

## Procedural Information Bulletin No. 69

*For the sitting period 26 May to 4 June 1992*

### MARSHALL ISLANDS AFFAIR: PRODUCTION OF DOCUMENTS

The disputation over what has come to be called the "Marshall Islands affair" produced a number of precedents and matters of procedural interest.

The sitting period began with a statement by the President in which he set out an account of his contact with Mr Greg Symons and the subsequent action he took to introduce Mr Symons to an officer in the Australian Embassy in Washington. Consideration of the President's statement was provided for by an unusual motion, moved by leave, that the statement be called on at the conclusion of question time as if it were an order of the day. The statement was duly called on for consideration after question time, and the Leader of the Opposition moved a motion expressing "grave concern that the President of the Senate failed to exercise due care in requesting the Australian Embassy in Washington to assist Mr Symons". After fairly lengthy debate this motion was negatived. Significant elements of the President's statement were that Mr Symons had produced to the President letters from the Marshall Islands government indicating that Mr Symons was authorised to act on behalf of that government, and the President's letter to the Washington Embassy was a letter of introduction based on those credentials.

A significant part of question time on that and subsequent days was devoted to the Marshall Islands matter, the Minister for Foreign Affairs and Trade, Senator Evans, tabling a number of relevant documents in the course of question time on the first two days. On 2 June, after another debate on the matter, the Senate passed a resolution calling on the government to establish a judicial inquiry into government involvement with Mr Symons, and there was speculation that, if the government does not establish such an inquiry, a Senate committee of inquiry may be appointed.

In response to requests for the tabling of all documents relating to the matter, Senator Evans appeared to suggest in some of his answers that he would not provide information which would not be made available under the Freedom of Information Act. On 3 June, after several such responses, a motion was moved by the Opposition and carried repudiating "the claim repeated by the Minister for Foreign Affairs and

Trade that the exemption provisions of the Freedom of Information Act provide grounds for not producing documents to a House of the Parliament". In response to this motion Senator Evans explained that he did not intend to imply that the Freedom of Information Act is in any way applicable to the production of documents to a House by a minister, but that he was merely adopting a shorthand expression to indicate that in examining the documents he would have regard to criteria similar to those contained in the Act. The motion also called upon him to produce by noon on the following day all relevant documents. Although this was not a formal order for the production of documents, it was regarded as having the same practical effect, and before noon on the following day Senator Evans tabled a substantial collection of documents. Some questions were asked based on those documents during question time on that day, and Senator Evans tabled further documents during question time. There appears to be little doubt that the Senate will return to the matter in some way in the next sitting period.

## APPROPRIATION BILLS: POSTPONEMENTS AND AMENDMENTS

An unusual motion to postpone consideration of part of the appropriation bills was passed in committee of the whole on 28 May. Consideration of the question for the adoption of the report of Estimates Committee B in respect of the Department of Finance was postponed until "questions asked of Senator McMullan are answered and relevant documents are produced" in relation to the accommodation of the Australian National Audit Office. The matter under consideration was the propriety of the Audit Office leasing space in a building owned by the Australian Labour Party. Theoretically it was not possible to resume consideration of the postponed question until the questions were answered and the documents produced, but this problem was overcome by a motion, moved by Senator McMullan, that the committee resume consideration of the postponed matter, the view being taken that, the committee of the whole not having reported its resolution to the Senate, it was open to the committee to take that course. That motion having been passed, Senator McMullan then tabled relevant documents, and the postponed question was eventually passed after further questioning based on the documents. The Opposition subsequently gave notice of a motion to refer to the Standing Committee on Finance and Public Administration the question of the accommodation of the Audit Office.

Under the procedures in operation since 1990 for the consideration of the appropriation bills in committee of the whole, debate is limited to matters recommended for further consideration in Estimates Committee reports and reservations attached to those reports. The relevant order explicitly states that this does not prevent the moving of any amendment or request for amendment. If an amendment or request is moved which does not arise in any way from something in an Estimates Committee report, does this mean that it must be put and determined without debate? In a ruling given on 2 June, the Chairman of Committees referred to a circulated request for amendment which did not relate to anything in an

Estimates Committee report, and stated that, while debate on the request was not permissible on a strict interpretation of the relevant order, he proposed to allow debate limited to the purpose of the request. He also pointed out that this problem would be overcome if the Senate adopted the altered procedures for the consideration of appropriation bills and Estimates Committee reports recommended by the Procedure Committee earlier this year. The Procedure Committee report is due to be considered at the beginning of the budget sittings.

As it turned out the circulated request was not moved. Its purpose was to delete a sum of money from Appropriation Bill (No. 3) 1991/92 associated with the transfer of funding of the John Curtin School of Medical Research, but it was discovered that the request would not have the intended effect, and there was a peculiarity in the way in which the figures were presented. Instead of the request, the committee of the whole passed a resolution calling for a change in the Program Performance Statements to reveal more clearly the effects of adjustments to appropriation items.

#### OTHER LEGISLATION AMENDED

The Taxation Administration Amendment Bill 1992, the purpose of which was to allow taxation information to be presented to the "WA Inc." royal commission, was amended on 4 June to provide that other commissions of inquiry may ask for the provision of information under the bill, and such requests are to be presented to each House.

The Repatriation Institutions (Staff) Bill 1991, which related only to the staffing of repatriation hospitals transferred to the control of the States, was amended on 4 June so as to regulate the transfer of such institutions. This amendment represented a change in the purpose of the bill, and required amendments to the long and short titles. The amendment could have been challenged on the question of its relevance to the bill, but its acceptance indicates the general liberality of the Senate on questions of relevance.

The motion to set the cut-off date for receipt of bills from the House of Representatives was passed on 26 May, setting the day as the Friday of that week. A number of messages received on the Friday, when the Senate was not sitting, were duly reported and the bills proceeded with in the following week. By the end of the period some bills had already been exempted from the cut-off.

The return to order providing details of legislation not proclaimed and reasons for its non-proclamation was tabled on 28 May.

#### CASUAL VACANCIES

On the motion of Senator Chamarette, a further resolution on casual vacancies was passed on 3 June. (See the first items in Bulletins Nos. 66, 67 and 68.) This resolution is a very significant expression of the Senate's view on the filling of casual vacancies. It expresses the belief that casual vacancies should be filled as expeditiously as possible so that no state is without its full representation for any time longer than is necessary, recognises the problem which may arise when the Houses of the state Parliaments are adjourned but not prorogued, which, on a strict reading of section 15 of the Constitution, prevents the state Governors making appointments, and suggests to the state Parliaments that their Houses adopt procedures whereby they are recalled to fill vacancies if they are adjourned but not prorogued when the vacancies are notified. Such a procedure is already in effect in Queensland. The resolution has been communicated to the Presiding Officers of all the state Houses and, on the suggestion of Senator Chamarette, to the Premier of Western Australia.

Senator Olsen's replacement, Senator Alan Ferguson, having been appointed by the South Australian Houses on 26 May, was sworn in on 1 June. As with other recent swearings-in, only a faxed copy of the certificate of appointment was available at the time, but the original certificate was tabled later in the day.

#### REGULATIONS DEEMED TO BE DISALLOWED

Notices of motion given by Senator Parer to disallow all the regulations under the *Political Broadcasts and Political Disclosures Act 1991* remained on the Notice Paper for 15 sitting days until 26 May, and the regulations were then deemed to be disallowed under section 48(5) of the Acts Interpretation Act. The notices were unusual in that they were given for the day on which the government tabled the advice it had received on the validity of the regulations, and that advice not having been tabled, the notices were never called on. It is not entirely clear whether the disallowance of the regulations will cause any serious difficulties for the government; they relate to past elections, and new regulations will be made for future elections.

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## COMMITTEE REPORTS

The Select Committee on Superannuation, which has proved to be an extremely active committee, presented a significant interim report on 3 June, together with copies of correspondence with the Life Insurance Federation. The report revealed a dispute between the committee and insurance firms concerning the disclosure of details of fees, commissions and charges in the life insurance industry. The committee has indicated that it may formally require the production of the information it is seeking. The committee also presented its first report on 4 June, relating to the regulation of superannuation, and the report was immediately debated.

The Legal and Constitutional Affairs Committee continued its practice of presenting discussion papers on 27 May by presenting the 8th paper on its inquiry into the cost of legal services and litigation. This discussion paper was also presented to the President while the Senate was not sitting and its publication authorised under the relevant special order.

The Select Committee on Community Standards Relevant to the Use of Services Utilising Telecommunications Technologies, better known as the "0055 Committee", presented a report on 28 May on telephone message services.

The Environment, Recreation and the Arts Committee presented, also on 28 May, its report on the circumstances surrounding the positive drug test on Mr Alex Watson, a matter left over from its inquiry into drugs in sport. Although there was no disagreement on the major finding of the report, the dissent attached to the report by the Opposition members is far longer than the report itself.

The Regulations and Ordinances Committee presented, also on 28 May, special reports on particular regulations which have attracted the committee's scrutiny. The reports took the form of statements by the chairman on behalf of the committee.

Other committee reports presented during the period included:

- Industry, Science and Technology: Australian Nuclear Science and Technology Organisation Bill (2 June)
- National Crime Authority: Casinos (4 June)
- Transport, Communications and Infrastructure: Annual Reports (2 June).

The following government responses were presented:

- Joint Corporations and Securities: use immunity provisions (28 May)
- Joint Foreign Affairs, Defence and Trade: Defence Force Reserves (28 May)

- Select Committee on Agricultural and Veterinary Chemicals (28 May)  
(This response, which was debated, was notable for its lateness, the committee having reported in July 1990.)
- Joint Family Law: retiring age of Family Court judges (28 May)
- National Crime Authority: evaluation of the National Crime Authority (1 June).