

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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for the sitting period 17—27 June 2002

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ESTIMATES HEARINGS

The last two weeks of sittings before the winter long adjournment were preceded by two weeks of estimates hearings on the budget estimates, which resulted in several major revelations about government expenditure and operations.

The Legal and Constitutional Legislation Committee encountered a reluctance on the part of the Australian Government Solicitor's Office to provide details of the costs of services provided to royal commissions on the basis of client confidentiality, although the Senate has previously rejected claims for confidentiality of legal fees paid by the Commonwealth. The committee in its report undertook to pursue the matter.

ORDER FOR PRODUCTION OF CONTRACTS

The government responded on 18 June to the report of the Finance and Public Administration References Committee on the Senate's order for production on the Internet of lists of Commonwealth contracts. This report had resulted in amendments of the order. The government indicated that it would comply with the order (many responses to the order have already been tabled), and did not refer to earlier claims that the order was beyond the powers of the Senate (see Bulletins Nos. 156, pp 1-2 and 157, p. 1). The committee had obtained a copy of the advice on which this claim was based, and it contained nothing to support such a conclusion.

REFERENCE OF AMENDMENTS TO COMMITTEE

The Legal and Constitutional Legislation Committee received an unusual reference on 26 June. The government tabled, and then moved to refer to the committee, amendments of the Proceeds of Crime Bills to be moved by the government in the House of Representatives. This was a way of having the committee consider the details of proposed government changes to the bills which were not before the Senate.

MIGRATION REGULATIONS DISALLOWED

The sittings began with an expectation that the Senate would disallow migration regulations made during the non-sitting period which removed certain islands from the migration zone. The regulations were not tabled on the first substantive day of the sittings, as would normally have been the case. It was not clear whether the government was deliberately delaying the tabling of the regulations in order to avoid disallowance of them by the Senate. Nothing could be gained by such a manoeuvre, because it is established that regulations do not have to be tabled by the government before disallowance, but may be tabled by any senator (see *Odgers' Australian Senate Practice*, 10th ed, pp 348, 353-4). A motion calling on the government to table the regulations was passed on 18 June. The government tabled the regulations on the following day, and a motion to disallow them was then moved without notice by leave and passed (although the statutory disallowance provisions refer to notice of disallowance motions, notice is not necessary: see *Odgers*, pp 352-3). A notice of motion given by Senator Brown to disallow the regulations, which was given before their tabling, was withdrawn later on the same day (leave was not required to withdraw the notice under standing order 78, because, having been given before tabling, it was not regarded as an effective disallowance notice).

ORDERS FOR PRODUCTION OF DOCUMENTS

The sitting period was very fertile of orders for production of documents.

Documents were tabled on 18 June in response to earlier orders relating to a superannuation cash management trust and nuclear safety testing (orders of 16 May and 20 March, respectively). An order on 18 June for documents relating to the use of primates in research resulted in production on 24 June. In response to an order of 19 June for documents relating to mining on Christmas Island, the government made a statement on 25 June indicating that the preparation of the documents would take longer than the Senate's deadline. Similarly, orders for documents on the Lucas Heights nuclear reactor (25 June) and greenhouse gas reports (26 June) were responded to by statements indicating that the documents had not yet been completed (26 and 27 June, respectively). An order for documents relating to oil exploration on the Barrier Reef has a deadline of the resumption of the sittings in August. There were two orders met with virtual refusals to produce the documents: those relating to costings of superannuation policies and retirement and income modelling (24 and 25 June respectively). The government claimed on 27 June that these were superseded working documents which should not be produced. The mover for the documents, Senator Sherry, indicated that he would pursue the matter.

The Australian Competition and Consumer Commission produced on 25 June another report on anti-competitive practices in the health industry, in response to the Senate's continuing order of 1999. On 27 June the Commission was required to produce a further report on the

activities of tobacco companies, following its report of 6 May in response to an order of September 2001.

LEGISLATION

Several bills were substantively amended during the period. Most of the legislative time was spent on the government's anti-terrorism package of bills, which, as expected, was substantially amended by the Senate following the report of the Legal and Constitutional Legislation Committee. Although arguing against some of the successful amendments, the government eventually accepted them.

As was also expected, the government's proposed changes to the pharmaceutical benefits scheme were rejected on 20 June, the bill being negatived at the second reading. The only other outstanding disagreement on legislation related to the government's long-standing and regularly-pursued, but never achieved, desire to exempt small businesses from unfair dismissal laws. The Senate amended the latest bill, and insisted on its amendments on 27 June.

PRIVILEGES COMMITTEE REPORTS

The Privileges Committee presented four reports on 26 June.

One (103rd report) related to the action of the Northern Territory Country Liberal Party in depriving Senator Tambling of his party endorsement as a result of his not following a party direction about how to vote on a bill. This is the first occasion on which the committee has considered an attempt by a political party to impose party discipline on a senator as a possible contempt of the Senate. The committee found that the party had imposed a penalty on Senator Tambling in consequence of his vote in the Senate, and that the actions of the party were reckless and ill-judged, but given that Senator Tambling had subsequently reached a settlement of the matter with his party, the committee recommended that a contempt not be found.

A report on alleged misleading evidence given to the Joint Committee on Native Title (104th report) found that misleading evidence was given but that there was no intention to mislead and therefore no contempt.

A report on the execution of search warrants in the offices of Senator Harris (105th report) found that the Queensland State Police had appropriately given to Senator Harris the opportunity to claim that any of the documents were protected from seizure by parliamentary privilege. The committee indicated that the question of the seizure of documents not protected by parliamentary privilege but not covered by the authorisation of the relevant search warrant is a matter for the courts and not for the Senate.

The committee received on 27 June a further reference, relating to an alleged unauthorised disclosure of a report of the Environment, Communications, Information Technology and the Arts Legislation Committee.

MESSAGE FROM HOUSE NOT ACTED ON

An unusual situation occurred on 20 June when a message from the House of Representatives was reported transmitting a bill (the Family and Community Services Legislation Amendment (Disability Reform) Bill 2002) and no action was taken to consider the bill. This occurred because the government had decided at that stage not to proceed with the bill pending further negotiations with other parties about changes to disability entitlements announced in the budget.

NEW SENATORS APPOINTED TO COMMITTEES

In accordance with the usual practice when senators' terms are about to end, the membership of committees was changed on 27 June with effect from 1 July, to discharge senators whose terms were to end on that date and to appoint new senators whose terms were to then begin.

PROPOSED PROCEDURAL CHANGES

The Procedure Committee presented a report on 26 June proposing two procedural changes: the moving of the unlimited adjournment debate from Monday to Tuesday, and the extension from 30 days to 60 days of the time limit for answering questions on notice (not all senators on the committee agree with the latter proposal). These proposed changes have not yet been considered. On 20 June the Senate finally adopted another proposal of the committee, which was not the subject of a committee report, whereby a committee of the whole stage does not take place on a bill unless a senator has circulated amendments to the bill or requires that a committee stage occur (see Bulletin No. 160, pp 2-3). This procedure, adopted as a temporary measure, was used for bills subsequently considered.

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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