

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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for the estimates hearings 23-27 February 2009

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Although short, the additional estimates hearings contained many matters of procedural and other interest.

PROCEDURAL MATTERS

- (1) The desirability of heads of agencies appearing in the hearings was again emphasised in the context of the failure of the managing director of Australia Post to appear in spite of a request that he do so. (ECA 23/2)
- (2) The matter of the ordinary annual services of the government and the content of the appropriation bills was again the subject of discussion, as well as the proliferation of special appropriations. (FPA 23/2)
- (3) The likelihood of a Senate inquiry into the government's Carbon Pollution Reduction Scheme was canvassed, following cancellation by a minister of a House of Representatives Committee inquiry.* (FPA 23/2)
- (4) There was a mild note of complaint about the length of the opening statement by the Chief of the Defence Force, and a suggestion that it should be provided in advance for consideration before questioning. (FADT 25/2)
- (5) Questions were answered about the execution of the search warrants on the anti-whaling vessel *Steve Irwin*, in contrast to claims on previous occasions that questions would not be answered about ongoing investigations and operational matters. (LCA 23/2)

- (6) Similarly, the Commissioner of the Australian Federal Police answered questions about the so-called “cash for visas” investigation, and also further questions about the Haneef investigation, which is now said to have cost \$4.7 million. (LCA 23/2)
- (7) There was considerable questioning about the “alcopops tax”, seemingly in rehearsal for the forthcoming Senate debate on the subject (see Bulletin No. 228, p. 2 under Orders for the production of documents). (ECO 25/2)
- (8) A strange body which appears in estimates hearings is the Migration Institute of Australia, a private organisation of migration service providers, which administers a public program, the Migration Agents Registration Authority. Representatives of this body took the opportunity of their appearance before the committee to publicly disagree with the government’s recent decision to shift responsibility for the public function into the Department of Immigration and Citizenship. (LCA 24/2)
- (9) The government continued to decline to answer some questions about the National Broadband Network tendering process, but answered some questions, including those relating to legal advice received by the government, further undermining past claims that legal advice is never disclosed. (ECA 23/2)
- (10) There was a hint of refusal by the Federal Court administration to reveal the Court’s response to the Semple Review, but after further questioning the response was released, revealing that the Federal Court is opposed to plans to merge the Court and the Federal Magistrates Court. (LCA 23/2)
- (11) The Attorney-General’s Department was again hesitant about answering questions on consultants’ fees, in spite of long-standing declarations by the Senate on the subject (see *Oggers’ Australian Senate Practice*, 12th ed., 2008, p. 487), but the information sought was eventually provided. (LCA 23/2)
- (12) Budget confidentiality was raised as a ground for not answering some questions about the government’s review of the Department of Foreign Affairs and Trade. (FADT 26/2)
- (13) There was a blanket refusal to answer questions about the Australian Secret Intelligence Service, with a suggestion that the Joint Committee on Intelligence and Security is the sole forum for such questions. The senator concerned suggested that budgetary questions should not be treated in this fashion; this is a matter that may be revisited. (FADT 26/2)
- (14) There were also refusals to answer some questions because they related to “a matter before government”. Presumably this is an attempt to invoke the internal deliberations

of government ground, but it is not one of the recognised grounds for public interest immunity claims. (ECO 26/2)

- (15) There were also the usual refusals to produce information on the grounds that it constituted “advice to government”, although it has been made clear in the past that this is not in itself a sufficient ground for a public interest immunity claim; something may be done in the Senate about this in the near future. (CA 25/2)
- (16) Some questioning was discouraged by a chair on the basis that it sought to analyse the provisions of bills which are the subject of separate bills inquiries. It has been advised in the past that, where bills are separately referred to committees for inquiry, the estimates hearings should not be used as a substitute or supplement for analysis of the provisions of the bills. (EEWR 25-26/2)
- (17) The Community Affairs Committee’s cross portfolio hearing on indigenous matters was held on 27 February. The committee arranged the questioning by themes or issues, and the departments involved then ensured that the appropriate officers were present to deal with those subjects.
- (18) The Foreign Affairs, Defence and Trade Committee secretariat experimented with providing members of the committee with a list of programs under the relevant outcomes, to assist senators in locating the outcomes under which programs were to be found.
- (19) The question again arose whether an estimates hearing should continue without a Senate minister or parliamentary secretary present. There is nothing in the rules of the Senate that requires a minister or parliamentary secretary to be present, and a committee may decide to continue a hearing if there is no minister or parliamentary secretary available. The only difficulty likely to be caused by such a hearing is that matters referred to ministers obviously cannot be dealt with at once and of necessity have to be taken on notice.
- (20) The Foreign Affairs, Defence and Trade Committee found the need to restrain film crews at one of its hearings; additional filming of the hearings is subject to the direction of the committee.
- (21) The principle that points of order may be raised in the committee hearings on the same basis as they may be raised in the Senate was reinforced (see *Odgers*, pp 390-1, 397-8). (ECA 24/2)

OTHER MATTERS

The following matters of public interest were the subject of questioning:

- The use of consultants by departments. (several departments)
- The effect of budget cuts, particularly on the law enforcement agencies. (LCA 23/2)
- The High Court's operational loss of \$1.2 million and its serious financial difficulties. (LCA 23/2)
- The Emissions Trading Scheme. (several departments)
- Managed investment schemes again, particularly in relation to the government's Carbon Pollution Reduction Scheme. (RRAT 23/2)
- The government's stimulus packages and Treasury modelling. (ECO 25/2)
- The losses of the Future Fund due to the global financial crisis. (ECO 24/2)
- 457 Visas and the expected economic downturn. (LCA 24/2)
- The fallout from the collapse of ABC Learning. (EWRE 25/2)
- The effects of the collapse of Storm Financial. (ECO 25/2)
- The expenditure of \$1.2 million by the Department of Education on "happiness seminars". (EEWR 25/2)
- The situation in Afghanistan. (FADT 25/2)
- The Defence salary overpayments affair. (FADT 26/2)
- The employment of ministerial advisers outside the Members of Parliament Staff Act. (EWRE 26/2)

***MINISTERS AND COMMITTEE INQUIRIES**

Perhaps the most commonly asked question (from persons outside the parliamentary process) during the week was whether a minister could cancel a Senate committee inquiry, as happened recently with a House of Representatives committee inquiry. Under the procedures of the Senate, a minister has no power either to refer a matter to a Senate committee or to prevent a committee inquiry by withdrawing a matter from a committee.

RELATED RESOURCES

The *Dynamic Red* records proceedings in the Senate as they happen each day.

The *Senate Daily Summary* provides more detailed information on Senate proceedings, including progress of legislation, committee reports and other documents tabled and major actions by the Senate.

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