

## Procedural Information Bulletin No. 84

*For the sitting period 14 to 24 March 1994*

### PRIVILEGE: PROPOSED LEGISLATION

On 23 March Senator Kernot presented a bill to amend significantly the law of parliamentary privilege, as a result of the matter arising from the inquiry by the Select Committee on the Print Media.

The government refused to provide certain documents to that Committee in the course of its inquiry into media foreign ownership decisions, and, in effect, claimed executive privilege and instructed a public servant not to provide the documents. It was pointed out that the Senate could impose a penalty of imprisonment on the public servant for contempt, but this would not be an effective or just remedy against the government.

The bill would make failure to comply with a lawful order of either House or a committee a criminal offence prosecuted in the Federal Court. If an offence were proved, the Court would make orders to ensure future compliance with a lawful order of a House or committee; in the case in question the order would be for the production of the documents. If a public servant committed an offence as a result of an instruction by a minister, the Court would make the necessary orders but not impose a penalty. It would be a defence to a prosecution that compliance with an order to give evidence or produce documents would involve substantial prejudice to the public interest not outweighed by the public interest in the free conduct of parliamentary inquiries. In order to determine whether the defence was established, the Court would examine the disputed evidence or documents in camera. By this provision the Court would be empowered to determine any government claim of executive privilege. A House would not be able to use its power to punish contempts in respect of an offence for which it had initiated a prosecution, and only the Houses would be able to commence prosecutions.

The Parliamentary Privileges Act already contains provision for dealing with certain contempts of parliament as criminal offences prosecuted in the courts, and this bill would be an extension of those provisions.

The President presented on 14 March his response to the 42nd Report of the Privileges Committee, outlining measures taken, in accordance with the

recommendations of the Committee, to overcome a lack of understanding of parliamentary processes in the public service. The Committee had reported that this lack of understanding was the cause of a number of cases that came before it involving public officials and alleged interferences with witnesses.

## TAXATION LEGISLATION

In debate on the Taxation Laws Amendment Bill (No. 4) 1994 on 22, 23 and 24 March, it was pointed out that the bill was classified as a bill not imposing taxation, but government amendments which were moved to the bill were framed in the form of requests apparently because it was thought that the amendments would increase the taxation liability of taxpayers. It was suggested that this highlighted again the difficulties arising from the government's classification of taxation legislation, which basically holds that a bill can increase taxation without being a bill imposing taxation within the meaning of section 53 of the Constitution, and that Senate amendments can increase taxation without imposing taxation and should then take the form of requests. This view was the basis of extensive dispute concerning the taxation legislation arising from the 1993 budget, which resulted in the government withdrawing and reframing its taxation bills (see Bulletins No. 77, pp 2-4, 78, pp 1-2, 79, pp 1-4).

In this case the Senate agreed to the requests for amendments but passed a declaratory resolution, similar to resolutions used for the taxation legislation last year, declaring that in agreeing to the requests the Senate did not necessarily accept that requests were appropriate and had not arrived at any concluded view as to the application of sections 53 and 55 of the Constitution to the bill. The matter of the application of section 53 of the Constitution to taxation legislation was referred to the Legal and Constitutional Affairs Committee.

Advice from the Attorney-General's Department expressing the government's view of the matter was tabled on 23 March, and a commentary on that advice pointing out the difficulties involved with it was tabled on 24 March.

## REGISTER OF INTERESTS

As part of the "package" of measures relating to government accountability arising from the sports grants affair (see Bulletin No. 83, p. 1) it was agreed that the Senate pass resolutions requiring the registration of senators' interests. These resolutions had been under consideration since 1986 and had been extensively debated but not agreed to.

On 16 March the Senate agreed to an order applying a special time limit to debate on the motions for the resolutions, with an amendment by Senator Harradine to

remove a provision whereby time spent on the time limit motion would be deducted from the time available for the substantive motion. The resolutions were then passed on 17 March. A number of amendments had already been made to the resolutions as proposed by the government to resolve matters raised during debate, and further amendments were made to the resolutions before their passage. Included among the amendments was one to ensure a non-government majority on the Committee which is given responsibility for overseeing the registration of interests.

#### OFFICER'S SALARY DISALLOWED

Under the Public Service Act the Senate has power to disallow determinations of the Public Service Commission relating to terms and conditions of employment of public servants. An unusual determination was disallowed by the Senate on 16 March. The determination provided for a special salary for an individual officer, the former Comptroller-General of Customs, who had resigned from that post after criticism of the customs service and an announcement by the government of a reorganisation of the service. The majority of the Senate took the view that it was inappropriate to make a special arrangement for a particular officer.

#### OTHER LEGISLATION AMENDED

An unusual request for an amendment was moved on 24 March to the Social Security (Home Child Care and Partner Allowances) Legislation Amendment Bill 1994. The Senate had agreed to requests to extend entitlements to allowances under the legislation, and the government in the House of Representatives had declined to make the requested amendments, which were intended to overcome anomalies in the legislation. The substituted request would have asked the government to redraft the bill to overcome those anomalies. There are precedents for this kind of request. Consideration of the bill, however, had been delayed until the last sitting day of the period of sittings, and the proposed request was eventually withdrawn in favour of an amendment simply pointing out the difficulties with the legislation and criticising the government for its unwillingness to redraft it. This resolution was moved by way of an amendment to the motion for the adoption of the report of the committee of the whole.

In addition to making extensive amendments to the Transport and Communications Legislation Amendment Bill (No. 3) 1993 on 24 March, the Senate also passed a resolution, also moved by way of an amendment to the motion for the adoption of the committee of the whole report, drawing attention to action which should be taken in conjunction with the legislation and requiring the tabling of regular reports on the results of such action.

The Crimes (Search Warrants and Powers of Arrest) Amendment Bill 1993 was extensively amended on 24 March in relation to the issuing of search warrants and the treatment of suspects.

In relation to two bills, the Military Compensation Bill and the Training Guarantee (Administration) Amendment Bill, the Senate agreed on 24 March to substitute amendments proposed by the government for amendments previously proposed by the Senate.

## PROPORTIONAL REPRESENTATION

There was considerable public debate about a suggestion that the government might seek to change the system of proportional representation for elections to the Senate in order to attempt to secure a government majority in the Senate. This debate was taken up in the Senate on 17 March during the consideration of general business. Two resolutions were passed supporting the system of proportional representation for the Senate. It was pointed out that under the single-member constituency system used for House of Representatives elections, governments regularly secure majorities in that House on a minority of votes, and that the proportional representation system results in the number of seats held by parties and independents in the Senate more closely reflecting their shares of votes.

## VACANCIES

Senators Neal and Woods were sworn in on 14 March to fill the vacancies in the representation of New South Wales, but another vacancy in that state was almost immediately created by the resignation of Senator Richardson on 25 March.

## COMMITTEES

In accordance with the new procedures relating to estimates committees and appropriation bills, all of the estimates committees held supplementary hearings during the period.

The following committee reports were presented during the period:

Date tabled	Committee	Title
15.03.94	Publications	8th Report

15.03.94	Industry, Science, Technology, Transport, Communications and Infrastructure	Transport and Communications Legislation Amendment Bill (No. 3) 1993
15.03.94	Legal and Constitutional Affairs	Health Legislation (Powers of Investigation) Amendment Bill 1993
17.03.94	Finance and Public Administration	Examination of annual reports tabled July 1993 to December 1993
22.03.94	Community Affairs	Examination of annual reports, No. 1 and 2 of 1993
22.03.94	Public Accounts (Joint Statutory)	330th Report, Review of Auditor-General's reports, May 1991 to September 1992
22.03.94	Public Works (Joint Statutory)	HMAS Cereberus Technical training and other facilities, Western Port, Victoria (1st Report of 1994)