

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

hc/pro/prob/14167

No. 178

**for the sitting period 10—12 February 2004
and estimates hearings 16—20 February 2004**

23 February 2004

ORDERS FOR PRODUCTION OF DOCUMENTS

An order was passed on 11 February for the production of the text of the Australia-United States free trade agreement which was the subject of so much publicity at that time. The deadline for the production of the document was later that day. This produced what was perhaps the expected response: the document did not exist, and would not be available for some weeks. The point was thereby made that the government was promoting, and others were debating, an agreement the details of which had not been formulated. (See also below, under Committees, for the appointment of a select committee on the subject.)

The matter of the COAG documents (see Bulletin No. 177, p. 3) was raised again on 10 February by Senator Harradine, who quoted a letter from the Prime Minister indicating that the documents could not be released without the approval of all of the other governments involved. This led to the passage of a further order for the documents to be produced on the following Thursday, but that deadline passed without any result. Senator Faulkner referred to the difficulty of devising some effective sanction. Perhaps, as in similar cases, the sanction will be taking up further legislation time with debate on the matter.

A government statement was made unexpectedly on 12 February to the effect that the government does not intend to comply with the order for the production of details of government advertising projects costing more than \$100,000. There was no time for any response to this statement. Three of the reasons given for the intended non-compliance were erroneous: the statement indicated that existing accountability mechanisms, including the order for a list of contracts, cover the matter (in fact the new order requires further details of advertising contracts); that there was disagreement in the Public Accounts and Audit Committee over the guidelines which were incorporated in the order (in fact the recommendation of the guidelines in the report of the committee was without dissent, and the only relevant doubt expressed in the report was whether the guidelines were sufficiently objective); and that the order would require officers to make subjective judgments about compliance with the guidelines (in fact the order calls for statements by ministers, not

officers). Government advertising campaigns known to be in train were the subject of questioning in the estimates hearings.

LEGISLATION

The select committee on the government's proposed Medicare legislation reported on 11 February. The report indicates that non-government senators are not disposed to pass the legislation in its current form, although only the Greens voted on 11 February to disallow regulations containing one element of the government's package. Negotiations between those senators and the government are apparently continuing.

The Senate insisted on 11 February on amendments to the Trade Practices Amendment (Personal Injuries and Death) Bill which the government had disagreed to. The amendments modify the government's proposed limitation of suits for damages under the Trade Practices Act.

The Migration Legislation Amendment (Identification and Authentication) Bill provided an example on 10 February of extensive amendments moved by the government which were largely non-government amendments in the sense that they were designed to deal with matters raised by non-government senators.

Two other bills were amended during the period, the Fisheries Legislation Amendment (High Seas Fishing Activities and Other Matters) Bill, in relation to the compilation and publication of data, and the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 2), in relation to contracts. Consideration of the latter bill has not been concluded.

COMMITTEES

See above, under Legislation, for the report of the Select Committee on Medicare.

A select committee on the proposed Australia-United States free trade agreement was established on 11 February (see also above, under Orders for Production of Documents). Some of the members of the committee were appointed on 12 February, but the committee does not operate until the text of the treaty is published.

The Rural and Regional Affairs and Transport Legislation Committee presented on 12 February its report on Australian Wool Innovation Ltd, drawing attention to apparent malfeasance in the administration of that body and recommending action by the Australian Securities and Investments Commission.

ESTIMATES HEARINGS

The additional appropriation bills were introduced and the estimates hearings occurred in the second week. In addition to asking questions about other operations of departments and agencies, senators took the opportunity to explore numerous leading issues, including: the intelligence on which the Iraqi war was based; the leaking of the intelligence committee report on the subject; the Brigitte affair; the treatment of Messrs Hicks and Habib; the detention of asylum seekers; the many police investigations of leaks, with no apparent result; use of the anti-terrorism legislation; the free trade agreement; the new National Airspace System; Telstra “exporting jobs” and the National Australia Bank affair.

Items of procedural interest included the non-appearance of the Chief Scientist, on the basis that he is a consultant (in estimates hearings under standing order 26 questions may be asked only of “ministers and officers”), although the position of Chief Scientist is established by statute as an “office”; and a minister making a specific claim of commercial confidentiality and stating reasons for the claim, in accordance with the resolution of the Senate of 30 October 2003.

OMBUDSMAN REPORT: CONTROLLED OPERATIONS

The Ombudsman presented on 10 February his annual report on the monitoring of controlled operations (“stings”) conducted by the Australian Crime Commission and the Australian Federal Police. The provisions for the monitoring of controlled operations by the Ombudsman were inserted into the relevant parts of the Crimes Act by an amendment in the Senate when the legislation authorising controlled operations was passed.

QUALIFICATION OF A SENATOR

The independent advice on the qualification of Senator Scullion, which was sought on 18 September last year, was tabled on 10 February. The advice indicates that the relevant part of the *Webster* judgment (see *Odgers*, p. 157) should be regarded as authoritative and, given the nature of the contracts between Senator Scullion’s company and the Commonwealth, he was not disqualified. Presumably no further action will be taken in relation to the matter.

VACANCY

Senator Alston’s resignation was reported on 10 February, creating a vacancy in the representation of Victoria. It is expected that the vacancy will not be filled until late March when the Victorian Houses meet. All states now seem to adhere to the technically correct interpretation of section 15 of the Constitution, so that a state governor cannot fill a vacancy if the state houses are technically in session, that is, not prorogued.

ODGERS' AUSTRALIAN SENATE PRACTICE, 10TH ED, SUPPLEMENT

The supplement to the 10th edition of *Odgers*, updated to 31 December 2003, was tabled on 10 February, and is available at:

http://www.aph.gov.au/senate/pubs/html/supplement_dec03.HTM

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

Inquiries: Clerk's Office
(02) 6277 3364