

Procedural Information Bulletin No. 29

For the sitting period 7 to 18 December 1987

CHALLENGE TO SENATOR FAILS

The President announced on 16 December that the High Court had dismissed a petition challenging the election of Senator Wood on the basis that he was disqualified from being chosen or sitting as a senator under section 44 of the Constitution. There had been speculation that, had the petition succeeded, the Court may have ordered a new election of senators for New South Wales. The judgment was made mainly on the ground that the petition was incurably defective and did not disclose matters arising under section 44, but the Court also made some observations on the interpretation of the section.

VALIDATION BILL

The Wheat Tax (Validation) Bill was introduced on 14 December and subsequently passed, the Senate's cut-off date for consideration of bills received from the House of Representatives being suspended to allow its passage. The bill validated certain regulations under the Wheat Tax Act, the invalidity of the regulations having been pointed out by the Regulations and Ordinances Committee. The bill was marked by the draftsman as a bill imposing taxation, but it was clearly a bill amendable by the Senate: the Wheat Tax Act itself imposes the tax, as it explicitly states, and the regulations merely prescribe the rate of tax within a ceiling set by the Act. The bill operated to validate amending regulations, and if it had not been passed the previous regulations, setting a lower rate of tax, would have been operative. The bill therefore was clearly not a bill imposing taxation.

DISALLOWANCE MOTIONS

Certain export control orders, which provided for the charging of fees for chemical testing of meat, were the subject of identical disallowance motions, notice of which was given by the Opposition and the Australian Democrats. Each party gave notice in relation to the particular orders in question and also notice to disallow the whole of the amending orders, because of doubts about whether new orders contained within an amending order can be separately disallowed.

The Democrats withdrew their notices but the Opposition moved their motions, which were negatived, on 15 December. It was indicated that a select committee on chemical residues was to be established, but no action was taken to set up the committee before the Senate rose for the summer adjournment.

CLAUSES OMITTED AND REFERRED-TO COMMITTEE

The Social Security and Veterans' Entitlements Amendment Bill (No.2) 1937 was the subject of highly unusual proceedings. An Opposition amendment to the motion for the second reading was passed on 9 December to refer the provisions of certain subclauses, which related to the reduction of pensions with regard to potential property income, to the Standing Committee on Community Affairs. The subclauses were then omitted from the bill in committee.

Subsequently, on the same day, however, the subclauses were reinserted into the bill in amended form, the amendments being intended to overcome the objections to the provisions. A motion directing the Community Affairs Committee not to further consider the provisions of the subclauses was passed on 17 December.

The bill was also amended on the motion of the Australian Democrats to insert a reference to psychiatric disability into clauses relating to disabilities and eligibility for pensions.

MIGRATION AMENDMENT BILL

Consideration of this bill had been deferred until draft regulations to be made under the bill were tabled. The bill provided for retrospectivity of its provisions and of the regulations, and it was disclosed that the fee which was proposed to be levied by the bill was already being charged. When consideration of the bill was resumed on 9 December, the Senate had before it a further report from the Scrutiny of Bills Committee severely criticising the bill. The bill was amended to remove the provisions relating to retrospectivity. This means that over a considerable period a fee has been charged without legislative authority, and it appears that the money collected unlawfully will not be reimbursed.

OTHER LEGISLATION CONSIDERED

The States Grants (Tertiary Education Assistance) Bill 1987 was amended on the motion of the Opposition on 10 December by the omission of certain subclauses relating to the reduction of grants to institutions which pay academic salaries higher than those recommended by the Academic Salaries Tribunal. This bill was one of a

"package" of bills being considered together, and was reported separately from committee to allow it to be returned to the House of Representatives with the amendments.

The Senate agreed on 10 December to amendments made by the House of Representatives to the Statute Law (Miscellaneous Provisions) Bill 1987 . The amendments reinserted into the bill the provisions which had been omitted from it in the Senate and which were considered by the Regulations and Ordinances Committee and the Finance and Public Administration Committee. The provision considered by the Regulations and Ordinances Committee was amended in accordance with the recommendations of that committee.

The Broadcasting Amendment Bill (No. 4) was extensively amended on 8 December on the motion of the Australian Democrats in relation to conditions for the granting of licences. The Opposition unsuccessfully attempted, by means of an amendment to the motion for the adoption of the report of the committee of the whole, to refer the bill to a standing committee.

The Australian Democrats moved on 9 December a second reading amendment to the Health Legislation Amendment Bill to express a view that the bill should be amended in relation to eligibility for the new job search allowance. Speaking to the amendment, Senator Coulter indicated that his party would have preferred to have moved amendments to the bill in committee, but in the time available had not been able to have amendments drafted, because the principal Act had not been reprinted for some years and was virtually incomprehensible due to the large number of substantial amendments made to it since the last reprint. This is a further example of the difficulties caused by the failure of the Attorney-General's Department to reprint legislation promptly.

By means of an amendment to the motion for the second reading, consideration of the Customs and Excise Legislation Amendment Bill (No.2), which proposes a new system of calculation of value for tariff purposes, was deferred on 15 December to next year, to enable persons involved in importing to make representations on its provisions.

The Sales Tax (Exemptions and Classifications) Amendment Bill, having been deferred to allow consideration of an amendment moved by the Australian Democrats, was passed on 10 December, the amendment being negatived.

When the House of Representatives rose on 10 December for the summer adjournment it had agreed to all amendments to bills made by the Senate.

MISCELLANEOUS PROCEDURAL MATTERS

The Opposition, using a contingent notice of motion for the suspension of standing orders, succeeded on 14 December in changing the order in which government papers were considered pursuant to sessional order.

An Opposition senator withdrew, on 14 December, a proposal for a matter of public importance which he had lodged earlier in the day. The withdrawal of the proposal occurred just before the President would have reported it to the Senate.

COMMITTEE REPORTS

The Legal and Constitutional Affairs Committee presented on 15 December an extremely voluminous report, which is the result of its review of the *Freedom of Information Act 1982*. The report makes a large number of substantial recommendations relating to the Act.

A statement on 17 December by the chairman of the Regulations and Ordinances Committee indicates the large volume of legislation considered by that committee during the period of sittings. The chairman indicated that the committee had, since 14 September when the budget sittings commenced, scrutinised 622 instruments of delegated legislation, considered 31 legal advisers' reports, held 15 meetings, reported on a complex reference from the Senate (that relating to the Statute Law (Miscellaneous Provisions) Bill), received 20 undertakings from ministers to amend delegated legislation and authorised 12 chairmans' statements to the Senate on those undertakings. The chairman incorporated in Hansard a detailed statement of the committee's work.

The Joint Foreign Affairs, Defence and Trade Committee presented its report on the management of Australia's defence on 7 December.

The President tabled on 16 December his regular report on government responses to committee reports. The report indicates that there are 4 committee reports to which the government has not responded within six months after their presentation. Responses to 14 other reports are recorded.

COMMITTEE REFERENCES

A heavy workload for the Legal and Constitutional Affairs Committee resulted from the period of sittings. On the motion of the Opposition certain matters relating to the War Crimes Amendment Bill were referred to the committee on 15 December, and

the Cash Transaction Reports Bill was sent to the committee on the same day. The first-mentioned bill was not referred to the committee, but remains on the notice paper. Senator Hamer, later on the same day, made an unsuccessful attempt to refer to the committee additional matters relating to that bill.

On the motion of its chairman, the Finance and Public Administration Committee received on 9 December a reference on the central administration of the Australian Government.