

Procedural Information Bulletin No. 97

For the sitting period 29 May to 9 June 1995

VACANCY

A vacancy occurred during the 2-week adjournment and was filled before the Senate met again, the New South Wales Parliament having appointed on 24 May Senator Wheelwright to replace Senator Loosley who resigned on 21 May. The acceptance of facsimile transmitted documents for the purposes of swearing in senators obviates any delay in the process.

ORDER FOR WITNESS TO APPEAR

The Senate passed on 6 June an order that a named officer of the Commonwealth Bank appear before the Economics Legislation Committee during its supplementary hearings on estimates. The Bank had failed to provide officers at an earlier hearing notwithstanding a request by a senator. All non-government senators voted for the order. The supplementary hearings will take place in the next sitting fortnight.

ORDERS FOR PRODUCTION OF DOCUMENTS

On the first day of the sittings answers to questions were tabled pursuant to an earlier order (see Bulletin No. 96, pp 1-2), and the regular list of unproclaimed legislation was also tabled in accordance with the Senate's permanent order of 29 November 1988.

The matter of the allocation of land funds by the Aboriginal and Torres Strait Islander Commission was the subject of an order for documents on 5 June, and a large volume of documents was produced on the following day (see under Censure, below).

The failure to table guidelines under a statute (see under Failure to table instruments, below) was the subject of an order for the production of documents on 7 June and the required documents were tabled on the following day.

FAILURE TO TABLE INSTRUMENTS

On 1 June, by way of a question to a minister and a motion to take note of the answer, it was revealed that there had been a failure to table statutory guidelines relating to research and development grants for a period of two years, during which time the Department of Industry, Science and Technology had continued to act under the guidelines, which had ceased to have effect. The Department remade and tabled the guidelines on 10 May this year, but it appears that, as a result of a provision of the relevant statute, these guidelines are also of no effect. The Leader of the Opposition in the Senate, Senator Hill, claimed that there are large potential losses to the Commonwealth through actions for damages as a result of this error, and the minister indicated that the government is considering the consequences. The matter was taken up in estimates hearings, and it emerged that there were other instruments which also had not been tabled, and that departmental officers had known of the failure to table a considerable time before the remaking. Senator Hill gave notice of a motion for an order for the tabling of documents relating to the matter; a compromise order was passed on 7 June whereby documents subject to confidentiality orders of a court or tribunal would not be produced. Documents were then tabled on the following day.

DIVISION OF BILL

The standing orders provide procedures for the Senate to divide a bill into two or more bills. This step has not been taken by the Senate in the past, although there are precedents for the procedure in state parliaments, and proposals for the division of bills have been put forward in the Senate from time to time. On 9 June the Senate divided a bill for the first time. Senator Harradine pointed out that the Human Services and Health Legislation Amendment Bill (No. 1) 1995, an "omnibus" bill containing several amendments to legislation in a portfolio area, contained amendments of the Therapeutic Goods Act which arguably should not have been included in the bill. In committee of the whole the amendments of that Act were extracted and turned into a separate bill by the addition of enacting words, titles and commencement provisions, and the resulting two bills were then passed. The division of a bill is not different in principle from the amendment of a bill, and the two bills will be returned to the House of Representatives for concurrence with the Senate's action. It appears that the government agreed to the division of the bill.

OTHER LEGISLATION

The Senate's deadline for the receipt of bills from the House of Representatives now provides that bills must be introduced into the House in the previous sittings and be received by the Senate within the first two thirds of the current period of sittings (see Bulletin No. 95, pp 1-2). It is accepted, however, that there are some bills, particularly budget-related financial legislation, which will be exempted from the deadline. On 5 June the Senate exempted a list of bills, mainly budget measures, from the cut-off date.

There is an increasing tendency for the government to introduce major new legislative initiatives by way of amendments to relevant bills which have already been introduced. An example of this occurred on 9 June when the Human Rights Legislation Amendment Bill 1994 was substantially amended by the addition of provisions designed to overcome the difficulty created by the judgment of the High Court in the Brandy case relating to the enforceability of orders of the Human Rights and Equal Opportunity Commission.

The Commonwealth Electoral Amendment Bill 1995 was amended on the motion of the Opposition on 7 June to remove a retrospective provision relating to electoral funding.

SCRUTINY OF RULES OF COURT

The Regulations and Ordinances Committee presented on 8 June a report in which the committee strongly reasserted its right and that of the Senate to scrutinise rules of court and other legislative instruments made by judicial bodies, and the appropriateness of such scrutiny. The committee had doggedly persisted with its questioning of the validity of certain rules of court made by the Industrial Relations Court, and the court eventually remade the rules. The committee pointed out in its report that the Legislative Instruments Bill 1994, which is designed to establish a new system for the making of delegated legislation, and which is still before the Senate, is to be amended to ensure that rules of court will remain subject to the scrutiny of the committee and the Senate.

TREATIES

Senator Bourne introduced on 31 May a new version of her Parliamentary Approval of Treaties Bill. The new bill simplifies the provisions relating to parliamentary approval of treaties and provides for the tabling of certain statements with treaties.

CENSURE

The Senate passed on 31 May a motion censuring the Prime Minister, the Leader of the Government in the Senate and the Minister for Primary Industries and Energy over the matter of the allocation of land funds by the Aboriginal and Torres Strait Islander Commission. Senator Chamarette (Greens, WA), who moved the motion, alleged that the Prime Minister and ministers had made misleading statements about the intended application of funds while entering into a secret agreement contrary to their public statements. (See also under Orders for production of documents, above.)

COMMITTEES

The Legal and Constitutional Legislation Committee took the unusual step on 30 May of initiating a referral back to the Committee for further consideration of a bill and a draft bill relating to family law, on the basis that further evidence concerning the legislation had become available.

The Chair of the Select Committee on Unresolved Whistleblower Cases, Senator Murphy, made a statement on 31 May concerning certain disputes in the committee. Senator Murphy conceded that he had acted irregularly by leaving the chair of the committee during a meeting, but complained of allegedly misleading statements concerning the proceedings.

COMMITTEE REPORTS

The following committee reports were presented during the period:

Date tabled	Committee	Title
31.05.95	Scrutiny of Bills	Eight Report and Alert Digest No. 7 of 1995
01.06.95	Legal and Constitutional Legislation	Report on Customs, Excise and Bounty Legislation Amendment Bill 1995
01.06.95	Legal and Constitutional Legislation	Report on Migration Legislation Amendment Bill (No. 5) 1994
05.06.95	Community Affairs References	Report on Psychotherapeutic Medication in Australia

Date tabled	Committee	Title
07.06.95	Economics Legislation	Report on the Competition Policy Reform Bill 1995
07.06.95	Superannuation	Sixteenth Report — Allocated Pensions
07.06.95	Scrutiny of Bills	9th Report and Alert Digest No. 8 of 1995
07.06.95	Legal and Constitutional Legislation	Report on Customs, Excise and Bounty Legislation Amendment Bill 1995 — Erratum
08.06.95	Legislation Committees	Reports on Estimates
08.06.95	Employment, Education and Training Legislation	Report on Employment, Education and Training Amendment Bill 1995
08.06.95	Employment, Education and Training References	Report on Accountability in Commonwealth-State Funding Arrangements in Education
08.06.95	Regulations and Ordinances	101st Report: Rules of the Industrial Relations Court
08.06.95	Selection of Bills	Report No. 6 of 1995

ODGERS' AUSTRALIAN SENATE PRACTICE, 7TH EDITION

The seventh edition of *Odgers' Australian Senate Practice* has been published and was tabled by the President on 29 May. The work is also available in electronic form, with some updating.