

Procedural Information Bulletin No. 64

For the sitting period 5 to 14 November 1991

PARLIAMENTARY PRIVILEGE AND BROADCASTING

The Transport and Communications Legislation Amendment Bill 1991, an omnibus bill amending various statutes in the transport and communications area, contained provisions to amend the Parliamentary Proceedings Broadcasting Act to extend to the televising of the proceedings of the two Houses and their committees the absolute privilege currently given by the Act to radio broadcasts of the proceedings of the Houses.

It is not known how these provisions came to be included in the Bill, and there appears to have been no consultation with the Houses before the provisions were introduced. In the proceedings on the bill in the Senate on 14 November the provisions in question were struck out of the bill with the agreement of all parties. It was pointed out that the absolute privilege given to radio broadcasts was enacted when the only broadcast of proceedings was the virtually continuous radio broadcast by the Australian Broadcasting Commission. Now that television stations are authorised to televise extracts of proceedings of the Houses and their committees, the question of extending absolute privilege to those broadcasts involves different issues. It was also pointed out that the Parliamentary Privileges Act provides privilege for all fair and accurate reports of parliamentary proceedings, and that this cover is probably as much as is appropriate for the televising of extracts. Edited television extracts, it was pointed out, could constitute highly unfair and inaccurate reports of proceedings and should not have absolute privilege.

It appears that further consideration will need to be given to this matter of the appropriate protection to be given to broadcasts of proceedings.

DISALLOWABLE INSTRUMENTS

One part of the extensive government amendments of the Transport and Communications Legislation Amendment Bill was designed to shorten the statutory periods for the disallowance of instruments under the Telecommunications Act. The normal statutory period for giving notice of disallowance and for disposing of a disallowance motion is shortened from 15 sitting days to 5 sitting days in respect of instruments made during a limited time. The amendments also provide for an affirmative resolution of both Houses which would circumvent the disallowance procedures.

The government indicated that the rationale for the amendments is to enable intending telecommunications carriers to conclude the processes of entering the industry more quickly. The Senate agreed to the amendments, but it was stressed that they were not regarded as a precedent and were accepted only because of the particular circumstances surrounding the recent amendments of the Telecommunications Act.

OTHER LEGISLATION AMENDED

Another omnibus bill, the Arts, Sport, Environment, Tourism and Territories Legislation Amendment Bill (No. 2) 1991 was extensively considered and further amended on 7 November. An amendment earlier negatived was put again by leave and agreed to.

On 11 November the Senate agreed to amendments made by the House of Representatives to amendments made by the Senate to the Copyright Amendment Bill, and agreed not to insist on two amendments to which the House had disagreed, thereby concluding the very extensive proceedings on that bill.

An interesting debate occurred on 11 November in relation to amendments which were made to the Special Broadcasting Service Bill 1991. The opposition had proposed certain amendments concerning community consultation mechanisms for the Special Broadcasting Service. The government proposed alternative amendments, while indicating that it did not wish any amendments to be made in relation to that matter. The opposition and the Australian Democrats, however, decided to support the government amendments, and so the government amendments were made to the bill notwithstanding the Minister's protests that he did not wish the amendments to be made at all.

The Hearing Services Bill 1991 was amended on 11 November to restrict a power of delegation. Excessively wide powers of delegation have been the subject of adverse comment by the Scrutiny of Bills Committee over many years.

The opposition and the Australian Democrats combined to amend the Social Security Legislation Amendment Bill (No. 3) 1991 on 14 November in relation to assets tests and family allowance.

APPROPRIATIONS

The appropriation bills were finally passed at a late hour at the sitting on 7 November. Consideration of the bills in committee of the whole was again very extensive, notwithstanding lengthy scrutiny of the estimates in the Estimates Committees.

The statement of expenditure under the Advance to the Minister for Finance was the subject of considerable debate on 11 November before it was approved, indicating continuing scrutiny by senators of expenditure from the Advance.

NOTICES OF MOTION

In August 1990 standing order 76 relating to notices of motion was amended to require that a notice must consist of "a clear and succinct proposed resolution or order of the Senate relating to matters within the competence of the Senate", without extraneous matter or quotations. The reference to matters within the competence of the Senate was intended to prohibit motions congratulating sporting teams and the like.

The President made a statement on 13 November indicating that the traditional tolerance of the Chair had been taken advantage of by senators and that notices were becoming unduly prolix again. There had also been notices referring to sporting events. The President indicated that he intended to enforce the rules more strictly.

DIVIDING THE QUESTION

On 12 November there was some discussion of the propriety of the Chair agreeing to a request to divide an amendment and to put the question on parts of the amendment separately, at the request of a senator.

Standing order 84(3) provides that the Chair may order a complicated question to be divided. This procedure applies to amendments as well as to main questions. In practice, the Chair always divides a question at the request of any senator if the question contains two or more distinct proposals which are capable of being determined separately and are separately intelligible. The rationale of this procedure is to avoid any senator being forced to vote for or against a motion which

contains elements which the senator wishes to support and elements which he or she cannot support.

AMENDMENTS TO LEAVE OUT CLAUSES

When a bill is considered in committee of the whole the procedures are designed to ensure that every clause of the bill is agreed to by a majority. Very often, however, bills are taken as a whole by leave instead of clause by clause. Groups of amendments are often moved together by leave, and sometimes an amendment is to leave out a clause. Such an amendment involves the possibility of a clause being carried without a majority, because if the question on an amendment to leave out a clause is negatived by a vote in which the ayes and noes are equal, the clause then stands without a majority to support it. The solution to this problem is not to put an amendment to leave out a clause, but to ensure that where a clause is opposed the question is always put in the form: that the clause stand as printed. This is often awkward, however, when the bill is being taken as a whole. A mechanism has now been devised to ensure that, when a bill is being taken as a whole, a senator opposes a clause and does not wish to have the question on the clause put as one of a group of amendments, the question is put on the clause in the proper form. An advisory note has been prepared on this matter for those wishing to follow the procedure in more detail.

COMMITTEES

A letter from the Parliamentary Secretary to the Prime Minister relating to government responses to committee reports was tabled on 5 November. The letter indicates a change in the procedures for dealing with government responses as part of an effort to achieve more timely responses.

The Community Affairs Committee presented its report on 11 November on the Health Insurance Amendment Bill 1991, and the health insurance package of bills was passed on the following day.

The new Standing Committee on Rural and Regional Affairs was given its first two references on 7 November, relating to drought relief and feedlots.

An attempt by the government to alter the reference to the Finance and Public Administration Committee on the administration of the Department of Foreign Affairs and Trade, to restrict the scope of the reference, was defeated on 7 November.

The Select Committee on Political Broadcasts and Political Disclosures was given on 5 November an extension of time to report until 26 November.

The Public Accounts Committee was given on 6 November an extension of time till 30 April 1992 to report on the Midford Paramount case which was referred to the committee by the Senate.

On 11 November, in response to a question on notice by Senator Vanstone, a statement was made and documentation tabled on behalf of the President in relation to the remuneration and allowances of chairmen of committees. The President's statement indicated that he intends to table this information after the end of each financial year.