

# DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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## **SENATE ORDERS PUBLICATION OF COMMITTEE DOCUMENTS**

On 30 August the Senate took the unusual step of ordering the publication of documents held, and not published, by a committee.

The Rural and Regional Affairs and Transport Legislation Committee was given a reference on the role of the Australian Maritime Safety Authority (AMSA) in the search for the Tasmanian fishing vessel the *Margaret J*. A majority of the committee subsequently accepted representations by AMSA and counsel assisting the Tasmanian coroner that it should not proceed with its inquiry until the coroner had concluded his inquiry into the matter, a decision opposed by the non-government members of the committee. The representations were based on a claim that the committee's inquiry could prejudice the coroner's inquiry. Advice to the committee from the Clerk (which was tabled in the Senate), however, pointed out that this claim rested on misapprehensions that the coroner could not receive documents which were laid before the committee or evidence which contradicted evidence given in the committee or remarks made in the Senate, misapprehensions clearly arising from a misunderstanding of parliamentary privilege. While not seeking to compel the committee to proceed with its inquiry, the majority of the Senate directed the publication of relevant documents supplied by AMSA and held by the committee, so as to ensure that the documents provided to the committee could not be withheld from the coroner.

## **ORDER FOR LISTING OF CONTRACTS**

In response to the Senate's order requiring the publication of a list of government contracts on the Internet (see Bulletin No. 154, p. 1), the government made a statement on 27 August indicating, in effect, that it would comply with the order, but referring to advice from the

Australian Government Solicitor that the order was beyond the power of the Senate. The advice was not provided with the statement, but was apparently based on two grounds, that the Senate may not order the publication of documents, and that documents ordered to be published by the Senate do not attract parliamentary privilege. These claims appear to be flatly contradictory of the Parliamentary Privileges Act. The Finance and Public Administration References Committee has asked for a copy of the advice.

#### **OTHER ORDERS FOR DOCUMENTS**

The government added to its tally of claims of public interest immunity in response to Senate orders for documents, a tally already well ahead of that of any previous Parliament.

An order of 21 August called for files and briefing notes relating to the Black Spot Project, but was met with a refusal on 23 August on the basis of the need to preserve the confidentiality of advice. Senator O'Brien, the mover of the motion for the order, then proceeded to make certain allegations about a particular part of the project, and to draw the conclusion that the truth of the allegations was evinced by the refusal to produce the documents. No doubt he will continue his pursuit of the matter.

Similarly, an order for documents relating to an agreement between Australia and Japan about fishing was declined on 30 August on the ground that disclosure of the documents would damage Australian-Japanese relations, a ground which always seems potentially to cause the damage which it aims to avoid merely by being stated.

An order relating to a federal-state agreement about rock lobster fishing, however, was complied with by the production of documents, also on 30 August.

An order on 23 August for a report relating to water quality on the Great Barrier Reef was met with an undertaking on 27 August to produce the report as soon as it is completed.

Telstra was ordered on 28 August to produce information about a database which it has already refused to produce to a committee on the basis of commercial confidentiality. Telstra has until 18 September to produce the document.

A continuing order dating back to 1999 requires the Australian Competition and Consumer Commission to produce reports on anti-competitive practices in the health insurance industry, and a further report on this subject was tabled on 30 August.

## **SEARCH WARRANTS: EXAMINATION OF DOCUMENTS**

A report and statement was tabled on 27 August from Mr Skehill indicating that he had concluded his examination of the documents seized under search warrant from the offices of Senator Crane (see Bulletin No. 155, p. 2). The statement indicated that a large volume of documents had been returned to Senator Crane because they were protected from seizure by parliamentary privilege or did not fall within the scope of the search warrants, and a lesser volume of documents was provided to the police.

## **PRIVILEGE: PENALTIES RECOMMENDED**

A report of the Privileges Committee presented on 30 August was unusual in that it not only found that contempts had been committed but recommended penalties. In a case of unauthorised disclosure of a document provided to a committee, the Privileges Committee was not able to identify the person who initially disclosed the document, but found that person guilty of a contempt warranting a maximum fine, and also found Nationwide News Pty Limited, publishers of *The Weekend Australian* and *The Australian*, guilty of a contempt in deliberately publishing the document. For the latter offence the committee recommended a reprimand, but expressed the view that further action should be taken against the publisher should another such offence occur. The document in question was provided to the committee by the Australian Securities and Investments Commission (ASIC), which informed the Privileges Committee that the publication of the document was significantly harmful to its operations.

## **BILL REJECTED**

The most important legislative event occurred suddenly on 29 August at the end of the period of sittings when the government presented a bill to give itself greatly increased powers (or confirm existing powers, depending on the view taken of the bill) as a result of the arrival of the vessel *Tampa* with a large number of illegal immigrants rescued from an Indonesian ship. The non-government parties voted to reject the bill on the grounds that it conferred draconian powers and sought to avoid the jurisdiction of the courts.

## **OTHER LEGISLATION**

A request for an amendment was required to be moved on 22 August to the Alcohol Education and Rehabilitation Account Bill 2001 because the bill established a fund which

automatically resulted in an appropriation as a result of provisions in the Financial Management and Accountability Act, and the amendment increased the appropriation. The statements required by the Senate's order of 26 June 2000 in relation to amendments circulated as requests explained the need for the amendment to take the form of a request.

The Financial Services Reform Bill 2001 provided an example of the Senate performing its legislative role when the bill was extensively amended in the course of an amicable debate on the part of all parties on 22 and 23 August. The same comment applies to the Measures to Combat Serious and Organised Crime Bill 2001, also extensively amended following a high-quality technical debate, and to the General Insurance Reform Bill 2001, although there were only two amendments to the latter, both bills dealt with on 27 August.

The device of reporting bills separately out of committee and proceeding with one while deferring consideration of the other was employed on 29 August. The government wished to proceed with the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2000, which had been heavily amended, while deferring the companion Occupational Health and Safety (Commonwealth Employment) Amendment Bill 2000.

A further example was provided on 30 August of a bill being dealt with during the Thursday lunchtime period for non-controversial bills but also being considerably amended, the International Maritime Conventions Legislation Amendment Bill 2001. Even a large volume of amendments may be made to a bill at that time if there is agreement to accept the amendments.

## **MESSAGES TO HOUSE**

Further use was made during the period of the procedure under standing order 154, whereby a motion for a message to send a Senate resolution to the House may be moved without notice. It was pointed out, however, that the government is able to prevent any debate on these messages in the House, so they are only a gesture where they convey a view or decision with which the government does not agree.

## ***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](http://www.aph.gov.au/senate)

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