



DEPARTMENT OF THE SENATE

PROCEDURAL INFORMATION BULLETIN

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For Additional Estimates hearings 23 to 27 February 2015
and for the sitting period 2 to 5 March 2015

ADDITIONAL ESTIMATES HEARINGS 23–27 FEBRUARY 2015

This was the second round of hearings conducted in accordance with new rules and orders agreed to by the Senate in June 2014. While some committees proceeded without incident, other hearings were marked by controversy. The new rules which provide for matters to remain open as long as senators have questions to ask resulted in some scheduling difficulties but, in a small number of cases, additional or spill-over hearings were organised. Nevertheless, some senators expressed dissatisfaction with what was alleged to be the removal of a committee's ability to keep to an agreed program.

The new continuing order for the production of information about answers to Estimates questions taken on notice appears to have had the desired effect of improving the response rate of agencies, with fewer answers outstanding at the start of the latest round than has been the case in the past. However, at the hearing of the Finance and Public Administration Legislation Committee on Indigenous matters on 27 February, a senator asking about the late provision of answers to questions on notice was able to identify the source of the delay as the minister's office. The minister undertook to investigate the matter and indicated to the committee that it would not occur again.

INDEPENDENT STATUTORY OFFICERS

One of the more controversial hearings involved the lengthy examination of the President of the Australian Human Rights Commission who appeared before the Legal and Constitutional Affairs Legislation Committee on 24 February, together with the Attorney-General and the Secretary of the Attorney-General's Department. The Commission will return for an additional hearing at another time. The committee questioned the President, the Secretary and the Attorney-General on an allegation that the Attorney-General had, via the Secretary, sought the President's resignation. Whether an alternative role was offered to the President was also canvassed widely, together with the Commission's report on children in immigration detention, the timing of which had also been the subject of questions at the previous round of estimates. These matters were debated extensively again in the Senate the following week during debate on a motion to censure the Attorney-General for, among other things, failing to defend the President from attack and seeking to obtain her resignation (see below under Censure of a minister).

In another committee, the Secretary of the Department of Finance attempted to intervene to prevent another independent statutory officer, the Australian Electoral Commissioner, from answering a question. There would appear to be no basis for a minister to attempt to censor an independent statutory officer, let alone the Secretary of a Department.

WITHHOLDING OF ANSWERS

In most committees, the usual refrains of "advice to government" and "commercial-in-confidence" were brought out to justify non-provision of information to committees but there were no explicit public interest immunity claims made because, if difficulties arose, the questions were taken on notice. The exception occurred in the Legal and Constitutional Affairs Legislation Committee's hearing on 23 February when the minister at the table and the Secretary of the Department of Immigration and Border Protection relied on a previous claim of public interest immunity and the government's position that it would not comment on "operational matters" to resist providing information about the cost of boats involved in Operation Sovereign Borders.

Invasion of privacy was generally acknowledged as a legitimate ground for not providing particular answers and questions were not pressed, but an officer appearing before the Education and Employment Legislation Committee who claimed that providing an answer may prejudice ongoing working relationships with the police was asked to provide a statement of the grounds for non-disclosure in this instance, specifying the harm that disclosure might cause. The question was taken on notice.

APPLICATION OF STANDING ORDERS TO ESTIMATES HEARINGS

During questioning of the ACCC by the Economics Legislation Committee on 25 February, witnesses raised objection to answering a question on the grounds that it was hypothetical. When the questioner asked the minister to identify the relevant standing order, a government senator identified standing order 73 as the basis of the objection. Standing order 73 contains rules for questions that apply to both questions without notice and on notice in the Senate.

The questioner quoted advice from the Deputy Clerk, referring to Odgers' Australian Senate Practice, to the effect that the only substantive rule of the Senate relating to the scope of questions at estimates hearings is that questions must be relevant to the matters referred to the committees, namely the estimates of expenditure. Any questions going to the operations or financial positions of departments or agencies are relevant questions.

Objections were also raised to answering questions on the basis that a matter was being examined concurrently by another committee, in this case a references committee. While advice has previously been given by the Clerk that estimates hearings should not traverse the same ground as legislation committees examining bills, the rule does not apply to other matters that are before committees. If it did, this would amount to an unnecessary restriction on the rights of senators to ask questions at estimates. It would be a simple matter to put controversial issues beyond the scope of estimates hearings by referring them to other committees, although the ability of other committees to examine the matter may make such manoeuvres rather pyrrhic in their effect.

Standing orders on tedious repetition and the rules of debate were also cited perhaps more as a diversionary tactic than anything else. The general principle is that the standing orders

do apply to committee proceedings to the extent that they can apply, but not so as to override any rules that apply specifically to committee proceedings.

MATTERS OF INTEREST

Matters of interest canvassed at the hearings included:

- use of public funds for a trip to China in June 2014 involving officers of the Department of Immigration and Border Protection during which it is alleged that funds were spent on expensive accommodation, whisky and prostitutes;
- the opening statement by the Secretary of the Department of Parliamentary Services attacking the 160th report of the Committee of Privileges;
- the process for and timing of the award of a knighthood to Prince Philip;
- checks on imported frozen berries following numerous cases of hepatitis A;
- instances of sexual assault in immigration detention centres;
- potential reforms to Australia Post's pricing structure for letters;
- the costs of connecting broadband to a home by NBN Co;
- the purchase of kitchen equipment for Government House;
- the new Public Service Commissioner's assessment of pay offers under current enterprise bargaining negotiations;
- job losses at the ABC;
- ASIC's investigation of financial advice irregularities at NAB;
- the scope of multiple voting and other electoral fraud at the last Federal election;
- waiting times for calls to Centrelink;
- use of the War Memorial for functions hosted by large defence contractors.

SITTING PERIOD 2–5 MARCH

LEGISLATION

Legislation dealt with during the sitting period was largely routine in character but the Fair Work (Registered Organisations) Amendment Bill 2014 was negatived at second reading on 2 March. The bill was not identical to the Fair Work (Registered Organisations) Amendment Bill 2013 negatived by the Senate at second reading on 14 May 2014 and does not therefore establish a trigger for the purposes of section 57 of the Constitution.

PROPOSED DISALLOWANCE

A motion to disallow provisions of the Competition and Consumer (Industry Code—Port Terminal Access (Bulk Wheat)) Regulation 2014 was negatived on 4 March, only the joint movers (Senators Day and Leyonhjelm) supporting the motion. The government overcame procedural resistance to move a scheduling motion to ensure the disallowance motion was determined before the deadline under the *Legislative Instruments Act 2003* expired. In the event, the disallowance motion was determined before the scheduling motion became necessary.

CENSURE OF A MINISTER

Censure motions in the Senate are relatively unusual and have no legal or constitutional effect in any case, but are still a useful accountability measure. Following a suspension of standing orders on 2 March, the Opposition moved to censure the Attorney-General, Senator Brandis, for his conduct in relation to the President of the Australian Human Rights Commission. The matter was extensively canvassed in estimates hearings in the preceding week.

RULES OF DEBATE

The President made a statement on 2 March drawing attention to the standing orders prohibiting personal reflections and imputations of improper motive against members of Parliament and other, including to past rulings prohibiting accusations of lying or deliberate misleading. The President indicated that all chairs would be enforcing these and all other standing orders and rules of debate.

PRIVILEGES COMMITTEE MATTERS

The long-awaited revised [Government Guidelines for Official Witnesses appearing before Parliamentary Committees](#), a draft of which had been examined by the committee in the course of its inquiry into guidance for officers giving evidence and providing information, was finally tabled out of sitting on 18 February. The Guidelines now refer to numerous Senate resolutions and practices that had not been in place when the Guidelines were last revised in 1989. The new version incorporated comments made by the Privileges

Committee in its [153rd Report](#).

The President tabled a response to the committee's [160th Report](#) on the use of CCTV material in Parliament House, on 2 March, agreeing to all the recommendations made by the committee, including the development of a new code of practice on use of CCTV which takes into account the requirements of parliamentary privilege. The Presiding Officers will establish a working party of senators and members to oversee the development of the revised code of practice and to undertake wide consultations on its contents.

DEPLOYMENT OF TROOPS TO IRAQ

On 3 March the Leader of the Australian Greens moved a motion to suspend standing orders to allow the Senate to debate a motion relating to the deployment of Australian troops to Iraq. The suspension motion failed but later in the week Senator Ludlam re-introduced the Defence Legislation Amendment (Parliamentary Approval of Overseas Service) Bill 2015 which, as its title indicates, provides for parliamentary approval of the deployment of Australian troops overseas. In re-introducing the bill, Senator Ludlam noted that a version of it had been on the Senate *Notice Paper* for approximately 30 years.

ORDERS FOR THE PRODUCTION OF DOCUMENTS

A repeated order for the production of the preliminary and interim reports of the Mental Health Review was again agreed to on 3 March, again including provisions rejecting grounds for non-compliance previously claimed by the government (see [Bulletin No. 289](#)). The order produced the same response from the government to the effect that the reports sought were deliberative in nature and would not be produced, but that the final report and the government's response to it would be produced in due course. The mover of the motion, Senator McLucas, has indicated on multiple occasions that she is seeking the preliminary and interim reports to allow interested organisations that have not been included in the government's consultation process to have an input to the final report.

FIRST SPEECHES

The last of the class of 2014 to make his first speech, Senator Muir, did so on 5 March. Although the speech was characterised as a first speech, Senator Muir had, in fact, made numerous speeches in the Senate beforehand and had participated in determining several important matters, some of which he referred to in his speech which provided an assessment of his first 8 months in the Senate, among other things.

COMMITTEE REFERENCES

The tendency to regard a Senate committee inquiry as a panacea for everything from low key scrutiny of legislative proposals to intensely disputed policy is reflected in the rate of references to Senate committees which currently stand at record levels. While there is –

and should be – no check on the capacity of the Senate to refer matters to committees to inform itself of a range of matters, there is a limit on the capacity of committees to absorb the workload. The greatest constraint is the time and capacity of senators to participate in and focus on inquiries. Committees must therefore prioritise their work, including with the guidance of the Senate by its agreement to extensions of time for particular inquiries.

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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