

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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**for the sitting period 13–16 October 2008
and estimates hearings 20–24 October 2008**

27 October 2008

SENATE SITTINGS

ORDERS FOR DOCUMENTS: GRANTS AND APPOINTMENTS

It appears that departments and agencies will comply with the two orders of the Senate made on 24 June 2008 for the production, seven days before each round of estimates hearings, of lists of government grants and appointments. Returns to the orders started flowing in at the beginning of the sitting week and continued on subsequent days in time for the estimates hearings.

LEGISLATION

The Safe Work Australia bills reflected an agreement between federal and state governments. These intergovernmental agreements have been used in the past as an argument against any amendment of the legislation in the Senate, or by state upper houses. This situation has been the subject of concern to the two legislative scrutiny committees. Any such contention was robustly rejected during proceedings on these bills, which were passed on 13 October with amendments moved by the Opposition, the Greens and Senator Xenophon. The government, however, rejected the amendments in the House of Representatives on the basis that the intergovernmental agreement must prevail.

Two distantly related government bills, the Family Law Amendment (De Facto Financial Matters and Other Measures) Bill 2008, and the Same-Sex Relationships

(Equal Treatment in Commonwealth Laws—Superannuation) Bill 2008, were each the subject of large numbers of government amendments, partly reflecting scrutiny of the bills by the Legal and Constitutional Affairs Committee. The first bill was passed on 16 October, but the second remains to be dealt with in committee of the whole.

The government's first package of legislation to deal with the crisis in the international financial system, the Financial System Legislation Amendment (Financial Claims Scheme and Other Measures) Bill 2008 and two associated bills, was passed as a matter of urgency on 16 October. The government indicated that it would normally have moved to refer the bills to a committee, but asked that this not occur because of urgency. The two accompanying bills were to impose a levy on institutions, but provided that the levy would be imposed by regulations. Such a bill is not regarded by the Senate as a bill imposing taxation because the imposition occurs not in the bill but in the subsequent regulations.

The government's next package of related legislation, for "nation building" schemes, will be subject to committee scrutiny. On the recommendation of the Selection of Bills Committee on 15 October, this legislation was referred, in advance of its introduction, to the Economics Committee. The committee, in accordance with past precedents, is authorised to commence its inquiry as soon as the legislation appears.

The legislation to change Medicare levy surcharge thresholds, having been rejected in the last period of sittings, was passed on 16 October following a compromise between the government, the Greens and Senator Xenophon concerning amendments to the bill.

COMMITTEE REPORTS

Unlike all other select committees, the Select Committee on Regional and Remote Indigenous Communities has been appointed for the life of this Parliament and is required to present reports in accordance with a specified schedule. The first of these reports was presented on 13 October, and included a statement of the committee's future subjects of inquiry.

The Community Affairs Committee presented its report on 13 October on the draft pharmaceutical benefits regulations which are proposed to accompany the government's cost recovery legislation; the committee had complained about not having the draft regulations when it reported on the legislation. The committee was divided, with the Opposition opposed to the cost recovery legislation.

The Rural and Regional Affairs and Transport Committee presented its first report on the Murray-Darling Basin on 13 October. The report covered a bill introduced by Senator Xenophon to “rescue” the basin. This report also indicated divisions amongst the senators, but notably the Greens and Senator Xenophon signed a joint dissent.

SCRUTINY OF BILLS COMMITTEE

The Scrutiny of Bills Committee in reporting on 15 October drew attention to provisions which the committee believes to be unusual if not unique, whereby strict liability is imposed in respect of offences of failure to provide information to officials. The committee has sought explanation of these provisions. The committee also noted that its legal adviser, Professor Jim Davis, has retired after an association of 25 years with the committee.

PROCEDURE COMMITTEE

The Procedure Committee reported on 14 October reaffirming its recommendation that questions to chairs of committees and to senators other than ministers at question time should be abolished on a trial basis with a view to determining whether they should be abolished permanently. This recommendation was adopted on 15 October.

ESTIMATES HEARINGS

The supplementary estimates hearings are supposedly confined to matters of which senators give notice, but as in past years notices were given in sufficiently wide terms to allow examination of virtually all and any operations of departments and agencies. The following matters of interest arose.

- (1) On several occasions ministers and officers declined to provide information on the basis that it consisted of advice to government. Senators having again sought the Clerk’s advice on this issue, they were again reminded that the fact that information consists of advice to government has never been conclusively accepted as a ground for withholding information, and that ministers are expected to raise some specific public interest ground supporting non-disclosure such as is acceptable to the committee. In most cases senators did not press the questions. In the examination of the government’s response to the global financial crisis the advice given by the Treasury and the Australian Prudential Regulation Authority

was disclosed and canvassed, the Secretary of the Treasury indicating that this course was taken because of the public attention given to the issue. Some aspects of advice by those bodies, however, were not disclosed. (ECO 22/10) Legal advice about the government's measures was provided. (LCA 20/10) There was some dispute about the boundary between officers giving opinions on matters of policy and explaining policy, a distinction which is drawn in chairs' opening statements.

- (2) A senator attempted to ask questions about payments to members of the House of Representatives, but was reminded that the Senate estimates hearings do not examine matters which are the responsibility of that House. (F&PA 20/10)
- (3) The Audit Office revealed that it had reduced its audits by 10 per cent because of the impact of the efficiency dividend. (F&PA 20/10)
- (4) Medibank Private invoked commercial confidentiality without complying with the Senate's resolution of 30 October 2003, but subsequently provided some information relating to its corporate plan. (F&PA 21/10) The government again invoked commercial confidentiality of the tendering process for the National Broadband Network as a reason for not answering questions impinging on the process. (ECA 20/10)
- (5) It was observed that some departmental and agency annual reports were not available. The deadline for annual reports is 31 October, and the supplementary estimates hearings were early this year. This problem may need to be attended to in future hearings programs.
- (6) It was revealed that the government is considering not only a system for investigating complaints about federal judges but a national system covering both state and federal courts. The impact of budgeting restrictions on federal courts was explored. (LCA 20/10)
- (7) The Foreign Affairs, Defence and Trade Committee received a briefing from the Audit Office before the hearings on the vexed issue of the Defence Department's financial statements. The committee again explored the implementation of the committee's recommendations on the reform of the military justice system. (F&PA 22/10)
- (8) The Department of Foreign Affairs and Trade at first declined to answer but then took on notice a question about the employment contract for the engagement of a former secretary of the department as a special envoy. (FADT 23/10) This issue

would seem to fall squarely within the Senate's past declarations about the expenditure of public funds being subject to examination. One of those resolutions arose from employment contracts.

- (9) Possible harm to relations with a foreign country as a ground for a public interest immunity claim was hinted at by the Commissioner of the Federal Police in declining to answer some questions about the Laphorne case. (LCA 20/10)
- (10) In the absence of its chair on 23 October, the Education, Employment and Workplace Relations Committee removed the chair and elected another government senator as chair for the period of the hearing. A committee has no power to appoint an "acting chair". If the chair is absent the committee may only have the deputy chair act as chair or remove the chair and elect another government senator as the chair. The provision allowing the chair or deputy chair when presiding to appoint a temporary acting chair applies only to the temporary absence of both chair and deputy. (Standing order 25(9))
- (11) There was some dispute about whether the Director of the Central Land Council should be asked questions about a private company of which he is also a director. Eventually some questions were answered on the basis that the Land Council is a shareholder in the company. This questioning would seem to be well within the boundaries of involvement of public funds and the past resolutions of the Senate. (CA 24/10)
- (12) In accordance with the resolution of the Senate on 26 August, the Community Affairs Committee held its "cross-portfolio" hearing on Indigenous affairs on 24 October.

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

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