

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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DELEGATED LEGISLATION

The Regulations and Ordinances Committee presented its report on the Legislative Instruments Bill on 16 October (see Bulletin No. 174, p. 2). The committee recommends significant amendments of the bill, including the scrapping of the procedures for deferral of disallowance motions, which were criticised in the Department of the Senate's submission.

Another set of regulations relating to migration was disallowed on 9 October. During debate on the disallowance motion, Senator Bartlett again referred to these and other regulations being drafted in such a way as to inhibit disallowance of objectionable parts.

An unsuccessful attempt on 13 October to disallow another amendment of the National Capital Plan was not complicated by the peculiarities of the statutory provision (see Bulletin No. 173, p. 2), as no attempt was made to put off the motion.

ORDERS FOR DOCUMENTS

Committee inquiries may prove to be the best remedy for government failures to respond to orders for documents. The Employment, Workplace Relations and Education References Committee produced its report on 15 October on the government's failure to respond to orders for documents about university finances. The government had claimed that disclosure of the information would breach confidentiality agreements with the universities, but the committee found that the universities raised no objections to the disclosure of the information. Some of the required information was obtained by the committee.

Several orders for production of documents during the period met with mixed responses, with the government adding to its record of withholding information and consequently attracting criticisms and warnings in debate.

Two orders, relating to drug research and immunisation, were responded to on 9 October with some documents and a statement that the parties to agreements would be consulted about providing others.

Controversy about the role of the Chief Scientist continued with an order for documents on 9 October. A response on 13 October indicated that documents were being examined and a full response would be forthcoming. Senators expressed dissatisfaction with this in debate. On the following day another statement was made indicating that “every effort” was being made to meet the order.

Another order on 9 October, relating to free trade negotiations and genetically modified food, was responded to on 15 October with some documents tabled, but those said to be relating to ongoing negotiations were withheld.

An order relating to conditions in detention centres on 13 October was met with some documents produced on 16 October, but others withheld to protect “good order and security” in the detention centres, a phrase which seemed likely to increase concern about the centres. This led to a substantial debate. An offer of a confidential briefing for senators did not pacify them.

Also on 13 October there was an order about the medical insurance levy, and on the following day it was indicated that files were being searched for a future response. Non-government senators did not accept the adequacy of this reply.

The steadily mounting controversy about the export of live sheep led to an order on 14 October for the quarantine risk analysis relating to the return of sheep to Australia and a report on mortality rates. The report was produced on the following day. The risk analysis was withheld while the government considers it, but its future production was promised.

Two orders were made on 16 October, one relating to heritage protection of the Sydney Opera House, and one to a mine in Laos. The latter calls for documents in possession of an Australian authority and relating to the mine.

LEGISLATION

The Superannuation package of legislation (see Bulletin No. 174, p. 1) was extensively amended, with all parties contributing to the amendments. The most contentious amendments, made on 7 October, related to the taxation treatment of superannuation for same-sex partners. The package was returned with the government disagreeing with those amendments, and the disagreement was not resolved at the end of the period.

The Senate did not insist on 7 October on its amendments to the Sex Discrimination Amendment (Pregnancy and Work) Bill which were designed to put into effect more of the recommendations of the Human Rights and Equal Opportunity Commission.

The Taxation Laws Amendment Bill (No. 7) appeared to pass with the government and Opposition amicable on amendments on 8 October, but the bill was nonetheless returned with government disagreement to some amendments, and was not resolved at the end of the period.

The Australian Protective Service Amendment Bill, considered on 8 and 13 October, was the subject of amendments moved by all parties. As this is a bill initiated in the Senate, if the government wishes to disagree with any of the amendments it will have to reverse them in the House of Representatives, and then it will be a question of whether the Senate agrees with the government's amendments.

The Family Assistance Legislation Amendment (Extension of Time Limits) Bill was also significantly amended on 14 October on the initiative of the Opposition and the Democrats. Some of the amendments were in the form of requests, as they would increase expenditure under a standing appropriation.

The Petroleum (Submerged Lands) package of bills, although lengthy, was expected to pass without difficulty on 15 October, but a surprise amendment relating to the protection of whales from seismic testing explosions led to considerable discussion and the deferral of the bills.

MINISTERIAL STAFF

The Finance and Public Administration References Committee presented on 16 October its report on staff employed under the Members of Parliament (Staff) Act. The committee recommends a regime to increase the supervision and accountability of ministerial staff, whose activities, particularly in the "children overboard affair", led to the inquiry. Government members of the committee, however, preferred to stay with the conventional doctrine that ministers should be solely responsible for the activities of their (ideally invisible) personal staff.

As if to illustrate the problems considered by the committee, a letter responding to a Senate resolution was tabled on 15 October, signed by a minister's chief of staff. The significance of this was not lost on senators who referred to it in debate.

CENSURE OF PRIME MINISTER

The Prime Minister was censured by resolution of the Senate on 7 October over the Iraq war, the basis of the censure being the failure to locate weapons of mass destruction in Iraq.

This is the second occasion on which the current Prime Minister has been censured by the Senate, the first occasion on 19 March 2002 for failing to prevent Senator Heffernan, then a parliamentary secretary, from making unsubstantiated allegations against a justice of the High Court.

ADDRESSES BY FOREIGN PRESIDENTS

It was announced before the sittings that the Prime Minister would “recall Parliament” to hear addresses by the President of the United States and the President of China on 23 and 24 October, respectively.

The Prime Minister cannot “recall” the Senate, except when the Governor-General fixes the time of the first meeting of both Houses after a prorogation under section 5 of the Constitution.

The Senate, however, agreed on 9 October to meet for the addresses. No doubt in this situation an invitation by the Prime Minister could not be legislatively repudiated, although some senators thought that it should be. Attempts were made by the Democrats and the Greens to amend the resolution to “democratise” the proceedings and to provide that the Senate would transact other business on the two days; the latter proposition was rejected at that stage because the times of the meetings were not known. Senator Bartlett made further attempts on 16 October to provide for other business, but was frustrated by time limits, the press of business on the last day of the sittings and the unwillingness of some senators to attend the special sittings.

Minority opposition was particularly directed to receiving the address by the President of China, as a non-democratic country. It had been thought hitherto that the procedure would be extended only to US Presidents, on the basis that a similar procedure is adopted in Washington and has been extended to Australian Prime Ministers (see *Odgers*, p. 166). It now appears, however, that the procedure will be granted in respect of other heads of state, contrary to the rejection of Senator Brown’s motion of 16 September 2003 (see Bulletin No. 174, p. 5).

THE PRIME MINISTER’S SENATE “REFORM”

The Prime Minister’s discussion paper on changes to section 57 of the Constitution was tabled on 8 October and was the subject of debate during the period. The paper raises two options: a joint sitting without a general election and a joint sitting after any general election. It appears that there is no support for the first proposition, and scepticism was expressed about whether the Prime Minister is serious in raising the matter at all.

SENATE DAILY SUMMARY

This bulletin provides Senate staff and others with a summary of procedurally significant occurrences in the Senate. The *Senate Daily Summary* provides more detailed information on Senate proceedings, including progress of legislation, committee reports and other documents tabled and major actions by the Senate. Like this bulletin, *Senate Daily Summary* may be reached through the Senate home page at www.aph.gov.au/senate

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