

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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FREE TRADE AGREEMENT LEGISLATION

Apart from occupying most of the time devoted to legislation during the period, the bills implementing the US free trade agreement caused some unusual events.

Unlike the Houses of the US Congress, the Senate did not have the option of approving or disapproving of the agreement as such, but merely had to consider legislation implementing some parts of the agreement. Failure to pass the legislation, or amendment of the legislation in a manner inconsistent with the agreement, would have resulted in the agreement not coming into effect.

The report of the select committee on the agreement was not due until 12 August, but there was an expectation that it would report early due to the government's wish to deal with the legislation during the sitting period. The Labor Party members of the committee held a press conference in advance of the sittings to publish their recommendations on the agreement, and this was followed by a Labor Party announcement that they would insist on two amendments as conditions of passing the legislation. On the first day of the sittings, the chair of the committee, Senator Cook, was replaced on the committee due to illness, and his absence from the sittings appeared to add to the urgency of the occasion. The bills were received on the first day and proceeded with immediately, but the final report of the committee was not tabled until 5 August.

On that day the Privileges Committee received a reference on whether the Labor senators had made unauthorised disclosures of the draft report of the committee at their press conference, and whether there had been earlier unauthorised disclosures of events at private meetings of the committee. The matter of privilege was raised by Senator Ridgeway, the Democrat member of the committee, and given precedence by the President. The President pointed out that normally there would be an obligation on a committee to conduct a preliminary investigation of any unauthorised disclosure under the resolution of the Senate of

20 June 1996, but because the select committee would cease to exist when it presented its final report, there would not be opportunity for this to occur.

The bills were eventually passed on the last day with the government accepting the amendments insisted on by the Labor senators. Amendments moved by other parties were not agreed to by the Senate; most of them would have been clearly inconsistent with the agreement and therefore would have prevented the agreement from coming into effect.

BILL REVIVED

The Marriage Amendment Bill 2004, having been negatived at the first reading on 25 June (see Bulletin No. 183, p. 2), was revived on 13 August by means of a motion for the first reading of the bill to be put again. This motion was passed without debate. It was necessary to have a suspension of standing orders in the motion to allow the bill to proceed without formalities (i.e., to proceed under the expedited method provided for in standing order 113), because that motion may be moved only immediately after a bill is first introduced or received.

Had the motion to revive the bill been debated, the suspension of standing orders would have been regarded as inseparable from the authority for the bill to proceed without formalities, and that part of the motion would have been debatable, but the first reading would not have been debatable as such.

The government and the opposition agreed to put a limitation of debate (guillotine) in place on the last day when it was apprehended that the minor parties might filibuster the debate. The guillotine provided for termination times for this bill and three others.

ORDERS FOR PRODUCTION OF DOCUMENTS

Orders for the production of documents met with some success during the period. An order relating to the sale of Commonwealth land passed on 16 June was met with the tabling on the first day of voluminous documents presented to the President during the non-sitting period. An order of 10 August relating to government transactions about Repulse Bay near the Great Barrier Reef led to a government response on the following day indicating that there was not enough time to produce the documents then but that the government would “diligently respond”.

Two other orders were met with the response that the government could not table the required documents without the approval of other governments. An order of 4 August relating to the government’s in-principle decision to sign up to the proposed US missile defence shield produced the response that the government could not table the documents without US

permission, which was perhaps the expected result. An order of 5 August relating to bushfire management produced the now familiar response that the documents were COAG documents which could not be released without the approval of state and territory governments.

An order relating to nuclear waste on 11 August met with the response on the following day that the required government shortlist of possible sites for a waste repository did not exist, but it was conceded that there is a list in an advice of an advisory committee which would not be released because it was advice.

PRIVILEGES COMMITTEE

The Privileges Committee presented on 3 August its report on whether Telstra executives had given misleading evidence before the Environment, Communications, Information Technology and the Arts References Committee in relation to faults in the Telstra network. The committee found that no contempt had been committed because there was no evidence of an intention to mislead, but noted that officers of Telstra had previously come to attention in the context of allegations of false or misleading evidence. The committee referred to the difficulty of establishing that a witness intended to mislead in giving apparently inaccurate evidence. The committee recommended that Telstra be required to report to the Senate on measures taken to ensure that its senior officers are appropriately trained in their obligations to Parliament. The Senate adopted the report on 5 August.

See also above, under Free Trade Agreement Legislation, for a reference to the committee relating to alleged unauthorised disclosure of a committee report and proceedings.

COMMITTEE REPORTS

Among the significant committee reports presented during the period was the report on 12 August of the Rural and Regional Affairs References Committee on the search for the fishing vessel the *Margaret J*. This was the inquiry which the committee agreed to suspend pending a coroner's inquiry, although there was no obligation to do so, and in relation to which the Senate published the documents of the committee (see *Odgers' Australian Senate Practice*, Supplement to 10th ed., p.420).

Another highly significant report was that of the Foreign Affairs, Defence and Trade References Committee on 12 August on the Bali bombing and security assessments and warnings. The committee found that the security situation in Bali could with hindsight have been more adequately conveyed to the public.

SELECTION OF BILLS COMMITTEE

Another occasion of amendment of the motion to adopt the report of the Selection of Bills Committee to refer a bill to a committee not recommended for referral occurred on 11 August. The committee could not agree on the referral of the bill. In debate reference was made to the convention that a bill is referred if any senator wishes to have it referred, but it is not clear whether this convention is always accepted or observed.

PROCEDURAL ORDERS

The temporary order of the June sittings relating to divisions on Thursday was renewed on 4 August. The other temporary order, relating to suspension of standing orders after a notice of motion is refused formality, was not renewed, no doubt indicating its controversial character.

SUSPENSION OF SITTING

The Senate adopted the device of suspending its sitting over two days on 12-13 August. Because this procedure has been so frequently adopted in recent times, departments and agencies responsible for tabling delegated legislation are now not warned that they should regard the extended sitting as two sitting days, on the basis that they should now be well aware of this.

ODGERS' AUSTRALIAN SENATE PRACTICE, 10TH EDITION, SUPPLEMENT

The supplement to the 10th edition of *Odgers' Australian Senate Practice*, updating the volume to 30 June 2004, was tabled on 3 August and is on the Internet.

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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