

## Session 2

### Questions and Answers Session: 'Are There Too Many Watchers and Not Enough Managers'?

**Mr O'Keefe (Moderator)** We come to an open forum session now. It is now over to you.

**Mr McDermott** I am from the Australian Taxation Office. Senator McMullan, could I draw your attention to some of the things you said about lack of preparation and attention to detail in particular?

**Mr O'Keefe** Senator McMullan has left us, but carry on.

**Mr McDermott** What concerns us about lack of preparation or apparent lack of preparation and attention to detail is the lack of proper focus that we would see in the questions that are asked of us in particular Senate estimates committees. Can I say first of all that we do not have any problem at all with the concept of parliamentary scrutiny and scrutiny by estimates committees nor with the treatment that we receive at those committees. But it is very difficult when you attend a Senate estimates committee meeting and only a fraction of the questions are directed at estimates. If the Committee wants to know answers to questions about why particular items might be tax deductible or not tax deductible, perhaps they ought to give us notice of them. But a survey that we have undertaken going back to 1987 indicates that only 11 per cent of the questions that are asked of us by the Senate estimates committee relate directly to estimates and about another 11 or 12 per cent are on either policy issues or organisation and operational matters. So, taking the most charitable view, less than 25 per cent of the questions relate to estimates. We would also say that there is a lack of coordination with other parliamentary committees which are asking the same sorts of questions of us. Again, I think if we had proper notice of the kinds of questions that are likely to be directed to us or you wanted to extend the terms of reference of Senate estimates committees to make them wider ranging, we would have no objection. But it seems to me to be rather pointless to have a team of people coming along to answer questions on estimates and getting questions on policy, or operational matters.

**Mr O'Keefe** I invite Senator Coates to deal with that. Then Senator Bishop might give the other point of view.

**Senator Coates** I think I dealt with a lot of the answer to your very valid point in my paper. As to the accusations of Senator McMullan that there was sometimes a lack of preparation: the way I would put it is that mostly the preparation is reasonable. It is just that occasionally one is amazed that even though there is some current issue running, and one might have expected questions on a certain issue to blow up, it turns out that the Department is not ready to deal with that issue. It has not got the relevant officer present who may be able to give a direct answer. So that takes up extra time. The question has to be taken on notice and so forth. Sometimes that may be a sensible and a deliberate tactic if a current issue that is running is such a problem that it is better to be able to give some thought to the answer. I think it is that

occasional situation where it is sometimes surprising that there was not anticipation of the sorts of questions that might arise, even though, as I acknowledge, they are not necessarily strictly estimates matters. As I said, the committees ought to be given a different name if they are to continue, or some of the things which are dealt with by them ought to be dealt with by the standing committees.

**Senator Bishop** I will limit my remarks to your very specific question because later when I enjoy my 15 minutes, I might deal specifically with some of the points raised by some of the other speakers. As you can see from the presentation, this is a parliament which is full of politics, and governments and oppositions do have different points of views, and different aims to achieve. On the question of the preparation by senators for conducting the questioning during estimates, part of that problem of becoming prepared is the short time we have to look at the explanatory notes, annual reports and all relevant material. In fact, quite often annual reports, or draft annual reports, are put on our desks as we are sitting down to begin the estimates hearings. I do not think that is adequate.

If you want better prepared questions, then the quicker that material can be got to senators so that they can make an appraisal and formulate questions, then the more informed they will be. The other thing about estimates, of course, is that in a democracy everybody is entitled to be represented. I frequently believe that they are. You are going to get a great variety and variance in the degree of preparation that people put into that work, with different emphases on different sections. For those people who do put a lot of effort into preparation, the sooner the material is available for senators and their staff to go through, the better will be the degree of preparedness. I would be interested to know whose time you did the survey in. How long did it take to do the survey of the sorts of questions that were asked and whether or not they fitted a certain criterion? Who carried out the survey? Whose responsibility was it? To whom did they report back? What did you do with it?

**Mr O'Keefe** Could you perhaps take that on notice! The Secretary will be following it up.

**Mr Forrester** I have been coming along to Senate estimates committees for five or six years now. I followed the close questioning by Senator Hill of Senator Evans in Committee B, Senator Coates's Committee, only a couple of weeks ago. What has been clear to me over the past five or six years is precisely this dissolving of the distinction between policy and administration in the kind of questioning that comes to officials in the first instance in Senate estimates committees. I think what Senator Coates has suggested is a very good way of drawing a better distinction between policy and administration. I am not saying that officials should not answer questions about program performance. When you come to a department like Foreign Affairs and Trade, where the predominance in programs is policy, it is going to be inevitable that questions that are directed to officials are going to boil down to policy in the end.

The solution that has been suggested I think is an ideal way of ensuring that when it comes to the appropriations, the kind of questions that are asked deal with administration, funding and the administrative side of program performance. I think it would be a good idea if the standing committee relevant to DFAT looked at overall policy performance focussed on divisions, because division heads should be the people who can answer detailed questions on program performance, particularly when it relates to policy. There is a difficulty for public servants coming along to answer questions in Senate committees, whether they are estimates committees or others because there will always be that tension. We will always be the meat in the sandwich between Parliament and the executive, and it is not an easy situation in which to find yourself. There were comments made this morning about the need for these investigations to be more civilised and the difficulties of each of the parties involved I think need to be taken account of. If there could be greater concern for each other's problems in this situation, there might be a more productive outcome.

**Senator Bishop** Productive for whom?

**Mr Forrester** For all three parties, because there are three parties involved in it. I think this is the thing that needs to be taken account of.

**Senator Bishop** But what is the purpose, as you see it, of the committee hearing in the first place?

**Mr Forrester** There will be different objectives for different participants. To take up one point made by Mike Keating, that there is a need for public servants to demonstrate program performance and to demonstrate that we are delivering value for money, I think that is one important aspect. In a lot of the

questioning that comes in the Senate estimates committees that I have been to there has not been very much focus on this question of value for money, particularly in our portfolio.

**Senator Bishop** I perhaps can agree with part of that but maybe you could help us all by giving us the definitive definition of value for money.

**Mr Forrester** I do not know whether you can give a broad-based definition of that for all portfolios. I think it will differ from portfolio to portfolio. Foreign Affairs and Trade is highly policy-oriented in its work. I know that we are not as far advanced as some other portfolios in terms of defining objective performance indicators, and I think that may be due to the nature of the heavy policy orientation of our work. I do not think there is one definition that you could apply across all portfolios – it is something that each of us has to work at. That is why Senator Coates's suggestion is worthwhile in that it gives us a link to the Senate Committee that is particularly tasked with looking at that portfolio.

**Mr O'Keefe** I wonder whether there is anyone who has a big program to manage who would care to come in on that. Foreign Affairs and Trade has this keen policy focus, but what about Veterans' Affairs, Social Security, Defence, et cetera? Are you all happy with your performance indicators?

**Mr Kerr** I guess I do not have any problem with what has been said by speakers in terms of program performance. Clearly, my Department, the Department of Veterans' Affairs, is just as keen as other departments are to show that we are effective and efficient in the delivery of our programs. If the Senate can help us in pointing up ineffectiveness and inefficiency then that is great. The problem I have as a public servant is I guess the dilemma that I was hoping some speakers would touch on, that is, the responsibility the Public Service has to the executive Government. The dilemma I have is a personal dilemma between my responsibility to my Minister in the effective delivery of the Government's programs in the department I happen to be in from time to time and the relationship between that responsibility and the one I have to the Parliament. I have never been able to come to the bottom of that. I have always been very nervous, as I am now, in talking to Senate estimates committees, and I think everybody that I know in the Public Service is in that dilemma. We can swot up – sometimes we do so almost all night – before a Senate Estimate Committee and we walk in and the first question we get, which is very pertinent to the senator who asks it or the committee, is about something that we have never heard of, or maybe we have but we have decided that it probably will not loom so large. It is a bit like facing an examination. The other dilemma is that it is on the record, it is public.

We are required, quite properly, to give proper advice to the Senate. We cannot recall all the detail of the wide range of issues that are in our portfolio estimates – or at least I cannot – on the spot. Often the retreat to asking for the question to be on notice is to ensure that when we do provide an answer we provide it to the best possible extent; it is not a retreat to see how we can obfuscate and make it difficult for the Parliament to find the truth. I am not sure whether other people around this table have been in the same circumstances as I have, when we are asked questions that, in a sense, reflect on the advice that we have given our Ministers. Often, in the cases that I have been in, my Minister has not been at the table. The Minister representing him or her has been, but the matter is not within that Minister's purview. Frankly, I have faced a real dilemma. What do I do? Do I, if you like, dump my Minister? One of the titles here includes the words 'Watching Ministerial Backs?'. I have always been taught to protect my Minister of the day. If that is the wrong teaching or that is the sort of thing that public servants should not do, nobody has really told me that. I would be interested to find out from others, not only in the panel but here taking part, whether they have the same problem. I think we are torn between our integrity in terms of providing Parliament with the sort of information it needs and our integrity in serving the government of the day. That is off the particular subject but I have been glad to have the opportunity to say something that has been worrying me for some time.

**Mr O'Keefe** I ask Mike Keating to comment on that. We will finish with a very quick comment from Senator Bishop and Senator Coates, and then we will have our break.

**Dr Keating** I just want to come back to Senator Bishop's very challenging question of what we mean by value for money, because it is pretty central in the accountability process. I did, of course, say in my remarks that to some extent it is in the eye of the beholder. But that said, there is, I believe, a proper procedure for going about making the assessment, even if opinions can differ in terms of the eventual conclusion. That proper procedure is that an attempt should be made to set out what are the objectives of the program – what the program is attempting to achieve – and then assessing its cost-effectiveness in

achieving those objectives, that is, what progress has been made towards those objectives in terms of performance results and at what cost. That having been said, you clearly are into this difficult area of blurring policy and administration. I just want to go on from that and to address that issue.

One thing that we need to be clear on and I do not think, frankly, that it was entirely clear from John Uhr's paper is that explanatory notes are put forward on the authority of the Minister. That is precisely because it is recognised that explanatory notes are dealing with issues of policy: establishing a program's objectives or, to use John Uhr's phraseology, the appropriateness of programs whether the programs should continue or not. Those are not things that public servants determine: they are things that governments determine. I can think of examples of programs that were very efficiently administered, but which were not cost-effective. Some might even question whether they could have ever hoped to be cost-effective. In other words, the Government's policy guidelines are things that were determined in Cabinet: the public servants did not determine the policy guidelines, the government of the day determined the policy guidelines. The programs were efficiently administered, but the policy guidelines you might well query: with those policy guidelines, could you have ever achieved a cost-effective or value for money result? For that reason, explanatory notes are put forward on the authority of Ministers.

What follows from that going to the issue of preparation for Senate estimates inquiries is that the executive does need to get its act together in terms of properly briefing Ministers. There are a lot of questions that arguably should be taken by Ministers and not by officials; and in that context there is a difficulty, because many of the responsible Ministers are not at the Senate estimates inquiry: they are in another chamber. That increases the burden of spending a lot of time with the Minister who is going to represent you in the Senate estimates inquiry. I am obviously not an authority on what happens in respect of each and every portfolio, but I do wonder whether the executive has clearly understood the nature of Ministerial responsibility in relation to Senate estimates inquiries; and flowing from that, whether sufficient effort is put in to preparing a Minister who is going to represent you in the Senate estimates inquiry.

**Mr O'Keefe** Thank you, Mike.

**Senator Bishop** The problem that you outline is a dilemma to whom are you accountable and whom you serve. I can understand the dilemma, but finally you must be accountable to the Parliament. I think, in your terms the question is whether or not you dump on the Minister. In my view, if the Minister has acted improperly, and if your honest answer of a question is going to disclose that, then there is an obligation on you to do so. We go right back to the point that Dr Keating made about the executive arm of government, and the Minister being the person responsible: that is fine when you actually have the Minister whose portfolio you are dealing with in front of you. When he is dealing for and on behalf of another Minister, it is very much more difficult. Nonetheless, in areas where a difficulty is likely to arise and this happens from time to time the officer will simply refuse to answer: the Minister will come in and take over that line of questioning. It becomes perfectly apparent, and if you keep it up the Minister usually ends up with his foot in it because he, too, knows that he has done the wrong thing. So the answer to the question of to whom does your responsibility ultimately lie, is that it has to be the Parliament. If it is not to the Parliament, then the whole system does not work.

On the other point that Dr Keating took up, and the point I asked about what is value for money: it is very subjective. One could adjudge that you were getting the best value for money if your second best friend came in and did the job; but is that the proper expenditure of money? It cannot be divorced from that question. One of the things that concerns me about the new Finance regulations, which are at the moment before the Senate and subject to tabling and disallowance, is that there will no longer be a universal code. There will be an overall set of guidelines, but each department is going to have a much more flexible say in what they consider value for money to be. When we talk about value for money, what worries me is just whose money we think we are dealing with. The Government does not have any money. Departments do not have any money of their own; they have taxpayer's money. So it is taxpayers that we are finally accounting to through the Parliament, which is representing the people. If we are not doing that, then again the system is not working. I passed an aside to John Uhr earlier. I said, 'The trouble with democracy is that it is not very cost efficient'. I could run a very efficient benevolent dictatorship, but I would not be happy for anyone else to have the job. I basically want a democratic system where everybody is part of the system; where there is accountability and where the people's voice is represented.

**Senator Coates** I think Alan Kerr's point was a fair one. The solution is that, advice to Ministers on whether or not to adopt a particular policy position is something which the Committee is not entitled to have the response to, unless the Minister wishes to give that answer himself or herself. Ministers at the table at estimates committees should be more alert than they sometimes are to those sorts of questions. Estimates committees should not get into a debate about the internal advice to the Government on whether or not to adopt a particular policy. As the Chair of a committee, I have tried to detect that line of questioning in order to indicate that it is not appropriate for such a response to have to be given. I emphasise that is different from what Senator Bishop latched onto. She talked about a Minister acting improperly. That is a different issue. If some scandal had been dug out, that would be a different matter. But if we are talking about policy advice, I do not think that the estimates committees have the right to delve into the internal debate within the Cabinet or within the contents of a Cabinet submission, either from that relevant department or from some other department.