

Senate Rural and Regional Affairs and Transport Legislation Committee

**Questions on Notice – Tuesday, 23 April 2013
CANBERRA, ACT**

Inquiry into the Australia Council Bill 2013 and a related bill

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**SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT
LEGISLATION COMMITTEE**

Inquiry into the Australia Council Bill 2013 and a related bill

Public Hearing Tuesday, 23 April 2013

**Questions Taken on Notice – Department of Regional Australia, Local
Government, Arts and Sport**

1. HANSARD, PG 47

Senator BRANDIS: Drafting instructions were given to the Office of Parliamentary Counsel, presumably.

Dr Arnott: Yes.

Senator BRANDIS: By whom?

Dr Arnott: By the department.

Senator BRANDIS: Who wrote them?

Dr Arnott: Officers of the department.

Senator BRANDIS: Can you take this notice: I would like to know who they were, please.

Dr Arnott: It is not usual to provide the names of officers working in the department on particular things.

Senator BRANDIS: I am asking because I would like to know. It is not an improper question, even though it might be an unusual one. Take that on notice, please. I do not expect you to have that information to hand.

ACTING CHAIR: We would not normally ask for the names of junior officers in this context.

Senator BRANDIS: We do not know that they were junior officers. Are you ruling the question out of order?

ACTING CHAIR: No, I am not.

Senator BRANDIS: Okay, then take that on notice, please. You might consider if you want to make an objection to it.

ACTING CHAIR: I would like to qualify that, if I may. We are not interested in the names of junior officers.

Ms Foster: Thank you.

Senator BRANDIS: That is fair enough. I want to know the name of the officer who took responsibility for the drafting instructions, and I am assuming that would not be a junior officer. I would also like to have produced to the committee, please, a copy of the drafting instructions. Take that on notice, please.

Ms Foster: We will take that on notice.

2. HANSARD, PG 47

Senator BRANDIS: That is why you put it in the functions clause. That is the objects clause of this bill. That sets out what the basic purposes of the Australia Council are. Yet it has been relocated to clause 11 concerning matters to be taken into account by the council and the right of persons to freedom in the practice of the arts rather than the promotion of that principle being a function of the council and, as Ms Winikoff from NAVA told us before, at the very least that removes that as an advocacy function of the Australian Council, which is a not insignificant change. I do not want to have a debate with you about the meaning of words, because the words are there for all of us to see. What I want to know is why this was done when, as Dr Arnott has just told me, the purpose of this bill was to give effect to the relevant recommendations of the Trainor-James review and they made no such recommendation. Why was it done?

Ms Foster: I can only repeat that it has not diminished that responsibility in the act; it has actually called on the council to take that into account with regard to the performance of all of the functions.

Senator BRANDIS: I hear what you are saying, Ms Foster. I do not agree with you. If you take something out of the functions clause and put it elsewhere in the act, then it seems to me to demote it in importance. But that is really an argument about statutory interpretation. My question was really a different question. Given that it was not recommended that this be done and the review and purpose of the bill was to give effect to those parts of the review that the government adopted, why was this done, or don't you know?

Ms Foster: I do not know. I will have to take that on notice.

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Question:

- a) Who wrote the drafting instructions that were provided to the Office of Parliamentary Counsel?
I want to know the name of the officer who took responsibility for the drafting instructions, and I am assuming that would not be a junior officer.
- b) I would also like to have produced to the committee a copy of the drafting instructions.

1. HANSARD, PG 47

Asked by: Senator BRANDIS

Date set by the committee for the return of answer: 1 May 2013

Answer:

- a) The drafting instructions were issued to the Office of Parliamentary Counsel by Dr Stephen Arnott, Assistant Secretary, Creative Sector Development Branch, Department of Regional Australia, Local Government, Arts and Sport.
- b) Legal professional privilege applies to these drafting instructions and accordingly they will not be produced.

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Question:

The *Australia Council Act 1975* included function 5(a)(vi), which required the Council to formulate and carry out policies designed “to uphold and promote the right of persons to freedom in the practice of the arts”.

The functions contained in the Australia Council Bill 2013 do not include an equivalent to 5(a)(vi) from the *Australia Council Act 1975*.

- a) Given that it was not recommended that this be done and the review and purpose of the bill was to give effect to those parts of the review that the government adopted, why was function 5(a)(vi) from the *Australia Council Act 1975* not included in the functions contained in the draft Australia Council Bill 2013?

2. HANSARD, PG 47

Asked by: Senator BRANDIS

Date set by the committee for the return of answer: 1 May 2013

Answer:

- a) The drafting of the revised functions was informed by the Australian Government’s response to Recommendation 1 of the Report of the 2012 Review of the Australia Council. This recommendation called for a revised purpose of Council, underpinned by a number of principles and supported by clear statement of legislatively mandated functions.

The decision to maintain the principle of the right to freedom in the practice of the arts in the Australia Council Bill 2013, specifically as one of the ‘Matters to be taken into account by Council’ (Clause 11(b)), was made to ensure that it becomes an overarching principle that must be considered by the Council in the performance of all of its functions and the

exercise of all of its powers. For example, in making decisions on grants or supporting particular activities, the Council must have regard to the right of persons to freedom in the practice of the arts.