PROCEDURE COMMITTEE

FIRST REPORT OF 2010

The committee reports to the Senate on the following matters referred to the committee and considered by the committee.

PRIVATE SENATORS' BILLS - CONSIDERATION

The committee has under consideration proposals from Senator Bob Brown for ways in which private senators' bills could be dealt with at a dedicated time. The committee intends to keep this matter on its agenda to enable it to consider in more detail the practices for private members' legislation in comparable jurisdictions.

BILLS RELYING ON DELEGATED LEGISLATION

The committee has considered a discussion paper prepared at its request in response to a suggestion raised by Senator Bob Brown for a procedure whereby bills that rely on delegated legislation for their operation would be deferred until the delegated legislation was tabled.

The committee notes that there are difficult threshold issues associated with devising a general procedure to ensure that there is adequate scrutiny of legislative schemes that rely for their operation on delegated legislation which may not be available in draft form at the time the primary legislation is considered. The committee also notes that there has been an increase in recent times of broad principles legislation which relies heavily on delegated legislation and that this is inherently problematic from the point of view of effective parliamentary scrutiny. There are examples where committees have been critical of the lack of availability of draft regulations and have drawn this to the attention of the Senate. In some cases there has been follow up action by the committee concerned or by the Senate.

Rather than opting for a specific procedure at this stage, the committee sees merit in encouraging legislation committees in their examination of bills to be on the alert for cases in which the absence of draft regulations hinders adequate scrutiny of a bill, and to frame recommendations accordingly. While it would be open to a legislation committee to recommend deferral in particular cases where warranted, the committee does not endorse the adoption of a standard recommendation in all such cases to postpone further consideration of a bill until draft regulations became available. The committee supports a case by case approach with recommendations tailored to the particular circumstances. Since legislation committees are likely to receive for inquiry and report any bills that are at all contentious, the committee's view is that they are best placed to make judgements about the effect that the lack of access to draft regulations (or other instruments of delegated legislation) has on the Senate's ability to scrutinise bills thoroughly.

In this context, the committee also notes the important work done by the Scrutiny of Bills Committee in identifying cases where there is inadequate parliamentary oversight in legislative schemes, including because of excessive reliance on delegated legislation.

ARRANGEMENTS FOR THE OPENING OF PARLIAMENT

The committee has considered a request from the Leader of the Government in the Senate, Senator Evans, to examine the Government's response to the report of the House of Representatives Procedure Committee entitled, *Re-opening the Debate – Inquiry into the arrangements for the opening day of Parliament*, with a view to determining what changes to Senate standing orders might be required if an Indigenous 'Welcome to Country' ceremony were to become part of the procedures on opening day.

Two options are presented in Attachment A for the consideration of senators. The first option is an amendment to standing order 1 to incorporate recognition of an Indigenous welcoming ceremony. The second option is a draft resolution of continuing effect expressing support for the inclusion of such a ceremony before the official opening proceedings. A third option would be to leave the standing and other orders unaltered, thereby allowing the government of the day to choose what kind of ceremony might be held before the opening or, indeed, to choose to have no preceding ceremony.

The committee would welcome the views of senators on these proposals and intends, if possible, to consider them before the conclusion of the winter sittings.

Alan Ferguson
Deputy President
and Chair of Committees
Chair of the Procedure Committee