

No. 121

for the sitting period 24 November-5 December 1997

8 December 1997

BILLS AND "TRIGGERS"

This sitting period was preoccupied with the Native Title Amendment Bill, and even before the Senate's consideration of the bill began there was speculation about it providing the government with a "trigger" for a double dissolution. The bill was considered at great length and extensively amended. The government rejected some Senate amendments in the House of Representatives on 6 December and immediately laid the bill aside. It is said that the government has advice that this treatment of the bill is sufficient to provide a first occasion under section 57 of the Constitution for a double dissolution. There is good reason to question this advice. There is no precedent for such a treatment of a bill providing a "trigger"; on past occasions of disagreement between the Houses over amendments the normal parliamentary process has been followed of the House returning the bill to the Senate with a request for reconsideration of the amendments disagreed to by the government, and there has always been at least one such reconsideration by the Senate before a bill has been abandoned. There are good grounds for concluding that it is necessary to follow this process to establish a section 57 occasion, based on the wording of the section and its purpose of resolving genuine and ongoing disagreements. By following the presumed advice the government appears to be running a risk of the Governor-General declining a request for a double dissolution and of the High Court finding that legislation passed at the end of a whole section 57 process has not been validly enacted.

The Public Service package of bills (see Bulletin No. 120, p 3) was treated in the same way, and presumably the government thinks that this package also provides it with the first stage of a "trigger".

In relation to other bills, the normal parliamentary processes were followed. The government disagreed with the Senate's amendments to the Legislative Instruments Bill, but only after the Senate had insisted on its amendments on 3 December was the bill laid aside by the government in the House. This bill therefore certainly provides the first stage of a "trigger".

With the Superannuation Contributions and Termination Payments Taxes Legislation Amendment Bill 1997, however, the government accepted a Senate amendment after the Senate had insisted on it on 1 December. This demonstrates that agreement may eventually be reached after the normal processes have been followed, and supports the contention that those processes should be followed for a section 57 occasion to be established.

In relation to the Social Security Legislation Amendment (Parenting and Other Measures) Bill 1997, the government accepted in the first instance the extensive amendments made by the Senate on 26 November.

The matter of the Victorian government's treatment of the state Auditor-General found its way into the Senate's proceedings in relation to the States Grants (General Purposes) Amendment Bill (No. 2) 1997. The procedure of an amendment to the motion for the adoption of the report of the committee of the whole was used to refer to the Public Accounts Committee the question of whether the Commonwealth may attach conditions to grants to the states relating to the role of state Auditors-General, "with particular relevance to recent developments concerning the Victorian Auditor-General".

In relation to the Social Security and Veterans' Affairs Legislation Amendment (Family and Other Measures) Bill 1997, the government also accepted the Senate's amendments, but, the government drafters having apparently advised that the amendments should have been requests in accordance with their theories (which have not been followed by the Senate), the device was adopted of having the House disagree with the amendments but make the same amendments itself.

In relation to the Workplace Relations and Other Legislation Amendment Bill 1997, the government successfully moved to suspend standing orders to enable new amendments to be moved not consequent on the amendments previously made to the bill, after the government had disagreed with the Senate's original amendments. With a series of new amendments, the bill was then passed.

The revived Productivity Commission Bills (see Bulletin No. 120, p 2) were considered again on 3 December but not resolved at the end of the sitting period.

The situation in relation to double dissolution "triggers", therefore, is that there are three bills which have definitely provided first occasions under section 57: the Workplace Relations Amendment Bill 1997, rejected by the Senate at the second reading on 21 October; the Charter of Budget Honesty Bill, laid aside by the government on 19 November after the Senate had insisted on its amendments to which the government had disagreed; and the Legislative Instruments Bill. There are also the two dubious cases of the Public Service package and the Native Title Amendment Bill.

ORDERS FOR PRODUCTION OF DOCUMENTS

The year's sittings have ended with two unusual outright refusals by the government to produce documents in response to Senate orders.

In relation to the order for a report on a workplace relations consultancy (see Bulletin 120, p 1) the government again refused to provide the document on 25 November, again citing legal professional privilege as the ground for a claim of public interest immunity.

A refusal to produce legal advice on the constitutionality of the Native Title Amendment Bill was made on 26 November immediately after the Senate had passed an order for the advice. It was claimed that the advice cast doubt on the constitutionality of the bill.

DELEGATED LEGISLATION

The Senate disallowed a set of family law regulations on 24 November, not at the instigation of the Regulations and Ordinances Committee but on policy grounds.

PRIVILEGE

The President determined on 25 November that yet another matter of alleged unauthorised disclosure of committee documents should have precedence under standing order 81. This matter related to an apparent disclosure of a draft report of the Environment, Recreation, Communication and the Arts References Committee. This and the matter previously raised (see Bulletin 120, p 2) were referred to the Privileges Committee on 26 November.

The committee also received a reference on 5 December relating to a suggestion that the Queensland Criminal Justice Commission made misleading statements to a Senate select committee. This matter was initially raised by the Queensland parliamentary committee which oversees the Criminal Justice Commission. That committee asked the Senate to investigate the matter because federal parliamentary privilege prevented an investigation by a

state committee. Correspondence between the President and the Queensland committee was tabled in August, but no senator had previously moved to instigate a Senate inquiry.

PROCEDURE COMMITTEE REPORT

The Procedure Committee presented a report on 26 November in which it recommended against a series of proposed changes to Senate procedures. The Committee rejected suggestions for:

- estimates hearings to be held in camera in particular circumstances
- declarations of senators' interests not to be required where the interests concerned are already on the register
- a special procedure for debate on Ombudsman's reports
- changes to the arrangements for general business on Thursdays
- changes to the procedure for prayers.

In relation to the Ombudsman's reports, the Committee indicated that it would look again at this suggestion as part of a review of the routine of business.

COMMITTEES

The last two weeks of the 1997 sittings saw many committees presenting reports to conclude matters before the end of the year.

The following committee reports were presented during the period:

Date tabled	Committee	Title
24.11	Legal and Constitutional Legislation	Report—Crimes Amendment (Forensic Procedures) Bill 1997
25.11	Rural and Regional Affairs and Transport Legislation	Report—Live-stock Transactions Levy Bill 1997
26.11	Procedure	2nd Report of 1997
"	Scrutiny of Bills	18th Report and Alert Digest No. 17 of 1997
"	Rural and Regional Affairs and Transport Legislation	Additional Information—Estimates 1997-98
"	Employment, Education and Training Legislation	Additional Information—Estimates 1997-98
"	Employment, Education and Training Legislation	Additional Information—Estimates 1997-98—Supplementary
26.11	Environment, Recreation, Communications and the Arts legislation	Additional Information—Estimates 1997-98
"	Economics Legislation	Report—Additional Estimates 1997-98

Date tabled	Committee	Title
"	Employment, Education and Training Legislation	Report—Additional Estimates 1997-98
"	Environment, Recreation, Communications and the Arts Legislation	Report—Additional Estimates 1997-98
"	Finance and Public Administration Legislation	Report—Additional Estimates 1997-98
"	Foreign Affairs, Defence and Trade Legislation	Report—Additional Estimates 1997-98
"	Legal and Constitutional Legislation	Report—Additional Estimates 1997-98
"	Rural and Regional Affairs and Transport Legislation	Report—Additional Estimates 1997-98
27.11	Regulations and Ordinances	End of Sittings Statement—Document
"	Regulations and Ordinances	Conference Paper
2.12	Publications	Report—Future of the Parliamentary Paper Series
"	Environment, Recreation, Communications and the Arts Legislation	Additional Information—Estimates 1997-98
"	Economics Legislation	Report—Taxation Laws Amendment Bill (No. 5) 1997
"	Economics Legislation	Report—Trust Loss and Family Trust Bills
"	Rural and Regional Affairs and Transport Legislation	Report—Sun Fund Bill 1997
"	Legal and Constitutional References	Report—Sexuality Discrimination
3.12	Scrutiny of Bills	Alert Digest No. 18 of 1997
4.12	Scrutiny of Bills	19th Report

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