

# DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

hc/pro/prob/12983

**No. 146**

**for the sitting period 28 August—7 September 2000**

**8 September 2000**

## **SENATE INTERVENTION IN COURT PROCEEDINGS AUTHORISED**

The Senate on 4 September authorised the President to brief counsel to intervene in two defamation cases, if they go to trial, to make submissions on parliamentary privilege. This resolution was passed on the recommendation of the Privileges Committee in its 94<sup>th</sup> report. The two cases relate to the provision of information to Senator O'Chee, as he then was, and his use of that information in the Senate. One of the actions is that referred to in the 67<sup>th</sup> and 92<sup>nd</sup> reports of the committee, and the other is a new action against former Senator O'Chee. In both cases the matters which are the target of the defamation actions were incidental to the proceedings in the Senate (see Bulletin No. 144, p. 2).

## **RELEASE OF IN CAMERA EVIDENCE TO POLICE**

By adopting on 31 August the recommendation of a report by the Environment, Communications, Information Technology and the Arts Legislation Committee, the Senate agreed that transcripts of in camera evidence taken by that committee be released to the Victorian Police to assist in their investigations. The evidence related to the Casualties of Telstra, the persons harmed by activities of the telecommunications carrier. As the committee had concluded this inquiry, the transcripts could be released only by the Senate. The report of the committee pointed out that the evidence itself could not be used in any substantive way in legal proceedings because of parliamentary privilege, but, as with evidence taken in public, the police may use the transcripts to assess whether there may be evidence which may be given in court about alleged frauds.

## **ORDERS FOR DOCUMENTS**

The order of 17 August for documents relating to the SES ratings of schools (see Bulletin No. 145, p. 1) resulted in the production of documents on 28 August with more information promised. A further order on the following day, however, contained a preamble noting partial compliance with the original order and required the production of further information,

including the SES scores of individual schools. More documents were produced on 30 August, but were accompanied by an indication that the SES scores of individual schools are regarded as confidential information. A third order was passed on 7 September again calling for the scores of individual schools and other information. The matter was thereby carried over for the next period of sittings.

An order on 31 August required the production of certain contracts entered into by Telstra, but contained a clause allowing the exclusion of “genuinely commercially sensitive” material. It might have been thought that this provision was an invitation to Telstra to withhold the contracts, but on the due day, 6 September, a statement was made indicating that Telstra staff were going through the contracts for the purpose of producing them, and on 7 September a box of documents was produced.

On 30 September 1999, in a resolution relating to regulation of Internet content, the Senate called on the government to report at six-monthly intervals on the operation of the regulatory regime. Resolutions which “call for” information are not regarded as formal orders for documents, but the government often treats them as such. In response to this resolution, the first six-monthly report was produced on 5 September.

#### **DISALLOWANCE MOTIONS: SPECIAL PROCEDURE**

A special order was made on 29 August to provide for the consideration of a series of 13 motions to disallow determinations under the Native Title Act approving of alternative schemes made by the state of Queensland. The motions were due to be debated the following day, but that was also the last day for resolving the motions, and there was concern that the determinations would be disallowed by default because of the Senate not having time to deal with all of them (under the Acts Interpretation Act, if a disallowance motion is not resolved within 15 sitting days, the instruments in question are automatically disallowed: see *Odgers' Australian Senate Practice*, 9th ed, Chapter 15, Delegated legislation).

The special order required that the disallowance motions be called on no later than a specified time and that the questions be put on all of the motions by a specified time. The motions were duly moved on the following day, with the outcome that some of the determinations were disallowed and others were allowed to stand.

#### **DEFENCE BILL**

Most of the time devoted to legislation during the period was spent on the Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2000. This bill was designed to specify the conditions for a call-out of the Defence Force to assist a state to quell “domestic

violence” on the application of the government of the state under section 119 of the Constitution, or to protect Commonwealth interests in a state threatened by large-scale disturbances. The bill was said to be introduced in anticipation of any troubles during the Sydney Olympics or the World Economic Forum in Melbourne. The bill had been examined by the Foreign Affairs, Defence and Trade Legislation Committee, which recommended amendments. When the bill was finally passed on the last day of the sittings, amendments proposed by the government and the opposition had been made, but amendments moved by other parties were unsuccessful, and they opposed the final passage of the bill. Senator Harris attempted to kill the bill with an amendment on the third reading to give it the “six months hoist” under standing order 122(3). Some of the amendments are designed to assist parliamentary scrutiny of any use of the powers under the bill.

### ***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](http://www.aph.gov.au/senate)

Inquiries: Clerk's Office  
⇐ (02) 6277 3364