

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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PRIVILEGES COMMITTEE REFERENCES

The President on 11 August gave precedence under standing order 81 to two proposed references to the Privileges Committee arising from the “OzCar affair”. The first, raised by the Leader of the Government in the Senate, Senator Evans, related to possible misleading evidence and manipulation of the hearing of the Economics Committee on 19 June because of the “scripting” of the hearing and the use of an email later found to be false. This proposed reference was agreed to, in effect reversing a decision made in June (see Bulletin no. 223, p. 4). The other proposed reference, raised by Senator Fielding, would have asked the committee to inquire into whether there was scripting of an estimates hearing in October last year when it was discovered that during a committee hearing a minister was emailing questions to a government member of the committee. This proposed reference was rejected.

The committee therefore has two references relating to the matter: whether there was any adverse treatment of Mr Godwin Grech as a result of his evidence and whether there was misleading evidence and manipulation of the hearing.

ORDERS FOR PRODUCTION OF DOCUMENTS

Orders for the production of documents achieved mixed success during the period.

Attempts to obtain economic modelling underlying the government’s carbon pollution reduction scheme legislation, which culminated in an order of 25 June, were met on 11 August by the Productivity Commission producing all of its documents on the subject, but the government still refusing to produce its modelling. This refusal to produce information was said to have contributed to the rejection of the legislation (see below, under Legislation).

Another order passed on 25 June, relating to illegal timber imports, achieved some success with documents tabled on 11 August.

An order going back to 18 June relating to employment services contracts was met on 11 August by the tabling of a letter from the probity adviser on the tendering process stating that nothing untoward had occurred in the process.

Several orders were passed with short deadlines for returns during the period.

One relating to a report on biodiversity was passed on 17 August and documents were tabled on 20 August in response.

An order made on 18 August, returnable by the following day, relating to benefits for chemotherapy treatment, was met with a statement that the documents were voluminous, the files were being examined and more information would be provided at a later date.

Two orders were made on 19 August, returnable on 20 August, relating to matters in the Health and Ageing portfolio. On the following day two letters were tabled from the minister and junior minister in the portfolio stating that the information would be provided in the future. These letters indicated a misconception about standing order 164(3), which provides that, if an order for documents is not fulfilled within thirty days of the deadline, a senator may raise the matter without notice after question time on any day. The letters claim that this provision grants a thirty day extension on every order for documents. It is expected that the ministers will be disabused of this notion.

A resolution passed on 20 August on the motion of Senator Bob Brown requests the Joint Committee of Public Works to produce a document in the possession of the committee relating to the controversial Australian Security Intelligence Organisation headquarters building, which was exempted from the scrutiny of the committee. The resolution is cast in the form of a request, as an instruction to a joint committee requires the agreement of both Houses. The document sought is the recommendation of the Attorney-General in the previous government that the building be exempted from scrutiny.

PUBLIC INTEREST IMMUNITY CLAIMS

The Procedure Committee presented a report on 20 August on its review of the operation of the order of the Senate of 13 May 2009 governing the making and treatment of public interest immunity claims in Senate committee hearings. The report suggests that there was a lack of acquaintance with the terms of the order during the estimates hearings in May and June, and indicates that further steps will be taken to ensure that departments and agencies understand the order.

LEGISLATION

The government's carbon pollution reduction scheme legislation, an extremely voluminous and complex package of eleven bills, was rejected at the second reading on 13 August. This

led to a good deal of excitement in the media about “triggers” for a dissolution under section 57 of the Constitution. There is no such “trigger” in place yet. If these bills are passed through the House of Representatives in the same form in November and again rejected there may be such a “trigger”.

The legislation may not provide an effective “trigger”, because it is heavily reliant on regulations to give it effect, so it could suffer the same fate as the Australia Card bill of 1987 (see *Odgers’ Australian Senate Practice*, 12th ed., 2008, pp 577-8). Bills that provide mere frameworks and rely on regulations to provide some of their substantive provisions have been of concern in the Senate in recent times. Committees have commented on this phenomenon, and a second reading amendment moved on 20 August to the Health Insurance Amendment (Extended Medicare Safety Net) Bill calls for the bill to be deferred until draft regulations and determinations to be made under the bill are produced.

The “alcopops tax” bills were passed on 13 August. It is not certain that the rejection of these bills would have established a “trigger” because the bills were different in effect from those previously rejected (see Bulletin no. 231 and the advice attached).

The Higher Education Legislation (Student Services and Amenities, and other Measures) Bill 2009, relating to the controversial subject of compulsory student union fees, was amended and then negatived at the third reading, by equally divided votes, on 18 August. Such a situation arises when the amendment of a bill still does not make it acceptable to a majority of the Senate.

The government had better results, however, with the renewable energy package of bills, which were passed on 20 August as the result of a compromise between the government and the Opposition. Part of the compromise was the “decoupling” of the bills from the carbon pollution reduction scheme package; the commencement provisions of the bills originally provided that they did not commence until the other package commenced. The “decoupling” was done by amendments moved by the government in the House of Representatives before the bills were sent to the Senate.

The Freedom of Information (Removal of Conclusive Certificates and Other Measures) Bill, a bill initiated in the Senate, was passed on 13 August. This bill represents a significant concession by government in removing the ability of ministers to block the release of information by conclusive certificates.

The government bill relating to the National Broadband Network was deferred until the government produces documentation relating to the tender process ordered to be produced in June. The bill had been initiated in the Senate. The government has now introduced similar legislation into the House of Representatives, presumably on the basis that, if it is twice rejected by the Senate, it may become a “trigger” at some stage in the future.

FINANCIAL TRANSPARENCY

The government presented on 11 August its response to the report in 2007 by the Finance and Public Administration Committee on the transparency and accountability of Commonwealth public funding and expenditure. The response accepted some recommendations of the committee, but simply “noted” its recommendation that the matter of the ordinary annual services be resolved. The Appropriations and Staffing Committee still awaits a promised proposal by the minister to resolve this problem, which was set out in the 45th report of that committee in March 2008.

CHILDREN IN THE CHAMBER

The Procedure Committee report (see above, under Public Interest Immunity Claims) also reported on the proposal that standing order 175 be amended to allow senators to bring children in their immediate care into the chamber (see Bulletin no. 233, p. 4). The committee rejected the proposal, with Senator Bob Brown dissenting from that conclusion.

FORMAL MOTIONS

There has been an increasing tendency for motions to be taken as formal under standing order 66, whereby motions are determined without amendment or debate if no senator present objects, but then for statements by leave to be made, sometimes by several senators, about their attitudes to the motions. This frustrates the rationale of formal business. The Deputy President drew attention to this practice on two occasions during the period.

REFLECTING ON A VOTE

The President made a statement on 11 August on the provision in standing order 193(1) whereby senators are not to reflect on votes of the Senate. The President’s statement confirmed the long-established understanding that this provision does not prevent senators stating that decisions by the Senate were wrong or mistaken, provided that unparliamentary language is not used in referring to past decisions.

ANNOTATED STANDING ORDERS OF THE AUSTRALIAN SENATE

A major addition to the procedural resources of the Senate, the *Annotated Standing Orders of the Australian Senate*, edited by the Deputy Clerk, Rosemary Laing, was launched by the President on 19 August. It contains the history and background of each standing order currently in force, together with a great deal of other historical and current information.

ODGERS’ AUSTRALIAN SENATE PRACTICE

A supplement to the 12th edition of *Odgers’ Australian Senate Practice* was tabled on 11 August, with updates to 30 June 2009. It joins the book online.

RELATED RESOURCES

The *Dynamic Red* records proceedings in the Senate as they happen each day.

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, these documents may be reached through the Senate home page at www.aph.gov.au/senate

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