

Procedural Information Bulletin No. 85

For the sitting period 3 to 12 May 1994

PARLIAMENTARY PRIVILEGES BILL

The Parliamentary Privileges Amendment (Enforcement of Lawful Orders) Bill 1994, introduced by Senator Kernot on 23 March (see Bulletin No. 84, pp 1-2) was referred to the Committee of Privileges for examination, on the motion of Senator Kernot, on 12 May.

Senator Kernot's motion contained a lengthy preamble reciting the background to the bill: the occasions on which the government has refused to provide documents and evidence to the Senate and its committees (the cases have been few but controversial, and most orders by the Senate for the production of documents have been complied with); the claims of executive privilege raised to support these refusals; the fact that the only remedy against these refusals is the power of the Senate to impose penalties for contempts; the difficulty of imposing a penalty on a public servant who acts on the instruction of a minister; and the absence of any mechanism for impartial adjudication of claims of executive privilege. The motion set out how Senator Kernot's bill would seek to overcome these problems, and asked the Privileges Committee to report on the effectiveness of the bill in providing solutions. The motion also extended the time for the Select Committee on Foreign Ownership Decisions in Relation to the Print Media to present its final report until after the Privileges Committee has reported. A government amendment to prevent the extension of time for the Committee was rejected.

The Privileges Committee has until 23 August to report on the bill.

ORDER FOR RETURN

Another instance of a government refusal to provide documents in response to an order of the Senate occurred during the sitting period.

This case involved what has now become the most common ground for seeking to withhold information: the need to protect commercial information relating to

government-owned or controlled enterprises which are in competition with private business.

The order, agreed to on the motion of Senator Campbell on 5 May, concerned leases involving Commonwealth agencies. On 10 May the Minister representing the Minister for Administrative Services, Senator McMullan and the Minister for Administrative Services, Mr Walker MP, were censured for not providing the information, and were again ordered to produce the documents. All non-government senators voted for the motion of censure. The dispute had not progressed any further by the end of the sitting period.

CONSTITUTION, SECTION 53, PARAGRAPH 3

The Legal and Constitutional Affairs Committee has commenced its inquiry into the interpretation and application of the third paragraph of section 53 of the Constitution, which provides that the Senate may not amend any bill to increase any proposed charge or burden on the people (see Bulletin No. 84, p. 2).

The submission by the Clerk of the Senate to the Committee has been published. The essence of the submission is that the third paragraph of section 53 makes sense only as an auxiliary support of the exclusive right of the House of Representatives to introduce bills imposing taxation and appropriating money; that therefore it applies only to bills which cannot be introduced in the Senate but which can otherwise be amended by the Senate, that is, bills appropriating money other than for the ordinary annual services of government; that it has no application to taxation legislation; and that attempts to apply the paragraph to bills which can be introduced into the Senate leads to confusion. This interpretation was expounded at the time of the commencement of the Constitution and in an early debate in the Senate.

The view of the government's advisers, as indicated in documents tabled in the Senate, is that the paragraph applies to bills which are not technically bills imposing taxation, and which may therefore be introduced in the Senate and otherwise amended by the Senate, where a Senate amendment would increase the taxation payable. Because the government's advisers also take the view that a bill can increase taxation without being a bill imposing taxation, this provides considerable scope for the application of the paragraph to taxation bills. As it would be absurd for the Senate to make requests for amendments to its own bill, this leads to a conclusion that the third paragraph applies only if a bill is introduced in the House.

The Clerk's submission points out the anomalies and difficulties which arise from this view, and recommends that steps be taken in relation to the framing and treatment of legislation which would overcome the difficulties otherwise involved.

The problems with the interpretation advanced by the government's advisers were well illustrated by a bill introduced by the government in the Senate and passed on 4 May. The Customs Tariff Amendment Bill 1994 increased rates of customs duties, but was classified as a bill which did not impose taxation and was introduced in the Senate. According to the view of the government's advisers, the Senate could have amended the bill to increase further the rates of duty. Thus the House of Representatives would not only receive from the Senate a bill which increased taxation but which had been amended by the Senate to increase the taxation beyond the level proposed by the government. As the Clerk's submission points out, this completely undermines the main purpose of section 53, which is to give the House of Representatives the exclusive right to introduce taxation imposition and appropriation measures.

Copies of the submission may be obtained from the Clerk's office.

LEGISLATION AMENDED

Extensive and intensive attention was given in committee of the whole to the Health Legislation (Powers of Investigation) Amendment Bill 1993, and the bill was extensively amended, most significantly in relation to powers of entry and search. The most substantive opposition amendments required entry of premises only by warrant or with the consent of the occupier. On 4 May the committee of the whole reported progress (deferred consideration of the bill) on the motion of the Democrats to allow further consideration of the government's objections to these amendments, and the bill as amended was finally passed after debate over several days.

Civil liberties issues were also involved in the consideration and amendment of the International War Crimes Tribunal Bill 1994. Substantive amendments made on 4 May on the motion of the Australian Democrats concerned the treatment of suspects and arrested persons.

The procedure of reporting progress when information provided by ministers is inadequate or to allow further consideration of amendments was also used on 5 May in relation to the Banking (State Bank of South Australia and Other Matters) Bill 1994 and the Industry, Technology and Regional Development Legislation Amendment Bill (No. 2) 1994. Both bills were substantially amended before passage.

The Democrats were unsuccessful on 11 May with amendments to the Law and Justice Amendment Bill 1994 which would have allowed members of the Parliament as well as ministers to seek reports on proposed legislation from the Privacy Commissioner and the Human Rights and Equal Opportunity Commission, and

provided for the automatic tabling in the two Houses of reports on proposed legislation.

Other bills significantly amended included the Bounty (Fuel Ethanol) Bill 1994 and the Aboriginal and Torres Strait Islander Commission Amendment Bill 1994 (4 and 9 May).

On 4 May the Senate insisted on an amendment to the Social Security Legislation Amendment Bill 1994 to which the government in the House of Representatives had disagreed, and on 11 May it was reported that the government had eventually agreed to the amendment insisted upon by the Senate. The amendment concerned the application of the assets test to primary producers.

VACANCY FILLED

The vacancy created by the resignation of Senator Richardson was filled with the swearing-in of Senator Michael Forshaw on 11 May.

COMMITTEE REPORTS

The following committee reports were presented during the period.

Date tabled	Committee	Title
04.05.94	Scrutiny of Bills	5th Report and Alert Digest No. 6 of 1994
05.05.94	Appropriations and Staffing	20th Report
09.05.94	Selection of Bills	Report No. 6 of 1994
11.05.94	Scrutiny of Bills	6th Report and Alert Digest No. 7 of 1994
12.05.94	Selection of Bills	Report No. 7 of 1994
12.05.94	Broadcasting of Parliamentary Proceedings (Joint Statutory)	Interim Report into the Radio and Television Broadcasting of Parliamentary Proceedings
13.05.94	Superannuation	Super and Housing (presented to the President)

Date tabled	Committee	Title
13.05.94	Legal and Constitutional Affairs	Gender Bias and the Judiciary (presented to the President)