

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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SENATOR CENSURED FOR ATTACK ON JUDGE

The item of greatest procedural interest during the period arose from yet another *cause célèbre*, which resulted in a senator being censured by the Senate for an attack upon a High Court judge.

This is only the second occasion on which a senator who was not a minister has been censured for acting other than in a ministerial capacity. The other occasion was in March 1998, when Senator Bolkus was censured for disclosing a Federal Court affidavit which had not been released by the court. The senator involved on this occasion, however, was a parliamentary secretary, and the government was therefore held politically accountable for his conduct, although it did not arise from his function as an office-holder of the government.

On 12 March Senator Heffernan made a speech containing serious allegations against a justice of the High Court, Mr Justice Kirby. The allegations were of illegal conduct in a non-judicial capacity and of bias on the bench. The speech was so structured that it had to be examined carefully in order to be clear as to the subject of the allegations and their tenor. On the following day the Deputy President, Senator West (acting as President in the absence of the President), was asked to rule on whether the speech was in breach of standing order 193, which provides that offensive words, imputations of improper motives and personal reflections are not to be uttered against judicial officers. The Deputy President ruled that the speech was in violation of the standing order. She noted that senators had always been advised that allegations should not be made against judges except to initiate an inquiry to determine whether they should be removed under section 72 of the Constitution. On the next day the Australian Democrats gave notice of a motion to refer the speech to the Privileges Committee to determine whether it constituted a contempt of the Senate. At the same time, a resolution was passed, on the motion of Senator Brown (Australian Greens), but amended by the Australian Democrats, calling on Senator Heffernan to apologise to the Senate and Justice Kirby for the breach of the standing orders. The government required Senator Heffernan to

stand aside from his position as parliamentary secretary while documents which he said supported his allegations were referred to the New South Wales Police.

By the time the Senate met again, on 19 March, the documents produced by Senator Heffernan had been shown to be worthless as evidence, and he had been dismissed from his position as parliamentary secretary. He then withdrew his allegations and apologised. A motion to censure him for his reckless and disorderly attack on the judge was then carried without a division. An amendment by Senator Brown, containing a censure of the Prime Minister for not preventing Senator Heffernan's actions, was added to the motion over the opposition of the government.

One of the documents provided by Senator Heffernan was alleged to be a concoction, and investigations of that document by the Australian Federal Police were in train when the Senate rose for the Easter recess. This raises the possibility of the matter returning to the Senate in the future.

ORDERS FOR PRODUCTION OF DOCUMENTS

Two orders for documents were passed on 12 and 14 March in relation to the contract for the new nuclear reactor at Lucas Heights. Documents were produced on 19 March in response to the orders. Some documents, however, were said not to exist or were withheld on the ground that they would prejudice national security. Debate on the issue, which has been heightened by events in Argentina (an Argentine company is to supply the reactor), indicated that the matter will be further pursued.

An order passed on 20 March required the production of specified documents relating to health and radiation, and required that the documents be tabled that day. A government statement later in the day indicated that there was not time to comply with the order, so this matter also remained unconcluded at the end of the period.

ORDERS FOR CONTRACTS

During the period there was a steady stream of documents tabled in response to the Senate's order of 20 June 2001, as amended on 27 September 2001, for the publication on the Internet of lists of government contracts. An Auditor-General's report on the operation of the order was presented on 11 March, indicating that departments were taking appropriate action to comply with the order.

ORDER FOR COMMITTEE TO MEET

On 12 March 2002 the Economics Legislation Committee was directed by the Senate to continue its estimates hearings on another matter of great controversy, the losses allegedly incurred by the Treasury in “currency swaps”. The order also directed the minister to make relevant officers available for the hearing and required the production of specified documents. The hearing took place on 13 March and Treasury officers attended and answered questions, but the government declined to produce some documents. This is also expected to be a continuing matter.

LEGISLATION

The time spent on legislation was largely occupied with two government bills which the Opposition agreed to pass but which the Australian Democrats and the Greens were determined to resist.

After lengthy consideration, the Regional Forest Agreements Bill was finally passed on 15 March with two amendments moved by the Opposition.

In relation to the Migration Legislation Amendment (Transitional Movement) Bill 2002, dealing with the vexed issue of asylum seekers, the Australian Democrats took the course of preventing the presentation of a Selection of Bills Committee report on 14 March on the basis that the proposed reference of the bill to a committee contained in the report would have allowed only one day for committee hearings on the bill. (The report had to be presented by leave because it was not presented at the designated time in the routine of business for the presentation of reports of that committee which, unlike other committees, is required to present its report at a specified time.) The effect of this action, however, was that the bill was not referred to a committee at all. The Selection of Bills Committee presented a report on 20 March recommending reference of the bill to a committee but without a reporting date. The government then moved an amendment to the motion for the adoption of the report to provide that the bill not be referred to a committee, on the basis that its passage was then urgent. The bill was finally passed on 21 March with one amendment.

The time devoted to these bills resulted in something of a rush of bills at the end of the sittings. Several bills were amended, but only one resulted in transactions between the Houses: in relation to the States Grants (Primary and Secondary Education Assistance) Amendment Bill 2002, the non-government parties adopted the tactic of moving amendments to indicate their disagreement with government policies on that subject, but only one of the amendments was eventually agreed to, and the others were not insisted on. Amongst successful amendments to bills during the period, amendments to provide accountability measures, including reviews and reports on the operation of legislation, were conspicuous.

SELECT COMMITTEE REAPPOINTED

The long-running Select Committee on Superannuation (as it is now called) was reappointed on 14 March and required to report on specific matters with a reporting date of September 2002. The resolution of appointment also contemplates, however, that further matters relating to superannuation will be referred to the committee.

DETERMINATION DISALLOWED

A determination under the Health Insurance Act was disallowed on 21 March, on the basis of the exclusion of a particular hospital from provision of scanning equipment under the determination following a tendering process, amidst dispute about the validity of that process.

PRIVILEGES COMMITTEE REFERENCE

On the motion of its Chair, Senator Ray, the Privileges Committee received a reference on 20 March to consider the question of whether the Senate ought to engage counsel to represent it in court and other tribunal proceedings on questions involving parliamentary privilege affecting the Senate or senators. This question arises from recent court cases involving parliamentary privilege, such as that involving the seizure of documents from Senator Crane (see *Odgers' Australian Senate Practice*, 10th ed, p. 43).

TASMANIAN VACANCIES

Another vacancy in the representation of Tasmania occurred and was filled while the Senate was not sitting, Senator Gibson having resigned and being replaced by Senator Barnett. Both Tasmanian replacements (the earlier one of Senator Newman by Senator Colbeck) were filled under section 15 of the Constitution by the Governor of the state, as the Tasmanian Parliament was not in session at the time. On 21 March, however, certificates were presented indicating the “confirmation” of both appointments by the Tasmanian Parliament in accordance with section 15.

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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