

Procedural Information Bulletin No. 74

For the 3 sitting weeks 3 to 17 November 1992

ORDER FOR PRODUCTION OF DOCUMENT TO COMMITTEE

An order for the production of a document to a standing committee was passed on 5 November on the motion of Senator Knowles. Normally orders for the production of documents require them to be laid before the Senate. Senator Knowles' successful motion required that a report to the government on Medicare fraud be provided to the Standing Committee on Community Affairs.

On 5 November the committee reported that the document had not been produced to the committee. The Minister for Health, Housing and Community Services had indicated an unwillingness to produce the document because he did not wish it to be made public. (The presentation of a document to a committee does not automatically make it public, but the committee is able to authorise the publication of the document.) The Minister representing the Minister for Health, Housing and Community Services in the Senate, Senator Tate, moved by leave a motion to the effect that the document be provided to the committee but that the committee not publish the document until after 11 December. This motion, representing a compromise on the issue, was agreed to.

ESTIMATES COMMITTEE: MEETING IN CAMERA

Estimates committees are required to hold all their hearings of evidence in public session, and all documents presented to the committees are made public. On 4 November a motion was moved, following a special report by the committee, to authorise Estimates Committee D to meet in camera to take evidence concerning allegations of misuse of the printing facilities of the Department of Social Security. The Department had indicated an unwillingness to give the evidence in public session because this might prejudice police investigations and subsequent action.

The motion to authorise the committee to meet in camera was opposed and adjourned, Senators expressing a reluctance to set a precedent for estimates

committees meeting in camera. On 10 November a motion was agreed to to refer the matter to the Standing Committee on Community Affairs. Standing committees, unlike estimates committees, are empowered to hear evidence in camera, and the standing committee is able to accede to the request to do so if the committee considers that course appropriate.

TABLING OF COMMITTEE DOCUMENTS BY ORDER

On 17 November, during debate in committee of the whole on the appropriation bills, Senator Walters referred to documents which were in the possession of the Standing Committee on Community Affairs and which, she stated, had been withheld from publication in spite of a decision to publish them by the committee. The documents in question are a departmental report on part of a report by the committee relating to payment of Medicare benefits and a commentary on that document.

After some discussion of whether it was appropriate for Senator Walters to refer to the documents, Senator Knowles moved a motion under standing order 168 that the documents quoted by Senator Walters be tabled. Such a motion may be moved without notice immediately after a Senator has quoted any documents. The motion was passed and the documents duly tabled. It is always open to the Senate to order the tabling of documents in the possession of a committee.

SELECT COMMITTEE: NOMINATION OF MEMBERS

On 3 November a motion was passed to appoint a select committee on the Australian Loan Council, following controversy about the knowledge of the Commonwealth Government of the Victorian Government exceeding agreed borrowing limits.

The resolution appointing the committee provided that two members were to be nominated by the Leader of the Opposition in the Senate and one member was to be nominated by the Leader of the National Party in the Senate. On 5 November it was reported that a nomination had been received from the Leader of the Opposition and the Leader of the National Party nominating three Senators. The nomination was signed jointly and did not distinguish between the Senators nominated by each leader. The nomination was accepted on the basis that, although it might be regarded as technically not in accordance with the resolution appointing the committee, there was nothing in the resolution which required the Senators nominated by each leader to be distinguished for any purpose, and the nomination had provided the required number of Senators.

PRIVATE INQUIRY BY A SENATOR

Senator Spindler was unsuccessful on 17 June 1992 in seeking to have a select committee on tariff reductions established. He then announced that he would conduct an inquiry into the matter, and formed an inquiry panel for that purpose, including himself and one of the independent members of the House of Representatives. Advertisements were placed inviting submissions, and "hearings" of evidence were held. There is nothing to prevent a Senator or group of Senators conducting an inquiry in this way. There is, of course, no power to compel the giving of evidence or the production of documents, and documents produced to the inquiry and words spoken at its "hearings" are not protected by parliamentary privilege.

On 4 November Senator Spindler succeeded in tabling in the Senate by leave "reports" of the inquiry. In subsequent debate he was criticised for allegedly misleading the public by referring to the inquiry as a parliamentary inquiry. He indicated that persons giving "evidence" to the inquiry are advised that its "hearings" are not covered by parliamentary privilege.

QUESTIONS: TIME LIMITATIONS

On 3 November the special orders imposing time limitations on questions and answers and on motions to take note of answers after question time were again passed, but were again limited to the two-week sitting period. This means that the orders will not be in force when the Senate meets again, and if the experiment is to continue, the orders will have to be renewed.

MOTIONS FOR SUSPENSION OF STANDING ORDERS

On 16 November the Leader of the Opposition in the Senate moved a motion pursuant to contingent notice to suspend standing orders to enable him to move to alter the routine of business. This motion was unsuccessful, and he immediately attempted to move another motion to suspend standing orders using the same contingent notice. The President then ruled that no more than one motion to suspend standing orders using the contingent notice may be moved on any one occasion. The contingent notice, which is an "all-purpose" contingent notice designed to achieve the suspension of standing orders to allow a motion to rearrange business at any time when there is no other business before the chair, is expressed to have effect when the Senate is between items of business. The effect of the President's ruling, therefore, is that only one attempt to suspend standing orders pursuant to the contingent notice can be made on each such occasion. The ruling is designed to

prevent obstruction of business by the moving of successive motions to suspend standing orders.

After some discussion of the ruling, during which Senators expressed concern that the ruling could be unduly restrictive of their rights, the President agreed, with the concurrence of the Senate, to allow Senator Hill to move a second motion for the suspension of standing orders, on the basis that no further such motions would be moved, and also agreed to refer the problem underlying his ruling to the Procedure Committee.

PRIME MINISTER — CENSURE

The Senate passed on 5 November a motion to censure the Prime Minister for remarks which he had made about the Senate, which were characterised as contemptuous abuse.

A procedural point arising from this motion related to the effect of the procedural motion to allow a substantive motion to be moved after standing orders are suspended. This procedural motion takes the form: "That a motion to censure the Prime Minister may be moved forthwith and have precedence over all other business till determined". The question which arises is whether this motion has the effect of suspending the consideration of all other items in the routine of business, such as question time, or whether it merely gives precedence over other business in the strict sense of the word, that is, government and general business. The interpretation which has been applied is that if such a motion is passed before any business is embarked upon, the subsequent substantive motion has precedence over all other business. This was the case with the motion on 5 November. If, however, the procedural motion is passed at the placing of business or during consideration of government business, the subsequent substantive motion has precedence only over business in the narrow sense, and may be interrupted by other items in the routine of business, such as question time. In neither circumstance does continuing debate on the substantive motion interfere with suspensions of the sitting or the putting of the question for the adjournment of the Senate.

SUSPENSION OF SITTING OVER THREE DAYS

The sitting of the Senate which began at 10 am on Thursday, 12 November continued until 6.11 am on Friday, 13 November, due to protracted consideration of the appropriation bills in committee of the whole. A motion was then carried to suspend the sitting of the Senate until 2 pm on Monday, 16 November. When the Senate assembled on Monday the sitting continued, which meant that the consideration of

business was resumed at the place in the routine of business where it was left off, and consideration of the appropriation bills proceeded, after an unsuccessful attempt by the Leader of the Opposition in the Senate to suspend standing orders to have a question time. The sitting continued until 12.41 am on Tuesday, 17 November. A motion to suspend the sitting until 9.30 am that morning was then carried. When the sitting resumed, the Leader of the Opposition in the Senate was successful in having a motion carried to provide for question time, but apart from that the consideration of the appropriation bills continued until concluded that afternoon.

This device of extending a sitting over more than one day by means of suspensions of the sitting was used in the Senate in the past but has not been resorted to for many years. The advantage of suspending the sitting instead of adjourning is that the Senate can continue with government business without interruption by other items in the routine of business, such as question time. If used excessively by a determined majority, the procedure could be severely restrictive of the rights of individual Senators. On this occasion it was rationalised by the need to pass the appropriation bills and the fact that the Senate was not originally scheduled to sit on the extra days, so that no scheduled sitting days were lost so far as other business was concerned.

The extension of one sitting over three days raised the question of the effect of statutory provisions for the tabling of delegated legislation. Those provisions require delegated legislation to be tabled in the Senate within a specified number of sitting days, usually 15 sitting days, and legislation which is not tabled within the specified time ceases to have effect. It has not been determined whether a sitting extending over more than one day is one sitting day for the purposes of those statutory provisions. On this occasion departments were warned that to avoid any doubts about the valid tabling of delegated legislation they should assume that 16 and 17 November were separate sitting days for that purpose.

PRIVATE SENATOR'S BILL

Notwithstanding the desire of the government to have the appropriation bills passed, the Senate considered general business (private Senator's business) on 12 November, and Senator Walters' Regulation of Video Material Bill was given a second reading, but did not proceed to the committee stage.

LEGISLATION AMENDED

The Student Assistance Amendment Bill 1992 was extensively amended on 5 November in relation to student loans.

The Service and Execution of Process Bill 1992, a lengthy and technical bill, was amended on the same day in relation to interaction with state laws concerning bail.

EXTENDED SITTINGS

The Senate agreed on 12 November to extend its sittings, which will now occupy all of the four weeks until 18 December. This is the first period of sittings since 1986 in which the Senate has not imposed a deadline on the receipt of government bills from the House of Representatives. There is a large batch of government bills in prospect, and it will be interesting to see whether the absence of the deadline has affected the nature of the usual end-of-sittings rush of legislation.

COMMITTEE REPORTS AND REFERENCES

The Legal and Constitutional Affairs Committee presented on 11 November its report on the question of the legal effect of determinations of the Human Rights and Equal Opportunity Commission. The report contains a dissent and was the subject of vigorous debate on presentation.

The Select Committee on Superannuation presented on 12 November a report of a seminar on superannuation. The holding of seminars as part of committee inquiries appears to be a fruitful method of augmenting the conventional methods of committee inquiry.

Government responses were presented on 5 November to the reports of the Legal and Constitutional Affairs Committee on mergers, monopolies and acquisitions and of the Education, Employment and Training Committee on the John Curtin School of Medical Research. The latter continues to be a subject of controversy, as indicated by the debate on the presentation of the response.

The Finance and Public Administration Committee was given on 11 November a reference on the Metway Bank, and the Legal and Constitutional Affairs Committee received on the following day a reference on the operation of the Cash Transaction Reports Act.