

No. 144

for the sitting period 19—29 June 2000

3 July 2000

ORDERS FOR PRODUCTION OF DOCUMENTS

Orders for production of documents are always a reliable barometer of the number and intensity of matters of controversy. The following orders were passed during the period.

- *ATO–AEC correspondence*: An order of 20 June required the production of correspondence between the Taxation Office and the Electoral Commission on the matter of the attempted misuse of the electoral roll for GST advertising. Documents were produced on the following day, and then a further piece of correspondence on 22 June. The latter, according to the Opposition, showed that the Electoral Commissioner had responded to correspondence the contents of which he claimed to be unaware of at estimates hearings.
- *Nuclear reactor*: An order also passed on 20 June required documents relating to the contract to replace the Lucas Heights nuclear reactor. Documents were produced on 26 June, but some were withheld, adding to the tally of the government's public interest immunity claims.
- *Defence environment plans*: An order on 22 June required environment management plans for defence establishments, and they were produced on 29 June.
- *GST and petrol prices*: An order of 27 June for economic modelling relating to petrol prices under the GST produced the nearest thing to a flat refusal. The government stated that the modelling material on the price effects of the GST had already been made public, but refused to disclose the model itself.

Documents were produced on 20 June in response to the order relating to heavy trucks.

A very large volume of documents was produced on 22 June in response to the order relating to the Civil Aviation Safety Authority, but a statement with the documents indicated that some had been withheld.

PARLIAMENTARY PRIVILEGE

A report of the Privileges Committee presented on 29 June (92nd Report) consisted of advices by the Clerk of the Senate and by a leading Sydney barrister criticising a judgment in the Supreme Court of Queensland. The judgment related to a defamation action taken against a person who supplied information to a senator for use in the Senate. The taking of this action was found by the Privileges Committee in an earlier report (67th Report) to be a contempt of the Senate, but the committee recommended that the legal proceedings be allowed to take their course. A very confused judgment of a single judge, not on the substantive question, found that the supply of the information to the senator was not protected, but the legal proceedings are continuing.

The committee presented on 19 June yet another response, under the right-of-reply procedures, to remarks made by a senator on the presentation of earlier responses (see Bulletin No. 141, p. 4). The committee hinted that it would not be willing to accept another response in the matter.

The committee received another reference on 27 June on an unauthorised disclosure of a submission made to a committee, the Joint Statutory Committee on Corporations and Securities.

DIRECTION TO HOLD HEARING

The Senate on 28 June directed that a further estimates hearing be held to take evidence from the Employment Advocate, unless the relevant committee, after receipt of questions taken on notice during the earlier hearing, decides unanimously not to go ahead with the further hearing. This arose from dissatisfaction with the evidence of the Employment Advocate and his refusal to provide information about workplace agreements. Advice provided to the committee by the Clerk and published in its report pointed out the unclear basis on which the Employment Advocate, who claimed to be making his own decisions without ministerial direction, had declined to provide information.

DECLARATORY RESOLUTION ON EXCISE TARIFFS

An unusual resolution passed on 29 June declared that the Senate would not agree to the rates of excise contained in an excise tariff proposal tabled in the House of Representatives.

Provisions in the Customs Act and the Excise Act allow the collection of customs and excise duties from the time of announcement of proposals by the government for a period of twelve months before the passage of legislation to validate the duties. The purpose of these provisions is to ensure that windfall profits may not be made between the time of announcement of duties and the enactment of legislation to levy the duties. There has long been speculation about what would happen if the Senate declined to pass legislation after the duties had been collected for some time. This situation may now arise. The excise tariff proposals in question relate to the alleged breaking by the government of its undertaking concerning beer prices under the GST.

CONTRACTS AND ACCOUNTABILITY

The Finance and Public Administration References Committee presented its report on 26 June relating to the notice of motion by Senator Murray to require the disclosure on the Internet of the terms of all government contracts, as an accountability measure. The committee recommended that alternative methods of scrutinising contracts be considered before the Senate passes the proposed motion.

DELEGATED LEGISLATION: DISALLOWANCE OF REGULATIONS ALREADY DISALLOWED

The Senate disallowed on 20 June some regulations under the Customs Act which had been deemed to be disallowed in the House of Representatives. A notice of disallowance had been given in the House and had not been dealt with before the expiration of the statutory time limit after which instruments the subject of an unresolved notice are deemed to be disallowed. The reason for the seemingly unnecessary disallowance by the Senate was that, the regulations having been deemed to be disallowed in the House, they could be remade by the government with only the approval of the House. Disallowance in the Senate ensured that they could not be remade without the approval of the Senate. The regulations, part of GST implementation, related to the importation of used diesel engines, and were stated to have unintended consequences for engine importers.

LEGISLATION: AMENDMENTS AND REQUESTS: ORDER FOR EXPLANATIONS

Previous Bulletins (No. 142, p. 2; No. 143, p. 2) referred to difficulties with government amendments to bills being circulated as requests for amendments. In relation to two bills, the Indirect Tax Legislation Amendment Bill 2000 and the New Business Tax System (Miscellaneous) Bill 1999, explanations were eventually received from the government drafters as to the reasons for the amendments being framed as requests. It was stated that the amendments would result in payment of tax refunds out of a standing appropriation. On this basis the Senate agreed on 26 June to accept the amendments as requests

An order was passed, however, requiring that all amendments circulated as requests in future be accompanied by an explanation of the reasons for them being framed as requests and a statement by the Clerk of the Senate as to whether they would normally be treated as requests under the precedents of the Senate. The first such explanations and statements were produced on 27 June in relation to non-government amendments.

In relation to another bill, the New Business Tax System (Alienation of Personal Services Income) Bill 2000, the explanation from the government drafters indicated that the amendments would result in taxpayers paying more tax. The Chair of Committees pointed out that this explanation would make sense only if the bill were a bill imposing taxation, and on that basis all the amendments moved were treated as requests. The bill was eventually passed when the government accepted some amendments, rejected others and made a substitute for another.

In dealing again with the Youth Allowance Consolidation Bill 1999 on 22 June, the Senate accepted an amendment made in the House in place of a Senate request for an amendment and did not press another request disagreed to by the House, but made further requests for amendments not relevant to the matters in disagreement between the Houses. The rule that any further amendments must be relevant to the matters in disagreement between the Houses does not apply to requests for amendments, because section 53 of the Constitution allows the Senate to make requests for amendments at any stage of the consideration of a bill, and the Senate's rules reflect this principle.

LEGISLATION AMENDED

The following bills were significantly amended:

- *Sydney Harbour Federation Trust Bill 1999*: This bill provided for the establishment of a trust to manage Commonwealth land in Sydney expected to be transferred to the state. The government stated that it would not accept the extensive amendments made in the Senate to the bill, but also indicated that the bill is not necessary from the government's point of view because the Commonwealth has the exclusive management of the lands in question.
- *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Bill 2000*: This bill "bounced" between the Houses several times before agreement was finally reached on amendments on 29 June, the Senate eventually not insisting on some amendments relating to veterans' entitlements.
- *Broadcasting bills*: The bills relating to digital television broadcasting and datacasting were considered at great length and were the subject of voluminous amendments. Although opposing some amendments in the Senate, the government

eventually accepted all of them on 29 June, after the bill went back to the House with some last-minute government amendments which resolved some of the issues to the government's satisfaction.

- *New Business Tax System (Integrity Measures) Bill 2000*: Yet another tax bill relating to the GST package, this bill was amended on the motion of the Democrats on 29 June in relation to arts industries.
- *New Business Tax System (Miscellaneous) Bill (No. 2) 2000*: Large slabs were excised from this bill on 29 June as a result of a hearing by the Superannuation and Financial Services Committee in relation to superannuation provisions.
- *Telecommunications (Consumer Protection and Service Standards) Amendment Bill (No. 1) 2000*: Amendments made to this bill on 29 June on the motion of the Democrats were accepted by the government.
- *Environment and Heritage Legislation Amendment Bill 2000*: This bill reappeared after a long absence. The government accepted most of the Senate's amendments to the bill, and the Senate agreed on 29 June to some amendments made by the government in the House.

MINISTERIAL ANSWERS

The Local Government (Financial Assistance) Amendment Bill 2000 was eventually passed on 19 June, with a resolution referring to the failure of the Minister for Regional Services, Territories and Local Government, Senator Ian Macdonald, to respond appropriately to questions asked by senators. The resolution referred to advice provided by the Clerk about the relevance of the questions, the minister at one stage having claimed that the questions were not relevant to the bill (see Bulletins No. 141, p. 3; No. 143, p. 2).

STRANGE APPROPRIATIONS

During the passage of the Financial Management and Accountability Amendment Bill 2000 on 22 June, reference was made to its unusual character. It increases every standing appropriation in various statutes by indefinite amounts, the amounts necessary to allow various government departments and agencies to meet their GST obligations. As such departments and agencies pass on to their customers the GST they pay and claim input credits for the GST component of inputs, the bill does not result in any actual increased expenditure, but is a "bookkeeping" measure. In debate on the bill, the Opposition did not miss the opportunity to refer to the complexity arising from the GST.

COMMITTEE REFERENCES

Many references were made to committees during the period, indicating that committees will be extremely active during the winter long adjournment.

CENTENARY OF FEDERATION

The Senate formally accepted on 26 June the invitation of the Victorian Houses to meet in Melbourne next year for the Federation Centenary celebrations.

SENATE DAILY SUMMARY

This bulletin provides Senate staff and others with a summary of procedurally significant occurrences in the Senate. 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, *Senate Daily Summary* may be reached through the Senate home page at www.aph.gov.au/senate

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