

## **OPTIONS FOR MORE FLEXIBLE PROCEDURES RELATING TO THE MEMBERSHIP OF COMMITTEES**

### ***Background***

The Procedure Committee has requested a paper canvassing options for more flexible procedures for substituting members on committees, preferably without the need for a resolution of the Senate on each occasion. The request arose from the committee's consideration of proposals to alter the committee system and, in particular, the proposal to increase the number of members of each committee from six to eight (in the proportion of four government members, three opposition members and one minority group/independent member). One reason for the increase was stated to be that with a larger pool of members to draw on, committees would find it easier to assemble an adequate number of interested senators at public hearings. This rationale was queried on the basis that committees with larger memberships (for example, the joint statutory committees with memberships of ten) experience the same problems in relation to low attendance. The committee therefore sought advice on options to enhance flexibility.

### ***Problem to be addressed***

Before identifying options for more flexibility in arranging membership substitutions, it is necessary to identify the problem to be addressed. Accurate characterisation of the problem may lead to other, more effective solutions. On one view, the problem can be characterised as a problem of public perception: that low attendance of committee members at public hearings reflects badly on the reputation of Senate committees and the value of their inquiries. Alternatively, the problem can be characterised as operational. Committees have often experienced difficulties in securing quorums or the appropriate balance of voting members, particularly at interstate public hearings.

### ***Underlying principle***

The underlying principle for all committees is that, as delegated bodies, committees may operate only to the extent authorised by the Senate. All aspects of a

committee's composition and powers are determined by the Senate. The Senate's authorisation may be given on an ongoing or ad hoc basis.

### ***Existing options***

However the problem is characterised, it is not new. It has been addressed on previous occasions by amendments to standing and other orders, invariably resulting in more flexible arrangements that are also procedurally sound (having first been vetted by the Procedure Committee). These arrangements and the extent to which they address the identified problems are described in the following sections.

#### *Participating membership*

When the committee system was last restructured in 1994, a new category of membership for legislative and general purpose standing committees was created. Participating members of committees, appointed under standing order 25(7)(b), may participate in all hearings of evidence and deliberations of committees. They have all the rights of members including such rights as receiving committee papers, attending private meetings and moving motions, asking questions at hearings, contributing to reports, or attaching relevant conclusions or recommendations to reports. However, participating members may not vote and therefore do not alter the balance of power on a committee as determined by the membership formula set by the Senate.

Once the Senate has appointed a senator as a participating member of a committee, it is open to that senator to pursue his or her interests in particular inquiries. The attendance of participating members at public hearings is a potential solution to the problem of public perception, provided that the inquiry triggers the interest of participating members. The attendance of participating members also partially addresses the operational problem in respect of quorums. In 2002, following the Procedure Committee's examination of quorum arrangements for committees<sup>1</sup>, the standing orders were amended to authorise participating members to be counted for the purpose of forming a quorum in the absence of a majority of the members of the committee. Standing order 29(1) provides two methods of forming a quorum: a majority of members OR two members, provided one is a government member and one is an opposition member. Standing order 25(7)(d) provides that if a majority of members is not present, participating members may count towards a quorum (under the second method). An increase in the number of members from 6 to 8, however,

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<sup>1</sup> 2<sup>nd</sup> report of 2002, adopted 19 November 2002.

increases the number required to form a quorum under the majority method from 4 to 5, making it more likely that committees will continue to rely on the two-member quorum of a government and opposition member. Note, however, that a participating member cannot be counted for the purposes of the two-member quorum when a committee is voting because a participating member does not have the right to vote.

### *Substitute membership*

Standing order 25(7)(a) provides that senators may be appointed to committees as substitutes for other members in respect of particular matters before the committees. Substitute members may exercise all the rights of full members including voting rights, in respect of the particular matters for which they have been substituted. In practice, the Senate has agreed to appoint substitute members in the following circumstances:

- on an open-ended basis, for all matters in relation to a specified portfolio
- for a particular inquiry
- for all matters dealt with by a committee within a specified date range
- for particular inquiries on specified dates (including specified times on those dates or on an “if required” basis)
- for particular inquiries on specified dates in specified locations
- for all public hearings in relation to a particular inquiry to be held in specified places (for example, in a particular state or city)
- an equal number of substitutes, any of whom are authorised to replace any of the core members of the same party at any meeting or hearing of the committee which they are unable to attend (referred to below as the “bench”).

Substitute membership applies only to legislative and general purpose standing committees appointed under standing order 25 unless it is authorised by special resolution of the Senate or included in the resolution of appointment of a committee. The resolution appointing the Select Committee on the New Tax System in 1998 included provision for substitute (and participating) membership in the same terms as standing order 25(7). Subsequently, the Senate agreed to appoint a “bench” of alternative members to substitute for full members “in the event of any one of them being unavailable to attend any committee hearing or meeting”. Three government senators were authorised as substitutes for any of the three government members. The opposition members were covered by an identical arrangement and the seventh member of the committee, an Australian Democrat senator, was covered by a

substitute from the same party on the same basis. This arrangement provided maximum flexibility while complying with the requirement for prior authorisation by the Senate in accordance with the underlying principle stated earlier. It has subsequently been used only once by a legislation committee.

Flexible and ongoing backup arrangements are available under the existing provision for substitute membership and, once authorised by the Senate, may be resorted to as required. As a matter of good administration, committees with substitute “benches” may wish to adopt a procedure for members to notify the chair of their inability to attend a particular meeting and which substitute member will replace them, to avoid the system becoming unwieldy and administratively burdensome.

While not necessarily guaranteeing higher attendance at interstate public hearings, the range of options available under existing substitute membership provisions is wide enough to cover most contingencies and to address the operational aspects of the problem.

### *Subcommittees*

Unlike the new categories of membership, subcommittees are not an innovation. Senate committees have long been invested with the power to appoint subcommittees. Standing order 25(8) authorises committees to appoint subcommittees of 3 or more members. Standing order 27(6) requires any subcommittee to have at least one government and one opposition member while under standing order 29, the same quorum provisions apply to subcommittees (a majority of members or two members provided one is a government member and one an opposition member).

Subcommittees are a flexible alternative where a committee chair and deputy chair are not able to attend a particular hearing or series of hearings. They address the operational aspects of the problem but, without additional measures, they do not address the public perception aspect of the problem. The reason for this is that participating members of the committee at large have no automatic right to attend meetings or hearings of a subcommittee. It would be a simple matter for committees in appointing subcommittees to authorise participating members to participate in proceedings of the subcommittee. This may then have the effect of increasing the number of senators attending any particular public hearing of the subcommittee.

## **Conclusion**

Whether it is a question of encouraging a larger number of senators to attend public hearings or providing maximum flexibility to facilitate the attendance of **voting** members, existing arrangements already accommodate a wide range of circumstances. Specifically, attention is drawn to the use of ongoing substitutions on the following bases:

- a “bench”, any member of which may substitute for any of the core members at any meeting of the committee;
- geography (for example, Senator X to substitute for Senator Y for all public hearings held in WA);
- for a particular inquiry.

A core member who is substituted by another senator automatically becomes a participating member of the committee and may therefore still participate in the matters covered by the substitution, but may not vote.

Once established, such ongoing substitutions require no further resolution of the Senate. It is worth noting that most proposals for substitute memberships involve one-off substitutions to cover a limited number of occasions, most commonly arising during rounds of estimates hearings when there is an expectation that the government members will want to ensure that a full complement of their voting members is present. These substitutions tend to be the most detailed, sometimes involving multiple substitutes for one core member, multiple dates and even specified times on individual days. This may, in turn, give rise to the perception that the process is cumbersome and entails Senate approval on each occasion. The flexibility of existing options shows that this need not be the case if parties plan ahead.

Notwithstanding this conclusion, it would be prudent not to underestimate the logistical impact of larger committees. The following options are therefore identified for consideration:

### **Quorums in legislative and general purpose standing committees**

Standing order 29(1)(a) provides one method of forming a quorum by the presence of a majority of members of a committee. The rationale for this method was to ensure that a quorum could not be formed by members representing only one party. As noted previously, if committees are increased to 8 members it will be more

onerous to form a quorum under the majority method because 5 rather than 4 members will be required. One option for the new committees is therefore to reduce the required proportion from a majority (5) to half (4) of the members. The disadvantage of this is that there would be no guarantee that the members forming the quorum would represent different sides of the chamber. Either the 4 government or the 4 non-government members could provide the quorum and could make decisions.

### **A mechanism to transform participating members into voting members**

Just as participating members may count towards a quorum under standing order 25(7)(d), it may be theoretically possible to devise a mechanism to allow participating members to become voting members under defined circumstances. In practice, however, it would be difficult to draft appropriate safeguards to guarantee the voting balance on a committee. Say, for example, that two government members of a committee were unable to attend a deliberative meeting and only one participating member was available to be “transformed”. In the absence of any other substitution arrangements, if all non-government members attended and voted, the outcome would not accurately reflect the composition of the committee.

Given the range and flexibility of existing substitution arrangements, neither of these options is recommended.

**Office of the Clerk of the Senate**  
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