

Procedural Information Bulletin No. 58

For the sitting period 7 to 16 May 1991

CONSIDERATION OF UNLISTED BUSINESS

In the previous bulletin it was explained that the ability of a minister to move a motion "connected with the conduct of the business of the Senate" without notice under standing order 56 does not extend to making provision for the consideration of a completely new item of business not before the Senate in some way. A motion to bring on such an item of business can be moved only by leave or by the suspension of standing orders. In order to overcome the requirement in standing order 209 for an absolute majority to carry a motion for the suspension of standing orders moved without notice, and to allow for a motion to bring on such an item of business, a contingent notice of motion is used, whereby, at virtually any time, a senator may move a motion for the suspension of standing orders to allow a further motion to "provide for the consideration of a matter". In order to bring on without notice some completely new item of business, therefore, two procedural steps are necessary: the suspension of standing orders pursuant to the contingent notice, followed by the motion to provide for the consideration of a matter. The latter motion usually provides that a motion relating to a particular matter may be moved forthwith and have precedence over all other business until determined. The provision relating to precedence over all other business until determined is designed to prevent debate on the substantive motion being adjourned in the normal way, which, in relation to a motion moved by a senator other than a minister, would put the substantive motion at the end of the list of general business for the next day of sitting. When the two procedural steps have been taken and are successful, the substantive motion may then be moved.

These procedures were used on 8 May by the Leader of the Opposition in the Senate, Senator Hill, to enable him to move a motion requiring the tabling of documents relating to the intervention by the Minister for Administrative Services in the evaluation of certain tenders. To the motion that the substantive motion might be moved forthwith Senator Aulich moved an amendment to leave out "forthwith" and substitute "at 11 am this day". The motion as amended therefore had the effect of allowing the substantive motion to be moved with precedence over all other business at 11 am. The motion was duly moved at that time, but was then adjourned to 5 pm. As already explained, the motion to adjourn the debate could be moved only by leave. The motion then had precedence again at 5 pm. Debate was then again adjourned

by leave, this time till a later hour of the day. The reason for this adjournment was that an undertaking was given relating to the tabling of the documents in question, and they were tabled later in the day. The motion requiring their tabling was not again called on under the indefinite adjournment, and thereby went to the bottom of the list of general business orders of the day.

ANOTHER MOTION FOR TABLING DOCUMENTS

As the previous item indicates, frequent use is now being made of motions requiring the tabling of documents. They are usually moved under the procedures outlined in the previous item, and they are usually agreed to.

This was not the case, however, with a motion moved on 16 May to require the tabling of advice from the Human Rights Commission in relation to the government's proposal for a prohibition on political advertisements on radio and television. After the two procedural steps had been taken and the substantive motion was moved, the Minister for Defence raised a point of order, the gist of which was that the document in question was advice to government and should not be tabled. After considerable discussion on the point of order, the debate was adjourned at the request of the Deputy-President, Senator Colston, to allow him to consider a ruling.

The Deputy-President delivered his ruling later in the day. Pointing out that standing order 164, which provides that documents may be ordered to be tabled, does not contain any exceptions or exemptions as to the documents which may be ordered to be tabled, the Deputy-President indicated that the argument which had taken place really related to the question of whether the motion should be passed rather than whether the motion was in order. If the responsible minister considered that there were reasons for not tabling the document, that was a matter which might be argued in debate. The motion was certainly in order.

Debate on the motion then continued, but it was negatived, the Leader of the Australian Democrats, Senator Powell, indicating that the document in question was advice on the government's proposal and that it would be more appropriate to await advice on the bill which had been introduced after the preliminary advice had been given.

TAKING ITEMS OF BUSINESS TOGETHER

Motions are now quite frequently moved to allow for items of business to be taken together. Both orders of the day and notices of motion have been treated in this way. Such motions require leave or a suspension of standing orders to be moved; standing order 56 does not extend to such a motion, the effect of which is quite contrary to the standing orders. Putting items of business together involves a significant restriction

of the rights of senators, because items of business which would normally allow separate debates are then the subject of one debate only. It is therefore usually done only with the agreement of all senators present.

An example of putting items of business together without agreement occurred on 13 May. Two Australian Democrat senators, Senators Lees and Bell, had motions to disallow particular regulations contained in the same set of regulations providing for the AUSTUDY scheme. A motion to have these two motions taken together was moved by leave and agreed to on a division over the opposition of the Australian Democrats. One motion had already been moved and the resumption of debate was an order of the day, so that, when that order of the day was called on, the other motion was then moved to allow them to be taken together. When items of business are taken together in this way, the questions on the separate items are put separately at the request of any senator, and this was done in this case.

These proceedings were also interesting because an amendment was moved to one of the disallowance motions; amendments to disallowance motions are relatively rare. The amendment sought to leave out the provision for disallowing the regulations and to substitute words calling on the government to introduce emergency educational assistance for rural families excluded from AUSTUDY by the assets test. The amendment, moved by Senator Teague and supported by the Opposition, was negatived, and the two disallowance motions were then negatived. Senator Teague then immediately used the procedure of suspending standing orders to allow him to move his amendment as a substantive motion, and that motion was then passed.

TABLING OF DOCUMENTS BY MINISTER

Documents required to be tabled by statutory provisions, including delegated legislation made under statutes, are usually forwarded to the Clerk and tabled by the Clerk at the appropriate time. There is, however, nothing to prevent such documents being tabled by some other method, including by a minister or by another senator. An example of this occurred on 8 May with the tabling by a minister of certain determinations under the Social Security Act. These determinations related to the controversial question of rates of interest deemed to be earned by the funds of social security benefits recipients, and were tabled immediately after they were made, the government obviously wishing to have them tabled without delay.

LEGISLATION AMENDED

On 8 May the Senate agreed not to press its request for an amendment to the Superannuation Supervisory Levy Bill, and agreed to a substitute amendment made

in the House of Representatives. The amendments related to consultation with industry bodies in relation to the making of regulations under the bill.

The controversial Industrial Relations Legislation Amendment Bill (No. 2) 1991 was amended on 8 and 9 May, with government and Australian Democrat amendments being agreed to.

TELEVISION

The order of the Senate allowing the televising of Senate proceedings was amended on 9 May on the motion of Senator Vanstone to remove the prohibition on televising the adjournment debate.

DEADLINE FOR GOVERNMENT BILLS

The usual motion to provide a deadline for the introduction of government bills was passed on 14 May. The deadline for this period of sittings is 7 June.

This motion has become known as the "Macklin motion", after the Australian Democrat senator who first moved it some years ago.

COMMITTEE REFERENCES

The Legal and Constitutional Affairs Committee was given a reference on the unauthorised procurement and disclosure of information on 7 May on the motion of Senator Patterson. On the motion of Senator Powell on 8 May the Foreign Affairs, Defence and Trade Committee was given a reference on controlling military transfers. On 16 May on the motion of Senator Spindler matters relating to the Trade Practices Act were referred to the Legal and Constitutional Affairs Committee. This reference was amended by leave later in the day to repair a typographical omission. These references provide illustrations of the tendency for many committee references to be generated by the non-government senators.

Two more bills were referred to committees under the old procedures, bypassing the Selection of Bills Committee. The Defence Force superannuation legislation was referred to the Finance and Public Administration Committee on 8 May on the motion of Senator Newman, and on the same day, on the motion of the Minister for Justice, Senator Tate, the Sex Discrimination Bill 1991 was referred to the Legal and Constitutional Affairs Committee.

The Foreign Affairs, Defence and Trade Committee was given on 7 May an extension of time to report on its reference on Australia's role on United Nations peacekeeping

forces. The time for the Public Accounts Committee to report on the matter referred to it by the Senate (the Midford Paramount matter) was extended on 13 May on the motion of Senator Watson.

COMMITTEE REPORTS

All of the Estimates Committees reported on 8 May, and consideration of the appropriation bills, which were introduced later on that day, was resumed on the following day.

The Finance and Public Administration Committee presented its report on Estimates Committee documentation and procedures on 9 May. The report raises a number of matters but does not recommend any major changes to current procedures.

The Legal and Constitutional Affairs Committee presented on 14 May its report on the matter of legal costs incurred by the Aboriginal Development Commission in its dealings with the Senate Privileges Committee. The report found that in one respect the costs were excessive.

The Regulations and Ordinances Committee presented its general report on its activities on 16 May.

The Legal and Constitutional Affairs Committee presented another discussion paper on 16 May, relating to its inquiry into the cost of justice, and dealing with contingency fees.

The Employment, Education and Training Committee presented its report on the Education Services (Export Regulation) Bill on 7 May. Proceedings on this bill in committee of the whole are expected to be somewhat complicated.

The Joint Committee on Migration Regulations presented its second report on 16 May, dealing with change of status in relation to marital relationships.

A Register of Senate Committee Reports from 1970 to 1990 was tabled and printed on 7 May. This Register contains a list of all reports presented in that period and indexes to their subject matter.