



DEPARTMENT OF THE SENATE

PROCEDURAL INFORMATION BULLETIN

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For the Budget Estimates Hearings 25 May to 5 June 2015

OVERVIEW

In a close imitation of last year's Budget Estimates hearings, there were again numerous early finishes and only one committee used the opportunity of a spill-over Friday hearing, with the Community Affairs Legislation Committee again meeting on Friday 5 June for four hours to complete its examination of child care programs in the Department of Social Services. There may, however, be other additional hearings pursuant to the order of the Senate of 25 June 2014 providing for such additional hearings at times other than on designated spill-over days.

Generally, there appeared to be fewer complaints expressed about the impact of the year-old amendment of standing order 26 which keeps programs before the committee until senators have finished their questions or agreed to put them on notice, or the committee has programmed additional hearings for that purpose. However, government senators used their numbers to conclude questions on one area of the Attorney-General's Department while other senators still had questions to ask, by moving in a private meeting that remaining questions be dealt with at a spill-over day on a date and for a period to be determined (L&CA, 27/5).

Witnesses were again heard by teleconference (Ec, 3/6) and Deputy Chairs filled in for Chairs on several occasions for short periods of time, although Government senators were also appointed to the role in accordance with standing order 25(9)(f).

Overlap with a select committee inquiry (Recent Allegations relating to Conditions and Circumstances at the Regional Processing Centre in Nauru) again caused some difficulties in separating estimates questions from questions more appropriately asked in the select committee, a matter on which the chair of the relevant committee took a fairly hard line (L&CA, 25-6/5).

OPINIONS

At some hearings, statutory officers, departmental secretaries, and other senior officers freely shared their expertise and views with senators while avoiding giving opinions on matters of government policy. At others, objections were taken to questions seeking any kind of opinion, possibly in an attempt to apply the rules for questions in standing order 73, or possibly as another example of function creep that applies rules to matters never intended to be covered by them.

In relation to standing order 73, while that standing order does set out a number of impermissible inclusions in questions (most of which are ignored by the framers of questions without notice on any day), the general rule is modified by the specific principle, endorsed by the Senate on 22 November 1999, that any questions going to the operations or financial positions of departments and agencies are relevant questions for the purposes of estimates hearings. Standing order 73 may also be the source of the frequently-heard objection that a question is hypothetical.

STATUTORY OFFICERS

The position of statutory officers was the subject of consideration in some committees following an incident during additional estimates hearings when a departmental secretary attempted to intervene to prevent an independent statutory officer from answering a question. Numerous Senate resolutions have stressed the accountability of statutory authorities for their expenditure of public funds.

In this round of hearings, the appropriateness of statutory officers making public interest immunity claims arose when a minister disowned a claim made by a statutory officer in answers to questions on notice from the previous round, apparently on the basis that such claims could only be made by ministers and not by statutory officers unless the minister had approved it (L&CA, 28/5). However, the minister conceded that it was a matter for the committee.

Paragraph (c)(8) the order of the Senate of 13 May 2009 recognises that there are circumstances in which a public interest immunity claim might more appropriately be made by the head of an agency, by reason of the independence of that agency from ministerial direction or control:

- (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).

Where an Act of Parliament establishes an independent statutory authority and the minister is given no power of direction over the statutory officer or officers, the Senate has readily acknowledged that there will be occasions when it is appropriate for an independent statutory officeholder to make a public interest immunity claim directly.

In this case, the President of the Human Rights Commission had consulted the Attorney-General's Department, in accordance with instructions in the *Government Guidelines for Official Witnesses appearing before Parliamentary Committees and related matters*, and had acted in accordance with the department's advice.

The question of the relationship between ministers and statutory officers and who should answer questions arose in several committees (E&E, 2/6). Similar issues arose in questioning of the Inspector-General of Intelligence and Security (F&PA, 25/5) when the minister stated that all questions on a sensitive matter would be taken on notice, claiming that all questions at estimates are directed through the minister at the table. The terms of standing order 26(5), referring to committees seeking explanations from ministers in the Senate *or* officers, together with the independent statutory functions which legislation confers on statutory officers and authorities, indicate a contrary position.

In contrast, in another committee (Ec, 1/6) the minister left the table to emphasise the independence of the Reserve Bank when officers of that institution appeared before the committee.

A statutory officer with a dual role appeared before the Finance and Public Administration Committee twice on 25 May, first, as Parliamentary Service Commissioner with the Department of Parliamentary Services to answer questions about the termination of the appointment of the former secretary, and secondly, as Public Service Commissioner as one of the Prime Minister and Cabinet portfolio agencies, where he answered questions about progress – or lack thereof – on agency bargaining.

PUBLIC INTEREST IMMUNITY CLAIMS

As has become almost universal practice, most questions involving any possibility of a public interest immunity issue were taken on notice. In at least one case (E&E, 3/6), the possible ground for the claim was also taken on notice, a move that was queried but for which there are many precedents. In other cases, grounds for not answering questions were loosely articulated but not pressed by senators, including cases where officers advanced grounds that have been explicitly rejected by the Senate, such as the refusal of an FOI request for the same information (E&C, 26/5).

A discussion took place in the Environment and Communications Legislation Committee on 26 May about the receipt of commercially sensitive information from Australia Post, noting the inability of estimates committees to receive information in confidence. Other options canvassed included receiving the information in another mode (for example under standing order 25(2), or in a private briefing. Commercial confidentiality was also cited as the reason for not providing parts of the forensic audit of the Australian Submarine Corporation to the Finance and Public Administration Legislation Committee (27/5).

Despite concerted efforts by the Senate and senators over many years, some ministers still persist in claiming an independent discretion to refuse to answer questions or provide information without making a public interest immunity claim. Thus no reason was given, apart from “longstanding practice” for a refusal to disclose the remuneration being paid to a Royal Commissioner.

An unusual and scarcely justifiable refusal involved information about government responses to two reports of the Community Affairs References Committee. Officials declined to provide information on the grounds that it was advice to government.

Questions about the impact of the *Williams* decisions on funding programs involving benefits to students were answered by Education Department officials on 4 June (E&E). In contrast, questions to the Department of Social Services about the impact of *Williams* on funding for housing and homelessness advocacy services ran into claims that answers could disclose legal advice.

Whether private conversations between the departmental secretary and an ambassador about an airport incident could possibly attract any public interest immunity ground was eventually taken on notice after the secretary attempted to advance an argument along worn candour and frankness lines (FADT, 3/6).

TO LOSE ONE BRIEFCASE ...

The importance of correcting evidence at the earliest opportunity, either by correcting the *Hansard* or providing a clarification or correction of evidence that was incorrect (as opposed to incorrectly transcribed), was highlighted by two episodes involving senior officers of the Attorney-General's Department and their evidence to the Legal and Constitutional Affairs Committee.

The first issue arose from evidence at the Additional Estimates hearings in February (see [Bulletin No. 290](#)) to the effect that the Secretary had lost notes of a conversation with the President of the Human Rights Commission, "losing my briefcase by mistake". It appeared that this was a mistranscription and that there had been no lost briefcase. Two months later the Secretary provided to the committee a clarification of the briefcase issue, along with a copy of notes made for the Attorney-General about the conversation that had been released under FOI. Not surprisingly, questions were asked at the hearing about both matters and senators informed the Secretary about the process for correcting the committee *Hansard* (a matter covered in part 5.6 of the [Government Guidelines for official witnesses before parliamentary committees and related matters](#)).

In the second episode, concerning the Man Haron Monis letter to the Attorney-General (which had come to light during the inquest into the Lindt Café siege), both the Attorney-General and a Deputy Secretary gave evidence on 27 May that the letter had been provided to the cross-jurisdictional task force set up in the aftermath of the siege. It had not, although in the meantime the Minister for Foreign Affairs had relied on this evidence in answering a question in the House. Clarifications were provided by all three to either the committee or the House on 4 June.

ACCOUNTABILITY

Estimates hearings are among the most valuable of democratic tools – in the main, far more useful than the Parliament's own flagship program, Question Time, in helping the public understand what is actually going on.

Neil McMahon, The Age, 4/6/15, p. 8.

Many areas of government finances and operations were canvassed during the two week of hearings. As a result, we now know more about the following matters:

- dress standards at the Department of Immigration and Border Protection (L&CA, 25/5)
- penalties for not declaring unauthorised international arrivals in the form of two Yorkshire terriers (RRAT, 25/5)
- the relationship between the new National Counter-Terrorism Co-ordinator and the National Security Adviser (F&PA, 25/5)
- Bureau of Meteorology views on climate change and the development of a new El Nino weather event (E&C, 25/5)
- the cost of security upgrades at Parliament House (F&PA, 25/5)

- quantities of crystal methamphetamine arriving in Australia (L&CA, 25/5)
- the imminent habitability of the Lodge (F&PA, 26/5)
- the still-being-workshopped purchase of a Thermomix or comparable contraption for Government House (F&PA, 27/5)
- programming decisions at SBS, including the commissioning of Struggle Street, and, in a similar vein, the perennial issue of bias and the ABC (E&C, 27/5)
- the removal of some arts funding from dispersal by the Australia Council (E&C, 27/5)
- continuing fallout from the ILC's purchase of the Ayers Rock Resort (F&PA, 29/5)
- the ongoing travails of the yet to be wound up Office of the Australian Information Commissioner (L&CA, 28/5)
- the informally named "Project Tetris" to encourage vacant Commonwealth Office space to be filled in (F&PA, 28/5)
- how a letter to the Attorney-General from Lindt Café siege perpetrator Man Haron Monis was handled (L&CA, 28/5)
- possible electoral fraud in the Federal seat of Indi (F&PA, 28/5)
- progress on Defence Force investigations of abuse claims (FADT, 1/6)
- the cost of abolishing Medicare locals (CA, 1/6)
- the submarine replacement project (FADT, 1/6)
- is there a housing bubble? (Ec, 1/6)
- the gap between the official interest rate and rates charged on credit cards (Ec, 1/6)
- changes in the accounting treatment of Future Fund earnings (Ec, 1/6)
- free range chickens and food labelling (Ec, 2/6)
- the potential for funds to flow through charities to terrorist organisations (Ec, 3/6)
- the scale of fraud in the Defence Department (FADT, 3/6)
- threats to staff at the Fair Work Building and Construction Commission (E&E, 2/6)
- multinational tax fraud (Ec, 2/6)
- ASIC's campaign to improve corporate culture (Ec, 3/6)
- possible criminal investigation of events surrounding the Football Federation of Australia's World Cup Bid (CA, 3/6)
- developments in the South China Sea in the context of regional security (FADT, 3/6)
- Department of Foreign Affairs and Trade staffing review of overseas deployments (FADT, 3/6)

- workers' compensation premiums at the ATO (Ec, 4/6), a matter covered in several other committees in respect of other agencies
- the impact of the new paid parental leave scheme on low-paid women (CA, 4/6)
- proposed cuts to job creation pilot programs in Tasmania (E&E, 4/6).

RELATED RESOURCES

The [Dynamic Red](#) records proceedings in the Senate as they happen each day.

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, these documents may be reached through the Senate home page at http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures.

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