

Procedural Information Bulletin No. 68

For the sitting period 28 April to 7 May 1992

VACANCIES IN THE SENATE

The President tabled on 28 April a letter from the Premier of Western Australia responding to the resolution passed by the Senate criticising the Western Australian Government for the delay in filling the vacancy caused by the resignation of Senator Vallentine (see Bulletin No. 67, p. 1). The Premier's letter suggested that the Senate was misinformed and that the problem was caused by an anomaly in the Constitution. Senator Chamarette, however, again pointed out that the vacancy could have been filled by the Western Australian Houses when the vacancy was notified to them. Senator Chamarette has a notice of motion on the Notice Paper suggesting that the state Parliaments adopt procedures for the recall of their Houses when vacancies are notified and the Houses are adjourned but not prorogued (see also Bulletin No. 66, p. 1).

When the resignation of Senator Olsen was announced on 4 May, Senator Chamarette again drew attention to the notice of motion and suggested that the Senate give early attention to it.

BILL NEGATIVED IN COMMITTEE

The Forest Conservation and Development Bill 1991 was negatived in committee of the whole on 4 May, the committee of the whole rejecting the question that the bill as amended be agreed to. This is the second occasion on which a bill has been rejected in this way, the earlier precedent occurring in 1981. In this circumstance the Chairman of Committees reports to the Senate that the bill has been negatived in committee and the report of the committee is then adopted. Normally the rejection of a bill occurs on the motions for the second or third reading.

The bill had earlier been the subject of a guillotine. On this occasion the Opposition exercised all procedural options to frustrate the guillotine, but there was no disputation about the procedures as there was late last year (see Bulletin No. 65, pp. 1-3).

DISALLOWANCE MOTION ALTERED

Standing order 77 allows a senator to alter the terms of a notice of motion in the senator's name on any day before the notice is called on. This procedure cannot be used, however, to alter a notice of motion for the disallowance of delegated legislation in such a way as to extend the notice to instruments or parts of instruments which were not covered by the original notice, where the time for giving notice has expired, because notice of motion to disallow the additional provisions would then not have been given within the statutorily-prescribed time.

An instance of the alteration of a disallowance motion to extend its scope occurred on 28 April when Senator Harradine altered a notice standing in his name. On this occasion, however, the time for giving notice had not expired, and the alteration could be made without raising the problem caused by the statutory limitations.

MINISTER CENSURED

The Minister for Transport and Communications, Senator Richardson, was censured by the Senate on 7 May for allegedly misleading the Senate, attempting to interfere in the justice system of the Marshall Islands, and failing to declare an interest as a Minister.

The reaction of the Government to the raising of these matters was to place again before the Senate a motion for the registration of senators' interests. Such a proposal was debated in 1983, 1986 and 1987 but was not brought to a decision.

REFERENCE OF BILLS TO SELECT COMMITTEE

On 4 and 6 May unusual motions were moved for the reference of a package of bills to a committee. The superannuation package was referred not to a standing committee but to the already-established Select Committee on Superannuation, and on the motion of the chairman and the initiative of the committee rather than through the Selection of Bills Committee. The bills were not then before the Senate, and the relevant motions were also unusual in providing for the reference of the provisions of the bills to the committee, and the automatic referral of the bills themselves to the committee on their receipt by the Senate. Two of the four bills were received on 7 May. A significant point is that the right of senators who are not members of a committee to participate in its public hearings does not extend to select committees.

An unusual motion to extend the time for the select committee to report was also passed on 4 May. The motion provided for the committee to report on different paragraphs of its terms of reference by different dates.

LEGISLATION AMENDED

The Corporations Legislation (Evidence) Amendment Bill 1992 was amended on the motion of the Australian Democrats on 5 May to insert provisions for a review of the operation of the act.

Amendments recommended by the Finance and Public Administration Committee to the Taxation Laws Amendment Bill (No. 4) 1991 were moved as a group on 5 May; the amendments could not be moved by way of a motion to adopt the committee's report because other amendments had been circulated. On the other hand, the Customs and Excise Legislation Amendment Bill 1992 was also amended on 5 May by the adoption of the report of the Industry, Science and Technology Committee.

There was a long debate later on that day on government amendments which had been inserted in the Migration Amendment Bill 1992 in the House of Representatives to ensure that illegal immigrants who were being held in custody would not be released as a result of legal proceedings then pending. The debate focused on the propriety of enacting such provisions when legal proceedings had not been concluded. The amendments were agreed to by Government and Opposition senators voting together.

APPROPRIATION BILLS

The Estimates Committees having reported, a start was made on the consideration of the additional appropriation bills in committee of the whole on 6 May. Before the consideration of the bills commenced, the Deputy-President circulated a statement suggesting that some of the matters recommended for further consideration in the reports of the Estimates Committees and reservations attached to the reports did not relate to additional estimates of expenditure. The statement was not made; instead, the Deputy-President indicated that he had asked the President to refer the matter to the Procedure Committee. Three of the Estimates Committees referred to the proper scope of questioning on the additional estimates, and Estimate Committee D referred to the inconsistent approach by different committees and different ministers in allowing questions not strictly related to the additional estimates.

This problem may be largely solved if the Senate agrees to the changes in procedures recommended by the Procedure Committee (see Bulletin No. 67, pp. 2-3).

On at least three occasions senators have moved by leave motions to take note of documents or statements and adjourned such motions while in committee of the whole on the appropriation bills. This somewhat incongruous procedure occurred again on 6 May, when the procedural incongruity of it was somewhat overcome by having the committee of the whole report the motion and its adjournment to the Senate, the adoption of the committee's report by the Senate thereby providing some rational basis for putting the adjourned debate on the notice paper.

FURTHER SUBMISSION BY A CITIZEN

A further submission to the Senate by Mr J. Richardson was tabled on 4 May. Mr Richardson makes further claims that false evidence has been given to Estimates Committee A (see Bulletin No. 66, p. 4). A reservation attached to the report of Estimates Committee A recommends that the Public Accounts Committee consider the submissions in the course of its inquiry into the Midford Paramount matter. No doubt the rationale of this recommendation is that it would be difficult for any other committee to investigate Mr Richardson's claims without also examining the intricacies of that matter.

PRIVATE SENATOR'S BILL AGAIN PASSED

One result of the disputation about the flag was that the Senate passed on 30 April a private senator's bill to provide that the national flag may not be changed except by referendum. The Senate passed a similar bill in a previous Parliament, but it was not dealt with by the House of Representatives.

PROCEDURE COMMITTEE REPORT

The Procedure Committee reported on 30 April on proposed changes to standing orders 61 relating to the consideration of government documents and 27 relating to the right of senators to attend meetings of committees of which they are not members. The Committee does not recommend the procedure suggested by Senator Kernot for deferring consideration till the following day of documents presented after 12 noon, but recommends an alternative procedure. The Committee points out that the change to the standing orders proposed by Senator Harradine to extend the right of non-members to attend committee meetings to all committees would probably not be effective in relation to joint committees.

DIVISIONS AFTER SUSPENSION TIME

Although the standing orders require that the sittings of the Senate be suspended at specified times, a practice has grown up of the Senate sitting for a few minutes beyond a prescribed suspension time to finish the business on which it is engaged. Sometimes this leads to a division being taken after the suspension time, which may result in some senators missing the division. An instance of this occurred on 29 April, and was the subject of a protest by Senator Harradine and a statement by the Deputy-President.

ADJOURNMENT MOTIONS

Under standing order 201 a successful motion to adjourn a debate automatically fixes the next day of sitting as the time for the resumption of the debate, unless a different time is fixed by a further motion. The motion for the adjournment of the debate is not debatable or amendable, but the motion fixing a time other than the next day of sitting is open to debate and amendment. Senators have fallen into the habit of moving the two motions as one when they wish to adjourn a debate other than to the next day of sitting. This led to difficulty on 4 May when senators wished to speak to the motion fixing a future day for resumption. The Chair pointed out that only the second element of the motion was debatable and only in relation to the fixing of the time.

SEEKING THE CALL

The President also made a statement on 7 May in relation to the habit of senators of remaining seated and waiting to be called instead of rising and seeking the call in accordance with the prescribed procedure.

COMMITTEE REPORTS

The following committee reports were presented during the period:

Date tabled	Committee	Title
28.04.92	Transport, Communications and Infrastructure	Satellite Launching
30.04.92	Community Affairs	Radiology Fees

30.04.91	Education, Employment and Training	John Curtin Medical School
04.05.92	Industry, Science and Technology	Customs Bill
05.05.91	Rural and Regional Affairs	Deer Bills
05.05.92	Transport, Communications and Infrastructure	Motor Vehicles Bill
05.05.92	Finance and Public Administration	Tax Bill
07.05.92	Community Affairs	Annual Reports
07.05.92	Community Affairs	Pharmaceutical Restructuring

These reports were debated on presentation.

In addition to a motion to take note of this report, the chairman moved a motion to adopt a recommendation in the report so that the Senate would refer back to the Committee an aspect of the inquiry.

The following government responses to committee reports were presented:

Date tabled	Committee	Title
30.04.92	Animal Welfare	Feral Animals
30.04.92	Electoral Committee	Conduct of Elections
07.05.92	Foreign Affairs, Defence and Trade (Joint)	Papua New Guinea
07.05.92	Environment, Recreation and the Arts	Annual Reports

On the motion of the chairman, the Environment, Recreation and the Arts Committee received on 7 May two new references on water management and sport education.