

Procedural Information Bulletin No. 57

For the sitting period 9 to 18 April 1991

SENATOR CHOSEN

It is not generally appreciated that where a senator is chosen to fill a casual vacancy by the Governor of a state under section 15 of the Constitution, that senator holds the place in the Senate only until the expiration of 14 days after the next sitting of the state Houses of Parliament, and the Houses choose a person to hold the place after that time. Because the same person is invariably chosen for a vacancy on both occasions, it is usually said that the senator's appointment has been "confirmed", but technically the senator has been chosen to fill a vacancy for two different periods. The "confirmation" of Senator Tierney's appointment to the Senate by the New South Wales Houses was notified to the Senate on 9 April. It is the practice not to swear a senator in again in these circumstances.

LEGISLATION AMENDED

The Crimes (Investigation of Commonwealth Offences) Amendment Bill 1990, having been extensively considered by the Standing Committee on Legal and Constitutional Affairs, was dealt with on 10 April, and a considerable number of amendments was made to it on the motions of the government, the Opposition and the Democrats. The bill was not proceeded with by way of a motion to adopt the standing committee's report because amendments different from those recommended by the committee were moved.

The Taxation Laws Amendment Bill 1991, to which several amendments moved by the government were made on 10 April, provides an example of government amendments to legislation designed to deal with points raised by Opposition senators. As has been pointed out in the past, it cannot be assumed that government amendments deal only with matters coming from the government.

Some amendments proposed by the Australian Democrats to the Trade Practices Amendment Bill 1990 were moved but then withdrawn by leave on 10 April, after

the government had given an undertaking to consider matters raised by the amendments in relation to concentration of ownership.

Also on 10 April the Senate resolved not to insist upon its amendments to the Employment, Education and Training Bill 1990 to which the House of Representatives had disagreed. The amendments related to the time for tabling of the reports of the National Board of Employment, Education and Training and the Higher Education Council. The government argued that it would not be possible to have the reports printed within the reduced tabling time proposed, but Opposition speakers accused the government of expressing an intention to circumvent the proposed amendments by delaying the presentation of the reports to the minister.

A request for an amendment was made on 15 April to the Superannuation Supervisory Levy Bill 1991 relating to consultation to be entered into by the responsible minister with certain organisations before regulations setting the levy are made.

UNANSWERED QUESTIONS ON NOTICE

The procedures for requiring answers to questions on notice which remain unanswered for more than 30 days were again used and their use was the occasion of debate in the Senate.

On 9 April answers to questions on notice required by an order for a return arising from the use of the procedures on 14 March were tabled.

On 17 April Senator Short sought explanations of the failure to answer within 30 days a number of questions put to several ministers, but the ministers had not remained in the chamber after question time to provide the explanations, notwithstanding previous disputation about ministers leaving the chamber at that time, and requests by the President that they remain to respond to any references to unanswered questions. A motion was then passed expressing concern at the habit of ministers of leaving the chamber, and requiring that the answers to the questions be tabled on the following day. This was a much shorter period than is usually allowed for the tabling of the answers in this sort of motion. The answers were duly tabled, however, on the following day.

ABSTENTIONS

On 18 April the Australian Democrats expressed an intention of abstaining in the vote on an urgency motion calling for the recall of the Ambassador to Ireland and the Holy See, Mr Brian Burke. The motion was passed by 31 votes to 30. There is no

provision in the procedures of the Senate for senators to record an abstention; if senators are present in the chamber when a vote is taken they must vote with the ayes or the noes, and can abstain only by leaving the chamber. Later in the day Senator McLean by leave moved a motion to record the abstentions of members of his party, but the motion was negatived.

AMENDMENT TO URGENCY MOTION

Standing order 75 provides that an urgency motion may not be amended, but it is not uncommon for an amendment to be moved to an urgency motion pursuant to a suspension of the relevant provision of the standing order, the suspension motion being moved under a contingent notice of motion.

On 9 April an amendment to an urgency motion was moved and the time for debate expired before the matter was resolved. Senator Hill took a point of order to the effect that because the amendment would have the effect of substituting a different statement of the matter of urgency (though on the same subject matter), the question before the Chair was not the urgency motion originally moved and therefore the question should not be put. (Unlike other matters subject to time limits, urgency motions are put and determined when the time has expired: standing order 75(7).) The Deputy-President ruled that the motion before the Chair was still the urgency motion notwithstanding that the amendment would alter its tenor. The amendment and the motion as amended were then each put and passed.

REARRANGEMENT OF BUSINESS

Standing order 56 allows a minister to move at any time without notice a motion "connected with the conduct of the business of the Senate". As has been advised in the past, this standing order is interpreted as allowing a minister to move a motion relating to the way in which the Senate conducts the business which is before it, but does not allow a motion which would amount to suspending an order of the Senate or allowing for proceedings on an item of business not before the Senate. Rearrangement motions moved by ministers are therefore sometimes moved without leave and sometimes moved by leave, depending on their effect. A motion for the rearrangement of general business on 11 April was moved by a minister by leave because it provided for a motion of which notice was given earlier in the day to be moved on that day, a proceeding directly contrary to standing order 76(9), which provides that a notice cannot have effect for the day on which it is given. The motion to allow the notice to be dealt with having been passed, it was not then necessary to seek leave to move the motion at the time for general business.

TALKING OUT

Where a debate is subject to a time limit, it is possible to avoid a vote on the motion in question simply by continuing debate until the time has expired, that is, by "talking out the motion". That this tactic may not always be successful was demonstrated by proceedings on a motion moved by Senator Hill on 11 April relating to the treatment of the Kurdish people. The non-government senators wished to vote on the motion, but the time for the debate had not expired by 10.30 pm. The question for the adjournment of the Senate was then put and negatived on a division. When the time for debate on the motion by Senator Hill (that is, the time for debate on general business) subsequently expired, a motion was moved pursuant to contingent notice to suspend the standing orders to allow a further motion to continue the consideration of general business. The suspension motion and the motion to continue general business were each passed on a division, and the debate on Senator Hill's motion continued. The motion was eventually passed, and a further general business motion, relating to the collapse of the Australian Elizabethan Theatre Trust, was also debated and passed before the Senate rose.

APPROPRIATIONS AND STAFFING COMMITTEE REPORT

The Appropriations and Staffing Committee presented its 15th Report, on the determination of the additional estimates for 1990-91 for the Senate Department, on 15 April. The report revealed that the government had again reduced the estimates determined by the Committee, on this occasion by a sum of \$50,000 which was intended to provide for changes in the staffing arrangements in the President's office. This decision was made, the Committee reported, notwithstanding that similar changes to staffing arrangements in ministerial offices were being fully funded in the additional appropriations. At the hearing of Estimates Committee A on 16 April, the President stated that he would be pursuing this matter with the government.

COMMITTEE REFERENCES

Notwithstanding the adoption of the new procedures for the referral of bills to committees, the old procedures for referring bills remain in place and available to be used. A reminder of this was provided on 11 April when the Australian Capital Territory (Electoral) Amendment Bill 1991 was referred after the second reading to the Standing Committee on Environment, Recreation and the Arts on the motion of the responsible minister.

The Standing Committee on Foreign Affairs, Defence and Trade received a reference on 9 April on Australia's Relations with the Latin American states. The matter of the development of satellite launching facilities in Australia was referred to the Transport, Communications and Infrastructure Committee also on 9 April.

The Employment, Education and Training Committee sought and obtained two extensions of time on 15 and 18 April for its report on the Education Services (Export Regulation) Bill 1990. The Committee is now to report by 7 May.

The membership of the new Joint Select Committee on the Family Law Act was appointed on 17 April.

COMMITTEE REPORTS

The Legal and Constitutional Affairs Committee presented its reports on the Crimes (Investigation of Commonwealth Offences) Amendment Bill 1990 (see under Legislation Amended) and the Trusts (Hague Convention) Bill 1991 on 9 April.

Government responses to the report of the Select Committee on Health Legislation and Health Insurance and to the report of the Foreign Affairs, Defence and Trade Committee on Australia — USSR Relations were presented and debated on 11 and 17 April, respectively.

The Legal and Constitutional Affairs Committee on 17 April presented two discussion papers on its inquiry into the cost of justice. These documents are technically not reports of the Committee, but because standing committees have the power to report from time to time (standing order 25(19)), such documents are treated as equivalents of reports and are tabled without leave.