The Senate

Procedure Committee

Private senators' bills - consideration

Bills relying on delegated legislation

Arrangements for the opening of Parliament

First report of 2010

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MEMBERS OF THE COMMITTEE

Senator the Hon John Hogg
President of the Senate

Senator the Hon Alan Ferguson
Deputy President and Chair of Committees, **Chair**

Senator the Hon Chris Evans
Leader of the Government in the Senate

Senator the Hon Nick Minchin
Leader of the Opposition in the Senate

Senator the Hon Eric Abetz

Senator Bob Brown

Senator the Hon John Faulkner

Senator Annette Hurley

Senator the Hon Joe Ludwig

Senator Stephen Parry

The Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Telephone: (02) 6277 3350
Facsimile: (02) 6277 3199
E-mail: rosemarylaing@aph.gov.au
Internet: http://www.aph.gov.au/Senate/committee/proc_ctte

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

ATTACHMENT A

Option 1

STANDING ORDER 1

PROPOSED AMENDMENT TO INCORPORATE RECOGNITION OF AN INDIGENOUS 'WELCOME TO COUNTRY' CEREMONY

(shown *thus*)

1 Proceedings on opening

(1) On the first day of the meeting of a session of Parliament, after a general election for the Senate and the House of Representatives, or after a general election for the House of Representatives:

(aa) There may be an Indigenous 'Welcome to Country' ceremony before the declaration of the opening of Parliament;

(a) If there is a President the President shall take the chair at the time specified in the proclamation.

(b) The Clerk shall read the proclamation calling Parliament together.

(c) Deputies appointed by the Governor–General shall be introduced by the Usher of the Black Rod to the Senate chamber.

(d) The Senior Deputy shall direct the Usher of the Black Rod to desire the attendance of the members of the House of Representatives to hear the commission read.

(e) Members of the House of Representatives shall sit in the Senate chamber and the Clerk shall read the commission.

(f) The Senior Deputy shall then inform the members of both Houses that the Governor–General will at a future time declare the cause of calling Parliament together.

(g) The certificate of election or choice of each senator whose term of office has begun since the last sitting of the Senate shall be laid on the table, and each such senator may then make and subscribe the oath or affirmation of allegiance in accordance with the Constitution.

(h) If the office of President is vacant the Senate shall elect a President.

(2) On the first day of the meeting of a session of Parliament not after a general election for the Senate and the House of Representatives or a general election for the House of Representatives:

If there is a President:

(a) The President shall take the chair at the time specified in the proclamation.

(b) The Clerk shall read the proclamation calling Parliament together.

(c) The Governor–General shall be introduced by the Usher of the Black Rod to the Senate chamber.

(d) The certificate of election or choice of each senator whose term of office has begun since the last sitting of the Senate shall be laid on the table, and each such senator may then make and subscribe the oath or affirmation of allegiance in accordance with the Constitution.

If there is no President:

(e) The Clerk shall at the time specified in the proclamation read the proclamation calling Parliament together.

(f) Deputies appointed by the Governor–General shall be introduced by the Usher of the Black Rod to the Senate chamber.

(g) The Clerk shall read the commission.

(h) The Senior Deputy shall inform the Senate that the Governor–General will at a future time declare the cause of calling Parliament together.

(i) The certificate of election or choice of each senator whose term of office has begun since the last sitting of the Senate shall be laid on the table, and each such senator may then make and subscribe the oath or affirmation of allegiance in accordance with the Constitution.

(j) The Senate shall elect a President.

Option 2

PROPOSED RESOLUTION OF CONTINUING EFFECT TO ENDORSE AN INDIGENOUS 'WELCOME TO COUNTRY' CEREMONY

That the Senate is of the view that the declaration of the opening of Parliament should be preceded by an Indigenous ‘Welcome to Country’ ceremony.