

# DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

hc/pro/prob/14138

**No. 177**

**for the sitting period 24 November — 5 December 2003**

**9 December 2003**

## **DELEGATED LEGISLATION**

The migration regulations relating to the excision of islands from the migration zone were disallowed on 24 November, immediately after they were tabled, by means of the contingent notice of motion given by the Democrats (see Bulletin No. 176, p. 3). Senator Brown had earlier in the day given notice of a motion to disallow the regulations, but then withdrew it after they had been disallowed. No leave or notice under standing order 78 was necessary for the withdrawal, because the notice was not effective.

The Legislative Instruments Bill was finally passed, almost a decade after it was first introduced. The bill was amended to take account of most of the recommendations of the Regulations and Ordinances Committee, including the abolition of the proposed procedure for the deferral of disallowance motions.

An example of scrutiny of regulations in draft occurred on 2 December with the tabling of a report by the Rural and Regional Affairs and Transport Legislation Committee on the draft Aviation Transport Security Regulations.

The Corporations Amendment Regulations 2003 and some draft regulations were referred to the Economics Legislation Committee, for consideration in conjunction with the Financial Services Reform Amendment Bill and amendments proposed to the bill, by an unusual motion, moved by the government on 27 November, modifying the resolution adopting a report of the Selection of Bills Committee. The bill was subsequently passed with amendments and notice of a motion was given to disallow part of the regulations.

## **DIRECTION FOR CONTINUATION OF ESTIMATES HEARINGS**

An order was passed on 25 November directing the Legal and Constitutional Legislation Committee to resume its estimates hearings, and directing that appropriate officers appear, for the purpose of examining the matter of the Kurdish asylum seekers and the incorrect information given by ministers about whether the Kurds had claimed asylum. The hearing duly occurred and officers were closely examined about the matter. The misinformation was put down to a mistake by officers.

## **LEGISLATION**

Unusual proceedings occurred on the Family and Community Services and Veterans' Affairs Legislation Amendment (2003 Budget and Other Measures) Bill on 25 November. A schedule was struck out of the bill by an equally divided vote, but this was a misadventure caused by the absence of one government senator. Although the bill had been read a third time, it was recommitted and the error corrected later in the day, by a procedure rather more streamlined than was used on the last such occasion in 1979.

There were two major pieces of legislation expected to be dealt with during the sittings, the higher education package and the Medicare package. The former was passed with many amendments following agreements between the government and the four independent senators, but the latter was not dealt with due to failure to reach a similar agreement. In relation to the Medicare package, the Select Committee on Medicare was re-established on 25 November to examine the government amendments proposed to be moved in the Senate. The bill was not referred to the committee, so that it would have been open to the Senate to resume consideration of the bill at any time, but this did not occur.

Amendments to the Family Assistance Legislation Amendment (Extension of Time Limits) Bill 2003, which were moved in the form of requests because they involved increased expenditure, were insisted on (pressed) on 25 November, after the government had rejected them, but the bill was not further considered.

In a series of other bills, some Senate amendments disagreed to by the government were subsequently not insisted on because of an unwillingness on the part of a majority of senators to delay the passage of beneficial legislation. This included the spam bills, designed to regulate unsolicited emails, which were the subject of extensive consideration and amendment.

The Australian Protective Service Amendment Bill (see Bulletin No. 175, p. 3), as expected, was returned with the Senate's amendments reversed by government amendments in the House, and those amendments were accepted by the Senate.

## **ENTRY AND SEARCH PROVISIONS**

The government presented its response on 27 November to the report of the Scrutiny of Bills Committee on entry and search provisions. Although accepting some recommendations of the committee, the government did not accept that uniform standards and principles should apply to these provisions. Such provisions will therefore continue to be dealt with on a piecemeal and ad hoc basis when the bills are before the Senate.

## **ORDERS FOR PRODUCTION OF DOCUMENTS**

The Australian Competition and Consumer Commission presented two further responses to Senate orders, one relating to the tobacco industry (24 November) and one relating to anticompetitive conduct in the health insurance industry (25 November).

In response to the order for documents relating to the Sepon mine, a ministerial statement was made on 25 November claiming commercial confidentiality of the material, on the basis that the Export Finance and Insurance Corporation (EFIC) could not effectively function unless information obtained from corporations remained confidential. A further order was made on 3 December narrowing the documents required to the environmental and social impacts of the mine, but a further statement on 4 December maintained the claim of commercial confidentiality for that part of the information. It was pointed out that this effectively means that EFIC is a publicly-funded body which operates in secrecy, and there were promises that the matter would be pursued.

A further discussion took place on 3 December relating to the problem of documents which, according to the government, cannot be released without the approval of state governments because they are under the aegis of the Council of Australian Governments (COAG) (see Bulletin No. 176, pp 1-2). Senator Harradine again referred to the implications for parliamentary accountability of this claim, and the Leader of the Government in the Senate, Senator Hill, gave an undertaking that the government would consider whether objections by states to the release of information should be overridden.

There were mixed results from other orders for documents. An order relating to deposit bonds on 25 November produced the response on 1 December that there was not enough time to locate all the documents, and the search would continue. Similar responses were made on 4 December in relation to orders for documents concerning the First Home Owner Grant Scheme and the Pharmaceutical Benefits Scheme. On the same day, however, further documents which had been subsequently located were produced in response to an order made in June concerning Biotech Australia.

## **PARLIAMENT AND FOREIGN POLICY**

The Foreign Affairs, Defence and Trade References Committee presented two reports recommending greater parliamentary involvement in foreign and trade policy. The first, on 27 November, relating to the proposed Australia-US free trade agreement, recommended a scheme for parliamentary involvement in trade negotiations and a new system for parliamentary voting on trade agreements. The second report, presented on 4 December, relating to the government's white paper on foreign affairs, recommended stronger parliamentary involvement in foreign policy formulation. The government has already

rejected the recommendations on the basis of the doctrine of exclusive executive control of foreign affairs.

#### **DAIRY REPORT**

The Finance and Public Administration References Committee report on the Dairy Regional Assistance Program, concerning alleged misappropriation of money from the program, drew a government response on 27 November. The response conceded that there had been problems with the program, leading Senator O'Brien, who had initiated the inquiry, to claim vindication.

#### **SELECT COMMITTEE RE-ESTABLISHED**

The Select Committee on Medicare was reappointed on 25 November and required to examine proposed government changes to the Medicare legislation (see above, under Legislation).

#### **PRIVILEGE: ALLEGED INTERFERENCE WITH WITNESS**

The Privileges Committee received a reference on 2 December on a matter raised by the Rural and Regional Affairs and Transport Legislation Committee, arising from its inquiry into Australian Wool Innovation Ltd, relating to an alleged attempt to interfere with a witness before the inquiry. Documents presented by the committee give an account of a conversation which could be interpreted as putting improper pressure on a witness.

#### **ORDER FOR CONTRACTS AMENDED**

The order for the publication on the Internet of lists of contracts was further amended on 4 December on the initiation of the Finance and Public Administration References Committee. The amendment changes the reports of the Auditor-General under the order from six-monthly to yearly in accordance with a request by the Audit Office.

#### **BILLS IN COMMITTEE**

Standing order 115 was amended on 3 December to make permanent the rule temporarily adopted in 2002 whereby a bill is not considered in committee of the whole if no amendments to the bill are circulated and if no senator requires that a committee stage occur.

#### **AUDIT REPORT ON MOPS STAFF**

An Auditor-General's report on the administration of staff employed under the Members of Parliament Staff Act was tabled on 1 December, leading to a debate on the administration of such staff and their entitlements.

## **PROPOSED SELECT COMMITTEE POSTPONED**

Senator Harris postponed on 4 December his notice of motion for the establishment of a select committee on what the notice calls the Lindeberg grievance, better known as the Heiner documents affair, relating to the shredding of documents by the Queensland government following a state inquiry into child abuse in state institutions. The link with the Senate is the claim that a Senate inquiry into whistleblowing may have been misled, an allegation already twice investigated by the Senate Privileges Committee in 1996 and 1998. It appears that Senator Harris will depend on support from the government to establish the select committee, and the Leader of the Government in the Senate gave an undertaking to consider the matter.

## **REQUEST FROM QUEENSLAND PARLIAMENT**

The President tabled on 24 November a resolution forwarded by the Queensland Legislative Assembly which, amongst other things, requests that there be an inquiry into the part played by federal politicians in the prosecution of the One Nation figures Pauline Hanson and David Ettridge. No action was taken in relation to the request.

## **PROCEDURE COMMITTEE REPORT: JOINT MEETINGS**

The Procedure Committee presented on 4 December its report on joint meetings to receive addresses by foreign heads of state (see Bulletin No. 176, p. 5). Referring to the constitutionally and procedurally anomalous character of the meetings and their consequent potential difficulties, the committee recommends that the Senate not participate in such joint meetings in the future. Given that the government is likely to continue with the practice of addresses in the House of Representatives chamber, the committee recommends that senators be invited to such occasions as guests without any formal meeting of the Senate.

## ***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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