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Senator the Hon Helen Coonan
Chair
Scrutiny of Bills Committee
Parliament House
CANBERRA ACT 2600

Dear Senator Coonan

Inquiry into the role of the Scrutiny of Bills Committee

Thank you for inviting me to make a submission to the committee's renewed inquiry on its future role and direction occurring in the lead up to its 30th anniversary later this year. The processes by which legislation is considered by the Senate continue to evolve, for instance with the addition to the Senate program of dedicated time for private senators' bills, and it is appropriate that the committee is actively seeking to reinvigorate its own contribution to those processes. In my submission last year I commented on some of the committee's recent innovations in its increased interaction with legislation committees and more active stance on government explanatory memoranda, and it is pleasing to see that those innovations have taken root.

I make comments on two areas in which there have been developments since my submission to the committee last year.

Scrutiny and control of delegated legislation

In its First Report of 2010 the Procedure Committee reported on bills relying on delegated legislation. Its conclusions reinforce the comments I made in my submission last year suggesting that it may be useful for the Scrutiny Committee to assist in identifying bills which appear to rely heavily on regulations which are not seen during the consideration of the legislation.

The Procedure Committee had considered a proposal for a procedure for bills relying for their operation on delegated legislation to be deferred until that delegated legislation was tabled in substantially final form. Although the committee noted that the increasing reliance of legislative schemes upon detailed delegated legislation made scrutiny by the parliament problematic, it stopped short of recommending that an automatic deferral should apply. Instead the committee encouraged legislation committees, on a case-by-case basis, to consider whether deferral or a bill in the absence of draft regulations would be warranted.

The committee concluded by noting “the important work done by the Scrutiny of Bills Committee in identifying cases where there is inadequate parliamentary oversight in legislative schemes, including because of excessive reliance on delegated legislation.” As I suggested in my earlier submission, such a task may be a useful addition to the committee’s terms of reference.

Proposed Joint Committee on Human Rights

When I made my earlier submission it was not yet clear how the Government would respond to the Human Rights Consultation Process undertaken in 2009 (the ‘Brennan Report’). The comments I made reflected recommendations which envisaged a role for the Scrutiny of Bills Committee, or for a joint committee of the parliament. As you are aware, the Government has responded by introducing legislation to establish a joint committee to consider legislation introduced into the parliament against specified human rights criteria. That legislation remains to be finally considered by the Senate, and it is apparent that there are differences of opinion among senators about the criteria the proposed committee should use to undertake its work.

Regardless of the final form of that committee and its work, I endorse the position put by the Scrutiny of Bills Committee in its submission to the Legal and Constitutional Affairs Legislation Committee’s inquiry into the legislation. Whatever enhancement that committee may bring to the process of considering legislation, it ought not be seen as a substitute for the work of the Scrutiny of Bills Committee. Rather, I would expect the two committees to develop a cooperative approach in which the consideration by one committee would typically complement consideration by the other. When the committees draw distinct conclusions, however, it is appropriate that the Scrutiny Committee continue to report its concerns to the Senate in accordance with its terms of reference, relying on the well-established principles which underlie its work, adapted to this new element of the legislative process.

(Rosemary Laing)