

Reservation by Labor Senators

Refusal to answer a question

1. At the hearing on 17 February 2005, during questions relating to the Iraq Survey Group, an officer of the Department of Foreign Affairs and Trade indicated that he had made a communication by telephone with the office of the Minister for Foreign Affairs. Subsequently, the officer declined to answer further questions to confirm the mode of the communication. It is emphasised that the questions went only to the mode of communication, not to the content of the communication.

2. The officer did not give any reason for declining to answer those questions. The minister representing the Minister for Foreign Affairs, Senator Hill, supported the officer in his refusal to answer the questions, on the basis that, if the officer felt uncomfortable about answering the questions, he should not be required to answer them. Senator Hill also did not give any reason for a refusal to answer the questions, apart from speculating that the reason might be "the privacy of communications between the officer and his minister".¹

3. Over many years, going back to 1971, the Senate has passed, and reiterated, resolutions to the effect that officers do not have a discretion to decline to answer questions.² On 16 July 1975 the Senate resolved that it is for the Senate to determine any claim by the executive government to be excused from answering questions or producing any documents on specified grounds.³

4. On 22 November 1999 the Senate resolved, by adopting a report of the Procedure Committee, that all questions going to the operations of departments are relevant questions for the purposes of estimates hearings.⁴ Privilege Resolution No. 1 of the Senate, in paragraph (10), provides that, if a witness declines to answer a question, the witness should state the ground of the objection to the question so that the committee can consider the objection. Particularly at estimates hearings, ministers are expected to take responsibility for decisions about whether questions to ministers or officers are to be answered, and to state grounds for any ministerial refusal to answer a question.

5. It is expected that a refusal by a minister to have a question answered will be taken on a claim for public interest immunity, that is, that it would be contrary to the public interest to answer a particular question on specified grounds. This expectation is reflected in the resolution of the Senate of 30 October 2003, which provides that a claim to withhold information from the Senate or a committee on the ground of commercial confidentiality must be made by a minister and be accompanied by a statement setting out the basis for the claim.⁵

¹ *Proof Committee Hansard*, 17 February 2005, pp. 46–50.

² *Standing Orders and other orders of the Senate*, November 2004, pp. 134–136.

³ *Standing Orders and other orders of the Senate*, November 2004, p. 130.

⁴ *Odgers' Australian Senate Practice*, 11th ed, 2004, p. 367.

⁵ *Standing Orders and other orders of the Senate*, November 2004, p. 121.

6. It would be highly detrimental to the proceedings of the Senate and its committees if ministers were to fall into the habit of refusing to answer questions without stating any public interest grounds for such a refusal. It is equally undesirable that ministers should advance grounds unrelated to the public interest, such as that an officer feels uncomfortable with a question. It is perfectly reasonable for a minister to consider a question and subsequently report to the committee where the minister wishes to advance any claim for public interest immunity in relation to the question. It should not be acceptable for a minister simply to refuse to answer a question without advancing any public interest ground for such a claim.

7. It is therefore recommended that the Senate reiterate the following principles in relation to proceedings of its committees:

- (a) ministers and officers do not have a discretion to decline to answer relevant questions;
- (b) any refusal to answer a relevant question should be made by a minister on the basis of a properly advanced claim of public interest immunity based on specified grounds; and
- (c) it is for the committee in the first instance and the Senate ultimately to consider whether a properly advanced claim of public interest immunity is to be sustained.



Senator Steve Hutchins



Senator Sue Mackay