

No. 138

for the sitting period 22 November — 9 December 1999

13 December 1999

ORDERS FOR DOCUMENTS

There were further developments in the four cases of government refusals to produce documents in response to orders of the Senate (see Bulletin No. 137, pp 1-2).

Welfare reform paper: The final version of this document, stated by the minister to be substantially the same as the draft demanded by the Senate, was tabled on the first day of the sittings. The committee hearing ordered by the Senate occurred on 12 November; relevant officers duly appeared and answered many questions about the document, although under instruction from the minister not to answer some types of questions. The committee reported on 22 November, including in its report advices from the Clerk suggesting that the minister's claim of public interest immunity raised novel grounds and was not well founded. To a motion to take note of the report, Senator Faulkner moved an amendment that the Senate reject the minister's claim of public interest immunity and the grounds on which it was based. This amendment was passed on 25 November. The effect of it seems to be that the Senate does not accept "confusing the public debate" or "prejudicing policy consideration" as grounds for public interest immunity claims or that all advice to ministers is "cabinet-in-confidence".

Higher education funding: The government's grounds for not producing most of the documents required by the order were commercial confidentiality, cabinet confidentiality, and possibly confidentiality of advice. An advice from the Clerk suggested that these grounds were over-extended in the claim. The advice was produced at an estimates hearing on 2 December, at which questions were asked and answered about the matter.

Magnetic resonance imaging machines: The minister conveyed a refusal to produce the documents at question time on 23 November and followed this up with a letter on 29 November. The principal grounds were risk of prejudice to administrative inquiries and

the confidentiality of the government's relationship with the medical profession. Advices from the Clerk suggested that these were also novel grounds and lacking in cogency. The matter was extensively explored at an estimates hearing on 1 December, in which most of the required information seems to have been produced, and the advices were released.

Draft air safety report: The government's grounds for refusing to provide this document were stated in a letter on 22 November, the principal ground being the inappropriateness of releasing a draft report. The final report was tabled on 23 November and may have been speeded by the order for the draft report. In debate on the report it was stated that it confirmed apprehensions about the abandoned class G airspace trial.

By way of a motion to take note of answers after question time on 30 November, the government's frequent resort to claims of public interest immunity in recent times was debated. In the Parliament of 1993-96 there were 53 orders for documents and only four were not complied with, while in the Parliament of 1996-98 there were 48 orders and five not complied with. In the last two months the government has tallied four refusals.

The advices on the subject, which were released, are available from the Clerk's Office.

PRIVILEGE: WITNESSES

The Privileges Committee received a reference on 7 December on alleged threats to witnesses who made submissions to the Select Committee on A New Tax System. Senator Allison had received a letter in which a witness referred to such threats.

PROCEDURAL CHANGES

The Senate adopted on 22 November the second report of 1999 of the Procedure Committee, with the result that:

- Standing order 142 is amended so that all duly circulated amendments, not just government amendments, are put and determined at the expiration of the allotted time under a limitation of time on a bill (the guillotine). This significantly consolidates the rights of non-government senators and reflects recent practice.
- Government reports on unproclaimed legislation under standing order 139(2) are required only once a year.

- Senators are required to declare the interests of their partners of either sex as well as spouses.
- Advices provided to the Rural and Regional Affairs and Transport Legislation Committee about the relevance of questions in estimates hearings were endorsed. This is significant in that it provides an authoritative view of the Senate on relevance, which may prevent future disputes about relevance in estimates hearings.

On 30 November two amendments of the standing orders which had operated on a temporary basis were adopted permanently:

- Standing order 67, to provide for the lodging of postponement notifications instead of the moving of postponement motions.
- Standing order 76, to provide the option of giving notice by delivery at the table instead of oral presentation.

QUALIFICATION OF SENATORS

On 22 November the President tabled the judgment of the Court of Disputed Returns in *Rudolphy v Lightfoot*. The appointment of Senator Lightfoot to a casual vacancy was challenged on the basis that a member of the Western Australian Legislative Council was not qualified when the appointment was made. The challenging petition was lodged outside the 40-day limit provided by the Commonwealth Electoral Act, but the petitioners claimed that the court should interpret this period as running from the time when the defect was discovered. The court rejected this argument and found that it had no power to set aside the 40-day limit. Even if that argument had succeeded, there is a line of precedents suggesting that the actions of a legislature, including the appointment of a senator to a casual vacancy, will not be invalidated by the presence of an unqualified member.

PUBLIC SERVICE TRAINING

Throughout the period reports were presented by public service departments on actions they have taken to train their senior officers in parliamentary matters. These reports are required by an order of the Senate of 1 December 1998, which arose from cases reported on by the Privileges Committee of contempts committed by public officers through ignorance of parliamentary processes.

LEGISLATION

The government was successful in having major legislative packages passed during the period, usually through compromise with other parties reflected either in the shape of the legislation as introduced or in subsequent amendments.

Major successes were:

Business taxation package: Passed on 29 November as a result of agreement between the government and the opposition.

New Tax System bills: Adjustments to the GST legislation finally passed on the last day of the sittings as a result of agreement between the government and the Democrats. The passage of the legislation was almost imperilled by confusion on the part of the government's advisers over whether amendments should be requests. The Chair of Committees altered two government amendments from requests to amendments.

Federal Magistrates package: This package is of considerable constitutional significance; in establishing Federal Magistrates' Courts it virtually completes a parallel federal judiciary along American lines. The framers of the Constitution had sought to avoid this by allowing federal jurisdiction to be conferred on state courts. The bills were extensively amended on 23 November; some amendments disagreed to by the government were insisted on on 30 November and were finally agreed to.

Social Security (Administration) package: Amended on 24 and 25 November, and amendments accepted by the government.

Equal Opportunity for Women in the Workplace Bill: Extensively amended on 30 November, discrimination on grounds of pregnancy being the main subject of disagreement. The amendments were not insisted on and substitute amendments agreed to on 9 December.

Australian and New Zealand Food Authority Bill: Amendments made on 17 and 18 December accepted by the government.

The following legislation was not successful:

Regional Forest Agreements Bill (see Bulletin No. 137, p. 4): Lengthy proceedings on 23 and 24 November but mainly relating to the composition and functions of an industry council and

parliamentary control over regional forest agreements. The amendments disagreed to by the government were insisted on, and the bill did not pass.

Social Security (Disposal of Assets) Bill: This bill was rejected on 25 November, and is only the second bill rejected outright in this Parliament.

Aboriginal and Torres Strait Islander Heritage Protection Bill: A major piece of legislation. Voluminous amendments made in the Senate were accepted in part and rejected in part by the government in the House. The bill was returned on 9 December and not resolved.

Taxation Laws Amendment Bill (No. 8): The amendments most in dispute related to donations and loans to political parties by bodies of the nature of the controversial Greenfields Foundation. The amendments were rejected by the government in the House but insisted on by the Senate on 9 December, leaving the bill unpassed.

COMMITTEES

A motion calling on the government to settle “stolen generation” cases and referring related matters to the Legal and Constitutional References Committee was passed over the objections of the government on 24 November.

The following committee reports were presented during the period:

Date tabled	Committee	Title
22.11	Finance and Public Administration Legislation	Report—Portfolio Budget Statements
“	Employment, Workplace Relations, Small Business and Education Legislation	Additional Information—Additional Estimates 1998-99
“	Rural and Regional Affairs and Transport Legislation	Additional Information—Additional Estimates 1998-99 and Estimates 1999-2000
“	Finance and Public Administration References	Report—Business Taxation Reform
“	Superannuation and Financial Services	Report—Choice of Superannuation Funds (Consumer Protection) Bill 1999
“	Community Affairs Legislation	Report—Social Security Amendment (Disposal of Assets) Bill 1999
“	Community Affairs References	Report—Changes to the Welfare System

Date tabled	Committee	Title
23.11	Rural and Regional Affairs and Transport Legislation	Additional Information—Additional Estimates 1998-99 and Estimates 1999-2000
24.11	Scrutiny of Bills	18 th Report and Alert Digest No. 18 of 1999
25.11	Finance and Public Administration Legislation	Additional Information—Additional Estimates 1998-99
29.11	Economics Legislation	Report—A New Tax System (Tax Administration) Bill 1999
“	Economics Legislation	Report—Taxation Laws Amendment Bill (No. 8) 1999
“	Employment, Workplace Relations, Small Business and Education Legislation	Report—Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999
30.11	Privileges	81 st , 82 nd and 83 rd Reports — Right of Reply
“	Economics Legislation	Report—Diesel and Alternative Fuels Grants Scheme (Administration and Compliance) Bill 1999
“	Economics Legislation	Report—Taxation Laws Amendment Bill (No. 9) 1999
“	Superannuation and Financial Services	Report—Superannuation Legislation Amendment Bill (No. 4) 1999
6.12	Scrutiny of Bills	19 th Report and Alert Digest No. 19 of 1999
“	National Crime Authority	Report—Involvement of the National Crime Authority in Controlled Operations
“	Legal and Constitutional Legislation	Report—Family Law Amendment Bill 1999
7.12	Employment, Workplace Relations, Small Business and Education Legislation	Additional Information—Budget Estimates 1997-98 and 1999-2000 and Additional Estimates 1998-99
“	Rural and Regional Affairs and Transport Legislation	Interim Report—Australian Quarantine and Inspection Service and the Importation of Salmon
“	Economics Legislation	Report—A New Tax System (Indirect Tax and Consequential Amendments) Bills
8.12	Community Affairs References	Report—Childbirth Procedures
“	Community Affairs References	Additional Information—Changes to the Welfare System
“	Legal and Constitutional Legislation	Report—Australian Federal Police Legislation Amendment Bill 1999

Date tabled	Committee	Title
8.12	Legal and Constitutional Legislation	Report—Family Law Amendment Bill 1999—Additional Comments

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