

Procedural Information Bulletin No. 75

For the 4 sitting weeks 24 November to 17 December 1992

A very large volume of business was compressed into the last weeks of the sittings, and even with the extended sittings and hours not all of the business was reached. It is not clear whether this was partly due to the failure of the Senate, for the first time since 1986, to set a deadline for the receipt of bills from the House of Representatives; the House, having risen on 26 November, was recalled on 16 and 17 December to deal with legislation passed and amended by the Senate.

APPROPRIATION BILLS

Additional appropriation bills were introduced on 30 November to move some funds provided for employment-generating projects to different projects; the particulars of expenditure contained in the bills were tabled on 24 November. The Opposition initiated a reference of the bills to the relevant estimates committees, but the motion was amended to refer them to Estimates Committee B only. An attempt to have the Senate direct that officers of the Treasury and the Department of Finance attend the hearings of the Committee to discuss the general strategy of the bills was unsuccessful on 3 December. Estimates Committee B duly presented its report on 8 December, and the bills were considered on the following day. The Chairman of Committees was obliged to make another ruling about the scope of debate in committee of the whole, which led to some further disputation.

The items of expenditure in the main appropriation bills which estimates committees were unable to examine due to shortage of time were referred to two standing committees on the initiative of the Opposition on 25 November. As was pointed out in debate, this procedure, in effect, anticipates the recommendation of the Procedure Committee whereby follow-up hearings of estimates committees would be held as a substitute for committee of the whole proceedings on appropriation bills.

Statements of expenditure under the Advances to the Presiding Officers were considered in committee of the whole on 26 November in the same way as statements

relating to the Advance to the Minister for Finance. It is intended that these statements be dealt with in this way as a regular practice.

QUALIFICATION OF SENATORS

The judgment of the High Court in the case of Mr Cleary, given on 25 November, provided significant guidance on the interpretation of section 44 of the Constitution relating to the disqualifications of members of both Houses. Senator Kernot introduced, on 24 November, a Constitution Alteration Bill to remodel section 44 along lines recommended by various bodies, including the Legal and Constitutional Affairs Committee, over a number of years.

On 17 December the President, in response to a question, made a statement relating to the membership by Senators of statutory bodies in the light of the interpretation of section 44.

BILL NEGATIVED IN COMMITTEE

The government decided to introduce legislation in response to changes to industrial relations law in Victoria by way of amendment of an industrial relations bill which was then before the Senate, the Industrial Relations Legislation Amendment Bill (No. 2) 1992. This led to an unsuccessful Opposition attempt to delay consideration of the bill for three days on 10 December; later on the same day a motion was successful to delay consideration of the bill until the explanatory memorandum relating to the government amendments was tabled. The Legal and Constitutional Affairs Committee having reported on the bill and the government amendments on 15 December, the bill was considered later that day, with extensive debate and determined opposition.

Due to the absence of some government Senators early on the following morning, one of the questions necessary for the passage of the bill in committee of the whole, the question that the bill as amended be agreed to, was negatived. This is the third occasion on which a bill has been negatived in committee. The resolution of the committee was reported and the report adopted. The Manager of Government Business then immediately, by way of a motion to suspend standing orders, moved for the bill to be recommitted. The bill was recommitted, agreed to in the committee, reported and read a third time. An amendment to recommit the bill on the motion for the adoption of the committee report under standing order 121 could have been used; this was not done partly because it was initially thought that the recommittal of the bill would be left until the following sitting, and there was some doubt about the propriety of using that procedure when a bill is negatived in committee of the

whole. Arguably when a bill is negatived in committee of the whole it should be revived only by a motion on notice, and the recommittal amendment procedure should be used only for reconsideration of a bill actually reported out of committee of the whole.

ORDERS FOR PRODUCTION OF DOCUMENTS

Normally orders for the production of documents passed by the Senate are directed to ministers, but they can also be directed to statutory authorities, private organisations or any other persons or bodies in the jurisdiction. An unusual order was agreed to on the motion of Senator Harradine on 16 December. It calls for the production by the Auditor-General of certain financial statements in relation to postal services. The statements are required to be produced by the first sitting day in 1993. It is believed that this is the first occasion of an order for the production of documents directed to an independent statutory authority.

An order for the production of a document recording discussions between Australian and New Zealand officials on the New Zealand goods and services tax was passed on 7 December. This document had been released in part under a freedom of information request. A letter from the Leader of the Government in the Senate refusing to produce the document was tabled on 9 December and was debated, with further action foreshadowed, but no further action in relation to the matter had been taken at the end of the sittings.

The regular return to order relating to non-proclaimed legislation was tabled on 26 November.

UNUSUAL DISALLOWANCE PROVISION

By way of an amendment made in the Senate, an unusual disallowance provision was inserted in the *Superannuation Guarantee (Administration) Act 1992*, which was passed in the Autumn sittings. The relevant provision provided for a prescribed figure, known as the superannuation charge percentage, to be altered by regulation subject to disallowance up to a specified date. This provision had the effect of altering the normal period of disallowance provided by the Acts Interpretation Act for other regulations. A motion to disallow the regulations was moved but negatived on 8 December.

QUESTIONS

The order of the Senate relating to unanswered questions on notice was subject to interpretation by the Chair on two occasions on which, a Senator having asked for an explanation of failure to answer a question, an answer was produced by a minister. The Deputy President ruled that where an answer is produced following such a request it is not open to a Senator to move the motions otherwise authorised by the order. The rulings were given on 2 and 8 December, and on the second occasion the Deputy President explained that the rationale of the order is to encourage Ministers to answer questions, and once a question is answered the procedure in the order no longer operates in relation to the question.

The procedures applying time limits to questions and answers at question time and motions to take note of answers after question time were renewed as sessional orders on 24 November. A paper has been circulated by the Opposition on the effect of the orders on the conduct of question time, and no doubt the matter will be further considered in the next sittings.

BILL DEFERRED

A second reading amendment to defer consideration of a bill was agreed to on 16 December. The Veterans' Entitlements Amendment Bill 1992, which was one of a package of bills, was deferred until the first day of sitting in February 1993 in order to allow more time for consideration of provisions relating to the determination of veterans' entitlements.

MIGRATION LEGISLATION

Various pieces of migration legislation were the subject of heated debate. Senator Harradine attempted unsuccessfully on 7 December to delay the consideration of a package of migration bills until after the High Court had delivered its judgment on the provisions concerning the detention of boat people. In the event, the High Court found only one section of the legislation invalid, relating to an order by a court for the release of detainees. A bill to amend the legislation in consequence of this judgment and to limit damages claims for illegal detention was passed after lengthy consideration on 17 December.

PRIVATE SENATORS' BILLS

When the usual end-of-sittings motion to alter the routine of business was passed on 7 December, an amendment was agreed to to provide for consideration of Senator Walters' Regulation of Video Material Bill. The bill was duly considered in committee of the whole on 10 December but was not completed when the time allowed for its consideration expired.

Senator Colston was more successful with his Parliamentary Presiding Officers Amendment Bill. This bill, to take account of the change in the title of the Deputy President and Chairman of Committees, was amended in the House of Representatives when the House decided to make a similar change in the title of its Chairman of Committees, and the House amendments were agreed to on 26 November and the bill proceeded to royal assent. Senator Colston thus became the first member of either House to have two of his bills put onto the statute books.

CAA INQUIRY

The report of the independent review of the Civil Aviation Authority's tender evaluation process for the advanced air traffic system was tabled on 16 December, and, as the report and Senators in debate pointed out, vindicated by its criticisms of the process those Senators who had raised the matter in debate. An attempt to censure the Minister for Transport and Communications for his handling of the matter was unsuccessful on the following day.

NEGATIVING OF ADJOURNMENT

On many days during the period the question for the adjournment of the Senate was negatived to extend the sittings to deal with the large volume of business. A problem which arises is that, once the question for the adjournment has been negatived at the time when it is automatically put under the standing orders, the adjournment can be moved subsequently only by a minister, and the government can seek to keep the Senate sitting for as long as it considers necessary. This restriction on the rights of Senators, however, may be overcome by Senators simply moving the adjournment of the debate on each item of business as it is called on. This was done on 10 December, and, after one item of business had been so adjourned, the Manager of Government Business moved the adjournment of the Senate.

PRIVILEGE

There has been a tendency in recent times for Senators to respond to statements, by persons aggrieved by remarks made about them in the Senate, incorporated in *Hansard* in accordance with recommendations of the Privileges Committee. This happened on two occasions, in relation to the 39th and 40th Reports of the Committee, on 30 November and 17 December respectively.

Business was rearranged on 17 December to allow the endorsement by the Senate of findings and recommendations contained in two reports of the Privileges Committee, the 36th Report relating to improper interference with a witness and misleading evidence before the National Crime Authority Committee, and the 37th Report relating to improper interference with witnesses before the Community Affairs Committee.

PROCEDURAL STATEMENTS

The President tabled on 30 November three statements on procedural matters which had caused some disputation: possible action by the President in relation to remarks by the Prime Minister concerning the Senate, questions to ministers about Opposition policy at question time, and rulings relating to repeated motions to suspend standing orders.

On two occasions, on 9 and 14 December, the President made statements on unparliamentary language, setting out the principles for distinguishing acceptable and unacceptable remarks concerning Senators, following disputes about the matter.

On 8 December the President made a statement concerning the taking of points of order and the discretion of the Chair to hear them.

AMENDMENTS AND REQUESTS

A further paper on section 53 of the Constitution and amendments and requests, commenting upon a House of Representatives paper on the subject, was tabled on 26 November.

MPI PROPOSED BY LEAVE

The unusual course of proposing a matter of public importance for discussion by leave was adopted on 10 December when the Opposition wished to respond to figures for unemployment which were released on that day but was not able to lodge a proposal by the required time.

LEGISLATION AMENDED

An unusual amendment to the motion for the second reading of a bill was moved by the government and agreed to on 24 November. The amendment had the effect of noting the government's intentions in relation to film and video classification, was attached to the motion for the second reading of the Transport and Communications Legislation Amendment Bill (No. 3) 1992, and was put forward as an alternative to amendments to that bill. The bill was subsequently separated from the package in which it was included.

Senator Harradine was successful in proposing on 25 November to the Broadcasting Services (Subscription Television Broadcasting) Amendment Bill 1992 an unusual amendment whereby codes of practice applying to television stations could be amended by both Houses of Parliament. The amendment included provisions to ensure that proposed amendments would be dealt with by each House. On the following day the Senate agreed to substitute amendments proposed by the government in the House of Representatives which retained the provision for amendment by both Houses but removed the provisions to ensure that proposed amendments are dealt with.

The National Crime Authority Amendment Bill (No. 2) 1992 was substantially amended on 26 November in relation to the provision of information by the National Crime Authority to the Parliamentary Joint Committee which supervises the Authority. The amendments were unacceptable to the government, which subsequently had the bill laid aside in the House of Representatives.

The Health and Community Services Legislation Amendment Bill (No. 2) 1992 was substantially amended on 2 December in relation to the payment of financial assistance to aged persons' hostels.

The Endangered Species Protection Bill 1992 was the subject of prolonged consideration and extensive amendment on 3 December.

The bill to establish the National Health and Medical Research Council on a statutory basis was also the subject of lengthy consideration and significant amendment on 14 December.

Packages of taxation bills were substantially amended. All of the amendments were to the bills which related to the assessment of taxation and not to the bills which actually imposed the taxation, which are separate bills under section 55 of the Constitution, and therefore none of the amendments took the form of requests. These bills were the subject of the only disagreements between the two Houses over amendments made by the Senate. The Taxation Laws Amendment (Car Parking) Bill relating to the imposition of fringe benefits tax on car parking spaces was amended by the Senate to exempt certain institutions from taxation; the government did not accept this amendment, but eventually accepted a substitute amendment made by the Senate when the bill was returned from the House. In relation to the Taxation Laws Amendment Bill (No. 5) government substitute amendments for two of the Senate's amendments were agreed to by the Senate when the bill was returned from the House.

Among the amendments to the Transport and Communications Legislation Amendment Bill (No. 3) were provisions to restore the so-called "election blackout", the prohibition on the broadcasting of political advertisements in the three days before polling day in an election, which, having been in force since 1942, had been removed by the ill-fated political broadcasts legislation held to be invalid by the High Court. The government indicated that it had been advised that the "blackout" would survive legal challenge.

Other bills significantly amended by the Senate included:

- Child Support Legislation Amendment, 26 November
- Taxation Laws Amendment (No. 4), 30 November
- Electoral and Referendum Amendment, 1 December
- Banking Legislation Amendment, 1 December
- Qantas Sale, 7 December
- Industrial Chemicals (Notification and Assessment) Amendment (No. 2), 10 December
- Health Insurance (Quality Assurance Confidentiality) Amendment, 15 December
- Social Security Legislation Amendment (No. 3), 16 December
- Custom Tariff Amendment (No. 2) (a request), 17 December
- Corporate Law Reform, 17 December
- Seafarers Rehabilitation and Compensation, 17 December.

A notable feature of the period of sittings was the large number of government bills first introduced in the Senate. In the course of 1992 some 43 government bills first introduced in the Senate were passed by both Houses, far exceeding the number of private Senators' bills introduced during the year (12 such bills were introduced and five draft bills were tabled; there were, however, 44 private Senators' bills on the Notice Paper at the beginning of the year).

COMMITTEE REPORTS

The following committee reports were tabled during the period:

GENERAL INQUIRIES

- **Certain Public Service determinations; Regulations imposing UN sanctions**, Regulations and Ordinances Committee, 26 November and 16 December.
- **Operation of the *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 (ESOS Act)* (together with the transcript of evidence, 1 volume and submissions, 1 volume)**, Standing Committee on Employment, Education and Training, 1 December 1992.
- **Certain items of expenditure by the Department of Industrial Relations (together with transcript of evidence, 1 volume)**, Standing Committee on Industry, Science and Technology, 7 December 1992.
- **Aspects of heavy road vehicle charges (together with transcripts of evidence, 7 volumes and submissions, 2 volumes)**, Senate Standing Committee on Transport, Communications and Infrastructure, 9 December 1992.
- **Gas and Electricity — Combining Efficiency and Greenhouse (together with transcripts of evidence, 12 volumes and submissions, 1 volume)**, Standing Committee on Industry, Science and Technology, 10 December 1992.
- **Appropriations of the Department of Primary Industries and Energy (together with transcripts of evidence, 2 volumes)**, Standing Committee on Rural and Regional Affairs, 15 December 1992.
- **Wanted: Our future — Implications of sustained high levels of unemployment among young people (15-24 years old) (together with transcripts of evidence, 9 volumes and submissions, 8 volumes)**, Standing Committee on Employment, Education and Training, 16 December 1992.
- **Physical and sport education — summary of findings and recommendations (together with transcripts of evidence, 8 volumes and submissions, 9 volumes)**, Standing Committee on Environment, Recreation and the Arts, 16 December 1992.
- **Implications of United States policies for Australia (together with transcripts of evidence, 2 volumes)**, Standing Committee on Foreign Affairs, Defence and Trade, 16 December 1992.

- **Management and Operations of the Department of Foreign Affairs and Trade (together with transcripts of evidence, 8 volumes and submissions, 8 volumes)**, Standing Committee on Finance and Public Administration, 17 December 1992.
- **Beef Cattle Feedlots in Australia (together with transcripts of evidence, 8 volumes)**, Standing Committee on Rural and Regional Affairs, 17 December 1992.

ON LEGISLATION

- Report on the *Customs Tariff Amendment Bill (No. 2) 1992*, 24 November 1992, Standing Committee on Industry, Science and Technology (One volume of evidence was also tabled).
- Report on the *Veterans' Entitlements Amendment Bill 1992*, 24 November 1992, Standing Committee on Legal and Constitutional Affairs (One volume of evidence was also tabled).
- Report on the *Income Tax Assessment (Foreign Investment) Bill 1992, Income Tax (Dividends and Interest Withholding Tax) Amendment Bill 1992, Taxation Laws Amendment Bill (No. 5) 1992, Taxation Laws Amendment Bill (No. 6) 1992 and Taxation Laws Amendment (Car Parking) Bill 1992*, 14 December 1992, Standing Committee on Finance and Public Administration (Two volumes of evidence and four volumes of submissions were tabled on 15 December 1992).
- Report on the *Australian National Training Authority Bill 1992*, 14 December 1992, Standing Committee on Employment, Education and Training (One volume of evidence was also tabled).
- Report on the *Seafarers Rehabilitation and Compensation Bill 1992, Seafarers Rehabilitation and Compensation (Transitional Provisions and Consequential Amendments) Bill 1992, Seafarers Rehabilitation and Compensation Levy Bill 1992 and Seafarers Rehabilitation and Compensation Levy Collection Bill 1992*, 14 December 1992, Senate Standing Committee on Transport, Communications and Infrastructure (One volume of evidence was also tabled).
- Report on the *Imported Food Control Bill 1992*, 14 December 1992, Standing Committee on Rural and Regional Affairs.
- Report on the *Taxation Legislation Amendment Bill 1992 and the Taxation Laws Amendment (Fringe Benefits Tax Measures) Bill 1992*, 15 December 1992, Senate Standing Committee on Finance and Public Administration (One volume of evidence was also tabled).
- Report on the *Medicare Agreements Bill 1992*, 15 December 1992, Senate Standing Committee on Community Affairs (One volume of evidence and one volume of submissions were also tabled).
- Report on the *Industrial Relations Legislation Amendment Bill (No. 2) 1992*, 15 December 1992, Senate Standing Committee on Legal and Constitutional

Affairs (One volume of evidence and one volume of submissions were also tabled).

SELECT COMMITTEES AND OTHER REPORTS

- **Fourth Report — Super-Fiscal and Social Links — *Taxation Laws Amendment (Superannuation) Bill 1992, Social Security Legislation Amendment Bill (No. 3) 1992, Divisions 16-19 (inclusive) and related terms of reference (together with the transcript of evidence 1 volume and submissions, 1 volume)***, Senate Select Committee on Superannuation, 14 December 1992.
- Committee on Transport, Communications and Infrastructure, **Report on the examination of annual reports — No. 2 of 1992**, 14 December 1992.
- Committee on Employment, Education and Training, **Report on the examination of annual reports — No. 2 of 1992**, 15 December 1992.
- Committee on Industry, Science and Technology, **Report on the examination of annual reports — No. 2 of 1992**, 15 December 1992.
- **Appropriation Bill (No. 3) 1992-93 and Appropriation Bill (No. 4) 1992-93 (together with the transcript of evidence, 1 volume)**, Estimates Committee B, 8 December 1992.

Several committee reports which were due to be presented on the last day of sittings were not reached before the Senate adjourned on that day (or rather, at 6 am the following morning), and these reports were subsequently presented to the President under the procedures for the presentation of reports when the Senate is not sitting:

On 18 December

- Rural and Regional Affairs, Report on the examination of annual reports.
- Legal and Constitutional Affairs, The examination of annual reports, The doctrine of the Shield of the Crown, Proposed amendments to Part VA of the *Trade Practices Act 1974* — Product liability — where should the loss fall, together with transcript of evidence.

On 21 December

- Environment, Recreation and the Arts, Discussion paper on the management of Australia's water resources and toxic algae.
- Foreign Affairs, Defence and Trade, Report on the examination of annual reports.
- Estimates Committee C, Additional information, Volume 4.

- Corporations and Securities, Report on the *Close Corporations Act 1989*, Issues paper on audit committees.
- Public Accounts, Report No. 321 — Finance Minutes, Report No. 322 — Report of Activities 1991-92, Report No. 323 — Managing people in the Australian Public Service: Dilemmas of devolution and diversity, Report No. 324 — Commonwealth support for private sector investment in research and development — Volume 2 of a report on research and development.
- Public Accounts, Report No. 325 — Report on the Midford Paramount case.
- Foreign Affairs, Defence and Trade, Defence Sub-Committee, Report on stockholding and sustainability in the Australian Defence Force, together with the transcript of evidence and submissions.
- Electoral Matters, Ready or not — Refining the process for election '93 — Report on the conduct of the 1990 Federal election, Part II and preparations for the next Federal election.

A transcript of a seminar which was held as part of the program of exchange committee visits between Australian and New Zealand, during the visit of the New Zealand Finance and Expenditure Committee, was tabled on 17 December.

The President tabled his report on outstanding government responses to committee reports on the same day.

The following Government Responses were tabled during the period:

- **Australian and Latin America (report tabled 18 June 1992)**, Foreign Affairs, Defence and Trade Committee, tabled 24 November 1992.
- **Aboriginal Development Commission — Legal costs in relation to a Senate privileges matter (report tabled 14 May 1991)**, Legal and Constitutional Affairs Committee, tabled 25 November 1992.
- **Developing Satellite Launching Facilities in Australia and the Role of Government (report tabled 28 April 1992)**, Transport, Communications and Infrastructure Committee, tabled 25 November 1992.
- **Telephone message services (report tabled 28 May 1992)**, Community Standards Relevant to the Supply of Services Utilising Telecommunications Technologies Committee, tabled 25 November 1992.
- **The circumstances surrounding the positive drug test on Mr Alex Watson (report tabled 28 May 1992)**, Environment, Recreation and the Arts Committee, tabled 9 December 1992.
- **Review of the Office of the Commonwealth Ombudsman (report presented to the President on 20 January 1992, tabled in the Senate 25 February 1992)**, Finance and Public Administration Committee, tabled 15 December 1992.
- **First Report — Safeguarding Super: The regulation of superannuation (report tabled 4 June 1992)**, Superannuation Committee, tabled 17 December 1992.

- **Scrutiny of annual reports — No. 1 of 1992 (Report tabled 18 June 1992)**, Legal and Constitutional Affairs, tabled 14 December 1992.
- **Examination of annual reports — No. 1 of 1992 (report tabled 25 June 1992)**, Rural and Regional Affairs Committee, tabled 14 December 1992.
- **Examination of annual reports — No. 2 of 1991 (report tabled on 4 March 1992)**, Environment, Recreation and the Arts Committee, tabled 14 December 1992.
- **Examination of annual reports — No. 1 of 1992 (Report tabled 25 June 1992)**, Environment, Recreation and the Arts, tabled 14 December 1992.
- **Scrutiny of annual reports No. 2 of 1991 (report tabled 9 December 1991)**, Legal and Constitutional Affairs Committee, tabled 16 December 1992.

COMMITTEE REFERENCES

On many occasions committees were granted leave to sit during the sittings of the Senate, to allow them to carry on their business during the extended sittings.

An unusual reference of bills to a committee was agreed to on 25 November; a package of bills was referred to the Select Committee on Superannuation at whatever stage they had reached at the conclusion of the sitting of the Senate on that day.

The Superannuation Committee was given another extension of life, also on 25 November. Several bills were referred to the Committee.

A motion was passed on 25 November to allow the Community Affairs Committee to provide to other Senators the report on medicare fraud which was referred to the Committee on 9 November 1992 on condition that the Committee not publish the report until after 11 December.

An example occurred on 26 November of some bills in a package being referred to a committee while another bill in the package proceeded through all stages.

An attempt by the Chairman of the Finance and Public Administration Committee to have the Senate authorise joint meetings of that Committee with its House of Representatives counterpart was rejected on 3 November.

The Joint Committee on Corporations and Securities was given a reference on the shares of Jupiters Limited on 26 November and the Industry, Science and Technology Committee received a substantial reference relating to fisheries on 17 December.