

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

31 May – 2 June 2011

Question No: BET 282

Topic: Order of the Senate

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Senator Cormann asked:

Senator CORMANN: Mr Banks, did you personally review the *Hansard* of the last Senate estimates?

Mr Banks: Yes, I did.

Senator CORMANN: So if you read the *Hansard*, you would be aware that there is significant precedent, and that is in the context of both Labor and coalition administrations, of organisations like yours or, if not yours, the ACCC, ASIC, the National Audit Office and a whole series of organisations being ordered or asked by the Senate on various occasions to produce information in relation to matters where they have to actually go out of their way and put that information together, not just make available documents that they already have. Are you aware of that?

Mr Banks: Yes. I was. We looked carefully at all of those instances. I did not think any of them really created a precedent in this case.

Senator CORMANN: Why is that?

Mr Banks: The Productivity Commission's functions as an independent statutory agency are different to the ACCC's and a range of other bodies. Our purpose is to conduct public inquiries for the purposes of making recommendations about public policy to the government. So the nature of the role and the function of the commission differs in that respect. In the instances that you cited, they either involve the collation or collection of documents that were already available, which is a situation where we have responded in the past or, in the case of the ACCC, reflected differences in the ACCC's act that positioned it differently to my organisation. The act refers exclusively to the relationship that we have in reporting through the minister or being asked to do work by the minister.

Senator CORMANN: I do not have the list here again. Most of those inquiries, incidentally, were initially by cross-bench senators, by nongovernment senators, that were referred to ASIC, the ACCC or the National Audit Office in relation to smoking policy and a great variety of issues. It was not a matter of the ACCC or others putting together documents they already held. It was about them doing actually work that then had to be provided to the parliament. Just because that has not happened to the Productivity Commission so far—of course, in your current iteration, you have not existed that long—does not mean that you have a different status from any other independent statutory agency that has been created by an act of parliament. I am interested to hear from you your intentions. Is it your intention to just ignore it and not come back because you have not given us conclusive advice as to how you propose to deal with it? The last indication was that you would respond more fully to the matters that you raise in your letter to me once advice becomes available from the Assistant Treasurer. Clearly, there is a deadline here, which ran out two days ago. What is your intention in terms of how you are going to handle this?

Mr Banks: Well, I have had advice from the Assistant Treasurer that an inquiry of the kind in question here will be sent to the Productivity Commission next year. So the task will be dealt with by us with a reference from the Assistant Treasurer in the normal way.

Senator CORMANN: So when did you get that advice?

Mr Banks: That is only just in recent days.

Senator CORMANN: So eventually you are going to tell the Senate what your intentions are so that the Senate can make a judgement on your approach to this?

Mr Banks: Well, I can tell you now, Senator, that my response will be when we receive those terms of reference, we will conduct the inquiry.

Senator CORMANN: There is a formal order of the Senate. Now, you might not think that is an important thing, but there is a formal order of the Senate requiring you to do something by a certain time. It has been in place for seven months now. All other parts of government have to take these things quite seriously. Essentially, you think that now telling me in this committee is going to do the job?

Senator Wong: Senator, I obviously am at a bit of a disadvantage. I am not Mr Shorten and I do not have all of the relevant documents with me. I understand that there was correspondence to the President outlining PC's response to the order. I understand the government has made its view clear about whether or not the Senate possesses this sort of power. Is this a matter, Senator, where the broader issue of guidance for officials giving evidence and the provision of information to the Senate and its committees—

Senator CORMANN: Sorry?

Senator Wong: Is this not something that the privileges committee is dealing with?

Senator CORMANN: This is something that is quite—

Senator Wong: No. Is not the broader issue of the provision of information to the Senate and its committees something that the privileges committee is dealing with?

Senator CORMANN: The privileges committee, the procedure committee and various bodies of the Senate are dealing with the fact that under your government, Minister, there is now an increasing trend of statutory agencies and government departments not complying with legitimate orders passed by the Senate for the production of information.

Senator Wong: Well, we do not accept this is legitimate, Senator.

Senator CORMANN: Absolutely it is legitimate.

Senator Wong: No. We do not accept that—

Senator CORMANN: Well, indeed.

Senator Wong: for the reasons I have outlined.

Senator CORMANN: For which reasons? So what are the reasons?

Senator Wong: Because, as Mr Banks has said—and I can go on the advice he has provided to the committee today—if you look back to 1973, this is not the sort of order that the Senate has made. Just in terms of public interest, Senator, do you really think it is an appropriate thing that a parliamentary chamber can simply direct a statutory body to go away and do an inquiry?

Senator CORMANN: They have done it many times before, Minister.

Senator Wong: Senator, I am sorry, I do not—

Senator CORMANN: Including Labor. Senator Conroy has done it. Senator Conroy initiated motions in the Senate as a nongovernment senator to get the ACCC to do work on telecommunications matters.

Senator Wong: We are not going to agree on this, Senator.

Senator CORMANN: Well, it is a fact.

Senator Wong: Senator, I am just not going to argue with you about it. We are not going to agree. You have a view. We have a view.

Senator CORMANN: This is a recent trend under your government.

Senator Wong: Well, I do not accept that. But I am saying in relation to this issue, I am not sure where you want to proceed with it. I do not think we are going to be able to resolve this impasse tonight.

Senator CORMANN: I am going to proceed with this a bit further. Are you aware of the occasional note that was written by the Clerk of the Senate in February in relation to these issues? Have you seen those?

CHAIR: This is really not a question for the Productivity Commission.

Senator CORMANN: No. I am asking the Productivity Commission because it is actually directly relevant to the order that was passed by the Productivity Commission and the initial advice that was given.

CHAIR: I think the minister has given that response.

Senator Wong: We will take that on notice, Senator.

Senator CORMANN: I might table it for the benefit of Mr Banks.

Senator Wong: I will take that on notice and I will ask Minister Shorten the response he thinks is appropriate.

Senator CORMANN: Minister, the answer—

Senator Wong: The question is—

Senator CORMANN: It is a question for you.

Senator Wong: It is unfair. The question I am taking on notice is whether the government is aware of the occasional note.

Senator CORMANN: I did not ask about the government. I asked about Mr Banks.

Senator Wong: Well, I do not think it is fair to put Mr Banks in this position.

Senator CORMANN: Why not?

CHAIR: Well, the minister has taken it on notice, and the minister is entitled to do that.

Senator Wong: I will take it on notice, thank you.

Answer:

The Government is aware of the views of the Clerk of the Senate.