

## Procedural Information Bulletin No. 66

*For the sitting period 25 February to 5 March 1992*

### VACANCY IN THE SENATE

The President reported on 25 February the vacancy in the Senate caused by the resignation of Senator Vallentine. There was some debate on the failure of Western Australia to fill the vacancy, and later in the day notices of motion criticising the Western Australian government were given. One of these motions, moved by Senator Coulter, was debated and passed at general business time on 5 March.

The background to this matter is a question of interpretation of section 15 of the Constitution, which provides that a vacancy is to be filled by the Houses of the state Parliament, but may be temporarily filled by the state Governor if the Parliament is not in session. In the past the state of Western Australia has interpreted this to mean that the Governor may make an appointment if the Houses are not sitting even though the Parliament has not been prorogued and is therefore technically in session. Other states have adhered to the strict construction of the section and their Governors have not made appointments to vacancies unless their Parliaments have been prorogued. This interpretation is undoubtedly technically correct, and on this occasion the Western Australian government determined to adhere to that interpretation.

It was pointed out, however, that the Western Australian Houses were sitting when the vacancy was notified and therefore could have made the appointment, and the criticism of the Western Australian government was directed to its failure to bring about this procedure.

It is expected that Senator Vallentine's nominated replacement will be appointed on 12 March and will take her seat in the Senate on 24 March.

### LEGISLATION AMENDED

House of Representatives messages were reported on 26 February agreeing to amendments made to bills by the Senate at the end of the last period of sittings. One

bill remaining in dispute is the Law and Justice Legislation Amendment Bill (No. 2) 1991, which the Senate amended in relation to the controversial matter of engagement of the Solicitor-General in private practice. This was a Senate bill, so the House has returned it with an amendment which reverses the amendment made in the Senate. The House has also disagreed with amendments made by the Senate to the Australian Institute of Health Bill. Neither of these bills had been resolved at the end of the period.

The National Rail Corporation Agreement Bill was amended on 2 March on the motions of the Opposition and the Australian Democrats to require that the Auditor-General be the auditor of the company established by the bill and to require the tabling of the company's financial statements and reports. A similar amendment was made to the Construction Industry Reform and Development Bill on 5 March to require the tabling of periodical reports. Another amendment to the bill related to the information to be included in its annual report.

## HOUSE BILL DISCHARGED

A bill received from the House of Representatives, a private member's bill relating to national uniform time measurement, was discharged from the Notice Paper on 4 March. The procedures of the Senate allow a bill received from the House to be discharged in this way, thereby providing another avenue for the Senate to decline to consider a House bill. An interesting question arises in relation to the possibility of the bill being restored to the Notice Paper and consideration of it resumed. The view is taken that provided that the discharge and restoration occurred in the same session the Senate could resume consideration of the bill without any request from the House to do so.

## POLITICAL BROADCASTS REGULATIONS

During debate on 26 and 27 February on a motion to disallow regulations under the Political Broadcasts and Political Disclosures Act (see Bulletin No. 65, p. 3), attention was drawn to the extraordinary series of errors made in the processes of proclaiming the act and making the regulations. The proclamation to commence the act was not gazetted until the day after the day of commencement, and the proclamation was therefore probably void. A new proclamation was made and gazetted on the following day. Regulations containing the original intended commencement date were then repealed and new regulations substituted, but it was realised that these new regulations were void because of the prohibition in the Acts Interpretation Act against the remaking of regulations which have not been tabled or which are the subject of an unresolved disallowance motion. A third set of regulations was then made amending the original set. The possibility was raised, however, that none of these regulations are in force because of technical defects. The motion for the

disallowance of the regulations was negated. On 5 March unusual notices of motion were given by the Opposition to disallow the regulations which were not covered by the original disallowance motion. These notices are expressed to be for a future day, namely the day on which the responsible minister tables the advice received by the government in relation to the regulations. The minister had earlier declined to table that advice.

#### REGULATIONS DISALLOWED

Regulations under the Family Law Act and the Administrative Appeals Tribunal Act were disallowed on 3 March. The regulations had increased fees payable in respect of proceedings under those acts. Motions to disallow regulations relating to fees under the Federal Court Act and the Judiciary Act were not carried.

#### GOVERNMENT DOCUMENTS — RETURN TO ORDER

In accordance with the order of the Senate on the last day of sitting, a statement giving details of government documents tabled at the end of the last period of sittings was presented on 25 February (see Bulletin No. 65, p. 7).

A suggested change to the procedures for considering government documents was referred to the Procedure Committee on 3 March. The essence of the proposal is that government documents that are presented after 12 noon should be held over for consideration on the following day.

#### MINISTERIAL STATEMENT TABLED BY OPPOSITION

An unusual situation occurred on 4 March when a ministerial statement relating to client service delivery in the Department of Social Security was tabled by an Opposition senator and immediately debated. Apparently the government had not intended to have the statement made in the Senate, but the Opposition wished to debate it.

#### SUBMISSION BY A CITIZEN

The Deputy President tabled on 25 February a submission by a person who claims that false answers have been given to questions on notice in the Senate and that false evidence has been given to an estimates committee. The submission is extremely voluminous, with a large number of attachments. No action had been taken by the end of the period to refer the matter to the Privileges Committee or otherwise to deal with it.

## FAMOUS SENATORS

Lengthy debate on condolence motions took place on 25 February in relation to the deaths of two near-legendary former senators, Ian Wood of Queensland and Geoffrey McLaren of South Australia. Senator Wood was particularly renowned for his independence and his long chairmanship of the Regulations and Ordinances Committee, and all speakers referred to the famous tenacity of Senator McLaren in questioning ministers in the Senate and on estimates committees.

## COMMITTEE REPORTS

A discussion paper and a background paper prepared by the Legal and Constitutional Affairs Committee in relation to its reference on the cost of justice were tabled on 26 February, having been presented to the President during the long adjournment under the procedures relating to the presentation of reports in that circumstance. The view has been taken that, as committees have the power to report from time to time, it is open to a committee to treat a background paper or a discussion paper in all respects as if it were a report. The Committee presented a further discussion paper in relation to this reference on 5 March.

Reports by the Finance and Public Administration Committee on the Ombudsman's Office and by the Rural and Regional Affairs Committee on national drought policy were tabled on 25 February, having also been presented to the President during the adjournment.

A number of submissions to the former Select Committee on the Political Broadcasts and Political Disclosures Bill have been presented, two such submissions being tabled on 26 February. These are submissions responding to other evidence given before the committee while it was in operation.

The Environment, Recreation and the Arts Committee presented its report on annual reports on 4 March.

Government responses to the report of the Legal and Constitutional Affairs Committee on annual reports and to reports of the Joint Foreign Affairs, Defence and Trade Committee on defence force reserves and of the Joint Standing Committee on Migration Regulations on marital status were presented on 27 February and 5 March.

The Register of Senate Committee Reports for 1991 was tabled on 5 March, to update the register for the period 1970-1990 which was tabled last year. A statement on behalf of the President indicated that the Headquarters Secretariat of the Commonwealth Parliamentary Association is using the register as a model for a database on parliamentary committee reports of the Commonwealth of Nations.

## COMMITTEE REFERENCES

The allocation of departments to estimates committees was altered and the additional estimates referred to the committees on 5 March. The committees will sit during the next two-week period of sittings and are to report by 29 April.

The Community Affairs Committee was granted on 25 February an extension of time to complete its inquiry into pharmaceutical restructuring.