

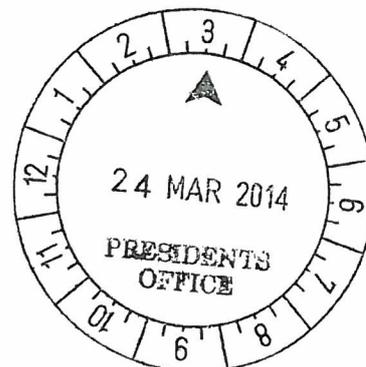


STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

24 March 2014

Senator the Hon John Hogg
President of the Senate
Parliament House
CANBERRA ACT 2600

refer to Procedure Cttee
JH
24.3.14



Dear Mr President

The Scrutiny of Bills Committee conducted an inquiry into its future role and direction and reported about it to the Senate in May 2012. The inquiry made fourteen recommendations, which the committee has been progressively implementing.

A number of the recommendations relate to possible amendments to the standing orders. Therefore, pursuant to SO 17(3), I ask that you refer the following matters to the Procedure Committee for its consideration of the operation of the standing orders on the role and work of the Scrutiny of Bills Committee in relation to:

1. a permanent public inquiry power;
2. consideration of provisions of bills;
3. general committee powers;
4. framework bills;
5. uniform (or national scheme) legislation; and
6. comments on bills.

I have attached an extract of the relevant recommendations and some supporting information about them as well as a copy of the 2012 inquiry report.

Yours sincerely

Senator Helen Polley
Chair

Extract information for the Procedure Committee relating to implementation of the recommendations of the Scrutiny of Bills Committee report into its future role and direction

PERMANENT PUBLIC INQUIRY POWERS

Recommendation 4

4.22 That Senate standing order 24 be amended to provide the committee with permanent public inquiry powers in line with the relevant paragraphs of Senate standing order 25 relating to legislative and general purpose standing committees.

The committee noted in the report that it would be desirable for it to undertake more inquiries into matters of principle. The committee therefore formed the view that a permanent inquiry power is also desirable. Several submitters noted that the inquiry power may not be needed frequently, but that having such a power would add flexibility to the committee's proceedings.

The committee notes that implementing this recommendation would require amendment to the standing orders and welcomes any comments on the proposal.

TECHNICAL AMENDMENT RELATING TO 'PROVISIONS OF BILLS'

Recommendation 5

4.29 That Senate standing order 24(1)(a) be amended to include a reference to the committee reporting in respect of the 'provisions of bills introduced in the Parliament'.

In her submission to the committee, the Clerk of the Senate suggested an amendment to standing order 24 to address a technical issue in relation to the ability of the committee to consider bills after they have been introduced in the House of Representatives, but before they are received in the Senate. This mechanism is already utilised by the committee to avoid unnecessary delay in its consideration of bills. However, as the Clerk noted, making a technical change so that the standing order refers to 'provisions of bills introduced in the Parliament' would make the reference and reporting functions of the committee, and their timing, more transparent.

The committee notes that implementing this recommendation would require amendment to the standing orders and welcomes any comments on the proposal.

GENERAL COMMITTEE POWERS

Recommendation 6

4.31 That Senate standing order 24 be amended to provide that the Scrutiny of Bills Committee deputy chair is elected rather than appointed (in line with Senate standing order paragraphs 25(9)(a) and 25(9)(b)).

Recommendation 7

4.32 That Senate standing order 24 be amended in line with Senate standing orders 25(16) in relation to printing and 25(19) in relation to broadcasting.

During the inquiry differences between the relevant standing orders relating to the general powers of standing committees and the general powers of the scrutiny committees became apparent. The matters that the committee considered should be addressed in this regard were the discretionary appointment of deputy chairs (rather than their election – c.f. standing order 25 paragraphs (9)(a) and (b)), the power to print documents and evidence (c.f. standing order 25(16)), and the power to authorise the broadcasting of proceedings (c.f. standing order 25(19)).

The committee notes that implementing these recommendations would require amendments to the standing orders and welcomes any comments on the proposal.

FRAMEWORK BILLS

Recommendation 8

5.15 That Senate standing order 24 be amended to specifically include the scrutiny of bills which excessively rely on delegated legislation for their operation.

The committee has a long-standing view that it prefers that important information is included in primary legislation unless there is a principled reason for including it in delegated legislation. To this end, the committee has regularly highlighted instances in which primary legislation may excessively rely on delegated legislation for its operation. The committee has done so under the general principle 1(a)(iv) – 'inappropriately delegated legislative powers'.

In the report, the committee noted that the Procedure Committee has stated that it:

...sees merit in encouraging legislation committees in their examination of bills to be alert for cases in which the absence of draft regulations hinders adequate scrutiny of a bill, and to frame recommendations accordingly.' [Procedure Committee, *First report of 2010*, April 2010, p. 1.]

This accorded with the suggestion of the Clerk of the Senate that:

...one new area in which the committee may be able to assist the Senate is in identifying bills which appear to rely significantly for their operation on the making of regulations, the detail of which is not available for the Senate's consideration while the bill is before it.

The committee endorsed this proposal in the report. The committee, noting the increasing prevalence of framework bills and the importance of ensuring they are subject to effective scrutiny, recommended that the committee's terms of reference be amended to include specific reference to this task. It is also noted that the *Williams* 2012 High Court decision has had a significant impact on the use of delegated legislation, the ramifications of which are still evolving.

The committee notes that implementing recommendation 8 would require amendment to the standing orders.

UNIFORM (OR NATIONAL SCHEME) LEGISLATION

Recommendation 12

6.19 That standing order 24 be examined to confirm whether the Scrutiny of Bills Committee is empowered to consider, advise and report on exposure drafts and, if it is not, that standing order 24 be amended to allow the committee to do so.

In the report the committee noted that scrutiny concerns in relation to uniform legislation are not new and were stated clearly in a discussion paper prepared by a working party of the chairs of Australian scrutiny committee in July 1995. The working party stated that:

...in relation to uniform legislation no changes are permitted. Committees are often told that the legislation cannot be varied because it has been carefully worked out by the relevant Ministerial Council and has national significance....This is also the case with subordinate legislation. As a result, Scrutiny Committees are restricted from carrying out their roles in relation to uniform legislation. Practically speaking, it is fair to say that there is effectively no parliamentary scrutiny of national scheme legislation.

The committee suggested that, in order to encourage the practice of providing exposure drafts, the Senate could consider deferring the passage of any uniform or national scheme legislation unless adequate opportunity to scrutinise it, and negotiate any amendments, is provided.

The committee notes that implementing these recommendations may require amendment to the standing orders and welcomes any comments on the proposal.

COMMENTS ON BILLS

Recommendation 13

7.11 That the Senate refers to the Procedure Committee the Scrutiny of Bills committee's request that standing order 24 be amended to provide that the committee's comments on bills stand referred to legislation committees inquiring into those bills.

In her submission to the inquiry, the Clerk of the Senate noted that the committee regularly provides its comments on bills to legislation committees. In this regard the Clerk made a practical suggestion for the committee to seek to arrange for the practice to become part of the committee's operating framework:

I note the recent innovation of the committee in forwarding its initial comments on bills to legislation committees examining those bills. The committee may wish to formalise this arrangement by seeking a change in standing order 24 (or standing order 25 covering the legislation committees) to provide that the committee's comments on bills stand referred to legislation committees inquiring into those bills. This is an issue that could be referred to the Procedure Committee to follow up should the committee see merit in it.

In the report, the committee endorsed the proposal from the Clerk of the Senate and accordingly recommended that this matter be referred to the Procedure Committee for consideration.

The committee notes that implementing these recommendations may require amendment to the standing orders and welcomes any comments on the proposal.