

# DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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**No. 166**

**for the sitting period 20 November—12 December 2002  
(including estimates hearings 20—22 November)**

**16 December 2002**

## **ESTIMATES HEARINGS**

The supplementary estimates hearings on 20 and 21 November ranged over a wide area of government administration, although supplementary hearings are confined to matters notified by senators for further examination following the main budget hearings. Due to the long gap (June to November) between the main hearings and the supplementary hearings, many topics had accumulated. Among the matters brought to light during the hearings were:

- losses incurred by the government in buying back government bonds
- losses incurred in currency speculation (further information)
- the action of the government in indemnifying two plaintiffs in a case against a trade union before the Industrial Relations Commission whose case was thrown out as improper
- former Minister Wooldridge's continued use of departmental equipment after he left office (the exposure of this matter was referred to by Senator Faulkner as a triumph of accountability)
- the Department of Finance and Administration resuming control of departments' spending of cash
- the lack of information about expenditure through special accounts
- information outstanding following the Select Committee on a Certain Maritime Incident

- the alleged use of tracking devices on boats carrying asylum seekers, and the government's "people-smuggling disruption program" (this was the subject of an explicit government claim of public interest immunity)
- funding problems in CSIRO
- the extraordinary delay in issuing the centenary medal.

The additional estimates were referred to the committees on 12 December and the hearings scheduled on 11 December for late February.

### **ORDERS FOR PRODUCTION OF DOCUMENTS**

The order of 19 November relating to superannuation and HIH matters was the subject of a government statement on 2 December indicating that the documents sought were very old and that the search was continuing. This led to further complaints about the government's record in responding to orders for documents.

Two orders passed on 3 December related to the Pharmaceutical Benefits Scheme: a review of its effectiveness and its involvement in free trade negotiations. A statement on 4 December indicated that the first order would be complied with but that there were no documents in the possession of the nominated minister relevant to the second order, leaving a question as to whether there are documents in the possession of other ministers.

Another order of 3 December, for the government's submission to the Remuneration Tribunal about judicial remuneration, produced a speedy response, with the document tabled on 5 December.

The Australian Competition and Consumer Commission responded on 9 December to the Senate's resolution of 12 November for a progress report on the report being prepared in response to the order of 27 June relating to the activities of tobacco companies.

Three orders passed on 10 December, relating to the Walla Weir Irrigation Project, the pecuniary interests of the Minister for Revenue and Assistant Treasurer, Senator Coonan, and seismic testing on the Great Barrier Reef, were the subject of government statements on 12 December which provided a general "clean-up" in relation to outstanding orders for documents. Also covered by the statements were orders relating to the ethanol subsidy scheme (16 October), mining on Christmas Island (19 June) and live animal exports (11 November). These statements either provided undertakings that the documents would be produced soon, or were accompanied by documents in response to the orders. A resolution

passed on 11 December noted, in relating to the order concerning the ethanol scheme, that 50 days had elapsed since an earlier undertaking that the documents would be produced.

An order relating to questions on notice concerning logging, passed on 11 December, produced a response on the following day to the effect that there was no information meeting the description contained in the order.

Two orders passed on the last day of the sittings, relating to science and technology funding and genetically modified food, have deadlines falling next year.

## **LEGISLATION**

Most of the legislative time of the first week of the sittings was taken up by the Research Involving Embryos Bill, which attracted such a volume of amendments that it threatened to take up all of the following week as well. The bill was subjected to a limitation of time (guillotine), however, on 4 December. Although imposed by the votes of government and Australian Democrat senators, the guillotine was not only a “civilised guillotine” but also a “rubber guillotine”, in that the times were subject to negotiation and there was a great deal of flexibility in dealing with the bill. The Scrutiny of Bills Committee presented on 4 December a special report on delegation of legislative power under the bill (see Bulletin No. 165, pp 3-4). All of the amendments made in the Senate were eventually agreed to by the government.

That bill having been dispensed with, much of the second week, including extended sitting hours, was taken up by the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002, the provisions of which, especially those allowing the indefinite and secret detention and questioning of persons alleged to have relevant information about terrorism, were vigorously contested. A report of the Legal and Constitutional Legislation Committee on 3 December recommended extensive amendments. Many amendments were made in the Senate over the following week. Although the government progressively gave ground on various Senate amendments, the bill was not passed at the end of the sittings, with the Senate insisting on some of its amendments disagreed to by the government at the very end of the prolonged last day.

A great deal of contention also attached to the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill, which had been divided by the Senate into two bills on 15 November. It was reported on 5 December that the government had refused to consider the division of the bill. This action arose from the view apparently taken by the government’s advisers, and reflected in a statement by the Speaker, that there is something particularly evil about the Senate dividing a bill, although the basis of this view has never been explained (for earlier cases see *Odgers’*

*Australian Senate Practice*, 10th ed, pp 266-7). The Senate passed a resolution on 12 December reiterating that division of a bill is not different in principle from any other form of amendment of a bill, and should be considered as such, and, while not insisting on its division of the bill, made further amendments to it. These amendments were in turn rejected by the government in the House, and some of them were insisted on by the Senate on the same day, leaving the bill unresolved at the end of the sittings.

Not all Senate amendments to bills resulted in confrontation with the government: the extensive amendments to the Telecommunications Competition Bill on 9 December were agreed to by the government.

The Migration Legislation Amendment (Further Border Protection Measures) Bill, however, was rejected outright at the second reading on 9 December. The bill proposed the excision from the migration zone of a large number of islands, and was regarded by the non-government parties as designed by the government to keep the issue of border protection alive and controversial for electoral reasons.

Other bills amended by the Senate also remained unresolved at the end of the sittings.

#### **OMBUDSMAN'S REPORT UNDER SENATE AMENDMENT**

Another example of the lasting effects of Senate amendments of bills, and of the Senate enlisting the aid of independent office-holders to impose safeguards on government powers, was provided by the presentation on 12 December of a report by the Ombudsman on the use of powers conferred on the National Crime Authority and the Australian Federal Police by amendments of the Crimes Act. A Senate amendment to the Measures to Combat Serious and Organised Crime Bill 2001 required the Ombudsman to scrutinise and report on police operations under the "controlled operations" provisions enacted by the bill.

#### **CONTRACTS ORDER: FURTHER REPORT**

The Finance and Public Administration References Committee presented a further report on 12 December on the Senate's order for the publication on the Internet of lists of government contracts. The report dealt with various queries and difficulties raised by departments and agencies, and suggested some further amendments to the order, including linking the statements required to be tabled in the Senate to the financial and calendar years.

#### **DELEGATED LEGISLATION**

An example of a major policy implemented by delegated legislation was provided by the special sugar industry restructuring levy introduced by regulations under the Primary

Industries Charges Acts, which allow the imposition of primary industries levies by regulation. The regulations were extensively debated and a motion to disallow them was negatived on 11 December.

#### **CERTAIN MARITIME INCIDENT FOLLOW-UPS**

Two resolutions were passed by way of follow-up of matters arising from the inquiry by the Select Committee on a Certain Maritime Incident. The resolutions were unusual in that they were moved jointly by non-government senators. That of 10 December called for a full inquiry into the government's people-smuggling disruption program, especially as it related to the so-called SIEV X, the vessel carrying asylum seekers which sank with huge loss of life. That of 11 December called for a suspect allegedly involved in the SIEV X matter to be brought speedily to justice.

#### **COMMITTEE REFERENCES**

A series of references on the last day of the sittings required committees to inquire into very large and significant topics. The Economics References Committee received a reference on the taxation system, the Select Committee on Superannuation was given a general reference on the superannuation system, and the Foreign Affairs, Defence and Trade References Committee was required to conduct an extensive inquiry into the General Agreement on Trade in Services.

#### **FOREIGN AFFAIRS RESOLUTIONS**

The Senate frequently passes resolutions relating to foreign affairs. In recent times the Prime Minister has adopted the practice of formally responding to these resolutions, and these responses sometimes lead to further debate. An example was provided by a prime ministerial response on 2 December to a resolution relating to Iraq.

#### **NORTHERN TERRITORY RESOLUTION**

State and territory governments frequently respond to Senate resolutions involving their areas of responsibility. On 9 December, however, the usual situation was reversed: the Senate received and debated a resolution of the Northern Territory Legislative Assembly relating to Timorese asylum seekers resident in the Territory. The resolution expressed the view that the people concerned should be allowed to remain in the Territory.

## **QUESTIONS: PRESIDENT'S RULINGS**

Questions at question time relating to allegations that the Minister for Revenue and Assistant Treasurer, Senator Coonan, and her husband were engaged in tax avoidance through their property holdings were the subject of rulings by the President and a statement on 4 December. The President distinguished between questions relating to Senator Coonan's pecuniary interests and activities, which were permitted, and questions relating purely to her husband's activities, which were not permitted. The President reiterated the principle that questions must relate to a minister's ministerial responsibilities.

## ***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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