

Procedural Information Bulletin No. 38

For the sitting period 22 November to 21 December 1988

PROCLAMATIONS OF ACTS — ORDERS FOR RETURNS

In Bulletin No. 35 (page 1), it was reported that a motion, moved by Senator Macklin, that there be laid on the table of the Senate details of all provisions of Acts which come into effect on proclamation and which have not been proclaimed, together with a statement of reasons for non-proclamation and a timetable for their operation, had been agreed to by the Senate unanimously and without debate. The order stipulated that the information should be provided on or before 25 November 1988.

On 24 November the Leader of the Government in the Senate (Senator Button), pursuant to standing order 358, transmitted the Return to Order to the Clerk of the Senate. The Return was tabled in the Senate later the same day. The Return included details of almost 60 Acts, the provisions of which had not been proclaimed, together with detailed statements of reasons for their non-proclamation and a timetable for their operation, in accordance with the Order for the Return. Two of the Acts had been passed by the Parliament in the 1920's! In addition, as Senator Macklin pointed out when speaking to a motion that the Senate take note of the paper, on 22 November the Senate was notified that an Act passed by the Parliament in 1963 had been proclaimed. The Return attracted considerable interest in the Senate, and debate on the motion to take note of the paper was adjourned.

On 29 November Senator Macklin moved a further motion, requiring the same information to be laid before the Senate on or before 31 May and 30 November each year. This motion, too, was agreed to unanimously and without debate.

It is of interest to note that since the passage of Senator Macklin's motion, and the tabling of the Return, commencement clauses of a number of bills have been the subject of comment and, in some cases, amendment.

QUESTIONS ON NOTICE

As also reported in Bulletin No. 35 (pages 1-2), Senator Macklin moved a motion concerning answers to questions on notice. As indicated in that Bulletin, the motion was agreed to without debate but on division.

On 23 November, at the conclusion of question time, Senator Macklin, pursuant to the Order of the Senate of 28 September, asked the Minister for the Arts, Sport, the Environment, Tourism and Territories (Senator Richardson) for an explanation as to why an answer had not been provided to a question on notice asked on 11 October. An explanation having not been forthcoming, Senator Macklin, pursuant to the Order, thereupon moved a motion without notice concerning the Minister's failure to provide an answer or an explanation. Senator Macklin chose to move an Order for a Return, on or before 28 November, of the answer to the question, together with an explanation for the delay in responding. The motion was agreed to without debate. On 24 November the Return to Order was tabled in the Senate.

This new procedure is potentially very effective in ensuring proper accountability of the executive to Parliament. While at this stage Senator Macklin has been the only senator to use the procedure, and the Return to Order is the only public record of its success, the capacity of any senator whose questions have gone unanswered for thirty days or more to take action in the Senate has ensured that a number of responses to outstanding questions has been forthcoming.

DISALLOWANCE

Pathology Services Table Determination

As reported in Bulletin No. 37 (pages 13 and 14), on 1 November Senator Puplick gave a notice of motion of disallowance of a determination of a Pathology Services Table. The motion was postponed on a number of occasions, to enable certain matters to be determined by the Federal Court. It was finally brought on for debate on 30 November 1988. Senator Puplick's motion was unsuccessful. On 15 December, however, the Federal Court found that the determination was void and of no effect.

Casino Control Ordinance (Christmas Island)

Senator Jenkins moved the disallowance of the Casino Control Ordinance of Christmas Island on 23 November. The motion was unsuccessful, and therefore the Ordinance stands.

Australian Federal Police Regulations (Amendment)

On 22 November Senator Hill, by leave, withdrew a notice of motion for the disallowance of regulation 7 of the Australian Federal Police Regulations. He explained to the Senate that his concerns relating to the regulation had been satisfied.

Regulations and Ordinances Committee

As is customary, the Regulations and Ordinances Committee was extremely active during this five week period. The Committee's concerns, reflected in a number of "protective" notices of motion of disallowance, were satisfactorily assuaged in relation to a number of instruments. In addition, and as is also customary, the Chairman of the Committee made a statement to the Senate, and incorporated a paper in *Hansard*, on 21 December, relating to the work of the Committee during the Budget sittings. As the Chairman indicated, very positive developments have resulted from its work, notably the co-operation of Ministers with the Committee in matters of concern. The Committee has warned, however, that the present tardiness in implementing undertakings is of concern to it and it will keep this matter under review.

In Bulletin No. 35 (page 3), attention was drawn to the introduction into the Senate of the Statutory Instruments (Tabling and Disallowance) Legislation Amendment Bill 1988. The Bill was introduced to meet points made by the Committee in relation to weaknesses in the statutory schemes of disallowance. The Bill passed the Senate during debate on non-controversial legislation on 24 November and the Committee's role in ensuring proper parliamentary scrutiny of executive law-making was acknowledged during the debate.

Disallowance of Export Control Orders

On 15 December the President made a statement to the Senate, and tabled certain papers, relating to the validity of resolutions of disallowance, on 1 May 1986, of certain export control orders. The papers included a letter from the Minister for Resources (Senator Cook) to the President, informing him that he had received advice that the motions of disallowance agreed to by the Senate in 1986 were not effective, and that he had given certain directions under the orders on the basis that the orders were still in force. He indicated that the advice he had received from the Attorney-General's Department had been confirmed by the Solicitor-General.

On 16 December, following an answer to a question asked by the Leader of the Opposition in the Senate (Senator Chaney), Senator Cook tabled a further paper.

The President in turn tabled the opinion of the Solicitor-General referred to in Senator Cook's letter to the President.

On 20 December the President made a further statement to the Senate and tabled papers by Mr P.O'Keeffe, Clerk-Assistant (Procedure) and Professor D.J. Whalan, Professor of Law, Australian National University, relating to the effectiveness of the Senate's disallowance motions of 1 May 1986. Senator Chaney immediately gave certain contingent notices of motion relating to the need for Senator Cook to ensure that the services of the Commonwealth Meat Inspectors were provided. (The export control orders in question allowed the services of inspectors to be withheld in certain circumstances.)

Motions were moved on 15, 16 and 20 December to take note of the statements and papers, and debate on the matters has been adjourned. The views taken in the opinion tabled by Senator Cook, and confirmed by the Solicitor-General, that the Senate's motions of disallowance were ineffective have serious implications, and further debate on the matter is likely in 1989.

On 23 December Mr Justice Woodward of the Federal Court, in making orders restraining the Secretary of the Department of Primary Industries and Energy, and the delegate of the Secretary, from making any determinations or decisions based on a ministerial direction under the orders the subject of dispute until a full hearing of an application concerning the validity of the orders, made the following comments in relation to the Senate's 1986 disallowance: "In my view this disallowance was almost certainly valid. The only reason I refrain from expressing a concluded opinion is that counsel [for the Minister and Departmental officers] came into this matter without notice and had no time to mount a full argument." The judgement may be obtained from the Senate Library.

PRIVILEGE

Freedom of speech and protection of citizens' rights

In Bulletin No. 37 (page 3), it was noted that a question had been raised by Senator Chaney concerning Resolutions 5 and 9 of the Privileges Resolutions of 25 February. The President indicated that he would give consideration to the matters raised.

On 22 November the President made a statement to the Senate drawing attention to the provisions of Resolution 9. He also indicated, *inter alia*, that he was considering a submission from a person, under Resolution 5, who was named in the debate which gave rise to Senator Chaney's original comments.

Having considered the submission, the President referred the matter to the Committee of Privileges. The Committee, having in turn considered the submission, tabled a report to the Senate on 7 December. The report recommended that the Senate agree to the incorporation of a statement, agreed to by the Committee and the person affected, in *Hansard*. The Committee's report was adopted on 13 December, and the agreed statement was duly incorporated.

This procedure attracted considerable attention, in that it was the first time a matter had been dealt with under Resolution 5 of 25 February.

A second person, who had also been named by Senator Walsh on 10 November, subsequently wrote to the President, who again referred the submission to the Privileges Committee. The Committee, which reported on this matter on 14 December, recommended that an agreed statement be incorporated in *Hansard*. The motion was agreed to on that day, and the agreed statement also appeared.

Alleged false or misleading evidence before an Estimates Committee

On 5 December the President informed the Senate that he had received a letter from Senator MacGibbon relating to a matter of privilege and had determined that notice of a motion should have precedence for the day on which it was given. Senator MacGibbon thereupon gave a notice to refer to the Privileges Committee questions as to whether false or misleading evidence had been given to a Senate Estimates Committee in relation to a Department of Defence project, and whether a contempt of the Senate had been committed in the giving of that evidence. Senator MacGibbon's motion was agreed to without amendment or debate on 6 December.

Administration of Aboriginal Affairs

In Bulletin No. 37 (pages 1-3), details were given of matters of privilege relating to the administration of Aboriginal Affairs. On 30 November the Chair of the Committee (Senator Patricia Giles) advised the Senate, in relation to the question of possible misleading evidence given to Estimates Committee E, that persons named in the Resolution referring the matter to the Committee, the Department of Aboriginal Affairs, and Mr Charles Perkins (the officer who had given the evidence in question) had been invited to make written submissions to the Committee. Senator Giles also indicated that the Committee would receive written submissions on the matter from any other persons who wished to make them.

Drugs in Sport Inquiry: alleged harassment of a witness

On 8 December the Chairman of the Standing Committee on Environment, Recreation and the Arts (Senator Black) tabled the Committee's report, pursuant to Resolution 1(18) of the Privileges Resolutions, drawing attention to the alleged harassment of a witness who had given evidence during the Committee's current inquiry into drugs in sport.

Immediately following the tabling of the report, the President made a statement to the Senate advising that the Chairman had written to him raising as a matter of privilege the matters referred to in the Committee's report, and that the President had determined that notice of a motion relating to the matter should have precedence of all other business on the day for which it was given. Senator Black immediately gave a notice for the next day of sitting.

Following statements made by senators, indicating that in view of the urgency of the matter leave would be granted for the motion to be moved forthwith, Senator Black obtained such leave and the matter was thereupon referred to the Committee of Privileges.

On 14 December the Chair of the Committee (Senator Giles) made a statement to the Senate advising that certain persons had been invited to make written submissions and also inviting others to do so. The Chair advised the Senate that the Committee was anxious to meet the concerns of the Standing Committee, and had thus moved very expeditiously so that that Committee's inquiry would not be impeded.

CONSIDERATION OF BILLS

The Senate engaged in substantial debate on, and amended, a considerable number of bills. As the Minister for Justice (Senator Tate) suggested when consideration of the Privacy Bill was completed, and reiterated during the concluding stages of the War Crimes Amendment Bill, constructive Senate input into legislation sponsored

by the Government has been well illustrated in this period of sittings (*Hansard*, pp 3792, 4652). The following bills were amended during the period:

Privacy Bill 1988

In Bulletin No. 37 (page 7), mention was made that three amendments, moved by the Opposition, had so far been agreed to. When debate on the Bill resumed on 22 November, further amendments, moved on behalf of the Government, the Opposition and the Democrats, were agreed to. When the amendments were considered by the House of Representatives on 28 November, the House disagreed to the Opposition and Democrat amendments.

The Senate considered the House of Representatives message disagreeing to the amendments on 7 and 8 December. The amendments were not insisted upon, despite attempts by the Democrats to ensure that the Senate pursue the matter.

Australian Capital Territory (Self-Government) Package

Extensive debate was conducted on the four Government Bills comprising the package, and three private senators' bills, introduced by Senator Jenkins.

On 23 November the Senate agreed, by motion, to consider Senator Jenkins' Bills with the package; unusually, however, an amendment was moved, by Senator Hill, to Senator Jenkins' motion, which also had included a provision relating to the consideration of the bills in a particular order during committee of the whole. That part of her motion was removed as a result of Senator Hill's amendment, after debate.

Senator Jenkins also moved a second reading amendment in respect of the Australian Capital Territory (Electoral) Bill 1988, which would have had the effect of postponing consideration of the Bill for two sitting days. When the question on this amendment was finally put, on the next sitting day, it was negatived. Senator Jenkins' motions for the second reading of the three Democrat Self-Government Bills were also negatived on 24 November. The second reading of all the Government bills was agreed to, also on 24 November.

In committee the bills were taken separately and, during debate which lasted until the early hours on 25 November, substantial amendments were made, on the motions of the Government, the Opposition, the Democrats and Senator Harradine, to all of the bills constituting the self-government package.

From a parliamentary perspective, a notable amendment was moved by Senator Hill, which ensures that, should laws be passed in the Territory which are inappropriate in any application to the Parliament, either House of the Parliament may pass a resolution declaring that an enactment, or part thereof, does not apply to the House concerned, to the members of that House or in the parliamentary precincts. The House of Representatives agreed to all of the amendments on 29 November.

Taxation Laws Amendment Bill (No. 5) 1988

Following significant consultation, and debate in the Senate, amendments were made to this bill on the motion of the Government. One of the Government amendments related to the commencement clause in the Bill. In addition, as the bill was being considered in committee, further information was sought in relation to certain matters, and consideration was postponed until the information was provided.

The House of Representatives agreed to the amendments on 21 December.

Sales Tax (Exemptions and Classifications Amendment Bill (No.2) 1988

The commencement clause of this bill, too, was amended, on the motion of the Opposition and supported by the Democrats, to remove the retrospective application of certain provisions of the bill.

The House of Representatives agreed to the amendment on 21 December.

Education Package

Of significant interest during the last weeks of sitting was the Senate's consideration of seven bills constituting the Education Package. The well publicised result of the Senate consideration was that the House of Representatives, which had completed its program of sittings on 1 December, was obliged to return for a special sitting day on 21 December to consider the Senate changes to three of the bills. The reason for the recall of the House was that assistance to schools and higher education funding were due for implementation on 1 January 1989. The history of the legislation is as follows:

States Grants (Schools Assistance) Bill 1988

On the motion of the Opposition, two requests for amendment were agreed to by the Senate. (While the bill was a bill which could be amended by the Senate, Senator Teague moved his proposed changes as requests, because they had the effect of increasing the charge or burden on the people, which under the Constitution the Senate is not itself empowered to do.) In addition, both Opposition and Democrat amendments were also made to the bill. Because the requests for amendment had been made, the bill could not be given a third reading, and nor could the remaining amendments be considered by the House of Representatives until the House of Representatives had first considered the requests.

On 20 December, the day before the House of Representatives was due to consider the Senate requests and amendments, the Minister for Finance (Senator Walsh) made a statement to the Senate advising that it had been discovered subsequent to the passage of the bill that the requests for amendment were technically defective.

On 21 December the House, having considered the requests, refused to make the requested amendments and returned the bill to the Senate for further consideration. The Senate pressed its requests, at the same time making a consequential amendment relating to the requests to remedy the defect identified by the Minister for Finance, and returned the bill to the House of Representatives. The House of Representatives then made the requested amendments and returned the bill to the Senate, whereupon it was read a third time.

The next step was for the House of Representatives to consider the amendments made to the bill, of which there were five. The House of Representatives agreed to three of the amendments, disagreed to one, and made an amendment in substitution for the last amendment. The Senate agreed to the substitute amendment, and did not insist on the amendment to which the House of Representatives had disagreed.

States Grants (Technical & Further Assistance) Amendment Bill (No 2) 1988

This bill passed the Senate on 14 December, with amendments made by the Senate on the motions of the Opposition and Democrats. The House of Representatives, on 21 December, disagreed to three of the four amendments, and substituted an amendment for the fourth. When the message advising the Senate of the House of Representatives decision was considered in the Senate, the Senate did not insist on one of its amendments, agreed to the substitute amendment made by the House of Representatives, and insisted on the remaining two amendments. The House of Representatives insisted on disagreeing to the two amendments. When this message was received by the Senate, the Manager of Government Business in the Senate (Senator Ray) moved that it be made an order of the day for the next day of sitting. Consequently, debate on this bill was not concluded by the end of sittings.

Higher Education Funding Bill 1988

During consideration of this bill on 14 December, one Opposition amendment was agreed to and two Democrat amendments, the second of which was twice amended on the motion of the Opposition, were also agreed to.

On 21 December the House of Representatives agreed to one amendment, disagreed to the second, and made an amendment in substitution for the third. The Senate did not insist on this second amendment and agreed to the House of Representatives' substitute amendment.

The remaining bills of the package passed the Senate without amendment.

The passage of these bills, notably the Senate's successful reassertion of its right to press its requests, was of considerable constitutional significance.

War Crimes Amendment Bill 1988

A substantial debate took place in the Senate on the War Crimes Amendment Bill. Consideration of the six clauses of the bill began on 19 December. Debate continued for the remainder of the day and concluded at 6.30 pm on 20 December. The substantive amendments made to the Bill (which had passed the House of Representatives after a very brief debate more than a year earlier) were made on the motion of the Government, following extensive consultation with the Opposition, and with Democrat senators. The House of Representatives agreed to the amendments on 21 December.

Community Services and Health Legislation Amendment Bill 1988

On 20 December, on the motion of the Australian Democrats, an amendment was made to the bill. In addition, two clauses were deleted from the bill. These amendments were considered by the House of Representatives on 21 December. The House of Representatives agreed to the first amendment but did not agree to the amendment which removed the two clauses from the Bill. The Senate insisted on this amendment, and the House of Representatives finally agreed to the deletion of the clauses.

Private Senators' Bills

Census and Statistics Amendment (Voluntary Provision of Survey Information) Bill 1988

In Bulletin No. 37 (page 7), reference was made to a debate on 10 November on the Census and Statistics Amendment (Voluntary Provision of Survey Information) Bill 1988 introduced by Senator Sheil. Debate resumed on the bill on 24 November. When the question that the bill be read a second time was put, a division was called and the motion was negatived on a tied vote (28 to 28).

Australian Bureau of Statistics Amendment Bill 1988

This Bill was introduced by Senator Sheil on 6 December, as an alternative to his earlier bill.

Broadcasting (Prohibition of Violent Programs for Children Bill) 1988

This Bill was introduced by Senator Vallentine on 7 December.

For debate on Senator Jenkins' bills relating to Australian Capital Territory self-government, see above, under that heading.

Regulation of Video Material Bill 1988

On 25 November Senator Walters gave notice that, on the next day of sitting, she would introduce this bill. On 28 November, her notice of motion was postponed till two sitting days after that day. The bill was introduced on 30 November.

On 14 December the Leader of the Opposition in the Senate (Senator Chaney) gave contingent notice of motion, the effect of which, if successful, would be to enable him to move a suspension of standing orders on 15 December to ensure that the general business order of the day relating to the Video Material Bill have precedence over all other business until the Minister for Justice (Senator Tate) made a second reading speech putting the Government position on the public record before the Senate rose.

On 15 December Senator Chaney moved the motion accordingly. The motion being agreed to, Senator Chaney thereupon moved that the order of the day relating to the Bill have precedence, and this question too was put and passed without division or debate. The Clerk called on the order of the day, Senator Tate immediately made the second reading speech, and in accordance with the terms of Senator Chaney's motion the debate was automatically adjourned.

During consideration of the Postal Services Amendment Bill 1988, Senator Harradine moved an amendment the effect of which would have been to prohibit the distribution of X-Rated video material through Australia Post. The amendment was defeated on division, by 33 votes to 34.

Other matters relating to Bills

Second Reading Amendments

Mention has been made already of the proceedings relating to the consideration of Senator Jenkins' private senator's bills on ACT Self-Government together with the government bills. In addition, a substantial number of second reading amendments having various effects, including the reference of a matter to a Senate Committee, were moved in the Senate, and a number agreed to.

The most unusual second reading amendment was moved to the Veterans' Affairs Legislation Amendment Bill 1988 on 13 December. Senator Newman moved an amendment to this bill, expressing certain opinions on the government's attitude to veterans' affairs. Senator McLean moved an amendment to the amendment, which had the effect of criticising the Opposition. Senator Newman thereupon moved a further amendment to Senator McLean's amendment, to neutralise the criticism. Senator Newman's amendment to Senator McLean's amendment was defeated on the voices; Senator McLean's amendment was defeated after division; and Senator Newman's original amendment was agreed to, also after division, with Democrat support. The bill itself passed the Senate without amendment.

Cut off Point for Consideration of Legislation

As reported in Bulletin No 34 (page 10), Senator Macklin's motion to set a time limit on the introduction of bills for consideration by the Senate during the Budget sittings was agreed to. The date specified in the motion was 25 November.

On that day, 23 bills received from the House of Representatives were introduced to the Senate. This ensured that they could be considered during the Budget Sittings. Subsequently, four further bills were exempted from the automatic adjournment to the first day of sitting in 1989, after a special motion had been moved to enable them to be considered during the Budget Sittings. Exemption from the requirement was not sought for one further government bill.

Public Service (Parliamentary Departments) Bill

An unusual course was followed on receipt of a message from the House of Representatives transmitting the Public Service (Parliamentary Departments) Bill to the Senate for concurrence. The normal practice on receipt of a message from the House of Representatives transmitting a bill is for a Minister to move appropriate motions to bring the bill to first or second reading stage. In this case, however, the message having been reported to the Senate on 14 December, the Minister moved that consideration of the message be an order of the day for the next day of sitting.

LEGISLATION PROCEDURES COMMITTEE

On 1 December the Chairman of the Committee (Senator Colston), pursuant to Order of the Senate, tabled the report of the Legislation Procedures Committee. (For discussion on the terms of reference of the Committee, see Bulletin No. 34, pp. 6-7.)

In its unanimous report, the Committee recommends a number of substantial changes to the Senate's procedures for consideration of legislation. The Chairman, after tabling the report, moved a motion, the effect of which was to postpone consideration of the report till the first sitting day of 1989, and to provide that consideration of the report be listed on the notice paper as business of the Senate (thereby taking priority over all government and general business) until finally determined. This motion will ensure early consideration of the report.

Should the recommendations of the report be adopted, consideration of bills by standing committees will be a regular occurrence rather than ad hoc, and as experience has shown legislation should be significantly improved as a result.

COMMITTEES

(And see Disallowance, Privilege and Legislation Procedures Committee)

During the last five weeks of sitting, a substantial number of reports was tabled in the Senate.

Senate Committees

Transport, Communications and Infrastructure

The Chairman of the Committee (Senator Foreman) tabled its Third Report on the Australian Capital Territory on 23 November, and its report, including a minority report, on the Canberra Leasehold System on 24 November.

On 7 December Senator Foreman tabled the Committee's report, including a dissenting report, on the adequacy of the international terminal and aircraft handling facilities at Sydney Airport. This report was, by agreement, the subject of a special debate in the Senate on 8 December.

Publications

In addition to its normal reports recommending that certain papers be published as Parliamentary Papers, on 1 December the Committee, reporting as a joint committee with its House of Representatives counterpart, tabled a report on the Auditor-General's Review of the Australian Government Publishing Service.

Community Affairs

On 7 December the Chair of the Standing Committee on Community Affairs (Senator Zakharov) tabled the Committee's report, including dissenting reports, on income support for the retired and the aged.

Joint Committees

Electoral Matters

On 24 November the Committee tabled a report entitled "Is This Where I Pay the Electricity Bill?" The Report in fact concerns an efficiency scrutiny into regionalisation in the Australian Electoral Commission.

Public Accounts

On 1 December the Public Accounts Committee tabled its 292nd, 293rd and 294th reports. Report 292 is of particular interest, because it continues a long standing debate between the Committee and the Senate concerning the right claimed by the Committee to sit during the sittings of the Senate (see Bulletin No. 37, page 8).

Estimates Committees

Substantial additional information continued to be tabled in the Senate throughout the period. Most information was available for consideration of the appropriation bills in committee of the whole, but more information was forthcoming as late as 21 December, well after the passage of the appropriation bills early in the morning of 2 December.

References to Committees

The following matters were referred to Committees during the sitting period:

Industry, Science and Technology

On 25 November, on the motion of the Chairman of the Committee (Senator Childs), the following matter was referred to the Committee: The implications for Australia of the greenhouse effect.

On 14 December matters relating to the sugar industry were referred to the Committee, on the motion of Senator Boswell, agreed to by the Senate without amendment or debate. Senator Boswell, pursuant to standing order 36AA, had handed the notice to the Clerk on 13 December; the Clerk reported the notice to the Senate when no other business was before the Chair, in accordance with the standing order.

Legal and Constitutional Affairs Committee

On 13 December the following matter was referred to the Committee after debate:

- a) whether it is constitutional for the Senate to be asked to consider Bills which incorporate a clause or clauses which inhibit the Senate's ability to effect amendment of such a bill; and
- b) whether the Defence Service Homes Amendment Bill 1988, which contains such a clause, is therefore unconstitutional.

As the terms of reference indicate, this matter arose because of the passage, on 8 December, of the Defence Service Homes Amendment Bill.

Transport, Communications and Infrastructure

On 21 December, as a result of an amendment moved by Senator MacGibbon to add words to the second reading of the Federal Airports Corporation Amendment Bill

1988, the organisation and operations of the Federal Airports Corporation and the Civil Aviation Authority was referred to the Committee. Because the amendment added words to the second reading motion, the reference to the Committee did not impede passage of the Bill. The amendment further provided that, for the purposes of the inquiry, 4 additional senators be appointed to the Committee. Later that day, one Opposition senator and one Democrat senator were appointed in accordance with the resolution.

Proposed references

In addition to these references, unsuccessful attempts were made to refer to committees specific aspects of the Australian Shipping Commission Annual Report (by motion of which notice had been given on 12 December by Senator Hamer) and aspects of the Superannuation Funds Investment Trust Annual Report (by an amendment to the motion for the second reading of the Superannuation Amendment Bill 1988, moved by Senator Lewis).

Other Committee Matters

On 14 December the Chair of the Finance and Public Administration Committee (Senator Coates) made a statement to the Senate relating to the Committee's program of inquiries.

On 16 December the Chairman of the Select Committee on the Administration of Aboriginal Affairs (Senator McMullan) tabled letters, on behalf of the Committee, to the Editors of *The Australian* and *The Canberra Times*, relating to articles which had been published in those papers based on *in camera* evidence taken by the Committee. The letters warned the Editors of the consequences of publishing such material, and indicated that further action would be taken if similar incidents occurred.

On 13 December the President presented his report on Government responses outstanding to Parliamentary committee reports which have not been responded to within the three-month time limit during which the Government has undertaken to respond to reports. Very few responses are outstanding.

ADMINISTRATION OF ABORIGINAL AFFAIRS

The administration of aboriginal affairs (see Bulletin No. 37, pages 1-3) continued to take up much of the time of the Senate during the sitting period. In addition to matters relating to privilege, and motions moved during consideration of

appropriation bills, discussed elsewhere in this bulletin, a substantial number of questions without notice was asked; a number of papers was tabled; and, as a result of the order for a return agreed to by the Senate during passage of Appropriation Bill (No. 1), the return to order was tabled in the Senate on 5 December.

On 6 December, the Leader of the Opposition in the Senate, Senator Chaney, moved an urgency motion relating to the "need for the Prime Minister to dismiss the Minister for Aboriginal Affairs because of his misleading of Parliament". The motion of urgency was lost, following a division, with the Ayes and Nos being equal.

On 7 December, following a motion by Senator Chaney for suspension of standing orders, agreed to after debate, to enable him to move a censure motion of the Prime Minister relating to ministerial proprieties and the administration of Aboriginal Affairs, Senator Chaney moved the motion.

During the course of this debate, a senator was suspended from the Chamber (see Suspension of Senator under OTHER MATTERS, below). When the question on the censure motion was put, the Senate divided and the motion was lost, the Ayes and Nos being equal.

On 12 December, the Chairman of the Select Committee moved for an extension of time for the Committee to report, to the first sitting day in 1989 (28 February) rather than 23 February which, because of the Government's proposed program of Autumn sittings, is not a sitting day.

OTHER MATTERS

Australian Bureau of Statistics Survey on Household Expenditure

For some months there has been controversy concerning whether a proposal by the ABS to conduct a Household Expenditure Survey, to be given effect as a compulsory survey, should have been tabled in both Houses of the Parliament. Initially, the controversy arose outside the confines of the Chambers, in that certain media releases had been issued by the ABS itself and by members of both Houses. In the case of senators, advice had been sought from Senate officers concerning the accuracy of the assertions by the ABS that, despite the fact that the proposed 1988-89 Expenditure Survey had not been tabled in the Parliament, on the grounds that it was not "a new proposal" under the Australian Bureau of Statistics Act which requires all such proposals to be tabled in the Parliament before implementation, respondents to the Survey were required to participate in the Survey.

During the consideration of the estimates of the ABS by Estimates Committee C, questions were raised in relation to conflicting views concerning the compulsory

nature of the Survey. In a reservation appended to the report, Opposition senators suggested that the weight of opinion lay against the view, taken by the ABS, that the Survey was compulsory. The report of the Committee, including the reservation containing these views, was considered in committee of the whole on 30 November. Senator Teague, a member of the Committee, moved a motion in committee of the whole relating to reservations in the report. The motion, with an amendment moved by Senator Haines, was agreed to in the committee.

On 29 November, Senator Walters gave a notice of motion, seeking that the Government expedite the preparation and release of an opinion by the Attorney-General's Department, in response to a request of the Commonwealth Ombudsman, to the ABS, as to the legality of retrospective tabling of the Household Expenditure Survey and seeking an early response by the Bureau to certain matters on which the Ombudsman had requested comment. (The proposal for a Survey had been tabled in both Houses on 29 September, after the questions as to its compulsory nature had been raised.) On the same day, the President made a statement concerning advice given by officers of the Senate in relation to the matter.

On 30 November the Leader of the Opposition in the Senate (Senator Chaney) gave a notice of motion that, contingent on no notice having been given to the Senate that advice in the terms of Senator Walters' notice of motion had been provided to the Ombudsman, he would move for the suspension of standing orders to give Senator Walters' notice precedence over all other business on 5 December.

On 5 December the Manager of Government Business in the Senate (Senator Ray) indicated to the Senate that the responses sought in Senator Walters' notice of motion had been given to the Ombudsman.

On 12 December Senator Walters gave a further notice of motion, this time for an Order for a Return relating to correspondence between the ABS and the Attorney-General's Department, which had been quoted in debate by the Minister for Finance (Senator Walsh). The motion was agreed to without amendment or debate on 13 December. The Order had effect for 14 December.

On 14 December, pursuant to the Order, the documents sought in the motion were laid on the table by the Minister for Finance.

On 20 December Senator Puplick, on behalf of Senator Chaney, gave a notice of motion ordering a return of any legal opinions obtained by the ABS from the Attorney-General's Department concerning the HES.

On 21 December the Minister for Finance tabled the papers the subject of the notice of motion, without any order of the Senate having been made.

Appropriation Bills — Motions moved in committee of the Whole

Before the Appropriation (Parliamentary Departments) Bill and Appropriation Bill (No. 1) are considered in committee of the whole, it is usual for a Minister to move a motion enabling motions based on reports of Estimates Committees to be moved during consideration of the votes of the departments and authorities which have been examined by Estimates Committees. The appropriate motion was moved in the Senate in relation to each of the Bills for 1988-89.

When the Senate moved into committee of the whole in relation to the Parliamentary Appropriations Bill, Senator Michael Baume moved a motion based on the reports of Estimates Committee A and the Appropriations and Staffing Committee concerning the determination of estimates for the Senate. The motion reaffirmed the recommendation in the report of the Appropriations and Staffing Committee, adopted in September (see Bulletin No. 34, pages 7 to 8). The motion was agreed to in committee of the whole, and endorsed by the Senate when the bill was reported from the committee. In the course of the Committee debate, the President made a statement relating to the estimates for Parliamentary Departments generally, and tabled correspondence between the Presiding Officers, the Minister for Finance and the Prime Minister.

During consideration of the Appropriation Bill (No.1), Senator Teague moved a motion, referred to above, relating to the Australian Bureau of Statistics, based on the report of Estimates Committee C. As earlier indicated, the motion was agreed to, with an amendment.

During consideration of the estimates of the Department of Prime Minister and Cabinet, Senator Michael Baume, by leave (because his motion was not based on a report of an estimates committee), moved a motion that the Senate take note of a response given by the Leader of the Government in the Senate to questions deriving from additional information provided to Estimates Committee A. Debate on the motion was adjourned.

During consideration of the estimates of the Department of Aboriginal Affairs, Senator Short moved a motion that there be laid on the table of the Senate certain papers relating to Aboriginal Affairs. Senator Short's motion derived from consideration of the report of Estimates Committee E. Later that evening, debate on the votes for the Department of Community Services and Health was interrupted, to enable Senator Tate, as Minister representing the Minister for Aboriginal Affairs, to table a number of papers relating to the matter. Senator Short thereupon moved, by leave, that the Senate take note of the papers. Debate was adjourned, and the committee continued its consideration of the Community Services vote.

Following completion of the committee's consideration of the votes for all departments, the Chairman put the question that the bill be reported. The Leader

of the Opposition in the Senate (Senator Chaney) moved as an amendment to that motion that Senator Tate be censured for tabling an incomplete document in response to the earlier order made in committee of the whole. The motion was lost, after division, Senator Tate having presented the whole of the document concerned.

The Chairman reported to the President that the Committee had considered the Appropriation Bill and had agreed to the Bill without requests but with four resolutions, as set out above. The report of the Committee was adopted and the Bill read a third time.

Formal Motions

In addition to a number of standard motions, such as leave for introduction of bills, and motions put formally without debate relating to orders for returns and matters of privilege (discussed above), a number of motions which would normally be considered and discussed as general business passed the Senate without amendment or debate. The subject matter of some 11 motions ranged widely, from human rights in Brazil to the Senate's appreciation of the performance of the Eureka Stockade Opera to the Armenian earthquake disaster.

On 1 December discussion ensued concerning whether a motion relating to World AIDS Day should be taken as formal. When Senator Peter Baume, who had given notice of the motion, indicated that certain senators had objected privately to the motion being put without debate and he had therefore decided not to seek to have the motion declared formal, Senator Harradine moved for the suspension of standing orders to bring on the matter for debate. His motion was lost, without division.

Orders for Returns

As reported in Bulletin No. 35 (page 1), Senator Macklin had recourse to the procedure for requiring the return of documents in relation to provisions of acts which had not been proclaimed. Since that time, the procedure has been used with great regularity; other orders for returns are discussed under various subject headings in this Bulletin. It may be mentioned that in all cases the orders for return have been agreed to by the Senate, and the returns to order have been received on, and frequently before, the dates specified in each order.

Urgency Motions

In Bulletin No. 37 (page 16), reference was made to the use of a contingent notice of motion to enable a question to be put after time for debate on a motion of urgency had expired. This procedure was used twice during the present sitting period.

On 28 November, Senator McLean moved an urgency motion, to which Senator Newman wished to move an amendment, also pursuant to contingent notice. (Amendments to motions of urgency are not permitted without a suspension of standing orders. The purpose of the contingent notice of motion is to enable the suspension of standing orders to permit an amendment to be moved, without the requirement of an absolute majority.) The motion for suspension of standing orders having been agreed to, Senator Newman moved her amendment. The time having expired for debate on the urgency motion and the amendment, Senator Reid, pursuant to contingent notice, moved that the questions be put forthwith. This motion having been agreed to, the question that the amendment be agreed to was put and passed, and Senator McLean's urgency motion, as amended, was thereupon put and agreed to.

On 5 December, the time for debate on an urgency motion moved by the Leader of the Opposition in the Senate, Senator Chaney, having expired, resort was again had to the contingent notice to enable the question to be put. This motion was agreed to, and the motion of urgency was put but defeated after division.

On 25 November, Senator Coulter moved a motion of urgency. The automatic question for the adjournment of the Senate at 3.45pm would have intervened before the question on the motion of urgency could have been resolved. Therefore, some minutes before 3.45pm, Senator Knowles moved that the question be now put, to enable a vote to be taken. The motion was agreed to. The question that the motion of urgency be agreed to was then immediately put, and was negatived after division.

Order of the Day — motion to take Bill separately from other Bills

On 6 December, on the motion of the Minister for Local Government (Senator Reynolds), a motion that the resumption of the debate on the Australian Industry Development Corporation Amendment Bill 1988 be placed on the Notice Paper as an order of the day separate from, and following, the order of the day relating to the consideration of broadcasting legislation, was agreed to.

While the motion for the introduction of bills together contains within it an automatic right to put questions on each bill in a package of bills separately, on request, the intention of this motion was to enable the AIDC Bill to be treated as a separate order of the day. The Bill passed the Senate on 8 December.

Consideration of Government Papers

In Bulletin No. 37 (pages 15 and 16), reference was made to the lack of opportunity to debate government papers because of the sittings of estimates committees, and the method used to consider papers on Thursday at General Business.

On 5 December, following a request by the Opposition when the substantial list of government papers to be tabled on that day was made available, the Manager of Government Business in the Senate (Senator Ray) moved a motion to enable their considerations during the usual time for the detailed consideration of government papers, over a three day period. A similar motion was moved later in the period of sittings.

Senator changing place during division

On 7 December, following a division in committee, the Chairman of Committees (Senator Hamer) drew attention to the standing orders which provide that, after tellers are appointed, senators should not change their place in the Chamber. As he pointed out, however, the senator's changing his place did not affect the division. A short discussion ensued as to whether the senator was entitled to change his place without the leave of the Senate. The Chairman advised that, without such permission, technically the senator should have been recorded as voting on the side on which he had originally sat.

Suspension of senator

The suspension of senators is now a rare occurrence.

During debate on the motion of censure of the Prime Minister (see ADMINISTRATION OF ABORIGINAL AFFAIRS, above), however, a point of order was taken that Senator Macklin should be asked to withdraw certain remarks in breach of standing order 418. The point of order was upheld and Senator Macklin was asked to withdraw the remarks. Senator Macklin having refused to withdraw, the Deputy-President (Senator Hamer) named Senator Macklin and, in accordance with Standing Order 440, called upon him to make any explanation or apology he saw fit. Senator Macklin indicated that he refused to withdraw his comments. Senator Hamer thereupon called upon the Leader of the Government in the Senate (Senator Button) to move the appropriate motion in accordance with the Standing Order. Senator Button immediately moved that Senator Macklin be suspended from the sitting of the Senate. The question was resolved in the affirmative, and Senator Macklin was suspended accordingly, for the remainder of the sitting day.

Leave of absence to senators

Leave of absence is frequently granted to senators when they are unavoidably absent from the Senate on parliamentary or ministerial duty. Normally, leave of absence is granted pursuant to notice of motion which has priority business of the Senate on the day for which it is given.

On 5 December the Manager of Government Business in the Senate (Senator Ray) moved, by leave, that Senator Richardson have leave of absence from the period 30 November to 15 December, inclusive, on account of absence overseas on ministerial business. This motion was agreed to.

On 12 December, the Minister for Consumer Affairs (Senator Bolkus) also moved, by leave, that Senator Button be granted leave of absence from 12 December to the end of sittings 1988, on account of ministerial business overseas. Following debate on this motion, Senator Bolkus, by leave, amended his motion to accord Senator Button leave of absence from the period 12 to 16 December only. The amended motion was agreed to.

Both Ministers returned from overseas after their leave expired, and participated in the Senate proceedings until the end of the sitting period.

Orders of the Day discharged from the Notice Paper

In Bulletin No. 37 (page 15), reference was made to the withdrawal of certain notices of motion from the Notice Paper, at the request of a number of senators. On 21 December, the Manager of Government Business in the Senate (Senator Ray) moved, by leave, that a number of government business orders of the day be discharged from the notice paper. The orders of the day to be discharged had been determined after consultation with senators. Senator Ray's motion was agreed to without debate.

Notices of Motion relating to Senate procedures

On 30 November, Senator Crichton-Browne gave a notice of motion relating to certain standards of behaviour in the Chamber, one element of which, if successful, would involve a change to the standing orders. The notice of motion has not yet come on for debate.

Another notice of motion, which would also involve an amendment to the Standing

Orders, was given by Senator Teague on the last day of sitting. The notice proposes the insertion in standing orders of a method of dividing senators into classes,

pursuant to section 13 of the Constitution, following a double dissolution of the Houses of Parliament.

Constitutional and Bill of Rights exhibitions

On 19 December, in response to questions raised during discussion on matters of public interest on 15 December, the President made a statement relating to the constitutional exhibition on display in Parliament House. The President advised the Senate that the exhibition was the result of a request from the Prime Minister in 1986 to stage an exhibition of constitutional documents in Parliament House during the Bicentennial year.

Another exhibition in Parliament House was also mentioned during debate. On 13 December, His Excellency the Governor-General opened an exhibition, prepared by the Department of the Senate, to mark the tercentenary of the Bill of Rights of 1688 on which so much of parliamentary law is grounded. As mentioned by Senator Durack when speaking to a motion for the adoption of a report of the Committee of Privileges recommending a right of reply to a citizen affected by matters raised in the Senate (see PRIVILEGES, above) the formal recognition on that day of Australia's debt to the Bill of Rights was singularly appropriate.

**APPENDIX - HIGHLIGHTS OF THE SITTINGS 22 AUGUST — 21
DECEMBER 1988**

- (1) Inaugural sitting of the Houses in the new Parliament House
(Bulletin No. 34, page 1)
- (2) Orders of the Court of Disputed Returns and of new senator
(Bulletin No. 34, pages 1-2)
- (3) Commonwealth Parliamentary Association Conference in Australia
(Bulletin No. 35, page 6)
- (4) Referendum on Constitution Alterations
(Bulletins No. 34, pages 3-4, No. 35, page 4)
- (5) Legislation Procedures Committee
 - Establishment (Bulletin No. 34, pages 6-7)
 - Report (Bulletin No. 38, page 18)
- (6) Parliamentary Privilege
 - Judgement upholding validity and effect of *Parliamentary Privileges Act 1987*
(Bulletin No. 34, page 10)
 - Protection of Witnesses: matters referred to Privileges Committee
(Bulletins No. 36, pages 1-2, No. 37, pages 1-2, No. 38, page 8)
 - Freedom of Speech and Protection of Citizens' Rights — Matter raised by Senator Chaney
(Bulletin No. 37, page 3)
 - Statement by President
(Bulletin No. 38, page 6)
 - Alleged Misleading Evidence: Matters referred to Privileges Committee
(Bulletins No. 37, page 3, No. 38, page 7)
- (7) Appropriations for Parliament
 - Resolution contained in Report of Appropriations and Staffing Committee agreed to
(Bulletins No. 34, pages 7-8, No. 38, pages 25-26)
 - Tabling of correspondence by the President
(Bulletins No. 36, page 7, No. 38, page 26)
- (8) Proclamations of Acts
 - Order for Return of details of provisions of Acts which have not been proclaimed
(Bulletin No. 35, page 1)
 - Return to Order (Bulletin No. 38, pages 1-2)

- Order for Biannual Returns
(Bulletin No. 38, page 2)
- (9) Answers to Questions on Notice
- Resolution concerning actions which may be taken if Questions not responded to within 30 days
(Bulletin No. 35, pages 1-2)
 - Return to Order
(Bulletin No. 38, pages 2-3)
- (10) Statutory Instruments (Tabling and Disallowance) Legislation Amendment Bill 1988 — passage through the Senate
(Bulletins No. 35, page 3, No. 38, page 4)
- (11) Legislation Amended in the Senate
(Bulletins No. 35, pages 5-6; No. 36, page 9; No. 37, pages 4-7; No. 38, pages 8-14)
- (12) Validity of Disallowance Motions
(Bulletin No. 38, pages 4-6)