

Procedural Information Bulletin No. 65

For the sitting period 26 November to 19 December 1991 and the special sitting on 2 January 1992

INTRODUCTION

The Senate sat over 4 weeks to conclude the budget sittings of 1991 and transacted a large volume of business, with the result that there were a great many occurrences of procedural interest. As a full description of these matters would fill many pages, the following is a brief account drawing attention to only the most salient elements.

POLITICAL BROADCASTS AND POLITICAL DISCLOSURES BILL 1991

The prolonged and heated proceedings on this bill gave rise to the greatest number of matters of procedural interest.

It was clear that the bill would be the subject of an intense political battle, because of the strong resistance by the Opposition to its principal aim, as it was originally drafted, to prohibit political advertisements on radio and television. The opening shots were fired on 2 December before proceedings on the bill had actually commenced, with two unusual notices of motion given by the Opposition. One motion provided for the bill to be divided, so as to separate the provisions relating to political broadcasts from the provisions relating to the disclosure of political donations, and specified the way in which the bill was to be divided and the amendments which were to be made to each resulting bill. The other motion provided for an instruction to the committee of the whole on the bill to divide the bill. These motions were eventually moved on 4 December, after the second reading of the bill, and were debated and negatived.

Before proceedings on the bill actually commenced, it was known that the Government and the Australian Democrats had agreed to amend the bill so as to provide for certain restrictions on political broadcasts rather than a prohibition. This involved extensive amendment of the bill and the proceedings were expected to be

extremely protracted. On 3 December, however, the Government and most of the Australian Democrats voted together to impose a limitation of debate, or a "guillotine", on the bill. The guillotine provided for proceedings on the bill to be concluded by 7.30 pm on the following day. Normally in the Senate limitations of time provide for quantities of time rather than fixed terminating times. One of the indirect results of the fixed time was that the Senate sat all night on 3 December to conclude the second reading debate on the bill. In the past, a fixed-time guillotine has been regarded as suspending all other business until consideration of the bill in question is concluded, but this interpretation has not been followed for many years, and the normal routine of business continues where such a limitation is in place. Thus the normal routine of business was followed on 4 December.

Senators of the non-government parties and the independent senators have had on the Notice Paper since 1986 contingent notices of motion to allow them to move suspension of standing orders to dispense with key elements of a guillotine, for example, the prohibition on debate on a motion declaring a bill to be an urgent bill, the limitation on debate on the motion to allot time for the consideration of the bill, and the limitation of time itself once imposed. On 3 December Senator Hill used one of these contingent notices to move suspension of standing orders in relation to the limitation of debate on the allotment of time. The suspension motion was negatived. Later in the debate Senator Hill attempted to move again the same suspension motion. The President then made a ruling, pointing out that this raised the possibility of an endless series of motions for the suspension of standing orders endlessly extending the time for the debate on the allotment of time (in the past it had been accepted that debate on a suspension motion, which is limited to 30 minutes, would not take up the time available for debate on the allotment of time). The President ruled that only one motion to suspend standing orders to extend the time allowed for debate could be moved pursuant to the contingent notice. This ruling was accepted at that time, but a similar ruling was to cause intense dispute later.

The bill was considered at length in committee of the whole on 4 December and extensive amendments were made to it, including amendments moved by all parties. A motion moved by the Government to extend the time allowed for the bill to noon on 5 December was agreed to, and on the following day a further extension of time was agreed to (the standing order relating to the guillotine, standing order 142, has always been interpreted as allowing such motions for extensions of time). On 5 December a motion was moved by the Government to allow all circulated Opposition and Democrat amendments which had not been moved to be put at the expiration of the allocated time; the standing order contemplates only circulated government amendments being put in that circumstance.

In committee of the whole on 5 December the Chairman of Committees ruled that a motion to suspend standing orders to remove the limitation of time on the bill could not be moved twice. On this occasion, however, the ruling was disputed and a motion

of dissent was moved. The dissent having been reported to the Senate, the President upheld the Chairman's ruling and pointed out that it was then open to any senator to move a motion of dissent from the President's ruling. This procedure, which is in accordance with the standing orders and long-established practice, was disputed, no doubt due to the heat of the occasion, and after some confused debate it was provided by motion, moved by leave, that the matter be dealt with by consideration of a motion to dissent from the Chairman's ruling. This motion of dissent was negatived and the committee of the whole then resumed.

On 9 December, in accordance with an undertaking given during debate, the President made a statement further explaining his and the Chairman's rulings. The essence of the statement is that when the Senate has determined that a bill is an urgent bill and must be dealt with by a particular time, the Chair is under an obligation to ensure that the procedures do not operate in such a way as to subvert and frustrate that decision of the Senate. Once the Senate had been asked, by way of a motion to suspend standing orders pursuant to contingent notice, to change its mind and alter the limitation of time imposed on the bill, and had refused to do so, the Chair could not allow an endless series of motions to suspend standing orders which would defeat the limitation of time. The President's statement was extensively debated and eventually referred to the Procedure Committee. It appears from the debate that the matters in dispute were not so much the President's ruling in relation to suspension motions, but the fact that the President did not hear further argument before upholding the Chairman's ruling, and the refusal of the Chair to hear further points of order during the proceedings on the bill. In his statement the President pointed out that it is always open to the Chair to determine a matter without hearing any debate, and that an endless series of points of order (which also raise the possibility of an endless series of motions of dissent from the rulings of the Chair) could also be used to subvert the limitation of time, and that it must be open to the Chair to decline to entertain any further points of order.

The bill having finally passed, regulations under the bill, which are necessary to enable it to operate, were tabled on the last day of sitting, 19 December, and a motion to disallow them was immediately moved by leave. Debate on this motion was adjourned. Since the Senate rose there have been further difficulties with the interpretation and application of the bill and the regulations, and it appears certain that the Senate has not heard the last of the legislation.

OTHER LEGISLATION AMENDED

During the period there were many bills considered at length and extensively amended. Some 14 major bills were significantly amended by amendments moved by all parties.

An unusual situation occurred on 11 December in relation to the Australian Institute of Health Amendment Bill: an amendment moved by a government backbencher and supported by the Government was negatived.

An amendment to the motion for the second reading which would have had the effect of rejecting the Industrial Relations Legislation Amendment Bill (No. 3) 1991 was withdrawn on 18 December after undertakings were given in relation to the Government's consideration of a relevant report.

Most amendments made by the Senate were agreed to by the House of Representatives when it returned for a special one-day sitting on 19 December to consider Senate amendments, but at the end of the sittings there were three major bills amended by the Senate on which the proceedings had not been concluded. In relation to the Taxation Laws Amendment Bill (No. 3) 1991 an amendment in substitution for one of the Senate's amendments was agreed to on 19 December.

ADDRESS BY PRESIDENT OF THE UNITED STATES

On the occasion of the visit to Australia of the President of the United States of America, Mr George Bush, the intention was expressed by leaders of the major parties of granting him the honour of addressing both Houses of the Parliament at formal sittings of the Houses. A similar honour was conferred on the Australian Prime Minister when he visited Washington in 1988. Unlike the United States Congress, however, the Australian Parliament has not had a practice of "joint sessions" addressed by distinguished visitors, or, indeed, of allowing the Houses to be addressed by anyone other than their own members. It was therefore necessary to devise special resolutions to bring about the proposed occasion.

In framing the resolutions, it was necessary to make it clear that the proposed meeting was not in any sense a joint sitting of the Houses such as occurs under section 57 of the Constitution in relation to a continuing disagreement between the Houses over legislation which has been the subject of a simultaneous dissolution of the Houses. The occasion was therefore brought about in the following way. The House of Representatives passed a resolution inviting the US President to address the House at a special meeting to be held on 2 January 1992, and inviting the Senate to meet in the House of Representatives chamber for that purpose. This resolution was then forwarded to the Senate by message. The Senate then, on 28 November, passed a resolution inviting the US President to address the Senate and accepting the invitation of the House to meet in the House of Representatives chamber for that purpose. The Senate's resolution also concurred with provisions in the House's resolution to the effect that the address by the US President would be the only business transacted at the meeting, which would be concluded forthwith after the address. The Senate's resolution was passed only after some debate on the

implications of it and a statement by the President explaining the provisions of the resolution.

In accordance with the resolution, the Senate met on 2 January in the House of Representatives chamber to hear the address by President Bush.

As it was not possible to transact any other business at that meeting, and as the Senate did not otherwise meet on that day, it was necessary for the motions relating to the next meeting of the Senate and leave of absence for all senators, which were passed before the Senate rose on 19 December, to contain special provisions to cover the meeting on 2 January.

CENSURE MOTION

In some houses when a motion of censure against the government or a minister is moved at the time normally devoted to question time, debate on the motion is regarded as replacing question time. Such a motion was moved in the Senate on 9 December at 2 pm when questions would normally have been called on. The view was taken, however, that the routine of business specified by the standing orders continued to operate unless some decision were made by the Senate to alter it, and therefore question time took place after the censure motion had been determined.

SUSPENSION OF SENATOR AND RESCISSION OF SUSPENSION

A motion relating to the conduct of the Government was the occasion of heated debate and unprecedented proceedings on 19 December. During a period of disorder in the debate, the Deputy-President, Senator Colston, "named" Senator Kemp for persistently and wilfully disregarding the authority of the Chair by continually interjecting. In accordance with standing order 203 Senator Kemp was called upon to make an explanation or apology, and made an explanation. The Leader of the Australian Democrats, Senator Coulter, then moved for the suspension of Senator Kemp from the sitting of the Senate. Normally such a motion is moved by the Leader of the Government in the Senate or the minister on duty, but any senator is able to move it. The motion having been moved the Deputy-President was obliged by the standing order to put it, and it was carried on a division. The Opposition was aggrieved by the naming and suspension of Senator Kemp, and immediately after the substantive motion was disposed of the Leader of the Opposition moved by leave a motion expressing lack of confidence in the Deputy-President. That motion was negatived. After further discussion, a motion moved by Senator Hill by leave to rescind the suspension of Senator Kemp was carried, the Deputy-President made a statement accepting Senator Kemp's explanation, and a motion moved by leave was passed endorsing the Deputy-President's acceptance of the explanation. The matter was thus resolved. It would have been open to the Senate to accept Senator Kemp's

explanation when it was first made, but the moving of the motion to suspend him, while it did not actually preclude that course, complicated the matter.

UNPARLIAMENTARY LANGUAGE

The President made a statement on 10 December making it clear that it is not in order to use offensive language against a group of senators not individually identified, and that this may be regarded as a graver offence than offensive language against a particular identified senator.

NEW BUSINESS AFTER ADJOURNMENT MOVED

Motions were moved on three days during the period to suspend the prohibition, contained in standing order 64, on the commencement of new business after the adjournment of the Senate is first put on any day. These motions were moved by leave, thereby, in one case, on 28 November, avoiding the difficult question of whether it is in order to move such a motion after the question for the adjournment is actually put, and thereby also avoiding the need for an absolute majority to carry the motion.

URGENCY MOTION: TWO SENATORS

A motion to debate a matter of urgency under standing order 75 signed by two senators was accepted on 26 November. The view was taken that the standing order does not prevent a proposal for such a motion by more than one senator.

UNPROCLAIMED LEGISLATION

The regular return in response to the order of the Senate relating to unproclaimed legislation was tabled on 28 November, giving details of all provisions of statutes which come into effect on proclamation and which have not been proclaimed and statements of reasons for their non-proclamation.

GOVERNMENT DOCUMENTS: ORDER FOR RETURN

On 19 December the Senate agreed to a motion ordering the production in the next period of sittings of a statement of reasons for the late tabling of government documents which were tabled on the last two days of the sittings. Many documents were tabled on those days, and the motion was no doubt prompted by the often-

expressed suspicion that the tabling of government documents is deliberately delayed until the end of a period of sittings.

APPROPRIATION BILLS AND ESTIMATES COMMITTEES

The Procedure Committee tabled on 19 December a discussion paper relating to the procedures for dealing with appropriation bills and for the consideration of the estimates in the Estimates Committees. The paper proposes a further radical change in those procedures, in essence involving dispensing with the committee of the whole stage on appropriation bills except in relation to amendments to the bills, and substituting for that stage follow-up hearings of Estimates Committees after answers to questions taken on notice at the main hearings have been answered and additional information has been supplied, and after senators have given notice of matters which they wish to discuss further.

COMMITTEE ACTIVITIES

There was a great deal of committee activity during the period, full details of which are set out in the *Committee Office Information Bulletin* No. 16, December 1991.

The following committee reports were presented:

Date tabled	Committee	Title
26.11.91	Corporations and Securities (Joint)	Use Immunity Provisions
26.11.91	Environment, Recreation and the Arts	ACT Self-Government Legislation
26.11.91	Finance and Public Administration	Fringe Benefits Tax Legislation
27.11.91	Employment, Education and Training	Adult and Community Education
28.11.91	Political Broadcasts and Political Disclosures Bill (Select Committee)	
28.11.91	National Crime Authority (Joint)	Evaluation of Authority
2.12.91	Privileges	Work of the Committee

2.12.91	Foreign Affairs, Defence and Trade (Joint)	Defence Force Reserves
2.12.91	Legal and Constitutional Affairs	20th Anniversary of Committee
2.12.91	Community Affairs	Health and Community Services Legislation
9.12.91	Superannuation (Select)	Background Paper
9.12.91	Legal and Constitutional Affairs	Annual Reports
11.12.91	Foreign Affairs, Defence and Trade	Annual Reports
11.12.91	Transport, Communication and Infrastructure	Annual Reports
12.12.91	Regulations and Ordinances	Annual Report of Committee
12.12.91	Industry, Science and Technology	Annual Reports
12.12.91	Community Standards, Telecommunications Services (Select)	Interim Report
12.12.91	Rural and Regional Affairs	Annual Reports
18.12.91	Legal and Constitutional Affairs	Legal Costs (Background Paper)
18.12.91	Transport, Communications and Infrastructure	National Road Transport Commission Bill
19.12.91	Legal and Constitutional Affairs	Trade Practices Act
19.12.91	Employment, Education and Training	Annual Reports
19.12.91	Community Affairs	Pharmaceutical Restructuring (Interim)
19.12.91	Foreign Affairs, Defence and Trade (Joint)	Papua New Guinea

The following government responses to committee reports were presented:

Date tabled	Committee	Title
18.11.91	Legal and Constitutional Affairs	Obligations of Company Directors
28.11.91	Foreign Affairs, Defence and Trade	United Nations Peacekeeping
28.11.91	Foreign Affairs, Defence and Trade	Nuclear Ships
5.12.91	Industry, Science and Technology	Anti-dumping
12.12.91	Employment, Education and Training	Active Citizenship

The following references to committees were made by the Senate (other than references of bills on the recommendations of the Selection of Bills Committee):

Date tabled	Committee	Title
3.12.91	Employment, Education and Training	John Curtin School of Medicine
18.12.91	Transport, Communications and Infrastructure	Road Costs
19.12.91	Community Affairs	Medicare benefits

The government response to the President's report in June on outstanding government responses to committee reports was presented on 12 December. The President's report for this period of sittings was tabled on 19 December.