

Procedural Information Bulletin No. 49

For the sitting period 8 May to 1 June 1990

NEW SESSION, NEW SENATORS

The new session of the Parliament was opened by the Governor-General on 8 May in accordance with the long-established procedures, which are contained in the standing orders of both Houses, whereby the members of the House of Representatives are summoned to attend first upon the deputy of the Governor-General and subsequently upon the Governor-General himself in the Senate chamber.

During the last Parliament, the House of Representatives had passed a motion calling for changes in the opening procedures to allow the two Houses to meet together in the Members' Hall. Earlier this year the Clerk of the Senate wrote to the Leader of the Government in the Senate to ask whether the government intended to initiate any changes to the opening procedures and to suggest a method whereby the concurrence of the two Houses could be sought for an alteration of the procedures. It was decided, however, not to seek any changes in the procedures at that stage.

The re-elected territory senators were sworn in (only three of them were available on the first day), and there were five vacancies in the Senate caused by resignations. Only three senators had been appointed by State Parliaments to the vacancies by 8 May, and the last senator appointed, Senator Campbell in the vacancy left by Senator Chaney, was not sworn in until 21 May.

In order to allow the appointed senators to take their seats as soon as possible after their appointments, facsimile copies of the certificates of appointment were accepted to swear them in, and the original certificates were tabled when they became available.

PRIVILEGE

In adopting the findings of the 21st Report of the Committee of Privileges, the Senate, on 16 May, found that a contempt of the Senate had been committed.

The 20th and 21st Reports of the Committee remained to be considered from the last session. The 20th Report dealt with the unauthorised disclosure of an unpublished committee report. This report recommended that in the circumstances the Senate should not find that a contempt had been committed, and made certain recommendations concerning the treatment and presentation of committee reports. The 21st Report dealt with a case of possible adverse treatment of a witness. The report found that there had been adverse treatment of a witness in consequence of the witness giving evidence before a Senate committee, and that a contempt had been committed. The report found, however, that the offence was minor and recommended that, in the light of an apology tendered to the committee, no further action should be taken. These two reports were adopted on 16 May, and were considered pursuant to a special motion to allow them to be dealt with at the time for consideration of committee reports.

The 22nd Report of the Committee, which was presented on 9 May, dealt with a case of unauthorised disclosure of an unpublished submission to a Senate committee. This report recommended that the Senate should not find that a contempt had been committed, and also recommended certain steps to acquaint persons dealing with submissions of the rules relating to unauthorised disclosure. This Report was adopted by the Senate on 23 May.

The Committee's 23rd Report, which was presented and adopted on 25 May, recommended the incorporation in Hansard of a response by a person referred to in debate in the Senate, in accordance with the procedures laid down in Privilege Resolution No. 5. A motion to take note of the report was moved by Senator MacGibbon, who had referred in debate to the person in question. This motion provided Senator MacGibbon with the opportunity to refer to the response and to his previous references to the person concerned.

The Privileges Committee also sought and obtained on 16 May the concurrence of the Senate for the return to the Aboriginal and Torres Strait Islander Commission of the originals of documents obtained from its predecessor organisation, the Aboriginal Development Commission, during earlier inquiries involving that organisation and witnesses.

REFERENCE OF BILLS TO COMMITTEES

The new procedures for the reference of bills to committees came into effect on the first day of sitting, but the operation of the provision whereby the Senate is not to sit on Wednesdays to allow time for committee meetings was postponed until the beginning of the budget session. Because of the compressed nature of these sittings and the relatively small number of bills introduced, no bills have yet been referred to committees.

ESTIMATES COMMITTEES

The new procedures were much in evidence, however, in relation to Estimates Committees.

The estimates of additional expenditure were referred to the committees on 9 May and they were required to report by 21 May .

All of the reports recommended approval of expenditure to allow the shortened procedures on the appropriation bills to operate in the committee of the whole, and there were several reservations attached to reports for the purpose of allowing matters to be referred to in debate in the committee of the whole.

Unfortunately, insufficient time was allowed between the presentation of the committee reports and the consideration of the appropriation bills. An attempt was made to start the committee of the whole proceedings on 22 May, but progress was immediately reported because copies of the Estimates Committee reports were not then available. The committee of the whole proceedings commenced later that day.

The lack of time for the provision of written answers by departments also caused some difficulty. On 24 May consideration of various matters was postponed because of the absence of such answers. A highly unusual procedure was adopted on the following day. Certain answers had not been provided by the Australian Broadcasting Corporation, and it was agreed that the appropriation bill would be passed, but that when the answers were forthcoming they would be considered in committee of the whole. The answers were considered in the committee of the whole on 28 May on a motion to take note of them.

MINISTER CENSURED

The Minister for Justice, Senator Tate, was censured by the Senate on 10 May. The censure motion related to his allegedly prejudicial statements concerning a person arrested in Thailand.

TELEVISION

The new procedures affecting the sittings of the Senate on Wednesdays required some consideration of the allocation of the radio broadcast between the two Houses. On 17 May the President made a statement relating to negotiations with the House of Representatives on that subject. The Opposition indicated dissatisfaction with

what was stated to be the uncooperative attitude of the House of Representatives in relation to the matter. It was indicated that there could be a motion to allow the televising of the Senate's proceedings, the matter of televising proceedings having been under consideration for some time.

On 30 May Senator Vanstone gave notice of a motion which was passed, notwithstanding the expressed objection of the government, on the following day. The motion provides for the televising of Senate question time by the ABC on a trial basis in the next period of sittings, and also allows all television stations to use excerpts of the video recorded proceedings of the Senate, subject to certain conditions relating mainly to fair and accurate reporting. An amendment successfully moved by the government requires the Procedure Committee to consider the prescribed conditions, but not so as to delay the operation of the resolution.

An attempt to put forward a similar motion by the Opposition in the House of Representatives to allow the televising of that House was defeated on 1 June.

REGULATIONS, SUBJECT TO APPROVAL, DISALLOWED

The Therapeutic Goods Act 1989 contains an unusual provision, inserted by amendment in the Senate, whereby the act is not to come into operation until each House of the Parliament has approved the regulations made under the act. Without waiting for a motion to approve the regulations, the Senate disallowed them on 16 May.

There was some discussion about whether the provisions of the act are in addition to, or in substitution for, the disallowance provisions contained in the Acts Interpretation Act. By disallowing the regulations the Senate adhered to the view that the two sets of provisions operate concurrently.

To allow the act to come into operation, the government will have to make new regulations and seek the approval of each House for them. The Acts Interpretation Act, however, contains a provision forbidding the making within six months of regulations the same in substance as regulations disallowed without the approval of the disallowing House. As some of the new regulations are expected to be the same as some of those disallowed, the approval of the Senate will have to be sought before the new regulations can be made. This may be done by issuing the regulations in draft form.

The Regulations and Ordinances Committee had detected some problems with the regulations, and had also given notice of a motion to disallow them. That notice was withdrawn on 21 May with a statement indicating the Committee's concerns.

VIDEOS DENIED SUBSIDY

The controversial question of X-rated videos arose again in the Senate in an unexpected manner.

The Export Market Development Grants Amendment Bill 1990 was amended on 11 May on the motion of Senator Harradine to provide that export market development grants would not be payable to exporters of X-rated materials. The amendment was subsequently accepted by the government in the House of Representatives.

PARLIAMENTARY ENTITLEMENTS

In consequence of the judgment of the High Court in *Brown v West and another* in relation to the lawfulness of the government's decision before the general election to grant a \$30,000 postage allowance to members of the House of Representatives, a bill, the Parliamentary Entitlements Bill 1990, was introduced to validate all entitlements extended to members by the executive government. The bill was amended in the Senate on 16 May, however, to remove the reference to the additional postage allowance for members of the House of Representatives. The payment of that allowance, therefore, remains unlawful, and questions were subsequently asked about the repayment of the money, to which no definite answer was given.

RETROSPECTIVE TAXATION

In 1988 the Senate agreed to a motion declaring that it would not accept retrospective taxation extending beyond the date on which legislation was introduced or published in draft form.

The sales tax bills imposing additional taxation on luxury motor vehicles were amended by the Senate on 22 May to remove the provision for retrospectivity. Substitute amendments proposed by the government to limit the retrospectivity to the date of introduction of the bills was accepted by the Senate on 31 May.

The Bounty (Textile Yarns) Amendment Bill 1990 was amended on 28 May in relation to the criteria for eligibility for bounty.

REMUNERATION AND ALLOWANCES

As a result of the decision by the government not to accept increases in remuneration and allowances for members of Parliament and other office-holders determined by the Remuneration Tribunal, a bill was introduced at the end of the period of sittings to substitute different levels of remuneration and allowances for those determined by the Tribunal.

The bill was amended and passed by the Senate on 1 June. It was then found that there were technical problems with the bill as passed, one of the problems relating to its effect on the Parliamentary Entitlements Act to which reference has already been made.

Later on the same day, the last day of the sittings, an amending bill was received from the House of Representatives, but the responsible minister announced that this bill had been superseded by another and would not be proceeded with. It appears that this bill did not rectify all of the problems. Another amending bill passed by the House was then reported. In passing this final bill, the Senate agreed to an amendment criticising the government for the "extraordinary ministerial and administrative incompetence" involved in the handling of the legislation.

RESTORATION OF BILLS

Government and Democrat bills which were on the notice paper at the end of the last Parliament were restored on 9 May so that consideration of them may be resumed where it was left off. The relevant motions included a suspension of standing orders, because the standing orders embody the principle that a bill should not be restored in this way where a general election has intervened. The Privacy Amendment Bill 1989 was the subject of some discussion and was not restored until the last day of the sittings.

Only bills first introduced into the Senate were restored in this way. The Senate may not resume consideration of a House of Representatives bill except on a request from the House indicating that the House wishes to proceed with the bill. In the House the view is taken that bills should not be restored after a general election, although no principle is violated by such a procedure because the new House has the opportunity to determine whether a bill should proceed.

ELECTRONIC VOTING

In response to the order of the Senate of 22 December 1989, the President presented on 8 May a paper on electronic voting and its possible introduction in the Senate. Senator Macklin, who moved the motion calling for the paper, sought to have it

referred to the Procedure Committee, but the motion to do so was adjourned on 9 May until the first day of sitting in August, the Opposition indicating that they required more time to consider the document.

QUESTION TIME

In response to a question asked by Senator Vanstone, the President presented on 22 May a paper on question time, indicating options for change in the procedures for question time. A motion to take note of the paper was adjourned.

UNPROCLAIMED LEGISLATION

The list of unproclaimed legislation, which the order of the Senate of 29 November 1988 requires to be produced each May and November, was presented on 30 May and was debated. Senators indicated their dissatisfaction with some of the reasons given for failure to proclaim legislation.

DECLARATIONS OF INTEREST

Two senators made declarations of interest in relation to the training guarantee legislation which was under discussion in the Senate on 30 May.

RESOLUTIONS AND ORDERS OF THE SENATE

Certain resolutions and orders of the Senate made in past sessions were the subject of some disputation.

In debate on 16 May on the 13th Report of the Standing Committee on Appropriations and Staffing, which dealt mainly with the determination of the additional estimates for the Senate Department, Senator Crichton-Browne referred to the amalgamation of the Department of the Principal Parliamentary Reporter and the Parliamentary Information Systems Office, which was referred to in the report. He also referred to a resolution of the Senate passed in June 1987 which required that the Committee and senators be consulted on any changes in the structures and functions of the parliamentary departments. This resolution is one of a number of miscellaneous orders and resolutions of the Senate collected in the volume containing the new standing orders. Senator Coates joined the debate to question whether the resolution had any effect, and suggested a view that resolutions and orders of the Senate lapse at the end of a session.

On 21 May Senator Coates tabled a letter addressed by the Clerk of the Senate to the party leaders. The letter pointed out that there was no basis in parliamentary law and practice for the view that a resolution or order lapses at the end of a session, and that, if Senator Coates' view were to be accepted, the Senate and its committees were operating under a large number of procedures which no longer had any effect, including those contained in the standing orders themselves. Senator Coates also tabled a letter from himself suggesting that some of the matters contained in the standing orders volume were still in force but others were not. He gave notice of a motion to refer the letters to the Procedure Committee. On the following day leave to have that motion put without debate as a formal motion was refused, and Senator Coates then withdrew his notice.

On 23 May Senator Puplick gave notice of a motion which would declare that all of the resolutions and orders are still in effect. To this motion Senator Macklin circulated an amendment which would declare the Senate's intention of indicating in the future which resolutions and orders have continuing effect by the insertion of a provision for that purpose. On 25 May Senator Coates gave notice of a motion incorporating the provisions of Senator Puplick's notice and Senator Macklin's amendment but referring to the Procedure Committee the question of which resolutions and orders should have continuing effect.

Senator Coates' notice had precedence as business of the Senate because it contained a reference to a standing committee. Debate on his motion on 29 May was adjourned to the first sitting day in August, Senator Puplick indicating that the motion would be the subject of considerable debate.

COMMITTEE MEMBERSHIP

Members of the standing committees were appointed on 11 May, and further provision for membership of committees by independent senators was settled on 14 May.

A motion to appoint some of the senators-elect to committees with effect from 1 July, when those senators' terms begin, was passed on 1 June.

SELECT COMMITTEES RECONSTITUTED

The Select Committees on Animal Welfare and Agricultural and Veterinary Chemicals were re-established on 9 May. A motion to limit the Animal Welfare Committee to certain subjects and to set a time for presentation of its final report was agreed to on 31 May, and a deadline for the other committee was set on 1 June.

The Select Committee on Health Legislation and Health Insurance was reconstituted on 10 May, having been the subject of some discussions, and the Committee was granted an extension of time to report on 31 May.

SCRUTINY OF ANNUAL REPORTS

Pursuant to the new procedures for the scrutiny of annual reports of departments and authorities by the standing committees, the President presented his list of annual reports on 8 May and the list prepared by the committee chairmen showing the allocation of annual reports to the committees.

JOINT COMMITTEES

Various joint committees were reconstituted on 16 May. The Minister moving the necessary motion pointed out that some of the resolutions of appointment proposed by the House of Representatives contain a provision empowering subcommittees to publish evidence and documents, that such provisions are unnecessary and that in agreeing to the appointing resolutions it was not conceded that those provisions have any effect.

The Joint Select Committee on Migration Regulations was reconstituted on 17 May.

GOVERNMENT RESPONSES TO COMMITTEE REPORTS

The President presented on 31 May his report on government responses to committee reports. The report indicates that government responses to a number of reports are overdue, but most of the reports were presented since the middle of last year.

PRESENTATION OF REPORTS DURING ADJOURNMENT

The report of the Select Committee on the Airline Pilots' Dispute, which was presented to the President and published during the election adjournment, was tabled on 8 May. At the end of the sitting period a number of committees sought and obtained approval for their reports to be presented to the President during the winter adjournment.

A motion was moved on 11 May to authorise the publication of certain submissions made to the Select Committee on Private Hospitals and Nursing Homes, which operated in the Parliament before last.

COMMITTEE REPORTS

In accordance with the new procedures relating to the scrutiny of annual reports, the standing committees presented their reports on annual reports of departments and authorities.

The highly controversial report of the Standing Committee on Environment, Recreation and the Arts on the use of drugs in sport was presented on 24 May and debated, and the debate on the subject was also carried on during the consideration of the appropriation bills.

The Regulations and Ordinances Committee presented its annual report on its work on 31 May, indicating that the Committee still actively scrutinises a very large volume of legislation, and that the removal of the laws of the Australian Capital Territory from the oversight of the Senate does not appear to have lessened the Committee's work load.

The following committee reports were presented:

Date tabled	Committee	Title
9 May	Finance and Public Administration	The Senior Executive Service
9 May	Community Affairs	Accommodation of the Disabled
29 May	Industry, Science and Technology	New Management Techniques in Manufacturing Industry
29 May	Transport, Communications and Infrastructure	Very Fast Train

FAREWELLS TO SENATORS

On 31 May senators farewelled their ten colleagues whose terms end on 30 June, including the Deputy-President, Senator Hamer. The 10 senators-elect whose terms begin on 1 July will be sworn in with the other senators elected for the States on the first day of sitting after 1 July. All of the 5 senators who resigned during the adjournment had terms ending on 30 June 1993 except Senator Sanders. He was replaced by Senator Bell who was also successful in gaining election to a term beginning on 1 July this year.