

Dear Ms Dunstone,

I understand that earlier today the Legal and Constitutional Affairs Committee considered whether an officer of the Home Affairs department could be asked to appear to answer estimates questions relating to a responsibilities held in a previous position with the department. You have asked for advice on the matter to pass on to interested senators.

Standing order 26(5) provides that committees may ask for explanations from ministers in the Senate, or officers, relating to items of proposed expenditure. The Senate has taken a wide view of what 'relating to' means and adopted the following test in 1999 on the recommendation of the Procedure Committee:

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.

Although 'officer' is not defined in the standing orders, it has been taken, in practice, to mean any person employed in a publicly funded agency. It is usually the current senior officers of an agency who attend estimates hearings because they have knowledge of, and responsibility for administering, the various programs within the agency. However, there would be nothing to stop a committee requesting that a person with prior knowledge of these matters appear, if that person has subsequently moved to another position and is still an 'officer' within the meaning of standing order 26(5). Of course, such an officer would be able to avail themselves of the provision in Senate privilege resolution 1(16) allowing them to refer questions to a more senior officer at the table or the minister.

Under standing order 25(15), legislation committees have power to call for persons and documents, although legislation committees considering estimates have not generally used this power. Committees have often requested the attendance of particular officers and ministers have often cooperated with such requests. On occasion, the Senate has ordered that specific officers attend to answer questions on a particular area. On other occasions, the Senate has ordered the relevant officers to attend a reconvened estimates hearing, placing responsibility on the minister to ensure that the officers who attend are the relevant ones to answer questions on the specified area.

In short, there is no procedural barrier to an officer being questioned about the objectives, operational procedures and efficiency of the programs for which they were formerly responsible. However, I cannot bring to mind an example of this occurring, other than one case in 2018 when the Senate directed a committee to request (rather than require) the attendance of persons who were formerly officers of a department allocated to a committee, one of whom attended and answered questions.

Please let me know if I can provide any further assistance on this matter.

Richard

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