

Procedural Information Bulletin No. 60

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RECONSIDERATION OF HOUSE MESSAGE

The package of bills for restructuring the wool industry was the subject of highly unusual proceedings which were not concluded until the last minute before the Senate rose for the winter long adjournment. It is believed that one aspect of those proceedings is quite unprecedented.

The bills were not considered until 18 June, one of the package having been discharged from the Notice Paper and replaced by a substitute bill introduced into the Senate on 17 June. The most contentious matter in issue was the rate of tax on wool to be set by the *Wool Tax (Nos 1 to 5) Amendment Bills*. The government proposed a maximum rate of 15 percent under the bills, but both the Democrats and the Opposition wished to have a lower rate. The Democrats moved to substitute a rate of 12 percent, but this amendment was defeated. The Democrats then moved for a rate of 13 percent with the intention of giving the government, as Senator Bell expressed it, a last chance to vote for a rate closer to that proposed by the government before the even lower rate proposed by the Opposition was put. This second Democrat amendment, however, was defeated, and the Opposition amendment providing for a rate of 10 percent was then moved and carried. The bills being bills imposing taxation, the amendments were moved in the form of requests to the House of Representatives.

Before dealing with the wool tax bills, the Senate had considered and amended two of the other bills in the package. With the rate of tax set, it was necessary to return to one of those bills to make a consequential amendment. This was done by means of a motion to reconsider a clause of that bill, moved as an amendment to the question that the bills be reported — a procedure which is not often used. That clause was amended and all the bills were then reported.

The non-government parties then adopted the tactic of sending the wool tax bills back to the House of Representatives while retaining in the Senate the other bills in

the package. This was done by the adjournment of the debate on the motion for the third reading of those bills and a motion fixing the resumption of the debate as an order for consideration after the wool tax bills were returned from the House and considered by the Senate. These tax bills, being the subject of requests, were not read a third time: the third reading of such bills does not take place until the Senate's requests have been dealt with.

On 20 June the wool tax bills were returned from the House of Representatives with the requested amendments not made. A government motion that the requests not be pressed was negatived, and a message was accordingly sent to the House indicating that the Senate had resolved to press the requests.

The bills were returned from the House of Representatives on the last day of the sittings with the requested amendments still not made, but with a government undertaking that a lower rate of taxation than the statutory ceiling of 15 percent would be initially set by regulation, and with a consequential amendment made to the bills. The government undertaking, however, did not satisfy the majority of the Senate, and the government motion that the requests not be pressed and that the substitute amendment be agreed to was negatived. The adjournment of the Senate was then moved.

In consequence of behind-the-scenes discussions, however, the question for the adjournment of the Senate was negatived after some debate, and the responsible Minister, Senator Cook, then by leave moved that the message from the House of Representatives be recommitted to the committee of the whole for reconsideration. The same motion as was previously negatived was then moved again in committee, this time accompanied by a government undertaking that the regulation-making power would be used to lower the rate of taxation initially to the figure of 12 percent originally suggested by the Democrats. This motion was carried, the resolution reported, the report of the committee adopted and the bills read a third time. It was then necessary to recommit three of the other bills to make amendments to them, one of which altered an amendment previously made. The motion for the recommittal of those bills could be moved to supersede the motion for the third reading, and this procedure, also not often used, was employed to get the bills back into committee and amended as required. Those bills were then reported and given a third reading, thereby allowing the package of legislation to be passed, when it had appeared only an hour or so before that the wool package was doomed to failure.

To the parliamentary procedural purist the methods adopted during these proceedings may be considered more than unusual. The primary device, whereby the House of Representatives message was recommitted after it had been considered, may be regarded as irregular. It depended for its effectiveness upon a message not having been dispatched to the House indicating that the Senate had again resolved to press its requests. Had the message been sent, the motion could not have been moved. The motion had to be moved by leave, because there is no provision in the

procedures for such a motion to recommit a House message which has already been dealt with. Once a message from the House of that sort has been considered a message should be sent to the House and there is then no basis for the Senate to change its mind unless the bill is again returned from the House. Had the Opposition determined to obstruct this procedural step, the last-minute compromise could have been prevented. The Opposition, however, apparently did not wish to prevent the government's last proposal by procedural means. The propriety of accepting the House's amendment as a substitute for the Senate's requests could also be questioned, as that amendment was not really a substitute but merely incidental to the undertaking which was given.

In a bicameral system with two Houses of virtually equal powers, however, it is important not to restrict unduly the methods by which the Houses may treat with each other and the means whereby they may reach agreement. It was for this reason that the revised standing orders adopted in 1989 retained the procedures for conferences between the Houses, although a conference has not been held for many decades.

Irregular or not, these proceedings on the wool bills allowed a last-minute agreement between the Houses to be reached.

BILL REWRITTEN

The *Education Services (Export Regulation) Bill 1990* was virtually rewritten when it finally emerged from its passage through the Standing Committee on Employment, Education and Training and the Senate. The standing committee recommended very extensive amendments to the bill, but further amendments were circulated in the Senate when the bill came to be considered on 18 June. The circulation of further amendments prevented the moving of a motion to adopt the standing committee report, but by leave a motion was moved to make all of the amendments recommended by the committee, which included a list of amendments proposed by the government and further amendments recommended by the committee itself. Further amendments were then made to the bill in committee of the whole. On the motion for the third reading of the bill, Senator Tierney observed that the virtual rewriting of the bill demonstrated the value of the procedures for referring bills to committees.

The bill having been passed, on the motion of the chairman of the standing committee the resulting statute was referred to the committee for further consideration. This will allow the committee to review the operation of the legislation.

OTHER LEGISLATION AMENDED

Many other bills were amended by the Senate during the period. All of the amendments other than those to the wool package were accepted by the government in the House of Representatives, although some of them involved very significant changes to the legislation.

The package of telecommunications bills was extensively amended when it was dealt with at length on 17 June.

The Petroleum Resource Rent Legislation Amendment Bill was returned from the House with one of the Senate's amendments disagreed to, and the amendment was not insisted upon on 18 June following undertakings given by the government in relation to the payments to the state of Victoria which were the subject of the amendment.

The taxation package of bills was very extensively amended, also on 18 June.

Senator Teague moved an amendment to the motion for the second reading of the Student Assistance Bill on 19 June which would have had the effect of deferring consideration of the bill until the government indicated the action it proposed to take in response to the Senate's resolution of 13 May concerning hardship provisions for those affected by the assets test on the Austudy allowance. He withdrew his amendment after undertakings were given by the government in relation to that matter.

The Opposition and the Democrats combined to amend the Industrial Relations Legislation Amendment Bill on 19 June to remove disqualification for holding offices of persons over 65 years of age. This is a matter which the non-government parties have been pursuing in relation to various pieces of legislation.

The Great Barrier Reef Marine Park Amendment Bill was amended on 19 June in relation to the onus of proof applicable to statutory defences, a matter on which the Scrutiny of Bills Committee has commented in its reports. One of the amendments made to the social security package of bills, also on 19 June, provided for certain determinations under the legislation to be subject to parliamentary disallowance.

A series of Opposition amendments were made to the Bounty Legislation Amendment Bill on 20 June.

The consideration of the Health Legislation (Pharmaceutical Benefits) Amendment Bill on 20 June was deferred so that one of the amendments proposed by the Opposition could be redrafted, and that amendment was then agreed to.

The National Food Authority Bill was significantly amended during its passage on 20 June.

The Migration Amendment Bill and the Proceeds of Crime Legislation Amendment Bill were also amended on their passage on the last day of sitting.

PARLIAMENTARY SECRETARIES

The appointment of Senator McMullan, the Parliamentary Secretary assisting the Treasurer, as the Manager of Government Business resulted in his performing a greater role in the chamber and in questions to the President about his powers under the procedures of the Senate. In response to those questions the President made a statement on 18 June, in which he pointed out that apart from answering questions at question time, which only a minister could do, there were few procedural steps which could be taken only by a minister, and that when Senator McMullan took those steps he was taken to be acting on behalf of a minister, although that was not always indicated. The President pointed out that a statement by a senator that he or she is acting on behalf of another senator is invariably accepted by the Senate, and stated that the Chair intended to uphold that convention. The President incorporated in *Hansard* a paper on the powers of parliamentary secretaries which had been circulated at the time of Senator McMullan's appointment.

Senator McMullan then gave notice of a motion for an order which would empower a parliamentary secretary to do that which only a minister is empowered to do, except answer questions at question time. On the following day Senator McMullan changed his motion to refer the proposed order to the Procedure Committee.

PRIVILEGE

Another response by a person aggrieved by remarks made about her in the Senate was incorporated in *Hansard* on the recommendation of the Privileges Committee on 21 June.

DELEGATED LEGISLATION

Senator Harradine introduced on 20 June a bill to amend the Acts Interpretation Act, which would provide for delegated legislation to be published in draft before it is made, for the prohibition of prejudicial retrospectivity of delegated legislation to be clarified, and for the disallowance of parts of provisions in delegated legislation. These reforms have been under discussion for some years and have been referred to in past reports of the Regulations and Ordinances Committee.

NEW BUSINESS

On 20 and 21 June, the last two days of the sittings, motions were moved to allow new business to be embarked upon after the adjournment of the Senate was first proposed. These motions were moved by leave after the adjournment had been first put on each sitting day. The propriety of moving such a motion after the time for the adjournment has long been questioned, but it is difficult to argue that it cannot be moved by leave, ie., by unanimous consent of all senators present.

SELECT COMMITTEES

The composition and powers of the new Select Committee on Superannuation were provided on 20 June.

Another new select committee, which probably has the distinction of having the longest title of any select committee, was appointed on the motion of Senator Walters on 21 June: the Select Committee on Community Standards Relevant to the Supply of Services Utilising Telecommunications Technologies.

The non-government members of these select committees were appointed later on 21 June, but the government party members have not yet been appointed. Under the usual provisions applying to standing and select committees, the committees could meet and transact business without their full membership.

COMMITTEE REFERENCES

A motion by Senator Hill to refer to a committee matters relating to the administration of the Department of Foreign Affairs and Trade was the subject of some disputation before it was finally passed on 19 June. The reference was originally intended to be to the Foreign Affairs, Defence and Trade Committee, but was changed to the Finance and Public Administration Committee, on the basis that the matters related to general questions of public administration. The chairman of the Finance and Public Administration Committee, Senator Coates, moved an amendment to alter the reference to an instruction to the Foreign Affairs, Defence and Trade Committee to consider the particular matters listed in Senator Hill's motion as part of its scrutiny of the department's annual report, but this amendment was defeated. Senator Hill's motion prompted notices from the Australian Democrats to refer matters relating to the administration of other departments to the Finance and Public Administration Committee, but these notices were postponed on 20 June until the budget sittings.

An Opposition attempt to refer the Political Broadcasts and Political Disclosures Bill to the Legal and Constitutional Affairs Committee was unsuccessful on 20 June. The Leader of the Australian Democrats, Senator Powell, said that the Democrats did not support the motion because it was clear that the bill currently before the Senate would not pass.

On the motion of its chairman, the Industry, Science and Technology Committee received on 21 June a reference on the electricity and gas industries.

COMMITTEE REPORTS

Six of the eight standing committees presented their reports on departmental annual reports during the period; the Community Affairs and Employment, Education and Training Committees were granted extensions of time on the last day to present their reports on annual reports.

The relatively large number of bills processed in the last week is reflected in the number of committee reports on bills presented during the period:

- Legal and Constitutional Affairs: clause 11, Health Legislation (Pharmaceutical Benefits) Amendment Bill, 18 June
- Community Affairs: National Health Amendment Bill, National Food Authority Bill, 18 June
- Industry, Science and Technology: Primary Industries (Industry Councils) Bill 18 June
- Industry, Science and Technology: Fisheries package of bills*, 18 June
- Finance and Public Administration: clause 7, Health Legislation (Pharmaceutical Benefits) Amendment Bill, 18 June

* The fisheries package, which was not dealt with at the end of the period of sittings, was referred back to the standing committee on 21 June. The committee indicated in its report that it had not had time adequately to consider the package.

The Industry, Science and Technology Committee presented its report on anti-dumping and countervailing legislation on 21 June; the Select Committee on Animal Welfare reported on the culling of large feral animals, also on 21 June.

A batch of government responses to committee reports was presented on 21 June.

Extensions of time were granted to the Legal and Constitutional Affairs Committee on 17 June to report on the Copyright Amendment Bill, to the Select Committee on Animal Welfare on 20 June for the presentation of its final reports, and to the

Employment, Education and Training Committee, also on 20 June , for its report on Community Education.

On 21 June the Regulations and Ordinances Committee presented a report on the Third Conference of Australian Delegated legislation Committees held in Perth in May, and the Deputy-Chairman of the committee, Senator Bishop, presented a transcript of proceedings of the Third Commonwealth Conference on Delegated legislation held in London in 1989. Both senators made statements indicating that at both conferences significant observations were made about particular types of provisions in delegated legislation and the approach which parliamentary scrutiny committees would take to them.