

## Procedural Information Bulletin No. 30

*For the sitting period 16 to 25 February 1988*

### NEW SENATOR CHOSEN

The first day of the 1988 sittings was notable for a joint sitting of the two Houses to choose a senator to take the vacant place of Senator Ryan, who had resigned as a senator for the Australian Capital Territory during the adjournment. This is the method of choosing an ACT senator prescribed by the Commonwealth Electoral Act. The rationale of this provision, no doubt, is that the two Houses are the effective legislature of the Territory.

Under the Act, the Governor-General convenes a joint sitting, but it is necessary for each House to agree to rules for the conduct of the joint sitting. The Houses had also to determine the place of the joint sitting, as the Governor-General's instrument nominated only Parliament House. This was done, and the rules adopted, in the course of the normal sitting on Tuesday 16 February, the joint sitting was held at 8.00 pm and the new senator sworn when the sitting of the Senate resumed after the joint sitting.

### QUALIFICATION OF A SENATOR

The President tabled on the first day correspondence he had received indicating that it had been discovered that Senator Robert Wood was not an Australian citizen at the time of his election. There was some speculation that the Senate might use its power under section 47 of the Constitution to determine whether there was a vacancy in the place to which Senator Wood was elected, but in the event the Government moved a motion, which was carried, to refer the matter to the High Court sitting as the Court of Disputed Returns, as provided by the Commonwealth Electoral Act. The questions referred to the Court ask whether there is a vacancy in the Senate in consequence of Senator Wood's situation, and how the vacancy may be filled. In a similar case in 1907 a vacancy was filled by a by-election, but it is by no means clear that the Court will resort to the same method, given the changes since then to the electoral system and the constitutional method of filling casual vacancies.

## CENSURE MOTIONS

The first day also saw the unusual step of a censure motion being moved in the middle of question time. The Minister for Justice, Senator Tate, having answered a question and tabled some papers referring to other answers he had given in the Senate, Senator Lewis by leave moved a censure motion relating to those answers.

When debate of the censure motion concluded, question time was resumed. It would have been open to the Leader of the Government in the Senate to terminate question time by asking that further questions be placed on notice, but it also would have been open to the Opposition to take steps to continue question time.

On 24 February a censure motion was moved by means of a motion for the suspension of standing orders to allow the moving of the censure motion in accordance with a notice which had been given earlier. The motion for the suspension of standing orders was agreed to without division. The censure motion related to the matter of the release of information by the Minister for Community Services and Health.

## COMPULSORY RESPONSES TO QUESTIONS?

Senator Macklin gave notice on 16 February of a motion which, if passed, would provide that a minister would have to answer a question on notice within thirty days or provide an explanation of failure to answer the question within that period. The sanction against failure to provide an explanation would be the ability of a senator to move a motion without notice in relation to the matter.

## ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) AMENDMENT BILL 1987

On motion of a minister, the further consideration of this Bill was made an order of the day on 18 February. The Bill was referred to the Standing Committee on Legal and Constitutional Affairs by means of a second reading amendment. Because such an amendment removes the motion for the second reading, the Bill disappears from the notice paper, and it is necessary to provide for any further consideration. The order of the day having been placed on the notice paper, when it is called on a Minister is able to move again the motion for the second reading.

## PROCEDURE COMMITTEE REPORTS

Two reports of the Procedure Committee presented in the last period of sittings were debated on 19 February. A new standing order 362 was adopted to make it clear that

the Senate authorises the publication of every paper laid before it. There has always been doubt about the privilege attaching to the publication of a tabled paper in the absence of explicit authorisation to publish, and the new standing order removes that doubt.

The other recommendation of the Committee, however, met with some resistance in debate and has not yet been adopted. This is a recommendation for a special speaking time limit and total time limit on a motion for the suspension of Standing Orders.

## BILL AMENDED

The Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Bill was the subject of extensive consideration in committee of the whole over several days. On 24 February two clauses, relating to the powers of judicial registrars, were recommitted and postponed. The recommitment was done by leave, as the opportunity to recommit clauses by motion does not arise until the conclusion of the committee stage. Non-government amendments, relating to ceilings on property matters to be considered by magistrates and the wearing of robes by Family Court judges, were made to the Bill on 25 February. The first amendment was the occasion of an amendment moved by the Democrats to an amendment moved by Senator Durack to an amendment moved by Senator Tate, and was dealt with according to the new simplified rules relating to the putting of amendments.

## TABLING OF PAPERS

On 24 February the President made a statement on the interpretation of standing orders 363 and 364, which relate to the tabling of papers by private senators and ministers, respectively. The standing orders contemplate motions being moved for the presentation of papers, but the practice has grown up of senators requesting that papers be tabled instead of moving motions. In the case of private senators, this leads to a difficulty because such senators may table papers only by leave. The President suggested that the standing orders be correctly followed and motions moved in future.

## PRIVILEGE RESOLUTIONS

The resolutions which were tabled in draft form by the Manager of Government Business, Senator Evans, in March 1987, and which were designed to carry out the remaining recommendations of the Joint Select Committee on Parliamentary Privilege, subject to some modifications, were passed on 25 February. Amendments

to the resolutions were made on the motion of Senator Durack in relation to proposed provisions for the reimbursement of witnesses' expenses and provisions relating to an opportunity for reply by persons aggrieved by remarks made about them in the Senate. There was some opposition to the latter and a division was taken on it. The resolutions are now part of the procedures of the Senate, and the first resolution is particularly important in that it obliges all Senate committees to follow certain procedures in their dealings with witnesses.

## DISCHARGE OF GOVERNMENT PAPERS

An unusual motion was moved on 25 February in relation to the consideration of orders of the day concerning government papers under general business. There were a large number of such orders of the day on the notice paper, and the motion, moved by a minister, provided for the orders of the day to be called on in a particular order and for orders to be discharged where no senator wished to speak to them.

## COMMITTEE MATTERS

The Select Committee on the Education of Gifted and Talented Children was granted an extension of time to report on 16 February.

On the following day the Standing Committee on Legal and Constitutional Affairs presented its report on matters relating to the War Crimes Amendment Bill 1987. This was an unusual reference, in that the Bill was not referred to the Committee, but a motion was passed to refer certain matters relating to the Bill, and the second reading of the Bill remained an order of the day on the Notice Paper while the Committee conducted its inquiry.

## RETIREMENT OF THE CLERK

In accordance with long-standing practice, the retirement of the Clerk was announced by the President and a motion was moved by the Leader of the Government on 16 February.