

No. 114

for the sitting period 6-15 May 1997

19 May 1997

VACANCIES: DELAY IN FILLING

The framers of the Constitution, in providing for state parliaments to fill casual vacancies in the Senate, thought that those parliaments, representing their states, would normally be anxious to ensure the maintenance of their full compliment of representation in the Senate. They did not foresee the situation of governments completely controlling lower houses and therefore controlling the process of filling vacancies. The results of this situation were apparent in the Senate during this period of sittings.

The vacancy created by the death of Senator Panizza has remained unfilled for a record period of over 100 days. The reason for this is that the nominee to fill the vacancy is a member of the state Legislative Council and the state government wishes to retain his vote in the Council until seats in the Council change hands as a result of the last state election. The Senate passed a resolution on 7 May drawing attention to the delay in filling the vacancy and reiterating previous resolutions of the Senate that vacancies should be filled as speedily as possible.

Another resolution passed on 15 May drew attention to the speed of the Victorian state government in filling a vacancy caused by the resignation of Senator Short (the replacement senator, Senator Synon, was sworn in only two days after the resignation), this speed contrasting markedly with the 84 days taken to fill the vacancy caused by the resignation last year of Senator Gareth Evans. The resolution suggested that partisan considerations were influential. The earlier vacancy occurred during a general election period, but the Senate could conceivably have decided to meet during that period, not to mention Senate

committees, and the principle that vacancies should be filled as quickly as possible was therefore applicable.

Senator Payne was sworn in on 6 May, having been appointed by the New South Wales Parliament to fill the vacancy caused by the resignation of Senator Woods.

PARLIAMENTARY PRIVILEGE: (1) SENATOR COLSTON MATTER

During investigations of alleged irregularities in Senator Colston's travelling allowance claims, the President tabled in the Senate a statement by Senator Colston and one of his staff indicating that the irregularities were due to staff errors in the claims. On 6 May the President tabled a further statement from the staff member repudiating the earlier statement. This gave rise to a question whether deliberately false and misleading statements had been made to the Senate, and a question of privilege was raised with the President under standing order 81. The revelation of the second statement, however, caused the government to refer the claims to the police for investigation as to possible fraud. It was pointed out in advice by the Clerk to the President and senators that the statements tabled in the Senate were protected by parliamentary privilege and therefore could not be used in any substantive way in any legal proceedings arising from any police investigations. Any further statements made by Senator Colston and the staff member to the Senate or its Privileges Committee would similarly be unavailable for use in such legal proceedings. The question was therefore raised whether the Senate should refrain from inquiring into the privilege matter until the police investigations and any consequent legal proceedings have concluded. The President gave precedence to the matter of privilege and it was referred to the Privileges Committee on 7 May, but the resolution of reference enjoined the committee not to commence its inquiry until the conclusion of the police investigations and any legal proceedings.

Senator Colston resigned as Deputy President on 6 May, and was replaced by Senator West, thereby restoring the practice of having the President from the government party and the Deputy President from the opposition.

PARLIAMENTARY PRIVILEGE: (2) SENATOR O'CHEE CASE

The President tabled on 14 May a request by solicitors representing Senator O'Chee that the Senate intervene in a case arising from a defamation suit against Senator O'Chee in respect of statements he made outside the Senate. The other party in the suit is seeking an order for discovery of documents in the possession of Senator O'Chee, and he has claimed that the documents are so closely connected with his participation in Senate proceedings that they are

covered by the provision relating to matters "for purposes of or incidental to" such proceedings under the *Parliamentary Privileges Act 1987*. The Queensland Supreme Court has rejected this argument and the case is going to the Court of Appeal. The Privileges Committee has a reference concerning legal proceedings taken against Senator O'Chee and other persons who supplied him with information relevant to proceedings in the Senate. The request by the solicitors has not been considered. (The scope of the statutory provision and the question whether it grants any immunity from compulsory production of documents in legal proceedings was the subject of a paper presented by the Clerk at the Conference of Presiding Officers and Clerks in Hobart last year.)

LEGISLATION

A great deal of time during the sitting period was spent on the government's superannuation surcharge package of bills, which were designed to impose a tax on certain superannuation payments. The bills were finally passed on 12 May with many amendments.

The retirement savings accounts package of bills, having been previously negated at the third reading, were revived and recommitted on 12 May, thereby providing the second precedent for bills treated in that way (see Bulletin No. 113, p. 1). The motion reviving the bills established a further precedent by providing that one of the bills would be reconsidered as it was before it was amended in committee of the whole when it was last debated, while the two other bills in the package would be reconsidered as they emerged from committee of the whole and as amended on the previous occasion.

The motion to revive the bills had a suspension of standing orders built into its terms. Unlike the motion to divide a bill moved on 18 October 1996 (see Bulletin No. 108, p. 4), however, the motion was not subject to the special time limits applying to debate on motions to suspend standing orders. This is because suspension of standing orders was the primary purpose of the earlier motion, which was designed simply to allow a senator to move a motion which could otherwise not be moved at that stage but which could be moved at another stage of the proceedings on the bill concerned. The motion to revive and recommit the later bills was a substantive motion and the suspension of standing orders was merely incidental to its primary purpose.

The Natural Heritage Trust of Australia Bill also occupied a great deal of time and was finally passed on 15 May with extensive amendments. Some government amendments to the bill, relating to the expenditure of funds under the bill, were rejected.

The Hindmarsh Island Bridge Bill (see Bulletin No. 113, p. 1) was finally disposed of on 12 May, with the Senate not insisting on the amendment, relating to inconsistency with the Racial Discrimination Act, to which the government had disagreed. It was immediately declared that the bill in the absence of the amendment would be subject to legal challenge.

ORDERS FOR PRODUCTION OF DOCUMENTS

Documents in response to the order relating to conservation in East Gippsland (see Bulletin No. 113, p. 3) were produced on 6 May.

In response to an order on 7 May for documents relating to woodchip exports, a very large volume of documents was produced on 12 May.

WITNESSES

An unusual statement was made by the Chairman of the Foreign Affairs, Defence and Trade References Committee, Senator Forshaw, on 15 May. A suspended officer of the Department of Foreign Affairs and Trade claimed to have vital information relevant to the committee's inquiry into consular assistance for Australians abroad. The committee agreed to hear him, but only in camera, because of an apprehension that he would make adverse comments about other persons not necessarily relevant to the committee's inquiry. He refused to appear except in public, the committee then summoned him to appear and he then could not be located for service of the summons. The incident illustrates the care taken by Senate committees to ensure that their public proceedings are not unfairly used to defame other persons.

COMMITTEES

The Legal and Constitutional Legislation Committee presented on 15 May its report on the Auditor-General Bill, relating principally to a provision in the bill concerning the presentation of information by the Auditor-General in reports to the Parliament. The provision allows the withholding of information where the Attorney-General certifies that its disclosure would not be in the public interest. This provision replaced a provision in an earlier version of the bill which impliedly allowed the withholding of information from the Houses and which was the subject of much dispute between the government and the Scrutiny of Bills Committee. The majority of the Legal and Constitutional Legislation Committee accepted the provision but it is likely to be the subject of further debate when it is considered in the Senate.

The following committee reports were presented during the period:

Date tabled	Committee	Title
6.5	Employment, Education and Training References	Report—Adult and Community Education in Australia
"	Foreign Affairs, Defence and Trade References	Report—Radio Australia and Australia Television
7.5	Employment, Education and Training Legislation	Additional Information—Additional Estimates 1996-97
"	Foreign Affairs, Defence and Trade Legislation	Additional Information—Additional Estimates 1996-97
"	Environment, Recreation, Communications and the Arts Legislation	Additional Information—Additional Estimates 1996-97
"	Scrutiny of Bills	6th Report and Alert Digest No. 6 of 1997
14.5	Economics Legislation	Report—Financial Laws Amendment Bill 1996
"	Rural and Regional Affairs and Transport References	Report—Australian Rail Industry
"	Rural and Regional Affairs and Transport References	Report—Value-adding in Agricultural Production
15.5	Legal and Constitutional Legislation	Report—Constitutional Convention (Election) Bill 1997
"	Legal and Constitutional Legislation	Report—Auditor-General Bill 1996
"	Legal and Constitutional Legislation	Document—Euthanasia Laws Bill 1996
"	Publications	9th Report
"	Uranium Mining and Milling Select	Report

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