

Procedural Information Bulletin No. 54

For the sitting period 26 November to 21 December 1990

LEGISLATION AMENDED REJECTED

A large volume of legislation was passed during this period, reflecting the end-of-year logjam notwithstanding the now established practice of the Senate of setting a deadline for the receipt of bills from the House of Representatives.

Many amendments were made to a large number of bills, including some highly significant bills, such as the Industrial Relations Legislation Amendment Bill, the Commonwealth Banks Restructuring Bill and the Data-Matching Program (Assistance and Tax) Bill (which is referred to further in relation to its consideration by a committee).

Requests for amendments were made to several bills which imposed taxation and which were therefore not amendable by the Senate. In relation to the Social Security Legislation Amendment Bill, the principle was again recognised that where a bill seeks to reduce benefits payable to recipients, and proposed amendments would preserve existing entitlements, such amendments would not, under the terms of the Constitution, involve any proposed charge or burden on the people and therefore would not need to be moved in the form of requests. This is an important point of constitutional interpretation.

Two bills were rejected during the period, the Higher Education Funding Amendment Bill, which related to the imposition by universities of compulsory student union fees, and was negatived with the ayes and noes equal on 18 December, and the Pipeline Authority (Charges) Bill, relating to the proposed sale of the Pipeline Authority, on 19 December.

As has become customary in recent years, the House of Representatives rose early after passing bills before the Senate's deadline, and returned at the end of the period to consider amendments and requests for amendment made by the Senate. On this occasion there was no disagreement between the Houses, the government having decided to accept all the Senate's amendments and requests, and the House's agreement with all amendments and requests was reported by 21 December.

On 13 December 52 bills were declared to be urgent bills and time limits were imposed for their consideration. Later in the same day a motion moved by a minister was passed to provide that any amendments to bills circulated by Opposition, Democrat and independent senators would be put and determined if the time for consideration of bills to which the amendments related expired before the amendments had been moved. The relevant standing order (SO 142) at present allows only circulated government amendments to be put in this way. Extensions of the time allotted for the consideration of bills were on a number of occasions granted by leave, and on one occasion, on 19 December, on the motion of a minister.

CONSIDERATION OF BILLS BY COMMITTEES

Several bills were considered by committees during the period under the new procedures for the reference of bills to committees.

One of the most significant bills considered was the Data-Matching Program (Assistance and Tax) Bill, which dealt with the difficult and controversial matter of the matching of computer data held by various departments on recipients of benefits and taxpayers. A new bill was introduced by the government on 6 December, substantially different from the previous bill which had already been considered by the Standing Committee on Legal and Constitutional Affairs, and the new bill was immediately referred to the committee on the motion of the government. The committee reported on 11 December. The bill was considered at length and extensively amended on 18 December, together with a companion bill, the Social Security Legislation Amendment Bill. Included among the amendments to the Data-Matching Bill were amendments to the Privacy Act, which was not proposed to be amended by the bill in its original form, and this required an amendment to the title of the bill. Amendments moved by the Opposition to make the Privacy Commissioner an appointee of the Parliament were not successful.

Parts of the Social Security Legislation Amendment Bill were referred to the Standing Committee for Community Affairs, on the motion of a minister, on 26 November. Three taxation bills were referred to the Standing Committee on Finance and Public Administration on the motion of the chairman of that committee on 13 December, and the motion provided that the bills be considered as if the referral of the bills resulted from a recommendation of the Selection of Bills Committee.

Most of the bills considered by committees, however, were referred on report of the Selection of Bills Committee. In its report presented on 28 November the committee recommended that the Veterans' Affairs Legislation Amendment Bill be referred to a committee before the second reading, notwithstanding its previous recommendation that the bill be referred after the second reading. On the following day, on the motion of Senator Knowles, the referral of the Australian Heritage

Commission Amendment Bill was altered so that the bill was referred before the second reading, and a similar motion was passed in respect of two other bills on 5 December. On the same day a referral of a bill was altered so as to provide that the relevant committee consider only part of the bill. There were further instances of bills being taken back from committees, for example, the Northern Prawn Fishery Bill on 5 December, on the motion of Senator Knowles.

INSTRUMENTS SUBJECT TO APPROVAL AND AMENDMENT

As a result of amendments made to legislation by the Senate, there are significant statutory instruments made under acts of the Parliament which are subject to approval or amendment by both Houses of the Parliament. Two types of such instruments occupied the attention of the Senate during the period.

As a result of amendments made in the Senate, charters of the rights of residents of nursing homes and aged persons' hostels and forms of agreements between residents and the proprietors of such establishments were subject to amendment and approval by the Houses. Two charters which were previously tabled were then superseded by charters contained in a bill, the Community Services and Health Legislation Amendment Bill (No. 2) 1990. On 17 December a special motion was passed to allow consideration of the bill and amendments proposed to a form of agreement to be considered together in committee of the whole. The bill and the form of agreement were duly considered later on that day and were extensively amended. The special motion also provided for a time limit for the consideration of these matters, but the time limit was later extended due to the lengthy consideration of the controversial provisions. The bill and the form of agreement as amended by the Senate were subsequently approved by the House of Representatives on its return on 21 December.

Also as a result of an amendment made in the Senate, the Therapeutic Goods Act 1989 could not come into operation until the Senate had approved the regulations made under the Act. A previous set of regulations had been disallowed by the Senate on 16 May 1990. A new set of regulations was debated and approved on 20 December, thereby allowing the act and the regulations to come into effect. A special motion also provided a time limit for the consideration of the motion of approval.

Another instrument, the Guide to the Assessment of Rates of Veterans' Pensions, was disallowed by the Senate on 20 December. The motion to disallow the Guide was also subject to special time limits agreed to earlier on that day. It was necessary for the disallowing motion to cover an instrument revoking the previous Guide to ensure that the previous Guide would be revived, because of the peculiar statutory provisions relating to the Guide.

On 13 December the President tabled a judgment of the Federal Court relating to rules for regional council elections under the Aboriginal and Torres Strait Islander Commission Act. The government had failed to table these rules, as a result of which they had ceased to have effect, but because of the relevant statutory provisions it appeared that the rules could still be used for the first round of regional council elections (see Bulletin No. 53, p.1). The Federal Court judgment upheld this interpretation of the act, while severely criticising the failure to table the rules.

UNANSWERED QUESTIONS ON NOTICE

The procedure allowing senators to ask for an explanation of the failure to answer a question on notice within 30 days, and to move a motion in the absence of an explanation, was used in relation to three questions on 28 November. In relation to one question, in the absence of an explanation, Senator Watson moved a motion for an order that the answer to the question be tabled. The motion was passed and the answer was duly tabled on the following day. An explanation was not provided in relation to another question, but Senator Newman did not exercise her right to move motion.

Immediately after these events, Senator Hill drew attention to the practice of Ministers leaving the chamber immediately after questions without notice, thereby thwarting the procedure of asking for explanations. The President suggested that ministers be warned in advance that they would be asked for explanations, and undertook to raise the matter with them.

APPROPRIATION BILLS: PROCEDURES

The new procedures for the consideration of appropriation bills, whereby the bills are considered in committee of the whole on a motion to adopt the reports of estimates committees, have necessitated some changes to other procedures. For example, the postponement of consideration of a department now takes a rather peculiar form (27 November), and a request for an amendment of a non-amendable bill is moved in the form of an amendment to the motion for the adoption of the estimates committee report (also on 27 November).

PRIVILEGE: RESPONSES BY AGGRIEVED PERSONS

The Privileges Committee presented 3 reports recommending the incorporation in Hansard of responses by persons referred to in debate, on 29 November and 19 December. After the motion for the adoption of the first report was agreed to, a motion to take note of the report was moved by leave. This motion was debated on 5 December, providing a vehicle for senators to refer to the response by the person.

REFERENCE TO A SENATOR: PROPOSED DISQUALIFICATION OF

A motion moved by Senator Bishop was agreed to on 5 November to refer a matter to the Joint Committee of Public Accounts. The Leader of the Government in the Senate, Senator Button, moved an amendment to the motion to the effect that Senator Bishop not participate in the proceedings of the committee on the reference, on the basis that Senator Bishop had already formed a judgment on the matter in question. Standing Order 27 provides that a senator may not serve on a committee in an inquiry where the senator has a conflict of interest, but this, of course, is a different point from the question raised by Senator Button. Senator Button subsequently withdrew his amendment. This proceeding may be regarded as supporting the principle that, except in relation to a conflict of interest, it is for an individual senator to determine whether the senator should disqualify himself or herself from participation in an inquiry, a principle which was referred to in the 18th Report of the Privileges Committee tabled on 16 June 1989.

MINISTERIAL STATEMENT: TABLING

On 4 December Senator Button sought leave to incorporate in Hansard a ministerial statement, but leave was refused. Senator Button, not wishing to read the statement, then tabled it, as a minister is entitled to do with any document. This course of action was queried on points of order, but the Chair ruled that Senator Button was in order. The matter was referred to the Procedure Committee, which subsequently reported, indicating that a minister could not be compelled to make a statement and that no changes to procedures should be made (see below for a further reference to the committee's report).

A SENATOR TAKES THE CHAIR

On 20 December the President asked for leave of the Senate to be granted for Senator Peter Baume to take the Chair at the beginning of the sitting on the following day. Senator Baume had earlier announced his intended resignation from the Senate to take up a professorship of medicine, so that 21 December would be his last day in

the Senate, and the President intended that this procedure be adopted as a mark of honour for Senator Baume. Leave was granted, and Senator Baume duly took the Chair at the beginning of the sitting. Tributes to Senator Baume were paid during the adjournment debate at the end of the day.

PROCEDURE COMMITTEE REPORT

The Procedure Committee reported on 21 December on a number of matters referred to it. The matters covered were: electronic voting; disclosure of in camera evidence; question time; televising and personal explanations; estimates committee reports; video recordings of proceedings; government documents presented to the Senate; tabling of a ministerial statement; and the continuation of various resolutions and orders of the Senate, including the orders providing the new procedures for the reference of bills to committees.

ACCESS TO COMMITTEE TAPES

On 29 November Senator Vanstone directed a question to the President concerning access by members of committees to audio tapes of committee hearings. She stated that the production of transcripts of a public hearing of the Joint Committee on the National Crime Authority had been delayed, that members of the committee had asked for access to the tapes, but that this had been refused by the chairman of the committee. On 4 December the President made a statement in response to the question, indicating that access to the records of proceedings of a committee is a matter for the committee to determine. On 6 December Senator Crichton-Browne successfully moved a motion which provided for an order of the Senate to the Principal Parliamentary Reporter to make available to members of the joint committee the tapes of the meeting in question, and the tapes were subsequently provided in accordance with that order.

OTHER COMMITTEE ACTIVITIES

Significant references to committees during the period included a reference to the Standing Committee on Legal and Constitutional Affairs on 21 December on the review of decisions of the Human Rights and Equal Opportunity Commission, a reference to the Joint Committee on the National Crime Authority, on the motion of Senator Crichton-Browne on 28 November, relating to the relationship between the Authority and a particular person, and a decision by the Finance and Public Administration Committee, announced on 13 December, to examine the office of the Ombudsman under one of the committee's general references.

Significant committee reports presented during the period included a special report by the Regulations and Ordinances Committee on subdelegation of powers, presented on 29 November, the annual report of the Scrutiny of Bills Committee, presented on 21 December, two reports of the Select Committee on Health Legislation and Health Insurance on hospital costs and registration of general practitioners, presented on 17 and 20 December, respectively, and two reports by the Standing Committee on Foreign Affairs, Defence and Trade on India and reform in the Soviet Union, presented on 21 December.

All of the standing committees, with the exception of the Standing Committee on Finance and Public Administration, presented their reports on annual reports of departments and authorities, as required by the order of the Senate of 14 December 1989.

The government presented its response to the report of the Select Committee on Video Material on 4 December and, on the insistence of non-government senators, the response was debated on that day.