

Procedural Information Bulletin No. 94

For the sitting period 27 February to 9 March 1995

LAND FUND BILL AND DOUBLE DISSOLUTION

Proceedings on the legislation relating to the Aboriginal and Torres Strait Islander Land Fund were interpreted as manoeuvring by the government to establish the grounds for a simultaneous dissolution of both Houses under the deadlock provisions of section 57 of the Constitution.

The government claimed that the reference on 28 November 1994 to a select committee of the amendments of the original bill, the ATSIC Amendment (Indigenous Land Corporation and Land Fund) Bill 1994, could be regarded as a failure to pass the bill within the meaning of section 57 (see Bulletin No. 92, p. 3).

The government could succeed in bringing about a double dissolution if it could persuade the Governor-General that a section 57 situation had occurred, even if the High Court would subsequently hold that the conditions of section 57 had not been met. This is because the High Court indicated, in the petroleum and minerals authority case in 1974-75, that it would not intervene to prevent a dissolution but would determine the validity of any legislation which emerged from a completed section 57 process.

The select committee reported on the original bill on 9 February, but the bill did not come on for further consideration because the government kept it down the list of government business. A new bill, the Land Fund and Indigenous Land Corporation (ATSIC Amendment) Bill 1995 was introduced into the House of Representatives. The change in title reflected the incorporation in the bill of some of the amendments made to the original bill by the Senate (section 57 allows a second bill, after a first failure to pass, to include any amendments "which have been made, suggested, or agreed to by the Senate"). As the period of three months prescribed by section 57 had elapsed since the claimed first failure to pass on 28 November, the appearance of the new bill was taken to indicate that the government was attempting to set up a double dissolution "trigger".

Against the wishes of the government, the majority in the Senate brought on the original bill for further consideration on 28 February, but rejected a government motion to have the sitting extended to deal with the bill on that day. The bill was further amended on the following day, to substitute amendments for the request rejected by the government in the House of Representatives and to make new amendments reflecting the deliberations of the select committee, and the bill was then passed.

The bill having been further considered and passed by the Senate, it would be more difficult for the government to claim that a failure to pass the bill had occurred on 28 November, even for the purpose of persuading the Governor-General. The amendments of the bill were rejected by the government in the House of Representatives, at which point the Opposition announced that it would support the new bill containing some of the amendments made by the Senate. The government could have treated the passage of the original bill with amendments by the Senate as a first occasion under section 57, and retained the new bill for a further period of three months, but the new bill was passed through the House and forwarded to the Senate, thereby, unless the government maintains the argument that there was a failure to pass on 28 November, foregoing for the time being the establishment of a "trigger" with this legislation. The new bill had not been dealt with by the Senate at the end of the sitting period.

ORDERS FOR PRODUCTION OF DOCUMENTS

Several packages of documents were produced during the period in response to orders for documents passed by the Senate, mainly relating to forest industry matters and the Great Barrier Reef.

Two orders for production of documents relating to forest management on 27 February were accompanied by statements by the government that it would not produce "high level advice given to ministers by departments", but documents in response to the orders were produced on the following day and on 1 March, including some advices.

LEGISLATION AMENDED

Proceedings on the International War Crimes Bills (see Bulletin No. 93, pp 2-3) concluded on 27 February and the bills were passed with extensive amendments. The Weapons of Mass Destruction (Prevention of Proliferation) Bill 1994 was also passed with extensive amendments on the same day.

On 6 March the Senate struck out of the Law and Justice Legislation Amendment Bill (No. 3) 1994 a provision which had been criticised in evidence before the Legal

and Constitutional Legislation Committee. This provision would have inserted in the Acts Interpretation Act a section further directing the courts as to the interpretation of legislation, and requiring the High Court to give otherwise invalid legislation any valid application it is capable of having. The provision was criticised as an attempt to prevent the High Court striking down legislation found to be invalid.

The Environment, Sport and Territories Legislation Amendment Bill (No. 2) 1994, an omnibus bill, was amended on the motion of the Democrats and Opposition on 8 March in relation to heritage management plans and "frisk searches" of suspects.

PRIVILEGE

The Privileges Committee presented its second report on Senator Kernot's Parliamentary Privileges Amendment (Enforcement of Lawful Orders) Bill 1994, having been required to consider the Casselden Place matter in relation to the bill (see Bulletin No. 90, pp 1-2). The Committee drew attention to its earlier suggestion that, in the event of a conflict between a claim of executive privilege by the government and the assertion by the Senate of its right to have access to information, relevant documents be provided to an independent arbitrator to be evaluated. In relation to the Casselden Place matter, the Committee noted that the Senate had, in effect, engaged the Auditor-General as an independent arbitrator, and that this appeared to have worked satisfactorily.

The Committee received on 9 March another reference, arising from the Select Committee on Public Interest Whistleblowing, and referring to a claim that false and misleading evidence was given to that select committee.

COMMITTEES

Two further select committees were appointed during the sitting period, a Select Committee on Aircraft Noise in Sydney on 8 March and a Select Committee on the Dangers of Radioactive Waste on 9 March.

Both of these select committees arose out of particular continuing controversies, and illustrate the point that, where such controversial matters appear to require investigation but no other adequate investigation has been provided, the Senate is resorted to as the only avenue for bringing about such an investigation.

The Select Committee on Foreign Ownership Decisions in relation to the Print Media was instructed, by a motion moved by the Opposition on 9 March, to invite the Prime Minister and the Minister for Communications and the Arts to provide evidence in substantiation of their allegations concerning the Packer bid for Fairfax newspapers.

It was indicated during the debate that it was not expected that the Prime Minister and the Minister would respond to the invitation, but that the motion was passed to provide a formal opportunity for them to substantiate their allegations.

COMMITTEE REPORTS

The following committee reports were presented during the period:

Date tabled	Committee	Title
28.02.95	Legal and Constitutional Legislation	Report on Law and Justice Legislation Amendment Bill (No. 3) 1994 and Human Rights Legislation Amendment Bill 1994
28.02.95	Community Affairs Legislation	Report on the Examination of Annual Reports
01.03.95	Privileges	52nd Report
01.03.95	Finance and Public Administration Legislation	Report on Annual Reports Tabled July 1994-December 1994
01.03.95	Rural and Regional Affairs and Transport Legislation	Report on Examination of Annual Reports
01.03.95	Economics Legislation	Report on the Examination of Annual Reports
01.03.95	Scrutiny of Bills	3rd Report and Alert Digest No. 3 of 1995
01.03.95	Legal and Constitutional Legislation	Report on Migration Legislation Amendment Bill (No. 3) 1995
02.03.95	Environment, Recreation, Communications and the Arts Legislation	Report on the Broadcasting Services Amendment Bill 1994
02.03.95	Legal and Constitutional Legislation	Report on Migration Legislation Amendment Bill (No. 3) 1995 — Erratum
06.03.95	Finance and Public Administration Legislation	Report on Financial Management and Accountability Bill 1994, Commonwealth Authorities and Companies Bill 1994, Auditor-General

Date tabled	Committee	Title
		Bill 1994, Audit (Transitional and Miscellaneous) Amendment Bill 1995
06.03.95	Legal and Constitutional Legislation	Report on the Family Law Reform Bill 1994 and Family Law Reform Bill (No. 2) 1994 [Exposure Draft]
08.03.95	Community Affairs Legislation	Report on Health and Other Services (Compensation) Bills
08.03.95	Legal and Constitutional Legislation	Report on Racial Hatred Bill 1994
08.03.95	Scrutiny of Bills	4th Report and Alert Digest No. 4 of 1995
09.03.95	Rural and Regional Affairs and Transport Legislation	Report on the Primary Industries and Energy Legislation Amendment Bill (No. 3) 1994 [1995]
09.03.95	Environment, Recreation, Communications and the Arts Legislation	Report on Annual Reports
09.03.95	Senators' Interests	Annual Report 1994