

# DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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**No. 195**

**for the sitting period 4—13 October 2005**

**14 October 2005**

## **TIME OF MEETING**

Before the sittings began on 4 October it was announced that the Prime Minister had dispensed with the first week of sittings of the House of Representatives. This could not occur with the Senate, which has fixed its times of meeting by resolution for the remainder of the year. Where the adjournment resolution empowers the President to fix a time of meeting, by convention he may fix a time of meeting at the request of the government to facilitate the consideration of government legislation. Otherwise the Senate meets in accordance with its own resolution or at the request of an absolute majority of senators under standing order 55. The Senate therefore duly met on 4 October.

## **REFUSAL TO PROVIDE DOCUMENTS**

A report by the Finance and Public Administration References Committee on the matter of works on the Gallipoli Peninsula, presented on 13 October, included advices provided to the committee on the refusal of the government to provide relevant legal advices supplied to the government. This material discloses an apparent very large expansion of the grounds for refusal to provide such documents. At first the Department of Foreign Affairs and Trade attempted to argue that the documents could not be provided because Senate standing order 73 prohibits the asking of questions seeking legal opinions at question time. It was pointed out that this has nothing to do with the provision of documents to committees, that legal advices to government have often been provided in the past, and that refusals to provide documents should be based on a ministerial claim of public interest immunity on specified grounds. The department then stated that the minister had refused to provide the material because of "a longstanding practice accepted by successive Australian governments not to disclose legal advice which has been provided to government, unless there are compelling reasons to do so in a particular case". It was pointed out that this "longstanding practice" had in fact never been advanced before, and would have prevented most of the cases of disclosure

of legal advice which had occurred in the past. The response to this was simply a reassertion of the "longstanding practice".

It is not clear whether this is a deliberate new declaration of government policy in relation to legal advices, or simply a one-off aberration. It will no doubt be referred to on the next occasion on which government voluntarily discloses its legal advice to support some argument it is putting forward.

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

The procedure under standing order 74 to allow a senator to seek an explanation of the failure to answer questions on notice is very little used. On any sitting day there are likely to be hundreds of questions outstanding for thirty days or more, but the procedure is invoked very rarely.

Senator Allison has perhaps the most interesting unanswered question on notice, No. 29. In April 2003 she wrote a letter to the Leader of the Government in the Senate, Senator Hill. When the letter remained unanswered in 2004 she placed a question on notice, asking when the minister would respond to the letter. The question was renewed after the general election of 2004. She has now twice referred to the question when seeking explanations under standing order 74, but on each occasion has not been provided with either an answer to the letter or an answer to the question.

#### **QUESTION TIME**

Following disputes about the relevance of ministers' answers to questions, reference was made on 11 October to past rulings and a report by the Procedure Committee on the subject. This drew attention to the very stringent requirements of relevance imposed by past rulings, requirements which are now seldom met.

#### **STANDING APPROPRIATIONS**

The fact that 80 percent of all government expenditure is now authorised by standing appropriations which thereby escape parliamentary control has been taken up by Senator Murray. He referred to yet another standing appropriation in the asbestos claims bills on 10 October and to the general proliferation of these appropriations. The Scrutiny of Bills Committee has also drawn attention to the matter. (See also Audit Report No. 15 of 2004-05 and the published submission to the Finance and Public Administration References Committee headed Government advertising—funding and the financial system, dated 5 August 2005).

## **COMMITTEE INQUIRIES**

Some non-government initiatives for committee inquiries were rejected by the government during the period, including one relating to industrial relations moved by Senator Fielding and negatived on equally divided votes on 6 October. This provides an indication that such references will not be allowed in future, a situation perhaps reinforced by some reports on matters giving rise to criticism of government, particularly the Finance and Public Administration References Committee's report on the regional partnership program on 6 October and its report on the Gallipoli Peninsula on 13 October.

There seems to be, however, a residual respect for the practice that complex bills should be scrutinised by Senate committees. An Opposition motion on 12 October to refer the forthcoming industrial relations legislation to a committee was met by a government amendment to allow the reference with a restricted scope and less time for inquiry (approximately three weeks).

A government motion to refer forthcoming anti-terrorist legislation to a committee for a one-week inquiry, moved by leave on the last day of sittings, was not, however, met with gratitude. The motion was moved after 4.30 pm, so that no division could take place (if a division is called for after that time on a Thursday, the matter is adjourned until the next day of sitting). The government was accused of moving the motion at that time either by mismanagement or in order to avoid a division on any amendment. An amendment was moved, a division called, as a result of which the whole matter was adjourned until the next day of sitting, which is one day before the committee's reporting time under the government motion.

## **LEGISLATION**

The focus of attention during the period was on the Trade Practices Bill. As was widely expected, Senator Joyce "crossed the floor" on 11 October to amend the bill by striking out a set of provisions. His vote resulted in equally divided votes on the question that the provisions be agreed to. Government amendments were also made to the bill. Senator Joyce had earlier voted for a motion by Senator Fielding to divide the bill, but that motion required a majority to be carried and was therefore negatived on equally divided votes.

Opposition amendments to the Intelligence Services Amendment Bill, based on the recommendations of a joint committee, were rejected by the government on 5 October, providing an indication that non-government amendments of any kind are not likely to be accepted.

A more conciliatory approach may have been attributed to the amendment by the government on 10 October of its motion to exempt several bills from the deadline under standing order

111, to reduce the list of bills to be exempted. There was no chance, however, of the bills being considered before the end of the period of sittings, as a new period of sittings within the meaning of standing order 111 will begin on 7 November after the week of estimates hearings.

The Democrats again moved their amendment to provide for the disclosures of government expenditure on advertising, which was again rejected by the government. They obviously intend to move this amendment to every bill providing an opportunity to do so.

#### **LENGTH OF DEBATES**

A perhaps unintended consequence of government resistance to all non-government initiatives is that debates on matters such as proposed references to committees are lengthening. The number of urgency motions and matters of public importance has increased. On two days during the period two proposals were simultaneously lodged, requiring ballots to decide which proposal would be reported to the Senate. The result of these developments is that a smaller percentage of Senate time is spent on government business.

#### **PRIVILEGES COMMITTEE: DECLARATION OF INTERESTS**

The Privileges Committee presented on 5 October its report on failures by Senator Lightfoot to declare his share tradings in the register of interests. The committee found that Senator Lightfoot had failed to comply with the requirements for the declaration of interests, but had not done so knowingly, which is the condition required by the resolution of the Senate for a contempt to be found.

#### **AUDIT REPORT: GOVERNMENT CONTRACTS**

An Audit Office report on compliance with the Senate's order for the disclosure of details of government contracts was presented on 5 October. The report found continuing inappropriate claims of confidentiality for contracts and a continuing need for departments to improve their awareness of, and compliance with, the Senate order.

#### **ORDERS FOR DOCUMENTS**

The chances of orders for documents being passed in the future must be rated very low. A proposed order relating to voluntary student unionism was rejected by the government on 11 October.

#### **PROCEDURE COMMITTEE REPORT**

In a report presented on 5 October the Procedure Committee recommended a resolution authorising the storage of original tabled documents outside the building, and a resolution

giving further guidance to committees on how they are to deal with cases of unauthorised disclosures of their unpublished documents. Both resolutions were adopted by the Senate on 6 October.

#### **UNUSED STANDING ORDER**

Senator Conroy attempted on 12 October to use standing order 205 as the vehicle for raising allegations of attempted improper influence of Senator Joyce in relation to his votes in the Senate. Standing order 205 declares that the Senate may intervene to prevent the prosecution of quarrels between senators arising out of debates or proceedings of the Senate or of a committee. The standing order has never been formally invoked. Action taken under the standing order might consist of, for example, an order by the Senate that quarrelling senators refrain from particular behaviour, or perhaps an order to prohibit the fighting of a duel. The President indicated that he would investigate Senator Conroy's allegations and report to the Senate.

#### **ACCOUNTABILITY REPORT**

The willingness of the government to countenance the referral of bills to committees, whatever the restricted basis of the reference, might be taken to be a positive sign for accountability.

The refusal of the documents to the Finance and Public Administration References Committee might indicate an enormous expansion for the grounds for such refusals.

Committee inquiries in the future are likely to be limited in relation to politically controversial matters.

Orders for documents may well be foreclosed for the duration of this Parliament.

#### ***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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