

Procedural Information Bulletin No. 33

For the sitting period 10 May and 17 May to 2 June 1988

CONSTITUTION ALTERATION BILLS

As foreshadowed in Bulletin No. 32, four Constitutional Alteration Bills were introduced into the House of Representatives on 10 May 1988, at a special sitting held on the day after the opening of the new Parliament House. The Senate also met on that day, to deal with routine business. After they were guillotined through the House of Representatives, the four bills — Constitution Alteration (Parliamentary Terms) 1988, Constitution Alteration (Fair Elections) 1988, Constitution Alteration (Local Government) 1988 and Constitution Alteration (Rights and Freedoms) 1988 — were introduced into the Senate on 19 May. The Government had some concern that agreement would not be given to debate the bills together. To prevent difficulties arising, the Minister for Justice (Senator Tate) gave a contingent notice, as follows:

(contingent on the reading of the order of the Day for resumption of the debate on the motion for the second reading of the Constitution Alteration (Parliamentary Terms) Bill 1988) — That so much of the Standing Orders be suspended as would prevent the Minister for Justice (Senator Tate) moving a motion to provide that there be one debate only on the motions for each of the readings of the following Bills:

- a) Constitution Alteration (Parliamentary Terms) 1988;
- b) Constitution Alteration (Fair Elections) 1988;
- c) Constitution Alteration (Local Government) 1988;
- d) Constitution Alteration (Rights and Freedoms) 1988; and
- e) Constitution Alteration (Electors' Initiative) 1987.

It may be noted that the Constitution Alteration (Electors' Initiative) 1987 (Senator Macklin's bill), which the Senate had previously ordered to be considered together with any Constitution Alteration Bill coming from the House of Representatives, was included in the motion, for the sake of completeness.

In the event, agreement was reached to debate all the bills together and an extension of time was moved on 23 May to enable the Leader of the Opposition in the Senate (Senator Chaney), the Deputy Leader of the Australian Democrats (Senator Macklin) and the Minister for Home Affairs (Senator Ray) to speak for up to one hour in the debate.

Debate on the five bills dominated the proceedings in the Senate until the four government bills were passed by an absolute majority on 1 June 1988. The Constitution Alteration (Fair Elections) Bill was passed with amendments moved by the Australian Democrats and supported by the Government. Two of the amendments were designed to remedy a defect, acknowledged by the Government but discovered by the Opposition, which would have had the effect, if not remedied, of making unlawful the proposed system of elections for the Australian Capital Territory, and, it was thought, the New South Wales Upper House. The House of Representatives agreed to the amendments at a special sitting on 3 June.

Censure Motion

The Opposition having found a major flaw in the Constitution Alteration (Fair Elections) which the above-mentioned amendments were designed to remedy, moved on 30 May to censure the Government "for its incompetence in negligently proposing to the people of Australia Constitutional referenda, the full consequences of which had not been considered and which the Government is now proposing to amend". The motion of censure was negatived.

Before the bills were finally passed by the Senate, a number of items of procedural and constitutional significance intervened:

Constitution Alteration (Electors' Initiative) 1987

As indicated, by order of the Senate of 14 May 1988 there was a requirement that the Constitution Alteration (Electors' Initiative) be considered with the Government Constitution Alteration Bills. The motion included a provision that, while the Bill should be considered together with a Government bill at every stage, the questions for the stages be put separately.

The Opposition gave some thought to separating the Electors' Initiative Bill by means of adjourning the debate. Because this could not be achieved without overriding the order of the Senate, on 24 May the Leader of the Opposition gave the following contingent notice:

(contingent on the Order of the Day for the resumption of the debate on the second reading of the Constitution Alteration (Parliamentary Terms) Bill 1988 being called on) — That so much of the Standing Orders be suspended as would prevent the Leader of the Opposition in the Senate (Senator Chaney) moving the following motion: That, notwithstanding the Order of the Senate of 14 April 1988, debate on the motion for the second reading of the Constitution Alteration (Electors' Initiative) Bill

1987 be adjourned and be an Order of the Day for the next day of sitting.

On 26 May, just before debate on the Bill, which was being considered automatically with the Parliamentary Terms Bill, had concluded, Senator Puplick moved an amendment which, in giving reasons why the Electors' Initiative Bill should not proceed to second reading, would have the effect, if carried, of defeating the Bill. After the Minister for Justice (Senator Tate) and Senator Macklin, as the sponsors of the respective bills, had exercised their right of reply, the Constitution Alteration (Parliamentary Terms) 1988 was given a second reading; and Senator Puplick's amendment to the motion for the second reading of the Constitution Alteration (Electors' Initiative) was agreed to with the support of the Government and Senator Harradine. Thus, Senator Macklin's Bill proceeded no further.

Call of the Senate

As indicated in Bulletin No. 32, a Call of the Senate for the purpose of considering the third reading of Constitution Alteration Bills received from the House of Representatives was ordered for 26 May 1988. An order for the Call of the Senate is the first government business order of the day for the day on which it has been set down. By 26 May, it was clear that none of the bills would then reach the third reading stage. The order for the Call was therefore postponed until after consideration of the bills, but, pursuant to standing order 242, the Call had of necessity to occur before the third reading of any of the bills. The third reading was, in fact, not reached until 1 June 1988. For the following few days, however, the order for the Call continued to be listed as Government Business, Order of the Day No.1 and was postponed each day till after consideration of the bills. The third reading of each Bill, when all other stages were completed, was made an Order of the Day for another time, to enable the Call to take place in relation to all four Bills.

Guillotine

Well after midnight on the sitting day of Tuesday 31 May, the Committee stage of only two of the four Government Constitution Alteration Bills had been completed. In the course of proceedings, the Opposition moved on four occasions that the Committee considering the Constitution Alteration (Rights and Freedoms) report progress, to enable further consideration of that bill to be deferred to the sittings on Wednesday, 1 June 1988. Each time the motion was defeated. By about 3.00 a.m. on Wednesday, 1 June, the Committee had reached clause 4 of the bill, with the long title still to be considered. The Manager of Government Business (Senator Evans) moved the closure on clause 4. The Democrats having supported the Government, the question that clause 4 stand as printed was immediately put and passed. At that point, the Committee reported progress and was given leave to sit again "on the next

day of sitting", that is, after the Senate began a new sitting day at 10.00 a.m. on 1 June.

Before the Committee could resume its consideration of the Constitution Alteration (Rights and Freedoms), the Manager of Government Business declared all four Constitution Alteration Bills urgent bills, together with a further 32 bills (see below for further discussion), and allotted till 12.30 on that day for the remaining stages of the Constitution Alteration Bills, including the motion fixing the time for the third reading of the bills. After the time had expired, the Call of the Senate took place immediately. Seventy-four of the seventy-five senators answered to their names when called by the Clerk, after the bells had been rung for three minutes. Only Senator Brownhill was not available. His name was again called, after which the President advised the Senate that Senator Brownhill had written to him explaining that he would be unable to answer the Call of the Senate because of his absence overseas on parliamentary business. On the motion of the Manager of Government Business (Senator Evans, the Senate excused him from attendance. The third reading of the four Constitution Alteration Bills then proceeded immediately.

A final episode in the long saga of the passage of the Constitution Alteration Bills occurred when Senator Harradine, who had assumed that the third reading of the Bills would proceed in the same order as their introduction to the Senate, found that he had voted against, rather than in favour of, the Local Government proposal. By leave of the Senate, as recorded in the Journals, the division list in relation to the Constitution Alteration (Local Government) was altered to reflect his intention.

OTHER LEGISLATION

A feature of the last three sitting weeks of the Senate in the Provisional Parliament House was the number of bills that were substantially amended, primarily as a result of Opposition and Democrat amendments. This feature was all the more remarkable considering that, of all the bills considered, the vast majority was not introduced into the Senate until the last sitting weeks. Indeed, ten bills associated with the May Statement were not even introduced into the House of Representatives until 25 May.

It should be noted that these bills were transmitted to the Senate after the cut-off time of 24 May 1988 which the Senate had laid down on 13 April as the last day on which it would receive and consider bills from the House of Representatives. In order to enable the consideration of the bills, the Senate, on 30 May, suspended the order in relation to all the bills. Following passage of the Constitution Alteration Bills, a guillotine was operating in relation to 32 bills which the Government regarded as essential for passage before the Senate rose. On the first day to which the guillotine applied, times by which the bills were to be completed, that is, in the case of the May Statement bills, 7.00 p.m. and in the case of the Civil Aviation Bill 1988, 8.00 p.m.,

were specified in the motion. In relation to the remaining bills to be considered on Thursday 2 June, hours were set aside for debate, for example, the Education package one-and-a-half hours, Audit Amendment Bill 1988, 30 minutes, and so on. The 7.00 p.m. timetable covered all the bills in the May Statement package; debate on the bills was cognate and at 7.00 p.m. the bills passed the Senate. The Civil Aviation Bill was agreed to with both Government and Democrat amendments when the time expired at 8.00 p.m.

On Thursday, 2 June, the remaining 22 bills were passed, many with amendments. The passage of some bills was effected in the normal way, with all stages completed before the time allowed by the guillotine had actually expired. In most cases, however, the guillotine operated. Normally, this would mean that amendments proposed to be moved By Opposition and Democrat senators could not have been considered or put. However, pursuant to contingent notices of motion (which have the effect of nullifying the provision of standing order 407B, which enables only Government amendments which have been circulated at least two hours before the time expires for the consideration of a bill under guillotine, to be put to the Senate) Opposition and Democrat amendments were moved and, in most cases, agreed to.

The following bills were amended by the Senate during the last weeks of sittings:

Cash Transaction Reports Bill 1987
Government amendments agreed to
(based on Legal and Constitutional Affairs Committee Report)

Transport Legislation Amendment Bill 1988
Democrat amendments agreed to

Constitution Alteration (Fair Elections) 1988
Democrat amendments agreed to

Civil Aviation Bill 1988
Government and Democrat amendments agreed to

Social Security Amendment Bill 1988
Democrat amendment agreed to

Community Services and Health Legislation Amendment Bill 1988
Government amendments agreed to

Employment, Education and Training Bill 1988
Democrat amendments agreed to

Commonwealth Employees' Rehabilitation Compensation Bill 1988
Government amendments agreed to

Anti-Dumping Authority Bill 1988
Opposition amendment agreed to

Customs Legislation (Anti-Dumping Amendments) Bill 1988
Opposition amendments agreed to

Taxation Laws Amendment Bill (No.2) 1988
Democrat amendment agreed to

Referendum (Machinery Provisions) Amendment Bill 1988
Opposition amendment agreed to

Audit Amendment Bill 1988
Opposition amendment agreed to

Australian Film Commission Amendment Bill 1988
Democrat amendment agreed to

All of the amendments to Bills transmitted from the House of Representatives were sitting on 3 June and considered by the House at its special agreed to.

There was also very extensive debate on a number of other bills, most notably the Appropriation Bills. During Committee of the Whole consideration of Appropriation Bill No.3, progress was reported, to enable Government advisers to be called to give advice to Ministers answering detailed questions from senators.

COURT OF DISPUTED RETURNS — JUDGMENTS RELATING TO ROBERT WOOD

On 17 May, the President tabled in the Senate a copy of the Judgment of the full High Court, sitting as the Court of Disputed Returns, in which the Court found that there was a vacancy in the representation of New South Wales for the place to which Robert Wood was returned; that the vacancy was not a casual vacancy within the meaning of Section 15 of the Constitution; and that the vacancy could be filled by the further counting or recounting of ballot papers cast in the election of senators in New South Wales. The Court left open the question of any further function the Court might have in the matter, to enable submissions to be made in relation to that question.

On 7 June, the Chief Justice of the High Court, Sir Anthony Mason, also sitting as the Court of Disputed Returns, made certain orders which will enable a further count and recount of the New South Wales ballot papers, in accordance with submissions

made by the Electoral Commission. It is expected to be some weeks before the process is completed.

In tabling the first judgment, the President drew particular attention to the following quotation from an earlier case relating to the qualifications of senators:

"The return is regarded ex necessitate as valid for some purposes unless and until it is successfully impeached. Thus the proceedings of the Senate as a House of Parliament are not invalidated by the presence of a Senator without title."

REVIEW OF STANDING ORDERS

Also on 17 May, the President tabled a submission from the Clerk of the Senate relating to a review of standing orders, together with draft revised standing orders and associated documents. The purpose of tabling the submission was to enable senators to consider the draft and make comments to the Procedure Committee, which is expected to examine the draft during the next period of sittings.

As the President pointed out, the draft represents the first full review of the standing orders since they were originally adopted by the Senate in 1903.

Two suggestions were made for adoption by the Senate of new rules before the Senate sits in the new Parliament House. The first was to extend the time for ringing bells for divisions or quorums from three minutes to four minutes, while the second would have given the President the discretion to suspend, rather than adjourn, the Senate if a quorum is not present. The Senate adopted the four-minute provision on 1 June, after a division, but no action has been taken in relation to the other suggestion.

SUB JUDICE

On 10 May, the Leader of the National Party of Australia in the Senate (Senator Stone) proposed a matter of public importance for discussion, relating to the question of abuse of power by elements of the trade union movement. Before the discussion proceeded, the President informed the Senate that he had been advised that writs had been issued against persons involved in a building industry dispute in Canberra alleging defamation in relation to the conduct of trade unions in the dispute. He pointed out that

"The essence of the sub judice convention is that, subject to the right of the Senate to debate matters of public interest, debate in the Senate should

not be such as to involve a substantial danger of prejudice to proceedings on foot before the courts.

The issue of writs, of course, does not necessarily mean that proceedings will take place, and, in this instance, strictly speaking, there are no proceedings as such to prejudice. Moreover, until proceedings have actually commenced, the danger of prejudice must be regarded as much less than when the proceedings have started.

However, the President asked honourable senators to have regard to the indication that the conduct of certain persons may be the subject of legal proceedings, and therefore asked them not to say anything which would clearly prejudice court proceedings as such.

OTHER PROCEDURAL MATTERS

Absence of President

At the commencement of sittings on 10 May, the President was unavoidably absent. The Clerk informed the Senate of his absence, and thereupon Senator Hamer took the Chair. As the President was absent for only a brief time, no action other than the Clerk's informing the Senate was required.

On 19 May, the President, aware that he would be unavoidably absent on the next day of sitting, so advised the Senate. His advice to the Senate obviated the necessity for the Clerk to make the announcement the next day, and on 20 May the Deputy President took the Chair for the full day in accordance with the President's announcement.

Helsham Report

Immediately after Government Papers were tabled, pursuant to Sessional Order, on 17 May, the Minister for the Arts, Sport, the Environment, Tourism and Territories) (Senator Richardson) tabled the Report of the Lemonthyme and Southern Forests Commission of Inquiry (the Helsham Report) under the statute establishing the Inquiry (see Bulletin No. 31). The Report was tabled on the last sitting day provided under the Act.

In order that the paper be debated separately from the normal consideration of Government Papers — which would have limited senators to speaking for 5 minutes only, and with papers considered in order of their tabling for a maximum time of 30

minutes — the Minister moved a special motion to enable the paper to be debated for a 1-hour period before consideration of other Government Papers was called on.

Presentation of draft bill

In Bulletin No. 32, mention was made that Senator Jenkins had, by leave, tabled a draft bill and explanatory memorandum relating to self-government in the A.C.T. On 18 May, Senator Jenkins again, by leave, tabled a second, previously-released, draft, together with explanatory notes, and made a statement relating to the draft.

PARLIAMENTARY PRECINCTS ACT

Bulletin No. 31 drew attention to the passage of the Parliamentary Precincts Act. During debate on the Act it was indicated that an undertaking had been given by the Government to proclaim the major provisions of the Act in the first week of July. By agreement between the Presiding Officers and the Minister for Administrative Services, however, the date has been extended for one month, to 1 August. The President informed the Senate that the changed date was to accommodate the activities of the Parliament House Construction Authority and emphasised that the change of day would not affect the operations of the two Houses in the new building.

The Scrutiny of Bills Committee, which had been concerned about the question, also agreed that the delay was appropriate.

SUMMARY OF QUESTIONS ON NOTICE AND GOVERNMENT RESPONSES OUTSTANDING TO PARLIAMENTARY COMMITTEE REPORTS

In accordance with practice, Senator Giles, on behalf of the President, tabled on 2 June a summary of questions on notice, and a schedule of Government responses outstanding to Parliamentary committee reports. A feature of the schedule of Government responses is that only four reports have not been responded to within the Government's prescribed three-month period. This provides a welcome contrast to previous Presidents' schedules.

COMMITTEE ACTIVITY

The last three weeks of sittings have been characterised by significant activities in the committee area (and see DELEGATED LEGISLATION and MATTERS OF PRIVILEGE, below).

Committee Reports

The following reports by committees administered by the Senate were tabled:

National Crime Authority Committee

The National Crime Authority evaluation, tabled 17 May.
Witness Protection, tabled 26 May.

Gifted and Talented Children

The report of the Select Committee was tabled on 18 May.

Finance and Public Administration

A further report on non-statutory bodies was tabled on 18 May. This report is of particular interest, in that the report queried the Government response to a recommendation, contained in an earlier report, that a central register of non-statutory bodies should be established. The May report affirmed the earlier Committee's recommendation.

Animal Welfare

Report on kangaroos tabled 1 June.

Electoral Matters

A report by the Joint Committee on Electoral Matters on Senator Macklin's Constitution Alteration (Democratic Elections) Bill was tabled in both Houses on 17 May.

Other reports tabled, and/or discussed, Bills Committee reports, Publications, Public Works Committee reports.

Committee references

The following matters were referred

Environment, Recreation and the Arts

(1)The role of the Commonwealth Government in the further development of the Australian tourist industry. (19 May 1988)

(2)The use by Australian sportsmen and sportswomen of performance enhancing drugs and the role played by Commonwealth agencies. (19 May 1988)

Legal and Constitutional Affairs

(1)The social and fiduciary duties and responsibilities of company directors. (26 May 1988)

(2)The taxation file numbering scheme announced in the May 1988 Economic Statement (for consideration in conjunction with the Committee's reference on the national identification system). (1 June 1988)

Employment Education and Training

Priorities for reform in Higher Education. (26 May 1988)

Debates

All the tabled reports attracted debate in the Senate. In addition, the report of the Joint Select Committee on Video Material was further debated and, after the question that the Senate take note of the report was put and passed, the Leader of the Opposition in the Senate (Senator Chaney), by leave, immediately moved to take note of the report again. This procedure means that senators who were not in the Chamber at the time the question was put will be able to make their views known when the report again comes up for debate in the budget sittings, and also provides a fresh opportunity for senators who have previously spoken to the report to discuss it again.

A recommendation contained in the Appropriations and Staffing Committee Report for the transfer of certain functions within the Parliamentary Departments was adopted by the Senate on the motion of the Leader of the Government in the Senate. The procedure was in conformity with a resolution of the Senate in June 1987, on the motion of former Senator Georges, that administrative changes within the Parliamentary departments should not take place until examination by the Appropriations and Staffing Committee and agreement by the Senate.

Other matters

Legal and Constitutional Affairs Committee

On 18 May, the Minister for Justice (Senator Tate) successfully moved that the Cash Transaction Reports Bill 1987 be restored to the notice paper. In so moving he tabled the Government's response to the Legal and Constitutional Affairs Committee Report on the Bill (see Bulletin No. 32). When debate on the Bill was resumed, the Government moved amendments to accord with recommendations of the Committee.

Establishment of Select Committee

On 1 June, the Senate agreed to a motion, moved by Senator Tambling, to establish a select committee on the administration of Aboriginal Affairs. The members of the Committee were appointed on 2 June.

Proposed Select Committee

The Leader of the Opposition (Senator Chaney) unsuccessfully moved, on the same day, that a select committee to examine the Industrial Relations Bill 1988 be established.

Estimates committees

Noteworthy during debate on the Appropriation Bills was the extensive use made of both Estimates Committee reports and information supplied to committee members. This is a most welcome development in the consideration of departmental proposals for expenditure, particularly in the light of the almost universal application of program budgeting.

Leave to sit

On 20 May, pursuant to notice, Senator McKiernan, on behalf of the Joint Committee on Electoral Matters, sought the leave of the Senate for the Committee to take public evidence during the sittings of the Senate. His motion was agreed to without debate or dissent.

DELEGATED LEGISLATION

There was considerable attention given to delegated legislation during the last three weeks of sitting.

Regulations and Ordinances Committee

The Chairman of the Regulations and Ordinances Committee (Senator Collins) frequently advised, or took action in, the Senate, on the Committee's consideration of delegated legislation. On 25 May, the Chairman made a most unusual statement to the Senate, advising that the Committee had released a Minister from an undertaking given by two of his predecessors to place a 12 months' sunset clause on the Blood Donation (Acquired Immune Deficiency Syndrome) Ordinance 1985. He further indicated the Committee's acceptance of the Minister's desire that he be released from an obligation to supply the Committee with documents for tabling in the Senate explaining legal, compensation, and medical developments with AIDS. The Committee agreed to release the Minister from these obligations on the grounds that the Government would shortly table a Green Paper on AIDS which will address the issues of concern to the Committee.

On 2 June 1986, to mark the 56 years of operation of the Committee in the Provisional Parliament House, the Chairman tabled a statement in the Senate concerning the history of the Committee.

Other matters relating to disallowance

Activity in relation to delegated legislation was not confined to the Regulations and Ordinances Committee. On 19 May, the Leader of the Opposition in the Senate (Senator Chaney) moved a motion to disallow Regulation 3 of the Occupational Superannuation Standards Regulations. The motion was defeated, on division, after debate.

On 25 May, Senator Puplick moved two motions together, the first to disallow the World Heritage Properties Conservation Regulations (Amendment) and the second to disapprove a Declaration in a Proclamation made by the Governor-General under the *World Heritage Properties Conservation Act 1983*. Again, these motions were unsuccessful, but were determined only after extensive debate.

However, a motion by Senator Reid on 10 May to disallow the Australian Rifle Club Regulations (Repeal) was agreed to, after debate and division. The effect of Senator Reid's successful disallowance motion was to revive the regulations repealed by the repealing Regulations.

Senator Jenkins, on behalf of the Australian Democrats, also used the process of giving notices of disallowance, to preserve the rights of the Senate in relation to certain instruments; in each case, she withdrew the notices when satisfactory undertakings were given by the responsible Minister.

MATTERS OF PRIVILEGE

As reported in Bulletin No. 31, questions relating to the circulation of petitions were referred to the Committee of Privileges on 16 March. The Committee reported to the Senate on 2 June. A dissenting report was appended.

The Committee found that privilege does not, and should not, attach to the circulation of a petition prior to its presentation. In his dissenting report Senator Durack expressed the view that the Committee should have examined the question more closely and considered whether some privilege should attach to the circulation of a petition among persons with a common interest in its subject.

On 17 May, the President reported to the Senate that he had considered a matter raised by Senator Walters, under the procedures outlined in the resolutions of the Senate of 25 February, concerning allegations that the Chairman of the Joint Select Committee on Video Material had published a misleading account of the proceedings and report of that Committee. The President advised the Senate that he had determined that he should not give precedence to a motion to refer the matter to the Committee of Privileges.

A further matter of privilege was raised with the President late in the sittings; the President determined that the matter should not have precedence and further decided that his determination did not warrant a special report to the Senate.

APPENDIX - Highlights of the sittings 16 February to 2 June 1988

- (1) Joint sitting to choose ACT senator: rules adopted 16 February. (Bulletin No. 30, p.1)
- (2) Senate vacancy — New South Wales: Court of Disputed Returns judgement, 16 February (Bulletin Nos 30, p.1, 33, p.9)
- (3) New standing order 362: publication of tabled papers, adopted 19 February. (Bulletin No. 30 p.3)
- (4) Privilege Resolutions passed 25 February. (Bulletin No. 30, p.5)
- (5) Matters of Privilege raised under new procedures: 1 given precedence, certain questions referred to Privileges Committee 15 and 16 March (Bulletin No. 31, p.1); Report 2 June (Bulletin No. 33, p.18); 2 matters not given precedence, but 1 reported to the Senate 17 May (Bulletin No. 33, p.19)
- (6) Parliamentary Precincts Act passed 24 March (Bulletin No. 31, p.2); Statement by President relating to Proclamation 26 May (Bulletin No. 33, p.12)
- (7) Extended Committee of Whole Proceedings on Family Law, and Textiles Clothing and Footwear Bills. (Bulletin No. 31, pp.2, 3); Many other Bills amended. (Bulletin Nos 32, p.5, 33, p.7)
- (8) Regulation disallowed on the motion of the Chairman of the Regulations and Ordinances Committee: the first since 1971, 24 March (Bulletin No. 31, p.4)
- (9) Constitution Alteration Bills and Call of the Senate (Bulletin Nos 32, p.1, 33, p.1)
- (10) Revised standing orders tabled 17 May (Bulletin No. 33, p.9)