



# DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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## For the Budget Estimates Hearings 26 May — 6 June 2014

### TIMES AND PLACES

Despite the characterisation of the 2014-15 Budget as one of the toughest for many years, and robust discussion in some committees of the agreed timetables, there were numerous early finishes during the fortnight and only one committee took advantage of the availability of a spill-over Friday.

The Community Affairs Legislation Committee met for an additional three hours on Friday 6 June, not in accordance with a decision of the committee itself but pursuant to a temporary order of the Senate which provides for hearings to be held on spill-over days at the written request of any three members of the committee.

There were also occasional complaints about Government senators using time to ask questions and ministers giving what some considered to be unnecessarily long answers (Ec, 2/6, 4/6, 5/6). Although estimates hearings are regarded as a prime opportunity for non-government senators to question ministers and officials, there is nothing in the standing orders – or the practices of earlier years – to suggest that Government senators are not entitled to ask questions. In fact, a detailed study of the matter would show that non-government senators overall are allocated the lion's share of the time.

In what is believed to be a first for estimates, witnesses from one authority, the Office of the Supervising Scientist, appeared via televisual link from the Northern Territory, resulting in a significant saving for the authority at a time of widespread budget reductions. The arrangements were such that the parliamentary secretary and officers already at the witness table were able to participate in answering the questions when required.

### QUESTIONS ON NOTICE

As is usual, questions were asked about answers to questions taken on notice at the previous round of estimates hearings, including why particular questions had not been answered and when draft answers had been provided to the Prime Minister's Office (FPA, 27/5). Answers to these were themselves taken on notice.

Frustration with the non-provision of answers by the Department of the Prime Minister and Cabinet may have been behind a notice of motion given on 14 May for an order requiring the departmental secretary to appear and answer questions at estimates. As noted on previous occasions (see [Bulletin No. 270](#)), the PM&C Secretary is the only agency head not to make regular appearances at estimates. The notice of motion was withdrawn the following day, apparently after a large number of answers were provided to the relevant secretariat.

## PUBLIC INTEREST IMMUNITY CLAIMS

There were numerous occasions when officers or ministers declined to provide information and senators pressed for articulation of the grounds on which the information was being declined. In most cases, the questions were then taken on notice. Some examples include:

- monthly reports of agency figures on involuntary redundancies (Australian Public Service Commissioner) – said to be advice to ministers (FPA, 26/5)
- whether the Prime Minister’s Chief of Staff attends Cabinet meetings (FPA, 27/5)
- appointment and role of the new Cabinet Secretary (FPA, 27/5)
- the timing of advice on cessation of the Nursing and Allied Health Scholarships Support Scheme in Tasmania (CA, 3/6)
- further questions about funding for mental health programs (CA, 3/6)
- the number of Cabinet decisions in relation to free trade agreement negotiations with China (FADT, 5/6).

In other cases, while only skeletal public interest immunity claims were articulated – such as national security concerns in relation to information about drone strikes in Yemen and the death of Australians (LCA, 28/5) – senators did not press for further information.

Questions about the previous Government’s consideration of a GP co-payment elicited the response that deliberations of a previous Government could not be revealed, but no public interest immunity claim was offered or asked for (CA, 3/6).

In one interesting episode, Senator Xenophon sought details from the Australian Federal Police about the settlement figure in the case brought against the AFP by Seven West over the execution of search warrants for information about a possible deal over the Schapelle Corby interview (LCA, 26/5). The AFP advised the committee that the settlement figure was subject to a court confidentiality order but that the order provided for the figure to be given to a parliamentary committee if so requested. The Attorney-General took the question on notice in order to be satisfied that the provision of the figure would not be inconsistent with the terms of the court order. While the law of parliamentary privilege protects the provision of information to a House or its committees in any case, it is interesting that the court in this case has directly acknowledged the right of the legislature to receive information about the expenditure of public funds. The irony is that the executive will now decide whether to honour such a gracious and practical gesture of comity by the court to the legislature. One factor may be the inability of legislation committees considering estimates to receive information in confidence, a limitation that could be overcome by the committee operating in one of its other modes.

Robust discussions of the Cormann order on public interest immunity claims and its operation took place on several occasions, including at the Community Affairs Legislation Committee on 5 June when the Secretary of the Department of Social Services revealed a textbook understanding of the order, in relation to details of departmental program grants and a soon-to-be-closed tender process. In contrast, the Health Department Secretary intervened to prevent both statutory officers and ministers answering the committee’s

questions, without raising appropriate claims (CA, 3/6).

There are always cases of officers or ministers declining to provide answers on the basis of “longstanding” practice, only to be embarrassed by the discovery of the information from a public source moments later. In this round, the ministerial order of precedence – astonishingly – was claimed to be a secret, but was found shortly thereafter on Wikipedia (FPA, 27/5). It is also reflected in the published ministry list and in the order of occupation of seats on the front benches in each House. Membership of the Government Staffing Committee was also discovered to be public information (FPA, 29/5).

In another case, however, a document claimed to be published on a website was not accepted and published by the committee because the version proffered was marked ‘draft’ and ‘commercial-in-confidence’ and, given its length, it was not possible to ascertain if the two versions were identical (E&C, 29/5).

Despite the recent enhancement of opening statements with the agreement of the Chairs’ Committee, “advice to Government” is still the most common bleat by officers and continues to remain unpursued on most occasions. Apparently, it is also “not the practice” to make legal advice public in estimates hearings, a statement made in the context of discussion of the tabling of departmental legal advice on the legality of settlements in the Palestinian Territories at a previous round of hearings (FADT, 4/6).

## SUB JUDICE?

Concerns were raised during questioning of the NBN on 29 May by the Environment and Communications Legislation Committee that evidence sought from the newly appointed CEO, Mr Morrow, raised sub judice concerns because of pending legal proceedings in the USA. There was also some discussion of the application of parliamentary privilege outside Australia. Advice clarified that the issue was not one that would attract the Senate’s sub judice convention (for details of which see *Odgers’ Australian Senate Practice*, Chapter 10), but that the non-application of the Australian law of parliamentary privilege in foreign jurisdictions could be problematic for the witness because there was no guarantee that a foreign court would not admit evidence given to an Australian parliamentary committee. The committee therefore accepted Mr Morrow’s claim not to answer certain questions.

## DOUBLING UP

The practice that estimates inquiries should not duplicate the work of legislation committees on bills currently referred to them created some difficulties in separating questions about policy and the fate of agencies from questions about the provisions of the bills (Ec, 5/6).

## EXHIBITS

The purpose of estimates is for committees to ask for explanations from ministers and officers about items of proposed expenditure. This basic rule has allowed committees to control the proceedings by ruling out lengthy statements, the showing of films and the exhibition of such display items as unarmed torpedoes and manikins in combat armour.

On one occasion, it was a senator rather than a witness who was discouraged from continuing to display a replica pipe bomb to demonstrate his concerns about security screening arrangements at Parliament House (LCA, 26/5). On another occasion, a departmental secretary conceded that a colour-coded diagram to illustrate streamlining of discretionary grants programs may not have been as helpful as expected (CA, 5/6).

## PRIVILEGE ISSUES

The use of closed circuit television in Parliament House turned into a potential issue of parliamentary privilege when Senator Faulkner raised the possibility that the CCTV system had been used in internal disciplinary proceedings by a parliamentary department to monitor a staff member who was filmed apparently providing information to the senator's office. Senator Faulkner subsequently tabled advice from the Clerk discussing the parliamentary privilege dimensions of the incident (F&PA, 26/5).

Privilege was also considered in the context of an exchange of correspondence between a senator and the President of the FairWork Commission which was tabled by the senator. When asked why he had not published the correspondence on the agency's website, the President raised concerns about whether it might be actionable. Publication of the correspondence by the committee is covered by absolute privilege but any other publication may not be and therefore caution is often warranted (EE, 2/6).

Also see above, under [Sub judice?](#)

## CHAIRS AND DEPUTY CHAIRS

This round of estimates again saw examples of the deputy chair taking the chair when the chair was not present for part of the hearing (RRAT, 26-27/5, FADT). This is the practice prescribed by the standing orders. On other occasions, committees elected another Government member as chair during temporary absences of the chair. (RRAT, 28-29/5)

## PUBLIC HEARINGS

There is occasional disquiet on the part of officials that "ordinary people" are coming into the hearing rooms. After a recent spate of such incidents, the Chairs' Committee, established by standing order 25(10), agreed on a protocol, with copies to be available at all estimates hearings, reminding everyone that estimates hearings are public hearings and therefore members of the public are welcome to attend. Officers of the Attorney-General's Department were advised that it was not appropriate to direct people to the Main Committee Room upper gallery (LCA, 29/5).

## ACCOUNTABILITY

Information is the life blood of accountability and as a result of the Budget estimates hearings, we now know considerably more about a large number of issues including:

- the impact of budget cuts on a wide variety of departments and agencies
- the trial of new security screening arrangements at Parliament House (FPA, LCA,

26/5)

- the lack of a cost-benefit analysis of the Commonwealth's financial contribution to Melbourne's East West Link stage 2 which lacks either a business case or a confirmed route (RRAT 26/5)
- the cost of public service commission training venues (FPA, 26/5)
- whether asylum-seekers are being held in custody on Customs ships (LCA, 26/5)
- the transfer of unspent funds from the Royal Commission into Institutional Responses to Child Sexual Abuse to the Royal Commission into the Home Insulation Scheme (LCA, 27/5)
- payment of legal costs of the Papua New Guinea and Nauru governments arising from litigation relating to asylum-seeker detention centres in those countries (LCA, 27/5)
- AFP advice on the cancellation of a Prime Ministerial visit to Deakin University (LCA, 26-7/5)
- the search for Malaysian Airlines Flight MH370 (RRAT, 27/5)
- interests of the firm awarded a contract to review renewable energy targets (EC, 27/5)
- the absence of detailed family outcomes tables from this year's Budget papers (FPA, 28/5)
- whether the ABC's Peppa Pig was for the chop (EC, 28/5)
- whether SBS can afford to keep covering the World Cup or Tour de France (EC, 29/5)
- the NGA's acquisition of the US\$5 million Shiva (EC, 28/5)
- Medibank Private's trial of GP clinics (FPA, 29/5)
- ministerial bookshelves (LCA, 28/5)
- amounts of compensation paid in relation to "Cornwell claims" (by people allegedly misled into not joining the Commonwealth Superannuation Scheme) (FPA, 29/5)
- "vague" responses to media inquiries about renovations at the Lodge (FPA, 29/5)
- occupation of the new ASIO headquarters (LCA, 29/5)
- approval of government advertising campaigns during the caretaker period (FPA, 29/5)
- savings to be made at the Australian Human Rights Commission by cutting one Commissioner's position (LCA, 29/5)
- the timing of consultations on the new airport at Badgery's Creek (RRAT, 29/5)
- powers of the Indigenous Corporations regulator to deal with alleged fraud (FPA, 30/5)

- alleged conflicts of interest of members of various expert panels within the FairWork Commission (EE, 2/6)
- job losses at CSIRO (Ec, 2/6)
- compensation payments to Afghan civilians (FADT, 2/6)
- women in infantry roles (FADT, 2/6)
- the likely fate of Australian car part suppliers (Ec, 3/6)
- former Senator Bob Carr's *Diary of a Foreign Minister* (FADT, 4/6)
- the adequacy of training for financial advisers (Ec, 4/6)
- the cost of producing a 5c coin (6c) and the value of lost coins in any year (Ec, 3/6)
- possible sale of the Clean Energy Finance Corporation's loans business (Ec, 4/6)
- ASIC's investigation of bad financial advice given to Commonwealth Bank customers and the adequacy of the compensation arrangements (Ec, 4/6)
- ACCC investigations of a construction union over alleged boycotts of a supplier (Ec, 4/6)
- the location of funds for potential refugee resettlement plans in Cambodia (FADT, 4/6)
- details of how the proposed GP co-payment and the medical research fund it will finance will operate (CA, 2/6)
- the number of people it is estimated will need emergency assistance following the imposition of a longer waiting period for welfare benefits (550,000) and the size of the contingency fund earmarked for emergency relief (\$230 million over four years) (CA, 5/6)
- the shortfall in potential revenue from deficit reduction levy measures because of timing issues affecting the imposition of a higher rate of FBT for relevant tax payers (Ec, 5/6).

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## 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.

Like this bulletin, these documents may be reached through the Senate home page at [http://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures](http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures).

Inquiries: Clerk's Office  
(02) 6277 3364