

Procedural Information Bulletin No. 73

For the 2 sitting weeks 6 to 15 October 1992

PRIVILEGE

Interference with a witness

In the previous Bulletin (No. 72, p 1) reference was made to the report of the Joint Committee on Corporations and Securities on the case of an Australian Securities Commission officer who had been charged with an offence under the Public Service Act for making submissions to the Joint Committee at variance with the submissions of the Commission.

The Deputy-President, presiding in the absence of the President, reported on 8 October that two senators had raised the matter with him as a matter of privilege under standing order 81, and ruled that a motion to refer the matter to the Privileges Committee could have precedence over other business. The matter was duly referred to the Privileges Committee on the motion of Senator Spindler on the following sitting day.

The letters to the Deputy-President by the senators and the material tabled in conjunction with his ruling indicate that there may be additional evidence relating to the matter which was not known to the Joint Committee.

Publication of a document

At question time on 12 October, Senator Bishop asked the Leader of the Government in the Senate a question concerning the Australian Taxation Office's investigation of alleged tax avoidance by a state member of Parliament. Having asked the question, Senator Bishop handed to Senator Button an envelope containing the name of the person concerned.

This gives rise to a question of whether Senator Bishop's publication of the name to Senator Button is covered by parliamentary privilege.

Although the procedures of the Senate do not provide for the sort of action taken by Senator Bishop, it is quite common for information to be made available to ministers in conjunction with the asking of questions or to senators in conjunction with the answering of questions, without that information forming part of the questions or answers and therefore part of the primary proceedings in parliament. The provision of information in this way is probably covered by the definition of proceedings in parliament in section 16 of the *Parliamentary Privileges Act 1987*, which includes "all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a House or of a committee". In this case, the publication of the name was in itself meaningless except in the context of the question, which of course could not be used in any legal action.

Senators also frequently make information available to ministers without reference to any proceedings in parliament. Such provision of information, however, is usually privileged under the common law interest and duty immunity, which covers, amongst other things, asking a person in a relevant position of authority to investigate an allegation.

Persons referred to in the Senate

Under Privilege Resolution No. 5, which provides for responses by persons aggrieved by references to them in the Senate, the Senate on 13 October published a response by the Chairman of the Advertising Standards Council, a former Supreme Court Judge, to remarks made about him by a minister in answering a question. This is notable as the 15th such use of the relevant procedures since they were adopted in 1988.

DELEGATED LEGISLATION: AMENDMENT AND APPROVAL

The Senate on 15 October added to the growing category of delegated legislation which is subject to amendment and approval by both Houses of the Parliament. An Opposition amendment to the Disability Discrimination Bill 1992 applied this form of parliamentary control to standards made under the bill. Under the bill as introduced those standards were to be contained in regulations, which would have been subject to disallowance only. There is now a considerable body of delegated legislation subject to amendment or approval. The Regulations and Ordinances Committee maintains a list of delegated legislation subject to the various methods of parliamentary control.

OTHER LEGISLATION AMENDED

The Industry, Technology and Commerce Legislation Amendment Bill 1992 was extensively amended on 8 October. This is an "omnibus" bill, and some of the amendments were to insert amendments of statutes which were not amended by the bill as introduced.

In the course of amending the Law and Justice Amendment Bill (No 3) 1992, another "omnibus" bill, the Senate took the unusual step on 13 October of rejecting a government amendment, preferring, as did the minister, an alternative amendment moved by the Australian Democrats.

QUESTION TIME AND MOTIONS ON ANSWERS

The temporary procedures which were applied to question time during the previous fortnight's sittings (see Bulletin No. 72, pp 2-3) were put in place on 6 October for this two-week period, but with an amendment moved by the Australian Democrats to extend the time for answers to questions to four minutes. The limitations on motions to take note of answers after question time were also agreed to again and also limited to the two-week period. The Procedure Committee, in its report presented on 15 October, noting the experimental nature of the procedures, made no recommendations on them but undertook to keep them under review.

No action was taken at the end of the sitting period to extend the procedures, so that, if the experiment is to continue, further motions will have to be moved when the sittings resume in November.

PRIVATE SENATORS' BILLS PASSED

The Parliamentary Presiding Officers Amendment Bill 1992, introduced by the Deputy-President and Chairman of Committees, Senator Colston, was passed by the Senate on 8 October. The statute which it amends provides for the exercise of statutory powers of the Presiding Officers, and the bill takes account of the change in the title of the Deputy-President.

A bill introduced by Senator Tierney, the Australian National University Amendment (Autonomy) Bill 1992, was passed by the Senate on 8 October. The bill aims to prevent what was claimed to be ministerial interference with the funding of the University and its research schools.

CUT-OFF DATE FOR LEGISLATION

Since 1986 the Senate has set, for each period of sittings, a deadline for the receipt of bills from the House of Representatives and the introduction of government bills into the Senate, in an attempt to control the end-of-session rush of legislation.

In recent times, however, the procedure has been criticised as worsening the evil which it was intended to remedy. Its effect has been that legislation is pushed through the House of Representatives before the deadline, the House is then adjourned for some weeks while the Senate deals with a large volume of legislation received just before the deadline, and the House then returns at the end of the period of sittings to consider Senate amendments. There has still been a concentration of bills at the end of sitting periods in the Senate, and the consideration of legislation in the House has been even more attenuated than before the procedure was adopted.

This criticism of the procedure may have been the reason for the refusal on 13 October for the motion to set the cut-off date to be taken as a formal motion. It may be that some alternative procedure will be devised.

FLAG

One effect of the recent controversy about the national flag was the installation, for the first time since federation, of flags in the Senate chamber.

Proposals to have the national flag and other symbols displayed in the Senate chamber have been made from time to time over many years, but have not been carried, a majority of senators favouring an unadorned chamber.

On 8 October, however, a motion by Senator Boswell to furnish the chamber with a national flag was passed, and two flags were displayed in the chamber on the following sitting day.

COMMITTEE REFERENCES

The controversial question of the operation of sections 45D and 45E of the Trade Practices Act, relating to secondary boycotts, was referred to the Employment, Education and Training Committee on 12 October on the motion of Senator Bell. The reference was opposed and amended.

The Community Affairs Committee on 6 October obtained amendments of its terms of reference relating to psychotherapeutic medication.

The Transport, Communications and Infrastructure Committee received on 15 October a reference relating to public sector planning for disasters and emergencies.

COMMITTEE REPORTS

The Select Committee on Superannuation's report on superannuation and the financial system, presented on 8 October, attracted a great deal of attention because of its treatment of the matter of financing superannuation commitments.

The Joint Committee on Corporations and Securities presented on 8 October its report on relations between the Australian Securities Commission and the Director of Public Prosecutions. The disputes between these two agencies had been the subject of hearings by the committee and the cause of a great deal of public vexation. The chairman of the committee, Senator Beahan, made a statement on 15 October on the program of the committee, and the statement was debated.

The Environment, Recreation and the Arts Committee presented on 7 October a major report on the environment and tourism.

The government presented its response on 8 October to the report of the Finance and Public Administration Committee on government companies and their reporting requirements.

The Procedure Committee presented on 15 October a report including a discussion of the grounds on which ministers may seek to withhold documents required by either House of the Parliament. This was a matter which arose out of the Marshall Islands affair (see Bulletin No. 69, pp 1-2).