

# DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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**No. 192**

**for the sitting period 14—23 June 2005**

**27 June 2005**

## **ESTIMATES HEARINGS**

On the first day of the sittings the President tabled statistics of answers to estimates questions on notice and a letter he wrote to the Leader of the Government in the Senate expressing concern about delays in answering those questions. This followed questioning of the President in the estimates hearings of the Finance and Public Administration Committee about failure to answer questions and what he intended to do about it (see also below, under Procedure Committee reference).

The Finance and Public Administration Committee referred to the problem in its estimates report. The committee also criticised the lack of preparedness of officers for the hearings and the taking of many questions on notice to which answers could reasonably have been expected at the hearings. The other committees presented their estimates reports and also drew attention to accountability issues, including delays in answering questions on notice, the provision of apparently confused information, and the difficulty of tracking particular programs through the current portfolio and outcomes structures. The Environment, Communications, Information Technology and the Arts Committee reiterated the principle that government agencies are obliged to account for their activities at estimates hearings. The Rural and Regional Affairs and Transport Committee referred to its decision to take on an inquiry into the operations of a government agency partly as a result of the estimates hearings.

## **OTHER COMMITTEE REPORTS**

Other significant committee reports presented during the period included that of the Foreign Affairs, Defence and Trade References Committee on 16 June on the military justice system, which was unanimous and highly critical of the existing system, and recommended the civilianisation of the handling of justice issues in the military. The Minister for Defence appears to have already rejected that major recommendation. The Rural and Regional Affairs and Transport References Committee presented a report on the Iraqi wheat debt, the

Employment, Workplace Relations and Education References Committee on student income support and indigenous education funding, the Legal and Constitutional References Committee on the Privacy Act, and the Community Affairs References Committee on aged care and cancer treatment. (See also below, under Legislation, for Legal and Constitutional Committee scrutiny of bills.)

On the presentation of a report by the Joint Committee on Treaties on 20 June, it was pointed out that the committee had repeatedly refused to deal with references by the Senate in relation to the proposal to grant immunity to US nationals from the jurisdiction of the International Criminal Court. The committee repeatedly declined to consider the reference on the basis that no such treaty exists, although the committee is empowered to consider proposals for treaties.

#### **COMMITTEE REFERENCES**

Several significant committee references were made during the period, including one to the Foreign Affairs, Defence and Trade References Committee on the matter of the treatment of the defectors from the Chinese Embassy, and one to the Legal and Constitutional References Committee on the highly controversial subject of the administration of the immigration system.

It would be possible for the government at the next sittings to reverse these references, perhaps in a disguised way in a restructuring of the committee system.

#### **UNANSWERED QUESTIONS ON NOTICE**

On 22 June Senator Allison used the procedure under standing order 74 to ask the Leader of the Government for an explanation of his failure to answer a question which she placed on the Notice Paper in November 2004, but which had originally been lodged in February 2004, and which asked when the minister would respond to a letter she had written to him on 7 April 2003. No explanation was forthcoming, however, because Senator Hill said he was misinformed about the subject matter of the request for an explanation. The letter of two years ago presumably remains unanswered.

#### **ORDERS FOR PRODUCTION OF DOCUMENTS**

Orders for production of documents met with some successes and some failures during the period.

The Australian Competition and Consumer Commission presented on 14 June its regular report on the tobacco industry under the continuing order of the Senate of 2002.

An order of 14 June for ministerial correspondence about student unions resulted in documents being produced on the following day. An order relating to pregnancy support services on 12 May produced some documents on 14 June, and a further order of 15 June produced a statement on 21 June that more time was needed to gather the required documents, indicating that cooperation would be forthcoming. Similarly, an order of 11 May on community development projects produced some documents on 14 June (presented to the President out of sittings in accordance with an undertaking on 12 May: see Bulletin No. 190, p. 2) and more on 21 June.

On the other hand, an order of 14 June relating to correspondence about a proposed Tasmanian pulp mill produced a refusal on 23 June on the ground that excessive use of resources would be required to produce the documents. An earlier order of 12 May on the same subject had been met by a refusal on 16 June on the basis that the order was a “fishing expedition”, which is not a public interest immunity ground but may have referred to the legal action between the woodchipping firm Gunns Limited and environmentalists. An order of 21 June relating to gift deductible entities also produced a statement on 23 June that resources could not be justified in fulfilling the order. An order on 20 June relating to airport security produced a perhaps predictable refusal on the same day on security grounds.

An order of 23 June requires the production to the Senate of the report of the Palmer commission of inquiry on immigration administration three days after the report is provided to the government. Given that the report is expected to be highly critical of the Immigration Department, this may be regarded as excessively optimistic.

#### **PARLIAMENTARY PRIVILEGE**

A letter was tabled on 14 June referring to information from the Audit Office to the effect that an issue of parliamentary privilege was no longer a live issue in a case involving a claim by the Audit Office that it should not be compelled to produce draft reports on the basis that they are protected by parliamentary privilege (see Bulletin No. 165, p. 1).

The Privileges Committee received a reference on 16 June relating to Senator Lightfoot’s share transactions allegedly not declared in the Register of Senators’ Interests (see Bulletin No. 190, p. 3). On this occasion the reference was not avoided by an apology by Senator Lightfoot. On 20 June Senator Hill successfully moved a motion to refer the question of the registration of share transactions to the Procedure Committee.

The Privileges Committee presented its report on 21 June in relation to unauthorised disclosure of committee materials (122<sup>nd</sup> Report). The committee recommended that individual committees be required to take greater responsibility for assessing and investigating unauthorised disclosures before matters are raised as matters of privilege. The

committee also recommended that its proposals be examined by the Procedure Committee before adoption.

## **LEGISLATION**

The Legal and Constitutional Committee had some success in having legislation amended as a result of its inquiries. Amendments arising from the work of the committee were made to the Criminal Code Amendment (Trafficking in Persons Offences) Bill, the Crimes Legislation Amendment (Telecommunications Interception and Other Measures) Bill and the Criminal Code Amendment (Suicide Related Material Offences) Bill. Similarly, an Opposition amendment to the National Security Information Legislation Amendment Bill relating to stays of proceedings was accepted by the government.

The Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill was said to have been framed in consultations between the government and the Democrats, and so also reflected input by senators. Senate amendments to the Family Law Amendment Bill, and the unusual rejection of two government amendments, were partly reversed by the government in the House of Representatives (it was a Senate bill), but there was some element of compromise in the government's amendments which were finally accepted.

Several bills were said to arise from, or to be amended in the Senate because of, drafting or other errors. This was stated to be the case in relation to the Fisheries Legislation Amendment (International Obligations and Other Matters) Bill, Tax Laws Amendment (2005 Measures Nos. 1 and 2) Bills (the former as a result of an inquiry by the Economics Legislation Committee) and the Superannuation (Consequential Amendments) Bill. The New International Tax Arrangements (Foreign-owned Branches and Other Measures) Bill was also said to fall into this category, and there were references in debate to the value of committee scrutiny in detecting errors in legislation.

In other cases compromise was not the order of the day. The Superannuation Laws Amendment (Abolition of Surcharge) Bill was negatived at the second reading and notice was given to restore it to the Notice Paper with the expectation that the government would pursue it at the next sittings. Requests for amendments to the Family and Community Services Legislation Amendment (Family Assistance and Related Measures) Bill, to extend benefits under the bill, were not pressed when the government rejected them. The government signalled non-acceptance of amendments to the Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Bill and the bill was not returned for reconsideration. Similarly, the Telecommunications Legislation Amendment (Regular Reviews and Other Measures) Bill was left over after Opposition amendments were agreed to in the Senate.

The two most controversial bills of the period ultimately had to be effectively accepted in the form insisted on by the government because they were beneficial and could not be held up. The Tax Laws Amendment (Personal Income Tax Reduction) Bill was extensively amended and the amendments insisted on, but it is obvious that the bill will pass in the next period of sittings. The Pay as You Go schedules reflecting the government's tax cuts were not disallowed, so the cuts are in effect in the system.

The Migration Amendment (Detention Arrangements) Bill, resulting from the Prime Minister's concessions to the "rebel" government backbenchers, was also amended in the Senate, but the amendments were not insisted on and the bill passed.

#### **DELEGATED LEGISLATION**

Some public service regulations were disallowed on 16 June. They were intended to replace the regulations on the use by officers of official information, which were invalidated by the Federal Court partly on the ground that they were far broader than the valid purpose for which they were intended. The new regulations were disallowed on the ground that they were still too broadly drafted and did not overcome the problem detected by the court.

A disallowance motion was unsuccessful on 22 June in relation to a building industry compliance code. The notice was given for the last possible day for moving, and the instrument, thanks to an amendment made to the relevant legislation in the Senate, could not commence until the disallowance period had passed. It was suspected that there was a manoeuvre afoot to have the instrument disallowed by default by the disallowance notice not being resolved after 15 sitting days, but the notice was brought on as part of a special rearrangement of business and dealt with.

The Regulations and Ordinances Committee presented on 23 June its regular report on the work of the committee, leading to a reference in debate to the value of the committee's scrutiny of delegated legislation. The volume of instruments scrutinised has been increased by the Legislative Instruments Act which came into effect at the beginning of this year and which subjected more instruments to disallowance and therefore to the scrutiny of the committee.

#### **PROCEDURE COMMITTEE REFERENCE**

Two suggested changes to procedures were referred to the Procedure Committee on 23 June. They would apply to outstanding estimates questions on notice and unmet orders for the production of documents the procedures relating to unanswered questions on notice under standing order 74 (see also above, under Estimates hearings).

As these changes would amount to two new accountability measures, their chances of adoption in the next sittings are not regarded as high.

#### **ACCOUNTABILITY REPORT**

The mixed bag of success and failure on orders for documents and amendments to legislation could be regarded as a sign of a transitional period: in the next sittings will the government simply refuse to accept any requests for documents or amendments to legislation?

Similarly, the pattern of late response, or non-response, to estimates questions on notice has been regarded by some as a sign of things to come.

On the other hand, the unanimous estimates and other committee reports on accountability issues give some hope that such issues will at least continue to be raised.

#### ***SENATE DAILY SUMMARY***

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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