

DEPARTMENT OF THE SENATE PROCEDURAL INFORMATION BULLETIN

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ESTIMATES HEARINGS

During question time in the House of Representatives on 15 February the Prime Minister declined to answer questions about whether Australian personnel were involved in interrogation of prisoners in Iraq, on the basis that the questions would be answered in the estimates hearings. This was taken by some to be an indication that the government will fully cooperate with, and support, estimates hearings in the future, but such a conclusion may be premature if not naïve.

At the estimates hearings for the Department of Defence, the minister, Senator Hill, who had stated that Australian personnel were not involved in interrogations, explained that they had been involved in "interviews" of prisoners. It is not clear whether this is a victory for accountability in disclosing information otherwise unknown.

PROCEDURAL ISSUES

The following procedural issues arose during the estimates hearings:

- (1) There was a reminder that the right of reply procedure in Privilege Resolution No. 1 applies to estimates hearings, as well as other committee proceedings, when the heads of the Australian Security and Intelligence Organisation and the Australian Federal Police made allegations that the former Guantanamo Bay prisoner, Mamdouh Habib, was associated with terrorist organisations. The committee duly wrote to Mr Habib to invite him to make a written response if he chooses to do so.
- (2) The tardiness of departments in answering questions on notice was the subject of questioning. Some questions were still outstanding from the main estimates hearings in May and June last year, as well as from the special procedure for questions on notice adopted in November (see Bulletin No. 186, p. 4). The familiar problem of answers languishing in ministers' officers was observed. Answers to Senator Murray's questions

to all departments about departmental advertising campaigns were apparently being "cleared" through the Department of the Prime Minister and Cabinet.

- (3) Having referred to a communication with the minister's office, an officer of the Department of Foreign Affairs and Trade subsequently declined to answer a question about the mode of the communication, supported by the minister, who also declined to provide any ground for the refusal to answer the question.
- (4) A claim of commercial confidentiality was made in relation to companies importing Brazilian beef, but when the minister was reminded of the Senate's resolution of 30 October 2003, requiring ministers to state grounds for any such claim, the question was taken on notice. This does not, on past experience, necessarily indicate an intention to answer the question; there may be a general tendency to take some questions on notice without an intention to answer them.
- (5) The Legal and Constitutional Legislation Committee declined an offer for a document to be made available on a confidential basis, in accordance with the rule in standing order 26(2) that all estimates evidence must be received in public.
- (6) An officer of the Australian Competition and Consumer Commission repeatedly drew attention to the lack of a quorum when senators were temporarily absent from the hearing. Although only senators can do so, the committee accepted its obligation to keep a quorum. The officer concerned appears to have read something about doubts about parliamentary privilege applying to an inquorate committee, although he misunderstood the standing orders. As in previous hearings, the Commission was extensively questioned about its activities.
- (7) As on previous occasions, the Portfolio Additional Estimates Statements were observed to give very little guidance as to the actual expenditure and activities of agencies. On the other hand, the late tabling of those documents was the subject of complaint.
- (8) There was discontent with the Australian Securities and Investments Commission over the absence of officers who could answer the questions put by senators.
- (9) In following up Auditor-General's reports on special appropriations and government investments, senators asked about the implications of expenditures which were unlawful under section 83 of the Constitution. Ministers and agencies appear to adopt the view that such Audit reports should be described as being about technical accounting matters.

- (10) The transfer of programs between departments caused difficulties in the Community Affairs and Finance and Public Administration committees, with the latter committee having more programs than it could effectively deal with. It appears that the details of the administrative arrangements made after the last election are still unclear.
- (11) The Department of Finance and Administration refused to provide details for a consultancy fee paid to one of its former officers until the report of the consultancy is complete. No ground was stated for this refusal.
- (12) The Office of National Assessments was questioned about its failure to produce an annual report.
- (13) Many questions were asked about expenditures under the Regional Partnerships Program, partly based on information arising from the inquiry by the Finance and Public Administration References Committee into the program. There is nothing to prevent senators basing estimates questions on information arising from public inquiries by other committees.

MATTERS EXAMINED

As in the recent past, the estimates hearings were used as an opportunity to gain further information about matters of controversy. Matters examined included:

- the Cornelia Rau affair
- the Mamdouh Habib affair
- the Windsor/Regional Partnerships Program affair
- the financial state of universities (a subject with a long history in the Senate)
- the long-vexed question of the administration of the superannuation surcharge (the Australian Taxation Office confessed to shortcomings in the administration of the tax)
- government grants of all kinds apparently favouring groups on the same ideological and religious wavelength as the government
- the state of the Department of Defence financial accounts and when they are likely to be in order.

OTHER COMMITTEES

The Chief Minister for the Australian Capital Territory appeared and gave evidence before the Senate Select Committee on the Administration of Indigenous Affairs on 4 February in the course of an extensive set of hearings on the subject.

SENATE

FINANCIAL CONTROL

Attention was directed to two Auditor-General's reports, one on special appropriations and one on investments by government agencies, both disclosing widespread illegalities, lack of appropriate information and absence of accountability and control. The report on special appropriations verified the traditional parliamentary concern with these appropriations (see *Odgers*, 11th, pp 288-290). The reports were the subject of debate in the Senate and questioning in the estimates hearings, particularly of the Department of Finance and Administration, which promised that controls and scrutiny would be improved.

DELEGATED LEGISLATION

Instruments made under the Legislative Instruments Act 2003, which came into effect on 1 January 2005, are now appearing in large numbers, identified by their Federal Register of Legislative Instruments numbers, and with their now mandatory explanatory statements.

A disallowance motion was moved as a formal motion by Senator Ridgeway on 8 February and negatived. Presumably he knew that the motion was not going to attract support and was content not to debate it, although the absence of debate deprives the public of reasons for opposition to, and support of, the instrument.

LEGISLATION

A large number of mainly uncontroversial bills was passed.

The government appeared to accept an Opposition amendment of the Tax Laws Amendment (Long-term Non-reviewable Contracts) Bill and another to the Bankruptcy and Family Law Legislation Amendment Bill, but the latter amendment was subsequently rejected by the government in the House of Representatives.

WAR POWER

A Democrats' bill, which has been on the Notice Paper for many years, long before the Iraq war, to provide for parliamentary supervision of the executive government's war-making power, was debated on 10 February, but "talked out".

ADDRESS-IN-REPLY AMENDED

The address-in-reply to the Governor-General's opening speech was amended on 10 February, the amendment expressing disapproval of the government's policy in relation to the Kyoto Protocol. The address-in-reply has been amended on previous occasions, and in that case is presented to the Governor-General in the amended form. In the past the response by the Governor-General has contained some phrase to the effect that he adheres to the views of his ministers rather than those of the Senate.

TEMPORARY PROCEDURAL ORDERS

The temporary orders relating to divisions on Thursdays and the adjournment debate on Tuesdays, which were enforced last year, were renewed on 9 February, but only for 2005.

ACCOUNTABILITY REPORT

The estimates hearings lived up to their usual form of disclosing a large amount of information which would otherwise be unavailable. Once again it was demonstrated that their effectiveness consists of the ability to directly question officers about the expenditures and activities of departments.

On the other hand, the hearings exposed an increasing tendency on the part of ministers to flatly refuse to answer questions without expounding any public interest grounds for their refusal.

SENATE DAILY SUMMARY

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

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