

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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LEGISLATION

The proceedings on legislation during the period were dominated by five highly controversial bills which the government was determined to pass and to which non-government parties were implacably opposed:

- Workplace Relations Amendment (Work Choices) Bill 2005 (the largest change to industrial relations for 100 years)
- Anti-Terrorism Bill (No. 2) 2005 (introducing for the first time detention without charge)
- Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Bill 2005 and an associated bill (radical changes to the welfare system)
- Commonwealth Radioactive Waste Management Bill 2005 (imposing a nuclear waste dump on the Northern Territory)
- Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Bill 2005 (abolishing student union fees, and therefore probably student unions, in universities).

All of these bills were the subject of committee reports, indicating the continuance of the system for committee scrutiny of bills. In the reports on the first three bills government senators made recommendations for amendments, most significantly in relation to the anti-terrorism bill and the controversial issue of sedition offences.

The first three bills were all passed with amendments (347, 74 and 30 amendments, respectively), some of which were designed to satisfy government senators, particularly in relation to the anti-terrorism bill and the sedition offences. The nuclear waste bill had three amendments moved by the government senator for the Northern Territory, Senator Scullion.

All of the bills were passed under limitation of time ("guillotine"), and, given the fierce resistance to them by the non-government parties, probably would not have otherwise passed, but the times allocated to them were significantly shorter than the times spent on bills of equal significance in the past. This led to complaints about the government "ramming bills through".

The last bill on the list was passed with the support of the Family First senator, Senator Fielding, with one government senator, Senator Joyce, voting against the bill.

In relation to the anti-terrorism bill, and another bill, the Tax Laws Amendment (Loss Recoupment Rules and Other Measures) Bill 2005, non-government senators pointed out that the government senators were passing provisions to which they had expressed opposition, or in respect of which they had recommended amendments, in committee reports they had signed, but the amendments to the anti-terrorism bill dealt significantly with matters raised by government senators.

There were some non-government amendments to bills passed during the period. There was a Democrat amendment to the Workplace Relations Amendment (Work Choices) Bill, but it was identical to a government amendment. An Opposition amendment to a bill dealing with indigenous education was accepted.

The Higher Education Legislation Amendment (2005 Budget Measures) Bill 2005 was the subject of three government amendments which altered the allocation of appropriations between financial years. This is in accordance with the well-established principle that the Senate can amend a bill to reallocate appropriations, and needs to make its amendments in the form of requests only if total appropriations or expenditure are increased. The government drafters, however, are still clinging to their view that anything remotely connected with money requires a request, and so the bill came back from the House of Representatives with substitute amendments (which also made other substantive changes).

A private senator's bill, sponsored by Opposition, Democrat and government senators, was introduced on 8 December to remove the ministerial power which was used to prohibit the controversial "abortion drug" RU486. It has been announced that this bill will be the subject of a "free vote" in the new year, but it remains unexplained how it comes about in the government parties that it is apparently the Prime Minister who decides whether there is a "free vote".

COMMITTEE REFERENCES

Significant references were made to the references committees without contested votes, indicating that the government does not intend to oppose all references to these committees:

- Rural and Regional Affairs and Transport References Committee: future of the oil supply, 29 November
- Employment, Workplace Relations and Education References Committee: proposals for a contract labor scheme with Pacific countries, 7 December
- Environment, Communications, Information Technology and the Arts References Committee: national parks, 7 December
- Community Affairs References Committee: petitions concerning health services, 7 December.

The Selection of Bills Committee continued to operate, with several bills referred to committees by that avenue.

It is clear, however, that the government will reject any references to these committees on controversial or potentially embarrassing matters. The following proposed references were rejected:

- Foreign Affairs, Defence and Trade References Committee: the Wheat Board/Iraq "kick backs" scandal, 7 December
- Employment, Workplace Relations and Education References Committee: state of the CSIRO, 7 December (not yet resolved, but apparently opposed by the government)
- Community Affairs References Committee: disability funding, 8 December.

Committee reports on some controversial matters continued to appear: the Finance and Public Administration references committee presented its report on government advertising on 6 December, and the Foreign Affairs, Defence and Trade References Committee presented its final report on the Vivian Solon immigration matter on 8 December.

COMMITTEE REPORTS: GOVERNMENT RESPONSES

There was a dispute at question time on 28 November about a government response to a committee report given in answer to a question. Senator Faulkner contended that this was

contrary to the practices of the Senate. The President responded on the following day indicating that there was no Senate rule preventing this practice, and it had occurred on previous occasions, although he referred to a past presidential statement pointing out that question time did not lend itself to debate on government responses.

Resolutions were passed on 29 November, on the motion of Opposition, Democrat and government senators, asking each of the states and territories to respond to the reports of the Community Affairs References Committee on children in care, a subject largely in the responsibility of the states and territories. A separate motion was passed for each state and territory.

The regular President's report on outstanding government responses to committee reports, tabled on 8 December, showed that most reports are still not responded to within the required three-month period, although a large number of interim responses may indicate some result of the recent controversy about this subject.

STANDING APPROPRIATIONS

The Scrutiny of Bills Committee presented a report on 30 November on the problems posed for parliamentary control of expenditure by standing appropriations. The committee expressed an intention to scrutinise under its scrutiny criteria provisions for such appropriations in bills in the future.

ORDERS FOR DOCUMENTS

The Australian Competition and Consumer Commission presented two further reports in response to continuing orders of the Senate for documents, one relating to tobacco companies on 30 November and one relating to health funds on 7 December. A report on 8 December by the Ombudsman on controlled operations (police "stings") was a reminder that some continuing Senate orders for documents are contained in statutes by virtue of past Senate amendments to bills.

A proposed order for documents on 8 December relating to the Reserve Bank Board affair was negatived. It would probably have been one of those matters on which the government would have refused to produce the documents in any event.

GOVERNMENT APPOINTMENTS

The Reserve Bank Board affair was also the occasion for the passage on 7 December of a resolution, on the motion of the Democrats, expressing principles which should be observed in making government appointments. Whether the principles have been observed in practice would no doubt be a matter of disagreement.

DIVIDING THE QUESTION

There was an exchange between Opposition senators and the Chair on 2 December about the Chair's ability to divide a question at the request of any senator. At the expiration of the time for consideration of one of the major bills the Deputy President and Chairman of Committees, Senator Hogg, indicated that he would divide the question on certain amendments only if there were an indication that senators wished to vote differently on different amendments. It is necessary that the Chair insists on this principle; without it senators could require that separate votes take place, for example, on all 347 government amendments to the work choices bill. When it appeared, however, that senators wanted only one schedule of the bill to be put separately, the Chair acceded to the request.

DELEGATED LEGISLATION

A disallowance notice was taken over by another senator under the provisions of standing order 78 on 8 December. The notice was given on behalf of the Regulations and Ordinances Committee, and subsequently notice of intention to withdraw it was given, in accordance with the usual committee practice of giving "protective" notices and withdrawing them if satisfactory ministerial explanations or undertakings are forthcoming.

ADVISERS

The Chair made a ruling on 2 December to the effect that senators are entitled to have in their advisers' benches in the chamber any persons they choose to have as their advisers. This was in response to a point of order, no doubt raised for political reasons, about an ACTU office-holder in the Opposition advisers' benches.

SUBMISSIONS TO COMMITTEES

The report of the Finance and Public Administration References Committee on government advertising provided the occasion of a caution about assuming that committee members always understand the submissions which are made to them. In their minority report two government senators continued an attack made by the Special Minister of State, Senator Abetz, on submissions made by the Clerk (Senator Abetz also attacked every other person who made submissions to the committee). The government senators stated that the Clerk had given "constitutional advice" which was "subsequently rejected" by the High Court. In a supplementary submission tabled on 9 December, it was observed that they had overlooked the point, which had been explained in previous submissions, that the "constitutional advice" related to section 54 of the Constitution, a non-justiciable provision, and therefore there was no possibility of the High Court rejecting the interpretation offered.

RIGHT OF REPLY

The Privileges Committee presented a report on 6 December resulting in the publication of a reply by a citizen to words uttered in the Senate, indicating that the right of reply system is operating as before.

DAYS OF MEETING

The motion setting the days of meeting for 2006 was the subject of an amendment by Senator Bartlett designed to point out that the number of sitting days suggested by the government was relatively sparse, particularly in the first half of the year, thereby providing an opportunity for him to note that while the government was anxious to limit debate on its bills it was not anxious to extend the days of sitting to facilitate adequate consideration of them.

CENSURE MOTION

The government voted against a motion to suspend standing orders on 9 December to bring on a censure motion on government "abuse of Senate processes". It is believed that this is the first time that a government has refused to allow a censure motion to proceed (this option was open only in those relatively rare periods of government party majorities in the Senate).

ACCOUNTABILITY REPORT

The major pieces of government legislation undoubtedly merited longer and more intensive examination by the standards set by consideration of such legislation in the past, such as the native title bills. The committee inquiries into the bills and the numbers of government amendments indicated that the processes of the Senate were not entirely without effect.

The committees are still exercising a significant scrutiny and accountability role, albeit within more confined boundaries.

SENATE DAILY SUMMARY

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

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