



Principle (v): Insufficient parliamentary scrutiny

Overview

Scrutiny principle (v) requires the committee to scrutinise each bill as to whether it insufficiently subjects the exercise of legislative power to parliamentary scrutiny. Under this principle, the committee will typically be concerned with bills which provide for:

- incorporation of external materials existing from time to time;
- deferral of or exemption from sunseting;
- reports which are not required to be tabled in the Parliament;
- standing appropriations; and
- Commonwealth grants to states and territories.

The following discussion summarises the committee's expectations regarding key issues arising under principle (v). The issues identified are not exhaustive.

Incorporation of external materials as existing from time to time

Where provisions in a bill allow the incorporation of legislative provisions by reference to other documents, this raises the prospect of changes being made to the law in the absence of parliamentary scrutiny. Further, the incorporation of external material can create uncertainty in the law and, if relevant information is not publicly available, may mean that members of the public are not able to freely and readily access the terms of the law. Where a bill allows the incorporation of external materials as existing from time to time, the committee expects the explanatory memorandum to the bill to address the following matters:

- why it is appropriate to allow the incorporation of external materials as existing from time to time; and
- whether the incorporated material will be made freely available to all persons interested in the terms of the law.

Deferral of or exemption from sunseting

Sunset clauses are important safeguards which facilitate regular parliamentary scrutiny and oversight of primary legislation. In addition, disallowance and sunseting are the primary means by which the Parliament exercises control over delegated legislation. Where a bill extends or removes a sunset date in primary legislation or exempts delegated legislation from sunseting, the committee expects the explanatory memorandum to the bill to address why it is appropriate to provide for such an extension or exemption, noting the importance of sunseting to effective and regular parliamentary scrutiny.

Reports not required to be tabled in the Parliament

The process of tabling reports and other documents in Parliament alerts parliamentarians to their existence and provides opportunities for debate that are not available where documents are only published online. Where a bill provides for the review of significant matters it should also require the review report to be tabled in Parliament. In addition, removing the requirement for certain

information to be tabled in Parliament reduces the scope for parliamentary scrutiny. Where a bill does not include, or removes, tabling requirements, the committee expects the explanatory memorandum to the bill to address the following matters:

- why it is appropriate that the reports or documents are not to be tabled in Parliament; and
- whether each of the reports or documents will be made available online (including whether other legislative provisions, if any, require the publishing of these reports or documents online).

Standing appropriations

Standing appropriations enable entities to spend money from the Consolidated Revenue Fund on an ongoing basis. Once enacted, the expenditure a standing appropriation bill involves does not require regular parliamentary approval and therefore escapes direct parliamentary control.

Where a bill establishes or expands standing appropriations, the committee expects the explanatory memorandum to the bill to address the following matters:

- why it is appropriate to include a standing appropriation (rather than providing for the relevant appropriations in the annual appropriation bills);
- whether the bill places a limitation on the amount of funds that may be appropriated; and
- whether the standing appropriation is subject to a sunset clause and, if not, why such a clause has not been included in the bill.

Commonwealth grants to states and territories

Section 96 of the Constitution gives Parliament the power to make grants to the states and to determine terms and conditions attached to them. While the Parliament has largely delegated this power to the Executive, the committee considers that it is appropriate that the exercise of this power be subject to effective parliamentary scrutiny, particularly noting the terms of section 96 and the role of Senators in representing the people of their state or territory.

A bill providing for grants under section 96 of the Constitution should include provisions that limit or specify the terms and conditions on which the money will be distributed, allowing for effective parliamentary scrutiny before the bill is passed. The committee also expects that any written agreements between the Commonwealth and states and territories about these grants will be required to be tabled in the Parliament and published online.

Where a bill provides for Commonwealth grants to states and territories, the committee expects the explanatory memorandum to the bill to address the following matters:

- what limits or terms and conditions will apply to the making of the grants;
- whether any written agreements between the Commonwealth and the states and territories will be tabled in the Parliament and published online; and
- whether information about the amount and recipients of grants will be made publicly available.

Explanatory memorandum checklist

The following checklist summarises the type of information which should be included in explanatory memoranda where a bill may engage scrutiny principle (v).

- | | |
|---|---|
| <input type="checkbox"/> Incorporation of external materials as existing from time to time | <p>Where a bill allows the incorporation of external materials as existing from time to time, the explanatory memorandum should explain:</p> <ul style="list-style-type: none"> • why it is appropriate to allow the incorporation of external materials as existing from time to time; and • whether the incorporated material will be made freely available to all persons interested in the terms of the law. |
| <input type="checkbox"/> Deferral of or exemption from sunseting | <p>Where a bill extends or removes a sunset date in primary legislation or exempts delegated legislation from sunseting, the explanatory memorandum should explain:</p> <ul style="list-style-type: none"> • why it is appropriate to provide for the extension or exemption, noting the importance of sunseting to effective and regular parliamentary scrutiny. |
| <input type="checkbox"/> Reports not required to be tabled in the Parliament | <p>Where a bill does not include, or removes, tabling requirements, the explanatory memorandum should explain:</p> <ul style="list-style-type: none"> • why it is appropriate that the reports or documents are not to be tabled in Parliament; and • whether each of the reports or documents will be made available online (including whether other legislative provisions, if any, require the publishing of these reports or documents online). |
| <input type="checkbox"/> Standing appropriations | <p>Where a bill establishes or expands standing appropriations, the explanatory memorandum should explain:</p> <ul style="list-style-type: none"> • why it is appropriate to include a standing appropriation (rather than providing for the relevant appropriations in the annual appropriation bills); • whether the bill places a limitation on the amount of funds that may be appropriated; and • whether the standing appropriation is subject to a sunset clause and, if not, why such a clause has not been included in the bill. |
| <input type="checkbox"/> Commonwealth grants to states and territories | <p>Where a bill provides for Commonwealth grants to states and territories, the committee expects the explanatory memorandum to the bill to address the following matters:</p> <ul style="list-style-type: none"> • what limits or terms and conditions will apply to the making of the grants; • whether any written agreements between the Commonwealth and the states and territories will be tabled in the Parliament and published online; and • whether information about the amount and recipients of grants will be made publicly available. |