

3. COMMITTEE INQUIRIES

Initiation of inquiries

3.1. All general purpose standing committees traditionally have conducted general inquiries into subject matter referred to them by the relevant Minister. The Minister's referral is usually at the request of the committee. The fact that annual reports stand referred also provides a vehicle for these general inquiries. This, in effect, allows the committee to undertake any inquiry it chooses without the need for referral by a Minister. These inquiries typically involve an examination of policy development and implementation.

3.2. It has been argued that other bodies, such as research institutes, may be better equipped to conduct some of these inquiries. Some consider that standing committees' activities should be restricted to administrative scrutiny or legislative review. A Member questioned the value of many committee inquiries and considered that inquiries needed to be more relevant to current considerations of the Parliament.¹

3.3. The Attorney-General's Department considers that committees are well placed to review the operation of legislation and to consider the case for new legislation. The department believes it desirable, however, to pay some heed to governmental priorities in determining references. If the resulting recommendations are of a low priority from a government point of view, and are not taken up for that reason, the value of the exercise might seem doubtful.²

3.4. A number of submissions support the re-introduction of self referral powers for committees. The Chair of the House of Representatives Standing Committee on Communications, Transport and Microeconomic Reform states that, in any such move, it would be clearly understood that ministerial references would hold priority of place in a committee's scheduling.³

3.5. The committee notes that while it is apparent that committees are more actively performing a scrutiny role, policy type inquiries are likely to remain a major committee focus because of the preference of the majority of Members. The committee agrees that it is pointless to maintain that committees are limited to references from the Minister or the House, given that annual reports stand referred. There appears to be little justification to deny committees the right to initiate their own inquiries. The architects of the present system in 1987 specifically envisaged committees with the power to initiate their own inquiries.⁴

3.6. Accordingly the committee **recommends** that:

- **Standing orders be amended to enable committees to determine their own references. (recommendation 6) (see appendix 4)**

¹ Wakelin, B, *Submission*.

² Attorney-General's Department, *Submission*.

³ Neville, P, Chair, House of Representatives Standing Committee on Communications, Transport and Microeconomic Reform, *Submission*.

⁴ Browning, A R, *Development of a Committee System*, House of Representatives, March 1987 and Langmore, J V, *Committee Restructuring*, Unpublished paper, September 1987.

Annual reports

3.7. Through an amendment to the standing orders in 1996, the House extended to over 270 the potential range of Commonwealth agencies whose annual reports stand referred automatically to the relevant standing committee “for any inquiry the committee may wish to make”.⁵ These reports are referred to the general purpose standing committees in accordance with a schedule presented to the House by the Speaker, which shows the portfolio coverage of committees.

3.8. It is not obligatory for committees to review and report on annual reports, and indeed annual reports are only regarded as active references to committees (and listed as such on the Notice Paper) after deliberate decisions by committees. The Department notes that the existence of the annual report reference mechanism gives committees considerable freedom in their potential range of inquiries and provides an important (if to date under-utilised) element of the accountability and scrutiny framework.

3.9. The committee considers that it is for each committee to determine the extent to which it examines annual reports. However it encourages committees to consider using annual reports to initiate short, sharply focussed inquiries scrutinising specific aspects of government administration.

Reports of the Auditor-General

3.10. The JCPAA is required by its Act to examine all reports of the Auditor-General. General purpose standing committees are empowered to examine any financial matter referred to them by the House or a Minister. These committees now often examine audit reports, which are referred to them on request. Informal consultative procedures exist to ensure that the JCPAA and the standing committees do not duplicate each other’s work.

3.11. The JCPAA continues to examine all Auditor-General’s reports, as is required by its enabling legislation, although account is taken of inquiries by other committees. The JCPAA, however, has difficulty in dealing in detail with the volume of Auditor-General’s reports presented to the Parliament.

3.12. The Department of the House of Representatives believes that the consideration of Auditor-General’s reports should be facilitated by amending standing order 28B to allow them to ‘stand referred’ to the relevant standing committee in the same way as annual reports. Care would be necessary to ensure no duplication of reviews of Auditor-General’s reports by the JCPAA and other committees—a requirement for standing committees formally to advise their intention to activate an Auditor-General’s report reference could be included in the standing orders to minimise this risk.⁶

3.13. The JCPAA now has the role of advising the Auditor-General of the Parliament’s audit priorities. In the past some committees (eg Standing Committee on Employment, Education and Training) irregularly discussed with the Australian National Audit Office possible future audits. No procedures have yet been developed

⁵ Department of the House of Representatives, *Submission*.

⁶ *ibid*.

to ensure that the JCPAA priorities accurately reflect the Parliament's priorities. Nor are there any procedures developed to enable general purpose standing committees to participate in the process.

3.14. The committee **recommends** that:

- **Standing orders be amended to provide for reports of the Auditor-General to stand referred to general purpose standing committees for any inquiry they wish to make. Each committee shall notify the Joint Committee of Public Accounts and Audit in writing when it intends to examine a report. (recommendation 7) (see appendix 4)**
- **The Joint Committee of Public Accounts and Audit develop procedures to ensure that the views of general purpose standing committees are sought prior to the determination of Parliament's audit priorities. (recommendation 8)**

Bills

3.15. The standing orders (and, earlier, sessional orders) establishing general purpose standing committees empower them to inquire into and report on any matters referred to them by either the House or a Minister, including any pre-legislation proposal or bill. In addition, standing order 217A provides for bills to be referred to committees for consideration and an advisory report. Following referral normal committee inquiry processes apply.

3.16. Since 1994 (to the end of the 1998 Autumn sittings), ten bills have been referred to the House general purpose standing committees and 18 to joint statutory committees. Of the ten bills referred to general purpose standing committees, six were referred to the LACA Committee, three to the Transport, Communications and Infrastructure Committee and one to the Industry, Science and Technology Committee. If related bills referred to the committees as a package are considered as a single reference, the numbers are even less encouraging.

3.17. Since the present committees were established over 2000 bills have been initiated in the House and over 820 since the provision for referral of bills to standing committees for advisory reports (SO 217A) was adopted in February 1994.

3.18. The Procedure Committee noted in 1993 that the referral of a bill should not be seen as a routine stage in the passage of a bill, but rather as a process to be used judiciously where appropriate.⁷ It was never expected that the spread of references across committees would be even because the spread of legislative activity across government portfolios would not be even.⁸ It would be fair to say, however, that the expectation would have been for a greater number of referrals than has occurred.

3.19. The Department of the House of Representatives notes that in the relatively few cases where Ministers have referred bills, the House's consideration of legislation has invariably been assisted, better legislation has resulted and (presumably

⁷ House of Representatives Standing Committee on Procedure, *About Time: Bills, Questions and Working Hours*, October 1993.

⁸ House of Representatives Standing Committee on Procedure, *Time for Review: Bills, Questions and Working Hours*, June 1995.

importantly from a Minister's perspective) there has been significantly less likelihood of the delay of bills through extended Senate inquiry.⁹

3.20. The Chair of the JCPAA proposed that committees with policy responsibility review non-money bills between the first and second reading debate.¹⁰ The Department of the House of Representatives considers that greater recourse could be had to committee examination of pre-legislative proposals, thus enhancing the consultation process.

3.21. The Australian Labor Party committee deputy chairs consider that one of the strengths of the US congressional system is its ability to scrutinise the rationale for legislation and receive extensive evidence from the executive. The absence of an effectively operating committee system in Australia scrutinising legislation, distorts the balance of input into the legislative process, in favour of organised interest groups and large corporations.¹¹

3.22. Major obstacles to referring more bills to House committees are the lack of a procedure for seeking referrals and the natural anxiety of Ministers and their advisers that committee consideration will delay passage of the bill. The LACA Committee suggests that a referral procedure be devised which could facilitate committee consideration of bills when the committee has the time or inclination to undertake the inquiry.¹² Committee chairs at the round table discussions did not support the introduction of procedures that would see bills referred to standing committees as a matter of course or compulsory referral at the request of the committee.

3.23. The committee is disappointed that more bills have not been referred to committees. The committee, however, does not support the automatic referral of bills at the second reading stage. Rather it encourages the Government to consider referring a higher proportion of its legislation to House of Representatives standing committees.

Bills and joint committees

3.24. As noted in the previous section, 18 bills have been referred to joint committees since 1994. The latest edition of *Australian Senate Practice* states that the use of joint committees "...tends to prevent the Senate exercising a review and second opinion function and therefore subvert the concept of bicameralism".¹³ It could also be suggested that Senators should not be involved in what is essentially a part of the House's consideration of legislation.

3.25. The Procedure Committee recognised this principle in 1993 when it made recommendations concerning referral of bills to general purpose standing committees. As the House had no foreign affairs, defence or trade committee, it recommended that bills, as appropriate, be referred "...to a committee formed of the House of Representatives members of the Joint Committee on Foreign Affairs, Defence and

⁹ Department of the House of Representatives, *Submission*.

¹⁰ Charles, R, *Submission*.

¹¹ Australian Labor Party Deputy Chairs, *Submission*.

¹² House of Representatives Standing Committee on Legal and Constitutional Affairs, *Submission*.

¹³ Evans, H, (Ed), *Odgers' Australian Senate Practice*, 8th Edn, AGPS 1997.

Trade”.¹⁴ It is clear that the Procedure Committee at that time did not expect bills to be referred to any other joint committee.

3.26. As a matter of principle, the committee considers that bills should only be referred to joint committees in exceptional circumstances and that Senators should not be involved in what is, in effect, House business.

3.27. Accordingly the committee **recommends** that:

- **As a general rule, bills should only be referred to House committees or, if necessary, the House may refer a bill specifically to a committee consisting of House members of a joint committee, rather than to the joint committee as a whole. (recommendation 9)**

3.28. Standing order 28BA provides for House of Representative members of any joint committee to be considered a committee for the purpose of considering a bill. No bill has been considered under this standing order. As joint committees operate under Senate standing orders, the question arises as to whether this standing order applies unless the House specifically refers the bill to the House Members of a joint committee. Any committee, consisting of House Members of a joint committee, operating under standing order 28BA operates in accordance with House rather than Senate procedures.

Estimates

3.29. Between 1979 and 1981 the House experimented with sessional orders providing for the proposed expenditure contained in Appropriation Bill (No. 1) to be considered in estimates committees. The House has not used estimates committees since then.

3.30. The Procedure Committee noted in 1994 that the consideration of the expenditure of government agencies as contained in their annual reports provides a means by which House committees can monitor the use of public funds without duplicating the work of the Senate estimates committees.¹⁵

3.31. Standing orders give general purpose standing committees the power to examine estimates if the House or a Minister refers them. It is possible, therefore, for general purpose standing committees to undertake the detailed consideration presently undertaken by the House and the Main Committee.

3.32. Some amendments to the standing orders would be required if committee consideration was to replace the consideration in the detail stage in the House or Main Committee, but as an additional stage (as with consideration of a bill), no amendments would be required.

3.33. The committee does not support a change in procedures that would see estimates automatically referred to committees. It would be reluctant to suggest anything which may duplicate the well established Senate estimates committee system, either in terms of operation and outcomes, or in the use of departmental

¹⁴ House of Representatives Standing Committee on Procedure, *About Time: Bills, Questions and Working Hours*, October 1993.

¹⁵ House of Representatives Standing Committee on Procedure, *Time for Review: Bills, Questions and Working Hours*, June 1995.

resources. However committees are encouraged to play a greater role in the review of government expenditure though the use of the powers to examine annual and, if the committee's recommendations are accepted, audit reports.

Petitions

3.34. Each of the general purpose standing committees has the power to consider and report on petitions referred to it by a Minister or the House. None has been referred. If petitions were routinely referred, the additional administrative load placed on committees could be substantial as nearly 1100 petitions have been presented to the House during the 38th Parliament. It should be noted, however, that if petitions stood referred to general purpose standing committees it would not be obligatory for committees to examine and report on them.

3.35. One submission states that the public should be able to petition the appropriate committee direct. The committee could then assess whether the matter needed to go to a Minister or the House.¹⁶

3.36. The committee supports an amendment to the standing orders which would enable petitions to stand referred to committees. As well as giving committees another mechanism for initiating inquiries (if self referral is not adopted) this procedure could provide committees with an indicator of public opinion on topical issues.

3.37. Accordingly the committee **recommends** that:

- **Standing orders be amended to provide for petitions to stand referred to general purpose standing committees for any inquiry the committee may wish to make. (recommendation 10) (see appendix 4)**

¹⁶ Janssen, P, *Submission*.