AUSTRALIAN SENATE

CLERK OF THE SENATE

PARLIAMENT HOUSE
CANBERRA ACT 2600

4 June 2014

Ms Lyn Beverley
Secretary
Senate Finance and Public Administration Committee
Parliament House
Canberra ACT 2600

Dear Ms Beverley Lyn

PUBLIC GOVERNANCE, PERFORMANCE AND ACCOUNTABILITY AMENDMENT BILL 2014

There are two amendments proposed in the bill which refer to the parliamentary departments, and one which deals with the Presiding Officers exercising authority in place of ministers. It may be prudent for the committee to seek an explanation of the effect the amendment made in item 5. The effect of the other amendments is clear, and they are supported, however the amendment made by item 58 introduces an undefined phrase ("the relevant Presiding Officer"). These matters are discussed in turn below.

Item 5

Item 5 proposes to add words to the definition in the PGPA Act of "Parliamentary Departments", as indicated by the underlined words:

> ***Parliamentary Department*** means a Department of the Parliament established under the *Parliamentary Service Act 1999* and includes any body (except a body corporate), person, group of persons or organisation that is prescribed by and Act or the rules in relation to a specified Parliamentary Department.

The item is among a number which insert or change definitions in the Act. The explanatory memorandum merely repeats the words of the amendment rather than offering an explanation, however it would appear to mirror part of the amendment made by item 2, which inserts similar words into the definition of ***Department of State***. The explanation provided for that item is that:

> Amendments would also allow a body to be recognised as Part of a Department through an Act or the PGPA rules, and for single persons, for example statutory officers, to form part of the Department of State.

It appears that the amendment in item 5 is intended to retain consistency between the treatment of departments of the Parliament and other Commonwealth entities. It may be useful to confirm the effect of the amendment with the Department of Finance and to seek an explanation or example of the circumstances in which the extended definition would apply.

Item 56

Item 56 makes a change in the ordering of the subsections in section 71, which places requirements upon minsters approving public expenditure. The Presiding Officers exercise this function in relation to the parliamentary departments. The explanatory memorandum states:

> **Item 56** would include a minor technical amendment to reverse the order of subsections 71(2) and (3) as they have been printed in the wrong order in the current version of the Act.

The effect of the amendment is to place additional requirements upon the Presiding Officers about recording the terms of the approval and complying with other requirements prescribed in the rules. These requirements match those placed upon Ministers and are entirely appropriate.

Item 58

Item 58 makes a change to section 75 of the PGPA Act, which is about transfer of functions between "non-corporate" Commonwealth entities, a category which includes the parliamentary departments. The section empowers the Finance Minister to make determinations related to the transfer which amend Appropriation Acts. Where such a transfer is "between Parliamentary Departments", subsection 75(5) currently provides an appropriate safeguard, in that such determinations must be in accordance with a written recommendation of the Presiding Officers.

As the explanatory memorandum points out that:

> The current provision does not allow for instances where a transfer of resources or functions is between a Parliamentary Department and another non-corporate Commonwealth entity (for example a Department of State). To allow for such circumstances it is proposed to amend this subsection to apply in relation to transfers of functions 'involving' a Parliamentary Department.

The proposed amendment retains the safeguard requiring a written recommendation of "the relevant Presiding Officer", and adds a note confirming that a transfer between Parliamentary Departments would require the recommendation of both Presiding Officers.

Definitions

A possible shortcoming in this last amendment is the use of the term "the relevant Presiding Officer", which is not used elsewhere. Although the note correctly identifies that the recommendation of both Presiding Officers would be required for transfers between

parliamentary departments, it is not readily apparent that the recommendation of both would ***also*** be required in any transfer of functions between a joint parliamentary department and an external entity.

The use of the shorthand "relevant Presiding Officer" contrasts with the detailed and clear approach used in section 71 of the PGPA Act (referred to above):

> For a Parliamentary Department, the references… to a Minister are references to:
>
> (a) a Presiding Officer, for expenditure for which he or she alone is responsible; and
>
> (b) the Presiding Officers jointly, for expenditure for which they are jointly responsible.

The definitions section in the PGPA Act provides only that:

> ***Presiding Officer*** means the President of the Senate or the Speaker of the House of Representatives.

It may be preferable for the PGPA Act to instead use or invoke the definition in the Parliamentary Service Act:

> ***Presiding Officer or Presiding Officers*** means:
>
> (a) where the expression is used in connection with a reference to the Department of the Senate or the Clerk of the Senate—the President of the Senate; or
>
> (b) where the expression is used in connection with a reference to the Department of the House of Representatives or the Clerk of that House—the Speaker of the House of Representatives; or
>
> (c) otherwise—the President of the Senate and the Speaker of the House of Representatives acting jointly.

I understand that officers of the parliamentary departments have suggested this approach to Finance officials in relation to a further set of amendments to the PGPA Act which are expected to be introduced in the next financial year.

Please let me know if I can be of any further assistance.

Yours sincerely

(Rosemary Laing)