

**No. 116**

**for the sitting period 16-27 June 1997**

**30 June 1997**

**DELEGATED LEGISLATION**

A notice of intention was given on 23 June, not to withdraw a disallowance motion under standing order 78, but to amend it by means of a letter under standing order 77. The notice, given by Senator Margetts, related to migration regulations, and had not been dealt with at the end of the period of sittings. The reason for the notice of intention was that Senator Margetts wished to narrow the scope of the disallowance motion so that it did not cover some regulations initially caught by it. Such an amendment to a disallowance motion, either before or after it is moved, is permissible because the resulting motion meets the statutory time limit for giving notice in that the regulations caught by the amended motion are also caught by the initial notice. An amendment which expands the scope of a disallowance motion is not permissible unless the time for giving notice has not passed, because extending a motion to regulations not covered by the initial notice would mean that the statutory requirement for giving notice would not be met. An amendment of a notice to reduce its scope, however, should not be made without an opportunity for another senator, who may have been intending to support the disallowance of regulations excluded from the notice by the amendment, to object to the amendment. Thus the notice of intention to amend, a procedure which has not been employed hitherto.

There has been something of a growth in motions for disallowance not arising from the scrutiny of the Regulations and Ordinances Committee. This probably reflects the inclusion in regulations of major policy matters. The following significant instruments of delegated legislation were disallowed by the Senate during the period:

- regulations making very large increases in High Court fees, on 19 June

- social security guidelines relating to access to benefits by newly arrived residents, on 25 June
- workplace relations regulations, relating to unfair dismissal, on 26 June.

The Regulations and Ordinances Committee made two significant statements on 23 June, again asserting its right to scrutinise delegated legislation made by the judiciary, in the context of certain High Court rules, and setting out its continuing problems with the Legislative Instruments Bill. This bill is designed to overhaul the system for making delegated legislation, and it remains unfinalised.

## **LEGISLATIVE SCRUTINY COMMITTEES**

Apart from its statements on its scrutiny of particular delegated legislation instruments, the Regulations and Ordinances Committee presented on 25 June its annual report, its report relating to its work during the autumn and winter sittings and a statement about its scrutiny of explanatory memorandums. The Scrutiny of Bills Committee presented, also on 25 June, its report on its work during the Parliament of 1993-1996. These substantial reports record the very significant scrutiny of legislation conducted by these two committees, which has a major impact on the shape of primary and delegated legislation, and most of which is not reflected in the proceedings in the Senate chamber.

## **ORDERS FOR PRODUCTION OF DOCUMENTS**

The end of the winter period of sittings was marked by something of a flurry of activity in relation to orders for production of documents.

A report in response to an order made in September 1996 was tabled on 17 June. This order was unusual in requiring the minister to refer a matter to the Australian Securities Commission and the production of a report by the Commission (see Bulletin 107, p. 1). The order related to the affairs of King Island Dairy Products Pty Ltd.

In relation to two orders for copies of reports made to government, the government declined to produce the reports on the last day of sittings, leaving no time for the Senate to follow up on the refusals. One order, made on 25 June, related to a report by consultants on the social security system. The other order, made on 26 June, related to a report on the workings of legislation on tobacco advertising; while declining to produce this report, the government promised to provide a full response to a Senate committee report on the subject.

An order made on 26 June was more successful in securing the production on the following day of documents relating to predictions of the greenhouse effect and the impact of greenhouse gas emissions restrictions.

## **PARLIAMENTARY PRIVILEGE**

The Privileges Committee received a reference on 26 June relating to the statutory terms of reference of the Joint Committee on the National Crime Authority. The reference follows a dispute in the committee arising from its examination of the operations of the National Crime Authority. Having heard evidence from two persons concerning investigations and prosecutions of them by the Authority, the majority of the committee attempted to prevent Senator Conroy cross-examining those persons on the basis of records of interview made by the Authority and produced during the prosecutions. Senator Conroy subsequently quoted the records of interview during debate in the Senate, thereby achieving his aim of counteracting the evidence of the witnesses before the committee. The reference raises again the question of the relationship between statutory secrecy provisions, particularly those relating to the NCA, and the law of parliamentary privilege (See *Odgers' Australian Senate Practice*, 7th ed, electronic update, pp 43-7).

## **LEGISLATION CONSIDERED**

In the last two weeks of the winter sittings there was a heavy concentration on legislation, and several highly controversial bills were the subject of hasty, last-minute proceedings.

The Constitutional Convention (Election) Bill 1997, to provide for a convention to consider the republic issue, was extensively amended by the Senate on 18 and 19 June, principally to substitute a compulsory attendance election for the government's proposed voluntary postal ballot. The government refused to accept the amendments, but the Senate insisted on them on 24 June. That occasion prompted a statement by the Chair of Committees, Senator West, on the effect of equally divided votes on motions to determine whether amendments are to be insisted on (see *Odgers' Australian Senate Practice*, 7th ed, electronic update, p. 264); this contingency, however, did not eventuate, as the amendments were insisted upon by a majority. The bill remained unresolved at the end of the period, and on 26 June the opposition and the Democrats introduced a bill to provide for an indicative referendum on the question of a republic.

The Customs and Excise Legislation Amendment Bill (No. 2) 1996, relating to the diesel fuel tax rebate, was finally passed on 17 June and the amendments made by the Senate accepted by the government.

The government's Reform of Employment Services Bill 1996, dealing with competition in employment services, was the subject of prolonged consideration and extensive amendment on 16 and 17 June, but the government then dropped it down the order of government business and did not return to it.

The Bounty Legislation Amendment Bill 1997, designed to carry out the government's policy of terminating certain bounties, was significantly amended in the Senate by the government on 20 June after representations concerning some of the bounties, but was further amended by the non-government parties, principally in relation to books and computers. The government had a hold over the Senate, in that the significant ship bounty would not continue without the bill. The final result in relation to the bill, on the last day of the sittings, was something of a compromise, with the government agreeing to continue the book bounty.

The Aged Care package of bills was considered at great length and extensively amended on 25 and 26 June; the Senate's amendments were substantially accepted by the government when the bill was finalised on the last day.

The highly controversial Social Security Legislation Amendment (Work for the Dole) Bill 1997 surprisingly was eventually passed without substantial amendment, mainly because of a disagreement between the opposition and the Democrats as to the amendments which should be made.

The Veterans' Affairs Legislation Amendment (1996-97 Budget and Other Measures) Bill 1997 was substantially amended on 26 and 27 June and, although the government rejected the amendments in the House of Representatives on the last day, the bill remained unresolved when the Senate rose.

On two occasions the Chair of Committees made statements concerning aberrations in government amendments drafted as requests. The first bill concerned, the Tax Law Improvement Bill 1997, considered on 26 June, was amended by the government in the House of Representatives to remove provisions which had the effect of imposing substantial amounts of taxation on transactions not previously subject to tax. The government then sought, by way of request, to reinstate those provisions in the Senate. The Chair pointed out that this had the effect of initiating an imposition of taxation in the Senate contrary to section

53 of the Constitution. The requests for amendments were agreed to, indicating once again that violations of section 53 are accepted in the House of Representatives when they are initiated by the government, while other amendments which should not be requests are objected to when they come from the non-government parties. The second bill, the Taxation Laws Amendment Bill (No.1) 1997, considered on 27 June, provided another example of government amendments presented as requests notwithstanding that the explanatory memorandum accompanying the amendments indicated that they had no financial impact. It was fortunate for the government that the Chair converted their requests to amendments, because the bill was the subject of final proceedings at the very end of the last sitting day, with the Senate not insisting on some of its amendments.

Amongst significant legislation remaining unresolved at the end of the period was the package of bills relating to the Auditor-General. It appears that there is still disagreement about the provision allowing the government to issue a binding certificate concerning matters not to be included in Auditor-General's reports (see Bulletin No. 114, pp 4-5).

## COMMITTEES

The following committee reports were presented during the period:

<b>Date tabled</b>	<b>Committee</b>	<b>Title</b>
16.6	Foreign Affairs, Defence and Trade References	Report—Australian Government's Provision of Consular Assistance
"	Community Affairs Legislation	Report—Social Security Legislation Amendment (Work for the Dole) Bill 1997
"	Community Affairs Legislation	Additional Information—Additional Estimates 1996-97
"	Foreign Affairs, Defence and Trade References	Documents—Role and Future of Radio Australia and Australia Television
"	Employment, Education and Training Legislation	Additional Information—Additional Estimates 1996-97
"	Native Title and the Aboriginal and Torres Strait Islander Land Fund	8th Report—Annual Reports
16.6	Economics Legislation	Report—Taxation Laws Amendment Bill (No. 3) 1997
"	Native Title and the Aboriginal and Torres Strait Islander Land Fund	9th Report—National Native Title Tribunal Annual Report
"	Superannuation	24th Report—Taxation Laws Amendment Bill (No. 3) 1997

<b>Date tabled</b>	<b>Committee</b>	<b>Title</b>
18.6	Scrutiny of Bills	8th and 9th Reports and Alert Digest No. 8 of 1997
"	Economics Legislation	Report—Excise Tariff Amendment Bill (No. 1) 1997
19.6	Appropriations and Staffing	Report—Parliamentary Departments—Proposed Amalgamation
"	Legal and Constitutional Legislation	Report—Administrative Review Council
"	Employment, Education and Training Legislation	Report—Estimates 1997-98
"	Finance and Public Administration Legislation	Report—Estimates 1997-98
"	Rural and Regional Affairs and Transport Legislation	Report—Estimates 1997-98
"	Community Affairs Legislation	Report—Estimates 1997-98
"	Economics Legislation	Report—Estimates 1997-98
"	Environment, Recreation, Communications and the Arts Legislation	Report—Estimates 1997-98
"	Foreign Affairs, Defence and Trade Legislation	Report—Estimates 1997-98
"	Legal and Constitutional Legislation	Report—Estimates 1997-98
"	Community Affairs References	Report—Aged Care Institutions
23.6	Environment, Recreation, Communications and the Arts Legislation	Report—Reference of Petitions
"	Regulations and Ordinances	Statements by Chairman
"	Rural and Regional Affairs and Transport Legislation	Additional Information—Additional Estimates 1997-97
"	Community Affairs Legislation	Report—Australia New Zealand Food Authority Amendment Bill 1996 and Australia New Zealand Food Authority Amendment Bill (No. 2) 1997
25.6	Foreign Affairs, Defence and Trade Legislation	Report—Annual Reports
"	Foreign Affairs, Defence and Trade Legislation	Additional Information—Budget Estimates 1996-97
25.6	Legal and Constitutional Legislation	Report—Annual Reports
"	Regulations and Ordinances	104th Report
"	Regulations and Ordinances	Statements by Chairman
"	Scrutiny of Bills	10th Report and Alert Digest No. 9 of 1997

<b>Date tabled</b>	<b>Committee</b>	<b>Title</b>
"	Scrutiny of Bills	Report—Work of the Committee May 1993-March 1996
"	Corporations and Securities	Report—Annual Reports
"	Employment, Education and Training References	Report—Private and Commercial Funding of Government Schools
26.6	Legal and Constitutional References	Report—Australian Legal Aid System—Second Report
"	Community Affairs References	Report—Access to Medical Records
"	Legal and Constitutional Legislation	Additional Information—Additional Estimates 1996-97
"	Community Standards Relevant to the Supply of Services Utilising Electronic Technologies	Report—Regulation of Computer On-line Services: Part 3
"	Corporations and Securities	Issues Paper—Securities Markets in an Electronic Age
"	Appropriations and Staffing	Document—Parliamentary Departments—Proposed Amalgamation
"	Legal and Constitutional Legislation	Report—Human Rights Legislation Amendment Bill 1996

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