

**No. 119**

**for the sitting period 20-30 October 1997**

**3 November 1997**

**WITNESS ORDERED TO APPEAR**

While the Privileges Committee is to investigate whether the Attorney-General improperly interfered with a witness by dissuading the Australian Law Reform Commission from presenting a submission to the Joint Committee on Native Title (see Bulletin No. 118, p 1), steps were taken to ensure that neither the Commission nor the committee were impeded. On 22 October 1997 the Senate ordered its Legal and Constitutional Legislation Committee to meet and directed the President of the Commission to appear before the committee and to give evidence on the Native Title Amendment Bill. The committee duly met and the witness duly appeared, and so the evidence which the Attorney-General was accused of trying to suppress was provided. (See also under Privilege, below.)

**PRIVILEGE**

A further accusation against the Attorney-General was raised in relation to the matter of the Australian Law Reform Commission and the Native Title Amendment Bill.

In the course of defending himself in the House of Representatives, the Attorney-General disclosed two documents of the Joint Committee on Native Title which had not been authorised for release by the committee. This apparent unauthorised disclosure of committee documents was raised as a matter of privilege. In ruling on the matter on 23 October, the President pointed out that the Senate cannot inquire into the conduct of a member of the House of Representatives, other than a minister acting in that capacity, or into anything done

in the course of proceedings in the House of Representatives. The motion to refer the matter to the Privileges Committee, which was passed on 27 October, therefore required the committee to inquire into any unauthorised disclosure by persons other than House of Representatives members who are not ministers and other than in the course of proceedings in the House of Representatives.

No sooner was this matter referred to the Privileges Committee than another allegation of unauthorised disclosure of committee documents was raised. It was alleged that signatories to the minority report of the Joint Committee on Native Title had disclosed that report, including at a press conference, before the presentation of the report to either House. This matter was referred to the Privileges Committee on 29 October.

### **ORDERS FOR PRODUCTION OF DOCUMENTS**

An order for production of documents was passed on 27 October in relation to the awarding of a consultancy to study waterfront reform. The government produced a document in response to the order and promised to seek the concurrence of other parties to the production of further documents, but claimed public interest immunity in relation to a report on the subject. The grounds of the claim included commercial confidentiality and the safety of respondents to the consultant's study. Senator O'Brien, the author of the motion, wrote to the minister asking for further details of the claim, but received a response which did not enlarge on the stated grounds. A government statement was made on the matter on 29 October, and there for the time being it rests, with Senator O'Brien considering his options for attempting to enforce further disclosure.

The matter of importation of chicken meat, which has caused considerable disputation over a considerable period, was the subject of an order for documents on 30 October. The order calls for documents relating to quarantine studies, and has a deadline of 12 November for their production.

### **LEGISLATION AMENDED, REJECTED**

The Workplace Relations Amendment Bill 1997, relating to unfair dismissal provisions, was rejected at the second reading on 21 October, thereby, to the delight of commentators, at last providing the government with the first stage of a double dissolution "trigger".

Another bill in the same area, the Workplace Relations and Other Legislation Amendment Bill 1997, was extensively considered and amended on 23 and 27 October.

The Social Security and Veterans' Affairs Legislation Amendment (Family and Other Measures) Bill 1997 was further considered and amended on 20 October.

The Charter of Budget Honesty Bill 1996, which is designed to carry out the government's pledge of fiscal transparency, was extensively amended on 27 October, with amendments relating to the costing of parties' election promises causing the most disputation.

Amendments made to the Snowy Hydro Corporatisation Bill 1997 on 30 October prevent the commencement of part of the bill until two states have held a public inquiry into river flows affected by the Snowy Mountains Scheme, and prevent the Commonwealth from disposing of its share of the Snowy Hydro Company without the approval of the Parliament.

The matter of telecommunications regulation again arose in the legislative context with the Telecommunications Legislation Amendment Bill 1997, which was amended on 30 October in relation to negotiations between carriers and parties affected by installations.

## **DELEGATED LEGISLATION**

The Regulations and Ordinances Committee took the relatively unusual step on 22 October of presenting a special report on a particular piece of delegated legislation. This related to the absence from a set of regulations of appropriate external review of the merits of decisions to be taken under the legislation, a problem which could not be cured by the disallowance of the particular regulations concerned. The committee reported that the Attorney-General and the Administrative Review Council were of the view that an external review should be provided, but that the Assistant Treasurer was obdurate in refusing to make such a provision. The committee undertook to monitor amendments of the regulations concerned "with a view to correcting this breach of its principles", which presumably means that it will look out for amendments which could be disallowed as a way of bringing about the desired change.

The importance of the independent advisers to the legislative scrutiny committees was marked on 20 October, when the Senate referred to the death of Emeritus Professor Douglas Whalan, who had been adviser to the Regulations and Ordinances Committee for 15 years and a familiar and trusted figure to senators and Senate committees generally.

## VACANCIES

The surprise resignation of Senator Kernot, announced on 20 October, led to speculation about the balance of numbers in the Senate, but an agreement was soon struck to pair the consequent vacancy, which was filled by the swearing in of Senator Andrew Bartlett, appointed by the Queensland Parliament, on 30 October 1997.

This occasion also drew attention to the number of senators filling casual vacancies (now 15), and to the way in which section 15 of the Constitution, as amended in 1977, in effect partially entrenches proportional representation by ensuring that casual vacancies do not upset the balance of party numbers as determined by the electors for the remainder of all senators' terms.

## COMMITTEES

The Legal and Constitutional Legislation Committee received a significant special reference on 30 October with the reference to the committee of the Crimes Amendment (Forensic Procedures) Bill 1997. This bill is designed to regulate the forensic treatment of persons as part of law enforcement investigations, for example, by the taking of blood tests. The reference asks the committee to consider the probative value and relevance to questions of fact before courts of the procedures prescribed in the bill.

The following committee reports were presented during the period:

<b>Date tabled</b>	<b>Committee</b>	<b>Title</b>
20.10	Foreign Affairs, Defence and Trade Legislation	Additional Information—Estimates 1997-98
"	Economics Legislation	Report—Workplace Relations Amendment Bill 1997
"	Legal and Constitutional Legislation	Report—Administrative Decisions (Effect of International Instruments) Bill 1997
21.10	Environment, Recreation, Communications and the Arts Legislation	Additional Information—Estimates
"	Privileges	69th Report—Person referred to in the Senate (Dr Clive Hamilton)
22.10	Scrutiny of Bills	14th Report and Alert Digest No. 14 of 1997
23.10	Appropriations and Staffing	28th Report
27.10	Community Affairs Legislation	Additional Information—Estimates

<b>Date tabled</b>	<b>Committee</b>	<b>Title</b>
"	Environment, Recreation, Communications and the Arts Legislation	Additional Information—Estimates
"	Community Affairs Legislation	Report—Child Care Payments Bills
"	Legal and Constitutional Legislation	Report—Copyright Amendment Bill 1997
"	Environment, Recreation, Communications and the Arts References	Report—Marine and Coastal Pollution
28.10	Rural and Regional Affairs and Transport Legislation	Report—Wheat Marketing Amendment Bill 1997
"	Native Title and the Aboriginal and Torres Strait Islander Land Fund Joint	10th Report—Native Title Amendment Bill 1997
29.10	Scrutiny of Bills	15th Report and Alert Digest No. 15 of 1997
30.10	Finance and Public Administrative References	Report—Portfolio Budget Statements
"	Legal and Constitutional Legislation	Report—Migration Legislation Amendment Bill (No. 4) 1997 and Migration Legislation Amendment Bill (No. 5) 1997

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