

**No. 141**

**for the sitting period 3—13 April 2000**

**14 April 2000**

**MANDATORY SENTENCING: PRESSING THE GOVERNMENT**

Before the sitting period began there was much speculation about the measures which might be adopted by the Senate in response to the government's refusal to allow the House of Representatives to consider the Senate's bill on mandatory sentencing (see Bulletin 140, p.1). Controversy over the matter continued. On the first sitting day standing orders were suspended to allow the moving of a motion to send a message to the House asking that the bill be considered. Time normally spent on government legislation was taken up by debate on the motion, which was passed and the message duly sent. On each subsequent sitting day a similar message was sent, the necessary motion being passed without resistance by the government. The government continued to suppress debate on the messages in the House, and was able to avoid dissent in its own ranks by the offer of funds to the Northern Territory to reduce the impact of its mandatory sentencing laws. More severe measures against the government were not supported in the Senate, the Opposition indicating that it was not prepared to suspend consideration of government legislation. On two occasions, on 3 and 11 April, the Greens senator, Senator Brown, attempted to move for more extreme sanctions, but was not supported. The penalty imposed on the government became clear at the end of the sitting period when legislation required by the government to be passed before Easter was not concluded.

**CENSURE OF MINISTER**

The dispute over Aboriginal affairs, arising initially from the mandatory sentencing matter, was brought to boiling point by statements by the Minister for Aboriginal and Torres Strait Islander Affairs, Senator Herron, in a submission to a Senate committee, on the appropriateness of the phrase "stolen generation". On 10 April, after another lengthy debate, the minister was censured for "failure to fulfil his ministerial responsibilities and provide leadership in indigenous affairs". This is the second occasion on which Senator Herron has

been censured by the Senate, the first occasion being in 1996 when he was censured for giving misleading answers in relation to funding of Aboriginal programs.

### **ORDERS FOR DOCUMENTS**

Senator Herron was also involved in continuing disputes about government refusals to provide information in response to Senate orders for documents.

In response to the government's failure to provide some documents on the matter of the magnetic resonance imaging machines, a motion was passed on 10 April requiring the Community Affairs Legislation Committee to hold a further hearing on the matter and directing the minister to provide relevant officers for the hearing. A letter from Senator Herron repeated that the Minister for Health and Aged Care was still reviewing relevant documents to see whether they could be released. The hearing duly occurred on 11 April, at which departmental officers were closely questioned about the nature of the documents and the reasons advanced for not producing them. Further action over the matter is expected.

On 3 April an order was passed for documents relating to the now notorious Riverside Nursing Home. On the following day Senator Herron provided a letter indicating that the government was concerned about prejudice to litigation arising from release of the documents, and would take advice. This matter is therefore also expected to continue.

An order was passed on 6 April for a report relating to heavy trucks. It was stated that the report was due to be presented in any case, but Senator Harris persisted with a motion for an order for the report. Provision was made in the motion for the report to be presented to the President when the Senate is not sitting, the deadline falling in a non-sitting period.

Documents were produced on 10 April in response to an order passed on 15 March for documents relating to the work for the dole scheme.

A Senate order passed on 25 March 1999 was directed not to the government but to the Australian Competition and Consumer Commission and required a report on anti-competitive practices by health funds and providers in relation to private health insurance. A voluminous report by the Commission on the subject was presented on 12 April and was the subject of debate.

## **GOVERNMENT CONTRACTS AND SECRECY**

A remedy for the problem of claims of commercial confidentiality in respect of government contracts was offered by Senator Murray. His motion, modelled on the Senate's successful order for production of indexed lists of government files, would require departments and agencies to publish on the Internet details of all contracts except where a claim of confidentiality is explicitly made, and would require scrutiny by the Auditor-General of any contracts claimed to be confidential. The motion was referred on 12 April to the Finance and Public Administration References Committee for inquiry and report by 26 June 2000.

## **APPROPRIATION BILLS AND RECALCITRANT MINISTERS**

Under the procedures applying to appropriation bills, if the contents of the bills are considered at estimates hearings there is no committee of the whole stage of the bills unless amendments are moved, in which case debate is confined to the purpose of the amendments. The unusual step of moving amendments to the additional appropriation bills was taken by the Opposition on 5 April. They were candid about the reasons for this step: it was to provide a further opportunity to question the government about matters within the responsibility of the Minister for Regional Services, Territories and Local Government, Senator Macdonald, following his refusal to answer some questions at estimates hearings. Senator Macdonald's approach to the hearings was the subject of a special report by the Rural and Regional Affairs and Transport Legislation Committee and a report by the Procedure Committee on the scope of questions at estimates hearings. The Senate adopted the Procedure Committee's report, thereby providing an authoritative view on the proper scope of questions and repudiating Senator Macdonald's view of relevance. After some debate the appropriation bills were finally passed on the last day of the sittings with the Opposition withdrawing its amendments.

## **OTHER LEGISLATION**

There was a preoccupation during the period with tax legislation largely arising from the government's new tax system.

The New Tax System (Family Assistance and Related Measures) Bill, having been passed with amendments and requests for amendments on 11 April, was finally dealt with on the last day of the sittings with some amendments disagreed to by the government not insisted on by the Senate.

The New Tax System (Fringe Benefits) Bill, which the government had hoped to pass during the sittings, did not get beyond the second reading stage after lengthy debate mainly about exemptions for benevolent and charitable institutions.

A long-running bill, the Taxation Laws Amendment Bill (No. 8) 1999, was finally passed on the last day of sittings with an agreement between the government and the Democrats about amendments concerning deductions for heritage and environmental expenditure. The Opposition did not succeed in insisting on amendments relating to institutions connected with political parties.

The legislation to deal with the consequences of the High Court's finding that state jurisdiction cannot be conferred on federal courts, the Jurisdiction of Courts Legislation Amendment Bill 2000, was passed on the last day with substantial amendments moved by the Opposition.

The Youth Allowance Consolidation Bill 1999 was finally passed by the Senate on 3 April after lengthy consideration, but the government has not dealt with the Senate's amendments in the House of Representatives and the bill is expected to return.

## **PRIVILEGE**

The Privileges Committee presented a report on 10 April recommending the publication of a response by a second person adversely referred to in the Senate, the second response being to remarks made by the senator concerned upon the publication of the first response. The second response was the occasion for further remarks by the senator, which may well continue the matter (see Bulletin No. 140, p. 3). The Privileges Committee, in dealing with any future proposed responses, would be able to terminate this ongoing debate.

The committee also presented a report on 13 April concerning compliance by departments with the requirement that they train their senior staff in relations with Parliament to avoid public servants breaching parliamentary rules through ignorance. The requirement for departments to report on their compliance arose from a report by the Privileges Committee, adopted by the Senate, in 1998.

## **AUDITOR-GENERAL'S REPORTS**

The Procedure Committee presented a report on 12 April recommending an amendment of the standing orders to ensure that Auditor-General's reports remain on the Notice Paper so that there is more opportunity for senators to debate them.

## COMMITTEES

The following committee reports were presented during the period:

<b>Date tabled</b>	<b>Committee</b>	<b>Title</b>
3.4	Environment, Communications, Information Technology and the Arts Legislation	Report—Sydney Harbour Federation Trust Bill 1999
“	Rural and Regional Affairs and Transport Legislation	Additional Information—Estimates 1997-98, 1998-99, 1999-2000
4.4	Finance and Public Administration Legislation	Additional Information—Estimates 1999-2000
“	Rural and Regional Affairs and Transport Legislation	Additional Information—Additional Estimates 1999-2000
“	Foreign Affairs, Defence and Trade Legislation	Report—Broadcasting Services Amendment Bill (No. 4) 1999
“	Legal and Constitutional Legislation	Report—Annual Reports
5.4	Scrutiny of Bills	3 <sup>rd</sup> Report and Alert Digest No. 4 of 2000
“	Rural and Regional Affairs and Transport Legislation	Report—Albury-Wodonga Development Amendment Bill 1999
6.4	Appropriations and Staffing	33 <sup>rd</sup> Report—Appropriations 2000-2001
“	Economics Legislation	Report—Annual Reports
“	Legal and Constitutional Legislation	Report—Classification (Publications, Films and Computer Games) Amendment Bill (No. 2) 1999
“	Scrutiny of Bills	4 <sup>th</sup> Report of 2000
“	Superannuation and Financial Services	Report—Superannuation (Entitlements of Same Sex Couples) Bill 2000
10.4	Privileges	88 <sup>th</sup> Report—Person referred to in the Senate
“	Corporations and Securities	Report—Corporations Law Amendment (Employee Entitlements) Bill 2000
“	Legal and Constitutional Legislation	Report—Classification (Publications, Films and Computer Games) Amendment Bill (No. 2) 1999—Document
11.4	Rural and Regional Affairs and Transport Legislation	Report—Australian Wool Research and Promotion Organisation Amendment (Funding and Wool Tax) Bill 2000
“	Employment, Workplace Relations, Small Business and Education Legislation	Additional Information—Additional Estimates 1999-2000

<b>Date tabled</b>	<b>Committee</b>	<b>Title</b>
11.4	Foreign Affairs, Defence and Trade Legislation	Additional Information—Additional Estimates 1999-2000
12.4	Scrutiny of Bills	5 <sup>th</sup> Report and Alert Digest No. 5 of 2000
“	Environment, Communications, Information Technology and the Arts References	Report—ABC On-Line
“	Procedure	1 <sup>st</sup> Report of 2000—Consideration of Auditor-General’s reports
13.4	Information Technologies	Report—Monitoring Australia’s Media
“	Privileges	89 <sup>th</sup> Report—Senior public officials’ study of parliamentary processes
“	Legal and Constitutional Legislation	Additional Information—Estimates 1999-2000

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