

Procedural Information Bulletin No. 59

For the sitting period 28 May to 6 June 1991

BILLS REPORTED FROM COMMITTEES

Significant precedents were set during the period in dealing with bills reported from standing committees.

Reference was made in the two previous bulletins to the referral of bills to committees under the procedures which were in force prior to the adoption of the new procedures whereby referral takes place on the recommendation of the Selection of Bills Committee. The question arose whether bills referred to committees under the old procedures could be considered in committee of the whole by way of a motion for the adoption of the standing committee's report. On a strict reading of the new procedures, only bills referred under those procedures, on the recommendation of the Selection of Bills Committee, may be dealt with in that way. It was considered, however, that it is more rational to allow any bill referred to a committee, whether under the old or the new procedures, to be dealt with by that procedure. The rights of senators are not abridged by this interpretation, because any senator can prevent the motion for the adoption of the standing committee's report by circulating amendments not recommended by the standing committee, thereby ensuring that the bill is considered in the normal way. There is also the opportunity to move further amendments to the bill by way of amendment to the motion for the adoption of the standing committee report, if the senator proposing further amendments chooses to proceed in that way.

These applications of the procedures were adopted on 4 June when the Australian Capital Territory (Electoral) Amendment Bill 1991 was considered after its return from a standing committee. The standing committee had recommended very extensive amendments to the bill, and these amendments were made on a motion for the adoption of the standing committee's report. To that motion Senator Bell moved an amendment to alter one of the amendments recommended by the committee.

A similar method was adopted on 6 June for dealing with the Petroleum Resource Rent Legislation Amendment Bill 1991, and in that case the amendment to the motion for the adoption of the standing committee report had the effect of making an amendment to the bill unconnected with the amendments recommended by the

standing committee. (A point of order was taken in relation to this amendment, but not on the procedure which was adopted. The point of order, raised by Senator Coates, was to the effect that the proposed amendment contained an appropriation of money and therefore could not be moved in the Senate. The Deputy-President, however, ruled that the amendment did not contain an appropriation of money: it was in the form of providing for a payment out of an appropriation to be made for the purpose by another act. On the same day the House of Representatives returned the bill disagreeing with the amendment, on policy grounds.)

The Sex Discrimination Amendment Bill 1991 was also amended on 6 June by way of a motion to adopt the report of the standing committee.

There is one difference of treatment required for bills referred under the old procedures which cannot be ignored because of the explicit terms of standing order 115(3) and paragraph (8) of the new procedures. The standing order requires that where a bill has been reported on by a committee a future day is to be fixed for the next stage of the bill, and the automatic fixing of the day for the next stage under the new procedures cannot be separated from the operation of those procedures. It was necessary, therefore, that motions be passed on 29 and 30 May for the further consideration of bills referred to committees under the old procedures. On the first occasion of such a motion the Manager of Government Business referred to the absence of a provision for automatic consideration of these bills, and suggested that the Procedure Committee consider the matter. Standing order 115 could easily be amended to provide for automatic further consideration of all bills reported from committees.

OTHER LEGISLATION AMENDED

An amendment made by the government in the House of Representatives to the Industry, Technology and Commerce Legislation Amendment Bill 1991, which was a Senate bill, was agreed to on 4 June.

A package of social security bills relating to the new allowances which replace unemployment benefits was extensively amended on 5 June.

The telecommunications package of bills was the subject of a large number of amendments made on 6 June, and consideration of the bills is not yet completed.

APPROPRIATION BILLS: REFERENCE OF MATTERS TO COMMITTEES

The long-established practice whereby the Senate, in considering appropriation bills, may adopt resolutions relating to matters raised by estimates committee reports is now contained in the new procedures for dealing with appropriation bills. When the

additional appropriation bills were finally passed on 3 June, two such resolutions agreed to in committee of the whole were adopted, and both involved references to committees. On the recommendation of Estimates Committee B, the matter of uniform conditions for the broadcasting of estimates committee proceedings was referred to the Procedure Committee, and the matter of pharmaceutical restructuring, referred to in the report of Estimates Committee E, was referred to the Standing Committee on Community Affairs.

The new procedures for considering appropriation bills involve a new method of returning to previously considered items of expenditure in committee of the whole. This was done on 3 June by means of a motion, moved by leave, that certain items be reconsidered without any question before the Chair, thereby avoiding reconsideration of the motion that the report of the relevant estimates committee be adopted.

PARLIAMENTARY PRIVILEGE AND SECRECY PROVISIONS

In bulletin no. 53 reference was made to contrary advice given to the Joint Committee on the National Crime Authority about the application of statutory secrecy provisions to the work of that committee. The Solicitor-General had given advice that the secrecy provisions may affect the giving of evidence before the Committee, but this view was disputed by advice to the Committee by the Clerk.

On 30 May, during debate on the appropriation bills, Senator Crichton-Browne tabled an opinion by the Attorney-General's Department suggesting that another set of statutory secrecy provisions could prevent the provision of evidence to a parliamentary committee. He also tabled a commentary by the Clerk on that opinion. Later on the same day, also during discussion of the appropriation bills, yet another secrecy provision was raised and another Attorney-General's Department opinion was tabled by the Minister for Justice. This opinion, however, contradicted the other Attorney-General's Department opinion, and indicated that secrecy provisions could not bar the provision of evidence to a parliamentary committee. On 4 June Senator Crichton-Browne tabled a commentary on the two opinions, pointing out the contradiction between them and suggesting that the matter should be resolved.

The basic question in issue is whether statutory secrecy provisions, which say nothing about parliamentary inquiries, have any application to such inquiries. Largely on the basis of the principle that parliamentary privilege is not affected by a statutory provision except by express words, the advices given by the Clerk argue that such provisions have no such application. The various opinions and advices are available from the Clerk's office for those who wish to read them.

ADVICES TABLED

In the last bulletin reference was made to an attempt to order the tabling of advice to the government by the Human Rights Commission on the Political Broadcasts and Political Disclosures Bill 1991 in relation to the proposed prohibition on political advertisements on radio and television. The Leader of the Australian Democrats, Senator Powell, expressed the view that the Senate should wait until the final advice on the bill was tendered by the Commission.

On 28 May the government tabled the advice from the Human Rights Commission and an advice from the Attorney-General's Department. As was anticipated in the previous debate, the advice by the Commission is unfavourable to the proposal, but the government obtained a more favourable advice from the Attorney-General's Department.

UNPROCLAIMED LEGISLATION

The list of legislation which commences on proclamation and which has not been proclaimed was tabled, in accordance with the order of the Senate, on 30 May. The list was not debated but was put on the notice paper, and as in the past senators will no doubt be scrutinising some of the excuses given for the non-proclamation of legislation.

CENSURE OF A MINISTER

A motion to censure a minister was passed on 4 June. Senator Richardson, in his former capacity as Minister for the Environment, was censured for his handling of the matter of payment of money under an agreement to a timber processing firm.

NEW SELECT COMMITTEE

A new select committee was established on 5 June to inquire into matters relating to the financing of superannuation. The motion for the select committee was moved by Senator Spindler for the Australian Democrats and had the support of Opposition senators.

CALLING SENATORS IN DEBATE

On 5 June, when the Senate was debating the matter of leadership of the government, the Deputy-President, Senator Colston, called Senator McMullan, the Parliamentary Secretary assisting the Treasurer, who moved a closure motion,

which was successful. Opposition senators questioned the action of the Deputy-President in calling Senator McMullan immediately after the Leader of the Government in the Senate had spoken, and asked him whether he knew in advance that Senator McMullan was going to move the closure. The Deputy-President stated that in departing from the practice of calling senators from each side of the chamber alternately, he had been influenced by the fact that five Opposition senators had spoken in succession before the Leader of the Government, and he confirmed that he had known in advance that Senator McMullan was going to move the closure.

On the following day the Deputy-President made a further statement on the matter. He incorporated in *Hansard* a document which was circulated by the then Deputy-President in 1987 and which sets out the practices of the Senate in giving the call. The Deputy-President stated that perhaps he should have given more weight to the fact that Senator McMullan was moving the closure and potentially terminating the debate. He undertook to refer the matter to the Procedure Committee.

COMMITTEE REPORTS

Four standing committee reports on bills were presented during the period. The reports of the Environment, Recreation and the Arts Committee on the Australian Capital Territory (Electoral) Amendment Bill 1991 (28 May), of the Legal and Constitutional Affairs Committee on the Sex Discrimination Amendment Bill 1991 (29 May), and of the Finance and Public Administration Committee on the Petroleum Resource Rent Legislation Amendment Bill 1991 and associated bills (5 June) were considered as has been indicated. The report of the Finance and Public Administration Committee on the Defence Force superannuation legislation (28 May) is yet to be considered.

Other Committee reports were presented as follows:

- Foreign Affairs, Defence and Trade Committee: United Nations Peacekeeping Forces, 29 May
- Legal and Constitutional Affairs Committee: Departmental Annual Reports, 4 June; Unauthorised Disclosure of Information, 5 June
- Joint Foreign Affairs, Defence and Trade Committee: Papua New Guinea, 6 June
- Joint Committee on the National Crime Authority: Annual Report of the Authority, 6 June

Government responses to committee reports were presented as follows:

- Animal Welfare Committee: Report on Intensive Livestock Production, 30 May

- Employment, Education and Training Committee: Report on Active Citizenship, 6 June
(This was a letter from the minister indicating that a substantive response was not yet available.)
- Legal and Constitutional Affairs Committee: Report on Data-matching, 6 June

The government's response to the President's report on outstanding responses was also presented on 6 June.