

Procedural Information Bulletin No. 32

For the sitting period 12 to 29 April 1988

CONSTITUTION ALTERATION BILLS

Following the government's announcement that a special sitting of the House of Representatives would be called on 10 May 1988, the day after the opening of the new Parliament House, to introduce bills to be put to a referendum later this year, the Senate has been active in its preparations for debate. The number and titles of the bills to alter the Constitution were not known until late on Thursday, 28 April 1988, when notices of motion for four proposals were given in the House of Representatives. It was clearly intended by the government, however, that the bills should be debated in both Houses before the end of the Autumn sittings, scheduled to conclude in the Senate on 2 June.

Order of the Senate for consideration of Constitution Alteration Bill

Senator Macklin (Australian Democrats) is eager that a proposal to change the Constitution to enable the passage of laws on the initiative of a percentage of Australian electors should be considered by the Parliament at the same time as the government proposals. To this end, on 13 April 1988 he gave the following notice of motion:

That, when next an Order of the Day for the resumption of debate on a motion moved by a Minister for the second reading of a Bill for an Act to alter the Constitution is called on, the General Business Order of the Day relating to the consideration of the Constitution Alteration (Electors' Initiative) Bill 1987 shall be called on at the same time, that Bill shall be considered together with the Government Bill at every stage, and the questions for the remaining stages of the passage of the Bills shall be put separately in respect of each Bill.

The motion was agreed to as a formal motion, that is, without debate, on 14 April. The effect is that, when one or more of the government bills are debated, the Senate has ordered that debate on the Electors' Initiative Bill will automatically proceed at the same time, and that a vote be taken separately on the bill.

Call of the Senate

Standing Order 242 provides that before the Senate votes upon the Constitution Alteration Bills, which under the Constitution must be passed by an absolute majority of the whole number of senators, a Call of the Senate must be held. Under Standing Order 283 an order for a Call of the Senate must be made at least 21 days before the Call takes place. The government legislative program was planned on the assumption that a vote on the Constitution Alteration Bills would be held during the week ending 26 May. In order to comply with the Standing Orders, therefore, it was necessary to suspend the requirement for a Call of the Senate, to dispense with the 21 days' notice, or to make the order in sufficient time for the requirement to be fulfilled.

Despite the fact that, over many years, the suspension of the relevant Standing Orders has been agreed to, certain indications were given to the government that the Standing Orders would be adhered to on this occasion. Thus, if the introduction of the bills did not occur until 10 May, the 21 day timetable could not be fulfilled.

On 28 April, therefore, the Minister representing the Attorney-General, gave notice:

That there be a Call of the Senate on Thursday, 26 May 1988, for the purpose of considering the third reading of Constitution Alteration Bills received from the House of Representatives.

The motion was debated and agreed to, after division, on 29 April. The point was made in debate that this was the first time that a Call of the Senate had been ordered without any knowledge of the content of the legislation to which the order applied.

FIRST READING DEBATE

On 13 May 1987 new procedures relating to the introduction of bills were adopted by the Senate and were again adopted as sessional orders on 15 September. While "telescoping" the motions required for a bill to reach the first reading stage, the procedures nonetheless preserve the right of any senator to ask that the questions be split. On 20 April 1987, the Leader of the Opposition in the Senate (Senator Chaney) exercised this option, in order to preserve the right of any senators to conduct a first reading debate on the Appropriation Bill (No.3) 1987-88, a bill which, under the Constitution, the Senate may not amend. The question that the bill may proceed without formalities was thereupon put and passed, and debate was adjourned on the question that this bill be now read a first time. On 27 April, during a special lunchtime sitting, debate ensued on the first reading, and, after completion of this stage, the Minister moved the second reading in the normal way. It is also of

interest that the time limit of 15 minutes permitted for debate on the first reading of a bill which the Senate may not amend was, by motion, extended twice to enable a senator to complete his remarks.

RECEIPT OF PETITIONS NOT IN CONFORMITY WITH THE STANDING ORDERS

The use of petitions to draw the attention of the Senate to matters of public concern has increased significantly over the past 20 years or so. Under standing orders, rules are laid down for petitions but appreciable numbers are submitted for presentation which do not conform absolutely to the technical requirements of the standing orders. Under these circumstances, it has been normal for senators to ask leave of the Senate to present such petitions, and leave has usually been granted. On 27 April, however, the Deputy Leader of the Opposition in the Senate (Senator Lewis) and the Minister for Home Affairs (Senator Ray) indicated in statements by leave that in the light of the increasing recourse to this procedure, they would refuse leave on broadcast days to present petitions which are not in conformity with the standing orders. They indicated that they had gained the impression that petitions were being withheld until broadcast days to gain maximum publicity for the petitioners' cause.

OTHER PROCEDURAL MATTERS

Introduction of Legislation

On 13 April 1988, the Senate agreed to a motion by Senator Macklin to the effect that the cut-off time for the automatic consideration of bills introduced into the Senate should be 24 May 1988. This motion has now become virtually routine in the Senate, and is worthy of note only because, by leave of the Senate, rather than its being declared a formal motion, the motion was agreed to with minimal debate some days after the notice had originally been given. The motion, while allowing for the consideration of urgent legislation, is intended to constrain the holding back of contentious legislation in order to avoid proper parliamentary examination.

Consideration of Bills

The Senate is expediting the processing of non-contentious legislation very early in its sitting period, by enabling the consideration of routine bills during the period generally set aside for matters of public interest discussion. Without curtailing senators' rights to speak on matters of public interest, the Senate, after the discussion has concluded, has agreed to a motion to allow specific Government

Business Orders of the Day to be considered on Thursdays at lunchtime, with the order of the Senate expiring at 2.00 p.m. each Thursday. So far, under these procedures, 14 bills have been agreed to. Until this period of sittings, the mechanism has been used only during the last week of sittings.

Bills amended

Government and Democrat amendments have been agreed to, in relation to the following bills:

Broadcasting (Ownership and Control) Bill 1988 — government amendments agreed to, to take account of comments made by the Scrutiny of Bills Committee; other government and Democrat amendments to the same bill defeated.

Commonwealth Teaching Service Amendment Bill 1987 — Democrat amendment agreed to (Opposition amendments negatived).

Presentation of draft bill

On 18 April, by leave of the Senate, Senator Jenkins (Australian Democrat) tabled a draft bill, together with an explanatory memorandum, relating to self-government for the Australian Capital Territory. The bill was not introduced in the normal way, but rather was made a public document for the purposes of community discussion. Senator Jenkins has since released a second bill, although this has not yet been tabled, and has foreshadowed a third to a complete the package relating to a most important topic for the residents of Canberra.

COMMITTEE ACTIVITY

During the last three weeks, Committee activity has been a feature of Senate proceedings.

Reports

The following reports have been presented:

Regulations and Ordinances Committee

On 18 April, the Committee tabled its 83rd Report Philosophy, Goals and role of the Committee; Guidelines on the Application of the Committee's Principles; A Request

for Better Explanatory Statements and Legislation Considered 1986-87. This report is the most substantial report ever produced by the Committee. It canvasses the *raison d'etre* of the Committee and indicates to all persons affected by the Committee's operations the guidelines under which the Committee operates and details of the matters considered by the Committee.

In addition, on 29 April 1988, the Chairman (Senator Collins), on behalf of the Committee, cautioned Ministers and departments that the Committee is concerned at the delay in fulfilling undertakings by Ministers to amend faulty legislation, and also drew attention to the backlog of outstanding correspondence relating to points raised by the Committee. The Committee has warned in no uncertain terms that, if a cavalier attitude is taken, notably by the public service, to responding to the Committee's queries and the implementation of ministerial undertakings accepted in good faith by the Committee, the Committee will examine the options available to it to ensure that its efforts -are not a waste of time.

Appropriations and Staffing Committee

On 26 April 1988, the Appropriations and Staffing Committee report relating to the transfer of certain administrative functions within the Parliamentary departments was tabled. The Appropriations and Staffing Committee considered the proposed changes in accordance with a resolution of the Senate, on the motion of former Senator Georges on 3 June 1987, that such proposed changes be examined by the Committee. The Senate has yet to consider the proposed changes.

Legal and Constitutional Affairs Committee

The Committee tabled its report on the Cash Transaction Reports Bill 1987 on 28 April 1988. The report recommends that, in view of the uncertainty of the operation of the proposed law, a review of its operation be conducted within three years of the passage of the law. The Committee makes the point that there is a dearth of evidence as to the practicality and effectiveness of the legislation, which has thus led to the conclusion that the legislation should be tested and then reviewed. The Committee has not recommended, however, that a sunset clause be inserted in the Bill, on the grounds that the uncertainty which would ensue would not give the legislation a chance to operate effectively.

The government responded to a report of the Committee, tabled on 17 February, on matters relating to the War Crimes Amendment Bill. It is clear from the response that the government has taken the tenor of the Committee's report substantially into account in its thinking on this difficult question, and has noted the Committee's concerns in clarifying its views on the intention of the Bill. This aspect of the response is of great significance, in the light of the power, given by the Acts

Interpretation Act, for the courts formally to use debates and statements in Parliament as "extrinsic aids" in the interpretation of legislation. In addition, as a result of the Committee's examination of the Bill, the government has undertaken to introduce certain amendments to clarify clause 7 of the Bill, and to review the staffing and financial needs of the Special Investigations Unit.

Following a report of the Committee on the Administrative Decisions (Judicial Review) Amendment Bill 1987, and the government's response to the Committee's report, the Bill was restored to the notice paper on 18 February 1988, and the second reading of the Bill was moved on 20 April. The Committee's primary concern was that a major clause of the Bill took away an automatic right of an individual to approach the Federal Court to determine a matter of law. The Senate regarded the right as of such importance that the second reading of the Bill was negatived, following debate on 20 April.

The time for presentation of the Committee's report on the feasibility of and need for a national identification system was extended from 1 May to 1 December 1988.

Video Material

The Deputy Chairman of the Joint Select Committee on Video Material (Senator Walters) tabled the Committee's Report on 28 April. Senator Walters, as Deputy Chairman, signed the majority Report, while the Chairman (Dr. Klugman, M.P.) signed the dissent. In addition, there were four dissents from sections of the majority report, and a qualifying comment. The Report thus encapsulates the wide range of strongly-held views on the subject, which has been under study by the Committee since its establishment in March 1985.

Estimates Committees

The six Estimates Committees presented their Reports on 29 April, pursuant to an Order of the Senate. A wide range of matters was covered in the Reports, but a recurring theme was the effectiveness of program budgeting and the adequacy of information provided, both in Departmental Explanatory Notes and in evidence before the Committees. A feature of the Report of Estimates Committee A was a reservation, under Standing Order 36AB(17), appended to the report by the three Opposition Committee Members.

Committee reference

On 14 April the following matter was referred to the Standing Committee on Transport, Communications and Infrastructure:

The paper entitled *The Canberra Leasehold System* prepared by Professor Max Neutze at the request of the Joint Committee on the Australian Capital Territory.

The Senate empowered the Committee to sit as a joint committee with the Standing Committee on Transport, Communications and Infrastructure of the House of Representatives when that Committee was considering this matter, subject inter alia to the duty of the Senate Committee to report separately to the Senate. The House of Representatives agreed to the resolution conferring the joint committee powers on the two Committees on 18 April. The House of Representatives forwarded a Message to the Senate, seeking the Senate's concurrence in a requirement imposed by the House of Representatives on a similar committee of the House to confer with the Senate committee on the question of the leasehold system in the Australian Capital Territory. The Senate agreed to the House of Representatives' request on 20 April 1988.

Proposed Select Committee on Agricultural and Veterinary Chemicals

On 19 April, Senator Powell (Australian Democrats) gave notice of a motion to establish a Select Committee on Agricultural and Veterinary Chemicals, and immediately thereafter withdraw a similar notice which she had given in December last year. When, on 20 April, Senator Powell asked that the motion be taken as formal, Opposition senators objected, and the notice of motion would, under normal procedures, have taken its place as a General Business item set down for debate on a subsequent Thursday. However, Senator Powell moved, pursuant to a contingent notice of motion, to suspend Standing Orders to enable her to re-arrange business. She received the support of the Government in this first motion, but, after debate, priority was not given to her notice of motion. Consequently, the notice remains on the Notice Paper as a General Business item.

Press reports indicated that the Committee had been established, and would report to the Senate by February next year. Statements were made in the Senate on 21 April to make it clear that the Committee had not yet been appointed.