

# DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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## **STIMULUS PACKAGE: BICAMERALISM RECALLED**

The two sitting weeks, originally intended to be only one sitting week and one week of estimates hearings, were dominated by the government's \$42 billion economic stimulus package of legislation, whereby the government is attempting to cope with the global economic crisis.

The government wanted the legislation passed at once, but on 5 February all non-government parties in the Senate combined to refer the package to the Finance and Public Administration and Community Affairs Committees for hearings, before the bills were received by the Senate. The sittings were extended for a week and the estimates hearings put off until the week beginning 23 February. The second sitting week was then disturbed by observances occasioned by the Victorian bushfires. The committees, however, held hearings at which the Secretary of the Treasury, other officials, economists and other witnesses were heard, and presented reports on 10 February. The bills were rushed through the House of Representatives to provide the maximum time for their consideration in the Senate. The Opposition having decided to vote against the package as a whole, the government had to secure the support of the Greens and Senators Fielding and Xenophon to have the bills passed, and all of those senators were critical of aspects of the package. Amendments were made to two of the bills in relation to tax bonuses to be paid to taxpayers, in an attempt to secure the necessary support. The Greens and Senator Fielding secured sufficient undertakings from the government to enable them to vote for the bills, but Senator Xenophon was not satisfied in relation to expenditure on the Murray Darling Basin and as a result the bills were negatived at the third reading on 12 February.

New bills, incorporating the amendments made in the Senate, were rushed through the House of Representatives overnight while further negotiations were undertaken (the government

could have sought to revive the original bills and resume consideration of them at any stage). Further undertakings given to Senators Fielding and Xenophon having secured the necessary support, the bills were finally passed on 13 February.

In the course of debate, it was claimed by non-government senators that the government had not understood the process of taking legislation through the Senate. This is a complaint which has frequently been made over many years by senators about their House of Representatives colleagues. The episode of these bills, it was also said in debate, should provide a reminder of Senate processes.

### **OTHER LEGISLATION**

The Tax Laws Amendment (Political Contributions and Gifts) Bill 2008 was amended on the motion of the Greens on 3 February to preserve the tax deductibility of political donations from individuals as distinct from those from corporations, a major policy change to the government's bill. The government subsequently shelved the bill in the House of Representatives.

The Social Security Legislation Amendment (Employment Services Reform) Bill was revived and the question for the second reading put again on 4 February, the bill having been negatived in December 2008. The government accepted amendments moved by the Greens, and in doing so also acknowledged the work of the Education, Employment and Workplace Relations Committee on the bill.

The package of bills to impose a levy on the horse industries to pay for future disease outbreaks was negatived at the third reading on 4 February. The Opposition and Senators Fielding and Xenophon were not satisfied with responses given by the government at the committee stage of the bill.

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

For some time some departments, especially the Treasury, have been attempting to use as an excuse for not producing information to the Senate and its committees the statement that the information is "not published" or "not publicly available". It has frequently been pointed out that this is a nonsense excuse, as by definition inquiries by the Senate and its committees are in pursuit of unpublished information, and there would be little point in inquiries asking for information already published. An order for documents passed on 4 February included a provision repudiating this excuse. The order followed the refusal by government to disclose information about collections from the tax on "alcopops", which was levied the 2008 budget. The order required the production of the relevant figures. Some information was produced on 5 February, but there is more to come. Time is running out to pass the legislation, only recently introduced, to validate the tax (see Bulletin No. 221, p. 1), and if the legislation is not

passed by the Senate, a result that appears possible, the government will be left with a difficult decision as to what to do with the large amount of revenue illegally collected. The Community Affairs Committee was given on 12 February a wide-ranging reference on the tax, with a reporting date before the deadline for dealing with the legislation.

The Select Committee on Fuel and Energy has been pursuing information on the Treasury modelling used for the government's Carbon Pollution Reduction Scheme. The information having been refused to the committee, on 4 February an order for the information was passed in the Senate. A statement by the government on 5 February claimed commercial confidentiality as a reason for refusing the information, stating that "commercial harm" would be done by disclosure. This statement did not fulfil the requirements of the order of the Senate of 30 October 2003 relating to claims of commercial confidentiality; that order indicates that the nature of the commercial harm that is claimed should be specified. On 11 February the government made a further statement, indicating that the information required was of commercial value to Treasury's consultants, and that disclosure of the information would undermine that commercial value. The select committee responded to this statement with a proposed order for documents of an unusual nature. The proposed order would have required the information to be produced to the select committee and its consultant on a confidential basis. There are several precedents in the Senate for this kind of order, but the proposed order would also have authorised the committee to make the information available to other consultants appointed by party leaders or independent senators, also on a confidential basis, and would have allowed the committee to refer to the information in the committee's report. This proposal was rejected by the Senate on 12 February so that, in effect, the government's claim of commercial confidentiality, as further expounded, was successful.

An order was passed on 4 February in relation to the government's National Broadband Network contracting process. An amendment to the order passed on the motion of Senator Fielding provides that the information is not required to be produced until after the tender process for the network is completed.

The orders passed in 2008 for the production of information about government appointments and grants have joined the orders about government contracts and departmental files as established accountability mechanisms, with returns to the orders now flowing in regularly.

The Australian Competition and Consumer Commission is still faithfully presenting regular reports on anti-competitive practices in the health insurance field, in accordance with an order passed in 2002, the latest report being presented on 11 February.

## **OTHER COMMITTEE REFERENCES**

The Legal and Constitutional Affairs Committee received a major reference on 5 February on all aspects of the judicial system, ranging from the appointment of judges to the adequacy of legal aid. The committee has only until 25 June to report on this reference.

## **PRIVILEGES COMMITTEE**

The Privileges Committee presented on 10 February two reports containing responses by persons to statements made about them in the Senate. The responses were by persons connected with two organisations, the Exclusive Brethren and the Lone Fathers Association. In relation to the Exclusive Brethren, the committee indicated that there may be limits to the extent to which it will accept responses by persons representing organisations to remarks made about those organisations.

## **PROCEDURE COMMITTEE**

The Procedure Committee presented a report on 12 February indicating that it is still considering the new rules for question time, which have been renewed on a trial basis for 2009, and is also considering whether any changes should be made to the membership of the legislative and general purpose standing committees, although it did not agree to a proposal referred to the committee on the motion of Senator Bob Brown. The committee recommended that four temporary orders relating to changes in procedure be adopted as amendments of the standing orders, relating to:

- no questions to chairs of committees or senators other than ministers at question time
- temporary appointment of substitute members of committees
- adjournment debate on Tuesdays – choice of senators to make a twenty minute speech
- no divisions on Thursdays after 4.30 pm (as against 6.00 pm in the standing order).

## **VACANCY**

Two places in the Senate were unoccupied for the whole of the period, following the resignation of Senator Ellison and the unfortunate long-term absence of Senator Adams due to illness. Due to the sanctity of the pairing process, such occurrences do not affect voting in the chamber. As the Western Australian Parliament is neither prorogued nor sitting (see *Odgers' Australian Senate Practice*, 12<sup>th</sup> ed., 2008, pp 105-8) Senator Ellison will not be replaced until March.

## **RELATED RESOURCES**

The *Dynamic Red* records proceedings in the Senate as they happen each day.

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, these documents may be reached through the Senate home page at [www.aph.gov.au/senate](http://www.aph.gov.au/senate)

Inquiries: Clerk's Office  
(02) 6277 3364