



# DEPARTMENT OF THE SENATE

## PROCEDURAL INFORMATION BULLETIN

No. 300

12 February 2016

For the sitting week 2-4 February 2016 and Additional Estimates  
hearings 8-12 February 2016

### *Sitting week 2-4 February 2016*

The first sitting week for 2016 had its usual quota of items of public interest to which senators drew attention using the procedures of the Senate.

### LEGISLATION

The legislative program proceeded relatively uneventfully with only the Food Standards Australia New Zealand Amendment (Forum on Food Regulation and Other Measures) Bill 2015 being amended (on the initiative of the Opposition) before being agreed. The amendments were then agreed by the House. Other bills were agreed without amendment.

The Opposition made a statement in relation to the Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015 indicating opposition to the bill, although a division had not been called at the time of the second or third reading votes. By the time the statement was made, the message to the House signifying agreement to the bill without amendment had been despatched, meaning that any recovery action was no longer a matter for the Senate alone should there have been a desire to reconsider the outcome.

A pair of potential section 57 triggers relating to the re-establishment of the Australian Building and Construction Commission was passed again by the House and reported to the Senate on 4 February. The bills were referred to the Education and Employment Legislation Committee with a reporting date of 15 March.

### QUESTION TIME

The President made a statement before the commencement of business on 2 February relating to standards to be applied by the chair, particularly during question time. Based on standing orders, longstanding practice and rulings of past Presidents, the statement reiterated the role of the President in maintaining order and applying the requirement for answers to be directly relevant to questions. The President also made some observations about the content of questions and supplementary questions.

### ANSWERS TO QUESTIONS ON NOTICE

With additional estimates hearings looming, senators, on 3 and 4 February, used the opportunity provided by [standing order 74\(5\)](#) to seek explanations for answers not being provided by the deadline for questions on notice. On 3 February, Senator Ludlam received no explanation initially but was subsequently told by the minister that the answers had been provided to the Clerk within days of the question being asked. The minister returned to

the Senate the following morning to correct that advice and apologise to the Senate, explaining that it was a response to an order for production of documents that had been provided at that date, not the answers to questions on notice (which, however, duly appeared).

It is accepted practice that senators intending to invoke their rights under [standing order 74\(5\)](#) will generally notify the relevant minister's office in advance so that ministers can be prepared with an explanation. In some cases, the answers are produced before the questioner has the opportunity to draw public attention to their lateness. On 4 February, answers were lodged with the Table Office during question time in two out of three cases of senators using the procedure. Senator Cameron tested its limits by asking why an answer had only been produced that day. The Deputy President ruled that once a question is answered, the procedure in [standing order 74\(5\)](#) no longer operates in relation to that question.

## REQUEST TO THE AUDITOR-GENERAL

The Auditor-General is not subject to direction by any person. Consequently, the Senate on 3 February agreed a request rather than an order to the Auditor-General, asking him to inquire into Commonwealth funding approvals and decisions in relation to two Western Australian infrastructure projects in light of his previous work on that issue with respect to an infrastructure project in NSW. The motion passed on the initiative of the Australian Greens with support from the Opposition and six of seven cross-benchers who voted in the division.

## ORDERS FOR THE PRODUCTION OF DOCUMENTS

Two orders from December 2015 remained outstanding after the end of the final sitting week (see [Bulletin No. 299](#)). An order for documents relating to changes to child care assistance met with a response from the relevant minister, provided on the due date, referring to the legislation introduced into the House of Representatives on the day the order was agreed to, and providing a brief explanation of the rationale for the package.

An order for information about training undertaken since 2013 by public servants in preparation for estimates hearings was met with a response from the Leader of the Government in the Senate on 3 February that it would take an astonishing 1,432 days throughout the public service to compile the requested data. No public interest immunity claim was advanced but, rather, the "unreasonable diversion of resources" argument, an inapplicable claim based on freedom of information legislation, was invoked.

New orders were agreed on 2 February for a copy of the Defence White Paper 2015 and the Lazard Scoping Study on the future ownership and operations of Defence Housing Australia. The orders fall due on 22 February but the duty minister foreshadowed the likely responses that, while the White Paper would be released at a time of the government's choosing, the scoping study was a confidential document prepared for Cabinet consideration and containing commercially-sensitive information whose

disclosure could damage the Commonwealth's commercial interests.

## COMMITTEE INQUIRIES

Reports presented over the summer break or during the sitting week concluded inquiries into credit card interest rates (Economics References Committee) and access to education by students with disability (Education and Employment References Committee).

Substantial interim reports were also presented on firefighting foam contamination at RAAF Base Williamtown (Foreign Affairs, Defence and Trade References Committee) and the foreign investment review framework (Economics References Committee).

Numerous reports on bills and instruments were also presented by the legislation and legislative scrutiny committees.

As well as agreeing to establish a new select committee on school funding investment (4 February), the Senate also agreed to refer five bills or packages through the Selection of Bills Committee process and the following six inquiries to references committees:

- the collapse of listed retailers (Economics References Committee, 4 February)
- a nationally-consistent approach to alcohol-fuelled violence (Legal and Constitutional Affairs References, 3 February)
- Commonwealth procurement procedures for paper (Finance and Public Administration References, 2 February)
- bumblebees and commercial pollination in Tasmania (Environment and Communications References, 2 February)
- carbon risk disclosure (Economics References, 2 February)
- the medical complaints process (Community Affairs References, 2 February).

Another motion to refer a matter to the Environment and Communications References Committee on oil drilling in the Great Australian Bight was not resolved on 4 February because it was dealt with after 4.30 pm and a division was called for, meaning that the vote will not be taken till the next sitting week.

Particulars of proposed additional expenditure were referred to legislation committees on 4 February, with a reporting date of 1 March 2016 already set by an order of 10 November 2015 which sets out the estimates schedule for 2016 hearings.

Committee workloads were the subject of a statement by the Clerk to the additional estimates hearings of the Finance and Public Administration Legislation Committee on 8 February.

Motions calling on the government to account for progress in responding to or implementing committee recommendations have become more frequent of late with a motion on 2 February calling on the Government to provide an update on implementation of agreed recommendations from the Economics References Committee's report on housing affordability (May 2015).

## ODGERS' AUSTRALIAN SENATE PRACTICE

A [fourth supplement to the 13th edition of Odgers](#) was tabled by the President on 2 February, bringing that work up to date to 31 December 2015. The 14th edition is in preparation with publication expected later in the year.

### *Additional Estimates hearings 8-12 February 2016*

## PROCEDURAL MATTERS

Additional estimates hearings proceeded without major incident.

Some committees expressed continuing frustration with unanswered estimates questions on notice but the combined impact of the order of the Senate requiring reports on answers to estimates questions and the regular reporting to senators of numbers of unanswered questions appears to have encouraged some improvement in response rates.

The length of opening statements attracted sporadic criticism and there are some new culprits among the serial offenders. It has long been recognised that long opening statements reduce the time for asking questions.

One committee sought the Clerk's advice after a minister claimed that he would not be providing certain information and was not making a public interest immunity claim. The information was cabinet-in-confidence and, in the minister's view, refusal to provide it was conclusive. The advice affirmed that ministers only have two options: either answer the question or propose a claim of public interest immunity. It referred to the relevant resolutions and the well-known and often-circulated paper by the former Clerk on potentially acceptable and unacceptable grounds for making public interest immunity claims. In the event, the minister made a public interest claim which a majority of the committee appeared to accept, and the committee moved on to other business. Under the procedures for such claims, it remains open for an individual senator to raise the matter in the Senate in accordance with other procedures of the Senate.

A small number of other possible public interest immunity claims was taken on notice, including by a statutory officer, the Managing Director of the ABC. The practices of the Senate contemplate situations where it is more appropriate for such claims to be made by statutory officers where they are independent of ministerial direction. In other cases, however, ministers continued to assert the existence of restrictions on the ability of senators to ask questions, contrary to the orders and practices of the Senate which affirm the right of senators to ask questions on the broadest possible range of matters while mandating processes for the answering of them. In summary, there are only two options available to witnesses:

- answering the question, either at the hearing or on notice; or
- complying with the requirements of Senate resolutions and practice in relation to the making of public interest immunity claims (an obligation which may also be

taken on notice and complied with in writing).

The restriction (in Privilege Resolution 1(16)) on officers of a department of the Commonwealth or of a state being asked for opinions on matters of policy has often been misinterpreted as a restriction on asking officers for any opinion at all. In several instances when objections were raised on this ground, senators reframed their questions – as they have always done. In many other instances, opinions were given freely on a range of matters.

Since the restructuring of the committee system in 1994, legislation committees considering estimates have, like other committees, enjoyed the power to send for persons and documents. Although this power has never been used in the estimates context to summon a witness, the Senate has, on numerous occasions, directed committees to hold further hearings for the purpose of taking evidence on particular subjects and has ordered “appropriate” witnesses to be made available to answer questions. The Foreign Affairs, Defence and Trade Legislation Committee had requested the appearance of particular witnesses in the Defence portfolio. While one witness was available, another was not. In an opening statement, the Defence Department secretary acknowledged the power of the committee and the Senate to summon witnesses but referred to the sensitivity of the information expected to be sought from the absent witness, which concerned the submarine project. During the day questions were asked about the project and answered by officials who noted that some of the information went to cabinet deliberations. The matter was not pressed.

Several committees will hold additional hearings to deal with unfinished programs.

In the same week as the Prime Minister’s annual report on Closing the Gap was presented to the House of Representatives, the cross portfolio hearings on Indigenous matters carried extra significance.

### *Matters covered in hearings*

Matters of interest canvassed were wide and varied as usual. They included:

- shipbuilding capability in South Australia (FPA, 8/2)
- the marble table reprised (FPA, 8/2)
- the fate of asylum seekers following the High Court’s decision in the M28 case (LCA, 8/2)
- PBO costing of various policies (FPA, 8/2)
- infrastructure funding for Melbourne Metro Rail (Ec, 8/2)
- artificial insemination techniques for bees (RRAT, 9/2)
- an idea for merging ABC and SBS (EC, 9/2)
- ABC investment in rural and regional audiences (EC, 9/2)

- Future Fund increasing its holdings in government bonds ((FPA, 9/2)
- the perennially favourite topic of the cost of renovations to the Lodge – now complete (FPA, 9/2)
- the role of the Public Service Commission in the Briggs/DFAT staffer investigation, particularly in supporting the DFAT staffer (FPA, 9/2)
- the choice of a new Sex Discrimination Commissioner (LCA, 9/2)
- the capacity of Australia Post to deliver a range of government transactional processing (EC, 9/2)
- impact of CSIRO cuts on the Bureau of Meteorology and on CSIRO itself (RRAT, Ec, 9/2, 11/2)
- ASIO investigation of foreign fighters (LCA, 9/2)
- the independence of the Australia Council in view of arts funding cuts (EC, 9/2)
- enterprise bargaining (FADT, 10/2, EE, 11/2)
- concerns about global debt levels (Ec, 10/2)
- pursuit of multinational companies for unpaid tax (Ec, 10/2)
- further efficiency dividend-related job cuts at Canberra’s major national cultural institutions (EC, 9/2)
- use of anti-malarial drugs on ADF members (FADT, 10/2)
- impact on fresh food exports of the salmonella lettuce scare (RRAT, 9/2)
- costs of the new ATO building at Gosford (Ec, 9/2)
- pressures on the Federal Circuit Court (LCA, 9/2)
- progress against ISIS in Iraq from the ADF’s point of view (FADT, 10/2)
- ASIC investigations regarding Queensland Nickel (Ec, 11/2)
- the impact of various changes to childcare subsidies (EE, 10/2)
- various work practices at DFAT, including the InnovationXchange ideas hub (FADT, 11/2).

---

## 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 can be found on the [Senate website](#).

Inquiries: Clerk’s Office  
(02) 6277 3364