

# DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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**No. 165**

**for the sitting period 11—19 November 2002**

**21 November 2002**

## **PARLIAMENTARY PRIVILEGE**

When it was reported, before the sittings began, that the government had requested the Communications Authority to inquire into whether Telstra had misled a Senate committee, the question of parliamentary privilege was raised: how could the authority inquire into that matter when Senate proceedings cannot be substantively examined by any body other than the Senate? The answer was that the matter into which the Communications Authority would inquire was whether Telstra had upgraded a particular telephone exchange as claimed by the Casualties of Telstra group. Telstra had told a Senate committee that it had not upgraded the exchange. Had the inquiry found that the exchange had been upgraded the question of whether Telstra misled a Senate committee would then have been a matter for the Senate.

The Auditor-General's Office notified the Senate, in a letter tabled on 12 November, that in a pending court case the Office would claim that working documents associated with Audit reports are immune from the discovery process because they were compiled for the purpose of a proceeding in Parliament, namely, the submission of Audit reports to Parliament. This claim is well based because, unlike other bodies which only incidentally have their reports presented to Parliament, the Audit Office has reporting to Parliament as its essential purpose.

Another agency, which has not yet notified the Senate, intends to claim, on the same basis, in other court proceedings, immunity from discovery of briefing notes prepared for Senate estimates hearings.

## **ORDERS FOR PRODUCTION OF DOCUMENTS**

Two Senate orders for documents were met with success, documents relating to genetically modified canola and development at Nelly Bay being tabled, in response to earlier orders, on 11 and 14 November, respectively.

Two orders passed on 11 November, relating to a dam in Queensland and live animal exports, were responded to by ministerial statements on the due day, 15 November, to the effect that the documents would be produced but the government could not comply with the deadline.

An order passed on 12 November required the Australian Competition and Consumer Commission to give a progress report on its response to an order of 27 June for further information about advertising by tobacco companies.

An order for documents relating to applications by other governments for access under the General Agreement on Trade in Services, passed on 14 November, led to a statement by the government on 18 November that it could not disclose correspondence from foreign governments under the terms of negotiation, but had produced, and would continue to produce, other information about applications. This has the appearance of the kind of claim which might be accepted by the Senate. The mover of the motion, Senator Cherry, however stated that he would pursue the information by other means.

A government refusal to produce another document was met with an Opposition warning of future trouble, in the form of disruption of the government's legislative program, if the government continued its poor record of response to requirements for documents. An order of 18 November required the production of a report on oceans policy, but the government stated on the following day that the document was protected by cabinet confidentiality and would not be released at this stage. The warning was then delivered by Senator Ludwig, who referred to the number of orders for documents outstanding on the Notice Paper. The poor record to which he referred is represented by an increase in the number of government refusals to produce documents, but most orders for documents are still met with compliance.

Another order on 19 November continued the pursuit of superannuation matters arising from the collapse of HIH.

There were two instances of notices of motion for orders for documents being withdrawn when the documents were produced. The notices were withdrawn by Senator Carr on 12 November and Senator Sherry on 18 November, relating to radioactive waste and the "Living in Harmony" initiative, respectively.

## **LEGISLATION**

When a bill is referred to a committee and there is a fixed reporting date, the bill cannot be proceeded with until that date: standing order 115(3). When a committee reports before the due date, leave or a suspension of standing orders is necessary for the bill to proceed. An

instance of this occurred on 18 November with the New Business Tax System (Consolidation and Other Measures) Bill (No. 1) 2002.

The Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002 was divided into two bills on 15 November, one bill was passed and consideration of the other bill in committee of the whole was deferred. This arose from disagreement by the non-government parties with some parts of the bill. The same result could be achieved by amendments to strike out the parts of the bill not agreed to, but dividing the bill provides the option of more readily proceeding with the second bill.

The Prohibition of Human Cloning Bill was passed with amendments after lengthy consideration on 14 November, but its companion bill, the Research Involving Embryos Bill, is expected to take up a large part of the remaining legislative time of the year.

Other bills significantly amended included the Bankruptcy Legislation Amendment Bill 2002 on 15 November, the Plant Breeder's Rights Amendment Bill 2002 on 18 November and the Health Insurance Amendment (Professional Services Review and Other Matters) Bill 2002 on 18 November (the amendment of the latter took the form of a request because it expanded entitlements paid for out of a standing appropriation in an act amended by the bill).

The Workplace Relations Amendment (Genuine Bargaining) Bill 2002 was the subject of a compromise on 19 November, the government accepting most of the Senate's amendments and the Senate not insisting on two amendments.

The Members of Parliament (Life Gold Pass) Bill 2002 (see Bulletin No. 164, p. 2) was passed on 18 November without the amendment (in the form of a request) at first insisted on by the Senate. The government having insisted on disagreeing with the amendment, the Opposition was not willing to stop the reforms in the bill. The non-government parties apparently entertained some hope that the government would be obliged to give in when the bill was again debated in the House of Representatives, but the government gagged debate in the House and would not allow any reconsideration of the matter there.

The Family and Community Services Legislation Amendment (Disability Reform) Bill (No. 2) 2002 was negatived at the second reading on 19 November, indicating continued disagreement between the Senate and the government about changes to entitlements for the disabled.

## **SCRUTINY OF BILLS COMMITTEE: EXAMINATION OF AMENDMENTS**

A statement by the Chair of the Scrutiny of Bills Committee, Senator McLucas, on 19 November, indicated that the committee had agreed to re-examine, at the request of a senator, an aspect of the Research Involving Embryos Bill, relating to instruments which arguably should be subject to disallowance. The committee, however, declined the suggestion by the senator that it should examine amendments circulated but not made to the bill, keeping to its practice of not considering amendments until they are actually made. The statement also indicated that the committee is reviewing its processes for considering bills and reporting to the Senate.

## **EFFECT OF SENATE AMENDMENTS**

The effect of amendments made to legislation in the Senate often does not become apparent for some years. The current controversy about the remuneration of directors and executives of companies arises only because an amendment moved by Senator Cook and made by the Senate to the Corporations Law in 1998 required the disclosure of the emoluments of directors and leading executives of corporations.

## **PROCEDURE COMMITTEE REPORT: CHAIRS AND QUORUMS**

The Procedure Committee presented a report on 18 November recommending changes of the standing orders relating to chairs and quorums in the standing committees:

- if both the chair and deputy chair are temporarily absent from a meeting, the chair or deputy chair presiding will be able to appoint another member of the committee to temporarily take the chair (hitherto in the absence of both the chair and the deputy chair a committee wishing to meet had no option other than to remove either the chair or the deputy chair from office and elect another for a period; this provision arose from 1994 arrangements for sharing chairs proportionally among the parties)
- a participating member of a committee will count towards a quorum if there is not a majority of the committee present at a meeting
- the chair of a committee will not be obliged to suspend a meeting in the temporary absence of a quorum unless a senator draws attention to the lack of a quorum (this places committees on the same footing as the Senate itself).

These procedures were adopted on 19 November, so that they would be available for the supplementary estimates hearings occurring on 20-22 November.

Also adopted was a proposal by the committee that, during the unlimited adjournment debate on Tuesdays, senators will have the option of a second 10 minute speech when all those who wish to speak for a first time have done so.

#### **PRESIDENTIAL RULINGS: COMMITTEE REPORTS; CALL TO SPEAK**

The President made two rulings during the period. In relation to unparliamentary language included in a committee report or minority report, the President stated on 11 November that this should not occur, and all senators had a responsibility to avoid it, but, should it occur, it would not be permissible to quote that language in debate, on the long-established principle that the prohibition of offensive language in standing order 193 cannot be bypassed by quoting a document. This ruling arose from a complaint about the minority report of government members of the Select Committee on a Certain Maritime Incident.

Another ruling on 15 November reinforced the principle that the speaking list provided by the whips is not binding on the chair, and the chair allocates the call to speak in accordance with the practices of the Senate, particularly the practice of achieving balance amongst the parties.

#### **APPROPRIATIONS AND STAFFING COMMITTEE: SECURITY CHANGES**

The Appropriations and Staffing Committee reported on 18 November in favour of, and the Senate endorsed on the same day, changes to security services in Parliament House approved in principle by the President. The committee noted, however, that reorganisation would not of itself improve security services, and that it was the responsibility of the President to adopt appropriate security measures. The report by the committee is in accordance with a resolution of the Senate of 1987 which requires that the committee report on any proposed changes to the structure and responsibilities of the parliamentary departments, and that the Senate approve any such changes before they occur. The committee indicated that it would further examine other proposals relating to parliamentary administration in the report tabled by the President on 23 October 2002.

#### **COMMITTEE PROCEEDINGS REGULARISED**

There were two resolutions regularising practices of committees which were not in accordance with the standing orders. On 12 November the Joint Foreign Affairs, Defence and Trade Committee was granted a continuing exemption from standing order 33, relating to committee meetings during the sittings of the Senate, to regularise its practice of having briefings and private meetings during the sittings. The standing order limits meetings during the sittings to deliberations in private session and imposes attendance requirements for decision-making at such meetings. The President was made an *ex officio* member of the House Committee on 13 November to reflect the practice of the President presiding at

meetings of the Joint House Committee (the chair of the Senate House Committee was allocated to the Deputy President as part of the sharing of chairs arrangement in 1994).

#### **VACANCY FILLED**

Senator Santo Santoro, having been appointed by the Parliament of Queensland, was sworn in on 11 November to fill the vacancy created by the resignation of Senator Herron.

#### **ESTIMATES HEARINGS**

Three days of estimates hearings were scheduled following the sittings. These are the supplementary hearings arising from the main budget hearings in May. Under standing order 26, supplementary hearings are confined to matters notified by senators for additional examination as a result of the main hearings. Senators have adopted the practice, however, of nominating in very broad terms the matters for further examination, so that the hearings tend to become a general revisit of matters raised at the earlier hearings.

#### ***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)

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