



SENATOR THE HON SCOTT RYAN

Special Minister of State
Minister Assisting the Prime Minister for Cabinet
Liberal Senator for Victoria

May 25, 2017

OPENING STATEMENT – FINANCE AND PUBLIC ADMINISTRATION COMMITTEE BUDGET ESTIMATES

I would like to update the Committee on matters relating to Bob Day and Rod Culleton.

This year, two separate rulings of the High Court, acting as the Court of Disputed Returns, declared the Senate positions of Mr Culleton, an independent, and Mr Day, of Family First, vacant.

On 3 February 2017, the Court of Disputed Returns found that Mr Culleton was incapable of being chosen as a Senator under section 44(ii) of the Constitution because he had been convicted and subject to be sentenced for an offence punishable by imprisonment for one year or longer at the date of the 2016 election.

In a separate matter, on April 5 2017, the Court of Disputed Returns found Mr Day was incapable of sitting, or being chosen, as a Senator due to a pecuniary interest in an agreement with the Public Service of the Commonwealth relating to the lease of his Adelaide electorate office. The Court found he was incapable of sitting as a Senator from 26 February 2016.

This second matter is one that I brought to the attention of the President and Senate in October and November 2016.

Salary, allowances and other amounts paid to, and in relation to, Mr Culleton and Mr Day are debts owed by both individuals to the Commonwealth.

I have been asked why this is not simply a case of following precedents where the Commonwealth has previously waived debts against members and senators later deemed ineligible to hold their position.

Since the most recent precedent in 1996, there have been changes made to the *Remuneration Tribunal Act* and the introduction of the *Public Governance and Performance Act*.

In 2013, Section 16A of the *Remuneration Tribunal Act* was amended to deal with payments that had purportedly been made under the Act, but where there was, in fact, no power to make those payments.

The effect of Section 16A is to allow remuneration payments made in error under the *Remuneration Tribunal Act* to be recoverable by the relevant Commonwealth entity, in this case the Department of Senate and the Department of Finance, to ensure no breach of section 83 of the Constitution.

The *Public Governance, Performance and Accountability Act 2013* has also been introduced since the last comparable situation. Section 15 of the PGPA Act generally requires the authority responsible for the recovery of any payment made in error to allocate department resources to pursue the debt or attempt to have the debt waived or written off.

Accordingly, officials of the Department of Finance and Department of Senate – who are responsible for paying salaries, allowances and expenses to senators – are required to pursue debts to the Commonwealth.

The Department of the Senate has determined the amount paid out to Mr Culleton and Mr Day in salary and electorate allowances. The Department of Finance has determined the amount paid out for non-salary amounts. This includes superannuation under the *Parliamentary Superannuation Act 2004*, benefits paid under the *Parliamentary Entitlements Act 1990* and staff payments made under the *Members of Parliament (Staff) Act 1984*.

Mr Culleton and Mr Day have both been notified that they are responsible for money expended by the Commonwealth. As such, debts will not be pursued against their staff or against third parties, for example suppliers.

Today, I inform Senators that Mr Day wrote to me on May 20, 2017 requesting a waiver of all debts he owed to the Department of the Senate and the Department of Finance.

As the Minister responsible for the waiver of Commonwealth debts, I considered this request under subsection 63(1) of the PGPA Act.

In making my decision, I took recommendations from an Advisory Committee formed under section 24 of the Public Governance, Performance and Accountability Rule 2014.

The Advisory Committee noted it may be seen to be inequitable for the Commonwealth to recover the debt, given Mr Day performed his duties as a senator in good faith. The Committee also noted Mr Day's current personal financial circumstances.

After taking this advice, I have agreed to waive Mr Day's debts to the Department of the Senate for salary and allowances, and Mr Day's debts to the Department of Finance for superannuation, other parliamentary entitlements and staff salary and other payments. The waiver of this debt is consistent with the outcome in previous similar cases.

There have been criticisms levelled by some individuals surrounding the handling of this situation. I would like to point out that departmental officials have been acting in accordance with the requirements of the law.

As the media has reported, letters were sent to both Mr Culleton and Mr Day outlining the situation and presenting a number of options to progress this issue.

The letters provided Mr Culleton and Mr Day with options in relation to the debt. Mr Day has elected to take one of those options, which was to apply for a waiver. Those options remain open to Mr Culleton.