

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

hc/pro/prob/13899

No. 168

for the sitting period 3—6 March 2003

10 March 2003

ORDERS FOR DOCUMENTS

An apparent inconsistency in the government's approach to producing and withholding documents was suggested by two responses to Senate orders for documents during the period.

On 3 March documents were produced in response to an order of 3 December last year for the documents of an interdepartmental committee inquiring into the pharmaceutical benefits scheme, including documents provided by other departments.

Also on 3 March, however, in response to an order of 5 February, the government declined to produce a document provided by the Department of Defence to the Department of Education, Science and Training in relation to the proposed national nuclear waste repository, on the basis that interdepartmental advices should not be produced. The order was repeated on 5 March with explicit reference to the advice provided by the Department of Defence, and this was again met by a statement on 6 March that such advices should not be produced. The statement also referred to the environmental impact assessment processes continuing, suggesting that something may be produced in the future.

A resolution of 4 March set out all the earlier promises made by the government to produce documents in response to the order of 16 October last year relating to the ethanol subsidy, and called for documents to be tabled by 6 March. This, however, still produced no response, although it still appears that the government intends to respond.

CONTRACTS ORDER: AUDIT REPORT

The Auditor-General's Office produced on 5 March another report relating to compliance by departments with the Senate's order for the publication of departmental contracts. The report arose from the Senate's request that the Auditor-General examine claims of confidentiality of contracts. The report indicated that there are still inappropriate claims of confidentiality, but the contracts concerned had been entered into before the agencies involved had started to make the changes required for the new accountability framework. The report suggested that

the accountability requirements for contracting needed to be better communicated within departments.

LEGISLATION: “TRIGGERS”

To the great delight of journalists, the government now has three “triggers” for a double dissolution under section 57 of the Constitution.

The Workplace Relations Amendment (Fair Dismissal) Bill was amended by the Senate on 3 March and the amendments insisted on, after the government rejected them, on 5 March. The government’s advisers seem to have radically changed their view on the requirements of section 57 for a disagreement over amendments. Having suggested some years ago that a disagreement for the purposes of section 57 was established as soon as the government had once rejected Senate amendments (see *Odgers' Australian Senate Practice*, 10th ed, p. 87), on this occasion the bill has been returned to the Senate again after the government again rejected the amendments insisted on by the Senate, a step not strictly necessary to establishing the “trigger”. This last return of the bill has not yet been reported to the Senate.

The other two “triggers” are more straightforward. The Trade Practices Amendment (Small Business Protection) Bill was negatived at the third reading on 3 March and the National Health Amendment (Pharmaceutical Benefits—Budget Measures) Bill was negatived at the second reading on 4 March.

BILLS IMPOSING TAXATION

The government’s advisers seem also not to have clarified in their own minds the question of what constitutes a bill imposing taxation under sections 54 and 55 of the Constitution since the dispute about this subject in 1993 (see *Odgers' Australian Senate Practice*, 10th ed, pp 299-303).

The Migration Legislation Amendment (Contributory Parents Migration Scheme) Bill amended regulations to impose a charge under the regulations for new classes of visas. It is not difficult to make out an argument that the bill is a bill imposing taxation. The bill, however, contained matters other than the imposition of taxation which would be amendable by the Senate. The Senate treated it as an amendable bill, but the question remained hypothetical because no amendments were made to it.

IRAQ MATTER

Various motions were considered and some passed in relation to the Iraq question on 6 March, in expectation of some developments during the coming non-sitting week. As

Senator Murray pointed out in an adjournment speech on 4 March, however, one of the monarchical elements in the Constitution is that the war-making power is conferred entirely on the executive government with no legislative approval required, unlike the situation in the United States, where resolutions of both houses of Congress are necessary for authorising the kind of military action in contemplation.

EXECUTIVE INQUIRIES

In Bulletin No. 167 the inquiry into the Whyalla plane crash was referred to as a royal commission. In fact it is an inquiry by a coroner. The discussion of the inquiry in the estimates hearings supported the point that the sub judice convention is not regarded as applying to coronial inquiries in the absence of a jury. The corresponding point about royal commissions was illustrated by a speech by Senator Marshall on the adjournment on 4 March criticising the royal commission into the building industry.

QUESTION TIME: ALLOCATION OF QUESTIONS

The allocation of questions at question time is determined by an agreed sequence of questions negotiated between the various parties and followed by the President. The only thing resembling a rule or practice of the Senate is an endorsement by the Procedure Committee in 1995 of the principle that the allocation should be as nearly as practicable proportional to the numbers of the groups in the Senate. An attempt by Senator Brown to change the agreed allocation by means of a motion which would have become an order of the Senate was not accepted on 5 March.

VACANCY FILLED

A vacancy arose and was filled during the non-sitting period, with the resignation of Senator Reid and the appointment by the Australian Capital Territory Legislative Assembly of Senator Humphries, who was sworn in on 3 March.

ADJOURNMENT DEBATE

The new procedure adopted on 19 November last year whereby senators may make a 20 minute speech on the adjournment on Tuesdays was first used on 4 March, senators seeking leave to make two 10 minute speeches consecutively.

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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