

ESTIMATES HEARINGS — QUESTIONS TO DEWR

You asked for advice on the exchange this morning in the estimates hearing for the Department of Employment and Workplace Relations with the secretary of the department, Dr Boxall, relating to figures used in calculating budget estimates. The essence of that discussion was that questions about such figures were taken on notice, but with an indication by the secretary and by the minister on duty that a “whole-of-government” decision was required on whether the figures would be provided, and government may decide not to provide such figures.

At an early stage of the discussion it appeared that there was a refusal to provide any figures which are not included in the budget papers. As you pointed out, a great deal of questioning at estimates hearings is about figures which are not included in the budget papers, and many such questions have been routinely answered.

The only substantive rule of the Senate relating to the content of questions in estimates hearings is that, as with all committee hearings, the questions must be relevant to the matters under inquiry, and the matters under inquiry in estimates hearings are the estimates of expenditure. In 1999 the Senate resolved, in adopting a report of the Procedure Committee, that any questions relating to the operations or financial positions of departments are relevant questions for the purposes of estimates hearings. There is no doubt, therefore, that the questions concerned were questions permitted by the rules of the Senate.

As you pointed out at the hearing, the Senate has resolved on numerous occasions over many years that there are no areas of expenditure of public funds where any person has a discretion to withhold details or explanations. The important point in these resolutions is that officials do not have a *discretion* to withhold such information. These resolutions must be read in conjunction with other resolutions of the Senate, going back to 1975, which provide that if a minister considers that there are specific public interest grounds for withholding information at a public hearing, such specific grounds must be submitted to a committee so that the committee, and ultimately the Senate, may determine whether the claim to withhold the information is sustained on those grounds. Before the estimates hearings I circulated to all senators a list of recognised specific grounds for claims of public interest immunity. Attached is a copy of that list.

The effect of these Senate resolutions, extending over many years, is that it is not acceptable for ministers or officials simply to say that information will not be provided. A specific public interest immunity ground must be advanced for the committee’s, and ultimately the Senate’s, consideration.

Given the resolutions of the Senate, a committee when met with a refusal to provide information should ask that a recognised public interest ground for that refusal be advanced. If no ground is advanced and the committee is met with a groundless refusal to provide information, that refusal should be reported to the Senate. If a ground is advanced, regardless of whether the committee accepts that ground in the particular circumstances of the particular information required, that consideration by the committee also should be reported to the Senate.

I emphasise that this advice is not in any way subjective; it is based on the past resolutions of the Senate. I am bound to give the same advice unless and until the Senate expressly repudiates the resolutions which it has made over many years.

As requested, I have provided a copy of this advice to the committee via the committee secretary.