

The Senate

Economics Legislation Committee

Budget estimates 2004–05

June 2004

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Senate Economics Legislation Committee

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Senator O'Brien to replace Senator Webber for matters relating to tourism

Senator Fifield to replace Senator Chapman for the committee's consideration of the 2004-05 budget estimates from 31 May to 4 June 2004

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BUDGET ESTIMATES 2004-05

INTRODUCTION

1.1 On 11 May 2004, the Senate referred to the Committee for examination and report the following documents:

- Particulars of proposed expenditure for the service of the year ending on 30 June 2005;
- Particulars of certain proposed expenditure in respect of the year ending on 30 June 2005;

together with the:

- Particulars of certain proposed supplementary expenditure in respect of the year ending on 30 June 2004;
- Particulars of proposed supplementary expenditure in respect of the year ending on 30 June 2004; and
- The annual Tax Expenditures Statement.

1.2 The Committee is required to report to the Senate on or before 17 June 2004.

Portfolio coverage

1.3 In accordance with the allocation of portfolios to committees by the Senate on 13 February 2002, the Committee has responsibility for the departments and agencies in the portfolios of Industry, Tourism and Resources and the Treasury.

1.4 Appendix 1 lists the departments and agencies under the portfolios mentioned above.

Hearings

1.5 The Committee held public hearings from Monday 31 May to Friday 4 June 2004. Copies of the *Hansard* transcript of evidence from the hearings are available on the internet at <http://www.aph.gov.au/hansard>.

1.6 Further written explanations and answers to questions on notice from departments and agencies will be tabled in volumes entitled Additional Information.

1.7 The Committee received evidence from Senator the Hon Nick Minchin, Minister for Finance and Administration representing the Minister for Industry, Tourism and Resources, and Senator the Hon Helen Coonan, Minister for Revenue and Assistant Treasurer, and from officers of the departments and agencies concerned.

Questions on notice

1.8 The Committee is concerned about the late submission of some answers to questions placed on notice at the previous round of estimates.

1.9 The due date for submitting responses to questions on notice arising from the additional estimates hearings of February 2004 was Friday 2 April 2004. The Committee received answers from the Australian Taxation Office to certain questions as late as Wednesday 2 June, on the day that the ATO was due to appear for the budget estimates.

1.10 The Committee is concerned that the provision of answers to questions on notice on the very day of an agency's appearance gives Committee members almost no opportunity to consider those answers and ask any supplementary questions. Answers were also received after the due date from the Department of Industry, Tourism and Resources and the Department of the Treasury.

1.11 The Committee has set 16 July 2004 as the deadline for submitting answers to questions on notice arising from this estimates round, and requests that departments and agencies make every effort to meet this deadline.

Industry, Tourism and Resources portfolio

1.12 The Committee took evidence from the department and agencies in this portfolio area on Monday 31 May, Tuesday 1 June and, briefly, on Wednesday 2 June. The following agencies appeared before the Committee:

- Department of Industry, Tourism and Resources;
- Australian Tourist Commission;
- IP Australia;
- Geoscience Australia; and
- Biotechnology Australia.

Department of Industry, Tourism and Resources

1.13 Matters examined by members and other senators in attendance, in relation particularly to industry matters, included:

- research and development funding and private sector investment in R&D;
- performance of the Office of Small Business;
- advice given by ITR on the free trade agreement with the US and the proposed free trade agreement with China;
- Backing Australia's Ability; and
- the closure of the Mitsubishi engine plant in South Australia.

1.14 Matters examined by members and other senators in attendance, in relation particularly to resources matters, included:

- the Centroleum agreement;
- the Prime Minister's discussions in the USA on behalf of BHP;
- the East Timor maritime boundaries;
- the Oil Code; and
- funding and procedures for sports drugs testing by the Australian Government Analytical Laboratories (AGAL).

Australian Tourist Commission

1.15 Matters examined by members and other senators in attendance included:

- the new tourism advertising campaign;
- the formation of Tourism Australia,
- indigenous tourism and the numbers of indigenous staff; and
- the Fishing Hall of Fame.

IP Australia

1.16 Matters examined by members and other senators in attendance included:

- proposed legislative reforms to the Patents Act; and
- IP issues and the US-Australia free trade agreement.

Geoscience Australia

1.17 Matters examined by members and other senators in attendance included:

- lease arrangements for the building occupied by Geoscience Australia.

Biotechnology Australia

1.18 Matters examined by members and other senators in attendance focused on the activities and funding of the National Stem Cell Centre.

1.19 Senator Harradine had requested to be provided with a copy of the Deed of Agreement (including the Business Plan and milestones) between the Department of Industry, Tourism and Resources, the Australian Research Council and the National Stem Cell Centre at the supplementary estimates hearing in November 2003. The document had been provided, but with significant portions blacked out, because they were deemed by the Minister to be commercial-in-confidence.

1.20 Senator Harradine requested that a complete version of the document be provided and referred officers of the department to the procedural order of continuing effect (no.6), agreed to by the Senate on 30 October 2003, which states that a committee shall not entertain any claim to withhold information on the grounds that it is commercial-in-confidence, unless the claim is made by a minister and is accompanied by a statement setting out the basis for the claim.

1.21 Senator Harradine asked that the relevant minister make a statement setting out the basis for the claim to commercial-in-confidence. On the following day, the Hon Ian Macfarlane MP, Minister for Industry, Tourism and Resources wrote to the Committee, saying:

The basis for my determination is that the release of this information would prejudice the Centre's rights in its intellectual property and would be detrimental to the commercial strategies of the Centre, and their intentions regarding research. By providing valuable commercial advantage to competitors who are not subject to the same public disclosure of research directions, collaborations and intellectual property negotiations, the Government would be placing the Centre at a substantial disadvantage in achieving commercial outcomes. For example, provision of these documents would provide details of therapeutic targets and proposed commercialization activity which would be valuable to commercial competitors.

For these reasons, I do not propose to make this information available to the Senate...¹

1.22 Subsequently, the Committee received a letter signed by the Premiers of New South Wales, Queensland, South Australia and Victoria, the Deputy Chief Minister of the ACT, and the Minister for State Development of Western Australia, supporting Minister Macfarlane's view that the full business plan for the centre should not be released. The full text of the letter is at Appendix 2.

Treasury portfolio

1.23 The Committee took evidence from the department and agencies in this portfolio from Tuesday 1 June to Friday 4 June 2004. The following agencies appeared before the Committee:

- Australian Accounting Standards Board (AASB);
- Australian Competition and Consumer Commission (ACCC);
- Australian Prudential Regulation Authority (APRA);
- Australian Securities and Investment Commission (ASIC);
- Australian Taxation Office (ATO);
- Board of Taxation;
- Department of the Treasury; and
- Inspector-General of Taxation.

1 Correspondence, The Hon Ian Macfarlane MP, Minister for Industry, Tourism and Resources to Senator George Brandis, Chairman, Senate Economics Legislation Committee, dated 1 June 2004.

Australian Accounting Standards Board

1.24 The main issue raised in discussion with the AASB was the process of international accounting standards harmonisation.

1.25 Mr David Boymal, Chairman, Australian Accounting Standards Board, informed the Committee that the international accounting standards were finalised on 31 March 2004. The AASB is now in the process of promulgating the standards in the form required under Australian law. Mr Boymal advised that the standards will be completed by 30 June 2004, in time for gazettal in July 2004.² The standards will apply to Australian companies for the first financial period beginning after 1 January 2005.

1.26 The Committee had some concerns, however, at the fact that the AASB proposes to charge a \$44 annual fee to access supporting materials relating to international standards.³ The fee comprises recovery of the royalty charged by the International Accounting Standards Board to the AASB for the materials and recovery of the AASB's administration costs. Mr Boymal told the Committee that:

We have tried very hard to convince the International Accounting Standards Board that they should make these other two documents, the basis for conclusions and the application guidance, freely available. They, to this point in time, have not budged on that.⁴

1.27 The Committee notes and endorses the Minister's expressed view that 'I would like to see all efforts made to see how the additional information to which the waiver does not apply can be extended and I would be very supportive of any efforts that could achieve that outcome'.⁵

Australian Competition and Consumer Commission

1.28 Mr Graeme Samuel, Chairman, ACCC made a lengthy opening statement in which he noted the significant additional funding provided to the ACCC in the 2004-05 budget. He also outlined issues such 'the use of litigation in terrorem' by the ACCC to bring about timely settlements of disputes, the ACCC's campaign against property spruikers and get-rich-quick schemes, consumer protection, investigation of cartels, enhanced transparency and accountability in merger processes, the competition notice on Telstra, small business, unconscionable conduct provisions and collective negotiations.⁶

2 *Transcript of evidence*, Wednesday 2 June 2004 (Boymal), p.E67.

3 *Transcript of evidence*, Wednesday 2 June 2004 (Boymal), p.E73.

4 *Transcript of evidence*, Wednesday 2 June 2004 (Boymal), p.E74.

5 *Transcript of evidence*, Wednesday 2 June 2004 (Coonan), p.E75.

6 *Transcript of evidence*, Thursday 3 June 2004 (Samuel), pp.E2-E7.

- 1.29 Issues raised by members and other senators in attendance included:
- the current state of the ACCC's litigation program and its new litigation committee;
 - the impact of the US-Australia free trade agreement on Australian competition law;
 - ACCC action on property spruikers;
 - guidelines on transparency and accountability in merger negotiations;
 - collective bargaining;
 - the competition notice issued on Telstra;
 - criminal sanctions on cartels; and
 - voluntary codes.

Australian Prudential Regulation Authority (APRA)

1.30 Dr John Laker, Chairman, APRA made an opening statement outlining APRA's recent activities in reviewing the prudential regulation framework for insurers, the prudential regulation framework for superannuation, and APRA's activities in relation to the National Australia Bank (NAB).

1.31 APRA's report on the risk management and control weaknesses that allowed irregular trading in foreign currency options by NAB dealing staff was presented to a meeting of the NAB board and released by the board 24 March.

1.32 Dr Laker advised the Committee that the governance and risk management weaknesses identified in APRA's report were serious, and they warranted the supervisory action taken. At no stage, however, did the weaknesses threaten the bank's viability or its capacity to meet its obligations to depositors.

1.33 APRA has required NAB to submit detailed proposals on how it will implement the comprehensive remedial programs set out in the report and has agreed the broad timetable for this program with NAB. Dr Laker said that a key milestone in this process was the requirement that the NAB board approve and implement a revised set of market risk limits by 30 April, and that that milestone was met.

1.34 Members and other senators in attendance focused in their questioning on APRA's dealings with the NAB, as well as in-house investment rules for superannuation funds and low-doc loans.

Australian Securities and Investment Commission (ASIC)

1.35 Questions for ASIC focused on certain enforcement activities in relation to financial advisers and superannuation funds, disclosure of fees and charges, implementation of the new financial services licensing regime under the FSR Act, and work done by ASIC on property spruikers and 'get-rich-quick' schemes.

Board of Taxation

1.36 The main issue raised in questions to the Board of Taxation concerned the decision of the government not to proceed with the charities definition bill following consultation on the exposure draft. The Board had consulted with charities on the bill and presented a report to the Treasurer, which was released on budget night.

1.37 The Committee questioned the Secretary to the Board, Mr Bruce Paine, on the Board's view of the government's decision but he referred the Committee to the Treasurer's press release. Members of the Committee, including the Acting Chair, expressed some concern that the Chairman of the Board of Taxation had not appeared to answer questions.

Department of the Treasury and the Australian Taxation Office

1.38 Matters on which the Treasury Department was questioned included IMF macroeconomic modelling techniques, the question of the appropriate size of the budget surplus over the economic cycle, the impact of geopolitical risks such as SARS and terrorism, house prices and household debt, unemployment and the long term unemployed, a national unitary industrial relations system and intergenerational policy. Further issues discussed were the Trade Practices Act and the Dawson report, competition policy, regulation of the insurance industry, insolvency issues, consumer protection and health warnings related to tobacco.

1.39 The Treasury Department, together with the Australian Taxation Office, was also questioned on taxation and intergenerational issues, infrastructure development, the baby bonus and maternity payments, tax file numbers for illegal immigrants, rental losses, RBL compression, the definition of charities, family tax benefits, IT arrangements at the ATO, petroleum resource rent tax, income tax cuts, tax expenditures, tax measures relating to wine, enforcement issues, and the costing of a number of superannuation measures.

Inspector-General of Taxation

1.40 Issues raised by members and other senators in attendance included:

- GST refunds and BAS compliance;
- small business debt levels and collections; and
- general interest charge;

Procedural matters

1.41 An issue that arose on a number of occasions during the Budget Estimates concerned whether officials should be required to provide information about assumptions underlying the forward estimates or unpublished data underlying, but not printed in, the budget.

1.42 The Committee notes that the *Standing Orders and other orders of the Senate* (February 2004) contain two directions relevant to these matters.

1.43 The first, resolution 38 dated 25 June 1998 in Resolutions Expressing Opinions of the Senate, states 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'.

1.44 The second, Parliamentary Privilege Resolutions Agreed to by the Senate on 25 February 1988 no. 1(16), states 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'.

1.45 When requested to provide such unpublished information, a number of witnesses chose to refer the matter to the Minister. Some members of the Committee expressed concern that, as in the past, information would not subsequently be provided.

SENATOR GEORGE BRANDIS
Chair

RESERVATION TO THE ECONOMICS LEGISLATION COMMITTEE REPORT ON THE BUDGET ESTIMATES 2004-05

BIOTECHNOLOGY AUSTRALIA

Evidence was given at the hearings of the Department of Industry, Tourism and Resources in relation to proposed funding for the National Stem Cell Centre (NSCC) that:

- There had been a significant expansion of funding for the Centre from \$43.55 million to \$101.45 million;
- Funding for the Centre is committed to the financial year 2010-11;
- The funding is to a private company, the National Stem Cell Centre, for undisclosed purposes and projects far into the future;
- The funding was granted without any evaluation of the success or operation of the National Stem Cell Centre, without recommendation for extra funding from a funding committee and without a request from the NSCC.

It is of concern that officers present at the Estimates hearings of the Committee were unable to say when the Government first advised that extra money was to be given to the NSCC and were also unable to advise when they started working on this grant.

Officers admitted that there has been no evaluation of the Centre, no application for funding by the Centre and no funding committee consideration of this major additional grant of public money. The Government has, of its own volition, decided to fund the Centre for the next five years with an extra \$57.9 million, taking the total Commonwealth grant to the NSCC to \$101.45 million.

When questioned on whether the NSCC had any achievements to report, officers said that the NSCC reported its achievements against milestones. Officers declined to give details of the milestones the NSCC must meet as part of its reporting requirements, claiming the information was regarded as commercially sensitive. The issue was referred to the Minister.

The Minister is claiming in his letter of 1 June 2004 that information on this substantial grant cannot be released because it is commercially sensitive. This includes the information deleted from the Deed of Agreement (including the Business Plan and milestones) between the Department of Industry, Tourism and Resources, the Australian Research Council and the National Stem Cell Centre. What is particularly disturbing is that this information is being denied in relation to a line of research which is of serious concern to many in the community and which is surrounded by significant ethical sensitivities.

I note the advice of Clerk of the Senate Harry Evans to the Chair of the Economics Legislation Committee that "it is open to a committee to reject a claim of commercial

confidentiality”, even if a Minister provides a statement setting out the basis for a claim of commercial-in-confidence.

I reject the claim made by the Minister in his letter that this information is commercial-in-confidence. It is a corollary of accepting public money that the funds will be accountable to the public. The provision of public money places the company in a favoured and privileged position in the marketplace. It is reasonable to expect the Centre to disclose what it has done and intends to do with the money. The Minister and the company also have an obligation to satisfy legitimate public concern on the allocation of such a significant amount of money to such sensitive and ethically contentious matters.

I have serious reservations about spending public money in the absence of accountability to the public through Parliament. Further, I reserve the right to request the Senate to have the Committee reconvene so that this matter can be further explored. I am also considering calling for a committee of the whole stage on the Appropriation Bills so that the matter can be further considered. This would involve circulating an amendment to limit the funding of the National Stem Cell Centre until such time as a public evaluation is available in relation to the work it has done and the work it proposes to do with this public money.

Brian Harradine
Senator for Tasmania

APPENDIX 1

Industry, Tourism and Resources portfolio

Australian Tourist Commission

Department of Industry, Tourism and Resources

Geoscience Australia

IP Australia

National Standards Commission

Treasury portfolio

Australian Accounting Standards Board

Australian Bureau of Statistics

Australian Competition and Consumer Commission

Australian Office of Financial Management

Australian Prudential Regulation Authority

Australian Reinsurance Pool Corporation

Australian Securities and Investment Commission

Australian Taxation Office

Board of Taxation

Corporations and Markets Advisory Committee

Inspector General of Taxation

National Competition Council

Productivity Commission

Treasury

