

Procedural Information Bulletin No. 18

For the sitting period 7 to 23 October 1986

PARLIAMENTARY PRIVILEGE

Mr President introduced his Parliamentary Privileges Bill 1986 on the first day of the sittings, following the same procedures as are followed by any senator in presenting a Bill, but moving the necessary motions and speaking from the Chair.

In the course of his second reading speech, Mr President referred to recent judgments which indicate that other courts and other judges may not be willing to follow the highly restrictive interpretation of freedom of speech adopted in the judgments which the Bill is designed to overcome.

PRIVILEGE OF WITNESSES

A significant amendment was made to the Australian Security Intelligence Organisation Amendment Bill on the motion of Senator Durack on 10 October.

The proposed new section 92P relating to the proposed Parliamentary Joint Committee on ASIO provided as follows:

A person appearing before the Committee as a witness has the same protection and privileges, and is, in addition to the penalties provided by this Act, subject to the same liabilities in any civil or criminal proceeding, as a witness in proceedings in the High Court.

A similar provision first appeared in the *Public Works Committee Act 1913*. It was taken from the *Royal Commissions Act 1902*, apparently without any thought being given to its appropriateness to a parliamentary committee (the relevant clause was not debated in either House). It was then repeated in the *Public Works and Public Accounts Committees Acts* in 1951, and still applies to those committees.

It is not clear why it was thought necessary to make such a provision. It could not be for the sake of clarity, since the privileges and liabilities of a witness in proceedings in the High Court are not statutorily codified but are a matter of common law. If the provision was meant to supplant the privilege which a parliamentary witness has

under the law of parliamentary privilege, this would mean that witnesses before the proposed committee would have less protection than those before a parliamentary committee which does not operate under the provision. Even if one accepts the reading down of article 9 of the Bill of Rights by Justices Cantor and Hunt, a parliamentary witness apparently has a greater protection than this provision would give. It was noted that no similar provision was applied to the Joint Committee on the National Crime Authority.

Senator Durack in debate stated his belief that the provision had again been copied without thought, and without regard to the recent discussion about the scope of article 9 of the Bill of Rights. His amendment to strike out the proposed new section was carried with the agreement of the Government.

OTHER BILLS AMENDED

Democrat and Opposition amendments were made to the Australian Institute of Sport Bill on 9 October, the amendments relating to the tabling in each House of directions and plans issued under the Bill and the functions of the Institute.

The Freedom of Information Laws Amendment Bill was amended on the motion of Senator Puplick on 15 October to alter the conditions relating to the release of material and the charging of fees. The most significant amendment inserted a criterion relating to the general public interest in the release of material.

DISALLOWANCE MOTION BROUGHT ON EARLY

Standing Orders were suspended on 9 October to allow a notice of motion for disallowance which was standing on the Notice Paper for a subsequent day to be called on and moved forthwith. The motion related to guidelines issued under the Veterans' Entitlements Act, and the responsible Minister, Senator Gietzelt, wished to bring the debate on early because he did not want to run the risk of leaving it to the last available day for resolving the motion.

The suspension of Standing Orders merely *allowed* the motion to be moved, but did not *compel* it to be moved. Senator Macklin could have declined to move his motion, and the suspension motion would then have been ineffectual and the notice would have been called on when the due day arrived.

REMUNERATION AND ALLOWANCES ALTERATION BILL

Proceedings on this Bill finally concluded on 10 October with the Senate not insisting on its amendment to which the House of Representatives had disagreed, but making

an alternative amendment which was subsequently agreed to by the House of Representatives.

The matter in dispute was an amendment relating to the provision in the Remuneration Tribunal's determination for members to be accompanied on overseas trips by nominated persons instead of their spouses. Senator Harradine had moved an amendment to remove this provision relating to nominees, but his amendment was supplanted by an Opposition amendment altering the definition of nominee. This amendment was not agreed to by the House of Representatives, and in the Senate the Government moved the usual motion that the Senate not insist on its amendment. To this motion Senator Harradine moved an amendment to suggest his original amendment to the Bill as an alternative to the amendment in dispute. The Democrats then moved an amendment to Senator Harradine's amendment to provide yet another definition of nominee. The latter amendment was defeated, and Senator Harradine's was agreed to, the Government accepting it with reluctance. There was some pressure to have the Bill passed, because it provided for repayment of salary paid in accordance with the Tribunal's determination, in consequence of the alteration of the determination by the Bill. (See comment on amendments to amendments below.)

AMENDMENTS TO AMENDMENTS

The Income Tax Rates Bill 1986 was the subject of some interesting procedures which concluded on 21 October. The first point of interest was that this was another occasion of different second reading amendments being moved to Bills which were being taken together pursuant to a suspension of Standing Orders. As was indicated in a previous bulletin, the suspension of Standing Orders merely *allows* the Bills to be taken together but does not compel the putting of all the questions as one, so that if any senator requests that the questions in relation to the different Bills be put separately, this must be done. When different second reading amendments are moved, the questions for the second readings of the Bills are put separately, and the second reading amendments thereby determined separately.

The second point of interest was provided by the moving of amendments to amendments. Senator Messner moved an amendment to the motion for the second reading of the Income Tax Rates Bill, and Senator Siddons moved an amendment to that amendment. Senator Siddons' amendment having been negatived, Senator Michael Baume then moved a further amendment to Senator Messner's amendment, and to that further amendment Senator Siddons moved another amendment. Senator Siddons' amendment was negatived, Senator Michael Baume's amendment passed, but Senator Messner's amendment was then negatived, with some Australian Democrat Senators voting for it and some voting against it. The decision which the Australian Democrat Senators had to make was whether Senator

Messner's amendment was acceptable to them in view of their failure to have it amended.

In proceedings on the Bank Account Debits Tax Amendment Bill on 23 October Senator Siddons moved an amendment to the motion for the second reading calling for the withdrawal of the Bill. When this amendment was negatived, Senator Mason moved a further amendment to add words to the motion expressing an opinion about the Bill, it not being open to Senator Siddons to move another amendment. An amendment moved by Senator Messner in relation to the second reading of the Taxation Laws Amendment Bill (No. 3), which was being considered together with the Bank Account Debits Tax Amendment Bill, was also negatived.

The moving of amendments to amendments sometimes confuses observers of parliamentary proceedings and is the subject of some humour in the chamber. It is not generally realised that the device of moving amendments to amendments, as a means of dealing with more than two different propositions while keeping only one matter before the chamber at a time, is one of the great inventions of civilisation and absolutely essential to the proper functioning of a deliberative assembly. This is demonstrated by the difficulties which occurred in chambers where the procedure was not realised. A paper on this will be forthcoming shortly.

COMMITTEE ACTIVITIES

The Estimates Committees presented their reports on 17 October, and all the reports draw attention to significant matters arising from the Committees' consideration of the estimates. Estimates Committee A made further important observations on the financial independence of the Senate.

The Regulations and Ordinances Committee presented its 80th Report on 14 October, and the report was debated on the following day. The report is an account of the work of the Committee over the preceding year, and contains a large number of instances of the Committee bringing about changes in delegated legislation. Many of the matters raised by the Committee involve significant impact on the rights of individuals. The report also draws attention to a number of difficulties in the statutory schemes for disallowance.

The report of the Select Committee on the Human Embryo Experimentation Bill attracted a great deal of interest when it was presented on 8 October, and it was debated on the two following Wednesdays.

The Finance and Government Operations Committee gained a new reference on Commonwealth-owned and controlled companies on 8 October, and on the same day the Chairman moved two motions to amend references before the Committee. The

Committee also presented a report, which was debated, on non-statutory bodies on 7 October.

The Chairman of the Science, Technology and Environment Committee made a statement on 8 October relating to annual reports on Christmas Island.

CONTRIBUTIONS INVITED

Staff are again invited to suggest items for contributions to this bulletin. Suggestions for items on matters of interest which have not necessarily arisen in the course of the Senate's proceedings would be welcome.