

No. 110

for the sitting period 18 November-13 December 1996

16 December 1996

In the last four weeks of the 1996 sittings, the Senate concentrated on several major packages of government legislation giving effect to significant undertakings and budget measures of the new government. Most of this legislation was extensively considered and heavily amended during its passage through the Senate.

LEGISLATION AMENDED

The Workplace Relations Bill, giving effect to the government's industrial relations changes (see Bulletin No. 109, p. 2), was finally passed on 19 November, but fell short of the record set by the Native Title Bill 1993 in the number of hours spent on its consideration (49 hours as against 52 for Native Title). Most of the amendments to the bill reflected the agreement between the government and the Australian Democrats to secure its passage, but other amendments were also agreed to.

The annual appropriation bills were finally passed on 21 November, but only after two votes were taken again by leave when inadvertence by government senators led to the carriage of two amendments which did not actually have majority support.

The Social Security Legislation Amendment (Newly Arrived Resident's [sic] Waiting Periods and Other Measures) Bill 1996 was extensively amended before its passage on 26 November in relation to the provision of social security benefits to newly arrived migrants.

An unusual second reading amendment was passed in respect of the Shipping Grants Legislation Bill on 29 November. The amendment establishes a permanent order for the production of regular reports on international shipping standards. The first of these reports was subsequently tabled on 12 December. The government was constrained to move amendments to overcome much-criticised retrospective elements in the bill's operation.

The government's changes to higher education funding, largely contained in the Higher Education Legislation Amendment Bill, were the subject of amendments on 3 and 4 December, mainly initiated by the Democrats and Senator Harradine.

The legislation to part-privatise Telstra was given its second reading on 5 December as a result of the government's agreement with the independent senators. When the bill was finally passed on 11 December, however, amendments had been made on the initiative of the Democrats and the Opposition. Senator Harradine used an amendment to the motion for the adoption of the committee report to initiate a committee inquiry into the issue of redeemable preference shares.

Four major and potentially difficult pieces of legislation were left until the last days of the sittings: a social security package to carry out the government's social security budget measures, taxation and health packages, and a further workplace relations bill, all of which were considered at length and significantly amended.

These packages of bills would have taken much longer to pass but for the Senate agreeing on 12 December to a "civilised guillotine", that is, time limits for the consideration of the legislation set by agreement between the various parties. So civilised was this guillotine that the motion to set the time limits was moved by the Leader of the Opposition in the Senate. Provision was made to ensure that all non-government amendments circulated in the chamber would be dealt with notwithstanding the time limits, which is the hallmark of a civilised guillotine.

Proceedings on the bills were also expedited by an unusual agreement in relation to the most difficult package, the social security bills. All of the amendments were debated in turn and were then put separately and in order at the end of that debate in accordance with an agreed schedule. This procedure was particularly useful in dealing with amendments which had been circulated in the course of the debate and which superseded earlier amendments.

The government ultimately accepted all of the amendments to legislation made by the Senate, keeping the House of Representatives sitting for that purpose, with the exception of the amendments in relation to newly arrived migrants. The government's message disagreeing with these amendments had not been dealt with by the Senate when it rose and so will be left until next year.

The Chairman of Committees made a number of statements during the period concerning government amendments which were incorrectly presented as requests for amendments. This was mainly due to the government drafters preparing as requests amendments which increased expenditure from appropriations by comparison with the bills in question but did not increase expenditure by comparison with the existing law. The Senate has always treated such amendments as not requiring requests under section 53 of the Constitution. A statement made in the House of Representatives on 2 December indicated that this interpretation has now been accepted in the House.

DELEGATED LEGISLATION

The Regulations and Ordinances Committee made a number of significant reports on its scrutiny of delegated legislation during the period.

A statement on the Legislative Instruments Bill on 21 November, while welcoming the new version of that bill as enhancing the Senate's control of delegated legislation, indicated that some provisions of the bill are still unsatisfactory in that regard. A statement on 3 December drew attention to various failures by government departments and agencies to table delegated legislation, causing that legislation to lapse with considerable inconvenience to government. The committee on 12 December criticised the government for making regulations under the relevant legislation in relation to spent convictions without revealing that the advice of the Privacy Commissioner on the matter had been rejected. The committee also presented on 12 December its regular statement on its work during the year, indicating that the committee has productively scrutinised a very large volume of complex legislation.

The government avoided disallowance of instruments relating to the Great Barrier Reef (see Bulletin No. 109, p. 2) by giving undertakings relating to the conduct of the fishing experiments authorised by the regulations.

The Senate agreed on 4 December to a resolution under section 49 of the Acts Interpretation Act authorising the remaking of some of the migration regulations disallowed earlier (see Bulletin No. 109, p. 2). This resolution, and other similar resolutions of recent times, arose from the complex character of delegated legislation: the Senate is often not able to disallow provisions regarded as objectionable without also striking down some acceptable provisions.

PARLIAMENTARY PRIVILEGE

The Select Committee on the Victorian Casino Inquiry presented a report on 5 December indicating that it had decided not to continue with its inquiry because of advice provided by

the Clerk and by Professor Dennis Pearce in relation to limitations on the Senate's powers to compel evidence from state members of parliament and other state office-holders. The committee's report provides a comprehensive analysis of this significant matter.

The Privileges Committee presented, also on 5 December, its 63rd Report relating to allegations that the Queensland Criminal Justice Commission had misled the Select Committee on Public Interest Whistleblowing by withholding certain documents. The committee found that the Commission was unaware at the relevant time of the existence of the documents in question, and therefore was not guilty of a contempt.

Although it had nothing to do with the Senate, a judgment handed down by the New South Wales Court of Appeal in the case of *Egan v Willis and Cahill* on 29 November was highly significant. The New South Wales Parliament lacks an equivalent of section 49 of the Constitution, but the Court found that the Legislative Council possesses an inherent power to require the production of documents and to impose sanctions on a minister in the event of non-compliance. The Council had made an order for documents and suspended the Treasurer from the Council when he failed to produce the required documents. The Court cited *Odgers' Australian Senate Practice* and referred to the American law on the subject while developing the old British law relating to "colonial" legislatures.

ORDERS FOR PRODUCTION OF DOCUMENTS

For a permanent order for documents, see the Shipping Grants Bill under Legislation Amended, above.

See also the New South Wales Court of Appeal judgment under Parliamentary Privilege, above.

The government made a statement on 3 December relating to the Senate's order for a report by the Australian Securities Commission on the King Island Dairy (see Bulletin 107, p. 1). The statement indicated that the government had asked the Commission for a report on its previous investigations of the case, and that the government wished to consider the report before taking any further action. This statement was tacitly accepted by the Senate.

COMMITTEES

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

For the report of the Select Committee on the Victorian Casino Inquiry, see under Parliamentary Privilege, above.

At the end of the sittings the Senate agreed to a resolution setting out not only its pattern of sitting days for 1997 but the program for estimates hearings for the whole year. This is part of a plan to establish greater certainty with estimates hearings.

The following committee reports were presented during the period:

Date tabled	Committee	Title
18.11	Native Title and the Aboriginal and Torres Strait Islander Land Fund Joint	6th Report, Native Title Amendment Bill 1996
"	Community Affairs Legislation	Report—Social Security Legislation Amendment (Further Budget and Other Measures) Bill 1996-Schedule 2
"	Environment, Recreation, Communications and the Arts Legislation	Additional Information, Estimates 1996-97
"	Legal and Constitutional Legislation	Additional Information, Estimates 1996-97
"	Economics Legislation	Additional Information, Estimates 1996-97
"	Corporations and Securities Joint	Report—Draft Second Corporate Law Simplification Bill 1996
19.11	Environment, Recreation, Communications and the Arts Legislation	Additional Information, Estimates 1996-97
"	Community Affairs Legislation	Report—National Health (Budget Measures) Amendment Bill 1996
21.11	Regulations and Ordinances	Report—Legislative Instruments Bill 1996
"	Scrutiny of Bills	Alert Digest No. 12 of 1996
21.11	Employment, Education and Training Legislation	Report—Higher Education Legislation Amendment Bill 1996
25.11	Employment, Education and Training Legislation	Report—States Grants (Primary and Secondary Education Assistance) Bill 1996
26.11	Community Affairs Legislation	Report—Child Care Legislation Amendment Bill 1996
"	Community Affairs Legislation	Report—Health Insurance Amendment Bill (No. 2) 1996

Date tabled	Committee	Title
"	Superannuation Select	20th Report—Social Security Legislation Amendment (Further Budget and Other Measures) Bill 1996
27.11	Scrutiny of Bills	11th Report and Alert Digest No. 13 of 1996
28.11	Rural and Regional Affairs and Transport Legislation	Additional Information—Estimates 1996-97
"	Economics Legislation	Report—Bounty Legislation Amendment Bill 1996
2.12	National Crime Authority	Report—Annual Report 1994-95 of the National Crime Authority
3.12	Economics Legislation	Additional information—Additional estimates 1995-96 and Estimates 1996-97
4.12	Rural and Regional Affairs and Transport Legislation	Additional Information—Estimates 1996-97
"	Scrutiny of Bills	12th Report and Alert Digest No. 14 of 1996
5.12	Privileges	63rd Report
"	Environment, Recreation, Communications and the Arts Legislation	Additional Information—Estimates 1996-97
"	Publications	5th Report
"	Victorian Casino Inquiry Select	Report
"	Legal and Constitutional Legislation	Report—Migration Legislation Amendment Bill (No. 3) 1996
"	Legal and Constitutional Legislation	Report—Hindmarsh Island Bridge Bill 1996
"	Finance and Public Administration Legislation	Additional Information—Estimates 1996-97
"	Rural and Regional Affairs and Transport Legislation	Additional Information—Estimates 1996-97
9.12	Foreign Affairs, Defence and Trade Legislation	Additional Information—Estimates 1996-97
10.12	Superannuation, Select	21st Report, Investment in Australia's Superannuation Savings
10.12	Economics Legislation	Report—Taxation Laws Amendment Bill (No. 3) 1996
11.12	Community Affairs Legislation	Additional Information—Estimates 1996-97
"	Employment, Education and Training Legislation	Additional Information—Estimates 1996-97
"	Finance and Public Administration Legislation	Additional Information—Estimates 1996-97

Date tabled	Committee	Title
"	Rural and Regional Affairs and Transport Legislation	Additional Information—Estimates 1996-97
"	Economics Legislation	Report—Workplace Relations and Other Legislation Amendment Bill (No. 2) 1996
"	Scrutiny of Bills	13th Report and Alert Digest No. 15 of 1996
"	Legal and Constitutional Legislation	Additional Information—Estimates 1996-97
12.12	Economics References	Report—Outworkers in the Garment Industry
"	Native Title and the Aboriginal and Torres Strait Islander Land Fund Joint	7th Report—Native Title Amendment Bill 1996 and the Racial Discrimination Act

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