

**No. 137**

**for the sitting period 11-21 October 1999**

**25 October 1999**

**ORDERS FOR DOCUMENTS: REMEDIES FOR REFUSAL**

The passage by the Senate of orders for production of documents again provided a barometer of matters of controversy in which government was charged with concealing information. A turning point may have been reached in that the Senate for the first time adopted remedies for a ministerial refusal to produce information apart from the exaction of a political penalty on the government.

The document giving rise to this situation was a draft paper on welfare reform which the Minister for Family and Community Services, Senator Newman, allegedly announced she would produce at a Press Club address but which was not then produced, amid claims that it had been suppressed. The Senate passed an order for the document on 12 October. The minister on the same day tabled a substitute document, the terms of reference for a group examining welfare reform, and indicated that the paper in question had not been finalised but would be produced when it was completed. The actual document demanded not having been produced, Senator Newman was censured by the Senate on 13 October and a further order for the document made. The debate on the censure motion was notable for a discussion on remedies which might be applied if the document did not appear. The Opposition did not agree with some remedies proposed by the Australian Democrats, who initiated the censure motion, which involved preventing Senator Newman functioning as a minister in the Senate, but suggested other possible remedies. On 19 October, the document still not having been produced, an order was made for other associated information, and an order was passed extending question time with effect until the end of the year or until the document is produced. The latter order provided that question time would continue until a “quota” of Opposition and Australian Democrats’ questions had been asked. On 21 October a further remedy was applied. The Community Affairs References Committee was given a reference on the content of the document, the committee was directed to hold a public hearing on the matter, and the officers who appeared in June to explain the estimates of the Department of

Family and Community Services were directed to appear at the hearing to give evidence. The hearing is to take place on 12 November, before the Senate next meets.

Another intense controversy arose over a leaked cabinet document revealing proposals for higher education funding. The matter was pursued in spite of the government largely disowning the proposals in the leaked submission. The Senate passed on 20 October an order for various associated documents. On the following day one document was produced together with a statement giving reasons for the non-production of other documents. It is likely that this matter will be further pursued when the Senate meets again.

Another question causing great political agitation was the claim that large numbers of magnetic resonance imaging machines had been imported because of premature disclosure of relevant government budget decisions. Although the government announced an inquiry into the matter, the Senate passed an order on 21 October for relevant documents. The deadline for production of the documents is the next day of sitting.

The Senate also passed an order on 21 October for a draft report by the Bureau of Air Safety Investigation on the Class G airspace trial, another matter, affecting air safety, of great controversy. The deadline for the production of this document is also the next day of sitting.

## **LEGISLATION**

Two special appropriation bills considered by the Senate on 11 October provided for assistance for the book industry and for grants for alternative fuel and renewable energy development. Provisions in the bills allowed for grants to be made to persons and organisations other than government bodies without terms and conditions. The Senate struck out these provisions on the basis that the specification of terms and conditions is an essential element of audit control of expenditure. Although the government defended the provisions on grounds of administration convenience, the amendments were eventually accepted by the government.

In considering the Customs Legislation Amendment Bill (No. 1) 1998 on 14 October, the Senate struck out provisions imposing a vicarious criminal liability on individual employers for the actions of their employees. These provisions were regarded as objectionable on civil liberties grounds.

A great deal of time over several days was devoted to the Corporate Law Economic Reform Program Bill 1998. A very large volume of amendments was made to the bill relating to the

obligations of corporations and their principals. The bill was finally passed by the Senate on 18 October. All of the amendments were eventually accepted by the government.

The Public Service and Parliamentary Service Bills reappeared after a long absence. The government had not agreed to extensive amendments made by the Senate in the previous Parliament. The bills came forward again as a result of agreement between the government and the Opposition, an agreement reflected in an amended version of the bills presented to the Senate. Further amendments were made, however, when the bills were considered in the Senate on 14 October. For a time it appeared that the bills would again fail to pass because of disagreement over one set of amendments relating to limits on temporary employment. On 20 October, however, final agreement was reached as a result of government undertakings about regulations which would govern temporary employment, and the bills passed. The other amendments related mainly to the tenure of public servants and procedural safeguards of public service independence. As a result of the passage of the bills the Parliamentary Service will be established as an entity separate from the executive Public Service.

The pattern of the Senate striking out provisions in bills was repeated with the Family and Community Services Legislation Amendment (1999 Budget and Other Measures) Bill 1999 on 18 October, when provisions reducing certain benefits were removed from the bill.

A well-travelled bill was the Further 1998 Budget Measures Legislation Amendment (Social Security) Bill 1999, which was initially considered in the last period of sittings. Both amendments and requests for amendments having been made in the Senate, the bill was returned to the House for consideration of the requests, which involved increased expenditure from standing appropriations. When a bill is the subject of requests for amendments the requests are resolved before the bill is passed by the Senate and before any Senate amendments are resolved. In agreeing to the requests, the government in the House made further amendments to the bill which were government amendments rejected by the Senate. These amendments were agreed to by the Senate on 18 October, the government on this occasion having persuaded the Senate of their justification, and the bill was then returned to the House for consideration of Senate amendments. The bill was finally passed on the last day of the sitting period when the Senate did not insist on an amendment disagreed to by the government but substituted an amendment to which the government agreed.

The Stevedoring Levy (Collection) Amendment Bill 1999, considered by the Senate on 19 October, was a bill amendable by the Senate because it did not impose a levy. Amendments were made in the Senate reducing the amount and restricting the purposes of the levy.

The Regional Forest Agreements Bill 1998 was returned from the House with Senate amendments disagreed to and one substitute amendment made. Proceedings in the Senate promised to be somewhat complex when various amendments to the proposed substitute amendment were circulated and it was indicated that this amendment would be dealt with separately from the question of whether the Senate would insist on its original amendments. The bill was debated on 20 October but remained unresolved at the end of the period.

The Health Legislation Amendment Bill (No. 3) 1999 was considered at the time for non-controversial bills but was the subject of extensive amendments relating mainly to the rules governing registered health insurance organisations. The amendments were accepted by the government.

#### **RIGHT OF REPLY: CORPORATION**

The Privileges Committee recommended on 21 October the publication of a response by the principals of a corporation which was the subject of adverse comments by a minister in the Senate. The Senate's Privilege Resolution No. 5, which provides for responses by persons adversely mentioned in the Senate, does not refer to corporations, but the principals of the organisation were allowed to respond on the basis that they could be identified and were adversely affected by the minister's remarks.

#### **COMMITTEES**

The Economics References Committee received a reference on 12 October 1999 on the vexed question of petroleum retail sites and the limitations on the ownership of sites by oil companies.

The Finance and Public Administration References Committee received a reference on 14 October on the government's proposals for changes to business taxation. This inquiry promises to be as complex as that relating to the New Tax System legislation, although the committee is required to report when the Senate resumes.

The report on 18 October by the Joint Treaties Committee on the renewal of the agreement relating to the defence facility at Pine Gap provided the occasion for complaints about the dearth of information given to the Parliament about the facility. It was pointed out that United States congressional committees have greater access to this information than their Australian counterparts.

The following committee reports were presented during the period:

<b>Date tabled</b>	<b>Committee</b>	<b>Title</b>
11.10	Economics Legislation	Additional Information—Estimates 1999-2000
“	Legal and Constitutional Legislation	Report—Federal Magistrates Bills 1999
12.10	Rural and Regional Affairs and Transport Legislation	Additional Information—Budget 1999-2000
“	Economics Legislation	Report—Taxation Laws Amendment Bill (No. 5) 1999
13.10	Scrutiny of Bills	16 <sup>th</sup> Report and Alert Digest No. 16 of 1999
“	Native Title and the Aboriginal and Torres Strait Islander Land Fund	15 <sup>th</sup> Report— <i>Native Title Act 1993</i> —Inquiry under section 206(d)
20.10	Scrutiny of Bills	17 <sup>th</sup> Report and Alert Digest No. 17 of 1999
21.10	Procedure	2 <sup>nd</sup> Report of 1999—Use of motions to take note of answers; Putting of non-government amendments under a limitation of time; Reports on unproclaimed legislation; Estimates hearings—matters raised by the Rural and Regional Affairs and Transport Legislation Committee; Registration of senators' interests
“	Corporations and Securities	Report—Company Law Review Act 1998
“	Rural and Regional and Transport References	Report—Australian Dairy Industry
“	Privileges	80 <sup>th</sup> Report—Persons referred to in the Senate

## PROCEDURE

The Procedure Committee presented a report on 21 October dealing, amongst other things, with the relevance of questions at estimates hearings.

The 9<sup>th</sup> edition of *Odgers' Australian Senate Practice* was tabled on 11 October.

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