



AUSTRALIAN SENATE

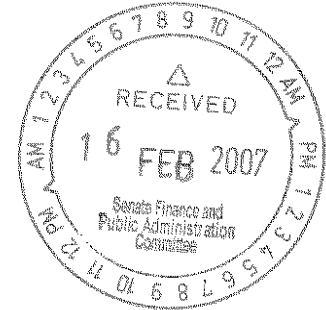
CLERK OF THE SENATE

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hl.let.15319

16 February 2007

Senator Brett Mason
Chair
Finance and Public Administration Committee
Parliament House
CANBERRA ACT 2600



Dear Senator Mason

ESTIMATES HEARING – STATEMENTS BY MINISTER

I refer to the statement by the minister at the commencement of this morning's estimates hearing. The statement contained two misunderstandings.

First, as my letter to the committee of 14 February 2007 made clear, the restriction of estimates proceedings to questions to ministers and officers applies only to estimates hearings. There is nothing to prevent committees inquiring into bills or conducting other inquiries from adopting other methods of proceeding. As I also indicated, this restriction was deliberately framed in the standing order applying to estimates hearings to preserve the rights of senators to ask questions. I did not invent it. It has nothing to do with embracing technology.

Second, the chairs' opening statement is not required by the standing orders relating to estimates proceedings or to other committee proceedings. These types of opening statements have expanded in response to misconceptions and misrepresentations about the rules applying to committee proceedings, and unauthorised attempts to restrict the rights of senators. There is nothing to prevent the chair simply referring to the statement or incorporating it in Hansard.

The minister later made another statement implying that I have raised some problem with the tabling of a DVD in the hearing. The earlier letter also made clear that there is nothing to prevent any form of document, including a DVD, being presented to the committee in an estimates hearing or otherwise.

Yours sincerely

(Harry Evans)



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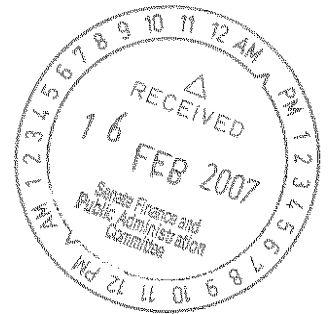
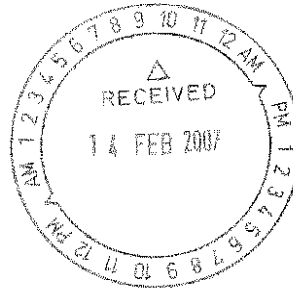
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CLERK OF THE SENATE

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14 February 2007

Senator Brett Mason
Chair
Finance and Public Administration Committee
Parliament House
CANBERRA ACT 2600



Dear Senator Mason

ESTIMATES HEARING – SCREENING OF VIDEO RECORDING

I understand that there is a proposal that a minister should be allowed to show a video recording at an estimates hearing.

Standing Order 26 provides:

- (4) When a committee hears evidence on the estimates, the chair shall, without motion, call on items of expenditure in the order decided upon and declare the proposed expenditure open for examination.
- (5) The committees may ask for explanations from ministers in the Senate, or officers, relating to the items of proposed expenditure.

These provisions have been in the orders of the Senate relating to estimates hearings since those hearings were initiated in 1970. They were deliberately designed to ensure that estimates hearings, which would be a substitute for the questioning of ministers in the chamber on appropriation bills, would be confined to putting questions to ministers and officers.

It has always been accepted that these provisions prevent a committee, in the course of estimates hearings, from adopting other methods of inquiry otherwise available to committees, such as the showing of video recordings or on-site visits.

This restriction on estimates hearings is a rule of the Senate, and cannot be suspended by a committee without the permission of the Senate. If the rule is to be altered, it must be altered by a deliberate decision of the Senate by motion after debate.

In the course of estimates hearings you and other chairs have properly ruled that the proceedings should be confined to questions to ministers and officers, and should not stray

into speeches, debates, demonstrations and gestures. Those sound rulings would be undermined if any committee were to depart from the stated rule. If a minister may show a video recording at an estimates hearing, on what grounds could other senators be prevented from doing so or from engaging in other forms of exhibition? And how could a committee deny any minister the right to begin every estimates hearing with a screening of a sixty minute video recording of the achievements of their department?

In the case of this proposal, the video recording relates to legislation which is also before the committee. In recent estimates hearings, your fellow chairs, on advice, have soundly ruled that estimates hearings may not be used to inquire into provisions of bills, as those inquiries are, under the determinations of the Senate, properly conducted in committee hearings on those bills and in proceedings in the Senate chamber. These sound rulings would also be undermined by the screening of the video recording.

The rules of the Senate are designed not only for the proper conduct of proceedings but for the protection of the rights of senators. Any arbitrary departure from those rules may be turned against those who initiate the departure, however innocent their reasons may be. It is an old parliamentary principle that those who overthrow the rules today will cry out for the protection of the rules tomorrow, and their cry may not then be heard.

You are no doubt aware of the immortal words of Mr Speaker Onslow, quoted at the beginning of Thomas Jefferson's *Manual of Parliamentary Practice*: "these forms, as instituted by our ancestors, operated as a check and controul on the actions of the majority, and that they were in many instances, a shelter and protection to the minority, against the attempts of power", to which Jefferson added his own observation: "by a strict adherence to which [rules], the weaker party can only be protected from those irregularities and abuses which these forms were intended to check, and which the wantonness of power is but too often apt to suggest to large and successful majorities."


I hope that these principles will continue to animate senators.

If the minister wishes to screen the video recording and members of the committee wish to view it, this can be done outside the bounds of the estimates hearing.

A video recording, whether in the form of a video cassette or a DVD, is a form of document, and may be tabled in an estimates hearing, if the committee agrees. When tabled, it is automatically published, in accordance with the rule of the Senate that all estimates evidence is public. It may then be referred to in questions in the hearing, subject to what has been said about examination of the provisions of bills.

Neither of these courses would reduce the time available to the committee for the estimates hearings.

Yours sincerely



(Harry Evans)