

## Procedural Information Bulletin No. 104

*For the sitting period 20 to 31 May 1996*

### QUALIFICATION OF SENATOR

The question was raised whether Senator-elect Ferris of South Australia was disqualified from election and as a senator by taking up a position on the staff of the Parliamentary Secretary to the Prime Minister, Senator Minchin. The relevant constitutional provision, in section 44, provides that a person who holds an "office of profit under the Crown" (ie, an executive government position) is incapable of being chosen or sitting as a senator. This provision is designed to prevent the government influencing members of Parliament by giving them government jobs, but has been held by the High Court to apply even to school teachers employed by state education departments.

The situation of Senator-elect Ferris gives rise to a number of questions: whether she actually held a relevant office (in resisting an inquiry into the matter, the government maintained that the appointment to Senator Minchin's staff was not validly made, but it appears that she actually took up the position and was paid for it for a period, the pay subsequently being returned); whether the disqualification applies to a senator-elect, or only to a candidate and to a senator who has commenced his or her term; whether at the relevant time Senator-elect Ferris was still a candidate, in that the writs for the election had not been returned; and, if she was disqualified, whether it is a case of a void election or a vacancy occurring after the election (if the former, the place would be filled by recount of ballot papers, and if the latter there would be a casual vacancy to be filled by the State Parliament).

On 22 May the Senate made an order for the production of relevant documents by the government. Documents were tabled in response to the order on 23 May, and indicated that Senator Minchin had signed a letter saying that he had appointed Senator-elect Ferris, and they had jointly signed an employment agreement. A further document was tabled on 28 May relating to payments made to Senator-elect Ferris.

On that day a motion was moved to refer the matter to the High Court sitting as the Court of Disputed Returns under section 376 of the Electoral Act. The motion was passed on 29 May, but was amended to provide that it does not take effect until 14 July 1996 if Ms Ferris is a member of the Senate at that time. The intention of the amendment appears to be to allow opportunity for Ms Ferris to resign and to have her place filled as a casual vacancy. It is not entirely clear whether senators-elect can resign, but it would be anomalous if they could not, and in the past the death of a senator-elect has been treated as giving rise to a casual vacancy.

## OTHER ORDERS FOR PRODUCTION OF DOCUMENTS

Orders for production of documents were passed in relation to other matters.

An order agreed to on 22 May required the production of Treasury costings of the government's election promises, and a large volume of documents was produced in response to the order on 30 May.

The order for the production of indexed lists of departmental files (see Bulletin No. 103, p. 1) was replaced on 30 May by a permanent order requiring the production of such lists in the future. The order also contained a reference to the Finance and Public Administration Committee asking it to report on the operation of the order.

Documents were tabled on 20 May in response to the Senate's order of 9 May relating to draft classification guidelines for film and video.

## LEGISLATION AND DOUBLE DISSOLUTIONS

The consideration of significant government legislation during the period was accompanied by speculation about the government acquiring a "trigger" to hold a simultaneous dissolution of both Houses under section 57 of the Constitution.

The bill most giving rise to such speculation was the Telstra (Dilution of Public Ownership) Bill 1996. The government moved on 20 May a motion to exempt the bill from the Senate's deadline for the consideration of bills (see Bulletin No. 103, p. 2), but an amendment was moved to this motion to refer the bill to the Environment, Recreation, Communications and the Arts References Committee for report by 22 August. This amendment, which was passed on the following day, requires the committee to consider a lengthy list of issues arising from the bill. It is fairly clear that this action by the Senate could not be held to be a failure to pass the bill within the meaning of section 57. The Senate could have refused to grant exemption to the

bill and then referred it to a committee in the August sittings, and even this probably could not be held to constitute a failure to pass.

Informed by this experience, the government attempted on 23 May to refer the provisions of the Workplace Relations and Other Legislation Amendment Bill 1996 to the Economics Legislation Committee for report by 17 June (the bill had not been received by the Senate, and thus the motion referred only to the provisions of the bill and not to the bill itself). The Senate amended this motion to refer the bill itself to the Economics References Committee for report by August, and again added a list of matters arising from the bill on which the committee is to report. The reference to the committee takes effect on receipt of the bill by the Senate, and the bill had not been received by the end of the sitting period.

The Therapeutic Goods Amendment Bill 1996 (see Bulletin No. 103, p. 4) was amended in its passage on 21 May in relation to the importation of a certain substance, a matter in which Senator Harradine had a particular interest. The amendment was accepted by a government no doubt grateful to see the last of the bill.

The Customs and Excise Legislation Amendment Bill (No. 1) 1996 was amended on 27 May, after lengthy debate, in relation to eligibility for diesel fuel rebate, a matter which has caused considerable vexation in the Senate in the past.

The Crimes Amendment (Controlled Operations) Bill 1996, relating to police operations which involve deliberate breaches of the law, was debated at great length in committee. The Democrats moved amendments to attempt to bring so-called "controlled operations" under judicial control, but were eventually persuaded to abandon those amendments because of the difficulties involved with them. The bill was eventually passed on 30 May with another Democrat amendment which related to evidentiary matters and which was itself the subject of some debate and amendment in the chamber.

The Senate was persuaded to exempt many bills from the deadline for the receipt of bills, but refused exemption to others, making its decision on a case-by-case basis. The Shipping Grants Legislation Bill 1996, for example, which gives rise to significant issues about retrospectivity, was refused exemption on 30 May.

The Supply Bills, however, were granted exemption and passed on the last day of the sitting period.

## DELEGATED LEGISLATION

The Regulations and Ordinances Committee presented on 23 May a report, in the form of a statement by the chairman, on the work of the committee. The statement indicates that the committee has dealt with an enormous volume of delegated legislation, which of course continued to accumulate during the election period, and has raised significant issues of principle in relation to many pieces of legislation.

The Senate disallowed on 23 May some Customs (Prohibited Exports) Regulations having to do with controls on certain mineral exports.

The Senate also disallowed, on 29 May, a Health Insurance Order concerning medical benefits for refugees.

Contrary to some speculations, the disallowance of delegated legislation cannot contribute to a double dissolution "trigger" as section 57 has to do only with bills.

## COMMITTEE MATTERS

The Select Committee on Community Standards Relevant to the Supply of Services Utilising Electronic Technologies and the Select Committee on Superannuation were reappointed on 20 and 29 May respectively, the latter with modified terms of reference.

For the reference of significant bills to committees, see under Legislation and Double Dissolutions, above.

The standing orders relating to the new standing committee structure do not contain a provision automatically allowing the committees to consider references from a previous Parliament. The committees therefore report to the Senate on references which they propose to continue and which they propose to discontinue, and ask the Senate to endorse these proposals by adopting the reports. Several such reports were presented and adopted during the period.

Resolutions received from the House of Representatives for the appointment of Joint Committees were amended on 29 May, in relation to quorums and the membership of the new Joint Committee on Treaties.

The President tabled on 30 May a document of a past select committee which had not been published by that committee and access to which had been requested by a researcher. As the

document was of a kind normally tabled by committees, the President tabled it, and thereby published it, instead of merely granting access to the person concerned.

A list of other committee reports presented during the period is attached to this bulletin.

## PARLIAMENTARY APPROPRIATIONS

The passage of the Supply Bills on 31 May was accompanied by warnings by various senators, and questioning of the President, about apparent government attempts to reduce the appropriations for the Senate as part of the government's program for reducing expenditure. The Appropriations and Staffing Committee has not yet reported on its consideration of the Senate's budget for 1996-97.

## TIMES OF SITTING AND ROUTINE OF BUSINESS

The Senate's times of sitting and routine of business remained unresolved at the end of this sitting period. The sessional orders in force at the end of the last parliament were again renewed on a temporary basis (see Bulletin 103, p. 4). It appears that the lack of agreement relates not to the sessional orders as such but to the conduct of question time, and that some senators are not willing to pass orders until that matter is settled.

## COMMITTEE REPORTS

The following committee reports were presented during the period:

<b>Date tabled</b>	<b>Committee</b>	<b>Title</b>
22.5	Finance and Public Administration Legislation	Report on Annual Reports
"	Economics Legislation	Report on Annual Reports
"	Environment, Recreation, Communications and the Arts Legislation	Report on Annual Reports
"	Finance and Public Administration References	Order of the Senate for the Production of Indexed Lists of Departmental Files
"	Scrutiny of Bills	1st Report and Alert Digest No. 1 of 1996

<b>Date tabled</b>	<b>Committee</b>	<b>Title</b>
27.5	Rural and Regional Affairs and Transport Legislation	Report on Annual Reports
29.5	Scrutiny of Bills	2nd Report and Alert Digest No. 2 of 1996
30.5	Community Affairs Legislation	Report on Annual Reports
"	Rural and Regional Affairs and Transport Legislation	Shipping Grants Legislation Bill 1996