

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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GOVERNMENT CONTRACTS: CONTINUING ORDER FOR DOCUMENTS

A significant step towards reasserting parliamentary scrutiny over government contracting was taken on 20 June. On the motion of Senator Murray, the Senate agreed to a continuing order whereby departments and agencies must publish on the Internet lists of their contracts to the value of \$100 000 or more, with details of the contracts and a statement of reasons for any provisions which require the parties to maintain confidentiality or which are regarded by the parties as confidential. The Senate must be advised by the tabling of a document twice a year that the lists have been placed on the Internet, and the Auditor-General is requested to examine a selection of contracts to determine whether there is any inappropriate use of confidentiality provisions. The Finance and Public Administration References Committee is also required to report on the first year of the operation of the order.

The order is the culmination of concerns in the Senate and its committees over government claims of confidentiality in relation to contracts and secrecy clauses in contracts (see the reference to the Auditor-General's report on the subject in Bulletin No. 153, pp 1-2).

OTHER ORDERS FOR DOCUMENTS

The order for files relating to a workplace relations case (see Bulletin No. 153, p. 1) was the subject of a government statement on the due day, 18 June, indicating that the government wished to further consider the order at the request of the firm engaged in the particular dispute and in continuing litigation. This hint of a claim of public interest immunity was the subject of debate on 26 June, and some documents were produced on 28 June, but a general claim of confidentiality was made for some documents, to the great dissatisfaction of the mover of the motion for the order, Senator Carr, who promised to pursue the matter.

An order made on 28 June also related to workplace relations, requiring the production of documents relating to the investigations of a particular employment services firm. Documents were produced in response to the order later on the same day, but some of the required documents were said not to exist.

DIRECTION TO COMMITTEE, MINISTER AND WITNESSES

Dissatisfaction with the government's reaction to a committee inquiry into a bill resulted in an order agreed to by the Senate on 19 June directing the Employment, Workplace Relations, Small Business and Education Legislation Committee to continue its hearings on the Innovation and Education Legislation Amendment Bill, and directing the minister to ensure that relevant officers appeared before the committee to answer questions about the bill.

This kind of direction has been used by the Senate on previous occasions to overcome perceived lack of co-operation with committee inquiries.

PRIVILEGE: ALLEGED MISLEADING EVIDENCE

The Privileges Committee reported on 25 June on the allegation that the Secretary of the Department of Employment, Workplace Relations and Small Business, Dr Shergold, and the Employment Advocate, Mr Hamberger, had given misleading evidence in estimates hearings. Having examined seemingly contradictory and evasive answers to questions, the committee concluded that there was no evidence that deliberately misleading answers had been given and therefore no contempt was committed.

PRIVILEGE: EXPEDITED REPLY BY AGGRIEVED CITIZEN

A demonstration was provided on 28 June of the speed with which the right of reply can be granted to citizens aggrieved by remarks made about them in the Senate. The references by Senator Heffernan to ATSI Regional Council Chairperson, Mr T. O'Shane, were the subject of great public controversy, and were also the subject of a response by Mr O'Shane which was received by the President, referred to the Privileges Committee, considered by the committee, reported to the Senate and published by the Senate, all on the same day.

DELEGATED LEGISLATION: REGULATIONS DISALLOWED

A set of workplace relations regulations was disallowed on 27 June, adding to the tally of regulations disallowed in this area and particularly relating to the unfair dismissals legislation.

LEGISLATION

In accordance with an instruction to the committee of the whole, the Innovation and Education Legislation Amendment Bill 2001 was divided into three bills on 28 June. Successive governments, relying on material provided by their advisers, have reacted to the division of bills by the Senate as if it were the most evil event that could possibly occur and to be resisted at all costs, although in previous cases it has been indirectly and tacitly accepted by the government. It has not been explained why the government should view the division of a bill with any greater dread than any other kind of amendment. On this occasion the responsible minister, after reading a document full of fulminations against the procedure, moved that the committee report progress, and so the bills were not finally dealt with before the Senate rose for the winter adjournment.

By way of contrast the government took the unusual step of moving that the Senate insist on amendments disagreed to in the House of Representatives in relation to the Trade Practices Amendment Bill (No. 1) 2000 on 18 June. This was done because the government had decided to accept Senate amendments which it had at first rejected in the House. When a bill is returned with a Senate amendment disagreed to, it is open to any senator to move that the amendment be insisted on, or not be insisted on (see *Odgers' Australian Senate Practice*, 9th ed, electronic update, p. 275). The usual course is for a minister to move that the Senate does not insist on its amendment.

A statement by the chair of committees on 21 June pointed out that the Governor-General Legislation Amendment Bill 2001 contained a provision which the Senate would regard as imposing taxation, in that it subjected the salaries of Governors-General to income tax for the first time, but that the bill contained other provisions, probably contrary to section 55 of the Constitution. The chair suggested that any amendments to the provisions imposing taxation should be treated as requests. In the event, no amendments were made to the bill.

The Customs Legislation Amendment and Repeal (International Trade Modernisation) Bill 2001 was the subject of amendments and an interesting debate on provisions for strict liability offences. As a result of this debate, a reference was made to the Scrutiny of Bills Committee on 28 June on strict liability offences in legislation.

Various bills led to complex bicameral transactions. As an example, the following was the report from the committee of the whole on the Child Support Legislation Amendment Bill (No. 2) 2000:

... the committee had considered message no. 692 from the House of Representatives relating to the Child Support Legislation Amendment Bill (No. 2) 2000 and had resolved:

- (a) to insist on Senate amendments nos 1 and 3 to 5 to which the House had disagreed;
- (b) not to insist on Senate amendment no. 2 to which the House had disagreed;
- (c) in respect of the amendments made by the House in place of Senate amendments nos 1 to 4 to which the House had disagreed:
 - (i) had agreed to House amendments nos 1 and 8, with amendments,
 - (ii) had agreed to House amendment no. 6, and
 - (iii) had not agreed to House amendments nos 2 to 5 and 7; and
- (d) had made a consequential amendment to the bill.

In order to arrive at this result, the motion moved by a minister that the Senate not insist on its amendments and agree to substitutes was divided and put separately in its component parts, with the opportunity for senators to move different amendments.

In relation to the Dairy Produce Legislation Amendment (Supplementary Assistance) Bill 2001, the Senate agreed to amendments in substitution for a request for an amendment it had earlier made, and then agreed to the bill as amended.

The most significant bill amended during the period was the Interactive Gambling Bill 2001, finally passed on 28 June with many pages of amendments.

The Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Bill 2001 was initiated and extensively amended in the Senate, and returned from the House of Representatives on 28 June with many amendments. In this case the government amendments in the House did not simply reverse the amendments made in the Senate, and non-government senators allowed the bill to pass on the basis that it was better to have it enacted than to continue to dispute some of the points raised by the amendments.

DRAFT BILL TABLED

A private senator's bill was tabled in draft on 28 June. On giving notice of a motion to introduce the bill, Senator Murray tabled it in draft for public comment. The bill provides for a question on whether Australia should become a republic (a question not yet put to the electors) and a consequential question to be put in a plebiscite at the same time as the general election expected later this year.

COMMITTEE REFERENCE FROM ESTIMATES

A reference was made to the Rural and Regional Affairs and Transport Legislation Committee on 25 June arising from questions in the committee's estimates hearing. The reference relates to the conduct of the search for a missing fishing vessel in Tasmania. Answers in the estimates hearing hinted at an evocation of the sub judice principle on the basis that the search is the subject of a coronial inquiry. As a Clerk's advice to the committee indicated, however, in the absence of judicial proceedings, as distinct from a coronial inquiry, the absence of a jury in that inquiry and the extensive public discussion of the search, there would appear to be little case for the Senate restraining its inquiries into the matter.

SCRUTINY COMMITTEES: MEETING WITH STATE COUNTERPART

Resolutions were passed on 21 June and 26 June to allow the Scrutiny of Bills Committee and the Regulations and Ordinances Committee, respectively, to meet with their Queensland counterpart. The resolutions were necessary because of the prohibition in standing order 36 on persons other than committee members and officers attending deliberative meetings of committees.

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

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