

## Procedural Information Bulletin No. 71

*For the sitting week 18 to 20 August 1992*

In accordance with the practice of recent years, both Houses sat for only three days for the presentation of the government's budget, and then adjourned for two weeks.

### AMENDMENTS AND REQUESTS

In the previous bulletin (No. 70, pp 4-5), reference was made to a disagreement between the Houses over whether an amendment made by the Senate to a bill should have been a request under section 53 of the Constitution.

On 18 August the President tabled another paper on the interpretation and application of the relevant constitutional provision. The paper responds to a request in the House of Representatives for a further explanation in relation to the matter, and sets out the reasons for the difficulties which have arisen in recent times. The paper suggests that the Parliament has been neglectful of proper parliamentary control of expenditure by agreeing to unlimited and indefinite appropriations and to provisions which confer wide discretions on ministers and other officials, sets out suggested principles which should be used to determine questions arising under the provision, and suggests that the interpretation and application of the provision in the past has been confused and inconsistent. Copies of the paper are available from the Table Office.

### APPROPRIATION BILLS: EXPLANATIONS

In a previous bulletin (No. 69, p 3), reference was made to a resolution of the Senate relating to the transfer of funds for the John Curtin School of Medical Research and the explanation of the relevant appropriation provision in the departmental program performance statements. It was discovered that a transfer of funds from a particular item was disguised by other increases in the expenditure proposed for that item and that this was not explained in the program performance statement. The government

accepted the view put by senators that the statements should explain changes in expenditure of that character.

On 18 August the President tabled correspondence from the Minister for Finance and the Department of Finance in response to the Senate's resolution. The department has agreed that the guidelines for program performance statements be altered to ensure that changes in expenditure of that sort are fully identified and explained.

## ERROR IN SCHEDULE OF AMENDMENTS

After the two Houses rose for the winter long adjournment on 25 June, it was discovered that the schedule of amendments made by the Senate to the Superannuation Guarantee (Administration) Bill 1992 forwarded to the House of Representatives contained four amendments which had not in fact been agreed to by the Senate. The bill was one of those dealt with during the end-of-sittings rush when the House of Representatives is recalled to deal with Senate amendments. The House had agreed to the amendments made by the Senate.

The question of how to deal with this problem was complicated by the fact that the bill contained a commencement date of 1 July, and if it were brought into operation after that date it would be purportedly retrospective but without any explicit retrospective commencement provision.

There were two legally safe options for dealing with the problem. The incorrect documentation could have been altered and the bill proceed as actually amend by the Senate. This option could have been adopted on the basis that the Houses were clear as to what they intended to do, and it would have been legally safe because the courts accept the records of the Houses of their proceedings and do not review the operation of the internal procedures of the Houses. The government was persuaded not to adopt this option, probably largely because it would involve conceding that the House merely endorses the Senate's amendments without making a positive decision actually to approve each amendment. The bill was therefore not sent for royal assent before 1 July. (In agreeing with other senators that this course could have been followed, Senator Harradine suggested in debate that it would have to be abandoned if any member of the House of Representatives could honestly state that he or she knew what was in the schedule of amendments, a possibility which he regarded as remote!)

The other legally safe option was to have the error corrected by action by the two Houses when they returned, and the bill amended to make it clear that it was intended to operate retrospectively. The resulting statute could then not be

challenged on the basis that it purported to operate retrospectively without any explicit retrospective commencement provision.

The commencement date having passed, however, the government apparently realised that the second option involved the bill being reconsidered in the Senate and the danger that it would be further amended or perhaps even not carried. In order to avoid this danger, it was suggested that the President should forward a substitute schedule of amendments to the House without consulting the Senate. This the President declined to do, on the basis that the Senate should be consulted as to the remedial action to be taken, particularly as the bill would operate retrospectively. On 18 August, therefore, the President reported to the Senate the problem and his refusal to adopt the course of seeking to correct it without first consulting the Senate.

Instead of moving that the bill be returned to the Senate for further consideration, however, the government, apparently still anxious to avoid the possibility of further amendments to the bill, moved that a corrected schedule of amendments be forwarded to the House. This motion was agreed to, but only after senators had pointed out the danger that it posed to the bill because the bill would not contain an explicit retrospective provision. The House then agreed to the corrected schedule of amendments and the bill proceeded. The further consideration of the content of the bill by the Senate was thereby avoided but at the risk involved in the commencement provision remaining unchanged.

## ESTIMATES

The estimates of expenditure were referred to the Estimates Committees on 20 August, thereby beginning the estimates process. The new procedure proposed by the Procedure Committee for dealing with estimates and appropriation bills was listed for consideration during this week but was not reached. It now appears unlikely that the proposed procedure will be put in place in time for this round of estimates and appropriations deliberations.

## REFERENCE OF BILLS TO COMMITTEES

Senator Kernot on 18 August gave an unusual notice of motion for the reference of bills to the Select Committee on Superannuation. The motion refers to bills which have not yet been introduced but which are expected to arise from a Treasurer's statement, provides for the provisions of the bills to be referred to the committee as soon as the bills are introduced into the House of Representatives, and also provides

for the bills when they reach the Senate and any relevant regulations to be referred to the select committee. The motion had not been dealt with at the end of the week.

## COMMITTEES

The report of the Rural and Regional Affairs Committee on drought policy, presented to the President during the long adjournment, was tabled on 18 August and was immediately the subject of extensive debate.

The Select Committee on Superannuation has adopted the practice of publishing issues papers relating to its inquiry. The view has been taken that issues papers and discussion papers published by committees may be presented to the Senate or to the President during a long adjournment as if they were reports. Such an issues paper from the select committee was tabled on 19 August.

The Select Committee on Sales Tax Legislation presented its report on 19 August. Before the committee had reported the government had announced extensive amendments to the legislation arising from submissions made to the committee. Debate on the legislation was commenced on 20 August but not concluded.

Government responses were presented on 20 August to the Community Affairs Committee's report on radiological services and the Employment, Education and Training Committee's report on Adult and Community Education. Both responses were immediately debated.

An unusual reference to the Legal and Constitutional Affairs Committee was made on 19 August on the motion of the Minister for Justice. The reference requires the committee to consider issues relating to compensation for loss caused by defective goods with regard to provisions in a trades practices bill passed earlier in the year.