

APPENDIX 3

ADVICE PROVIDED BY THE CLERK OF THE SENATE REGARDING STANDING ORDER 25(13)



AUSTRALIAN SENATE

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28 May 2008

Mr Peter Hallahan
Secretary
Standing Committee on Legal and Constitutional Affairs
The Senate
Parliament House
CANBERRA ACT 2600

Dear Mr Hallahan

ESTIMATES HEARINGS AND STANDING ORDER 25(13)

You asked for a note on the effect of paragraph (13) of standing order 25 on questions that may be asked in estimates hearings.

That paragraph provides:

A committee shall take care not to inquire into any matters which are being examined by a select committee of the Senate appointed to inquire into such matters and any question arising in this connection may be referred to the Senate for determination.

This provision has been in the order of the Senate relating to the legislative and general purpose standing committees since those committees were established in 1970. The intention of the provision is to avoid duplication between the activities of any select committees and the standing committees. The rationale of the provision is that, if the Senate has appointed a select committee to inquire into a particular matter, this is an indication that the Senate intends that that select committee be the vehicle for the inquiry into that matter, and a standing committee should not duplicate that inquiry, subject to any positive direction by the Senate.

The provision to my knowledge has never been formally invoked, certainly not to the extent of the Senate being called upon to adjudicate on any problem as contemplated by the provision.

In relation to estimates hearings, the Senate has determined that any questions going to the operations or financial positions of departments and agencies are relevant questions for the purposes of estimates hearings. This gives those hearings an extremely wide scope.

If questions in an estimates hearing were to be clearly and unambiguously directed to matters specifically under inquiry by a select committee, this would constitute an occasion for the chair to remind committee members of the standing order and to suggest that the line of questioning not continue. It would be for the chair in the first instance, and ultimately the committee, to judge whether any questions were so clearly going to matters under investigation by a select committee that the standing order should be invoked.

Certainly if a senator indicates that questions are being asked in estimates hearings as an alternative to, or as a supplement to, questions that have been asked, or that are to be asked, in a select committee, the senator should be asked not to persist but to save the questions for the select committee.

As indicated, however, a fairly clear-cut case is required for the chair or the committee to restrict questioning in an estimates hearing. The lack of precedents suggests that the standing order has been interpreted in this way in the past.

The foregoing is consistent with advice given on questions in estimates hearings about bills that have been referred to committees. The case for restriction is somewhat stronger in the current instance because there is a specific rule of the Senate and the specific inquiry is the responsibility of a different committee.

Please let me know if I can be of any further assistance in relation to this matter.

Yours sincerely



(Harry Evans)