

Procedural Information Bulletin No. 87

For the sitting period 20 to 30 June 1994

ORDERS FOR PRODUCTION OF DOCUMENTS

The Senate continued to make frequent use of orders for production of documents to obtain information on matters of public interest.

Reference was made in the two previous Bulletins (Nos 85, pp 1-2, 86, pp 2-3) to one of the relatively rare cases of a flat refusal by the government to produce documents which were the subject of an order, the consequent censure of the ministers concerned and notices of motion contemplating further action. This has become known as the Casselden Place matter, because it relates to leases involving Commonwealth agencies in a building of that name. On 22 June the Senate agreed without dissent to a motion moved by the Australian Democrats to require the Auditor-General to prepare and table a report on the leases. This motion appears to represent an interparty compromise on the issue. This is the second occasion on which the Senate has passed an order requiring the Auditor-General to report on a matter (see Bulletin No. 76, pp 3-4). The motion also requires the Privileges Committee to consider this case and the report of the Auditor-General in its examination of Senator Kernot's Parliamentary Privileges Amendment (Enforcement of Lawful Orders) Bill 1994 (see Bulletin Nos 84, pp 1-2, 85, p. 1).

Two other orders for the production of documents were also passed without dissent. An order agreed to on 28 June on the motion of Senator Harradine, an open government measure, requires the production of lists of files held by government departments. This order takes effect on 1 September or on the adoption by the Senate of a recommendation of the Finance and Public Administration Committee, whichever is the earlier.

An order agreed to on 29 June required the tabling on that day of the handbooks of government departments which set out the procedures to be followed in departmental contacts with members of Parliament. As required by the order, these documents were tabled later on that day.

PROCEDURE COMMITTEE REPORT: COMMITTEE SYSTEM

The Procedure Committee presented on 21 June its report on the committee system, following the reference by the Senate which required the Committee to consider ways in which the committee system could be made more responsive to the composition of the Senate. The Committee recommends a restructuring of the committee system, with the establishment of "twin" standing committees in each of eight subject areas to combine the functions of the current legislative and general purpose standing committees and the estimates committees. Each pair of committees would have overlapping membership and common secretariats. One of the pair in each subject area, the legislation committee, would assume the function of the estimates committees and scrutinise legislation referred by the Senate, and would have a government chair and an effective government majority. The other committee in each pair, the references committee, would have a non-government majority and a non-government chair and would inquire into matters referred by the Senate other than estimates and legislation. It is envisaged that this system would avoid the appointment of so many ad hoc select committees. No action was taken on the report before the end of the period of sittings.

DELEGATED LEGISLATION

An unusual resolution was passed on 30 June on the motion of the chairman of the Regulations and Ordinances Committee, Senator Colston. The resolution would allow the Committee to withdraw from the Notice Paper a notice of motion for the disallowance of certain Industrial Relations Court Rules during the winter long adjournment of the Senate. Senator Colston explained that, if the Committee received a satisfactory undertaking from the Industrial Relations Court concerning the making of substitute rules, the withdrawal of the notice of motion would allow the Court to make substitute rules without waiting for the next meeting of the Senate and without running the risk of the new rules being held to be invalid under section 48B of the Acts Interpretation Act. This provision prohibits the making of delegated legislation the same in substance as legislation which is the subject of an unresolved disallowance motion. The High Court has taken a broad view of the meaning of "the same in substance" (*Victorian Chamber of Manufactures v the Commonwealth* 1943 67 CLR 347), and new rules, while overcoming the objections of the Regulations and Ordinances Committee, might be legally the same in substance as the previous rules. The resolution preserved the right of any senator to prevent the withdrawal of the notice of motion until the Senate next meets, thus keeping the spirit of standing order 78.

Senator Colston also made a statement on behalf of the Committee on 29 June referring to compliance, or non-compliance, by departments and agencies with the statutory provisions relating to the tabling of delegated legislation.

LEGISLATION AMENDED

Several bills were very heavily amended during the period, in terms of the volume and the number of amendments.

Some pages of amendments were made to the Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Bill 1994 on 28 June, on the motion of the Opposition, the amendments relating mainly to the establishment of a Specialist Medical Review Council.

The amendments to the Social Security Legislation Amendment Bill (No. 2) 1994, considered on 29 and 30 June, also extended over many pages and reflected the contributions of all parties. The motion for the adoption of the report of the committee of the whole on the bill was amended to refer to the Rural and Regional Affairs Committee matters arising from the amendments relating to rural producers.

Three amendments were made to the Corporations Legislation Amendment Bill 1994 on 28 June relating mainly to the proceedings of quasi-judicial panels. The government in the House of Representatives accepted one amendment but proposed an alternative for two amendments, and the Senate on 30 June proposed a further amendment to the substitute amendment, to conclude finally the proceedings on the bill.

Voluminous amendments were made to the Australian Capital Territory Government Services (Consequential Provisions) Bill 1994 on 28 June. One of the amendments inserted a new part in the bill to deal with mobility between the ACT government service and parliamentary departments, a matter which had been overlooked.

The Plant Breeder's Rights Bill was significantly amended on 30 June. This bill had been considered by the Rural and Regional Affairs Committee, and during the debate reference was made to an unusual supplementary report of the Committee on the bill, presented on 2 June. The Committee had reported a response by a witness to adverse evidence taken before presentation of the earlier report on 31 May. As the Committee had reported on the bill, a supplementary report was adopted as the means of allowing the witness to respond to the earlier evidence.

A frequent inquiry made of the Clerk concerns bills which could be the basis of a dissolution of both Houses of Parliament under section 57 of the Constitution. So far in the course of this Parliament no bills have failed to pass twice within the terms of section 57 so as to provide a "trigger" for a double dissolution. Bills which have failed to pass once are:

- two diesel fuel tax bills negatived at third reading 16/12/93 (there are technical problems which probably prevent these bills being presented a second time to fulfil the requirements of section 57)
- Veterans' Affairs Legislation Amendment Bill (No. 2) 1993 (bill laid aside by government in House of Representatives 24/2/94 after Senate insisted on its amendments; a technical problem may prevent this bill being presented again) (another veterans' bill, the Veterans' Affairs Legislation Amendment Bill (No. 3) 1993, also laid aside on 24/2/94, has been superseded by subsequent legislation in a way which prevents it being presented a second time for the purposes of section 57)
- Petroleum (Submerged Lands) (User Charge) Bill 1994
Offshore Minerals (Exploration Licence User Charge) Bill 1993
Offshore Minerals (Retention Licence User Charge) Bill 1993
(negatived at second reading 1/6/94)
- Student Assistance Amendment Bill 1994 (laid aside by the government in the House of Representatives 27/6/94 after the Senate had insisted on its requests for amendments to the bill).

AUDITOR-GENERAL

As part of the undertaking by the government to the Senate that there would be a package of accountability reforms, arising from the sports grants affair (see Bulletin No. 83, p. 1), the government gave notice of a motion to establish an Audit Committee, but the Opposition on 30 June had the motion referred to the Public Accounts Committee for examination of the question whether that Committee should take on the tasks proposed for the new committee. The Senate also received on 30 June a report by the Auditor-General on legislation to replace the Audit Act which is part of the package.

TREATIES BILL

There has been a good deal of public discussion, particularly since the decision of the High Court in the Tasmanian dams case in 1983, of the absence of any parliamentary control over the exercise of the executive government's treaty-making power. In previous Parliaments, Senator Harradine has proposed a bill to provide for parliamentary approval of treaties and the establishment of a standing committee to review treaties. On 29 June Senator Bourne introduced a bill which would provide that treaties would not come into effect until approved by both Houses of Parliament or after a specified period for parliamentary action on the treaties.

COMMITTEE REPORTS

The following committee reports were presented during the period.

Date tabled	Committee	Title
20.06.94	Community Affairs	Report on the Social Security Legislation Amendment Bill (No. 2) 1994: Part 2, Divisions 2 and 5
20.06.94	Community Affairs	Report on the Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Bill 1994
21.06.94	Procedure	First Report of 1994
22.06.94	Selection of Bills	Report No. 10 of 1994
22.06.94	Scrutiny of Bills	9th Report and Alert Digest No. 10 of 1994
27.06.94	Community Affairs	Report on the Social Security Legislation Amendment Bill (No. 2) 1994 — Proposed Division 8A and Schedule 2A: enhanced reciprocal obligations
28.06.94	Employment, Education and Training	Report on the Nature, Implications and Effects of the Statutory Rules 1994 Nos 146 and 154
29.06.94	Community Standards Relevant to the Supply of Services Utilising Electronic Technologies	Overseas sourced audiotex services, video and computer games, R-rated material on pay TV
29.06.94	Regulations and Ordinances	98th Report — Scrutiny by the committee of amendments of the Family Law (Child Abduction Convention) Regulations
29.06.94	Industry, Science, Technology, Transport, Communications and Infrastructure	Report on Disaster Management
29.06.94	Scrutiny of Bills	10th Report and Alert Digest No. 11 of 1994
30.06.94	Environment, Recreation and the Arts	Report on Annual Reports: 1992-93 reports tabled in the Senate January to June 1994

Date tabled	Committee	Title
30.06.94	Finance and Public Administration	Report on Annual Reports tabled January 1994 — June 1994
30.06.94	Community Affairs	Report on Evaluation of Commonwealth Funded Programs
30.06.94	Rural and Regional Affairs	Report on the Examination of Annual Reports No. 1 of 1994 Report on the Examination of Annual Reports No. 2 of 1994
30.06.94	Industry, Science, Technology, Communications, and Infrastructure	Report on the Examination of Annual Reports No. 1 of 1994
30.06.94	Publications	Twelfth Report
30.06.94	Community Affairs	Progress Report on Validation of Care Aggregated Module (CAM) and Standard Aggregated Module (SAM) funding for Nursing Homes
30.06.94	Selection of Bills	Report No. 11 of 1994