

Procedural Information Bulletin No. 31

For the sitting period 15 to 25 March 1988

MATTER OF PRIVILEGE

The new procedures for raising matters of privilege and the new criteria for assessing matters raised, adopted by the Senate on 25 February 1988, were soon put to the test. Senator Chaney raised a matter of privilege by letter addressed to the President, and the President stated, on 15 March, that he had assessed the matter under the new criteria and determined that a motion to refer the matter to the Committee of Privileges should have precedence.

The matter raised by Senator Chaney involved the alleged suppression of a petition after a threat of legal proceedings had been made against the petitioner. This raised very difficult questions, particularly the question of whether the bringing or threatening of legal proceedings can ever be treated as a contempt of Parliament, especially having regard to the terms of the *Parliamentary Privileges Act 1987* and the criteria adopted by the Senate on 25 February. A person against whom legal proceedings are instituted has a readily available remedy: to contest the proceedings. In the matter raised, however, the threat of legal proceedings had allegedly already had the effect of causing the petitioner to suppress the petition, and Senator Chaney, in moving his motion on 16 March, suggested that the threat of legal proceedings had been employed for purposes of intimidation.

Senator Chaney's motion would have referred to the Privileges Committee the question of whether a contempt had occurred, but an amendment moved by Senator Collins was agreed to which had the effect of referring to the Committee the question of whether the circulation of a petition for the purpose of gaining signatures and submission to the Senate is, or ought to be, privileged. This would appear to be a question of law and of legislative policy.

PARLIAMENTARY PRECINCTS BILL

This bill, which was received from the House of Representatives on 15 March, declares the precincts of the new Parliament House, provides for the Presiding Officers to have the control of the precincts subject to orders of the Houses, and makes certain other provisions in relation to the precincts. When the bill was

received the President made a statement indicating that the bill had been the subject of consultations between the Houses and the executive government and that, as a result of those consultations, some changes had been made to a draft bill originally prepared by President McClelland to reflect the recommendations of a report by the Joint Committee on the New Parliament House.

The bill was passed on 24 March, and in the course of the committee debate undertakings were given by the government that the bill would be proclaimed to come into effect upon the occupation of the new building by the Houses.

FAMILY COURT BILL: CONSIDERATION IN COMMITTEE

The Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Bill 1987, which was referred to in the previous Bulletin, was the subject of further lengthy consideration in committee of the whole on 15 March. Further government amendments were made, an error in one of them being discovered in the course of the debate. The return of the bill to the House of Representatives provided the government with an opportunity to consider some of the amendments which had been made in the Senate, and on 17 March the bill was returned to the Senate with most of the Senate amendments agreed to but with House of Representatives amendments made to some of the Senate amendments. The House of Representatives amendments were agreed to, but further amendments to those amendments were moved by the Opposition.

The consideration of this bill provides a good example of the great value of the Senate's committee of the whole procedures, particularly the ability of senators to speak any number of times in committee and the freedom to move amendments which the procedures provide. Had those procedures been less liberal and the bill passed with the sort of consideration it received in the House, provisions which were admitted by all parties to be defective would have passed into law.

ANOTHER BILL AMENDED

A further example of the value of committee of the whole procedures was provided by the Textiles, Clothing and Footwear Development Authority Bill 1988, which was considered on 25 March. Opposition and Democrat amendments were made to the bill, mainly relating to inquiries by the proposed authority, and the government agreed to certain clauses being struck out of the bill after considering points raised on its provisions.

The bill also provided a minor point of procedural interest. The Opposition wished to vote against all of one part of the bill, but if that part was not omitted they wished to move amendments to it. This was done in the desired sequence by the Opposition

voting against the first clause of the part, as an indication of their opposition of the whole of the part, and when the clause was carried it was immediately recommitted by leave, in accordance with an undertaking by the minister, so that amendments could be moved to it.

REGULATION DISALLOWED

A regulation included in certain regulations made under the Freedom of Information Act was disallowed on 24 March on the motion of Senator Collins, the Chairman of the Standing Committee on Regulations and Ordinances. Senator Collins indicated that the government had agreed to the regulation being disallowed, and the motion was passed as a formal motion.

This is the first occasion since 1971 of a regulation or other instrument being disallowed by a motion moved by the Chairman of the Committee. Normally ministers give undertakings to amend delegated legislation to which the Committee takes objection, although on two occasions in recent times instruments have been disallowed when the statutory time for resolving a motion, of which notice had been given by the Chairman, expired.

The regulation in question related to the exemption of the Australian Bicentennial Authority from the Freedom of Information Act, and it was indicated by Senator Collins that the regulation was based on legal advice which the Committee questioned.

QUESTION DIVIDED

Following debate on a motion relating to South Africa moved by Senator Macklin on 16 March, the Chair used the power under standing order 130 to divide the question, and the three parts of the question were put to the vote separately, at the request of senators.

SOUND RECORDING TABLED

On 17 March a senator tabled a sound recording in the form of a cassette tape. The tape allegedly records a speech by a party official on election malpractices. The recording was subsequently played on at least one radio station. There is no doubt that such an item tabled has exactly the same status as a tabled paper. The *Parliamentary Privileges Act 1987* refers to the submission of a document to a House and the publication of a document by order of a House, new standing order 362 authorises the publication of each document laid before the Senate, and the Acts

Interpretation Act defines "document" so as to include all objects which store, record and reproduce information.

GUILLOTINE

The Conservation Legislation Amendment Bill was the subject of motions to limit the time for debate under standing order 407B on 24 March. When the motions for the guillotine were moved the Opposition used the contingent notices of motion which their leader has on the notice paper in an unsuccessful attempt to suspend the operation of the standing order and to nullify the limitations which were sought to be imposed. The guillotine was adopted by the government senators and Australian Democrat senators voting together. As it was imposed in committee of the whole, it did not apply to the subsequent proceedings in the Senate until the motion for the adoption of the report of the committee was passed.

ABSENCE OF PRESIDENT

The standing orders provide that the unavoidable absence of the President is announced by the Clerk on each day of such absence and the Deputy-President then takes the Chair. Normally a motion is passed on the first day for the Deputy-President to exercise the powers of the President for the duration of the absence, thereby avoiding the daily announcement.

On 18 March, however, the President announced in advance his absence during his attendance at a Commonwealth Parliamentary Association Executive Committee meeting, and the motion conferring all necessary authority on the Deputy-President was then passed.

CONFERENCE STAMP

An example of parliamentary pressure on a statutory authority occurred on 15 and 16 March. Australia Post had declined to issue a commemorative stamp to mark the Commonwealth Parliamentary Association Conference to be held in Canberra in September 1988. On the first of those days two notices of motion were given, one highly critical of Australia Post, and the other for a bill to amend the Postal Services Act to compel Australia Post to issue the stamp. On the following day the President informed the Senate that such a stamp would be issued, and the notices were then withdrawn.

COMMITTEE REFERENCES

A matter relating to Sydney airport was referred to the Transport, Communications and Infrastructure Committee on 18 March.

The Employment, Education and Training Committee received a reference relating to education for active citizenship on 23 March.

The time for the Legal and Constitutional Affairs Committee to report on the Cash Transaction Reports Bill was extended on 22 March.