

Procedural Information Bulletin No. 105

For the sitting period 17 to 28 June 1996

In the last two weeks of the Winter sittings there was a heavy concentration on legislation, but other matters of interest interposed.

ORDERS FOR PRODUCTION OF DOCUMENTS

A report by the Auditor-General on the government's estate management, in response to an order of the Senate of 20 October 1994, was tabled on 19 June. The Auditor-General had been asked to produce the report as soon as practicable as a result of the "Casselden Place affair" at that time. The report was said to vindicate the concerns of the Senate about the issue of property management.

An order was passed on 20 June requiring the production of answers to questions which had been asked by the Greens senators during the passage of the supply bills. The bills were passed on the understanding that the answers would be supplied. The answers were provided later on the same day, but the Greens senators expressed some dissatisfaction with them.

The government produced documents on 25 June in anticipation of an order for documents for which notice of motion had been given but which had not been passed. The documents in question were reports on drought aid.

Further documents relating to film and video classification were produced on 27 June in response to an order made by the Senate on 9 May. The order was unusual in requiring the minister to obtain information on codes of practice from certain organisations and to table their responses.

A further document was tabled on 28 June relating to the matter of the qualification of Senator-elect Ferris, concerning which an order for documents had been passed on 22 May. The

government made a statement indicating that, although the order could be regarded as spent after all documents known to exist were tabled in response to the order, the government felt obliged to table further documents which were discovered.

An order was passed on 27 June for the production of documents relating to the National Commission of Audit, requiring the documents to be tabled later on the same day. Having indicated that an attempt would be made to obtain the documents by the deadline, the government made a statement later on the same day indicating that there had been insufficient time to gather the documents, and this led to some acrimonious debate. The order will presumably be complied with in the next sittings.

SALES TAX: NOTIFICATION OF RETROSPECTIVE INCREASES

An amendment made to a bill by the Senate last year came back to haunt the government and to add to the difficulties arising from the announced, and subsequently modified, proposal to impose sales tax retrospectively on state and local governments. The Senate had amended the Sales Tax Assessment Act to provide that, within 7 days after a ministerial announcement of a retrospective sales tax change, notices giving details of the change must be published in newspapers. Notices relating to the government's proposals were not published within 7 days, but appeared a week later, and it was admitted by the Taxation Office that this was in breach of the statutory requirement, a matter of embarrassment to the government, which had already claimed that the 7 days did not begin to run until the announcement of the modification of the proposals. (For information on provisions relating to retrospective taxation legislation and relevant Senate amendments, see *Odger's Australian Senate Practice*, 7th edition, electronic copy, chapter 13).

MINISTER CENSURED

The Minister for Aboriginal and Torres Strait Islander Affairs, Senator Herron, was censured by the Senate on 27 June for giving misleading answers to questions in relation to funding of Aboriginal programs. Having at first said that funding was not affected by the government's special audit of the programs, the Minister subsequently conceded that in fact funding had been affected and announced changes to deal with this problem. Documents relating to further changes to the audit scheme were tabled on 28 June.

PARLIAMENTARY PRIVILEGE

The Privileges Committee received a reference on 25 June after correspondence had been sent to the former Chair of the Select Committee on Unresolved Whistleblower Cases alleging that documents recently disclosed indicated that false evidence had been given to that Committee.

A motion was passed on 27 June to give permission to the secretary of the former Select Committee on ABC Management and Operations to give evidence in a defamation action between Senators Alston and Carr. Standing order 183 requires the permission of the Senate for any Senate officer to give evidence concerning the proceedings of the Senate or a committee before any court or tribunal. While the motion was passed, the Leader of the Government in the Senate, Senator Hill, pointed out that the granting of the requisite permission did not set aside the immunity of proceedings of the Senate and its committees from question before a court or tribunal, and that because of the immunity the officer concerned could not give any evidence which would substantively assist either side in the action.

LEGISLATION AMENDED

Some bills were granted exemption from the Senate's deadline for the receipt of legislation, and some bills were refused exemption. The Migration Legislation Amendment Bill (No. 2) 1996, dealing with the question of access to the courts by illegal immigrants, was granted exemption on 28 June on the votes of the government and the opposition voting together against the Democrats and the Greens, but the bill was not proceeded with because of indications of strong resistance by the latter groups to its passage.

Some of the government bills amended by the Senate were first introduced by ministers in the Senate, and attention was drawn to the fact that such bills cannot be used as the basis for a dissolution of both Houses under section 57 of the Constitution, as that section applies only to bills first introduced by the government in the House of Representatives. There were disagreements between the Senate and the government over such government bills first introduced in the Senate.

For example, the Customs and Excise Legislation Amendment Bill (No. 1) 1996 was amended in the Senate on 27 May, and, in order to indicate its disagreement with the Senate amendments, the government had to amend the bill to reverse the amendments in the House of Representatives. When the bill returned to the Senate on 20 June the Senate did not insist on its amendments, and this action took the form of accepting the amendments made in the House.

Agreement was not so readily forthcoming, however, in relation to the Development Allowance Authority Amendment Bill 1996, which was also first introduced in the Senate. The bill having been amended by the Senate in relation to tax exemptions for developers of urban toll roads, the government reversed the amendments in the House of Representatives, but the Senate rejected the amendments on the last day of the sittings. The government sent the bill back with the amendments insisted on, the Senate again rejected them, and so the bill was not passed at the end of the sittings.

Another government bill first introduced in the Senate was the Aboriginal and Torres Strait Islander Commission Amendment Bill 1996. The government's changes to ATSIC were resisted by a majority of the Senate and the bill was extensively amended. The government reacted to this by introducing a new bill and forcing it through the House of Representatives by guillotine, presumably in the hope of using the bill as a basis for a double dissolution in the future. The message forwarding the new bill to the Senate was not reported at the end of the sittings, apparently because it was expected to be resisted at every stage by a majority of the Senate, and this would have prevented the transaction of other business on the last day of the sittings.

In relation to the Housing Assistance Bill 1996, a bill received from the House, the non-government parties followed a precedent set by the government by passing on 18 June a request for an amendment to insert an appropriation clause into the bill to appropriate more money for housing assistance. (The Senate cannot initiate an appropriation, but the government's advisers seem to have conceded that it can do so indirectly by a request for an amendment.) The requested amendment was rejected by the government in the House of Representatives, but other amendments made to the bill by the Senate were accepted by the government.

The Taxation Laws Amendment Bill (No. 1) 1996, having been amended on 19 June in relation to the vexed issue of the provisional tax uplift factor, was returned by the government on 27 June with the amendments disagreed to, but the government proposed alternative compromise amendments which were accepted by the Senate. (These amendments were moved by the government in the form of requests because, as the Chair pointed out to the Senate, the government's advisers seek to apply, as if it were accepted, their own views about the application of section 53 to taxation legislation, although these views have not been accepted by the Senate, and the application of section 53 is still under examination by a Senate committee.)

The Customs Tariff Amendment Bill (No. 1) 1996, being a bill imposing taxation, could not be directly amended by the Senate. Amendments to the bill made on 27 June on the motion of the government were made in the form of requests, so that the bill was not finally passed before

being returned to the House. When the bill was returned on 28 June with the requested amendments made, an unusual proceeding occurred. The bill was recommitted and further requests for amendments were made on the motion of the opposition. The Senate had at first not agreed to these amendments, but on the second occasion there was agreement to pass them. The opposition had indicated that they might vote against the final passage of the bill in the absence of the amendments. This meant that the bill had to be returned to the House for the government to agree to the further amendments and finally to return to the Senate again for the Senate finally to agree to it as amended.

DELEGATED LEGISLATION

The new government adopted the tactic of disallowing in the House of Representatives delegated legislation made by its predecessor. This avoids the making of repealing instruments, which could be disallowed by the Senate. On 27 June the Senate passed an unusual motion condemning this tactic in relation to certain therapeutic goods regulations.

The Regulations and Ordinances Committee continued its intense activity, with a statement by the chair on its operations on 26 June and three special reports (two in the form of statements by the chair) on particular batches of delegated legislation on 25 and 27 June.

COMMITTEES

The highly controversial matter of the discontinuance by the government of the Development Import Finance Facility scheme was referred to the Foreign Affairs, Defence and Trade References Committee on 26 June, against the wishes of the government.

For reports by the Regulations and Ordinances Committee, see above under Delegated Legislation.

A list of committee reports presented during the period is attached to this bulletin.

TIMES OF SITTING AND ROUTINE OF BUSINESS

The Senate continued to operate on temporary sessional orders in relation to its times of sitting and routine of business, and will continue to do so in the Spring sittings because the parties have still not reached agreement on the orders to be made. The disagreement relates specifically to the allocation of questions at question time, and it appears that the non-government parties are not willing to settle anything until that matter is settled.

PARLIAMENTARY APPROPRIATIONS

The Appropriations and Staffing Committee presented its report on the Senate's budget on 24 June. The Committee indicated that reductions had been made to the Senate's budget in accordance with requests made by the government, but that a dispute had broken out with the government in relation to the formula for committee funding. It was indicated that an agreement relating to the formula had been repudiated by the Department of Finance and that no substitute agreement had been reached. In tabling the report, the President indicated that he had had further discussions with the Minister for Finance and there was some indication of a settlement of the matter.

COMMITTEE REPORTS

The following committee reports were presented during the period:

| Date tabled | Committee | Title |
|--------------------|--|---|
| 17.6 | Foreign Affairs, Defence and Trade Legislation | Export Market Development Grants Amendment Bill (No. 1) 1996 |
| " | Economics Legislation | Taxation Laws Amendment Bill (No. 1) 1996 |
| 18.6 | Rural and Regional Affairs and Transport Legislation | Primary Industries and Energy Legislation Amendment Bill (No. 1) 1996 |
| 19.6 | Superannuation | 19th Report - Reserve Bank Officers' Super Fund |
| " | Scrutiny of Bills | 3rd Report and Alert Digest No. 3 of 1996 |
| 24.6 | Appropriations and Staffing | 24th Report and Document |
| 25.6 | Regulations and Ordinances | 103rd Report |
| " | Finance and Public Administration Legislation | Aboriginal and Torres Strait Islander Commission Amendment Bill 1996 |
| 26.6 | Employment, Education and Training Legislation | Report on Annual Reports |
| " | Legal and Constitutional Legislation | Report on Annual Reports |
| " | Senators' Interests | Annual Report 1995 and Document |
| " | Scrutiny of Bills | 4th Report and Alert Digest No. 4 of 1996 |
| " | Foreign Affairs, Defence and Trade References | Australia China Relations |
| 27.6 | Legal and Constitutional Legislation | Migration Legislation Amendment Bill (No. 2) 1996 |
| 28.6 | Finance and Public Administration Legislation | List of Commonwealth Bodies |

