

Procedural Information Bulletin No. 25

For the sitting period 14 to 24 September 1987

OPENING OF PARLIAMENT

There were two matters of interest in relation to the opening of Parliament on 14 September. When the newly elected senators took the oath or affirmation, three were absent. Contrary to some suppositions, the absence of those senators does not cause any difficulties. They are senators who have not fulfilled the constitutional requirement for taking their seats, namely, that they make and subscribe the oath or affirmation, and have in fact not taken their seats. When they first attend on the Senate they will take the oath or affirmation, pursuant to a commission given by the Governor-General to the President to administer the oath or affirmation, and they will then take their seats. They have been granted leave of absence, but even this is not strictly necessary unless it were apprehended that they would be absent for more than two months and would therefore be liable to have their seats vacated under section 20 of the Constitution.

The other notable feature of the proceedings at the opening was that the President and Deputy President were elected without a ballot, the Opposition having decided not to put forward a candidate for President and the Government not to put forward a candidate for Deputy President.

SESSIONAL ORDERS

The Sessional Orders, which were adopted on 15 September, are basically the same as those in operation at the end of the last session, including the changes which were made late in that session, for example, in relation to the introduction of Bills. The only substantive variation is inclusion in the Orders of provision for the matters of public interest debate on Thursdays. The pattern of sittings was varied by another resolution.

ROTATION OF SENATORS

The whole Senate having been re-elected after the double dissolution, it was necessary to provide for the rotation of senators under section 13 of the Constitution, that is, to determine the allocation to senators of the long and the short terms. For the first time since 1901, the matter was the subject of debate, and was debated over three days, on 15, 16 and 17 September.

The motion put forward by the Government was that the matter should be determined in accordance with past practice, so that the first six senators elected in each State would be allocated the long terms. The Opposition put forward an amendment to allocate the long terms to the six senators whose order of election was determined in a recount of ballot papers under section 282 of the Commonwealth Electoral Act. That section provides for a recount of votes as if there were only six places to be filled, and the result of the recount was forwarded to the Clerk, who laid it before the Senate. The intention of the section is to provide the Senate with a different method of allocating the long and short terms if the Senate chooses to employ it. The question was resolved in favour of the Government's motion.

THE COMMITTEE SYSTEM

The re-establishment of Senate committees was complicated by the desire of the Government to make fundamental changes in the committee system. The Government's proposals, as reflected in the notices of motion initially given, included the abolition of estimates committees and the reference of estimates to the standing committees, the reallocation of responsibilities among the standing committees and the renaming of the committees, basically to reflect the reorganisation of government departments, and the abolition of the standing committee covering foreign affairs and related subjects. The initial notices of motion were withdrawn and others substituted to reflect the Government's acceptance of some of the proposals of the Opposition. These proposals included the retention of estimates committees and of the standing committee covering foreign affairs.

When the various motions were resolved on 22 September, Opposition and Democrat amendments were agreed to. The final outcome may be summarised as follows:

- (1) The changes are made by Sessional Orders, and the Standing Orders have not been amended (this was an Opposition amendment).
- (2) There are to be eight legislative and general purpose standing committees, and they are to be so named (the Government's motion would

have dropped that title), but the committees have the names and subject areas proposed by the Government.

- (3) Each of those standing committees has power to confer with a similar committee in the House of Representatives, and to sit with such a committee if authorised to do so by a resolution of the Senate (the Government motion contained an unlimited discretion to confer and sit).
- (4) The departments covered by each standing committee are specified in the resolution (this was an Opposition suggestion).
- (5) All committees may meet during sittings of the Senate, but only in private and deliberative session, and may not make resolutions or take votes unless all members of the committee concerned are present (the latter qualification was added by the Opposition, who opposed any meetings during sittings).
- (6) Almost all of the matters before the committees at the end of the last session have been referred to the new committees, although they could have taken up those references under the Standing Order; the matters that were before the Select Committee on Private Hospitals and Nursing Homes have been referred to the Standing Committee on Community Affairs.

There were two unsuccessful Opposition amendments, to establish a selection committee on bills and a system for referring bills to the standing committees, and to require the standing committees to consider and report on their names.

Another Opposition amendment established a select committee to complete the preparation and presentation of the report on a matter that was before the Standing Committee on Education and the Arts in the last session, namely, the education of gifted and talented children.

The Select Committee on Animal Welfare was re-established.

Members of seven of the standing committees were appointed on 24 September, and the membership of most of the committees was increased to 8 to allow the appointment of an Australian Democrat to each committee.

REFERENCES TO COMMITTEES

A difficulty arose when senators wished to refer matters to standing committees before the standing committees had been established and before their names and responsibilities had been determined. The difficulty was overcome in each case by a motion so expressed as to refer matters to a particular committee, or, if a committee of that name was not established, to a committee specified in a subsequent resolution.

An Opposition motion to establish a select committee on coastal surveillance was amended on the motion of the Democrats on 17 September to refer that matter to the Standing Committee on Finance and Public Administration, the amendment using the formulation indicated. On 24 September the resolution referring the matter to that committee was rescinded and the matter referred to the Standing Committee on Infrastructure in effect, the reference was transferred from one committee to the other.

The Administrative Decisions (Judicial Review) Amendment Bill 1987 was referred on 17 September to the Standing Committee on Constitutional and Legal Affairs with the proviso as to the name of the committee added, and on 24 September a motion was passed to specify the new Standing Committee on Legal and Constitutional Affairs as the committee to receive the reference.

AUSTRALIA CARD BILL

The long debate on the Australia Card Bill began on 18 September, with the Opposition moving an amendment to the motion for the second reading to refer the bill to a select committee. To that amendment the Australian Democrats moved amendments to make the reference to a standing committee and to make some changes to the terms of reference. The outcome, on 23 September, was that the bill was referred to the Standing Committee on Legal and Constitutional Affairs and the committee was directed to examine a number of matters in relation to the bill.

The consideration of the bill was complicated by the Opposition pointing out that the bill, if passed, could be made inoperative by the disallowance of regulations made under it. In this, the bill would not be unusual: many acts depend for their operation upon regulations made under them and may therefore be virtually nullified by the disallowance powers of either House, and the fact that this bill fell into that category had been observed. Not all acts, however, are passed into law by means of a joint sitting, and the possibility of this bill being so passed gives added significance to the power to disallow regulations. The Government attempted to have the Senate declare, by way of a further amendment to the amendment to the motion for the second reading, that it would not disallow the necessary regulations. That amendment was defeated. The proceedings on the bill and the prospect of the disallowance of the regulations were the subject of a motion of censure against the government on 24 September, and that motion was passed.

ORDER FOR A RETURN

The Senate passed on 16 September an order for a return, that is, an order requiring that certain documents in the possession of Government be presented to the Senate. The documents concerned are answers to questions asked before Estimates Committee E, and the motion for the order was moved by Senator Michael Baume and passed as a formal motion. Senator Baume's motion claimed that officers had expressed willingness to provide the answers but that the former Minister for Territories had declined to answer the questions. The Government subsequently indicated that the answers would be tabled.

ELECTION OF SENATOR QUESTIONED

Among the papers tabled on the first day of sitting was a petition lodged with the Court of Disputed Returns (that is, the High Court), claiming that Senator Robert Wood was disqualified from being elected as a senator. Notwithstanding the petition, Senator Wood took his seat.

MINISTERS OF STATE BILL

The Senate passed on 16 September the Ministers Amendment Bill, to allow the proposed increase in of the ministry, and the Administrative Arrangements Bill relating to the reorganisation of departments. The first bill was opposed by the Opposition. After its passage, Senators Reynolds and Tate, who had been sitting as executive councillors, but not ministers, under the title of parliamentary secretaries, were sworn in as ministers.

URGENCY MOTION AMENDED

A contingent notice of motion was used on 23 September to suspend the relevant provision of the Standing Orders to allow an amendment to be moved to an urgency motion. The amendment, moved by the Opposition to a motion moved by the Australian Democrats relating to agent orange and veterans, was carried and the motion as amended was then passed.