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ACCC chief executive Brian Cassidy (centre) fronts a Senate estimates committee in 2008.

Photo: ANDREW TAYLOR

Senate's chance to give agencies a grilling

The coming budget estimates hearings should provide much for senators to get their teeth into, writes **Verona Burgess**.

With the budget over, the thrills and spills of the annual two-week round of Senate budget estimates committees will start on Monday.

It will soon be the 40th anniversary of Senate estimates, which were created on June 11, 1970, when the Senate passed a resolution to set up seven legislative and general purpose standing committees and five estimates committees. The rest is history.

The opposition has plenty of material to tackle, if it can get its act together. It will surely be the last round of estimates before the election.

They might have had a go at some big cuts in several agencies' staff (mostly via natural attrition and offset in overall public service numbers by gains elsewhere) had Opposition Leader Tony Abbott not said he would freeze public service recruitment for the first two years in office and then over-estimated the savings from natural attrition, not to mention the potential rise in labour hire to fill the inevitable specialist skills gaps.

A test for the Opposition will be how it penetrates the government's economic and regulatory agenda at the economics committee in the second week. There has already been a skirmish over the news that Treasury secretary Ken Henry was (unusually) planning to miss the economics committee hearing due to a family commitment overseas.

You'd think the bloke might be due for a holiday after producing the tax review and the budget, but not a bit of it. There was some senatorial fuming and calls to compel him to attend (fat chance). It followed senators trying to make Kevin Rudd and Wayne Swan front the home insulation inquiry (even fatter chance).

The economics estimates committee has yielded some

wonderful nuggets over the decades, few more spectacular than last year's Godwin Grech affair, but like all such hearings they can be haphazard, with some agencies receiving lavish attention and others escaping altogether.

The not-for-profit Rule of Law Association of Australia has conducted an analysis of the recent estimates scrutiny of the economic regulators, for whom the association says the estimates are arguably the most critical point in the accountability cycle.

The agencies in question are the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission, the Australian Prudential Regulation Authority, Fair Work Australia [FWA] and the Australian Taxation Office, which between them receive more than \$3.5 billion a year in funding, which is small, the association says, in comparison

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with the budgets of the industries that they regulate.

The analysis of four sets of hearings (February, June and October 2009 and February 2010) plots how many questions were asked of each regulator; who asked them; the length of any opening statements each read out; how many questions couldn't be answered and/or were put on notice; how many written questions on notice were submitted; and the length of oral examination of each agency.

It will flabbergast few who have occasionally slumbered through the estimates to learn that ASIC has made extremely generous use of the invitation to provide opening statements (they are usually tendered after being read aloud).

During the four sets of hearings surveyed, the ACCC and ATO did not provide any opening statements, and ironically both experienced far longer scrutiny than ASIC or APRA, which also

provided opening statements.

That's not to say that estimates hearings are shorter overall if agencies do tender opening statements (indeed, Defence is proof that that is not the case). But opening statements, while they are sometimes necessary and can answer a lot of as-yet unasked questions, are also a tried and true way of dramatically reducing the opportunity for questioning in a short hearing and, thus, potentially reducing accountability.

ASIC took the cake with a 3000-worder in February, 2009 (the February and October hearings are always squashed into a week while the June budget estimates go over two). By February this year ASIC's opening statement was back down around the 1000-word mark.

The ATO endured more than 4.5 hours of questioning in June, 2009, though it shared it partly with Treasury. ASIC got more than 2.5 hours. In October 2009 the new agency FWA was questioned for more than two hours and in February, 2010 for nearer three.

APRA's time at the witness table peaked at nearly 1.5 hours in June 2009 and fell to less than an hour in both subsequent hearings (in October and February).

The association found that, in general, regulators took only a small percentage of questions on notice and declined to answer very few. In February, for example, FWA was asked the most questions (about 180) and did a sterling job in answering most on the spot, taking on notice or not answering fewer than 20. Even fewer were put on notice during the hearing or submitted for notice in writing.

Now for a league table, of sorts, for senators at the economics committee. Over the four sets of hearings, Liberal David Bushby asked the most questions (about 430) followed by the Nationals' Barnaby Joyce (about 330). Third was Liberal Eric Abetz (about 170) and fourth Liberal Mary Jo Fisher (just under 150). There's more, but you'll have to look out for it at www.ruleoflawaustralia.com.au.

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