

CHAPTER 1

Introduction

1.1 This report is the result of the committee's commitment to inquire into its future role and direction. The inquiry itself has had several incarnations. Most recently, on 3 March 2011, the Senate referred the following terms of reference:

The Committee shall inquire into and report on:

- (1) The future direction and role of the Scrutiny of Bills Committee, with particular reference to whether its powers, processes and terms of reference remain appropriate.
- (2) In undertaking this inquiry, the committee should have regard to the role, powers and practices of similar committees in other jurisdictions.
- (3) The committee be authorised to hold public hearings in relation to this inquiry and to move from place to place.
- (4) The committee be authorised to access the records and papers of the 2010 inquiry into its future role and direction.

1.2 The reporting date was set for the last sitting day in June 2011. However, it was important for the committee to have adequate opportunity to review the terms of reference thoroughly. Given this, and as a result of changes in committee membership, the Senate agreed to extensions of time and an interim report was tabled on 23 November 2011. The interim report outlined the major themes of interest to the committee which it intended to explore further such as:

- the committee's approach to its work;
- framework bills and national scheme legislation;
- committee powers and sanctions;
- communication; and
- technical amendments.

The interim report was also sent to interested parties for further comment. The above themes are discussed in detail in later chapters of this report.

Background

2010 Inquiry

1.3 The current inquiry follows the commencement of a similar inquiry in 2010 into the future direction and role of the committee. The terms of reference for that inquiry had substantial similarities with the committee's current terms of reference.¹ The difference between the two inquiries was that the 2010 inquiry also inquired into the following two areas:

- whether parliamentary mechanisms for the scrutiny and control of delegated legislation are optimal; and
- what, if any, additional role the committee should undertake in relation to human rights obligations applying to the Commonwealth.²

1.4 The 2010 inquiry was due to table its report on 12 May 2010. However, on the 21 April 2010 the then Attorney-General, the Hon Robert McClelland MP launched Australia's Human Rights Framework (the Framework) in response to the *National Human Rights Consultation Report*, published in September 2009. One of the key commitments in the Framework included the establishment of a Parliamentary Joint Committee on Human Rights.

1.5 Given the potential overlap between the work of the two committees, on 12 May 2010 the committee produced an interim report which stated:

The work of the Parliamentary Joint Committee on Human Rights is likely to have an impact on the remit of the work of the Scrutiny of Bills Committee. It will be relevant for the Scrutiny of Bills Committee to consider the content of the enabling legislation before it can develop an informed view of its own future role and direction.³

1.6 Accordingly, the committee recommended:

That the time for the presentation of the committee's report on this inquiry be extended, with the reporting date to be determined after the introduction of legislation to establish the proposed Parliamentary Joint Committee on Human Rights.

1.7 However, the 2010 inquiry ultimately lapsed due to the 2010 federal election leading to re-referral of the inquiry on 3 March 2011 (see paragraph 1.1).

1 See appendix two for the 2010 inquiry terms of reference.

2 The changes in the terms of reference were primarily as a result of developments in these areas, discussed further in *Chapter 3, The committee's approach to its work*.

3 http://www.aph.gov.au/Senate/committee/scrutiny/future_direction_2010/interim_report/index.htm, p.1.

Conduct of inquiries

1.8 Both inquiries were advertised in *The Australian* and on the internet. In both instances the committee invited submissions from Commonwealth, state and territory departments and interested organisations and individuals.

1.9 The committee received 34 public submissions to its 2010 inquiry and 23 public submissions to the 2011 inquiry. A list of individuals and organisations who provided submissions authorised for publication by the committee is at Appendix 1.

Structure of the report

1.10 The structure of this report is as follows:

- (a) Chapter 1 – Introduction
- (b) Chapter 2 – History and outline of the work of the Committee
- (c) Chapter 3 – The Committee's approach to its work
- (d) Chapter 4 – Powers and sanctions
- (e) Chapter 5 – Framework bills
- (f) Chapter 6 – Uniform legislation
- (g) Chapter 7 – Communication

Acknowledgments

1.11 The committee acknowledges and thanks all those who have assisted with the inquiry by making submissions and providing additional information.

