

Chapter 1

Introduction

Reference

1.1 On 13 May 2008 the Senate referred the following documents to standing committees for examination and report:

- Particulars of proposed expenditure in respect of the year ending on 30 June 2009
- Particulars of certain proposed expenditure in respect of the year ending on 30 June 2009
- Particulars of proposed supplementary expenditure in respect of the year ending on 30 June 2008
- Particulars of certain proposed supplementary expenditure in respect of the year ending on 30 June 2008.¹

1.2 The committee was required to report to the Senate by 23 June 2008.²

Hearings

1.3 The committee conducted public hearings on the Broadband, Communications and the Digital Economy portfolio on 26 and 27 May 2008 and on the Environment, Water, Heritage and the Arts portfolio on 28 and 29 May 2008. The agenda is at Appendix 1.

1.4 Links to the transcripts of the public hearings, and to responses and additional information, are available on the Internet at:

http://www.aph.gov.au/senate/committee/eca_ctte/estimates/bud_0809/index.htm

1.5 Written answers and additional information provided to the committee on notice arising from the hearings are tabled in the Senate and also compiled as volumes of Additional Information. The answers are also posted on the committee's web page.

Questions on notice – date for response

1.6 In accordance with Standing Order 26(9)(a), the committee has fixed Thursday, 31 July 2008 as the date for the return of written answers or additional information in response to questions placed on notice.

1 *Journals of the Senate*, No. 11, 13 May 2008, pp 365-366.

2 *Journals of the Senate*, No. 26 13 February 2008, pp 98-99.

Procedural and other matters

1.7 At the commencement of the committee's consideration of output 1.1 of the Broadband, Communications and Digital Economy portfolio on 27 May 2008, the Minister, Senator Conroy made an opening statement about the process for establishing the national broadband network. He stated that the government has issued a request for proposals and the department and its specialist advisers are examining documents provided by potential proponents and will be advising parties who have met the prequalification requirements about the next steps in the process.

1.8 The Minister argued that it is of critical importance that integrity and confidentiality are maintained to ensure the commercial and policy objectives of the Commonwealth are not compromised and therefore stated that he did not propose to make any comments or answer any questions about the process.³

I will not be commenting, and nor will my department officials, about the number of bonds and deeds received or the identity of parties who lodge those bonds and deeds. The R[quest F[or] P[roposals] is a public document and it clearly set out the government's objectives for the national broadband network and established the criteria by which proposals will be evaluated. ... Further discussion in a forum such as estimates on the objectives or the criteria or speculation on the nature of the proposals or possible outcomes of the process could be misconstrued by proponents and could undermine the integrity of the process.

...

I am not proposing to comment on any matters that revolve around the process. Whether there has been previous comment or not, we are now in the middle of a very sensitive commercial process, there are billions of dollars at stake and we have reached a new stage in the process.⁴

1.9 The Minister also expressed his concern about the risk of inadvertent comment by department officials or himself.⁵

1.10 It is not unusual for ministers to decline to answer questions on the general ground that disclosure of information would be harmful to the public interest – public interest immunity. In this instance the claim to immunity was grounded on the need for commercial confidentiality with regard to a major tender process.

1.11 The Senate has acknowledged the right of ministers to do this, however it has never accepted it as an established prerogative. Nor has it accepted claims to immunity covering a whole subject area. Claims must be made with regard to specific questions with each claim to be considered on its merits.

3 *Committee Hansard*, 27 May 2008, p. 3.

4 *Committee Hansard*, 27 May 2008, p. 4.

5 *Committee Hansard*, 27 May 2008, p. 5.

1.12 Of particular concern is the refusal to answer questions because of a fear that commercially sensitive information might be 'inadvertently' released. The Minister did cite a precedent from the previous parliament where a similar claim had been made but to allow such a ground for declining to answer questions would provide ministers with *carte blanche* to refuse to answer questions.

1.13 The committee met briefly in private to consider its position. When the committee reconvened in public session the Chair advised the Minister that:

bearing in mind your comments about inadvertent comment, you take on notice questions from senators and, where possible, attempt to answer them in a prompt fashion. We also acknowledge that some questions that you take on notice may not be able to be answered until after the commercial process is completed.⁶

1.14 Through the course of the day senators asked questions on aspects of the national broadband network and the Minister, in line with his statement, took many questions on notice, undertaking to provide answers at the end of the process. The committee notes that, while 'inadvertent release' of sensitive information may be a risk in the heat of discussion before a committee, it cannot be a concern when providing a considered, written answer to a question on notice.

1.15 As part of this process the Minister made a further comment about probity advice. Senators sought information on the probity advice received by the Minister in regard to any comments he might make on the tender process. The Minister responded that:

You now ask me to comment on the advice that I was given and in what form it came. The probity advice is part of advice to government. It is not a matter that any government has ever previously discussed.⁷

1.16 There is, in fact, no general rule or convention that advice tendered to ministers is not published. Advice to ministers is subject to the same practice as any other information or document held by the executive. As the Secretary of the Department of Prime Minister and Cabinet stated:

It is always open to the Government to disclose the content of legal advice where it considers that it is in the public interest to do so. ... a minister will balance the public interest in disclosure with the protection of the Government's legal interests.⁸

6 *Committee Hansard*, 27 May 2008, p. 6.

7 *Committee Hansard*, 27 May 2008, p. 10.

8 Letter to the Secretary of the Attorney General's Department, 23 May 2008. Tabled in the Senate Standing Committee on Legal & Constitutional Affairs, 26 May 2008.

Late return of responses to questions on notice

1.17 The committee has repeatedly expressed its concern in previous reports about past failures to provide responses in a timely manner and its expectation that responses to questions on notice should be provided to it by the due date.

1.18 While acknowledging that there were no answers outstanding from previous estimates rounds at the commencement of these Budget Estimates hearings, the committee notes that answers were still being provided to the secretariat on the last working day before this round of hearings commenced – some six weeks after the date the committee had set for the return of answers.

1.19 In setting 31 July 2008 as the deadline for answers to questions on notice from the current round of hearings, the committee believes that it is allowing ample opportunity for answers to be carefully considered and submitted in a timely manner.

Comprehensiveness of Budget Estimates process

1.20 As the then Chair noted in previous estimates,⁹ the committee expects that all agencies will be available for the main round of Budget Estimates, unlike Supplementary Estimates where senators nominate agencies they wish to examine.

1.21 For this round the committee again continued its practice of listing all government companies in the program under the relevant departmental outcome, in the interests of comprehensiveness and transparency. It is left to the discretion of officials to determine whether company representatives need to attend the hearings in person or whether departmental officers are sufficiently knowledgeable to respond to the committee's inquiries on their behalf.

1.22 The committee believes that, by including all relevant government agencies in the hearing program, senators are made aware of the opportunity to be able to hold them to account for their activities at least once a year.¹⁰

Portfolio budget statements

1.23 The committee notes that, as foreshadowed in the Portfolio Additional Estimates Statements 2007-08, the Department of Broadband, Communications and the Digital Economy has developed a new Outcome Statement which reflects changes to the department under new Administrative Arrangements Order of 3 December 2007. The former and new outcome and output statements are shown in the table below:

9 *Proof Committee Hansard*, 25 May 2005, p. 55.

10 *Budget Estimates 2004-05*, Report of the Environment, Communications, Information Technology and the Arts Legislation Committee, June 2004, p. 13.

Former Outcome 1	Current Outcome 1
Development of services and provision of a regulatory environment which encourages a sustainable and effective communications sector for the benefit of all Australians and an internationally competitive information economy and Information and Communications Technology industry	Development of a vibrant, sustainable and internationally competitive broadband and communications sector which promoted the digital economy for the benefit of all Australians
Output 1.1	Output 1.1
Policy advice and program management that delivers competitively priced, accessible and high quality telecommunications, broadcasting and postal services and that supports development and application of a competitive capability in Information and Communications Technology	Policy advice and program management that delivers competitively priced, accessible and high quality broadband and other communication services and that supports the digital economy

1.24 The committee is aware that the Department of Finance is reviewing the structure and presentation of information in the Budget Papers. The committee notes that agencies are required '... to measure their intended and actual performance in terms of outcomes'.¹¹ Thus outcomes should be expressed in terms that lend themselves to measurement. The committee notes that one of the characteristics required for achievement of Outcome 1 is that the broadband and communications sector is that it be 'vibrant', which is a purely subjective concept. The committee suggests that the Department of Finance remove inappropriate, promotional terms from Outcome statements.

Department of Climate Change

1.25 The current arrangements for Estimates committees require that the Department of Climate Change be considered by the Standing Committee on Finance and Public Administration while the Department of the Environment, Water, Heritage and the Arts is examined by this committee. Several senators expressed the view that, given the overlap in functions between the two departments, they should both be the responsibility of the Standing Committee on Environment, Communications and the Arts.

11 Portfolio Budget Statements 2008-09, Budget related paper no. 1.3, Broadband, Communications and the Digital Economy Portfolio, p.36.

Acknowledgements

1.26 The committee thanks Senators Conroy, Wong and McLucas and officers from portfolio departments and agencies, for their assistance during this Budget Estimates process.

1.27 The committee notes that three of its committee members, Senators Bartlett, Kemp and Webber, are retiring from the Senate at the end of June and acknowledges their contributions to the work of the committee during their membership.