

## Procedural Information No. 55

*For the sitting period 21 and 22 January and 12 to 21 February 1991*

### GULF WAR SITTINGS

Special sittings of both Houses were held on 21 and 22 January to consider a motion supporting the government's policy on the Gulf War.

When the leaders of the non-government parties announced that they wanted a special sitting to consider the commencement of hostilities against Iraq, it was certain that the Senate at least would sit, because under the long-standing provision, now contained in the new standing orders, relating to the times of sitting, an absolute majority of senators, represented by their party leaders, have the power to require the President to recall the Senate. In the event the government decided that both Houses should meet.

At the commencement of the sitting on 21 January the Leader of the Government sought leave to move a motion relating to the Gulf War. Leave was granted only after the Leader of the Opposition indicated a view that there ought to be a question time. Leave having been granted to move the motion prior to the commencement of any other business, however, that motion was taken to supersede all other business for the remainder of that day. When the motion was adjourned at the end of the day, a motion relating to the times of sitting and routine of business was moved by leave, notices were given, and documents were tabled.

The second of the two special sitting days was virtually a normal day, but was devoted mainly to the Gulf War motion, which was finally passed at the end of the day. Other business transacted included opposition motions relating to the situation in the Baltic states, and a motion condemning the Australian Broadcasting Corporation for its refusal to send messages through Radio Australia to Australian service personnel in the Gulf.

## NEW SENATOR

Following the resignation of Senator Peter Baume on 28 January, his replacement, Senator John Tierney, was appointed by the Governor of New South Wales and sworn in on 12 February. His appointment must be confirmed (technically, continued) by the New South Wales Parliament when it next meets. The New South Wales authorities interpret section 15 of the Constitution as allowing an appointment by the Governor of the state whenever the state Parliament is not sitting. Other states take the view that an appointment by the Governor can be made only if the state Parliament is prorogued. In accordance with recent practice, Senator Tierney was sworn in on receipt of facsimile copies of the appointment documents, and the original documents were tabled when they were received, later in the day.

## WESTPAC DOCUMENTS: SUB JUDICE PRINCIPLE

On the adjournment debate on 12 February Senator McLean began to speak on the lending activities of banks, a subject on which he had spoken on previous occasions, and indicated an intention to refer to certain documents in his possession relating to the activities of the Westpac Banking Corporation. Mr President interrupted the debate and stated that submissions had been made to him by Westpac to the effect that certain documents should not be disclosed in proceedings in the Senate, on the ground of the sub judice principle. He stated that Senator McLean had made submissions to him to the effect that he should permit the disclosure of the documents because of the public interest in their content and the right of the Senate to debate matters of public interest. The President stated that the disclosure of the documents would prejudice legal proceedings undertaken by Westpac to have the documents suppressed by the courts, in that the disclosure of the documents would probably terminate those proceedings. He stated that, having weighed that danger of prejudice to legal proceedings against the right of the Senate to debate matters of public interest, he had concluded that he should not allow Senator McLean to disclose the documents, and he ruled accordingly.

Senator McLean accepted the President's ruling, but proceeded to quote his correspondence with the President. Points of order were taken to the effect that by quoting a letter he had sent to the President he was indirectly revealing the contents of the documents which he could not disclose under the President's ruling. He was then not permitted to quote parts of his letter.

The President's ruling aroused great controversy in the press. On 14 February Senator McLean proposed an urgency motion relating to banking practices, but before proceeding to the motion he read out in the Senate further correspondence he had had with the President, in which he asked the President to reconsider the ruling and the President declined to do so. Senator McLean then, by leave, withdrew the proposed urgency motion. This step was criticised by the Leader of the Opposition, who then by leave moved a motion, which was agreed to, whereby the Senate invited

Senator McLean to proceed with the urgency motion. Senator McLean then proceeded with the urgency motion, which was duly debated and negatived.

The documents in question were read out in the South Australian Legislative Council on 20 February, that House taking a different view of the application of the sub judice principle. Westpac continued its action in the courts, however, to have the documents suppressed, and on the basis that those actions were continuing, the President's ruling was not changed.

A question was put to the President by Senator Schacht on 20 February concerning the possibility of the Legal and Constitutional Affairs Committee obtaining copies of the documents and using them for the purposes of the inquiry into the cost of justice. The President's reply, given later in the day, indicated that the committee could have the documents laid before it and hear evidence relating to the documents. On the following day Senator Schacht asked a further question as to whether this meant that the committee could defeat the ruling. In his response given later on that day, the President pointed out that if the committee obtained the documents it would not necessarily order their publication, and that in considering whether to publish the documents the committee should have regard to his ruling in the Senate. In the absence of a contrary order by the Senate, however, a committee has the power to order the publication of documents laid before it.

## PROCEDURAL CHANGES

During the period the two outstanding reports of the Procedure Committee were considered and the recommendations of the committee determined.

The outstanding matter in the First Report of 1990, the proposed new procedure for the presentation and debate of committee reports, was referred back to the Procedure Committee on 12 February.

The Second Report of 1990 was considered on 13 February and the following decisions were taken in relation to the major matters covered by the report:

- *Electronic Voting* The Senate took note of the committee's recommendation that electronic voting not be introduced at this stage.
- *Disclosure of in camera evidence* The Senate rejected a motion proposed by the majority of the committee which would have forbidden the disclosure of in camera evidence taken by a committee in a dissenting report, and passed the alternative resolution recommended by the minority, whereby guidelines are adopted for the treatment of in camera evidence in a dissenting report.
- *Access to Video Recordings of Senate Proceedings* The Senate adopted the recommended resolution specifying conditions for access to video recordings of Senate proceedings by persons other than television stations.

- *Publication of Documents Presented During Adjournments* On the recommendation of the committee the Senate made permanent the authorisation of the publication of committee reports presented to the President during long adjournments of the Senate, and also agreed to a similar resolution relating to government documents presented to the President.
- *Reference of Bills to Committees* The Senate rejected a recommendation that the orders of the Senate of 5 December 1989 containing the new procedures for the reference of bills to committees be terminated at the end of this period of sittings. This means that those procedures now remain in force until the end of the current session, which will probably last until the end of the current Parliament.

The Senate also took note of the observations by the Procedure Committee on question time and recommendations for further consideration of matters in Estimates Committees reports.

The Senate also agreed on 13 February to a proposal that the consideration of committee reports be transferred from Wednesdays to Thursdays.

## REGULATIONS DISALLOWED

The Senate disallowed on 14 February regulations which would have empowered the charging of an admission fee for the Australian War Memorial. After the disallowance motion was passed, the Minister for Justice and Consumer Affairs, Senator Tate, by leave moved a motion to refer matters arising from the making of the regulations to the Standing Committee on Community Affairs. His stated intention was to have that committee inquire into the financial implications of the disallowance of the regulations for the War Memorial. His motion was withdrawn when it was agreed that the matters he wished to subject to examination could be examined in the relevant Estimates Committee.

## LEGISLATION AMENDED

The Occupational Health and Safety (Commonwealth Employment) Bill 1990 was amended on 18 February to subject to disallowance a code of practice to be made under the bill. This amendment was significant in indicating the view of the Senate that quasi-delegated legislation, such as guidelines and codes of practice, should on appropriate occasions be brought under parliamentary control by provision for disallowance, a point raised by the Regulations and Ordinances Committee and the Scrutiny of Bills Committee.

## UNANSWERED QUESTIONS

The procedures relating to questions on notice unanswered after 30 days were used by Senator Alston on 21 February to move successfully a motion requiring the tabling of answers to certain questions. This use of the procedures was accompanied by a statement by the Leader of the Opposition relating to the habit of ministers of leaving the chamber immediately on the conclusion of questions without notice. The President indicated that he would draw this matter to the attention of ministers.

## APPROPRIATION BILL

A special appropriation bill was introduced on 19 February to fund expenditures arising from the Gulf War. On the introduction of the bill, Senator Harradine exercised his right to have the various questions for the introduction of the bill divided so that he could speak on the motion for the first reading of the bill. Senator Harradine wished to express his concern about the intention to continue debate on the bill later that day. The Leader of the Opposition joined the debate, and indicated that the Opposition may revive the use of the procedure whereby the first reading of a bill which cannot be amended by the Senate may be debated and matters not relevant to the bill discussed.

## COMMITTEE REPORTS

The report of the Standing Committee on Industry, Science and Technology on the greenhouse effect, having been presented to the President during the adjournment, was tabled on 12 February and immediately debated.

An unusual document was tabled on behalf of the Joint Standing Committee on the National Crime Authority on 21 February. This was a letter from Mr Justice Stewart, the former chairman of the National Crime Authority, criticising a report by the committee.

The government presented on 14 February its response to the report of the Standing Committee on Legal and Constitutional Affairs on debt recovery, and the response was then debated.

The Minister for Industrial Relations, Senator Cook, presented on 21 February a letter explaining why the government had not responded within the prescribed time to the report by the Standing Committee on Finance and Public Administration on the senior executive service of the public service.

## COMMITTEE REFERENCES

The allocation of departments to the Estimates Committees was varied on 14 February with the intention of evening up the division of the workload between committees.

With the continuation of the procedures for the referral of bills to committees, the Selection of Bills Committee presented reports on 14 and 19 February, and the reports were adopted, referring a number of bills to committees.

The Standing Committee on Industry, Science and Technology was granted on 20 February an extension of time to report on its reference on anti-dumping legislation.

#### NEW COMMITTEE

The Joint Committee on Corporations and Securities, provided for by section 242 of the *Australian Securities Commission Act 1989*, was established on 19 February in consequence of the commencement of that Act.