

The Senate

Procedure Committee

Temporary orders

Matters referred by the Scrutiny of Bills Committee

Question Time

Routine of business

First report of 2014

June 2014

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Procedure Committee

First report of 2014

The committee reports to the Senate on the following matters.

Temporary orders

Question time

The Senate adopted modified rules for question time as a temporary order on 25 November 2009 and has subsequently extended or renewed its operation on eight occasions, most recently on 13 November 2013. The current order expires on 30 June 2014.

Rather than continuing to extend the temporary order, the committee agreed that the Committee Chair, on behalf of the committee, should initiate a motion in the Senate to amend standing order 72 in the terms of the temporary order. The committee noted that, should a majority of the Senate desire changes in the future, the standing orders are as readily amended as temporary orders.

Consideration of private senators' bills, time of meeting and divisions on Mondays

The Senate adopted a temporary order for the consideration of private senators' bills on 22 November 2010 and has subsequently extended or renewed its operation on five occasions, most recently on 14 November 2013. The current order expires on 30 June 2014. The committee noted that extension of the order is required at the earliest opportunity to provide certainty in relation to the Senate's meeting time on 7 July 2014 when senators elected at the 2013 election and the 2014 Western Australian Senate re-election are due to take their seats.

Pending its completion of a review of the routine of business, the committee agreed that the Committee Chair, on behalf of the committee, should initiate a motion in the Senate to extend the operation of the temporary order for a further period of 12 months, but with one variation.

The committee draws senators' attention to a proposed variation in the order, namely, the cessation of the prohibition on divisions before 12.30 pm on Mondays. While this prohibition may have been appropriate when the order was first adopted, the committee agrees that it is no longer required and that the Senate should be able to determine the business before it in all but the most limited circumstances.

Matters referred by the Scrutiny of Bills Committee

By letter dated 24 March 2014, the President of the Senate referred to the committee, pursuant to standing order 17(3), a matter raised by the Chair of the Scrutiny of Bills Committee, Senator Polley, arising from that committee's 2012 inquiry into its future role and direction. The Scrutiny of Bills Committee sought the committee's consideration of various changes to its standing orders. Details of the changes are included at Attachment A. Proposed amendments of standing orders that would give effect to these changes are at Attachment B.

The committee draws these matters to the attention of the Senate, but leaves it to the Scrutiny of Bills Committee to consider and initiate the necessary amendments.

Question time

By letter dated 3 December 2013, the President of the Senate referred to the committee, pursuant to standing order 17(3), a matter raised by Senator Siewert, relating to the conduct of question time. Details of the matter are at Attachment C.

At its meeting on 19 June 2014, the committee considered a discussion paper prepared by the Clerk of the Senate and agreed that the principle of proportionality should continue to govern the allocation of the call in question time.

The principle of proportionality was explicitly endorsed by the committee in its *Second report of 1995* (Parliamentary Paper No. 284/1995) as meaning "that the allocation of questions between the various parties, groups and independent senators should be as near as practicable in proportion to their numbers in the Senate".

The committee notes that it has been the practice of successive Presidents of the Senate to propose allocations of questions based on this principle, and that the precise allocation of questions in the future is a matter for the President and senators after 1 July 2014.

Routine of Business

In its *First report of 2012*, the committee indicated that it would seek from the President under standing order 17(3) a reference to enable it to conduct a broad review of the routine of business. Having obtained such a reference by letter dated 26 June 2012, the committee sought proposals from senators and made various observations and recommendations in its *First report of 2013*. These recommendations resulted in the adoption of specific arrangements for the consideration of non-controversial legislation on Thursdays and of a graduated system of speaking time limits for the

open-ended adjournment debate on Tuesdays. The committee also considered the reduction of speaking times from 15 to 10 minutes during matters of public interest on Wednesdays, but reached no concluded view. Finally it noted the complexity that had developed around the tabling and consideration of documents and reports that left senators unsure of their rights to speak. The committee indicated that it would consider these matters further but was unable to conclude its review of the routine of business by the end of the 43rd Parliament.

In its *Second Report of 2013*, the committee advised the Senate that it proposed to keep the routine of business under review and report to the Senate in 2014 with any proposals for further changes.

The committee now reports that it has undertaken detailed further consideration of these matters, has made progress and proposes to report again to the Senate later in 2014.

Acknowledgement of service

The committee wishes to acknowledge the long service of the retiring President of the Senate, Senator the Hon John Hogg, as a member of the committee, including as its Chair from 2002 to 2008, and to place on record its appreciation of his contribution to the committee in those roles.

Senator Stephen Parry
(Chair)

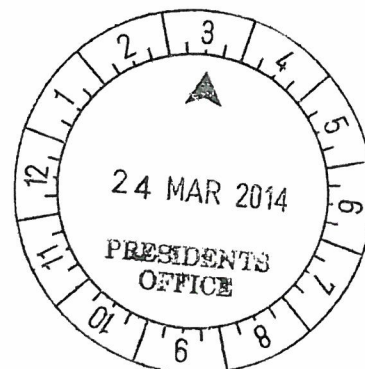


STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

24 March 2014

Senator the Hon John Hogg
President of the Senate
Parliament House
CANBERRA ACT 2600

refer to Procedure Cttee
JH
24.3.14



Dear Mr President

The Scrutiny of Bills Committee conducted an inquiry into its future role and direction and reported about it to the Senate in May 2012. The inquiry made fourteen recommendations, which the committee has been progressively implementing.

A number of the recommendations relate to possible amendments to the standing orders. Therefore, pursuant to SO 17(3), I ask that you refer the following matters to the Procedure Committee for its consideration of the operation of the standing orders on the role and work of the Scrutiny of Bills Committee in relation to:

1. a permanent public inquiry power;
2. consideration of provisions of bills;
3. general committee powers;
4. framework bills;
5. uniform (or national scheme) legislation; and
6. comments on bills.

I have attached an extract of the relevant recommendations and some supporting information about them as well as a copy of the 2012 inquiry report.

Yours sincerely

Senator Helen Polley
Chair

Extract information for the Procedure Committee relating to implementation of the recommendations of the Scrutiny of Bills Committee report into its future role and direction

PERMANENT PUBLIC INQUIRY POWERS

Recommendation 4

4.22 That Senate standing order 24 be amended to provide the committee with permanent public inquiry powers in line with the relevant paragraphs of Senate standing order 25 relating to legislative and general purpose standing committees.

The committee noted in the report that it would be desirable for it to undertake more inquiries into matters of principle. The committee therefore formed the view that a permanent inquiry power is also desirable. Several submitters noted that the inquiry power may not be needed frequently, but that having such a power would add flexibility to the committee's proceedings.

The committee notes that implementing this recommendation would require amendment to the standing orders and welcomes any comments on the proposal.

TECHNICAL AMENDMENT RELATING TO 'PROVISIONS OF BILLS'

Recommendation 5

4.29 That Senate standing order 24(1)(a) be amended to include a reference to the committee reporting in respect of the 'provisions of bills introduced in the Parliament'.

In her submission to the committee, the Clerk of the Senate suggested an amendment to standing order 24 to address a technical issue in relation to the ability of the committee to consider bills after they have been introduced in the House of Representatives, but before they are received in the Senate. This mechanism is already utilised by the committee to avoid unnecessary delay in its consideration of bills. However, as the Clerk noted, making a technical change so that the standing order refers to 'provisions of bills introduced in the Parliament' would make the reference and reporting functions of the committee, and their timing, more transparent.

The committee notes that implementing this recommendation would require amendment to the standing orders and welcomes any comments on the proposal.

GENERAL COMMITTEE POWERS

Recommendation 6

4.31 That Senate standing order 24 be amended to provide that the Scrutiny of Bills Committee deputy chair is elected rather than appointed (in line with Senate standing order paragraphs 25(9)(a) and 25(9)(b)).

Recommendation 7

4.32 That Senate standing order 24 be amended in line with Senate standing orders 25(16) in relation to printing and 25(19) in relation to broadcasting.

During the inquiry differences between the relevant standing orders relating to the general powers of standing committees and the general powers of the scrutiny committees became apparent. The matters that the committee considered should be addressed in this regard were the discretionary appointment of deputy chairs (rather than their election – c.f. standing order 25 paragraphs (9)(a) and (b)), the power to print documents and evidence (c.f. standing order 25(16)), and the power to authorise the broadcasting of proceedings (c.f. standing order 25(19)).

The committee notes that implementing these recommendations would require amendments to the standing orders and welcomes any comments on the proposal.

FRAMEWORK BILLS

Recommendation 8

5.15 That Senate standing order 24 be amended to specifically include the scrutiny of bills which excessively rely on delegated legislation for their operation.

The committee has a long-standing view that it prefers that important information is included in primary legislation unless there is a principled reason for including it in delegated legislation. To this end, the committee has regularly highlighted instances in which primary legislation may excessively rely on delegated legislation for its operation. The committee has done so under the general principle 1(a)(iv) – 'inappropriately delegated legislative powers'.

In the report, the committee noted that the Procedure Committee has stated that it:

...sees merit in encouraging legislation committees in their examination of bills to be alert for cases in which the absence of draft regulations hinders adequate scrutiny of a bill, and to frame recommendations accordingly.' [Procedure Committee, *First report of 2010*, April 2010, p. 1.]

This accorded with the suggestion of the Clerk of the Senate that:

...one new area in which the committee may be able to assist the Senate is in identifying bills which appear to rely significantly for their operation on the making of regulations, the detail of which is not available for the Senate's consideration while the bill is before it.

The committee endorsed this proposal in the report. The committee, noting the increasing prevalence of framework bills and the importance of ensuring they are subject to effective scrutiny, recommended that the committee's terms of reference be amended to include specific reference to this task. It is also noted that the *Williams* 2012 High Court decision has had a significant impact on the use of delegated legislation, the ramifications of which are still evolving.

The committee notes that implementing recommendation 8 would require amendment to the standing orders.

UNIFORM (OR NATIONAL SCHEME) LEGISLATION

Recommendation 12

6.19 That standing order 24 be examined to confirm whether the Scrutiny of Bills Committee is empowered to consider, advise and report on exposure drafts and, if it is not, that standing order 24 be amended to allow the committee to do so.

In the report the committee noted that scrutiny concerns in relation to uniform legislation are not new and were stated clearly in a discussion paper prepared by a working party of the chairs of Australian scrutiny committee in July 1995. The working party stated that:

...in relation to uniform legislation no changes are permitted. Committees are often told that the legislation cannot be varied because it has been carefully worked out by the relevant Ministerial Council and has national significance....This is also the case with subordinate legislation. As a result, Scrutiny Committees are restricted from carrying out their roles in relation to uniform legislation. Practically speaking, it is fair to say that there is effectively no parliamentary scrutiny of national scheme legislation.

The committee suggested that, in order to encourage the practice of providing exposure drafts, the Senate could consider deferring the passage of any uniform or national scheme legislation unless adequate opportunity to scrutinise it, and negotiate any amendments, is provided.

The committee notes that implementing these recommendations may require amendment to the standing orders and welcomes any comments on the proposal.

COMMENTS ON BILLS

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.

In her submission to the inquiry, the Clerk of the Senate noted that the committee regularly provides its comments on bills to legislation committees. In this regard the Clerk 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 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.

In the report, the committee endorsed the proposal from the Clerk of the Senate and accordingly recommended that this matter be referred to the Procedure Committee for consideration.

The committee notes that implementing these recommendations may require amendment to the standing orders and welcomes any comments on the proposal.

PROCEDURE COMMITTEE

AMENDMENTS REQUIRED TO IMPLEMENT CHANGES TO STANDING ORDERS PROPOSED BY
THE SCRUTINY OF BILLS COMMITTEE

1. *A permanent public inquiry power*

Standing order 24(7), omit "in private session", substitute "and transact business in public or private session".

2. *Ability to report on provisions of bills*

Standing order 24(1)(a), after "Senate", insert "or the provisions of bills not yet before the Senate".

3. *Election of deputy chair – adoption of standard committee provisions*

Omit standing order 24(5), substitute:

The committee shall elect as deputy chair a member appointed to the committee on the nomination of the Leader of the Government in the Senate, and the member so elected shall act as chair of the committee when there is no chair or the chair is not present at a meeting of the committee.

4. *Authority to print documents and evidence*

After standing order 24(8), insert:

(8A) The 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 the committee.

5. *Power to authorise broadcasting of public proceedings*

Amendment of standing order 24 is not necessary. The power is already contained in the broadcasting resolutions.

6. *Explicit reference to bills that rely "excessively" on delegated legislation*

At the end of standing order 24(1), add:

- (c) The committee, for the purpose of reporting on term of reference (a)(iv), shall take into account the extent to which a proposed law relies on delegated legislation and whether a draft of that legislation is available to the Senate at the time the bill is considered.

7. *Scrutiny of national scheme legislation – explicit reference to exposure drafts*

Omit standing order 24(1)(b), substitute:

- (b) The committee, for the purpose of reporting on its terms of reference, may consider any proposed law or other document or information available to it, including an exposure draft of proposed legislation, notwithstanding that such proposed law, document or information has not been presented to the Senate.

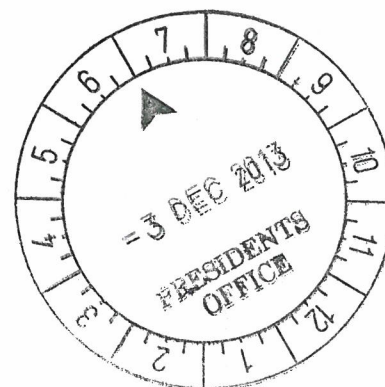
8. *Standing reference of committee comments to legislation committees considering bills*

After standing order 25(2), insert:

- (2A) The legislation committees, when examining bills or draft bills, shall take into account any comments on the bills published by the Standing Committee for the Scrutiny of Bills.



RACHEL SIEWERT
 Australian Greens Whip
 Senator for Western Australia



3 December 2013

Senator the Hon John Hogg
 President of the Senate
 SG40
 Parliament House
 CANBERRA ACT 2600

*Agreed
 JPH
 A.12.13*

Dear Mr President

REFERRAL TO THE PROCEDURE COMMITTEE – QUESTION TIME

Following our recent discussions and negotiations about the allocation of call for question time and foreshadowing the issues which may arise with the new Senate in July 2014, the Australian Greens ask that you refer the following matter to the Procedure Committee for inquiry and report by 11 February 2014:

The order of question and call during Question Time in the Senate, including:

1. The function of Question Time, particularly as a form of Government scrutiny;
2. The role played by the Opposition in scrutiny of the Government at Question Time;
3. The role played by Senators in minor parties and the crossbench in scrutiny of the Government at Question Time;
4. Alternatives to the 'principle of proportionality' (as endorsed by the 1995 Procedure Committee report);
5. The role of Ministers and Parliamentary Secretaries in Question Time;
6. Any other related matters.

Yours sincerely

Senator Rachel Siewert
 Australian Greens Whip
on behalf of Senator Christine Milne
Leader of the Australian Greens