

# DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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## **COMMITTEE INQUIRIES INTO BILLS**

The most notable features of the sitting period were some significant successes by committees in their inquiries into bills.

The Legal and Constitutional Affairs Committee added to its tally of productive legislative inquiries. The controversial provisions of the Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006 (this may be the longest title of a bill so far) to confer search and seizure powers on Centrelink officers were dropped from the bill by way of a government amendment on 28 November in response to criticisms raised in evidence before the committee. The Copyright Amendment Bill 2006 was extensively amended on 30 November partly in response to recommendations of the committee.

The Employment, Workplace Relations and Education Committee also had some success, with the Independent Contractors Bills also extensively amended and some amendments following matters raised at the hearings of the committee.

The Defence Legislation Amendment Bill 2006 was designed to carry out some of the recommendations of the Foreign Affairs Defence and Trade Committee following its inquiry into the military justice system, but after further scrutiny by the committee the bill was heavily amended by the government in the House of Representatives. A Defence Force "audit" arising from the committee's recommendations was also made available. The Opposition were still critical of the bill, which did not go as far as the committee had recommended in reforming the system. This committee inquiry, however, has been one of the most significant and influential inquiries by a Senate committee. The question which

arises is whether the government, now having its majority in the chamber, would allow such a reference to a committee.

The Scrutiny of Bills Committee, in a report on 29 November, expressed itself as still not satisfied with the explanation of provisions in the Environment and Heritage Legislation Amendment Bill (No. 1) 2006 (see Bulletin No. 206, p. 3). The bill was passed without amendment, however, on 7 December, over the bitter resistance of the Opposition, Greens and Democrats.

References of bills to committees continued apace, with the government initiating references at the earliest opportunity but still imposing tight deadlines for committees to report. During 2006 a total of 100 bills have been referred. A Selection of Bills Committee report on 7 December was the subject of a successful Opposition amendment to refer additional bills. The adoption of this report gave some committees a significant workload over the summer adjournment.

#### **SCRUTINY OF BILLS COMMITTEE**

The Scrutiny of Bills Committee presented on 4 December a report on search and seizure provisions in legislation, following an earlier report on this subject in 2000, and expounding principles which should govern the enactment of such provisions. The committee also referred to the relationship between parliamentary privilege and search and seizure provisions, which has largely been settled at the federal level by the adoption of guidelines for searches by agreement with the government.

The committee reported on 6 December that it had received undertakings from the Minister for Justice to amend absolute liability provisions in anti-money laundering legislation. The amendments were not made to the bill on its passage, but were promised for future bills.

The committee also picked up points on bills subsequently followed up by other committees, which often happens.

#### **OTHER COMMITTEE INQUIRIES**

A government response tabled on 5 December to the Finance and Public Administration Committee's report on the Regional Partnerships and Sustainable Regions Programs led to further acrimony about those controversial projects. The response, however, adopted some of the recommendations of the committee for greater accountability in such programs.

The Legal and Constitutional Affairs Committee believes in plain language. Its report on 7 December into what was designated as "paid labour of indigenous workers controlled by government" referred to the subject as "indigenous stolen wages".

The government refused to re-establish the Select Committee on Mental Health on 5 December, in spite of the multi-partisan nature of the earlier committee's inquiry.

The tabling of the report of the Economics Committee on petrol pricing on 7 December was accompanied by complaints about the chair allegedly ramming the report through the committee without adequate consideration. Such disputes are more likely in the context of the very tight deadlines imposed on the committees, although in this case it was claimed that the chair had the draft report for two weeks before circulating it. The chair claimed that the committee had agreed to the timetable.

The President's report on outstanding government responses to committee reports, and the government's response to the previous President's report, were tabled on 7 December. Both documents are voluminous, indicating a continuing problem with tardy government responses. The government's response to the previous President's report repeated the phrase "the government response is being considered and will be tabled in due course" in relation to many reports.

#### **COMMITTEES AND PARLIAMENTARY PRIVILEGE**

The report of the Legal and Constitutional Affairs Committee on the Families, etc. Bill (see above) provided an example of a committee dealing with a parliamentary privilege matter without the necessity of referring it to the chamber. The committee reported that it appeared that a person who made a submission to the committee may have been threatened with a possible penalty in relation to the evidence given by the person. The committee investigated the matter, and found that the person who made the apparent threats had not done so with the intention of threatening the submitter and that the submitter had not felt threatened. The person concerned also made an apology which was provided to the committee.

#### **LEGISLATION**

Exemption of bills from the deadline for introduction imposed by standing order 111 caused some dispute. There was a significant debate on 27 November on a motion exempting several bills from the "cut-off", and the non-government parties voted against the exemption of some bills, claiming that their urgency had not been established.

The Wheat Marketing Amendment Bill 2006, designed to temporarily repair the problems revealed by the Cole commission into the Iraq wheat bribery affair, was the subject of an unusual motion on 6 December, which provided for the introduction of the bill and the exemption of the bill from the "cut-off" in one motion. This kind of motion would normally be regarded as objectionable, but the statement of reasons for the exemption of the bill, which the government is obliged to provide under the standing order, was circulated to senators in advance of its tabling with the motion.

The Tax Laws Amendment (2006 Measures No. 4) Bill 2006, considered on 6 December, saw Senator Joyce “crossing the floor” to oppose part of it, but as the Opposition supported the controversial provisions about exemption from capital gains tax of certain foreign investments, the “rebellion” had no effect.

The Crimes Amendment (Bail and Sentencing) Bill 2006, which was initiated in the Senate and was designed to prevent courts having regard to indigenous cultural matters in granting bail and imposing sentences, was unsuccessfully opposed by the non-government parties, but had to return from the House of Representatives on 7 December with government amendments designed to correct inconsistencies in the bill which were pointed out during debate in the Senate.

Several bills were passed on the last day of the sittings under an allotment of time, not provided under the “guillotine” provisions in standing order 142 but by a special motion on notice, a device which has been applied by the government on previous occasions. The allotment of time combined quantities of time with prescribed deadlines, mainly to secure the passage of the Environment and Heritage Legislation Amendment Bill (No. 1) 2006.

#### **GOVERNMENT COMMISSIONS OF INQUIRY**

The report of the Cole commission on the Iraq wheat bribery affair was presented on 27 November, and the huge financial malfeasances exposed by the report were naturally vigorously debated. There was little reference to the bad parliamentary precedent established by the government refusing to co-operate with inquiries in Senate committees into the affair on the ground that the commission had been appointed. This episode will doubtless be cited by governments in the future when attempts are made to divert Senate inquiries by appointing government commissions of inquiry.

Another consequence of the commission was the Royal Commissions Amendment Bill 2006, which was intended to remove any doubt about the ability of criminal investigators and prosecutors to use the material collected by the commission. When the bill was considered on 7 December, Senator Murray objected to its application to all commissions, on the basis that this was a form of undesirable retrospectivity, and attempted to amend the bill to confine it to the Cole commission. This point had been raised by the Scrutiny of Bills Committee in an Alert Digest.

#### **MOTIONS FOR PRODUCTION OF DOCUMENTS**

The government continued to routinely vote down all motions for documents. A motion relating to the Transair affair was negatived on 27 November, although most of the documents were to be made public as a result of a subsequent report on the matter. A motion was negatived on 28 November in relation to a report on environmental matters.

It was perhaps not surprising that the government refused on 7 December a motion for documents relating to the Prime Minister's undertaking about Tasmanian forests, which the Greens claimed has been breached.

Documents continue to be produced, however, in response to continuing Senate orders made in the past. The regular Australian Competition and Consumer Commission report on anti-competitive practices in health insurance was tabled on 4 December in response to the order of 1999-2002, and the Ombudsman tabled on 6 December his report on controlled operations (police "stings") as required by the Senate's amendment to the relevant statute.

## **2007 MEETINGS**

A schedule of sittings for 2007 was set by resolution on 7 December, including the days for the estimates hearings, and including a "spill-over day" for the additional estimates hearings in February.

## **ACCOUNTABILITY REPORT**

Provided that committees are able, under the deadlines imposed upon them, to continue to diligently scrutinise bills, they will be able to make significant contributions to improving legislation and compelling government to think again about some legislative proposals.

The Cole commission precedent and the continuing refusal of all motions for documents are significant accountability negatives.

## **RELATED RESOURCES**

The *Dynamic Red* records proceedings in the Senate as they happen each day.

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, these documents may be reached through the Senate home page at [www.aph.gov.au/senate](http://www.aph.gov.au/senate)

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