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DELEGATED LEGISLATION

The Regulations and Ordinances Committee made a statement on 10 October reporting its scrutiny of regulations made under the Native Title Act soon after the act was passed at the end of 1993. The Department of the Prime Minister and Cabinet had neglected to have the regulations tabled, so that they were invalid, and their existence did not come to the attention of the committee until the department attempted to amend them some two years later. In the meantime, thousands of actions were taken unlawfully under the regulations, and those actions will now have to be validated by retrospective legislation. The chair of the committee, Senator O'Chee, compared the native title system to a ship which was launched without a bottom. This is the latest of a series of failures to table delegated legislation in recent times with serious consequences.

The two legislative scrutiny committees, the Regulations and Ordinances Committee and the Scrutiny of Bills Committee, combined to present on 16 October a position paper on the scrutiny of national schemes of legislation. Such schemes, also known as uniform legislation, have always presented difficulties because they are framed by agreement between the Commonwealth and state and territory executive governments and then presented to the respective parliaments as unchangeable because the parliaments cannot change the intergovernmental agreements. The position paper suggests two possible solutions: a national committee for the scrutiny of such legislation and the adoption of parliamentary procedures so that legislation commented on by a scrutiny committee would not proceed until the government reported on the matters raised.

Under section 49 of the Acts Interpretation Act, regulations the same in substance as disallowed regulations cannot be made within six months of the disallowance unless the disallowing resolution is rescinded for that purpose. Such a rescission is not a rescission properly so called; it does not revive the disallowed regulations, but merely authorises the making of new regulations the same in substance. On 9 October the Senate passed a rescission resolution in respect of its disallowance of certain Austudy regulations on 10 September. This will allow the government to remake some provisions of the disallowed regulations which were covered by the disallowing resolution but which are not objectionable to the majority of the Senate.

An attempt to disallow a range of regulations relating to court fees was unsuccessful on 10 October after the government gave an undertaking to review some of the fees.

A motion to disallow regulations relating to woodchip exports was also unsuccessful on 15 October, largely because it was said that the disallowance of the regulations would leave in place a regime going back to 1986 which would be unsatisfactory. Regulations which had been made in the meantime by the previous government had been disallowed by the current government in the House of Representatives, a tactic devised to avoid the making of repealing regulations which could be disallowed by the Senate (see Bulletin No. 105, p 5). The failure of the disallowance motion suggests that this tactic, which was condemned by the Senate, can work to the government's advantage.

ORDERS FOR PRODUCTION OF DOCUMENTS

The matter of the Port Hinchinbrook development was again the subject of an order for production of documents.

On 9 October the government tabled, in response to the Senate's order of 12 September, a large volume of documents, said to amount to 10 000 pages, relating to the government's approval of the project, together with two statements of reasons for the relevant ministerial decisions. A further order for documents was passed on 14 October, calling for the tabling, within 24 hours, of any correspondence from the Prime Minister relating to the matter. On the following day a letter from the Prime Minister to the developer was tabled accordingly.

ACCOUNTABILITY OF MINISTERS

Much debate occurred during the period about conflicts of interest arising from ministers owning shares in companies involved in dealings with their ministries.

On 10 October the Senate passed a resolution calling on the Assistant Treasurer, Senator Short, and the Parliamentary Secretary to the Treasurer, Senator Gibson, to explain apparent conflicts of interest arising from their shareholdings. Those two office-holders subsequently resigned. House of Representatives ministers said to be in the same situation, however, escaped unscathed, and the Prime Minister then indicated that the code of ministerial conduct would be reviewed as it may be too restrictive of ministers' private interests. This might be regarded by a critic of the system of government as striking evidence of the thesis that ministers are held accountable in the Senate but not in the House of Representatives to which the ministry is supposed to be responsible.

Another interesting aspect of the matter was that the apparent conflicts of interest involving Senators Short and Gibson were detected by the indexed lists of departmental files which are tabled in accordance with the order of the Senate requiring such lists to be produced.

MISLEADING EVIDENCE

Another matter of great controversy was the evidence given to the Employment, Education and Training Legislation Committee during estimates hearings concerning the receipt of benefits by the "Wright family". The committee was left with the impression that this was an actual case, and the responsible minister, Senator Vanstone, subsequently revealed that she had also been under this impression. Her department later disclosed that the evidence given did not reflect an actual case.

In past cases the Senate Privileges Committee has made it clear that leaving a committee with an incorrect impression as to the facts can be the equivalent of giving misleading evidence. The committee has also made it clear, however, that a minister is not guilty of contempt if the minister passes on incorrect information but corrects it when the error is discovered. This was the situation in the diesel fuel tax case, reported by the committee in its 46th Report in 1994. A minister had passed on at an estimates hearing incorrect information about a proposed tax, but subsequently corrected the information in the Senate and before the committee, although his first correction was in itself incomplete. The committee found that false information was given, but the minister was not aware at the relevant time that the information was incorrect, and no contempt was committed. The Senate endorsed the finding of the committee.

There was continuing disputation, however, about the time taken by Senator Vanstone to notify the committee in the current case.

LEGISLATION

Much of the time devoted to legislation during the period was taken up with debate on the two major pieces of legislation of the new government, the Workplace Relations Bill and the Telstra (Dilution of Public Ownership) Bill.

An attempt to divide the latter bill into two bills was unsuccessful on 18 October, but Senator Harradine pointed out that there would be further opportunities to do so if the Senate chooses.

The motion to divide the bill was moved in the course of the second reading debate, and had a suspension of standing orders built into its terms. Because of this, debate was limited to 30 minutes in total and 5 minutes per speaker. Senator Hill asked the President why all motions for suspension of standing orders could not take this form. The answer is that they could, if notice were given of them as was done in this case. The general purpose contingent notices for suspension of standing orders are designed to allow the rearrangement of business to bring on any item of business which of course is not specified in the contingent notices. The use of such notices therefore involves suspending standing orders first and then moving to rearrange the business.

TIMES OF SITTING

On 17 October the sessional orders of the last parliament, including the times of sitting and routine of business adopted in February 1994, were renewed for an indefinite period. This is a sign that agreement has not been reached on the government's proposals to change those sitting times. At the same time the Senate agreed to extend its sittings for the remainder of this year.

COMMITTEE REPORTS

The legislation committees presented their reports on the estimates on 9 October, and will hold their supplementary hearings before the Senate sits again, thereby completing the estimates scrutiny process.

The following committee reports were presented during the period:

Date tabled	Committee	Title
9.10	Scrutiny of Bills	7th Report and Alert Digest No. 8 of 1996
"	Community Affairs Legislation	Report, Estimates 1996-97
"	Economics Legislation	Report, Estimates 1996-97
"	Employment, Education and Training Legislation	Report, Estimates 1996-97
"	Rural and Regional Affairs and Transport Legislation	Report, Estimates 1996-97
"	Foreign Affairs, Defence and Trade Legislation	Report, Estimates 1996-97
"	Environment, Recreation, Communications and the Arts Legislation	Report, Estimates 1996-97
"	Legal and Constitutional Legislation	Report, Estimates 1996-97
10.10	Finance and Public Administration Legislation	Report, Estimates 1996-97
"	Employment, Education and Training Legislation	Report, Higher Education Funding Amendment Bill (No. 2) 1992
"	Environment, Recreation, Communications and the Arts Legislation	Report, Natural Heritage Trust of Australia Bill 1996
15.10	Foreign Affairs, Defence and Trade References	Abolition of the Development Import Finance Facility
16.10	Scrutiny of Bills	8th Report and Alert Digest No. 9 of 1996
17.10	Community Standards Relevant to the Supply of Services Utilising Electronic Technologies, Select	R-rated Material on Pay TV (Part 2) and Review of Classification Guidelines

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