

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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LEGISLATION: REJECTED BILL RESTORED

A bill previously rejected, at the third reading, the Superannuation (Surcharge Rate Reduction) Amendment Bill 2003, was restored to the Notice Paper on 10 September at the second reading stage, and taken together with other superannuation bills relating to the government co-contribution for low income earners. This was the result of an agreement between the government and the Australian Democrats in relation to the package of bills. Taking the restored bill back to the second reading meant that any senator could speak to the second reading of all of the bills. Consideration of the bills had not concluded at the end of the sitting period, after extensive debate and amendment. (See also below, under Delegated legislation and Superannuation Committee).

Agreement was also reached on the Workplace Relations Amendment (Fair Termination) Bill 2002. On 15 September the Senate insisted on some of its amendments disagreed to by the government, did not insist on others and made further amendments to the bill, a course which was accepted by the government.

Compromise was also the order of the day, on this occasion between the opposition and the government, which allowed the Migration Amendments (Duration of Detention) Bill 2003 to pass after amendment on 8 September.

Amicable agreement on amendments, to a certain extent, also characterised proceedings on the Communications Legislation Amendment Bill (No. 1) 2002 and the Health Legislation Amendment (Private Health Insurance Reform) Bill 2003 on 9 September.

The Sex Discrimination Amendment (Pregnancy and Work) Bill 2002 was amended on 8 September to reflect recommendations of the Human Rights and Equal Opportunity Commission on that subject which the government had not accepted, but the government's disagreement with the amendments was back before the Senate at the end of the period.

Other bills significantly amended included the Australian National Training Authority Amendment Bill 2003 (the amendments relating to parliamentary reporting) on 11 September and the Taxation Laws Amendment Bill (No. 3) on 15 September.

The message on 9 September informing the Senate that the government had accepted the Senate's amendments to the Environment and Heritage package of bills ended a process which began when the bills were first considered in March 1999.

ORDERS FOR PRODUCTION OF DOCUMENTS

The dispute over the alleged "doctoring" of the report on higher education (see Bulletin No. 173, pp. 4-5) continued, via a committee hearing, with an order for documents on 9 September relating to the various stages of the report. Some documents were produced in response to the order on 15 September, but accompanied by a statement that some of the specified documents did not exist and some would not be produced because they were "internal working documents" and "policy advice". The senator pursuing the matter, Senator Carr, was not satisfied with the documents which were produced, and promised further pursuit.

An order was made on 17 September for information relating to the ship which has been unable to unload its cargo of live sheep in the Middle East. The information was refused on the following day because of "delicate negotiations", and because the production of the information would not be helpful to the sheep. The government thereby added to its steadily mounting tally of refusals of information with a new and novel excuse.

ORDER FOR CONTRACTS

The Auditor-General made a further report on 11 September on compliance with the Senate's continuing order for the publication by departments and agencies of lists of contracts. The report identified an ongoing problem with unjustified secrecy claims.

DELEGATED LEGISLATION

The Legislative Instruments Bill, which is designed to reorganise the making and control of delegated legislation, returned to the Senate after an absence of four years (see *Odgers' Australian Senate Practice*, 10th ed., p. 344). The bill was again referred to the Regulations and Ordinances Committee in advance of its receipt on 9 September. Problems with the bill have already been identified, including problems not rectified since the original 1994 bill, and a major drafting error in the disallowances provisions. (A submission by the Department of the Senate, and other submissions to the committee, have been published).

Regulations relating to superannuation were disallowed on 18 September, reflecting the preoccupation with superannuation matters during the period (see also below, under Superannuation Committee).

During debate on the Migration Legislation Amendment (Sponsorship Measures) Bill 2003 on 11 September, Senator Bartlett referred to regulations drafted in such a way as to make the disallowance of objectionable parts of them difficult (see *Odgers*, p. 350). He unsuccessfully moved an amendment to the bill to alter the effect of the regulations.

SUPERANNUATION COMMITTEE

The Select Committee on Superannuation presented what may be its last report on 10 September. The committee was first established in 1991, and with two changes of name was re-established in successive parliaments and presented reports on various aspects of superannuation. This report was notable for its unanimous rejection of certain government proposals. The report examined the regulations which were disallowed on 18 September (see above, under Delegated legislation), the government having made the regulations while the committee was still examining them in draft, a matter which led to allegations of executive high-handedness.

RESPONSE BY COMMITTEE CONSULTANTS

Consultants to the Select Committee on Medicare made a response to comments which were made about them by government senators on 21 August, and this response was presented by the chair to the committee, Senator McLucas, on 8 September. The consultants could have made a response via the Committee of Privileges under the Senate's Privilege Resolution no. 5, relating to responses by persons adversely reflected on in debate in the Senate, but the availability of that remedy does not prevent any senator presenting directly a response by such a person.

ESTIMATES HEARINGS

The supplementary estimates hearings scheduled for November were extended from two to four days on 11 September, but it was pointed out that this step reduced the already low number of sitting days scheduled for this year.

DEFERRED VOTES: SENATORS' INTERESTS

Standing order 57(3) provides that if a division is called for on Thursdays after 6.00 pm, after consideration of general business has concluded, the division is deferred until a time fixed by the Senate. (After 6.00 pm on Thursdays is devoted to debate on government documents and committee reports.) This provision was first used on 11 September, when objection was taken to a change in the resolution for the registration of senators' interests recommended by the Senators' Interests Committee. The proposal, which was eventually adopted, dispenses with the requirement for senators to declare interests during debate if those interests are already entered in the public register. Two divisions, on an amendment moved by Senators Brown and on the main question, were taken at the beginning of the following sitting day, on 15 September.

AMENDMENTS IMPOSING TAXATION

Amendments were moved on 16 September to the Customs Tariff Amendment (ACIS) Bill 2003 by Senator Brown, which would have converted a bill which did not impose taxation into a bill imposing taxation, by increasing tariffs on certain vehicles. The President stated that, although there was an argument that such amendments could be moved by way of request, the better interpretation is that they cannot be moved at all, as they would be contrary to the first paragraph of section 53 of the Constitution, whereby an impose of taxation cannot be initiated in the Senate. Senator Brown withdrew the amendments.

VOTE ALTERED BY LEAVE

It is a basic principle in the Senate that decisions are not made by misadventure, and if there is a mistake in a division which alters the result, the division is usually taken again by leave. (Normally such errors arise over pairing mistakes; see *Odgers*, p. 246.)

A variation of this procedure occurred on 17 September when the result of a vote by division was simply altered by leave without the division being taken again. This procedure was adopted because some senators who had participated in the earlier division were then not available to hold the division again.

QUESTIONS ON NOTICE

The Senate adopted on 8 September a change to the standing orders, recommended by the Procedure Committee, to ensure that the publication of the answers to questions on notice is

protected by parliamentary privilege as soon as answers are provided to the questioner, rather than when they appear in Hansard, which may be a considerable time later.

QUALIFICATION OF SENATOR

A resolution was passed on 18 September to seek advice on a matter relating to the qualification of Senator Scullion, which was originally raised in May 2002, when Senator Scullion wrote to the President advising that he had various contracts with the Commonwealth at the time of his election. Senator Brown, referring to the delay in seeking advice on the matter, which had been under consideration by party leaders, unsuccessfully moved an amendment to refer the question at once to the Court of Disputed Returns.

VISITING HEADS OF STATE

With reference to a proposed visit and address to the two Houses by the President of the United States in October, Senator Brown moved a motion on 16 September to the effect that other visiting heads of state should be similarly received. The motion was rejected, only the Greens voting for it. Presumably this means that the procedure in question is to be extended only to presidents of the United States, on the basis that it is the procedure which is adopted in Washington (see *Odgers*, p. 166).

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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