

# CHAPTER 7

## Communication

### Introduction

7.1 In recent years the committee has developed a renewed interest in improving its communication. The committee recognises that its expertise in legislative scrutiny is likely to be useful to other participants in the legislative process. It is therefore seeking to identify ways in which to make this information more accessible and useful. The committee would like to create as much opportunity as it can to have a preventive impact (for scrutiny concerns to be avoided) and to reduce the necessity for a remedial impact (identifying and fixing problems once proposed legislation has already been introduced). In an effort to progress this goal, this chapter is dedicated to considering options for the committee to expand on, and improve, its communication.

7.2 A number of executive publications, such as the *Legislation Handbook* and the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*, already exist to provide guidance for those involved in the preparation of proposed legislation, amendments and supporting documents. The Clerk of the Senate has noted:

The appearance of the committee's views in these documents, and in advice given by [relevant] agencies in developing legislation, marks an important ongoing contribution to better standards in the drafting of legislation and better explanation of the proposed operation of new and amended laws.<sup>1</sup>

7.3 The committee welcomes the attention given to scrutiny matters in these documents and proposes later in this chapter that it will provide additional resources to those who would like further information and assistance about the technical scrutiny of legislation.

### Traditional communication methods

7.4 The committee has traditionally communicated through the publication of its:

- *Alert Digests* and *Reports* during each Senate sitting week;
- *The Work of the Committee Report* at the end of each Parliament; and
- inquiry reports tabled in the Senate at the conclusion of an inquiry.

7.5 Notice of the tabling of the *Alert Digest* and *Report* is now communicated each sitting week through Twitter, the documents are loaded onto the committee's website once they have been tabled, and they are also sent to various interested parties in hard copy. The format of these documents was updated relatively recently and the

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<sup>1</sup> *Submission 20* [2010], p. 4.

committee is of the view that they remain a useful contribution to understanding the committee's work. The Chair of the Senate Community Affairs Legislation Committee, Senator Claire Moore, in a submission to this inquiry, noted that:

The committee is grateful for the work of the Scrutiny of Bills committee, which it believes is vitally important in ensuring effective scrutiny of legislation and the protection of individuals' rights. It supports the committee's two stage process of reporting, with the Alert Digests and Reports, because this helps ensure Senators and committees are advised as early as possible of issues that might warrant consideration during inquiries by legislative and general purpose standing committees.<sup>2</sup>

7.6 The committee intends to retain its *Alert Digests* and *Reports* as the primary vehicles for notifying the Senate and others of the committee's assessment of legislative proposals against the scrutiny principles outlined in standing order 24.

7.7 In addition to these documents which the committee publishes, the committee's secretariat is regularly involved in providing material for educational events, such as the *Getting bills through the Senate* seminars. The seminar is designed to provide public servants who advise ministers in the Senate chamber on the passage of bills a detailed understanding of the legislative process and skills needed to monitor and facilitate the progress of bills through the Parliament.

## **Recent innovations**

### ***Interaction with Senate legislative committees***

7.8 One of the recent steps the committee has taken is to increase communication with Senate legislation committees. This interaction alerts the legislation committee in a timely manner about issues raised by the committee during a particular sitting week. This is especially helpful when a bill has been referred to a legislative committee by the Senate Selection of Bills Committee for inquiry and there is a tight reporting timeframe. The response from Senate legislation committee secretariats to this approach has been very positive.<sup>3</sup>

7.9 The practice was noted by the Clerk of the Senate who 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

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2 *Submission 23* [2011], p.1.

3 Most advice to this effect has been received informally, however, note that the Chair of the Community Affairs Legislation Committee, Senator Claire Moore, made a submission to the inquiry, which noted that her committee '...also supports the distribution of Alert Digests and Reports to committees when they contain comments on bills in those committees' portfolios of interest': *Submission No. 23* [2011], p. 1.

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.<sup>4</sup>

7.10 The committee endorses this proposal from the Clerk of the Senate and accordingly the committee recommends that this matter be referred to the Procedure Committee for consideration.

### **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.**

7.12 The committee notes that it also has informal, but effective, communication channels with the Senate Regulations and Ordinances Committee (discussed in *Chapter 5, Framework bills*) and it intends to extend this approach to include the new scrutiny committee, the Parliamentary Joint Committee on Human Rights.

### ***Use of technology***

#### ***Communication***

7.13 The committee, through its secretariat, has been updating its use of technology to improve its efficiency and communication. The key items that have already been implemented in relation to communication are:

- updating the website: additional information is being included on the committee's homepage and some features are regularly updated (within technology constraints). For example, the date of the committee's next scheduled meeting is now available; and
- the Senate's Twitter account is used to notify subscribers when the committee's *Alert Digests* and *Reports* have been tabled each sitting week and the message provides a link to access the documents online.

7.14 Utilising technology to improve the committee's communication is a continual process and the committee plans to implement further ideas, both shortly and into the future.

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4 *Submission 20* [2010], p.5. In her 2011 submission to the current inquiry the Clerk added to this with the view that: 'I commented on some of the committee's recent innovations in its increased interaction with legislation committees...and it is pleasing to see that those innovations have taken root': *Submission 15* [2011], p. 1.

*Internal database*

7.15 Another recent innovation has been the establishment of an internal database which captures the committee's comments on bills. Currently, comments on all bills introduced into the Parliament from 2000 to the present have been entered into the database, and it is being kept up-to-date. The database has the capacity to be easily searched and records filtered according to the information sought and it has become a very useful tool and resource for the committee secretariat.

7.16 It is hoped that in the future the database can be made publicly accessible so that it is available as a research tool to others. This may be especially useful to those who are involved in developing and drafting legislation. In the meantime, the database will facilitate the secretariat's ability to create additional support and education resources for these purposes. The database may also provide a foundation for the committee to communicate the information traditionally contained in its *Work of the Committee* report differently. Both of these items are discussed further below.

**Next steps**

7.17 The Clerk of the Senate has noted that:

After years of lamenting the failure of explanatory memoranda to provide sufficient explanations of important matters of legal policy (and an inquiry on the topic), the committee adopted the practice of requesting that explanatory memoranda be revised to incorporate better explanations.<sup>5</sup>

7.18 This has led to an improvement in the quality of explanatory memoranda, but only through remedial means.<sup>6</sup>

7.19 Earlier in this report the committee considered that an appropriate further step on from requesting changes to explanatory memoranda is for it to recommend textual amendments to bills on a case-by-case basis in response to scrutiny concerns (see *Chapter 3, Committee approach to its work*). A related issue, which has also been canvassed elsewhere in this report, is that the committee is interested in increasing its preventative impact. One way to assist those writing explanatory memoranda to meet the committee's expectations is to provide information about the standards required. This is related to an idea raised with the committee by the Clerk of the Senate, who observed that:

Another way in which the committee might enhance its effectiveness would be to bring greater awareness to its concerns by publishing its positions differently...Greater awareness might be gained by developing a comprehensive document outlining the committee's priorities and principles. Such a document could be updated regularly and published on

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5 *Submission 20* [2010], p. 4.

6 See the discussion at *Submission 20* [2010], p. 4

the committee's web pages, providing those who need it direct information about the committee's expectations.

A model for this kind of publication exists in the regular 'work of the committee' reports of the Senate Committee of Privileges...Reports are cumulative and provide an opportunity to assemble and comment on the committee's 'case law'.<sup>7</sup>

7.20 The Administrative Review Council has a similar view (though restricted to a specific topic) to the extent that it:

...considers that agencies may be assisted in developing legislation and explanatory memoranda by clearer guidelines about what the Committee considers appropriate in terms of review, including describing key considerations and providing examples of best practice in explanatory memoranda.<sup>8</sup>

7.21 The Clerk of the Senate also noted that an additional benefit of compiling a comprehensive document is that it generates the opportunity for the committee to review and reflect on its statements of principle and how they may be improved:

Development and publication of such a document might also give the committee an opportunity to consider the usefulness of its precedents and whether they continue to be effective in reflecting the committee's approach to each of its five principles. Should the committee decide to adjust its stance on particular matters, either because of this inquiry or otherwise, a comprehensive document of this nature would provide a useful means of raising awareness of those changes.<sup>9</sup>

7.22 The committee fully endorses these suggestions and the related options outlined in its 2011 interim report.<sup>10</sup> The specific ideas the committee intends to implement are to:

- create a checklist for drafters and others to use in the development of legislation. The list will include issues the committee could raise which breach any of the principles encapsulated in standing order 24;
- enhancing online indexes with hyperlinks to the *Digest* and *Reports* containing the committee's comments;<sup>11</sup>
- publish short guides and a consolidated document of priorities and principles to assist when drafting explanatory memorandums for bills, which could

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7 *Submission 20* [2010], p. 5.

8 *Submission 19* [2011], p. 2.

9 *Submission 20* [2010], p. 5.

10 23 November 2011, paragraphs 1.15 and 1.16,  
[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate\\_Committees?url=scrutiny/future\\_direction\\_2011/interim\\_report/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=scrutiny/future_direction_2011/interim_report/index.htm).

11 *Submission 20* [2010], p. 5.

include model clauses to demonstrate the scrutiny issues which need to be considered and addressed; and

- seek to include a link from the Parliament's home page for a bill to any relevant *Alert Digest* or *Report* which comments on that bill. This will readily indicate, and provide easy access to, any comments made by the committee.

7.23 All of the documents mentioned above will be accessible from the committee's homepage. The committee also intends to advise key stakeholders when the documents become available and when they are updated.

7.24 In response to the committee's 2011 interim report, which refers to the possibility of creating a checklist, Professor Bryan Horrigan provided a supplementary submission. The committee agrees that depending on their content, checklists can be useful, useless or counterproductive. In this context, the view Professor Horrigan expresses is apposite when he observes that 'How the checklists are framed and their ancillary explanation therefore matter.'<sup>12</sup> In relation to this, the committee envisages that it will proceed cautiously with the production of a checklist, concentrating on technical matters and cataloguing issues that have been commented on by the committee in the past and directing readers to further sources of information.

#### **Recommendation 14**

**7.25 That the committee develop checklists, guidelines and other supporting documents as appropriate and continues to implement improvements to its use of technology in raising awareness of the committee's work.**

Senator the Hon Ian Macdonald  
Chair

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12 *Submission 11* [2011], 2012 *Supplementary submission*, p. 10.