

# DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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**No. 180**

**for the sitting period 22 March —1 April 2004**

**2 April 2004**

## **DELEGATED LEGISLATION**

The principles applying to the amendment of motions to disallow instruments of delegated legislation (see *Odgers*, pp 354-55 and Supplement) were again demonstrated on 24 March. A motion to disallow some Corporations Regulations, which was passed, was first narrowed in scope by means of a written notice under standing order 77, but only after notice of intention to amend the motion was given in the chamber, so as to allow any senator to take over the wider motion and to preclude the possibility of a senator who wished to vote for the wider motion being frustrated by its amendment. In the course of the debate, the government moved an amendment, which was defeated, to further narrow the scope of the disallowance motion. The motion applied to various self-contained items in a schedule to the regulations.

## **ORDERS FOR PRODUCTION OF DOCUMENTS**

A refusal by the government to produce documents in response to a Senate order added to the already high number of refusals mounted by the current government.

An order of 24 March relating to superannuation and temporary residents was met by a statement on the same day that the relevant figures were not separately identified. This constituted an extraordinary refusal by the government to produce figures for government revenue. Senator Sherry, the mover of the motion, claimed that this was because the government wished to avoid embarrassment by revealing the figures.

An order for information relating to genetically-modified organisms on 30 March resulted in the production of some documents on 1 April.

An unusual order on 1 April requires the production of a government response to the United Nations Human Rights Committee and an explanation of the response.

For an order for documents in relation to the Keelty matter, see below, under Keelty matter and Iraq. For an order arising from the report of the Select Committee on Ministerial Discretion in Migration Matters, see below, under select committees. For the order relating to ethanol, see below, under legislation.

## LEGISLATION

A private senators' bill was passed at the end of the sittings, an unusual event nowadays. While many private senators' bills are introduced, they are usually not proceeded with, partly due to pressure of business and partly because sending them to the House of Representatives is a waste of time when the government suppresses them there. Senator Brown's and Senator Lundy's Kyoto Protocol Ratification Bill, however, passed all stages on 1 April, apparently as a result of an agreement with the government to list it for consideration amongst the end-of-sittings government bills.

Two bills were rejected outright during the period, the Workplace Relations Amendment (Termination of Employment) Bill was negatived at the third reading on 22 March after Democrat amendments were not agreed to, and the Telstra (Transition to Full Private Ownership) Bill was negatived at the second reading on 30 March. Both bills thereby became "triggers" under section 57 of the Constitution, having been previously rejected in the Senate.

Extraordinary proceedings occurred in relation to the customs and excise bills known as the ethanol bills. They were deferred in August 2003 to the day after the day on which the government fully complies with an order of the Senate to produce documents relating to the government's ethanol transactions (see *Odgers*, p. 319 and Supplement). As a result of an agreement between the government and the Democrats, however, the bills were brought on again. The motion to bring them on was adjourned by the Democrats on 31 March, and the energy grants package of bills was then passed with amendments apparently resulting from the agreement. The ethanol bills were then brought on and finally passed on 1 April, with the government tabling some documents in response to the order, and promising more.

Two bills were extensively amended as a result of scrutiny by Senate committees. The military rehabilitation package was amended on 29 March as a result of scrutiny by the Foreign Affairs, Defence and Trade Legislation Committee, and the Telecommunications (Interception) Amendment Bill on 1 April as a result of a report of the Legal and Constitutional Legislation Committee.

Other bills amended as a result of inter-party agreements included the migration agents package on 22 March and the age discrimination package on 23 March.

A certain amount of legislative interplay, which has been unusual in recent times, occurred in relation to the Agriculture, Fisheries and Forestry Legislation Amendment Bill on 1 April.

The government disagreed with some Senate amendments but suggested substitute amendments, and the Senate accepted the substitute amendments but with further amendments.

The Superannuation Legislation Amendment (Family Law) Bill was the subject of a huge volume of government amendments on 1 April.

There was a series of bills in relation to which the Senate did not insist on amendments disagreed to by the government, because of unwillingness on the part of a majority of the Senate to hold up beneficial measures, including the Superannuation Safety Amendment Bill, the Family Assistance Legislation Amendment (Extension of Time Limits) Bill and the Communications Legislation Amendment Bill (No. 2).

All Senate/government disagreements were settled at the end of the period, except in relation to one bill, the Migration Legislation Amendment Bill (No. 1), which was left over to the next sittings.

The Scrutiny of Bills Committee presented on 24 March a report resulting from its policing of explanatory memoranda accompanying bills. These memoranda have frequently been a source of complaint, as they often merely repeated the provisions of the bills and did little to explain them, and the committee has constantly sought to improve their quality.

#### **SELECT COMMITTEES**

The Select Committee on Ministerial Discretion in Migration Matters reported on 31 March that it was not able to discover evidence of anything untoward in the exercise of ministerial discretions, much less confirm suspicions of favourable decisions in return for electoral donations, but expressed dissatisfaction with lack of access to files. On 1 April an order for documents was passed by the Senate for file material to be produced by 5 pm on 12 May.

Senator Harris succeeded in having passed on 1 April his motion for the establishment of a select committee on the Lindeberg grievance, otherwise known as the Heiner documents matter, although when he first proposed it it appeared to have little support; apparently the government finally agreed to support it. The terms of reference of the committee call upon it to discover whether previous Senate inquiries were misled about the matter, a question already twice examined by the Privileges Committee.

#### **PRIVILEGES COMMITTEE**

The Privileges Committee received a reference on 24 March on whether misleading evidence was given by officers of Telstra. This relates to the controversial question of whether Telstra

has allowed the telecommunications network to deteriorate. An estimates hearing was told that the rising number of faults in the system were not due to such deterioration, but an internal Telstra document apparently contradicts that evidence.

The committee presented on 1 April its report on matters relating to the joint meetings on 23 and 24 October 2003 to receive addresses by foreign heads of state (see Bulletin No. 176, p. 5). The committee was unable to make findings on most of the matters referred to it, such as whether foreign agents had unduly influenced the incidents occurring at the meetings, but supported the recommendation of the Procedure Committee that the Senate not participate in such joint meetings in future.

#### **PROCEDURE COMMITTEE REPORT**

The Procedure Committee presented a report on 29 March suggesting three changes to procedures: having the no divisions on Thursday afternoons rule start at 4.30 pm rather than 6 pm (standing order 57(3)); allowing government documents to carry over for consideration from day to day before they go on the Notice Paper for Thursdays (standing order 61); and requiring the support of five senators for any motion to bring on a notice of motion which is refused formality (standing order 66). The report is expected to be dealt with in May.

#### **KEELTY MATTER AND IRAQ**

The controversy over whether the government exerted undue pressure on the Commissioner of the Australian Federal Police, Mr Keelty, to change his statement on Iraq and terrorism, was reflected in a series of proceedings in the Senate. A Greens' motion on 23 March for a reference to a committee on the matter was not passed, the other parties preferring to pursue other methods (the Opposition particularly referring to the inability of the Senate to compel members of the House of Representatives to give evidence). A motion was passed on 24 March referring to the Finance and Public Administration References Committee's report on ministerial advisers, the incident having again raised the question of the activities of ministerial staff. An order for documents was passed on 24 March for the drafts of the clarifying statement issued by Mr Keelty. The documents were refused by the government on 30 March, leading to the censure of the Leader of the Government in the Senate, Senator Hill, for the failure to produce the documents, after extensive debate on the matter (demonstrating again that the penalty of a censure is not so much the censure itself but the amount of the government's legislative time taken up in debate). There was also a debate on 25 March on a motion relating to the politicisation of the Public Service. Various senators remarked that they were looking forward to the estimates hearings when Commissioner Keelty and other officers would appear, and the potential interest was expanded by the dispute which broke out at the end of the period about security briefings for the Opposition, as officers involved in that matter are also expected to appear.

The Iraq war also returned to haunt proceedings in another guise. The controversy about the withdrawal of Australian forces from Iraq was reflected in an urgency motion on 30 March. Amendments were moved to the motion by leave (under standing order 75 an urgency motion is not amendable), and the amended motion which was eventually passed reflected the Opposition's position on the matter.

#### **FREE TRADE AGREEMENT**

The text of the proposed Australia-United States free trade agreement was finally tabled on 22 March, leading to a debate on the agreement. The agreement had already been made public, thereby starting up the select committee on the subject (see Bulletin No. 178, p. 2).

#### **VACANCY FILLED**

The vacancy created by the resignation of Senator Alston was filled by the Victorian Parliament on 31 March by the appointment of Senator Fifield, and he was sworn in on the following day.

#### ***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](http://www.aph.gov.au/senate)

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