

## Procedural Information Bulletin No. 95

*For the sitting period 21 to 30 March 1995*

### DEADLINE FOR LEGISLATION

In November 1994 the Senate made a permanent order whereby any government legislation received in one period of sittings is automatically adjourned until the next period of sittings unless specifically exempted from the order (see Bulletin No. 92, p. 1). This order was the most recent of a series of attempts by the Senate to stop the end-of-sittings rush of legislation. In August 1993, when the Senate had agreed to a "double deadline" for the introduction of government legislation, the Leader of the Government in the Senate had given an undertaking that, subject to certain exceptions, legislation would be introduced in one period of sittings for passage in the next. The order passed in November 1994 was intended to reflect this undertaking.

The government, however, subsequently claimed that in giving the undertaking it intended only that legislation be introduced into either House in one period of sittings for passage in the next, so that the Senate should consider bills introduced into the House of Representatives in a previous period of sittings and not insist that they be received by the Senate.

The government, therefore, moved a motion to amend the order to reflect this interpretation. It is clear, however, that the proposed amended version of the order could be ineffective in preventing the end-of-sittings rush, because government bills could be held in the House of Representatives until the last days of a period of sittings and then forwarded to the Senate with an expectation that they would be passed in the same period of sittings. Senator Chamarette, the author of the "double deadline", therefore moved an amendment to the government's motion to provide that bills introduced into the House of Representatives in a period of sittings would be considered by the Senate in the next period of sittings only if they were received by the Senate within the first two-thirds of the second period of sittings. This amendment was agreed to on 23 March. In effect, it re-establishes the "double deadline", as there is a deadline for the introduction of bills into the House of Representatives (the end of the previous period of sittings) as well as a deadline for

their receipt by the Senate (in the first two-thirds of the next sittings). The new "double deadline" is now a permanent order applying to all future sittings.

## LEGISLATION AMENDED

The package of Audit Bills, which is designed to replace the existing Audit Act and to provide for the establishment of the office of the Auditor-General, was considered on 22 and 23 March and finally passed by the Senate on 27 March with extensive amendments. The main amendments are intended to provide for parliamentary supervision of the appointment of the Auditor-General and parliamentary oversight of the audit system through the proposed new joint committee to replace the Joint Committee of Public Accounts. The government, however, rejected most of the amendments in the House of Representatives and the bills were returned to the Senate. They were not dealt with at the end of the sittings. The disagreement between the Senate and the government over the amendments is basically a disagreement about the relationship between the Parliament and the Auditor-General, the Senate wanting to formalise the role of the Auditor-General as an independent adviser to Parliament, and the government wanting exclusive control of the appointment of the Auditor-General.

The Land Fund and Indigenous Land Corporation (ATSIC Amendment) Bill 1995 was passed by the Senate on 21 March (see Bulletin No. 94, pp. 1-2). In the course of the debate on the bill, Senator Ellison pointed out that the government may have had difficulty had it attempted to use the bill as a double dissolution "trigger", because in the process of incorporating one of the amendments made by the Senate to the earlier bill a mistake was made, so that the bill would not have been the same as the original bill altered only by the Senate amendments which were incorporated in it, and would therefore not have met the conditions prescribed by section 57 of the Constitution.

Under the procedures for the consideration of estimates and appropriation bills adopted in May 1993, appropriation bills which have been considered by legislation committees are not considered in committee off the whole unless amendments are moved to them. On 29 March the Appropriation Bill (No. 3) 1994-95 was considered in committee because the Greens moved an amendment to omit expenditure for the Department of Defence. This allowed a debate on defence expenditure and the part it should play in reducing government expenditure generally. The amendment was not agreed to.

An unusual second reading amendment was passed on 30 March in respect of a pair of health bills relating to private health insurance changes. On the motion of the

Democrats, an amendment was agreed to whereby, when the bills are agreed to by both Houses, matters relating to the operation of the bills will be referred to the Community Affairs Legislation Committee. The bills were also substantially amended in the Senate.

The controversial Human Rights Legislation Amendment Bill 1994 and the Racial Hatred Bill 1994 were deferred on 21 March to the end of the sitting period and not reached before the Senate rose. The Greens had earlier attempted to have the Racial Hatred Bill deferred until after a government review of the implications for the bill of the High Court's decision in the Brandy case.

#### ORDER FOR DOCUMENTS TO BE PRODUCED TO COMMITTEE

An order that documents be produced to a committee was passed by the Senate on 22 March on the motion of Senator Bourne. The documents relate to the matter of interception of telephone calls by Telecom, and the order required their production to the Legal and Constitutional Legislation Committee in connection with its examination of the Telecommunications Interception Amendment Bill 1994. The committee was required to treat the documents as evidence taken in camera and to return them to the Minister for Justice unless the committee determined that the documents be published. Documents were subsequently handed over at a public meeting of the committee.

#### CENSURE MOTIONS

The sitting period was productive of censure motions.

The government moved a motion to censure Senator Baume for tabling in the Senate a document containing a person's tax file number. The motion would not only have censured Senator Baume but referred to the Privileges Committee the question of whether Senator Baume's action could be treated as a contempt of the Senate, on the basis that he did not inform the Senate that the documents, which he tabled by leave of the Senate, contained a tax file number. The motion was passed on 29 March, but with two sets of amendments moved by the Greens and Senator Harradine, which turned the censure motion into a resolution deploring Senator Baume's action, omitted the reference to the Privileges Committee, and acknowledged Senator Baume's statement that he was not aware that the tax file number was included in the document.

The Opposition gave notice of a motion to censure the Minister for Family Services, Senator Crowley, because of her disclosure at a press conference of a report of a post mortem examination of a minor, without the permission of the parents. This motion was not proceeded with when Senator Crowley apologised for her action on 29 March.

Senator Chamarette gave notice of a motion to censure a member of the House of Representatives, Mr Graeme Campbell, for disclosing the identity of a minor convicted of certain offences. Senator Chamarette did not proceed with her motion on 30 March, partly on the basis of her acceptance of advice that it was not appropriate for the Senate to seek to judge or censure the conduct of a member of the House of Representatives. This is an established convention in the Senate; on two occasions the President has declined to give precedence to motions to refer matters to the Privileges Committee on the basis that they involved allegations against members of the House of Representatives. The convention does not appear to be followed in the House of Representatives, as that House passed a government motion condemning Senator Baume on 30 March. In debate it was stated that it is not proper for a House to censure any member other than a minister, but this alleged principle has also not been observed. It appears to arise from a consideration of the situation in the House of Representatives and other lower houses which are controlled by the government of the day, in that any successful censure motion could only be moved by the government against an Opposition member. If the question is considered apart from that difficulty, however, it may well be concluded that a House properly so called may be justified in censuring its own members, apart from ministers, for unacceptable conduct.

## PRIVILEGES COMMITTEE REPORT

The Privileges Committee presented on 22 March its report on a case of alleged threats to a senator. The committee found that, although a person had threatened the senator, the threatened actions would have been lawful, and did not have the effect or tendency of substantially obstructing the senator in the performance of his duties.

## COMMITTEE REPORTS

The following committee reports were presented during the period:

<b>Date tabled</b>	<b>Committee</b>	<b>Title</b>
21.03.95	Community Affairs Legislation	Report on the Health Legislation (Private Health Insurance Reform) Amendment Bill 1994
22.03.95	Privileges	53rd Report, Possible threat to a Senator
22.03.95	Scrutiny of Bills	5th Report and Alert Digest No. 5 of 1995
23.03.95	Legal and Constitutional Legislation	Report on Annual Reports
27.03.95	Community Affairs Legislation	Report on the Provisions of the Social Security (Non-Budget Measures) Legislation Amendment Bill 1995
28.03.95	Employment, Education and Training References	Report on Open Learning in Australia Part 2
29.03.95	Legal and Constitutional Legislation	Report on Telecommunications (Interception) Amendment Bill 1994
29.03.95	Scrutiny of Bills	6th Report of 1995
30.03.95	Legal and Constitutional References	Discussion Paper, Treaties and the External Affairs Power
30.03.95	Economics References	Issues Paper, Telecommunications Developments
30.03.95	Economics References	Issues Paper, Small Business Taxation
30.03.95	Legal and Constitutional References	Report on Cashing in on the Sydney Olympics
30.03.95	Rural and Regional Affairs and Transport References	First Report on Impact of Assets Tests on Farming Families Access to Social Security and Austudy
30.03.95	ABC Management and Operations (Select)	Our ABC
30.03.95	Finance and Public Administration References	Report on Disclosure Provisions for Prime Ministers and Leaders of the Opposition

<b>Date tabled</b>	<b>Committee</b>	<b>Title</b>
30.03.95	Certain Aspects of Foreign Ownership Decisions in Relation to the Print Media	Final Report