



AUSTRALIAN SENATE

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CLERK OF THE SENATE

D16/31945

20 April 2016

To the Heads of all agencies appearing before Senate Legislation Committees

Dear Agency Head

**RESCHEDULED 2016-17 BUDGET ESTIMATES HEARINGS**

The Senate agreed yesterday to reschedule the 2016-17 Budget estimates hearings in the following terms:

That—

- (1) The estimates hearings by legislation committees for 2016-17 Budget estimates be scheduled as follows:  
  
Thursday, 5 May (*Group A*), and  
Friday, 6 May (*Group B*);
- (2) The orders of the Senate of 26 August 2008 and 23 June 2015 relating to cross portfolio estimates hearings on Indigenous matters not be proceeded with for the Budget estimates 2016-17 only.
- (3) The committees consider the proposed expenditure in accordance with the allocation of departments and agencies to committees agreed to by the Senate.
- (4) The committees meet in the following groups:

**Group A:**

Environment and Communications  
Finance and Public Administration  
Legal and Constitutional Affairs  
Rural and Regional Affairs and Transport

**Group B:**

Community Affairs  
Economics  
Education and Employment  
Foreign Affairs, Defence and Trade.

(5) The committees report to the Senate by 11 May 2016.

(6) The Senate not meet on Thursday 5 May 2016.

In accordance with an [order of the Senate of 25 June 2014](#), I also draw your attention to the attached resolutions on the accountability of public officials.

Other resolutions relevant to the estimates process, all of which were agreed to on 25 June 2014, include:

- an order for production of documents which requires Ministers, on behalf of each agency or department, to table not later than 10 days before the estimates hearings a statement showing:
  - (a) the number of questions taken on notice at the previous round of estimates hearings;
  - (b) the number of answers provided to the committee by the date set by the committee for answers; and
  - (c) of those answers not provided to the committee by the due date, the dates on which answers were provided to the approving minister's office ([Procedural orders and resolutions of continuing effect no. 20B](#));
- a resolution declaring that declining to provide documents or answer questions on the basis that a freedom of information request has been made for the same information is an unacceptable response and is not supported by the FOI Act ([Procedural orders and resolution of continuing effect no. 52B](#));
- an order providing that legislation committees are required to hold an additional hearing if any three members of the committee notify the Chair that they require this to take further evidence ([Procedural orders and resolution of continuing effect no. 9B](#))

Should the Senate be dissolved, the legislation committees, along with all other committees, cease to operate. The effects of prorogation (without a dissolution) are outlined in my earlier advice of 30 March 2016.

Staff in the Committee Office secretariats who support the various legislation committees (which hold estimates hearings) are always available to answer any questions that you or your staff may have about these procedures. The Clerk Assistant Committees ( Brien Hallett, telephone (02) 6277 3371) and Senior Clerk of Committees (Jackie Morris, telephone (02) 6277 3506) can also provide further advice if needed.

Yours sincerely

(Rosemary Laing)

## **Legislation committees—Estimates hearings—Accountability**

That the Senate—

- (a) reaffirms:
  - (i) the principle, stated previously in resolutions of 9 December 1971, 23 October 1974, 18 September 1980, 4 June 1984, 29 May 1997 and 25 June 1998, that there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the Parliament or its committees unless the Parliament has expressly provided otherwise; and
  - (ii) its expectation that officers, including agency heads, will appear before committees in fulfilment of their accountability obligations, whenever their presence is requested by committees;
- (b) in relation to the provision of exceptions to the general principle reaffirmed in paragraph (a), notes and reaffirms:
  - (i) Privilege Resolution 1(16) which provides that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister;
  - (ii) the resolution of 16 July 1975, relating to the powers of the Senate and the accountability of witnesses, and requiring any claim to withhold information from the Senate to be based on an established ground; and
  - (iii) the order of 13 May 2009 setting out the proper process for raising public interest immunity claims;
- (c) notes that:
  - (i) the statutory values which Australian Public Service agency heads and employees are required to uphold include a requirement to be open and accountable to the Australian community under the law and within the framework of ministerial responsibility; and
  - (ii) the Constitutional framework of checks and balances under a separation of powers places the Parliament in prime position as the agent of accountability, representing the Australian people;
- (d) calls on the Government to issue a general instruction to all public service agency heads and employees about their duty to cooperate with parliamentary committee inquiries, including by formalising the revised guidelines for official witnesses appearing before parliamentary committees (last issued in 1989), a revised draft of which was provided to the Committee of Privileges in 2012 and considered in its 153rd Report; and

(e) requires:

- (i) the chairs of legislation committees considering estimates to draw the provisions of paragraphs (a) and (b) of this resolution to the attention of any witness who declines to provide information to a committee on any basis other than those specified; and
- (ii) the Clerk to draw this resolution, and the resolutions referred to in paragraph (b), to the attention of the heads of all agencies appearing before legislation committees, prior to each round of estimates.

*(Agreed to 25 June 2014.)*

### **Privilege Resolution 1**

#### **Procedure to be observed by Senate Committees for the protection of witnesses**

In their dealings with witnesses, all committees of the Senate shall observe the following procedures:

- (1) A witness shall be invited to attend a committee meeting to give evidence. A witness shall be summoned to appear (whether or not the witness was previously invited to appear) only where the committee has made a decision that the circumstances warrant the issue of a summons.
- (2) Where a committee desires that a witness produce documents relevant to the committee's inquiry, the witness shall be invited to do so, and an order that documents be produced shall be made (whether or not an invitation to produce documents has previously been made) only where the committee has made a decision that the circumstances warrant such an order.
- (3) A witness shall be given reasonable notice of a meeting at which the witness is to appear, and shall be supplied with a copy of the committee's order of reference, a statement of the matters expected to be dealt with during the witness's appearance, and a copy of these procedures. Where appropriate a witness shall be supplied with a transcript of relevant evidence already taken.
- (4) A witness shall be given opportunity to make a submission in writing before appearing to give oral evidence.
- (5) Where appropriate, reasonable opportunity shall be given for a witness to raise any matters of concern to the witness relating to the witness's submission or the evidence the witness is to give before the witness appears at a meeting.
- (6) A witness shall be given reasonable access to any documents that the witness has produced to a committee.

- (7) A witness shall be offered, before giving evidence, the opportunity to make application, before or during the hearing of the witness's evidence, for any or all of the witness's evidence to be heard in private session, and shall be invited to give reasons for any such application. If the application is not granted, the witness shall be notified of reasons for that decision.
- (8) Before giving any evidence in private session a witness shall be informed whether it is the intention of the committee to publish or present to the Senate all or part of that evidence, that it is within the power of the committee to do so, and that the Senate has the authority to order the production and publication of undisclosed evidence.
- (9) A chair of a committee shall take care to ensure that all questions put to witnesses are relevant to the committee's inquiry and that the information sought by those questions is necessary for the purpose of that inquiry. Where a member of a committee requests discussion of a ruling of the chair on this matter, the committee shall deliberate in private session and determine whether any question which is the subject of the ruling is to be permitted.
- (10) Where a witness objects to answering any question put to the witness on any ground, including the ground that the question is not relevant or that the answer may incriminate the witness, the witness shall be invited to state the ground upon which objection to answering the question is taken. Unless the committee determines immediately that the question should not be pressed, the committee shall then consider in private session whether it will insist upon an answer to the question, having regard to the relevance of the question to the committee's inquiry and the importance to the inquiry of the information sought by the question. If the committee determines that it requires an answer to the question, the witness shall be informed of that determination and the reasons for the determination, and shall be required to answer the question only in private session unless the committee determines that it is essential to the committee's inquiry that the question be answered in public session. Where a witness declines to answer a question to which a committee has required an answer, the committee shall report the facts to the Senate.
- (11) Where a committee has reason to believe that evidence about to be given may reflect adversely on a person, the committee shall give consideration to hearing that evidence in private session.
- (12) Where a witness gives evidence reflecting adversely on a person and the committee is not satisfied that that evidence is relevant to the committee's inquiry, the committee shall give consideration to expunging that evidence from the transcript of evidence, and to forbidding the publication of that evidence.
- (13) Where evidence is given which reflects adversely on a person and action of the kind referred to in paragraph (12) is not taken in respect of the evidence, the committee shall

provide reasonable opportunity for that person to have access to that evidence and to respond to that evidence by written submission and appearance before the committee.

- (14) A witness may make application to be accompanied by counsel and to consult counsel in the course of a meeting at which the witness appears. In considering such an application, a committee shall have regard to the need for the witness to be accompanied by counsel to ensure the proper protection of the witness. If an application is not granted, the witness shall be notified of reasons for that decision.
- (15) A witness accompanied by counsel shall be given reasonable opportunity to consult counsel during a meeting at which the witness appears.
- (16) An officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy, and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister.
- (17) Reasonable opportunity shall be afforded to witnesses to make corrections of errors of transcription in the transcript of their evidence and to put before a committee additional material supplementary to their evidence.
- (18) Where a committee has any reason to believe that any person has been improperly influenced in respect of evidence which may be given before the committee, or has been subjected to or threatened with any penalty or injury in respect of any evidence given, the committee shall take all reasonable steps to ascertain the facts of the matter. Where the committee considers that the facts disclose that a person may have been improperly influenced or subjected to or threatened with penalty or injury in respect of evidence which may be or has been given before the committee, the committee shall report the facts and its conclusions to the Senate.

*(Agreed 25 February 1988)*

### **Witnesses – powers of the Senate**

- (1) The Senate affirms that it possesses the powers and privileges of the House of Commons as conferred by section 49 of the Constitution and has the power to summon persons to answer questions and produce documents, files and papers.
- (2) Subject to the determination of all just and proper claims of privilege which may be made by persons summoned, it is the obligation of all such persons to answer questions and produce documents.
- (3) The fact that a person summoned is an officer of the Public Service, or that a question related to his departmental duties, or that a file is a departmental one does not, of itself, excuse or preclude an officer from answering the question or from producing the file or part of a file.

- (4) Upon a claim of privilege based on an established ground being made to any question or to the production of any documents, the Senate shall consider and determine each such claim.

*(Agreed 16 July 1975)*

### **Public interest immunity claims**

That the Senate—

- (a) notes that ministers and officers have continued to refuse to provide information to Senate committees without properly raising claims of public interest immunity as required by past resolutions of the Senate;
- (b) reaffirms the principles of past resolutions of the Senate by this order, to provide ministers and officers with guidance as to the proper process for raising public interest immunity claims and to consolidate those past resolutions of the Senate;
- (c) orders that the following operate as an order of continuing effect:
  - (1) If:
    - (a) a Senate committee, or a senator in the course of proceedings of a committee, requests information or a document from a Commonwealth department or agency; and
    - (b) an officer of the department or agency to whom the request is directed believes that it may not be in the public interest to disclose the information or document to the committee,  
  
the officer shall state to the committee the ground on which the officer believes that it may not be in the public interest to disclose the information or document to the committee, and specify the harm to the public interest that could result from the disclosure of the information or document.
  - (2) If, after receiving the officer's statement under paragraph (1), the committee or the senator requests the officer to refer the question of the disclosure of the information or document to a responsible minister, the officer shall refer that question to the minister.
  - (3) If a minister, on a reference by an officer under paragraph (2), concludes that it would not be in the public interest to disclose the information or document to the committee, the minister shall provide to the committee a statement of the ground for that conclusion, specifying the harm to the public interest that could result from the disclosure of the information or document.

- (4) A minister, in a statement under paragraph (3), shall indicate whether the harm to the public interest that could result from the disclosure of the information or document to the committee could result only from the publication of the information or document by the committee, or could result, equally or in part, from the disclosure of the information or document to the committee as in camera evidence.
  - (5) If, after considering a statement by a minister provided under paragraph (3), the committee concludes that the statement does not sufficiently justify the withholding of the information or document from the committee, the committee shall report the matter to the Senate.
  - (6) A decision by a committee not to report a matter to the Senate under paragraph (5) does not prevent a senator from raising the matter in the Senate in accordance with other procedures of the Senate.
  - (7) A statement that information or a document is not published, or is confidential, or consists of advice to, or internal deliberations of, government, in the absence of specification of the harm to the public interest that could result from the disclosure of the information or document, is not a statement that meets the requirements of paragraph (1) or (4).
  - (8) If a minister concludes that a statement under paragraph (3) should more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control, the minister shall inform the committee of that conclusion and the reason for that conclusion, and shall refer the matter to the head of the agency, who shall then be required to provide a statement in accordance with paragraph (3).
- (d) requires the Procedure Committee to review the operation of this order and report to the Senate by 20 August 2009.

*(Agreed 13 May 2009)*