Procedural Information Bulletin No. 70

For the 2 sitting weeks 16 to 25 June 1992

As is usual with last weeks of sittings, a great deal of business was transacted during this period, and to keep this bulletin reasonably brief only the most significant matters of procedural interest will be recorded.

PRIVILEGE: INTERFERENCE WITH WITNESS AND MISLEADING EVIDENCE

The Privileges Committee presented on the last day of the sittings its report on the National Crime Authority Committee case, which was referred to it in November 1990. The essence of this case is that members of the National Crime Authority engaged in certain activities in relation to one of their number, the result of which was that he was not to give evidence before the Parliamentary Joint Committee on the National Crime Authority without the approval of the Authority. When asked before that Committee whether that member had been restricted in the evidence he could give to the Committee, a member and an officer of the Authority answered that he had not.

The Privileges Committee found that the activities of the Authority had the effect of restricting the member concerned in the evidence he could give to the Parliamentary Joint Committee, and that the answers given in evidence before that Committee misled the Committee. It was found that the members of the Authority believed that they were acting lawfully but had avoided facing the nature of their actions by resorting to legalistic rationalisation. The Privileges Committee determined that it should not make a formal finding that a contempt had been committed, but recommended that the Senate should warn persons dealing with parliamentary committees that they should direct their attention to the real effects of their actions and should not take refuge in such rationalisations. The Committee also recommended that the law relating to the National Crime Authority and the Parliamentary Joint Committee should be clarified, and suggested to the Senate that if these two actions were taken this would be a productive outcome of the case.

Debate on a motion to endorse the findings and recommendations of the Committee was adjourned.

SELECT COMMITTEES ON LEGISLATION

At the end of the sitting period the Senate had acquired two new select committees as a result of consideration of legislation on the last day. The package of sales tax legislation was referred to a select committee for report during the winter long adjournment, and provisions of the Broadcasting Services Bill relating to pay television were taken out of the bill by amendment and referred to a select committee which is to report in September. Members of the two committees were immediately appointed, and they have begun their inquiries. This situation was accepted by the government, although it opposed the removal of the provisions from the Broadcasting Services Bill.

QUESTION TIME TROUBLES

Disputes about the conduct of question time led to further developments during the period.

On 16 June Senator Watson made use of the procedure relating to questions on notice unanswered for 30 days to have passed an order for the production of documents, whereby the overdue answers were to be tabled on the following day. The answers were duly tabled, and, perhaps inspired by this success, a Senator then used the procedure to require an explanation of the failure to answer a question which was not technically a question on notice but a question to which an answer had been promised during question time. Also on 16 June, a Senator took the unusual step of tabling by leave answers to questions which he had received, and then by leave moving a motion to take note of the answers and debating them.

The government began to show impatience with the increasing use by Opposition Senators of the procedure of moving by leave after question time motions to take note of answers to questions, which can then be debated without limitation of time. At first tolerating these motions, ministers began on 17 June to refuse leave to move them. The result of this, however, was several motions to suspend standing orders to enable motions to take note of answers to be moved, and the merits of the answers then being debated on the suspension motions. A return to granting leave was tried, and then there was a return to refusing leave. Finally, on the last day of the sittings,

the Manager of Government Business resorted to moving his own special motion which allowed Senators to move motions to take note of answers but to speak only for limited times. It remains to be seen whether this will become the established practice.

Also on the last day, the Opposition successfully moved a motion, for which the Opposition Leader has on the Notice Paper a special contingent notice of motion to suspend standing orders, to extend question time, after complaints about long and irrelevant answers by ministers (it should be noted that ministers also complain, about long questions, points of order and supplementary questions).

REMAKING OF REGULATIONS AUTHORISED

On the last day of the sittings the government was obliged to move a motion to authorise the remaking of regulations which had been deemed to be disallowed. All of the regulations under the Political Broadcasts and Political Disclosures Act had been disallowed when notices of motion for their disallowance remained unresolved on the Notice Paper for 15 sitting days. The notices were given for the day on which the government tabled the advice it had received on the validity of the regulations, thereby giving the government the choice of disclosing the advice or having the regulations disallowed (see Bulletin No. 69, p. 5). Because regulations the same in substance as disallowed regulations cannot be remade within six months without the approval of the disallowing House, and because the government could not take the risk of a state or territory election occurring within the next six months, the motion was moved to allow new regulations to be made during that period. The motion was passed, with the support of the Australian Democrats. The Opposition attempted, by way of amendment, to make the authorisation of the remaking of the regulations dependent on the tabling of the government's advice on the validity of the original regulations, but the Minister for Administrative Services, Senator Bolkus, again declined to table the advice, saying that it was given orally.

LEGISLATION AMENDED

A feature of amendments made to legislation in the Senate in recent times has been the insertion into bills of provisions to subject various types of ministerial determinations and instruments to disallowance or approval by either House. As a result, such provisions are rapidly multiplying. Examples of these occurred with the Taxation Laws Amendment Bill (No. 2) 1992 on 17 June and the Health, Housing

and Community Services Legislation Amendment Bill 1992 on 22 June. An interesting example occurred on 25 June in relation to the Territories Law Reform Bill 1992, which dealt with the application of the laws of Western Australia to the territories of Christmas Island and Cocos (Keeling) Islands, and into which the Senate inserted a rather elaborate provision which would allow either House of the Parliament to disallow, in effect, the application of any particular law of Western Australia to the territories.

The Customs Tariff Amendment Bill 1992 was the subject of extensive requests for amendments on 22 June. The requests were originally circulated by the government in the first instance as amendments. A customs tariff bill, as a bill imposing taxation, as one which the Senate cannot amend and to which Senate amendments must therefore take the form of requests. This demonstrates that there is not a good understanding of the constitutional provisions about amendments and requests, which is further discussed below. An unusual situation occurred in relation to the Customs Legislation (Tariff Concessions and Anti-Dumping) Amendment Bill 1992 in that, while Opposition amendments to the bill were passed, three government amendments were moved and negatived.

So supportive was the government of an Opposition amendment to the Local Government (Financial Assistance) Amendment Bill 1992 that the Minister for Justice, Senator Tate, moved the amendment. On the last day of the sittings the House of Representatives returned the bill with a claim that this amendment should have been a request in that, contrary to the relevant paragraph of section 53 of the Constitution, it increased a "proposed charge or burden on the people". Although the amendment changed a sum of money to a greater sum, the effect was to increase a maximum figure within which the responsible minister may determine a figure which is then used to calculate an amount which may be a grant to a state, and the stated intention was that such a grant be in substitution for another grant so that no increase in actual expenditure would be involved. The view which has been taken in the Senate is that an amendment does not have to take the form of a request unless it necessarily and directly involves an increase in expenditure. Because there was not time to dispute the matter, Senator Tate moved a motion to turn the amendment into a request, the motion including the words "while not conceding that Senate Amendment No. 2 should have been a request". The request was duly made to the House, the requested amendment made, and the bill returned again to the Senate for final agreement. Opposition Senators having expressed the view that a request was not required, and Senator Tate having expressed a wish for further consideration of the matter, a paper is to be prepared on the matters in issue during the long adjournment.

The broadcasting package of bills was substantially amended on 24 June, with

virtually everybody having a hand in the amendments, including one of the independent Senators, Senator Harradine. One amendment was carried only after the question on the amendment was put again by leave following some confusion as to how some Senators intended to vote. The bill was returned from the House on the last day with four of the Senate's amendments disagreed to (as the bill had originated in the Senate, the House had actually amended the bill to reverse amendments which had been made in the Senate). After last minute deliberations on the bill, the Senate insisted on three of its amendments, amended the fourth, and carried another amendment to take out of the bill provisions relating to pay television which were then referred to a select committee for inquiry and report over the winter long adjournment. This latter step was vigorously opposed by the government.

Other bills significantly amended during the period included:

- Industrial Relations Legislation Amendment Bill (17 June)
- Social Security Legislation Amendment Bill (18 June)
- transport and communications package (18 June)
- Australian Nuclear Science and Technology Organisation Amendment Bill (18 June)
- Industrial Chemicals (Notification and Assessment) Amendment Bill (18 June)
- migration legislation package (22 June)
- superannuation package (24 June).

CODE OF CONDUCT

As an outcome of the Marshall Islands affair, a motion was passed on 25 June, moved by the Australian Democrats, calling for the development by the beginning of 1993 of a code of conduct for Senators, members and ministers. The motion was supported by the government, but opposed by the Opposition, who attempted to substitute, by way of amendment, a select committee to inquire into the whole affair.

When an attempt was made to have the motion dealt with as a formal motion at the beginning of the sitting on that day, leave was refused by the Opposition, and the Australian Democrats Leader, Senator Coulter, moved a motion to suspend standing orders to rearrange the business to allow the motion to be moved at that time. A somewhat heated debate on the motion then took up the whole morning, and was interrupted by the discussion of matters of public importance and question time, which, under the relevant orders of the Senate, occur at fixed times. The view was

taken that, after question time, the Senate had to return to the interrupted debate because it had occurred during the discovery of formal business and had been moved pursuant to a suspension of standing orders. The matter was then resolved after further debate.

QUOTATION OF CORRESPONDENCE IN DEBATE

On 17 June the Minister for Industrial Relations, Senator Cook, took a point of order to the effect that Senator Kemp should not be allowed to quote from a letter because it was a confidential letter addressed to the minister by members of the Industrial Relation Commission. The Acting Deputy-President, Senator Giles, ruled that there is nothing to prevent a Senator quoting a document in the Senator's possession. This is correct as a general rule, but it would be open to the Chair to prevent a Senator quoting from a document where it appeared that the rules of the Senate itself would be violated by the disclosure of the document. For example, if a Senator attempted to quote from evidence given before a committee in camera, and the status of the evidence were established to the satisfaction of the Chair, the Chair could intervene to prevent the disclosure of the evidence.

NEW BUSINESS AFTER ADJOURNMENT MOVED

The new business rule contained in standing order 64 prevents the commencement of new business in the Senate after the question for the adjournment of the Senate has been first put on any sitting day. It is a sign of the pressure of business that on the first day of the sittings the government gave a contingent notice of motion which allows the suspension of the standing order to be moved at any time when there is no other business before the Chair and before the time for the adjournment.

UNPARLIAMENTARY LANGUAGE

The President has indicated an intention of enforcing the rule against unparliamentary language, so as not to allow expressions which have hitherto been disallowed to become acceptable in debate, and to this end has reversed rulings of other occupants of the Chair, including by way of a statement in the Senate on 19 June.

PRESIDING OFFICERS

The Parliamentary Presiding Officers Act 1965 provides for the exercise of the statutory powers of the President during times when there is no President or the President is unable to act. On 25 June the Deputy-President, Senator Colston, introduced a bill to take account of the creation by the Senate of the office of Deputy-President, as distinct from that of the Chairman of Committees, which occurred in 1981.

COMMITTEE REPORTS AND REFERENCES

As is usual with the last weeks of a period of sittings, a large number of committee reports was presented.

The standing committees presented their reports on departmental annual reports towards the end of the period, and there was a number of standing committee reports on legislation. The Select Committee on Superannuation reported on 18 June on the superannuation package of legislation. This report is notable for the way in which the Committee integrated its inquiry on the legislation, which was referred to it separately from its general reference, with its more comprehensive inquiry, and the report contains a very thorough treatment of the legislation.

The Employment, Education and Training Committee and the Community Affairs Committee received very substantial references on 24 and 25 June, respectively, relating to youth unemployment for the former committee and psychotherapeutic medication and evaluation of community services, health and social security programs for the latter.

Three select committees had their terms extended beyond the presentation of their final reports to allow them to monitor and consider responses to their reports:

- the Joint Family Law Committee for two months on 16 June
- the "0055 numbers" Committee until the end of the current Parliament on 23 June
- the Superannuation Committee for two months on 25 June.

This extension of the terms of select committees beyond their final reports may well become a regular feature of provisions for select committees.