

Procedural Information Bulletin No. 101

For the sitting period 16 to 26 October 1995

ORDERS FOR PRODUCTION OF DOCUMENTS

After something of a lull in their use, orders for the production of documents have reappeared as a means whereby the Senate seeks to obtain information on matters of public interest and controversy.

An order passed on 17 October was significant in that it required the production of a statement by the government, that is, it required the creation of a document rather than the production of a document already in existence. The order called for a statement outlining progress of the inquiry by AUSTEL into the operation of the Telecommunications National Code. Such a statement was duly produced by the specified deadline, two days later. The order also required the report of the inquiry to be produced within two sitting days after its receipt by the minister.

An order passed on 25 October on the motion of Senator Chamarette requires the production of a report of a review announced by the government of the effect of international instruments on administrative decision-making. This relates to the government's Administrative Decisions (Effect of International Instruments) Bill, which is designed to overcome the judgment of the High Court in the Teoh case by providing that Australia's adherence to an international agreement does not give rise to an expectation that administrative decisions will have regard to the agreement unless there is some legislative expression of intention to that effect (see below, under Other Legislation Considered).

Another order, passed on 26 October, requires the production of all relevant documents relating to the appointment of the director of the National Gallery, a matter concerning which there is controversy.

DEADLINE FOR RECEIPT OF BILLS

The Senate's permanent order imposing a deadline on the introduction of government bills now provides that a bill must be introduced in a previous period of sittings and, if coming from the House of Representatives, must be received within the first two-thirds of the scheduled period of sittings, in order to avoid automatic adjournment to the following period of sittings.

A motion by the government to exempt a modest list of bills from this deadline was agreed to on 18 October, but only after Senator Harradine had required the tabling by the Manager of Government

Business of a statement of reasons for the exemption of the bills. Senator Harradine pointed out that the order of the Senate requires such a statement of reasons, and the chair ruled that it is for the Senate to determine whether this obligation has been discharged.

On 25 October the government presented a much more extensive list of bills to be exempted from the deadline, but after some debate consideration of the matter was adjourned on the motion of Senator Harradine, and was not reached again before the end of the sitting period.

DIVISION OF BILL

In June the Senate made use, for the first time, of procedures in the standing orders which allow for the division of a bill into two or more bills (see Bulletin No. 97, p. 2). On 16 October the Senate received from the House of Representatives two new government bills which contain the provisions of the divided bill. It is not clear why the government has adopted this course of introducing new bills rather than simply agreeing to the Senate's division of the original bill in the same way as Senate amendments to a bill are agreed to. Presumably the government's advisers think there is some advantage in introducing new bills, but there would appear to be no such advantage, and there is a significant disadvantage in having to spend time on passing the new bills.

The government attempted to proceed with the new bills on 19 October, but they were deferred, Senator Harradine pointing out that no explanation had been given of the decision to proceed by way of new bills, and the bills remained on the Notice Paper at the end of the sitting period.

OTHER LEGISLATION CONSIDERED

The package of health bills, one of which was rejected by the Senate (see Bulletin No. 100, p. 3), was subjected to further extensive amendment and finally passed on 16 October.

So strongly do the Greens object to the government's Administrative Decisions (Effect International Instruments) Bill (see above, under Orders for Production of Documents), that they unsuccessfully attempted to have it discharged from the Notice Paper on 17 October.

The question of the effect of international instruments also appeared in the consideration of the Aboriginal Education (Supplementary Assistance) Amendment Bill on 18 October. After some amendments moved by the Democrats were agreed to, Senator Chamarette moved an amendment to the effect that the administration of the bill would have regard to the international convention on racial discrimination. This amendment is still before the Senate, and consideration of the bill had not been resumed at the end of the sitting period.

Amendments to the Primary Industries and Energy Legislation Amendment Bill (No. 2) 1995 on 18 October included a request to the House of Representatives for an amendment to include a clause in the bill appropriating money. This government amendment and a similar one some years ago have an interesting bearing on the interpretation of section 53 of the Constitution, a matter which

is before the Legal and Constitutional References Committee (see *Odgers' Australian Senate Practice*, pp 295-313, printed version). These precedents suggest that the Senate can circumvent the prohibition in section 53 on initiating an appropriation of money by making a request to that effect to a bill initiated in the House. It appears that the government's advisers have not considered the effect this has on their view of section 53.

The Senate is obviously going to spend a good deal of time on the Family Law Reform Bill 1994. After extensive discussion and amendment of the bill on 25 October, consideration of it was adjourned following discussion of a possible compromise amendment to overcome a particular complexity, and the consideration of the bill had not been resumed at the end of the sitting period.

PRIVILEGE — INTERFERENCE WITH WITNESSES

The Privileges Committee reported on two further cases of alleged interference with witnesses arising from the proceedings of Senate committees.

The 57th Report, presented on 17 October, dealt with an allegation that two persons had been excluded from a credit union because of their evidence to the Select Committee on Superannuation. The committee's report was highly critical of the treatment of the persons concerned, but found that this treatment was not due to their evidence to the select committee.

In its 58th Report, presented on 26 October, the committee examined an allegation that an academic had been subjected to adverse treatment because of his evidence to the Select Committee on Unresolved Whistleblower Cases. The committee found no evidence that the difficulties between the academic and his faculty were due to his evidence to the select committee.

DELEGATED LEGISLATION

A motion was moved on 19 October by Senator Harradine to disallow Austudy regulations which were designed to facilitate the detection of fraud in applications for Austudy, but which, it was claimed, were defective in pursuing this aim. The Senate decided not to disallow the regulations, but settled for written undertakings by the government as to the methods of administration of the regulations.

A motion by the Democrats on 26 October to disallow a telecommunications instrument was the subject of an amendment by the Opposition to substitute a call for the government to immediately give a commitment that it will introduce open access for cable pay television. Senator Alston explained that the disallowance of the instrument would leave a void in relation to the direction of telecommunications carriers, and that the use of the "blunt instrument" of disallowance was not appropriate. In the event, neither the amendment nor the disallowance motion was agreed to.

PROCEDURAL PROPOSALS

The Procedure Committee presented its *Second Report of 1995* on 23 October. The committee proposes an amendment of the standing orders to authorise Senate committees to conduct meetings by audio or video conference facilities without a quorum being present in one place. (At present committees using such facilities to receive contributions by members or evidence from witnesses by teleconference or videoconference adopt the safeguard of having a quorum present in one place to avoid any suggestion that there is not a duly constituted meeting.) The Procedure Committee rejected a proposal to have participating members form part of committee quorums, pointing out that this would defeat the whole purpose of having quorums.

The committee also endorsed a proposal by the President to ensure a more proportional allocation of questions at question time. This proposal, however, did not meet with the approval of the minor parties and independent senators, and after debate on 24 October a different scheme, agreed to by all parties and independents, was applied on 26 October.

TREATIES

The tabling of a large number of treaties on 18 October led to another debate on the need for more effective mechanisms of parliamentary scrutiny and control of treaties. Apart from Senator Bourne's *Parliamentary Approval of Treaties Bill 1995*, which would subject all treaties to approval by the Houses, no other formal steps have yet been taken.

COMMITTEES

For a proposal that Senate committees be authorised to hold "electronic meetings", see under *Procedural Proposals*, above.

An unusual reference to the *Employment, Education and Training References Committee* was agreed to on 18 October, against the wishes of the government, to require the committee to investigate the sale of Bond University to the University of Queensland. During debate on the motion the question was raised whether the acquisition of the private university, which is a matter for the state government, would lead to a charge on Commonwealth expenditure through Commonwealth grants to the state university.

The estimates of additional expenditure were tabled on 26 October and referred to the *Legislation Committees*, beginning the process of estimates hearings on the additional estimates. The hearings will begin during the non-sitting period and extend into the next sitting period beginning on 13 November.

COMMITTEE REPORTS

The following committee reports were presented during the period:

Date tabled	Committee	Title
17.10.95	Privileges	57th Report
18.10.95	Scrutiny of Bills	16th Report and Alert Digest No. 15 of 1995
18.10.95	Economics Legislation	Taxation Laws Amendment (FBT Cost of Compliance) Bill 1995
19.10.95	Finance and Public Administration Legislation	Report on ANL Sale Bill 1995
19.10.95	Environment, Recreation, Communications and the Arts References	Arts and Cultural Education in Australian Educational Institutions
23.10.95	Procedure	Second Report of 1995
23.10.95	Environment, Recreation, Communications and the Arts Legislation	Report on Reference of a Petition
23.10.95	Finance and Public Administration Legislation	Report on Prime Minister and Cabinet (Miscellaneous Provisions) Bill 1995
23.10.95	Corporations and Securities	Report on Annual Reports
25.10.95	Scrutiny of Bills	Alert Digest No. 16 of 1995
26.10.95	Community Standards Relevant to the Supply of Services Utilising Electronic Technologies	Operations of Codes of Practice in the Television Industry – Part 1
26.10.95	Legal and Constitutional Legislation	Crimes Amendment (Forensic Procedures) Bill 1995
26.10.95	Employment, Education and Training References	Trends in Long Term Unemployment
26.10.95	Unresolved Whistleblower Cases	The Public Interest Revisited
26.10.95	Privileges	58th Report
26.10.95	Economics Legislation	Customs and Excise Legislation Amendment Bill (No. 2) 1995