



AUSTRALIAN SENATE

PARLIAMENT HOUSE  
CANBERRA ACT 2600

CLERK OF THE SENATE

8 April 2014

Ms Lyn Beverley  
Secretary  
Finance and Public Administration Committee  
The Senate  
Parliament House  
Canberra ACT 2600

Dear Ms Beverley

**OMNIBUS REPEAL DAY (AUTUMN 2014) BILL 2014**

Thank you for the committee's invitation to make a submission on this bill.

As a matter of principle, the law-making body has an undoubted interest in ensuring that the laws that are made are accessible and clear to those that are subject to them. By agreeing to periodic statute law revision bills and by adopting the concept of automatic sunseting of legislative instruments in the *Legislative Instruments Act 2003*, the Parliament has also endorsed the principle that legislation on the statute books should be current. Periodic repeal of spent legislation ensures that the statute book is effective as a statement of the current law, and the rights, obligations and duties applicable to those within the jurisdiction of the Commonwealth.

Statute law revision bills are recognised in the [Legislation Handbook](#) as a specific type of bill:

**STATUTE LAW REVISION BILL**

5.8 A Statute Law Revision Bill makes technical amendments to a number of Commonwealth Acts. The amendments included in such a bill deal only with tidying up, correction of errors, updating (including modernisation of style) and repeal of spent legislation. No proposals involving changes of policy will be included in a Statute Law Revision Bill. The Office of Parliamentary Counsel will prepare a Statute Law Revision Bill when time permits (usually only during an election period). As compilation of these bills is infrequent, these technical amendments should be made on an ongoing basis in portfolio or separate bills.

5.9 Where OPC considers that a matter is purely formal (for example, correction of errors, repeal of spent legislation, modernisation of style or a standard provision) and thus suitable for inclusion in a Statute Law Revision Bill, First Parliamentary Counsel may approve the amendment and its inclusion in a portfolio bill.

(Department of the Prime Minister and Cabinet, last updated 2001, p. 24)

In the past, statute law revision bills have been of concern to senators who have queried the scope of amendments contained in them. In 1985, for example, the Statute Law (Miscellaneous Provisions) Bill (No. 1) 1985 was the subject of extensive debate and numerous amendments were moved, although none were agreed to. In closing the second reading debate, the then Minister for Resources and Energy, Senator Gareth Evans, acknowledged criticism of the inclusion of substantial and lengthy amendments in such bills and informed the Senate of proposed changes to guidelines for matters to be included in such bills in future. He tabled and incorporated in Hansard a copy of the proposed new guidelines which read as follows:

Proposed New Guidelines for Statute Law (Miscellaneous Provisions) Bills

- (a) Only matters that deal with tidying up, correction and up-dating (including modernisation of style), with routine administrative changes or, with the approval of the Prime Minister, with changes of minor policy significance may be included.
- (b) No matter that is contentious, or is closely related to a contentious matter, may be included.
- (c) Matters that involve lengthy and complex drafting (particularly of a kind that may hold up the Bill) must not be included.
- (d) Matters that involve substantial policy issues (including legal policy issues) must not be included.
- (e) If the amendments proposed to a particular Act are of such a lengthy nature that they ought fairly to be the subject of a separate Bill (whether or not such a Bill is likely to be included in the legislative program for the sittings in which the relevant Statute Law Bill is to be introduced), the amendments must not be included in the Statute Law Bill.
- (f) No matter that would constitute a change to the National Companies and Securities legislation may be included.
- (g) No matter that imposes, abolishes or varies a tax, or varies the incidence of a tax, may be included.
- (h) No matter involving an appropriation may be included (except the repeal of a “spent” appropriation power).

- (i) A decision on whether a matter falls within the guidelines as being suitable for inclusion in the Bill should be made in the first instance by parliamentary Counsel after consulting, when appropriate, with the Attorney-General's Department and the Department of the Prime Minister and Cabinet.
- (j) In addition, if Parliamentary Counsel consider that the number or nature of some amendments proposed for inclusion in the Bill would result in the Bill becoming unduly lengthy, Parliamentary Counsel should have a discretion to require the amendments to be deferred for inclusion in the Statute Law Bill proposed for a later sittings or to be dealt with when the relevant Principal Act is next being amended by a separate Bill.
- (k) If a Department seeking the inclusion of a provision in the Bill is dissatisfied with a decision of Parliamentary Counsel, the matter should be referred to the Attorney-General for decision and, if the Attorney-General considers it necessary to do so, to the Legislation Committee.

Senator Evans added that the revision was “another gesture in the direction of open government which I know will win the heart and soul of Senator Durack [a leading Opposition senator], and no doubt lose me more favour with my colleagues” (*Senate Debates*, 30 May 1985, p. 2785).

Concerns were also raised in connection with the Statute Law (Miscellaneous Provisions) Bill 1987. Proposed amendments to the *Acts Interpretation Act 1901* and the *Audit Act 1901* were removed from the bill by the Senate and referred to two separate committees for further scrutiny (the Regulations and Ordinances Committee for the first-mentioned provisions and the Standing Committee on Finance and Public Administration for the latter).

After inquiry, both committees recommended that the Senate agree to amendments made by the House of Representatives to restore the provisions (with an amendment recommended by the Regulations and Ordinances Committee) but not without criticism of the process applied to an apparently technical and routine bill.

The Regulations and Ordinances Committee found that the proposed amendments to the *Acts Interpretation Act 1901* could circumvent the power of each House to disallow regulations, a matter of fundamental importance to the role of the Houses. The committee recommended an amendment to prevent the circumvention.

The Standing Committee on Finance and Public Administration reported on proposed amendments to the *Audit Act 1901* relating to the payment of moneys. Having received an explanation for the proposed amendments, including their origin in a 1983 recommendation of the Public Accounts Committee, the committee supported them, noting that had the explanatory memorandum and minister's second reading speech contained an adequate explanation of the provisions, their excision and referral for inquiry might have been unnecessary. The committee also considered the use of statute law revision bills for such

purposes, noting the 1985 guidelines tabled by Senator Gareth Evans, and concluded that a separate bill may have been warranted for these amendments:

The Committee suggests that the guidelines for Statute Law (Miscellaneous Provisions) Bills could usefully be reviewed. The Committee believes that a distinction should be made between purely technical and routine amendments and matters which are of greater significance but which may nevertheless be legislatively straight-forward. In the latter instance, a separate omnibus Bill would assist such matters to be considered more carefully (*Proposed Amendments to the Audit Act 1901*, Parliamentary Paper No. 211/1987, page 9).

I am not aware that the 1985 guidelines have any continuing application, although they may continue to inform decisions by the Office of Parliamentary Counsel as to suitable material for statute law revision bills, as contemplated by the current terms of the *Legislation Handbook*.

Of course, the Omnibus Repeal Day (Autumn 2014) Bill 2014 is not a statute law revision bill in the traditional sense because, as well as repealing redundant and spent Acts, it has a whole of government focus on reducing the regulatory burden for business, individuals and the community. It is one of three bills designed to rationalise regulation, particularly by repealing redundant legislation.

It is also suggested that this exercise will occur twice each year. If that is the case, then it may be useful from the point of view of parliamentary scrutiny for there to be some known legislative policy parameters for the exercise.

The reason I have quoted the old guidelines for statute law revision bills is that they provided useful guidance on what the Parliament could expect to be included in such bills. The committee will be aware that explanatory memoranda are often found to be deficient in including explanations of matters of interest to the Senate. Hardly a Scrutiny of Bills Committee report goes by without observations from that committee about the adequacy of information in explanatory memoranda and requests to ministers to issue revised memoranda to include the material provided in explanation of concerns raised by that committee.

A statement from the executive government about what it expects such bills to cover and – perhaps more importantly – not cover would be a useful adjunct to parliamentary scrutiny and would assist in optimising the limited resources of both Houses. Without such an understanding of the scope of such bills in the future, the Senate may wish to apply the full range of scrutiny to bills which might otherwise be able to be considered as non-controversial.

Two reasons why vigilance is always necessary, even with the most innocuous-looking of bills are:

- the capacity of governments to slip matters into such bills that really warrant much greater scrutiny (see the 1985 and 1987 examples cited above); and
- the incidence of errors.

On the question of errors, the explanatory memorandum to the Omnibus Repeal Day Bill includes reference to the repeal of spent, exhausted and lapsed appropriation acts, a process claimed to be consistent with the process used in relation to the *Statute Stocktake (Appropriations) Act 2013*. That Act, however, repealed a number of Appropriation (Parliamentary Departments) Acts that were neither spent nor exhausted. The Omnibus Repeal Day Bill repeats the same error and therefore raises the prospect that the Senate needs to be particularly vigilant in relation to such bills to ensure that its capacity to function is not being compromised by inappropriate attempts to strip it of funding.

There is a process for negotiation of the department's budget between the President of the Senate, on behalf of the Appropriations and Staffing Committee, and the Minister for Finance, set out in several resolutions of the Senate and most recently articulated in the Appropriations and Staffing Committee's 55<sup>th</sup> report. The use of bills such as the Omnibus Repeal Day Bill to deal with appropriations bypasses that process.

The background to this is as follows.

By the time of the 2008-09 Budget the Department of the Senate had accumulated a pool of unspent prior year appropriations. With the agreement of the Appropriations and Staffing Committee, the department returned approximately \$11.3 million to consolidated revenue. Retention of the remaining amount for accrued employee entitlements and other balance sheet items was the subject of agreement between the Appropriations and Staffing Committee and the then Minister for Finance and Deregulation. These amounts were held against a number of Appropriation (Parliamentary Departments) Acts. When it was pointed out, in relation to the Statute Stocktake (Appropriations) Bill 2013, that repeal of these Acts would nullify the agreement between the committee and the minister, the proposed repeal was acknowledged as "inadvertent" and administrative measures were taken to preserve the appropriated funds.

The very same error has been repeated with the proposed repeal of *Appropriation (Parliamentary Departments) Act (No. 1) 2011-2012* by Schedule 6, item 12 of the Omnibus Repeal Day (Autumn 2014) Bill 2014. The bill also proposed to repeal *Appropriation (Parliamentary Departments) Act (No. 1) 2010-2011*. When the Department of Finance consulted the Department of the Senate about the repeal of the latter bill, the department indicated that the 2010-2011 appropriation had been spent and the bill could therefore be repealed, but that there were unspent funds against *Appropriation (Parliamentary Departments) Act (No. 1) 2011-2012* (namely, the accumulated prior year appropriations, appropriated to the department for approved uses).

The Department of Finance did not consult the Department of the Senate about the repeal of *Appropriation (Parliamentary Departments) Act (No. 1) 2011-2012*. The Department of the Senate had already advised Finance that there were unspent appropriations held against that Act. Repeal of that Act was nonetheless included in the Omnibus Repeal Day Bill, indicating that this is yet another method by which the executive can threaten the independence of the Parliament by cutting off access to appropriated funds that are also the subject of agreement at ministerial level.

While an administrative solution has again been found to the problem, the repetition of the same error that occurred in the *Statute Stocktake (Appropriations) Act 2013* is disappointing. It indicates that particular vigilance is needed in relation to these apparently innocuous kinds of bills and that this is even more the case where such bills are to be a regular event.

Please let me know if I can provide any further assistance to the committee.

Yours sincerely

(Rosemary Laing)