

## Procedural Information Bulletin No. 22

*For the sitting period 17 March to 3 April 1987*

### PRIVILEGES BILL PASSES SENATE

The Parliamentary Privileges Bill 1986, which was introduced by Mr President McClelland in October last year, passed all stages in the Senate on 17 March after a substantial debate. The bill seeks to put into statutory form the long-established interpretation of freedom of speech in Parliament, which was called into question by two recent judgments of the Supreme Court of New South Wales, and to make certain changes in the law relating to parliamentary privilege recommended by the Joint Select Committee on Parliamentary Privilege.

Before the debate began the President tabled a recent judgment of a different judge of the Supreme Court of New South Wales which rejects the earlier judgments restricting the freedom of speech and upholds the traditional wide interpretation of that privilege.

The Bill was amended in committee of the whole, on the motion of Senator Evans, to make it clear that the provision for the Houses to impose imprisonment and fines on persons guilty of contempt would replace the existing power of the Houses to impose a penalty of imprisonment.

Senators Jessop and Puplick opposed clause 8, which would abolish the power of the Houses to expel their members.

Senator Cooney expressed some doubt about the width of the freedom of speech clause. In summing up the debate, Senator Evans referred to that clause in the following terms:

"I have been persuaded, ..... that however much one twists and turns and tries to confine or narrow the scope of this matter in some of the ways that Senator Cooney indicated it is almost impossible — in fact I think it is impossible — to find some principled basis on which to do that in a way that will not create more anomalies than are involved in the retention of the traditional protection. It is, I believe, very important — and most members of Parliament would believe it is very important — to retain

untrammelled the privilege that we in this Parliament enjoy of speaking our minds fearlessly and freely and not facing the consequences of court challenge, harassment or cross-examination, let alone prosecution, as a result of it. That privilege of course conveys with it many responsibilities. Perhaps one of the things we ought to emphasise more in the future in talking about privilege is some of the concomitant responsibilities to exercise our free speech in a responsible way and certainly in a way that is not irresponsibly to the detriment to the reputations of individuals."

At the beginning of the debate Senator Evans tabled a series of other Evans draft resolutions of the Senate which would carry out the recommendations of the Joint Select Committee. Senator explained that he was tabling the draft resolutions to allow comment on them before they are moved.

The resolutions provide for:

- procedures for the protection of witnesses
- procedures for the protection of persons appearing before the Privileges Committee
- criteria for determining whether a contempt has been committed
- procedures allowing persons criticised under parliamentary privilege to respond
- a statement to the matters which may be regarded as contempts of parliament
- procedures for raising questions of privilege.

Senator Evans also tabled an explanatory memorandum explaining the resolutions and some departures from the recommendations of the Joint Committee.

The Bill was received by the House of Representatives on 19 March. The Speaker took carriage of the Bill and made the second reading speech from the despatch box. As with the introduction of the Bill by Mr President McClelland, this involvement by a Presiding Officer is unprecedented. In her speech, Madam Speaker commended the Bill, stressing the importance of freedom of speech in Parliament and the threat posed by the unfavourable court judgments. She also presented to the Houses the documents tabled by President McClelland and President Sibraa. The Bill now awaits consideration by the House.

## DETENTION OF SENATORS

On 18 March the Senate passed resolutions reaffirming resolutions passed in 1980 requiring courts to inform the President of any detention of a senator and adding a new requirement for police to inform the President of any arrest of a senator.

The resolutions were recommended by the Privileges Committee in its Tenth Report. The report followed an inquiry into the circumstances in which Senator Georges was held in custody by police for over twenty-four hours before bail was granted. The Committee noted that the earlier resolutions deliberately placed an obligation on courts to notify any detention of a senator on the basis that any person arrested by police soon appears before a court. The Committee suggested that, in view of the possibility of arrested persons being held by police for some considerable time before appearance before a court, a similar obligation should be placed upon police.

## PRIVATE INTERESTS OF SENATORS

The Senate began debate on 17 March on resolutions moved by the Leader of the Government requiring declaration and registration of senators' interests. Senator Vigor moved an amendment to substitute for the scheme of registration proposed by the Government more general requirements for declaration of interests. The motion and amendment remain to be resolved.

## CASUAL VACANCIES

The Senate agreed to a resolution on 19 March expressing a view that a person appointed to fill a casual vacancy in the Senate should be the nominee to the political party of the vacating senator. Proceedings on the resolution were complicated, with an amendment and an amendment to the amendment, but this had to do with the insertion in the resolution of a list of casual vacancies filled since section 15 of the Constitution was changed in 1977.

## SCRUTINY OF BILLS COMMITTEE

The Senate on 17 March adopted a new standing order for the appointment of the Scrutiny of Bills Committee. Since the committee was first appointed in 1981 it has been established by resolution, and the adoption of the standing order was delayed by some disagreement between the Standing Orders Committee and some members of the Scrutiny of Bills Committee in relation to the details of the standing order. The standing order adopted is that recommended by the Standing Orders Committee.

## NOTICE OF MOTION CONCERNING A STATE GOVERNOR

On 25 March Senator Harradine attempted to give notice of a motion which contained words apparently reflecting on the Governor of Victoria. The notice related to remarks reportedly made by the Governor concerning the matter of invitro

fertilisation. Senator Evans raised the question of whether the language of the proposed notice of motion was acceptable. Subsequently, Senator Harradine gave the notice in amended form.

The standing orders protect from offensive words the Governor-General, but, unlike those of the House of Representatives, do not explicitly protect state governors. This would not prevent the President from ruling, on the basis of principle, that offensive words should not be used in relation to state governors.

Reference is often made to the principle that criticism of a protected person in a substantive motion is in order, but a substantive motion does not to itself suspend the prohibition on offensive language. Such a motion must be "in proper terms".

### INTEREST RATES PAPER REFERRED

The paper on interest rates which was the subject of disputation at the end of the last two-week period of sittings was referred to the Finance and Government Operations Committee on 17 March. Senator Chaney took advantage of standing order 109 to alter the terms of his motion for the reference between the sittings. The committee subsequently sought and obtained on 26 March an extension of the reporting date for the reference.

### URGENCY MOTION AMENDED

A motion of urgency, relating to compulsory trade unionism, was amended on 18 March by the use of a contingent notice of motion to allow the suspension of standing orders to permit an amendment to be moved.

### BILL REFERRED TO COMMITTEE

The Taxation Laws Amendment Bill (No. 5) 1986 was referred to the Standing Committee on Finance and Government Operations on 19 March by means of a motion under standing order 196A. The motion referring the Bill required the committee to consider particular matters relating to the provisions of the bill.

### PUTTING OF AMENDMENTS

The Standing Orders Committee, in its Fifth Report for the Sixty-second Session, has recommended that the standing orders be altered to permit all amendments to be put in the form: "That the amendment be agreed to". The committee has also suggested rules relating to amendments to be substituted for the rules contained in

the standing orders. This would avoid the situation, which has been referred to in previous bulletins, of the Senate being left with a meaningless motion because words have been left out and there has been a failure to agree on the words to be inserted.

#### AUSTRALIA CARD BILL

The Australia Card Bill was again the occasion for the sittings being extended. The Bill was again rejected on 2 April. The Senate sat on Friday, 3 April, to complete its consideration of the Lemonthyme and Southern Forests (Commission of Inquiry) Bill 1987.

#### RESIGNATION OF SENATOR GRIMES

Senator Grimes resigned from the Senate on 2 April. Tributes were paid to him by senators earlier that day, during the period set aside for discussion of matters of public interest.

#### OTHER COMMITTEE MATTERS

The Senate adopted the report of the Education and Arts Committee on 18 March, thereby endorsing the Committee's interpretation of its reference relating to the ABC/SBS merger.

Substantial changes were made to the groupings of the estimates and the membership of Estimates Committees before the committees commenced their sittings on 31 March. The meetings of the committees were somewhat disrupted by proceedings on the Australia Card and Lemonthyme Bills.

The Select Committee on Television Equalisation having reported on 23 March, the Bills subsequently restored presented a response to which were referred to the committee were to the notice paper. The Government the committee's report on 30 March.