

**No. 126**

**for the sitting period 22 June-12 July 1998**

**21 July 1998**

**ORDERS FOR PRODUCTION OF DOCUMENTS**

The Finance and Public Administration References Committee reported on 2 July on its review of the Senate's continuing order for the production of indexed lists of departmental files by government departments. The committee recommended that the order be complied with by loading the lists on the Internet. If this recommendation is adopted, it will amount to an order by the Senate that documents be published on the Internet, a significant precedent.

Documents were tabled on 22 June in compliance with an order made in 1995. The order required a report on the first two years of operation of certain amendments to the corporations law made by the *First Corporate Law Simplification Act 1995*.

Documents were produced on 23 June in response to the order of 28 May relating to classification of videos.

An order was passed on 24 June for the production of documents relating to government advertising campaigns. This order was made in the context of allegations that the government intends to use large amounts of public funds in promoting government programs as part of an election campaign. A statement was made on 29 June by the Leader of the Government in the Senate to the effect that the government was unable to meet the deadline on that day, and the order has not yet been complied with.

Another order yet to be complied with was made on 2 July in relation to electoral briefs prepared for ministers. The Leader of the Government in the Senate made a statement on 7 July indicating that the documents were being located and examined.

Nothing has yet been produced in response to the order for documents relating to events on the waterfront (see Bulletin No. 125, p. 2). Negotiations are continuing for a settlement of the various legal actions relating to the dispute. If a settlement occurs, the government's reason for not producing the documents, that their production might prejudice the legal proceedings, will be removed.

### **PARLIAMENTARY PRIVILEGE**

The Privileges Committee reported on 30 June on two significant cases.

The 73<sup>rd</sup> report dealt with an allegation that the Attorney-General and officers of the Attorney-General's Department had interfered with a witness before the Joint Committee on Native Title, namely, the President of the Law Reform Commission. The committee found that no contempt was committed in respect of the matter, as the Attorney-General and his officers had not sought by improper means to influence the evidence of the Law Reform Commission, but had acted in ignorance of the parliamentary dimension of the matter.

The 72<sup>nd</sup> report dealt with an allegation that the University of Queensland had taken disciplinary action against a person in consequence of his communication with the Senate through a senator. The committee found that the University had committed a contempt of the Senate in taking disciplinary action against the person concerned. The University has withdrawn its action against him.

The committee received on 2 July yet another reference relating to alleged unauthorised disclosure of committee documents. The motion to refer the matter to the committee was debated and interesting observations were made, including by the Chair of the Committee, Senator Ray, about the offence of unauthorised disclosure and privilege matters generally.

### **LEGISLATION**

Two bills gave the appearance of dominating the sitting period: the Native Title Amendment Bill 1997 and the Telstra (Transition to Full Private Ownership) Bill 1998.

Following negotiations between the government and Senator Harradine, the Native Title Bill was again presented to the Senate. In the course of the negotiations the assumption seems to have been made that a new bill would have to be introduced, the original bill having been laid aside by the government in the House of Representatives after it disagreed with some of the Senate's amendments (see Bulletin No. 121, p. 1; No. 123, p. 2). It was pointed out, however, that the Senate had revived bills even if they had been negatived at the third reading, and there was nothing to prevent the House of Representatives adopting the same course with the

Native Title Bill. The bill was accordingly revived in the House, further amendments were made to it and it was sent to the Senate for concurrence with this action. This course had the advantage of shortening the proceedings in the Senate: the bill was not the subject of full reconsideration, including a second reading debate and committee stage, but required only a decision by the Senate on whether it would abandon its amendments not agreed to and agree to the new amendments. There was also an advantage to the government in partly clarifying the status of the bill in relation to section 57 of the Constitution: had the revived bill met with disagreement by the Senate, the government's argument that the bill provided a "trigger" for a double dissolution under section 57 would have been considerably strengthened. In committee of the whole in the Senate the normal motion was moved by a minister that the Senate not insist on its amendments not agreed to and agree to its new amendments, but this question was divided to allow separate consideration of Senate amendments and of the new amendments. After two days of consideration the bill finally passed on 8 July.

The Telstra bill was subjected to extensive amendment and then negatived in committee of the whole by equally divided votes on the question that the bill as amended be agreed to. It is not rational for a bill which has been amended to be negatived in committee; the appropriate stage for senators to vote against the bill is at the third reading (see *Odgers' Australian Senate Practice*, 8th ed, p. 255), but it is difficult to dissuade senators from voting against the whole bill at the earliest opportunity. In this case a procedural impasse could have ensued: if the question in the Senate for the adoption of the committee's report had also been negatived by an equally divided vote, this would have had the effect of recommitting the bill to the committee. It would then have been necessary to persuade senators not to vote against the bill at that stage but to allow it to proceed to the third reading. The government, however, decided not to call a division on the question for the adoption of the committee's report.

Other bills were extensively amended during the period: the Managed Investments Bill 1997; the Company Law Review Bill 1997; the Social Security and Veterans' Affairs Legislation Amendment (Budget and Other Measures) Bill 1997; the Electoral and Referendum Amendment Bill 1998; the Television Broadcasting Services (Digital Conversion) Bill 1998 (an extremely contentious bill); the Aviation Legislation Amendment Bill (No. 2) 1997; the Crimes Amendment (Forensic Procedures) Bill 1997; the Trade Practices Amendment (Country of Origin Representations) Bill 1998; the Wheat Marketing Legislation Amendment Bill 1998; and the Intellectual Property Laws Amendment Bill 1998. None of these bills led to disagreements between the Senate and the government.

The bill which kept the Senate sitting on a Saturday evening and into Sunday morning was not the Native Title Bill or the Telstra Bill but the Copyright Amendment Bill 1997, which

raised the vexed question of copyright in relation to music on compact discs. It also was passed with extensive amendments.

In dealing on 26 June with the stevedoring levy package of bills, relating to the imposition of a levy to facilitate the payment of redundancies on the waterfront, the Senate passed a second reading amendment calling for transparency and accountability in the expenditure of funds under the bill, and made amendments to the text of the bill strengthening controls over the expenditure of the funds and reporting to the Parliament on payments under the bill.

The Scrutiny of Bills Committee presented on 25 June its special report on penalty provisions in statutes. The committee recommended review and clarification of criteria governing penalty regimes in legislation.

### **DELEGATED LEGISLATION**

The Regulations and Ordinances Committee presented its annual report on 24 June (105<sup>th</sup> report). The voluminous report briefly describes the extensive work undertaken by the committee in its review of legislative instruments. The committee also made a report on 30 June on the question of provisions more appropriate for statutory enactment rather than delegated legislation.

On 2 July the Senate disallowed migration regulations having to do with visas granted to foreign actors to participate in films made in Australia. The regulations had sought to remove criteria governing the granting of such visas.

### **ELECTORAL**

The Senate passed on 29 June, on the motion of the Leader of the Opposition in the Senate, a resolution indicating support for the use of section 282 of the *Commonwealth Electoral Act*, to determine the division of the Senate for the purposes of election by rotation of senators following a double dissolution, instead of the method used since 1901 of awarding the six year terms to the first six senators elected in each state (see *Odgers' Australian Senate Practice*, 8th ed, pp 125-6). The resolution cannot bind the Senate for the future.

### **COMMITTEES**

The three weeks of sittings were preceded by two weeks of estimates hearings. The committees reported on 23 June, and made several critical comments on the quality of the information provided to them. The annual appropriation bills were passed on 29 June.

The Economics References Committee was given on 24 June a significant reference involving a review of the operations of the Taxation Office, including the issue of “the equitable treatment of taxpayers” and allegations of infiltration of the office by organised crime.

A new select committee was appointed on 1 July to investigate the socio-economic consequences of the national competition policy, an issue related to current political discontents.

The following committee reports were presented during the period:

<b>Date tabled</b>	<b>Committee</b>	<b>Title</b>
22.6	Native Title and the Aboriginal and Torres Strait Islander Land Fund	12 <sup>th</sup> Report—Aboriginal and Torres Strait Islander Heritage Protection Bill 1998
23.6	Legal and Constitutional Legislation	Additional Information—Additional Estimates 1997-98
“	Finance and Public Administration Legislation	Report—Electoral and Referendum Amendment Bill (No. 2) 1998
“	Community Affairs Legislation	Report—Commonwealth Rehabilitation Service Reform Bill 1998
“	Environment, Recreation, Communications and the Arts Legislation	Report—Television Broadcasting Services (Digital Conversion) Bill 1998 and Datacasting Charge (Imposition) Bill 1998
“	Community Affairs Legislation	Report—Estimates 1998-99
“	Economics Legislation	Report—Estimates 1998-99
“	Employment, Education and Training Legislation	Report—Estimates 1998-99
“	Environment, Recreation, Communications and the Arts Legislation	Report—Estimates 1998-99
“	Finance and Public Administration Legislation	Report—Estimates 1998-99
“	Foreign Affairs, Defence and Trade Legislation	Report—Estimates 1998-99
“	Rural and Regional Affairs and Transport Legislation	Report—Estimates 1998-99
“	Rural and Regional Affairs and Transport Legislation	Report—Stevedoring Levy (Collection) Bill 1998 and Stevedoring Levy (Imposition) Bill 1998
“	Legal and Constitutional Legislation	Report—Estimates 10998-99

<b>Date tabled</b>	<b>Committee</b>	<b>Title</b>
24.6	Scrutiny of Bills	7 <sup>th</sup> Report and Alert Digest No. 8 of 1998
“	Regulations and Ordinances	105 <sup>th</sup> Report
“	Regulations and Ordinances	Conference Paper
“	Native Title and the Aboriginal and Torres Strait Islander Land Fund	13 <sup>th</sup> Report—Annual reports
“	Economics Legislation	Report—Trade Practices Amendment (Country of Origin Representations) Bill 1998
24.6	Rural and Regional Affairs and Transport Legislation	Report—Primary Industries and Energy Legislation Amendment Bill (No. 3) 1997
25.6	Scrutiny of Bills	8 <sup>th</sup> Report of 1998
“	Legal and Constitutional References	Report—Australian Legal Aid System—Third Report
“	Community Affairs Legislation	Additional Information—Health Legislation Amendment (Health Care Agreements) Bill 1998
30.6	Privileges	72 <sup>nd</sup> Report—Possible improper action against a person (Dr W. De Maria)
“	Privileges	73 <sup>rd</sup> Report—Possible improper interference with a potential witness before the Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund
“	Regulations and Ordinances	Provisions in Legislative Instruments—Document
“	Regulations and Ordinances	Great Barrier Reef Zoning Plans—Document
“	Rural and Regional Affairs and Transport References	Report—Commercial Utilisation of Australian Native Wildlife
“	Rural and Regional Affairs and Transport Legislation	Report—Wheat Marketing Legislation Amendment Bill 1998
1.7	Scrutiny of Bills	9 <sup>th</sup> Report and Alert Digest No. 9 of 1998
“	Regulations and Ordinances	Work of the Committee During the Autumn and Winter Sittings 1998—Document
“	Legal and Constitutional Legislation	Additional Information—Estimates 1998-99
2.7	Publications	18 <sup>th</sup> Report
“	Economics References	Report—Outworkers in the Garment Industry—Review

<b>Date tabled</b>	<b>Committee</b>	<b>Title</b>
2.7	Finance and Public Administration Legislation	Additional Information—Estimates 1998-99
“	Rural and Regional Affairs and Transport References	Report—Ovine Johne’s Disease in the Australian Sheep Flock
“	Finance and Public Administration References	Second Report—Indexed Lists of Departmental Files
8.7	Legal and Constitutional Legislation	Additional Information—Estimates 1998-99
“	Economics Legislation	Report—Taxation Laws Amendment (Part-Time Students) Bill 1997
12.7	Environment, Recreation, Communications and the Arts References	Report—Access to Heritage
“	Superannuation	31 <sup>st</sup> Report—Resolving Superannuation Complaints

#### VACANCY

The vacancy caused by the resignation of Senator Bob Collins was filled in time for Senator Crossin to take her seat in the Senate on 22 June. Vacancies in the representation of the Northern Territory are filled by the Northern Territory Legislative Assembly subject to the same conditions as apply to state senators under section 15 of the Constitution.

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