



Procedural Information Bulletin

12 May 2017 • No. 314

For the sitting period 9–11 May 2017

No vacancy

On 5 April 2017, the Court of Disputed Returns held that former senator Bob Day was incapable of being chosen as a senator in the 2016 federal election and ordered that the resulting vacancy be filled by way of a special count of the ballot papers, under the court's supervision (see [Bulletin 309](#) – for background). On 19 April the court declared the second Family First candidate on the ballot, Lucy Gichuhi, elected to the vacant position. At the hearing the court rejected a challenge to her eligibility under section 44(i) of the Constitution relating to citizenship requirements. The President tabled copies of the various orders and Senator Gichuhi was sworn in at the start of proceedings on 9 May. With her original party's arrangements having shifted around her, Senator Gichuhi informed the Senate that she would take her place as an independent.

The Senate has now returned to its full complement of 76 senators for the first time since Senator Day's resignation on 1 November last year.

A disputed petition

On 11 May, the President tabled a [document](#) received from Rodney Norman Culleton, framed as a petition under [standing order 207](#), disputing the election of Senator Georgiou (see [Bulletin 313](#)), together with [advice from the Clerk](#) explaining why it did not meet the requirements of that standing order.

Generally, the determination of election disputes is a matter for the Court of Disputed Returns under the electoral law. Standing order 207 is limited to questions “which cannot, under the provisions of the Commonwealth Electoral Act, be brought before the Court of Disputed Returns.” It is difficult to see how that standing order can be said to apply to a document seeking to recontest a matter already dealt with and determined by that court.

Rather than rejecting the petition for non-compliance, the President tabled it for the information of senators. Nothing follows automatically from the tabling; it simply places matters before the Senate, so it may determine what, if any, action to take. In any case, the relief sought by the petition is beyond the power of the Senate. It asks the Senate to overturn the orders declaring Senator Georgiou elected and reinstate Mr Culleton as a senator. The Senate cannot do these things. Section 368 of the *Commonwealth Electoral Act 1918* provides that decisions of the court here are final, while section 374 gives automatic effect to the court's orders.

Legislation

The centrepiece for the week was the presentation of the 2017–18 Budget and associated appropriation bills in the House of Representatives, which occasioned some debate in the Senate, including in the responses by party leaders and independent senators on the evening of 11 May. The reference of budget-related documents begins the next cycle of estimates, with 2 weeks of hearings commencing on 22 May.

Legislative time is limited during the 3-day sitting week, but the Senate passed the government's [Youth Jobs Path bill](#), with a cross-bench amendment requiring a review of the program after 2 years. A handful of other, less controversial bills were also passed during the week, including the Parliamentary Business Resources bills which streamline the legislative and administrative framework for parliamentarians expenses into one single head of legislative authority. This follows the establishment earlier this year of the Independent Parliamentary Expenses Authority to provide independent statutory oversight of expenses and allowances. One element of the framework yet to come is the delegated legislation that will set out the specific activities to be included in the definition of parliamentary business, and therefore claimable as a parliamentary expense. Although central to the framework, these determinations are not disallowable. Both the Finance and Public Administration Legislation Committee and the Scrutiny of Bills Committee drew this to senators' attention in their reports. The bills were passed without amendment on 11 May.

After circulating amendments to the Native Title (Indigenous Land Use Agreements) Amendment Bill 2017 to meet concerns raised in the Legal and Constitutional Affairs Committee Report into the bill, the Government sought to extend the sitting week into Friday to facilitate its passage. The proposal did not receive majority support, with a number of senators indicating further consultation was required. Nonetheless, a majority has indicated support for the passage of the bill in the June sitting weeks.

Orders for production of documents

Two orders for production of documents were made on 10 May: an order seeking the Castalia Report into parallel importation of books; and an order relating to the accreditation and assessment of a mental health care facility in South Australia, following allegations of mistreatment. The orders each had short time frames, requiring the documents the following day, but there was no response provided before the Senate adjourned.

Committees

A slight respite this week from the recent flow of inquiries to committees. Only one references committee matter was referred, dealing with the impact of climate change on housing, buildings and infrastructure; although four other matters stand on the Notice Paper for possible referral in the next sittings. A new Senate Select Committee was established, concerning public interest journalism (or what used to be known simply as "journalism") and the "fake news" phenomenon, with a reporting date in December this year. Four bills were also referred to legislation committees; two reporting in June and two in August. The Senate also agreed to the usual "time critical bills" motion, which automatically refers urgent bills to legislation committees if they are introduced in the House of Representatives during the Budget estimates weeks.

On the other side of the ledger, several significant reports were tabled, including reports on the Administrative Arrangements Order, the Prostheses List Framework, oil and gas production in the Great Australian Bight, and the management of credit transaction cards in the Department of Defence, all tabled on 11 May; and reports on carbon risk, on electricity infrastructure, on superannuation non-compliance, and on allegations relating to the regional processing centres on Nauru and Manus island, all presented out of session before the sitting week.

Disallowance

On 11 May, as has become common, arrangements were put in place to ensure that a vote would be taken on a disallowance motion relating to Therapeutic Goods regulation of narcotic drugs when the motion was listed on the last sitting day for its consideration. This avoids the possibility of an instrument being deemed to be disallowed on the basis that a proposal in the Senate was not finally determined. The motion was lost on an equally divided vote, meaning that the regulation remains in force.

RELATED RESOURCES

[Dynamic Red](#) – updated continuously during the sitting day, the Dynamic Red displays the results of proceedings as they happen.

[Senate Daily Summary](#) – a convenient summary of each day’s proceedings in the Senate, with links to source documents.

Like this bulletin, these documents can be found on the [Senate website: www.senate.gov.au](http://www.senate.gov.au)

Inquiries: **Clerk’s Office (02) 6277 3364**