

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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The two weeks of estimates hearings gave rise to a number of procedural points and also disclosed a significant amount of information about government activities.

PROCEDURAL POINTS

- There were some minor disputes about the relevance of questions, apparently because not everyone recalled that in 1999 the Senate, adopting the suggestion of the Procedure Committee, endorsed the following test of relevance of questions in estimates hearings:

Any questions going to the operations or financial positions of the departments and agencies which are seeking funds in the estimates are relevant questions for the purpose of estimates hearings.

Senator Ian Macdonald, whose claims that questions were not relevant to estimates led to the 1999 resolution, again refused to answer questions on the basis of this claim, and there were indications that the matter would be further pursued.

- Attention was drawn to the need for witnesses to distinguish clearly between objecting to a question or declining to answer it, which could invoke the process in paragraph (10) of Privilege Resolution No. 1, and asking that a question be referred to a minister or senior officer (paragraph (16) of the resolution) or taking a question on notice. Each of these courses has different implications.
- There were questions about departments using proceedings in estimates hearings to instigate police or other investigations of “leaks”. Departments appeared to be aware that they could not use committee proceedings as evidence in any legal action, but did not seem to appreciate fully that if the committee proceedings were the only evidence of the “leak” there would be no basis even to commence any such action, as the “leak” could not be proved.
- Committees expect that secretaries of departments will appear during estimates hearings. One departmental secretary appeared on the second day of hearings after inquiries were

made about his absence, and one appeared later on the same day after a temporary absence which attracted attention.

- A document may be presented to a committee during the hearings by leave of the committee or by a decision on motion. Documents tabled in estimates hearings are automatically published. There is no requirement for a senator to establish the provenance of a document which the senator seeks to table; it is for the committee to decide how much it needs to know about the document before allowing it to be tabled.
- The new provisions relating to chairs were used. One chair was temporarily absent and another senator was appointed to take the chair, but the absence became longer-term, the deputy chair did not wish to take the chair as she would be asking many questions, so the committee elected a replacement chair for a period.
- Under the new provisions relating to a quorum, it is open to the minister or parliamentary secretary in attendance to draw attention to the absence of a quorum, as any senator may do so. One parliamentary secretary did so, but it was pointed out that the new provisions also provide for a participating member to form a quorum, and a quorum was therefore present.

MATTERS EXAMINED

Finance and Public Administration

- the attempt by the government to “blackmail” (Senator Ray’s term) the Presiding Officers into paying for security out of existing budgets and to implement the Podger plan for amalgamation of the joint departments (this was also raised in other committees)
- the costs of the Governor-General’s resignation and replacement
- the Prime Minister’s hotel bill in Rome and other expenses
- further lessons of the “children overboard” affair for the functioning of the Public Service
- the relative ease with which major public works projects may be exempted from scrutiny by the Public Works Committee, as illustrated by the construction of the Christmas Island detention centre
- the overstatement of the Commonwealth’s net worth by the Department of Finance by several billion dollars because of overvaluing of Telstra

- the \$9 million owed by the Commonwealth to the ACT for emergency services, and the dispute about payment
- the need for greater transparency in special accounts
- the need for better accounting for superannuation liabilities

Environment, Communications, Information Technology and the Arts

- the Environment and Heritage Department tabled a simple guide to its Portfolio Budget Statements, an indication of the opaque character of those documents, and a helpful step which could be adopted by other departments
- the appearance, and extensive questioning, as in the past, of Telstra and Australia Post, though they have no money in the appropriation bills, on the basis that they are potential liabilities of government
- Australia Post declined to answer questions on its projected net profit on the basis of commercial confidentiality, and an indication was given that this matter would be further pursued
- the Australian Broadcasting Corporation was also extensively questioned, including on its contract remuneration for a television presenter (claims by the ABC to keep such remuneration secret led to conflicts with the Senate in the past and resolutions of the Senate relating to accountability of statutory bodies)

Legal and Constitutional

- the amendment of the Royal Letters Patent required to allow the Governor-General to “stand aside”
- further questioning on SIEVX (the asylum-seeker vessel which sank with great loss of life), including apparently inconsistent answers from the Australian Federal Police and further questions on overseas police operations
- detention by the United States of Australian citizens as “unlawful combatants” and the legal advice given to the government on the subject (the Attorney-General’s Department at first declined to confirm whether advice was given, but later took the question on notice)

- conditions in detention centres

Community Affairs

- the expenditure of large, indefinite sums on consultants to “sell” the government’s changes to Medicare, the legislation for which had not appeared
- the Therapeutic Goods Administration relented on a claim of confidentiality in respect of a consultant’s report on its performance and provided a copy to the committee
- alleged absence of “policing” of conditions of grants by the National Health and Medical Research Council and claims of misuse of grants

Rural and Regional Affairs and Transport

- it was revealed that an officer of the Department of Transport and Regional Services consulted accountants, allegedly insolvency experts, about the department’s financial position
- the financial position of Australian Wool Innovation, a private body funded by Commonwealth revenue, was questioned, and the committee may conduct a further inquiry into the matter
- the rejection within government of a plan to merge the Bureau of Rural Sciences and the Australian Bureau of Agricultural and Resource Economics (this led to the remarkable occurrence of the minister endorsing the decision by his departmental secretary not to merge the bodies)

Foreign Affairs, Defence and Trade

- the justification for the war in Iraq and the failure to locate weapons of mass destruction in Iraq
- the difficulties created by combining criminal investigations and public service disciplinary investigations of alleged “leaks” (the department was forced to withdraw one court action)

Economics

- at one stage Treasury officers appeared to claim that any requests for figures which were not disclosed in the budget papers or otherwise published would have to be referred to the Treasurer; subsequently it appeared that only particular requests would have to be referred, but several such questions were taken on notice for referral to the Treasurer, and it was pointed out that there may be a surprising new doctrine being developed

Employment, Workplace Relations and Education

- questions were asked about a consultancy report on higher education which has not been released, reviving memories of an earlier claim that information about higher education could not be released because this would undermine public confidence in the higher education sector.

SENATE DAILY SUMMARY

This bulletin provides Senate staff and others with a summary of procedurally significant occurrences in the Senate. 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, *Senate Daily Summary* may be reached through the Senate home page at www.aph.gov.au/senate

Inquiries: Clerk's Office
(02) 6277 3364