The Senate

Procedure Committee

The Senate committee system

Second report of 2009

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MEMBERS OF THE COMMITTEE

Senator the Hon John Hogg President of the Senate

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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 3360
Facsimile:	(02) 6277 3199
E-mail:	harry.evans@aph.gov.au
Internet:	http://www.aph.gov.au/Senate/committee/proc_ctte

PROCEDURE COMMITTEE

SECOND REPORT OF 2009

THE SENATE COMMITTEE SYSTEM

In accordance with the undertaking given to the Senate in its first report of 2009, the committee has further considered proposals to change the membership of the legislative and general purpose standing committees.

Following the consultation amongst senators referred to in that report, a proposal was presented to the committee which the committee now recommends to the Senate. Basically, this proposal involves restructuring the committees to return to the system that was in effect from 1994 to 2006, whereby in each of the eight subject areas of the standing committees there is a legislation committee and a references committee.

This structure was adopted in 1994, following a report by the committee, with the aim of making the committee system more reflective of the composition of the Senate and to reduce the numbers of select committees appointed.

Under the pre-1994 structure, each of the standing committees had a government party majority and a government party chair. It became more and more common for the Senate to appoint select committees to inquire into particular matters with non-government majorities and non-government chairs, where it was felt that the inquiry should be conducted by a group of senators more closely reflecting the composition of the Senate.

Under the 1994 structure, the legislation committees had government party majorities and government party chairs and conducted the estimates hearings, inquiries into bills referred to them by the Senate, the examination of annual reports and the oversight of government departments and agencies. The references committees inquired into other matters referred to them by the Senate, and had non-government majorities and nongovernment chairs. Matters formerly referred to select committees could then be referred to references committees with the assurance that those committees more accurately reflected the composition of the Senate.

In 2006, after the then government gained a party majority in the Senate at the general elections of 2004, the 1994 scheme of unified committees with government majorities and government chairs was restored. This has resulted, following the change of government and the change in the composition of the Senate in the 2007 elections, in a repetition of the proliferation of select committees that occurred before 1994. In 2006 and 2007 no select committees were appointed and an average of only two per year were appointed from 1998 to 2007. In 2008 and 2009 eight select committees have been appointed so far. This has put pressure on senators' time and on staff and financial resources. The committee considers that this expansion in the number of select committees has the same cause as before 1994 and that the same remedy should be adopted.

The committee therefore recommends that the 1994 system of dual committees should be restored. Each legislation and references committee would have six members, three from the government party, two from the Opposition and one from the minor party and independent senators. The legislation committees would have government party chairs and non-government party deputy chairs. The references committees would have Opposition or minor party chairs, and government party deputy chairs. The allocation of the chairs and deputy chairs between the Opposition and the minor party and independent senators would be determined by agreement between these senators, and in the absence of agreement by the Senate. These membership provisions are the same as those that applied under the 1994-2006 system. The provisions for participating membership and substitute members would continue.

The restructure would incorporate the changes to the rules for the operations of committees which have been adopted since 1994, including the procedures for members of the committees to nominate temporary substitutes and for chairs to nominate temporary acting chairs. This may be achieved by the amendments to standing order 25 shown in the attachment to this report.

The committee considers that this change in the structure of the legislative and general purpose standing committees should be accompanied by the winding up, as soon as practicable, of the existing select committees. The matters under inquiry by those select committees may be referred to the references committees if the Senate so chooses.

The committee also considers that the restructuring of the legislative and general purpose standing committees should be based on an understanding that there should be no more than three select committees in existence at any time. It is always open to the Senate to depart from this prescription whenever it chooses to do so, but the committee considers that the Senate should not do so and that this understanding should be observed as a convention of the Senate. It should also be an understanding that bills will be referred only to the legislation committees.

The committee believes that the restructuring of the committee system should involve the abolition of the remuneration currently paid to the deputy chairs of the legislative and general purpose standing committees, which was introduced in 2006. The committee has asked the Remuneration Tribunal to make a determination accordingly if the Senate agrees to the proposed change, with effect from the date of the change, and the Tribunal has agreed to do so.

The committee suggests that the change should be adopted in the first sitting week of May so that it will be in place for the budget estimates hearings beginning on 25 May.

The committee therefore recommends that the amendments of standing order 25 contained in the attachment be adopted in the Senate with effect from 14 May 2009.

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

ATTACHMENT

PROPOSED AMENDMENTS OF STANDING ORDER 25

25 Legislative and general purpose

(1) At the commencement of each Parliament, legislative and general purpose standing committees shall be appointed, as follows:

Community Affairs Legislation Committee References Committee Economics **Legislation Committee References Committee** Employment, Workplace Relations and Education **Legislation Committee References Committee** Environment, Communications, Information Technology and the Arts **Legislation Committee References Committee** Finance and Public Administration **Legislation Committee References Committee** Foreign Affairs, Defence and Trade **Legislation Committee References Committee** Legal and Constitutional Affairs **Legislation Committee References Committee** Rural and Regional Affairs and Transport **Legislation Committee References** Committee.

(2) The committees shall inquire into and report upon:

(a) matters referred to them by the Senate, including estimates of expenditure in accordance with standing order 26, bills or draft bills, annual reports in accordance with paragraph (20); and

(b) the performance of departments and agencies allocated to them.

(2) (a) The legislation committees shall inquire into and report upon estimates of expenditure in accordance with standing order 26, bills or draft bills referred to them by the Senate, annual reports in accordance with paragraph (20), and the performance of departments and agencies allocated to them.

(b) The references committees shall inquire into and report upon other matters referred to them by the Senate.

- (3) References concerning departments and agencies shall be allocated to the committees in accordance with a resolution of the Senate allocating departments and agencies to the committees.
- (4) The committees shall inquire into and report upon matters referred to their predecessor committees appointed under this standing order and not disposed of by those committees, and in considering those matters may consider the evidence and records of those committees relating to those matters.
- (5) Each committee shall consist of -8-6 senators, -4-3 nominated by the Leader of the Government in the Senate, -3-2 nominated by the Leader of the Opposition in the Senate and one nominated by minority groups and independent senators.
- (6) (a) The committees to which minority groups and independent senators make nominations shall be determined by agreement between the minority groups and independent senators, and, in the absence of agreement duly notified to the President, any question of the representation on a committee shall be determined by the Senate.
 - (b) The allocation of places on the committees amongst minority groups and independent senators shall be as nearly as practicable proportional to the numbers of those minority groups and independent senators in the Senate.
- (7) (a) Senators may be appointed to the committees as substitutes for members of the committees in respect of particular matters before the committees.
 - (b) On the nominations of the Leader of the Government in the Senate, the Leader of the Opposition in the Senate and minority groups and independent senators, participating members may be appointed to the committees.
 - (c) Participating members may participate in hearings of evidence and deliberations of the committees, and have all the rights of members of committees, but may not vote on any questions before the committees.
 - (d) A participating member shall be taken to be a member of a committee for the purpose of forming a quorum of the committee if a majority of members of the committee is not present.
 - (e) If a member of a committee is unable to attend a meeting of the committee, that member may in writing to the chair of the committee appoint a participating member to act as a substitute member of the committee at that meeting. If the member is incapacitated or unavailable, a letter to the chair of a committee appointing a participating member to

act as a substitute member of the committee may be signed on behalf of the member by the leader of the party or group on whose nomination the member was appointed to the committee.

- (8) A committee may appoint sub-committees consisting of 3 or more of its members, and refer to any such sub-committee any of the matters which the committee is empowered to consider.
- (9) (a) Each legislation committee shall elect as its chair a member nominated by the Leader of the Government in the Senate, and as its deputy chair a member nominated by the Leader of the Opposition in the Senate or by a minority group or independent senator.
 - (b) Each of 6 references committees shall elect as its deputy chair a member nominated by the Leader of the Opposition in the Senate, and each of 2 committees shall elect as its deputy chair or a member of a minority group in the Senate, and as its deputy chair a member nominated by the Leader of the Government in the Senate.
 - (c) The deputy chairs and deputy chairs to which members nominated by the Leader of the Opposition in the Senate and members of minority groups and independent senators are elected shall be determined by agreement between the opposition and minority groups and independent senators, and, in the absence of agreement duly notified to the President, any question of the allocation of chairs and deputy chairs shall be determined by the Senate.
 - (d) The deputy chair shall act as the chair of the committee when the member elected as chair is absent from a meeting of the committee or the position of chair is temporarily vacant.
 - (e) When votes on a question before a committee are equally divided, the chair, or the deputy chair when acting as chair, shall have a casting vote.
 - (f) The chair, or the deputy chair when acting as chair, may appoint another member of a committee to act as chair during the temporary absence of both the chair and deputy chair at a meeting of the committee.
- (10) The chairs and deputy chairs of the committees, together with the chairs and deputy chairs of any select committees appointed by the Senate, shall constitute the Chairs' Committee, which may meet with the Deputy President in the chair, and may consider and report to the Senate on any matter relating to the operations of the committees.
- (11) Except as otherwise provided by the standing orders, the reference of a matter to a committee shall be on motion after notice, and such notice of motion may be given:
 - (a) in the usual manner when notices are given; or
 - (b) at any other time by a senator:

- (i) stating its terms to the Senate, when no other business is before the chair, or
- (ii) delivering a copy to the Clerk, who shall report it to the Senate at the first opportunity;

and shall be placed on the Notice Paper for the next sitting day as business of the Senate and, as such, shall take precedence of government and general business set down for that day.

- (12) Matters referred to the committees should relate to subjects which can be dealt with expeditiously.
- (13) A committee shall take care not to inquire into any matters which are being examined by a select committee of the Senate appointed to inquire into such matters and any question arising in this connection may be referred to the Senate for determination.
- (14) A committee and any sub-committee shall have power to send for persons and documents, to move from place to place, and to meet and transact business in public or private session and notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives.
- (15) All documents received by a committee during an inquiry shall remain in the custody of the Senate after the completion of that inquiry.
- (16) A committee shall be empowered to print from day to day any of its documents and evidence. A daily Hansard shall be published of public proceedings of a committee.
- (17) A committee shall be provided with all necessary staff, facilities and resources and shall be empowered to appoint persons with specialist knowledge for the purposes of the committee, with the approval of the President.
- (18) A committee may report from time to time its proceedings and evidence taken and any recommendations, and shall make regular reports on the progress of its proceedings.
- (19) A committee may authorise the broadcasting of its public hearings, under such rules as the Senate provides.
- (20) Annual reports of departments and agencies shall stand referred to the **legislation** committees in accordance with an allocation of departments and agencies in a resolution of the Senate. Each committee shall:
 - (a) Examine each annual report referred to it and report to the Senate whether the report is apparently satisfactory.
 - (b) Consider in more detail, and report to the Senate on, each annual report which is not apparently satisfactory, and on the other annual reports which it selects for more detailed consideration.

- (c) Investigate and report to the Senate on any lateness in the presentation of annual reports.
- (d) In considering an annual report, take into account any relevant remarks about the report made in debate in the Senate.
- (e) If the committee so determines, consider annual reports of departments and budget-related agencies in conjunction with examination of estimates.
- (f) Report on annual reports tabled by 31 October each year by the tenth sitting day of the following year, and on annual reports tabled by 30 April each year by the tenth sitting day after 30 June of that year.
- (g) Draw to the attention of the Senate any significant matters relating to the operations and performance of the bodies furnishing the annual reports.
- (h) Report to the Senate each year whether there are any bodies which do not present annual reports to the Senate and which should present such reports.