

Procedural Information Bulletin No. 14

For the sitting period 29 April to 8 May 1986

EXPORT INSPECTION ORDERS

A ministerial statement was made on 29 April indicating that certain export inspection orders under the Export Control Act which were the subject of a disallowance motion still before the Senate had been repealed and replaced by new orders. It is believed that this is the first time that delegated legislation has been repealed while a motion to disallow that legislation was before the Senate. The new orders were tabled on the same day, and on the following day notice of motion to disallow some of the new orders was given and the order of the day for the adjourned debate on the motion to disallow the repealed orders was discharged.

The new disallowance motion was passed on 1 May. Fortunately, it was possible for the Senate to disallow the new orders to which it objected without disallowing the order which repealed the previous orders. If the repealing order had been disallowed this would have had the effect of reviving the repealed orders, which the Senate regarded as more objectionable than the new orders. Had the repeal and the substitution of the new orders been effected in a single order the Senate may have had to choose between the old and the new orders, because it is unlikely that once old orders had been revived by disallowance the Senate could disallow them in turn. This reveals yet another weakness in the statutory scheme for disallowance which may need to be corrected.

CONTINGENT NOTICE TO DEBATE A SPECIFIC MATTER

An unusual contingent notice was given by Senator Chipp on 1 May to enable him to move for the suspension of standing orders on the following Monday to give precedence over all other business to a motion on the Chernobyl incident. The substantive motion was included in his notice. The standing orders were suspended and the motion was duly debated on 5 May. The Government moved an amendment to replace the substance of Senator Chipp's motion, and the Opposition moved amendments to that amendment. By agreement a resolution was passed to provide special speaking time limits for the debate. The debate was not concluded on that day, and as there was no provision in Senator Chipp's motion for the debate to take

precedence from day to day, it is now listed on the notice paper under general business.

CONTINGENT NOTICE OF AMENDMENT

The Senate has before it the Sex Discrimination (Consequential Amendments) Bill 1986 which is designed to amend a number of Acts in consequence of certain provisions of the Sex Discrimination Act coming into force. Senator Harradine wished to move amendments to the Bill to amend the Sex Discrimination Act. These amendments are not relevant to the Bill, which does not amend that Act, and Senator Harradine would not normally be able to move them. He therefore, on 5 May, gave a contingent notice of motion to allow him to move, contingent on the Bill being read a second time, the suspension of standing orders to enable him to move the amendments to the Bill in Committee. The contingent notice of motion includes the text of the amendments, so that he has placed the amendments on record regardless of whether his attempt to suspend the standing orders is successful.

PARLIAMENTARY COMMISSION OF INQUIRY BILL

During debate on the Age tapes and transcripts in early 1984 the Opposition called upon the Government to establish a royal commission to investigate the conduct of Mr Justice Murphy as revealed by the tapes and transcripts. It is not clear whether such a commission could validly exercise any powers because the Constitution imposes upon the two Houses the sole responsibility for initiating any action to remove a federal judge, and presumably for any inquiry into the behaviour of a federal judge. The Government at that time declined to appoint a royal commission, and the question was then raised whether either or both of the Houses could appoint a body consisting of persons other than their own members to conduct such an inquiry. The term parliamentary commission came into use to describe such a body, and there was considerable discussion about whether the Senate could by resolution delegate its powers of inquiry to a body of non-members. It was suggested that any doubts about the constitutionality of such a procedure could be overcome by having commissioners operate under the "umbrella" of a Senate committee. (There is a departmental paper on this subject.) This was the scheme which was eventually adopted in the establishment of the Select Committee on Allegations Concerning a Judge. The matters before that committee were the subject of the two trials of Mr Justice Murphy.

The Parliament has now acted to establish a parliamentary commission by statute, legislation being announced by the Government on 7 May and passed by both Houses at the sitting of 8 May. The doubts about the validity of establishing such a commission have again been raised. The legislation has been drafted to make it clear

that the commission is a body established by Parliament for the purpose of advising Parliament in the exercise of its constitutional responsibility. If the legislation is held to be invalid on the ground that Parliament cannot delegate its powers this will mean that any inquiry or action under section 72 would have to be conducted entirely within the Houses or by their committees, and action against a federal judge would therefore impose a great burden upon the time of the Houses.

It is interesting to note that the same difficulty has been felt in the United States, where impeachment is the only method of removing a federal judge. This led the Congress in 1980 to legislate to provide for judicial councils to investigate complaints against federal judges and to send to the Congress any information warranting impeachment proceedings. The constitutionality of that legislation is yet to be tested, and any judgment of the US Supreme Court in that matter may have persuasive influence on any test of the legislation here.

GOVERNOR-GENERAL'S MESSAGES

The previous bulletin referred to the introduction into the House of Representatives of a message from the Governor-General under section 56 of the Constitution recommending an appropriation for the purposes of the Trade Practices Revision Bill, notwithstanding that the Bill contained no appropriation.

This matter was again raised by Senator Macklin in the debate on the Bill on 30 April. Senator Macklin asked, in relation to Senator Evans' explanation that the message was produced because of an "abundance of caution" on the part of the Office of Parliamentary Counsel, why any caution at all was required, since the requirements of section 53 and 56 of the Constitution are not justiciable. Senator Evans conceded that the Bill was not an appropriation Bill and that the message should not have been produced.

BILLS AMENDED

The Trade Practices Revision Bill was finally passed on 30 April, having been considered and amended on that and the previous day. Opposition and Democrat amendments were made to the Bill.

The Protection of Movable and Cultural Heritage Bill was passed with amendments on 1 May, and the Customs and Excise Legislation Amendment Bill was amended on 6 May by the omission of certain clauses relating to the importation of spirits.

COMMITTEE REPORTS

The Standing Orders Committee reported on 1 May that it was not able to resolve the questions relating to the registration and declaration of senators' private interests which were referred to it on 20 October 1983. The Committee reported that there was a fundamental disagreement amongst its members concerning the soundness of the proposals for registration and declaration and the effectiveness of the proposed register. The Committee suggested that the matter be resolved in the Senate, and that as a starting point the Senate consider whether any requirements imposed on senators should be the same as those imposed on Members of the House of Representatives.

The reports of all the Estimates Committees, which were presented on 2 May, contain significant comments on matters coming to the attention of the Committees during their examination of the estimates. Committees A and E commented upon the need for compatibility of the information systems installed in Parliament House and in senators' electorate offices, following the decision of the Government not to transfer to the Parliament responsibility for the services in electorate offices. The report of Committee E contains some significant observations on the appropriate accountability of departments for sums contained in the estimates.

The Finance and Government Operations Committee presented two reports on annual reports and a statement on 7 May, and a further report on the Northern Territory superannuation scheme on the following day.

The Joint Select Committee on the Australia Card presented its report on 8 May. The report is one of the most significant in relation to Government policy ever presented and also one of the most voluminous. It is notable for a dissenting report signed by the Chairman and most of the Government members.