

No. 117

for the sitting period 25 August-4 September 1997

8 September 1997

PRIVILEGE (1): PROVISION OF INFORMATION TO SENATORS

In its 67th report, presented on 3 September, the Privileges Committee found that a contempt had been committed by the taking of legal action against a person for provision of information by the person to a senator for use in proceedings in the Senate. The committee found that the legal action was taken primarily to punish the person for giving information to a senator for the purpose of its use in Senate proceedings.

This report is highly significant in identifying circumstances in which the provision of information to a senator may be protected by the Senate's contempt jurisdiction. While the report provides an analysis of the relevant issues, it refrains from expressing any view about whether the provision of information to a senator, in these or other circumstances, is also protected against legal action by the law of parliamentary privilege, so that a court would dismiss such an action on the basis of that law.

The committee did not recommend any penalty against the offender, but recommended that the Senate allow the legal proceedings to take their course.

The committee found that related legal proceedings, actual or threatened, against other persons and against the senator concerned did not constitute contempts.

On 4 September the committee received another reference from the Senate raising similar issues. Documents laid before the Senate by the President contain a complaint by an academic that a university has initiated disciplinary proceedings against him because of his

communication of information to a senator who subsequently laid that information before the Senate.

PRIVILEGE (2): STATE INQUIRIES

The President also tabled, on 25 August, documents relating to a request by the parliamentary committee of the Queensland Parliament which oversees the Criminal Justice Commission in that state, that the Senate investigate a statement made to a Senate committee by the Criminal Justice Commission. The Queensland committee had proposed to investigate this statement itself but was advised, correctly, that it could not inquire into the truth of a statement made to a Senate committee because that statement was the subject of federal parliamentary privilege, preventing any court or tribunal, including a state parliamentary committee, from inquiring into it.

In response to the Queensland committee's request, the President had suggested that the committee inquire into the facts and circumstances referred to in the statement rather than the truth of the statement itself, but the Queensland committee was not willing to follow this course and pressed its request for an inquiry by the Senate.

At the end of the sitting fortnight no action had been taken in the Senate on the Queensland committee's request.

LEGISLATION AMENDED, REJECTED

The Productivity Commission Bill 1997 and a related bill, which are designed to restructure advice to government on industry matters, were rejected by the Senate at the 3rd reading on 3 September after they had been extensively amended in committee of the whole. The vote indicated a view on the part of the majority of the Senate that, notwithstanding the acceptance by the government of several amendments, the bills were still unacceptable.

On the following day the government gave notice of a motion to revive the bills at the 3rd reading, indicating that some compromise may yet be reached.

The Constitutional Convention (Election) Bill 1997 (see Bulletin No. 116, pp 3-4) was finally accepted by the Senate on 28 August. The Senate did not insist on its amendments, again disagreed to by the government in the House of Representatives, for the replacement of a voluntary postal ballot with a compulsory attendance ballot. Instead, the Senate made a further amendment to the bill in the nature of a declaratory provision stating the Parliament's

intention that the voting system not be a precedent for any other elections or referendums. This result was achieved when Senators Brown and Harradine decided to vote to allow the convention to go ahead, Senator Brown explaining that this was not what the government wished! The Chair of Committees, Senator West, made a statement on 27 August about the implications of equally divided votes on the future treatment of the Senate's amendments to the bill, but this circumstance did not arise.

The Taxation Laws Amendment Bill (No. 3) 1997, relating to a number of taxation matters, was significantly amended on 25 August. The government disagreed with the amendments in the House of Representatives but the bill had not been considered again at the end of the period.

The Excise Tariff Amendment Bill 1997 was amended on 27 August, one amendment being designed to close a tax loophole and preserve government revenue, which the government did not wish to do because it thought that the amendment might be interpreted as a new tax. The amendment related to clarification of the nature of beverages subjected to excise tax.

MINISTERIAL ACCOUNTABILITY

Considerable time was taken on 3 and 4 September by statements by the Minister for Employment, Education, Training and Youth Affairs, Senator Vanstone, in relation to the awarding of a contract which had been examined in estimates hearings. Senator Vanstone had undertaken to provide further explanation relating to the circumstances surrounding the contract, and Senator Faulkner had pressed for an early response by the minister.

Apart from providing an example of the government giving an account of its conduct of administration, this incident illustrated other matters of significance in recent times: the interest of the Senate in ensuring that the awarding of contracts is properly conducted, the insistence of senators that the contracting out of services does not remove the provision of the services from parliamentary scrutiny, and the scrutiny of contractors extending beyond their price and fulfilment of the contract.

COMMUNICATION OF RESOLUTION TO HOUSE

On 28 August the device of a motion to communicate a Senate resolution to the House of Representatives was again used in an attempt to compel the government to respond to a particular issue. The Senate passed a resolution concerning tariffs in the textile, clothing and

footwear industries, and then employed the procedure in standing order 154 to have the resolution communicated to the House.

The government gagged debate on the Senate's resolution when it was reported in the House on 1 September. Even this, however, may be regarded as achieving the desired aim.

ODGERS' AUSTRALIAN SENATE PRACTICE

The 8th edition of *Odgers' Australian Senate Practice* has been released and is available in hard copy and on the Internet and the Intranet. The volume is updated to 30 June 1997.

COMMITTEES

A special select committee, the Select Committee on Information Technologies, was appointed on 27 August to carry on some of the work of the Select Committee on Community Standards Relevant to the Supply of Services Utilising Telecommunications Technologies.

The following committee reports were presented during the period:

Date tabled	Committee	Title
25.8	Community Standards Relevant to the Supply of Services Utilising Electronic Technologies	Document—Regulation of Computer On-line Services: Part 3
"	Environment, Recreation, Communications and the Arts Legislation	Additional Information—Additional Estimates 1996-97
"	Community Affairs Legislation	Additional Information—Estimates 1997-98
"	Rural and Regional Affairs and Transport Legislation	Estimates 1997-98
27.8	Scrutiny of Bills	11th Report and Alert Digest No. 10 of 1997
1.9	Superannuation	25th Report—Superannuation Schemes—Judges and Parliamentarians
"	Legal and Constitutional Legislation	Additional Information—Estimates 1997-98
"	National Crime Authority	Annual Report 1996-97
2.9	Employment, Education and Training Legislation	Additional Information—Additional Estimates 1996-97
2.9	Employment, Education and Training Legislation	Additional Information—Estimates 1997-98

Date tabled	Committee	Title
3.9	Privileges	67th Report—Possible threats of legal proceedings against a senator and other persons
"	Scrutiny of Bills	Alert Digest No. 11 of 1997
4.9	Appropriations and Staffing	27th Report—Transfer of responsibility for the administration of senators' travelling allowances
"	Employment, Education and Training Legislation	Report—Annual Reports
"	Regulations and Ordinances	Conference Paper—Scrutiny by the committee of regulations providing for the leasing of Commonwealth airports
"	Employment, Education and Training Legislation	Report—Vocational Education and Training Funding Amendment Bill 1997
"	Rural and Regional Affairs and Transport Legislation	Additional Information—Estimates 1997-98

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