

Procedural Information Bulletin No. 61

For the sitting period 13 to 22 August 1991

PARLIAMENTARY PRIVILEGE: SECRECY PROVISIONS

The dispute over the application of statutory secrecy provisions to parliamentary committee inquiries took a new turn on 16 August, when the Minister for Foreign Affairs, on behalf of Senator Tate, the Minister representing the Attorney-General, tabled an opinion by the Solicitor-General on the matter. This opinion concedes that a statutory secrecy provision having general application does not apply to the provision of information to a parliamentary committee, on the basis that the law of parliamentary privilege is not altered by a statutory provision unless the provision clearly has that effect. The opinion repudiates a contrary advice by the Attorney-General's Department which was tabled in the Senate on 30 May 1991 (see Bulletin No. 59, pp. 3-4). The opinion thus adopts the line of reasoning of advice provided to Senators by the Clerk. The opinion differs from that advice, however, in suggesting that a statutory provision may alter the law of parliamentary privilege not only by express words but by "necessary implication", and that the secrecy provisions of the National Crime Authority Act may have some application to the Joint Committee established under that Act.

BILL REFERRED TO SELECT COMMITTEE

The complicated debate over the Political Broadcasts and Political Disclosures Bill 1991 reached a new stage at the beginning of the sittings. When the order of the day for the second reading was called on on 13 August, the Minister for Administrative Services, Senator Bolkus, by leave, moved a motion to refer the bill to a special select committee. This motion was taken to supersede the motion for the second reading which was then before the Senate. It had earlier been announced that this step would be taken as a result of further discussions between the parties. The Australian Democrats moved an amendment to the motion to refer to the committee only the parts of the bill dealing with political broadcasts. The matter was determined on

14 August with the defeat of the amendment and the passage of the minister's motion. Senator Parer for the Opposition had given notice of a motion to refer the bill to a standing committee, and this notice took precedence over other business, but Senator Parer postponed it until the minister's motion was resolved, and then withdrew it on the following day. The select committee has until 5 November to report.

LEGISLATION AMENDED

The Defence Forces superannuation package of legislation was significantly amended on 14 August in relation to entitlements under the legislation. The Minister for Defence indicated that the matter of representation on appeal boards, which was considered by the Finance and Public Administration Committee, will be dealt with in the delegated legislation made under the bill.

The Interstate Road Transport Amendment Bill was amended on 16 August to ensure that certain determinations under the bill would be subject to tabling and disallowance. This was a matter raised by the Scrutiny of Bills Committee. The government had announced in the House of Representatives that this amendment would be accepted, but, strange to say, did not agree to the amendment in that House, and it was left for the Opposition to move the amendment in the Senate.

The Copyright Amendment Bill 1991, which was the subject of a report on 16 August by the Standing Committee on Legal and Constitutional Affairs, was extensively amended on 21 August, with Opposition and Democrat amendments being agreed to to make significant changes to the bill.

The Crimes (Aviation) Bill 1991 was amended on 21 August to take account of matters raised by the Scrutiny of Bills Committee.

The Quarantine Amendment Bill 1991 was amended on the motion of the Opposition on 22 August to remove the retrospective operation of provisions relating to charges for quarantine services.

SUB JUDICE PRINCIPLE

A point of order was taken by Senator Aulich on 15 August to the effect that a notice of motion which was being given by Senator Baume was contrary to the principle relating to matters which are sub judice. The basis of the point of order was that the notice of motion was making allegations against a person who was the subject of criminal proceedings, which proceedings were mentioned in the notice but which were not connected with the allegations. This point of order raised an interesting question of principle, as it may be possible to prejudice the trial of a person by

making allegations against that person which are not connected with the matters at issue in the criminal proceedings. The President, in accordance with the less restrictive interpretation of the sub judice principle in recent years, ruled that so long as the notice did not refer to the merits of the legal proceedings it was in order.

DISSOLUTION PROCLAMATIONS

For many years proclamations by the Governor-General dissolving the House of Representatives for an ordinary general election have included a phrase purporting to discharge Senators from attendance. In 1988 it was pointed out by the then Clerk-Assistant (Table), in a paper published in *Papers on Parliament* No. 2, that there is no constitutional basis for this practice and that it arose through a misreading of earlier dissolution proclamations.

On 16 August the President tabled correspondence between the Clerk and Government House relating to the 1990 dissolution proclamation. The result of the correspondence is that the government's advisers have indicated that the phrase in question will not be included in future dissolution proclamations.

SENATE QUORUM BILL

The bill to alter the quorum of the Senate from one-third to one-quarter of the Senators, which was first introduced in 1989 following a recommendation of the Select Committee on Legislation Procedures, was finally dealt with and passed on 21 August, on a division, members of the Opposition opposing the bill.

PARLIAMENTARY SECRETARIES

The Procedure Committee presented a report on 22 August recommending that parliamentary secretaries be formally empowered to take certain procedural steps which normally may be taken only by ministers, except answering questions at question time. Hitherto the sole parliamentary secretary in the Senate has been taking these steps on the basis that he does so on behalf of a minister.

COMMITTEE REPORTS AND RESPONSES

A volume recording the history of the Senate standing committees from 1970 to 1990 was tabled by the President on 20 August. It is a companion volume to the register of committee reports for the same period tabled on 7 May.

The Industry, Science and Technology Committee presented a report on the fisheries package of legislation on 13 August, and then obtained an extension of time until 3 September to present its final report on the package.

A further report by the Finance and Public Administration Committee on Commonwealth statutory bodies was tabled on 13 August, having been presented to the President during the long adjournment.

The Community Affairs Committee presented its report on the Social Security (Disability and Sickness Support) Amendment Bill on 22 August.

The Scrutiny of Bills Committee tabled on 22 August a letter it had received from the Treasurer relating to the Insurance Laws Amendment Bill 1991.

The Appropriations and Staffing Committee presented on 20 August its annual report and on 22 August its regular report on the determination of this year's estimates for the Department of the Senate.

On 15 August two government responses to committee reports were presented and debated, relating to the report of the Industry, Science and Technology Committee on the greenhouse affect and two reports of the Joint Standing Committee on Electoral Matters.

COMMITTEE RESPONSES

The Community Affairs Committee obtained on 22 August an extension of time to report on its reference on pharmaceutical restructuring measures. The Committee is now to report by 8 October 1991.

On the recommendation of the Selection of Bills Committee, the large insurance package of bills was referred to the Finance and Public Administration Committee on 22 August.

The annual estimates were referred to the Estimates Committees on 22 August. The Committees are required to report by 9 October.

The Senate agreed on 22 August to the establishment of the Joint Committee on Migration Regulations, with a modification relating to the membership of the Committee.