

# DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

hc/pro/prob/14405

**No. 186**

**for the sitting period 16—18 November 2004**

**19 November 2004**

## **ACCOUNTABILITY REPORT**

Since it was first issued at the beginning of 1985, this Bulletin has provided Senate staff with ready access to significant procedural developments in the Senate. As others became aware of it and it was provided on request to people outside the department, it gained a wider circulation and readership. This influenced to a certain extent its content, as material was added which would be known to Senate staff but which required some explanation for others.

In serving its informing and explaining function, the Bulletin has necessarily, if often by implication only, operated as a barometer of the accountability of the executive government to the Senate. Achievements in accountability (such as the Senate's order for the listing of government contracts and reporting by the Auditor-General on the lists) and failures of accountability measures (such as the order for disclosure of government advertising contracts) have been faithfully recorded.

The Bulletin will now make explicit its regular reporting on accountability. Each issue will conclude with a section entitled Accountability Report, which will summarise advances and retreats in accountability. All developments significantly affecting accountability will be mentioned.

It is hoped that the Bulletin will continue to be read with interest by all those recipients who value the processes of the Senate.

## **OPENING OF "A PARLIAMENT"**

The opening of the "41<sup>st</sup> Parliament" following the general election was widely reported as such. But why is it referred to as a new Parliament, and why is there an opening?

The concept of a new Parliament appears to be one of those unthinking adoptions of British practice. It has no constitutional basis; the Constitution simply refers to the Parliament as an institution and does not reflect the concept of separate or new Parliaments. The British usage no doubt is based on the fact that when a House of Commons is dissolved and the Lords

discharged the Parliament ceases to exist. (For government proclamations in Australia purporting to discharge senators from attendance, see *Odgers*, 10th ed, pp 177, 515.) This has no application in Australia. On one view, we are now in the 7<sup>th</sup> Parliament, because there have been six simultaneous dissolutions of both Houses under section 57 of the Constitution, and they are the only occasions on which the Australian Parliament could be said to cease to exist.

The British do not refer to Parliaments by number, as there would be endless dispute about which was the first and how many there have been; whether, for example, those of the revolutionary periods of 1642-1660 and 1688-1689 should be counted.

The usage of referring to Parliaments by number seems to have been influenced by the American practice of referring, for example, to the “108<sup>th</sup> Congress”, a new Congress being taken to begin when the House of Representatives is re-elected. That practice, however, is even more irrational there, because both Houses of the Congress are continuing bodies and never cease to exist; the elected or re-elected House members take office immediately after the terms of their predecessors cease.

Also quite irrational are the rules about what parliamentary business survives from one Parliament to another and from one session to another. Bills lapse, resolutions cease to have effect unless they are continued by their terms, but standing orders go on forever until altered. The US House of Representatives goes through the ritual of renewing its equivalent of standing orders with each new Congress, whereas we, with perhaps more basis for speaking of a new Parliament, do not. There is no rationality in any of this.

The usage is so entrenched, however, that there is also no point in attempting to change it.

In relation to the opening of Parliament, the opening ceremony also has no constitutional basis; the only relevant constitutional provision is in section 5, allowing the Governor-General to appoint the time for the Houses to assemble after a prorogation. The opening ceremony is an adaptation, with many curious variations, of British and old colonial practice. It is actually inconsistent with the Constitution, principally in four respects:

- (1) The appointment of justices of the High Court as deputies of the Governor-General is contrary to the separation of legislative, executive and judicial functions entrenched in the Constitution, and a violation of the principle that judicial officers exercise only judicial functions.
- (2) The Governor-General’s opening speech, which sets out the government’s program, involves the Governor-General, who is otherwise supposed to be a politically neutral head of state, in speaking as if he or she were the actual head of government and in making contentious and partisan political statements.

- (3) The Governor-General purports to direct the two Houses as to where they are to meet, which is not authorised by the Constitution.
- (4) The Governor-General attends in the Senate chamber and summons the House of Representatives to attend there, as if the Governor-General had some particular relationship with the Senate as distinct from the House of Representatives, analogous to the relationship between the monarch and the House of Lords. There is no such relationship under the Australian Constitution, which provides for two elected Houses as co-equal participants in the legislative process.

The ceremony continues, however, apparently because the current government likes the “tradition”. The government parties having gained a majority (of one) in the Senate for the first time since 1981, taking effect when the Senate places change hands on 1 July 2005, the chances of changing the ceremony appear to be slim.

#### **COMMITTEE REPORTS**

Numerous committee reports, presented to the President during the general election adjournment, were tabled on the first day. Many were interim reports but some were final, including reports on bills which may or may not be revived or reintroduced in the coming sittings. The Legal and Constitutional References Committee reported on the Road to a Republic; the Rural and Regional Affairs and Transport References Committee reported on forest plantations and the Community Affairs Legislation Committee on tobacco advertising prohibition. (See also below, under Lindeberg Committee.)

#### **LINDEBERG COMMITTEE**

The Select Committee on the Lindeberg Grievance presented its final report when the Senate was not sitting, and the report was tabled on the first day. The committee found no evidence that earlier Senate committees which became involved in the Heiner documents matter, including the Privileges Committee, had been deliberately misled as alleged by Mr Kevin Lindeberg. The committee repeated the finding by earlier committees that other matters raised by Mr Lindeberg could be resolved only within the Queensland state political and legal system.

The report included advices provided to the committee on seeking evidence from state authorities, the publication of committee documents, and the necessary elements of the contempt of giving misleading evidence.

When debating the report the following day (in the matters of public interest discussion), Senator Harris disclosed a document which had been received by the committee and not published, including the name of the person who had submitted the document. On the following day he made a statement to the effect that he had inadvertently disclosed the

unpublished document, and he unreservedly apologised for this action. This apology seems to have forestalled a matter of privilege being raised on the unauthorised disclosure.

#### **COMMITTEES AND COMMITTEE REFERENCES RENEWED**

The Select Committee on the Administration of Indigenous Affairs was re-established on 17 November, and the Select Committee on the Scafton Evidence on the following day. It is expected that the latter will not hold any more hearings on the matter referred to it (what the Prime Minister knew about the “children overboard” incident and when he knew it), but will only present its final report.

The Finance and Public Administration References Committee had its reference on government advertising renewed on 18 November. This is one of the references which the government opposes and which could be withdrawn, if the inquiry is not completed, when the government party majority takes effect in the Senate after 1 July next year.

The Employment, Workplace Relations and Education Legislation Committee received a reference on a bill in advance of the appointment of members of the committees, including the Selection of Bills Committee. This was done so that the committee could consider the bill before the Senate next meets.

In the event, senators were appointed to committees on 18 November, including all of the standing committees and the two select committees.

#### **ESTIMATES HEARINGS**

A prorogation ahead of a general election is regarded as setting aside a Senate order directing standing committees to hold estimates committees, although the committees are theoretically free to do so if they choose (see *Odgers*, 10<sup>th</sup> ed, p. 176). This was the case with the order requiring supplementary estimates hearings to be held this month. It is open to the Senate, however, to reinstate the order when the Senate next meets.

Two notices of motion were given by Senator Harradine, the first to direct that supplementary estimates hearings take place on the evenings of some of the scheduled sitting days during the remainder of this year’s sittings. This apparently did not meet with sufficient support, so he gave notice of another motion, which was passed on 18 November, to the effect that questions placed on notice in the last round of estimates hearings must be answered by 31 January 2005, and that senators may place additional questions on notice up to 2 December 2004, which must also be answered by 31 January. This gives senators the capacity to ask questions of departments and agencies without further hearings.

## **DAYS OF MEETING**

By a resolution of 17 November, the days of meeting for the remainder of 2004 and the whole of 2005, including days of estimates hearings, were set. The motion to do so was the subject of debate, in which the government was accused of already seeking to take advantage of its forthcoming party majority in the Senate by shortening the sitting times before July. Senator Ian Campbell, the outgoing Manager of Government Business, however, blamed the shortened sittings on the moon, which dictates the occurrence of Easter.

## **SENATE PUBLICATIONS**

The second volume of the historical document setting out the business transacted by the Senate up to 1910, in the format in which the publication *Business of the Senate* now appears, was tabled on 18 November, covering the period 1906-1910. This document demonstrates that the Senate in its first decade functioned in a manner very similar to its operations in recent years.

The consolidated register of Senate committee reports updated to 2004 was tabled on 18 November.

The 11<sup>th</sup> edition of *Odgers*, also updated to 2004, is at the printers and will appear soon.

## **ACCOUNTABILITY REPORT**

Accountability advances during the period included:

- the provision for senators to lodge further estimates questions on notice
- the reconstitution of the select committees and the references made to other committees.

There were no accountability losses during the period, unless the reinstatement of the estimates hearings could be said to be preferable to questions on notice.

## ***SENATE DAILY SUMMARY***

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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