

## Procedural Information Bulletin No. 80

*For the sitting period 16 to 25 November 1993*

### NEW ESTIMATES PROCEDURES

The new procedures adopted on 6 May 1993 for estimates committees and appropriation bills, whereby a supplementary round of estimates committee hearings replaces committee of the whole on the appropriation bills, seemed to have worked extremely well. The supplementary hearings were held without difficulty, and senators were able to question departmental officers and ministers about a number of contentious matters which had arisen since the main round of hearings, as well as matters arising from those hearings. A great deal of time was saved in the chamber by dispensing with the committee of the whole on the appropriation bills, but senators do not appear to feel that they missed out on any opportunity to inquire further into matters of interest.

Estimates Committee F presented a report on its supplementary hearings, and made use of the new procedure of moving amendments to other stages of the appropriation bills to carry out recommendations of estimates committees. The committee suggested that the Procedure Committee consider a change to the procedures whereby notice of matters to be raised at supplementary hearings could be given three days before the hearing on the relevant department rather than three days before the commencement of the supplementary hearings. The reference to the Procedure Committee was carried out by means of an amendment to the motion for the second reading of the bills on 18 November.

### REFERENCE OF BILLS TO COMMITTEES

The value of consideration of bills by committees as a means of "predigesting" legislation before its consideration in the whole Senate was demonstrated by the superannuation package of bills which was passed on 17 November. The chamber debate on these complex bills was undoubtedly greatly expedited because the proposals contained in them had been the subject of intensive examination by the Select Committee on Superannuation, and had partly arisen from the recommendations of the Committee.

The bills were extensively amended, with amendments moved by all parties. Senator Watson withdrew one amendment and subsequently used an amendment to the motion for the adoption of the report of the committee of the whole to refer the implications of his amendment to the Select Committee. One of the amendments passed by the Senate was disagreed to by the House of Representatives. The amendment was not insisted on, but the device of an amendment to the motion to adopt the report of the committee of the whole was again used to refer related matters to the Select Committee.

The Select Committee is thus operating as a policy-initiating as well as a policy-monitoring body.

Other bills amended during the period included the Aboriginal and Torres Strait Islander Commission Amendment Bill (No. 3) 1993, which was extensively amended on 22 November.

## SENATE AND GOVERNMENT INQUIRIES

Propositions for inquiries by Senate committees into particular matters are increasingly being used as levers to compel the government to conduct its own inquiries or to take some other action which the majority of the Senate thinks appropriate.

On 22 November the Minister for Health, Senator Richardson, tabled terms of reference for a review of pension incomes and assets tests, whereupon Senator Patterson withdrew a notice of motion which would have referred related matters to the Standing Committee on Community Affairs. Senator Patterson had used the notice as a means of pressing the government to have an inquiry and to disclose the terms of reference.

## ORDER FOR PRODUCTION OF DOCUMENTS

Senator Patterson was also responsible for an order for the production of documents passed on 25 November relating to the contentious matter of grants to artists. The order required the tabling of documents later on the same day, and documents were duly tabled later in the day.

Senator Patterson's motion contained a provision reaffirming the principle that expenditure of public money is always accountable to Parliament. During debate on the motion questions of the relationship between that principle and rights of privacy were raised, and an unusual feature of the order was that some of the information was to be tabled but made available only to senators (normally a tabled document is automatically published).

## DISALLOWANCE BY CONTINGENT NOTICE

Senator Patterson also moved an unusual disallowance motion whereby the Senate disallowed on 17 November principles relating to financial arrangements for nursing homes made under the National Health Act. Senator Patterson had given notice that she would move to disallow the principles contingent on the Senate not being presented with an instrument revoking the principles and a statement that the government had referred some of the principles to an independent review.

## PRIVILEGE

A question of whether a witness had been subjected to any injury or penalty in consequence of his evidence to a committee was referred to the Privileges Committee on 18 November (this is the case referred to in *Bulletin No. 79*, p. 5). Contrary to the usual practice, the motion to refer the matter to the Committee was debated. The basis of the debate was that further evidence had been received by the committee concerned, the Standing Committee on Industry, Science, Technology, Transport, Communications and Infrastructure, relating to the matter, but the Senate accepted the view of the chairman of the committee, Senator Childs, that the committee had discharged its function in reporting the question to the Senate, and the Senate should allow the Privileges Committee to examine all the evidence in accordance with its special procedures.

The Privileges Committee also received a reference on 25 November relating to an alleged unauthorised disclosure of documents of the Joint Standing Committee on Migration.

## SUB JUDICE PRINCIPLE

During debate on 17 November on a motion to take note of an answer relating to the Bureau of Air Safety Investigation, the question was raised whether the sub judice principle should be invoked because an aircraft crash causing multiple fatalities is to come before a coronial inquiry. The President ruled that although the sub judice principle as such did not apply (a coronial inquiry not being a court), it would not be advisable for the Senate to be debating the causes of the accident or the possible responsibility of parties.

## RESPONSES BY PERSONS REFERRED TO IN ESTIMATES COMMITTEES

The President tabled on 25 November two responses by persons adversely referred to in the proceedings of an estimates committee. They had asked that their responses be dealt with under Resolution 5 of the Privilege Resolutions, but that resolution relates only to remarks made about persons in the Senate. Responses by persons referred to in committee proceedings are dealt with under paragraph (12) of Privilege Resolution No. 1. As the estimates committees, however, had concluded their hearings, the President tabled the responses and had them incorporated in *Hansard*.

## BRINGING NOTICES ON EARLY

Reference was made in *Bulletin No. 78* (p. 3) to the principle that a senator who has given a notice of motion cannot be compelled to move the motion on a day earlier than that for which the notice has been given. This can be done only by leave and with the consent of the senator who has given the notice.

On 25 November the Minister for Family Services, Senator Crowley, sought leave for a notice of motion to disallow guidelines for eligible child care centres to be moved immediately. Leave was refused, and that was the end of the matter. Even if leave were granted to move the motion, or the standing orders were suspended to allow the motion to be moved, the senator who gave the notice could still not be compelled to move it, but could insist on moving it at the time for which notice was given. As a notice of motion is simply a statement of intention by a senator and not an item of business as such, and is entirely within the control of the senator concerned, it is not open to a majority of the Senate to force the senator to act otherwise than in accordance with the notice. In the case of an ordinary notice of motion, another senator could give a notice for an earlier day, but the situation of disallowance notices is complicated by the statutory time limits for giving notice, and the determination of a similar motion would not prevent a senator from proceeding in accordance with a notice given for a later day.

## CUT-OFF MOTION FOR BILLS

Two major pieces of legislation have been exempted from the "double deadline" for the introduction of bills into the Senate (see *Bulletin No. 77*, pp. 1-2). The Industrial Relations Reform Bill 1993 and a related bill were exempted on 25 November, but only after leave to move the exemption motion had been refused and it was moved by motion on notice and carried on a division. The "Mabo Bill", the Native Title Bill 1993, was also exempted on 25 November.

## REARRANGEMENT OF GENERAL BUSINESS

The contingent notices of motion which senators of all parties have to allow them to rearrange the business before the Senate are usually employed to give precedence to some item of general business at the time for consideration of government business. On 18 November, however, Senator Chamarette used the procedure to bring on at the time for consideration of general business a motion for which she had been unable to get sufficient support as an urgency motion.

## MEMBERSHIP OF COMMITTEES

During the debate on the reference of a matter to the Privileges Committee (see above), the question was raised of the participation of substitute members in committee proceedings. The Senate frequently uses the procedure of appointing members to committees as substitutes for other members only for the purposes of particular inquiries. The question then arises of when the substitute members may vote during committee deliberations. The principle has generally been followed that substitute members may vote only in relation to matters which are wholly part of the inquiry for which they have been appointed. The Industry, Science, Technology, Transport, Communications and Infrastructure Committee was advised that the permanent members of the committee should have the voting rights in relation to a matter of privilege rather than the substitute members appointed for the purposes of the inquiry out of which the matter of privilege arose. This advice was disputed, and was referred to the Procedure Committee as a result of the debate.

## COMMITTEES

The Community Affairs Committee presented its report on 18 November on alleged misuse of printing facilities at the Department of Social Security, a matter which arose from hearings of Estimates Committee D. It was said in debate on the report that this inquiry could have been avoided if departmental officers had been more forthcoming with their evidence during the estimates committee hearing.

The Native Title Bill 1993 (the "Mabo Bill") was referred to the Legal and Constitutional Affairs Committee on 25 November as a result of a Selection of Bills Committee report.

The following committee reports were presented during the period:

Date tabled	Committee	Title
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18.11.93	Community Affairs	Report on the Alleged Misuse of Printing Facilities at the Department of Social Security
18.11.93	Foreign Affairs, Defence and Trade	Report on Australia's Relations with Indonesia
18.11.93	Legal and Constitutional Affairs	<b>Checking the Cash</b> —Report on the <i>Effectiveness of the Financial Transaction Reports Act 1988</i>
18.11.93	Estimates Committee F	Report on the Supplementary Meetings
23.11.93	Community Affairs	Report on Health Legislation (Professional Services Review) Amendment Bill 1993
23.11.93	Employment, Education and Training	Report on Higher Education Funding Legislation Amendment Bill 1993
23.11.93	Employment, Education and Training	Report on States Grants (Primary and Secondary Education Assistance) Amendment Bill 1993
23.11.93	Corporations and Securities	Report on Differential Voting Shares and the Australian Stock Exchange
23.11.93	Legal and Constitutional Affairs	Scrutiny of annual reports—No. 2 of 1993
24.11.93	Employment, Education and Training	Report on Inquiry concerning aspects of the Industrial Relations Reform Bill 1993
25.11.93	Community Affairs	Report on Validation of CAM and SAM Funding of Nursing Homes—Preliminary Report
25.11.93	Corporations and Securities	The Role of Audit Committees in Corporate Governance—A Progress Report Trading shares in Jupiter's Limited Committee Exchange with the New Zealand Parliament

