

## Procedural Information Bulletin No. 67

*For the sitting period 24 March to 2 April 1992*

### FILLING OF CASUAL VACANCIES

In the previous bulletin reference was made to the delay in filling the vacancy in the Senate caused by the resignation of Senator Vallentine and to the motion passed by the Senate in relation to the matter. Senator Vallentine's replacement, Senator Christabel Chamarette, having been appointed by the Houses of the Western Australian Parliament on 12 March, appeared and was sworn in on 24 March. One of her first actions in the Senate was to give notice of a motion referring to the filling of casual vacancies. The motion would express the view of the Senate that casual vacancies should be filled as expeditiously as possible, note the problem of interpretation of section 15 of the Constitution to which reference was made in the previous bulletin, and recommend that all state Parliaments adopt procedures whereby their Houses, if they are adjourned when a casual vacancy is notified, are recalled to fill the vacancy within 14 days. The Parliament of Queensland already has such a procedure. The motion had not been dealt with at the end of the sitting period.

### BALLOT FOR COMMITTEE MEMBERSHIP

Senator Chamarette's appearance also precipitated a secret ballot of the Senate to fill a vacant position on a committee, the first such ballot to be held for over 20 years.

Both Senator Harradine and Senator Chamarette nominated for the vacancy on the Joint Committee on Foreign Affairs, Defence and Trade caused by the resignation of Senator Vallentine. Standing order 27(1) provides that where the membership of a committee is to be appointed a ballot shall be held if one senator so requires. It is the practice of the Senate to hold a ballot whenever there are more nominations than vacancies to be filled. A ballot was duly held on 24 March, and the position was won by Senator Chamarette.

The standing orders are silent as to whether debate may take place before a ballot is held, but, although there is usually no debate, a past President's ruling suggests that debate is permissible. A debate was therefore allowed before the ballot took place on this occasion.

During the debate Senator Harradine referred to a notice of motion which he had given earlier in the day to amend the standing orders applying to committees generally so that the procedure applying in the legislative and general purpose standing committees, whereby a senator who is not a member of a committee may attend public hearings of the committee and question witnesses unless the committee orders otherwise, would be applied to all committees. Senator Harradine explained that his purpose in proposing this amendment was to ensure that the loser of the ballot could attend public hearings of the Joint Committee. The basis of this suggestion is that joint committees follow Senate procedures in so far as explicit provision is not made for other procedures in their resolution of appointment. It is not entirely certain, however, that the amendment of the standing orders proposed by Senator Harradine would in fact apply to the Joint Committee. Senator Harradine's motion was not passed during the period, but was referred to the Procedure Committee on 25 March.

## ESTIMATES COMMITTEES

A great deal of the sitting time of the period was taken up with meetings of the Estimates Committees to consider the estimates contained in the additional appropriation bills. Four Estimates Committees were authorised to meet simultaneously on 2 and 3 April.

In a report presented on 24 March the Procedure Committee recommended the adoption of the new procedures suggested by the Committee in a discussion paper presented on 19 December 1991. The essence of these proposals is that supplementary meetings of Estimates Committees to deal with specific notified matters would take the place of committee of the whole consideration of the appropriation bills. Senator McMullan gave notice of a motion on 25 March to adopt the new procedures, but consideration of the motion has been postponed till the first sitting day in August, as has the consideration of the Procedure Committee's report. The proposed new procedures may therefore be considered by the Senate before the meetings of Estimates Committees to examine the main appropriations in the budget sittings.

## EXTRA APPROPRIATION BILL

An extra appropriation bill was introduced on 30 March and immediately proceeded with. This bill was designed to appropriate to some government programs some of the money which would have been appropriated by the ordinary appropriation bills, and the reason for introducing the bill was that these programs were expected to run out of money before the ordinary appropriation bills were passed. It is believed that this is the first time that a government has undertaken this procedure.

The estimates of expenditure contained in the extra bill had been referred to the Estimates Committees on 26 March, but notwithstanding that step the Opposition vigorously attacked the government in relation to the extra bill when it was debated and finally passed on 30 March. The Opposition succeeded in having the Senate agree to a second reading amendment condemning the government over the introduction of the bill, but was not successful in moves to have the bill itself referred to the Estimates Committees or to three of the standing committees. Had the bill been referred to the Estimates Committees this would have been an unprecedented step, because Estimates Committees normally consider the particulars of proposed expenditure contained in appropriation bills rather than the bills themselves.

### DISALLOWANCE MOTION

On 24 March the Chairman of the Regulations and Ordinances Committee, pursuant to standing order 78, gave notice of her intention to withdraw a disallowance motion in relation to certain regulations under the Freedom of Information Act. The Committee had decided to accept for its purposes an explanation by the responsible minister of certain provisions in the regulations relating to the life of conclusive certificates declaring that certain documents are exempt from disclosure under the Act. The Opposition, however, did not accept the minister's explanation and, under the procedures contained in the standing order, the notice of motion was transferred to Senator Bishop's name and was passed later in the same day, so that the regulations were disallowed. That day was the last day for resolving the notice of motion.

The use of these procedures to transform a Committee notice of motion into an Opposition notice of motion has occurred previously, and regulations have previously been disallowed in that way. This situation arises because there are sometimes policy considerations in addition to the considerations arising under the Committee's principles of scrutiny.

### PRIVILEGE: ALLEGED INTERFERENCE WITH WITNESSES

The Standing Committee on Community Affairs presented on 2 April a report indicating that some of its witnesses in relation to its inquiry into pharmaceutical restructuring measures may have been subject to attempted intimidation in respect of their evidence. The Committee asked that the matter be referred to the Privileges Committee. Under standing order 81 the President determined that a motion to refer the matter to the Privileges Committee should have precedence over all other business, and such a motion was immediately moved and passed, which is permitted under the standing order when the Senate is about to adjourn for more than a week.

## LEGISLATION AMENDED

The disagreement between the two Houses in relation to the Australian Institute of Health Bill 1991 was finally resolved on 25 March when the Senate agreed not to insist on certain of its amendments to which the House of Representatives had disagreed and resolved to accept amendments made by the House in place of the Senate's amendments.

Agreement between the two Houses was reached in relation to the Law and Justice Legislation Amendment Bill (No. 2) 1991 on 31 March. The Senate had inserted in the bill, which was originally introduced in the Senate, amendments relating to the granting by the Attorney-General of permission for the Solicitor-General to engage in private practice. The House had amended the bill to reverse the Senate's amendments, but when the bill was reconsidered in the Senate a further amendment was made in place of a House of Representatives amendment to ensure that whenever the Attorney-General gives such permission a statement of reasons is laid before each House. The House of Representatives accepted this compromise amendment.

An amendment was made on 31 March to the Arts, Sports, Environment and Territories Legislation Amendment Bill 1992 to ensure that a ministerial direction under a provision in the bill would be gazetted and laid before each House.

## MOTIONS TO TAKE NOTE OF ANSWERS

The Opposition is making increasing use of the device of moving by leave after question time motions to take note of answers given by ministers. On 26 March, for example, four such motions were moved after question time. On 31 March there was a short debate on this procedure, after three such motions had been moved, the Leader of the Government expressing concern about the use of the procedure, and the Leader of the Opposition indicating that the practice was being used because of Opposition dissatisfaction with answers by ministers at question time. On 2 April the meeting of the Senate was prolonged beyond the scheduled adjournment time, which was at 12 noon to allow Estimates Committees to meet, by follow-up debate on answers to questions. On that occasion, however, the debate which took up most of the time was actually initiated by a minister. The Senate had to negative the question for the adjournment to conclude necessary items, principally the presentation of committee reports, before finally adjourning to allow the Estimates Committees to meet.

## POLITICAL BROADCASTS REGULATIONS

In the previous bulletin reference was made to the difficulties surrounding the making of regulations under the Political Broadcasts and Political Disclosures Act.

On 1 April the Regulations and Ordinances Committee made a special report, by way of a statement by the Chairman, on the regulations. The statement indicates that, due to the various errors in the making of the regulations, there is considerable doubt as to which if any of the various regulations are in force. The Committee does not express a concluded view, but notes the possibility that none of the regulations are in force, and indicates that only a court could determine the question.

## UNUSUAL PETITION

On 2 April Senator Spindler presented an unusual petition relating to tariffs and the textiles, clothing and footwear industries. The petition was written on the back of a jacket which he wore into the Chamber, and was continued on a roll of cloth. The petition was not in conformity with the standing orders for various reasons, including its form, and it was therefore presented by leave.

## COMMITTEE REPORTS

The Select Committee on Superannuation tabled an unusual report on 25 March, consisting of a copy of a letter from the Committee to the Treasurer relating to a particular superannuation scheme. The accompanying statement indicated a possibility that funds of a scheme had been misappropriated.

The Legal and Constitutional Affairs Committee presented on 2 April a further discussion paper in its series of such papers relating to its inquiry into the cost of justice.

The Community Affairs Committee presented on 2 April an extremely voluminous report on its extensive inquiry into the employment of persons with disabilities.

Other reports presented during the period were:

- Finance and Public Administration Committee: departmental annual reports, 26 March
- National Crime Authority Committee: annual report of the Authority, 26 March
- ASIO Committee: ASIO and the Archives Act, 2 April

The Employment, Education and Training Committee was granted an extension of time on 26 March to conclude its inquiry into the transfer of control of the John Curtin School of Medical Research. The Committee indicated that the reason for the

extension was the Committee's desire to hear Sir Ninian Stephen, the chairman of the committee of inquiry into the school, before the Committee's report is presented.

Government responses to the Finance and Public Administration Committee's and the Environment, Recreation and the Arts Committee's earlier reports on annual reports and to the report of the Select Committee on Community Standards Relevant to the Supply of Services Utilising Telecommunications Technologies were presented on 26 March and 2 April.