

Procedural Information Bulletin No. 10

For the sitting period 26 November to 6 December

INTRODUCTION

The last two weeks of the 1985 sittings contained many items of great procedural and institutional interest, and this bulletin will cover only the most important.

The Senate sat for the whole two weeks in the absence of Mr President, and a resolution was passed on the first day to allow the Deputy-President to take the Chair each day and to act for the President in respect of committees of which the President is a member.

INDEPENDENCE OF THE HOUSES

A previous bulletin referred to the report of Estimates Committee A, which noted a number of developments relating to the control by the Houses of their own finance and staffing, and recommended that the Senate pass the following resolution:

That the estimates of expenditure for the Senate to be included in the Appropriation (Parliamentary Departments) Bill shall be those determined by the Standing Committee on Appropriations and Staffing.

Following the Senate's consideration of the Appropriation (Parliamentary Departments) Bill on 2 December, the following resolution was agreed to, on the motion of the Chairman of the Committee, Senator Richardson:

That —

- a) the provisions of the Resolution of the Senate of 25 March 1982, relating to the responsibilities of the Standing Committee on Appropriations and Staffing with respect to the estimates for the Senate, are re-affirmed;
- b) the estimates of expenditure for the Senate to be included in the Appropriation (Parliamentary Departments) Bill shall continue to be

those determined by the Standing Committee on Appropriations and Staffing;

- c) if before the introduction of the Bill the Minister for Finance should, for any reason, wish to vary the details of the estimates determined by the Committee, he should consult with the President of the Senate with a view to obtaining the agreement of the Committee to any variation;
- d) in the event of agreement not being reached between the President and the Minister, the Leader of the Government in the Senate, as a member of the Appropriations and Staffing Committee, should be consulted;
- e) the Senate acknowledges that in considering any request from the Minister for Finance the Committee and the Senate would take into consideration the relevant expenditure and staffing policies of the Government of the day; and
- f) in turn the Senate expects the Government of the day to take into consideration the role and responsibilities of the Senate, which are not those of the Executive Government and which may at times involve conflict with the Executive Government.

It is expected that this resolution, which stresses cooperation and consultation between the Executive Government and the Senate as well as the autonomy of the Senate, will govern the financial relationship between the Government and the Senate in the future.

APPROPRIATION BILLS

The annual appropriation Bills for the executive departments were passed on 27 November after considerable discussion in Committee of the Whole.

As one result of the consideration of Appropriation Bill (No. 1), the Finance and Government Operations Committee was given a reference relating to the disposal of certain property.

BILLS AMENDED

A number of Bills were amended by the Senate during the two weeks.

The Veterans' Entitlements Bill, which is intended to consolidate and replace the provisions in the Repatriation Act and related Acts, was extensively amended by the Senate on 28 November. A number of requests for amendments were also made; the amendments which were the subject of the requests would have had the effect of directly increasing the appropriation made by the Bill. Some of the amendments and requests related to entitlements under the Bill, some sprang from comments by the

Scrutiny of Bills Committee concerning parliamentary control over determinations to be made under the Bill and rights of review, one related to an undertaking given to the Regulations and Ordinances Committee in relation to similar provisions in delegated legislation, and one group of amendments was intended to apply the provisions of the Bill to serving members of the Defence Force.

In accordance with its procedures, the House of Representatives did not consider the amendments until it had dealt with the requests, which it declined. On 29 November the Senate resolved to press its requests, and the Bill was not passed by the end of the sittings. On 5 December a Bill was passed to extend the "sunset clause" which the Senate had inserted in the amending Bill in May. Press reports indicated that the agreement to pass this Bill may be based on an undertaking by the Government to accept some of the amendments and requests.

The Public Service and Statutory Authorities Amendment Bill (a Bill introduced in the Senate) was amended on 28 November, one of the amendments providing a requirement for executive departments to report annually to Parliament and listing a number of matters to be included in the reports. In the House of Representatives the Government amended the Bill to remove the list of matters contained in the Senate amendments, and suggested instead a provision to the effect that the contents of the reports be governed by guidelines determined by the Prime Minister. The House of Representatives amendment was not considered until 5 December, after the House of Representatives had risen, and the Senate accepted the amendment subject to a ministerial undertaking that the Act will be amended in the next period of sittings to provide for consultation with the Parliament in relation to the guidelines. Unfortunately, due to an oversight, the Government amendment applies the new reporting provisions to the parliamentary departments, so that the Public Service Act as amended by the Bill will contain two contradictory provisions for reporting by those departments. This was drawn to the attention of the Government, and it is expected that it will be remedied in the amending Bill next year.

There is an increasing tendency for the Government to put forward in the Senate amendments to Government Bills which are not in fact Government amendments but suggestions which have been made by the non-government parties and taken up by the Government. Examples of these were Government amendments to the sales tax package of Bills on 29 November. Those amendments related to the exemption of certain items from sales tax and had originally been circulated by the Australian Democrats.

The Overseas Students Charge Bill was amended on 29 November, the Government accepting certain amendments moved by the Opposition. Although this Bill is marked by the draftsman as a Bill imposing taxation, it has always been regarded in the Senate as a Bill imposing a fee for a service and therefore amendable by the Senate. The amendments were accepted in the House of Representatives.

The Broadcasting and Television Legislation Amendment Bill was amended on 29 November. One of the amendments, moved by the Opposition, removed from the Broadcasting and Television Act the prohibition on the dramatisation of political matter.

The Judiciary Amendment Bill was amended on 6 December, on the motion of the Opposition, to preserve the right of a judge to determine whether a defendant should be granted assistance. The amendment inserted a provision allowing the Attorney-General to refer a report by a judge to legal aid agencies.

REGULATIONS AND ORDINANCES COMMITTEE: DISALLOWANCE OF AN ORDINANCE

On 28 November the New South Wales Acts Application Ordinance of the Australian Capital Territory was disallowed as a result of a notice of motion given by the Chairman of the Regulations and Ordinances Committee. This is the first occasion since 1971 of a piece of delegated legislation being disallowed on the initiation of the Committee. The reason for this is that usually the Committee receives undertakings from Ministers to amend regulations and ordinances and refrains from recommending disallowance on the basis of those undertakings.

In this case the ordinance was disallowed not because the motion moved by the Chairman was agreed to, but because the notice of motion had not been resolved at the end of 15 sitting days after it was given, and the ordinance was deemed to be disallowed pursuant to the provisions of the Seat of Government Administration Act. This is also the first occasion of delegated legislation being disallowed in the Senate by the expiration of the statutory period for disposing of a notice of motion.

On 5 December the Committee presented its report explaining the circumstances. The ordinance amended certain specified New South Wales statutes applying in the Territory, and provided that all other New South Wales Acts applying in the Territory ceased to apply by force of the ordinance. The Acts so repealed" in the Territory were not specified in the ordinance; it is believed that there were over 100 of them, and in the case of some Acts it was not clear whether they applied in the Territory. The Committee considered that the Acts "repealed" by the ordinance should have been specified in the ordinance, not only to show what statutory provisions were being removed, but to give each House of the Parliament the opportunity to prevent, through the disallowance power, the cessation of any particular Act which it wished to preserve. It would have been possible for the Government to accede to the Committee's wish by means of a new ordinance, but by the last day for resolving the Chairman's notice of motion no undertaking had been received from the Attorney-General, and so the ordinance was disallowed.

Some years ago disallowance provisions in relevant statutes were amended, on the recommendation of the Committee, to ensure that disallowance would have the effect of reviving laws repealed by the disallowed legislation, but the relevant amendment of the Seat of Government Administration Act was so worded that it does not apply to New South Wales laws in force in the Territory. As a result of this, it is not clear whether the disallowance of the ordinance has the effect of reviving the New South Wales laws "repealed" by the ordinance. Some further legislative action may have to be taken in relation to this matter, in accordance with a recommendation by the Committee.

The Regulations and Ordinances Committee considered many other important provisions in delegated legislation, and received undertakings from Ministers to make amendments. Those matters included the service of summonses under the National Crimes Authority Act, the issue of search warrants by telephone, and the right to trial by jury in the ACT. In relation to these three matters the Committee insisted that service of summonses other than by the normal methods of service should be authorised only by a judge, that only a judge should have the power to issue a search warrant by telephone and that defendants should have the right to trial by jury in all criminal cases. Of particular interest was an ordinance relating to blood donations in the ACT. This ordinance gave the Commonwealth immunity from suit in relation to the contraction of AIDS by blood transfusion where the relevant authorities had properly conducted relevant tests. The ordinance was so drafted that it could have been interpreted as providing complete immunity even in cases of negligence by the relevant authorities. The Minister agreed to amend the ordinance to ensure that there would be no immunity in cases of negligence, and to insert a "sunset clause" to ensure review of the operation of the provisions. Amendments to achieve these purposes were made to similar provisions in the Veterans' Entitlements Bill.

SECOND READING AMENDMENTS TO BILLS TAKEN TOGETHER

On two occasions different second reading amendments were moved to individual Bills included in groups of Bills which were being taken together pursuant to a suspension of Standing Orders (States grants education package of Bills, 3 December, and taxation package, 4 December). In each case the questions for the second readings of the Bills concerned were put separately and the amendments thereby determined separately, without any further resolution or leave being granted. The view is taken that the suspension of Standing Orders to enable the various stages of Bills to be taken together does not prevent the questions for the second and third readings of individual Bills being put separately, and the questions ought to be put separately whenever any senator so requires. In Committee of the Whole Bills are considered separately when amendments are moved or particular clauses opposed.

NEW JOINT COMMITTEE

The Senate agreed on 29 November to a proposal from the House of Representatives for the establishment of a joint select committee on the proposed national identity card. The Senate Department is to administer the committee and to provide its staff. This will mean that the Senate Department will be staffing three select committees of its own and three joint committees, in addition to the Senate standing committees.

COMMITTEE REPORTS

The Joint Committee on the New Parliament House presented a report on the precincts of the new Parliament House on 28 November.

The Committee has recommended that legislation be passed to delineate the precincts of the new Parliament House for the purpose of making particular statutory provisions in relation to the precincts. The Committee is not under the illusion, which confuses a great many people, that the parliamentary precincts have any special status in law or that the ordinary law does not apply in the precincts.

The Committee considers, however, that a statute is necessary to delineate the precincts and to make it clear beyond any doubt

that the Presiding Officers have the management and control of the buildings in the precincts on behalf of the Parliament and on behalf of the Commonwealth;

that the police are obliged to remove persons from the precincts at the direction of the Presiding Officers;

that the Crown should initiate prosecutions at the request of the Presiding Officers for any offences committed in the precincts; and

that particular laws apply in the precincts where there is some doubt as to their application.

The Committee has recommended that the whole of the area enclosed by Capital Circle be the parliamentary precincts.

Other Committee reports presented during the period were

Date tabled	Committee	Title
05.12.85	National Resources	Resources of Antarctica

06.12.85	Education and the Arts	Annual Reports and Secondary Colleges in the ACT
06.12.85	Constitutional and Legal Affairs	In vitro Fertilisation and the Status of Children
06.12.85	Finance and Government Operations	Presentation of Appropriations and Departmental Explanatory Notes
29.11.85	Animal Welfare	Whales and Dolphins in Captivity
06.12.85	Volatile Substances	Final Report

EXTENDED SITTINGS?

A number of persons acquainted with the operations of the Houses have been heard to observe in recent times that it will be impossible for the Houses to transact their business properly in the future unless the volume of business is reduced or the sitting times extended. Some have suggested that the Houses should sit on a greater number of days per year.

On 6 December Senator Chipp gave notice of a motion to the effect that the Houses should sit from mid-February to mid-July and from mid-August to mid-December (i.e., the winter long adjournment should be considerably reduced).