

**Interim Report No. 2:
Monitoring and review of
procedural changes
implemented in the 43rd
Parliament
Referral of bills to committees by
the House Selection Committee**

House of Representatives
Standing Committee on Procedure

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Foreword

This short report by the Procedure Committee is intended to highlight what the Committee detects as an emerging issue: the referral of bills to committees by the House Selection Committee. The marked increase in the number of bills being referred for inquiry and report is welcome in many ways but, as part of its ongoing inquiry into the procedural reforms, the Committee wished to collect as soon as possible information and comment about the impact of increased referrals. A more considered examination of the work of committees will be undertaken later in the year as part of the Committee's ongoing inquiry.

The Procedure Committee seeks, as always, to assist the House in ensuring that its procedural framework is consistent with the needs of the House, its committees and Members.

Julie Owens MP
Chair



Membership of the Committee

Chair Ms Julie Owens MP

Deputy Chair Mr Russell Broadbent MP

Members Ms Sharon Bird MP

Mr Ewen Jones MP

Hon Joel Fitzgibbon MP

Mr Sid Sidebottom MP

Mr Steve Irons MP

Committee Secretariat

Secretary Ms Catherine Cornish

Inquiry Secretary Mr Justin Baker

Research Officer Ms Naomi Swann

Administrative Officer Ms Penny Branson



Terms of reference

To monitor and report on procedural changes implemented in the House of Representatives in the 43rd Parliament.



List of recommendations

1 Referral of bills to committees by the House Selection Committee

Recommendation 1 (para 1.31)

The Committee recommends that standing order 222(a)(iii) be amended to remove the provision that one member of the Selection Committee is sufficient to select a bill for referral to a House or joint committee for advisory report – thereby requiring a majority decision of the Committee – and to require that the Committee provide reasons for the referral of bills to committees.

Referral of bills to committees by the House Selection Committee

Introduction

- 1.1 Since 1987, House of Representatives general purpose standing committees have been able to examine and produce advisory reports on pre-legislation proposals or bills referred to them.¹ However, the relevant standing order was not exercised until 1994, when the Minister for Justice moved that the Crimes (Child Sex Tourism) Amendment Bill 1994 be referred to the House Legal and Constitutional Affairs Committee for consideration and an advisory report. That Committee subsequently presented the first advisory report by a House general purpose committee.²
- 1.2 Although inquiries into bills by House committees offer detailed scrutiny of proposed legislation and enable direct input into the legislative process by interested stakeholders and members of the public, they have not been a significant feature of House committee work until the current – 43rd – Parliament. Most inquiries by House standing committees and by joint
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- 1 Pursuant to the standing order establishing general purpose standing committees: Department of the House of Representatives, Submission no. 6 to the Standing Committee on Procedure's inquiry into the effectiveness of House Committees, p 3.
- 2 The bill was referred on 4 May 1994 and the report was presented on the requested reporting date of 30 May. Standing Committee on Legal and Constitutional Affairs' report: *Crimes (Child Sex Tourism) Amendment Bill 1994: Advisory report*, May 1994, Parliamentary Paper No. 90/1994.

committees have focused on the investigation of matters of policy or government administration or performance.³

- 1.3 In the 42nd Parliament, the Procedure Committee encouraged Ministers to ‘take advantage of the consultative, bipartisan and constructive nature of House committees by referring more bills to them for inquiry and report’ and supported the undertaking of more bills inquiries by House committees.⁴
- 1.4 More recently, another mechanism for referral of bills has become available and has been implemented with regularity. The re-establishment of a House Selection Committee – with a new mechanism to refer bills regarded as ‘controversial or requiring further consultation or debate’ directly to House and joint committees – was one of the procedural reforms foreshadowed in the *Agreement for a Better Parliament: Parliamentary Reform* (the Agreement).⁵
- 1.5 On 29 September 2010 – the second sitting day of the 43rd Parliament – the Leader of the House proposed, and the House agreed to, a number of amendments to House Standing Orders. These included the establishment of a Selection Committee which would have a more expansive role than its predecessors in the 41st and earlier parliaments. New standing order 222(a)(iii) requires the Selection Committee, among other things, to:
 - select bills that the committee regards as controversial or as requiring further consultation or debate for referral to the relevant standing or joint committee in accordance with standing order 143.
- 1.6 The same standing order provides that ‘One member of the committee is sufficient to select a bill for referral’.⁶
- 1.7 Bills may still be referred to committees by the House or a Minister under standing order 215(b), or in the case of joint committees, by a resolution of the Senate. This Committee notes that to date in the 43rd Parliament, two

3 In 1994, five bills inquiries were undertaken by House committees. In the years 1995 to 2008, House committees undertook either no, or one or two bills inquiries in total, Department of the House of Representatives, Submission no. 6 to the Standing Committee on Procedure’s inquiry into the effectiveness of House Committees, p 3. See also Figure 1.1, p 5.

4 Standing Committee on Procedure, *Building a modern committee system: An inquiry into the effectiveness of the House committee system*, 21 June 2010, Parliamentary Paper No. 144/2010, p 119.

5 *Agreement for a Better Parliament: Parliamentary Reform*, clause 10.5, p. 6. The Agreement was proposed by a group of non-aligned Members and agreed to by the major parties and signed on 6 September 2010, prior to the formation of government and the commencement of the 43rd Parliament.

6 Standing order 222(a)(iii), 20 October 2010.

bills have been referred to a joint committee for inquiry via a resolution of the Senate.⁷

- 1.8 In its interim report on procedural reforms implemented in the 43rd Parliament, this Committee indicated that although it had not received specific feedback about the role of the Selection Committee regarding the referral of bills to committees, it would continue to monitor the mechanism for referral and the time taken to complete bills inquiries.⁸
- 1.9 Even at this early stage of the 43rd Parliament, there has been a marked increase in the number of bills referred to House standing committees and joint committees for inquiry and report. As at Friday 3 June 2011, 26 bills have been referred by the Selection Committee. Some of these are part of packages of complementary bills which are usually considered together in one inquiry by the committee which receives the referral. The 26 bills have so far yielded 15 bills inquiries (see Table 1.1 below). Between 1994 and the end of the 42nd Parliament in July 2010, 16 bills were investigated by House committees in 14 inquiries (see Figure 1.1, p 5).⁹ This short report has been prepared to draw the attention of the House to the increase in the number of referrals of bills, the impact of that increase on committees so far, and to suggest a measure to manage that impact.

Table 1.1 Bills referred to committees by the House Selection Committee in the 43rd Parliament

Title of Bill	Committee	Date referred
▪ Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010	Standing Committee on Education and Employment	21 October 2010
▪ National Radioactive Waste Management Bill 2010	Standing Committee on Climate Change, Environment and the Arts	21 October 2010
▪ Wild Rivers (Environmental Management) Bill 2010 (Private Member's bill)	Standing Committee on Economics	17 November 2010
▪ Competition and Consumer (Price Signalling) Amendment Bill 2010 (Private Member's bill)	Standing Committee on Economics	24 November 2010
▪ Income Tax Rates Amendment (Temporary Flood and Cyclone Reconstruction Levy) Bill 2011	Standing Committee on Economics	10 February 2011
▪ Tax Laws Amendment (Temporary Flood and Cyclone Reconstruction Levy) Bill 2011		

7 On 28 October 2010 the Senate referred the Poker Machine Harm Reduction Tax (Administration) Bill 2008 [2010] and the Poker Machine (Reduced Losses – Interim Measures) Bill 2010 to the Joint Select Committee on Gambling Reform for inquiry and report.

8 Standing Committee on Procedure, *Interim report: Monitoring and review of procedural changes implemented in the 43rd Parliament*, 22 May 2011, Parliamentary Paper No. 116/2011, p 43.

9 Additionally, two exposure drafts of bills were examined by the Standing Committee on Legal and Constitutional Affairs during this period.

▪ National Health Reform Amendment (National Health Performance Authority) Bill 2011	Standing Committee on Health and Ageing	3 March 2011
▪ Carbon Credits (Carbon Farming Initiative) Bill 2011	Standing Committee on Climate Change, Environment and the Arts	24 March 2011
▪ Carbon Credits (Consequential Amendments) Bill 2011		
▪ Australian National Registry of Emissions Units Bill 2011		
▪ Social Security Legislation Amendment (Job Seeker Compliance) Bill 2011	Standing Committee on Education and Employment	24 March 2011
▪ Competition and Consumer Amendment Bill (No. 1) 2011*	Standing Committee on Economics	11 May 2011
▪ National Consumer Credit Protection Amendment (Home Loans and Credit Cards) Bill 2011	Standing Committee on Economics	11 May 2011
▪ Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011	Standing Committee on Social Policy and Legal Affairs	11 May 2011
▪ Telecommunications Legislation Amendment (Fibre Deployment) Bill 2011	Joint Committee on the National Broadband Network	11 May 2011
▪ Taxation of Alternative Fuels Legislation Amendment Bill 2011	Standing Committee on Economics	12 May 2011
▪ Excise Tariff Amendment (Taxation of Alternative Fuels) Bill 2011		
▪ Customs Tariff Amendment (Taxation of Alternative Fuels) Bill 2011		
▪ Energy Grants (Cleaner Fuels) Scheme Amendment Bill 2011		
▪ Offshore Petroleum and Greenhouse Gas Storage Amendment (National Regulator) Bill 2011		
▪ Offshore Petroleum and Greenhouse Gas Storage (Registration Fees) Amendment Bill 2011	Standing Committee on Agriculture, Resources, Fisheries and Forestry	26 May 2011
▪ Offshore Petroleum (Royalty) Amendment Bill 2011		
▪ Offshore Resources Legislation Amendment (Personal Property Securities) Bill 2011		
▪ Offshore Petroleum and Greenhouse Gas Storage Regulatory Levies Legislation Amendment (2011 Measures No. 2) Bill 2011		
▪ Navigation Amendment Bill 2011		
▪ Family Assistance and Other Legislation Amendment Bill 2011	Standing Committee on Social Policy and Legal Affairs	2 June 2011

Notes:

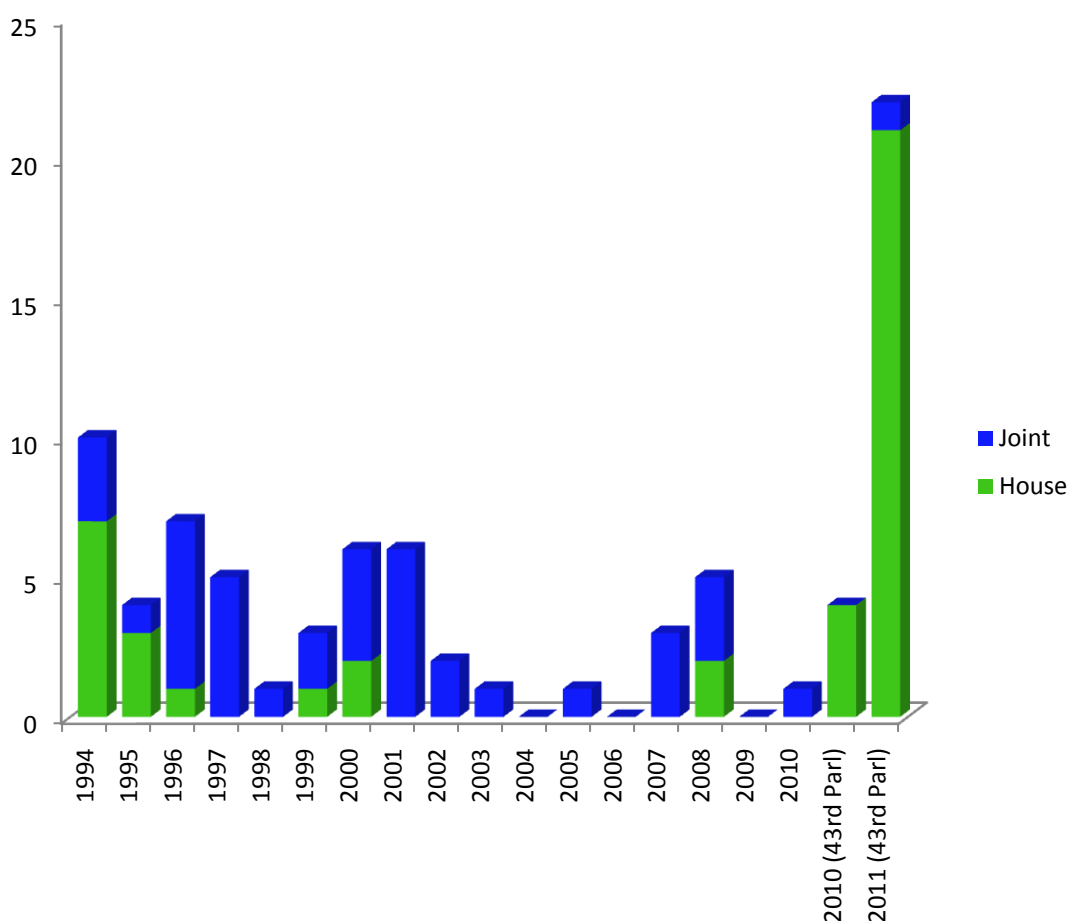
* The Standing Committee on Economics resolved to consider this Bill together with the Competition and Consumer (Price Signalling) Amendment Bill 2010 which was referred to the Economics Committee on 24 November 2010.

Source: Chamber Research Office statistics, 3 June 2011.

Conduct and role of bills inquiries in the 43rd Parliament

1.10 Standing order 143(b) specifies that the report produced from an inquiry into a bill referred by the Selection Committee constitutes an advisory report.¹⁰ An advisory report by a committee does not substitute for the consideration in detail stage of a bill. Further, although a committee's recommendations for detailed amendments would be expected to be persuasive for the government, the committee cannot amend a bill itself. As always, this can only occur after the agreement of the House to a formal motion to amend, at the appropriate stage of the bill's consideration in the House or Main Committee.

Figure 1.1 Number of bills inquiries conducted by House and joint committees: 1994-2011



Source: Chamber Research Office statistics, 3 June 2011.

10 Standing order 143(b), 20 October 2010.

- 1.11 While the Selection Committee requested reporting timeframes for the first four bills it referred to committees in the 43rd Parliament (all in October/November 2010), no reporting deadline has been included in its subsequent reports comprising bill referrals. The timeframe for reporting may be negotiated between a committee and the relevant Minister. As a result, the inquiries are often undertaken quickly, with committees sometimes reporting within a fortnight of receipt of the referral.¹¹
- 1.12 Committees usually call for submissions and conduct hearings on the bill(s), however, this is not mandatory and there have been occasions recently when committees have presented advisory reports without having called for submissions or conducted hearings.¹²

Impact of bill referrals on committee resources

- 1.13 The increase in referral of bills to committees in the 43rd Parliament, and the typically short timeframes for the conduct of inquiries, add to pressure on the resources of House and joint committees. For most bills inquiries in the current parliament, submissions have been invited, received and considered, and at least one public hearing held. In most cases, the processing of submissions and the organisation of public hearings is done very speedily to allow sufficient time to examine the evidence so received and to prepare the final report.
- 1.14 In its inquiry into the Temporary Flood and Cyclone Levy bills, the House Economics Committee received all submissions and organised a public hearing within a week of the bills being referred by the Selection Committee.¹³ Similarly, the House Education and Employment Committee resolved a tight timeframe for its inquiry into the Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010, in

11 For example, the Standing Committee on Economics inquiry into the Income Tax Rates Amendment (Temporary Flood Reconstruction Levy) Bill 2011; and the Tax Laws Amendment (Temporary Flood Reconstruction Levy) Bill 2011 was completed in 11 days; and the Standing Committee on Social Policy and Legal Affairs inquiry into the Family Assistance and Other Legislation Amendment Bill 2011 was completed in 12 days.

12 See, for example, Standing Committee on Climate Change, Environment and the Arts, *Advisory report on the National Radioactive Waste Management Bill 2010*, 22 December 2010, Parliamentary Paper No. 44/2011.

13 The Temporary Flood Reconstruction Levy bills were referred to the House Economics Committee on 10 February 2011. See House of Representatives Selection Committee, Report no. 13, p 3. Viewed 16 June 2011 at: http://www.aph.gov.au/house/committee/selc/reports/43rd_parliament/report_13.pdf. A press release was issued by the Economics Committee on 11 February 2011 calling for submissions by 15 February 2011. Viewed 16 June at: <http://www.aph.gov.au/house/committee/economics/Floodlevy/media/media001.pdf>.

order to facilitate the possibility of consideration of the bill by both houses of parliament by the end of the 2010 sittings.¹⁴ A media release issued by the Committee on 28 October 2010 sought submissions by 4 November 2010.¹⁵

- 1.15 Anecdotal evidence suggests that even at this early stage in the parliament, committee workloads have increased significantly. Mr Craig Thomson MP, Chair of the House Standing Committee on Economics, described that Committee's workload in the current parliament as 'light years different' to the previous parliament.¹⁶
- 1.16 The Standing Committee on Economics has been notably affected by the new bills referral mechanism, having received 10 of the 26 bills referred by the Selection Committee to date. The Chair and Deputy Chair commented on the need for adequate resources to meet this increasing demand. Mr Thomson stated:

We are finding that in this parliament we are getting two or three bills referred to (the) committee weekly, and the secretariat have gone above and beyond in their efforts to make sure that we can get our reports out, that they can be presented to parliament and that the business of parliament can continue to operate. I will use this time to say that we need to be looking at the resources given to these committees, because quite frankly the workload in this parliament, compared to the last, is light years different. If we want this parliament to continue to function in an efficient manner we need to make sure that resources are given to the committee.¹⁷

- 1.17 Deputy Chair, Mr Steven Ciobo MP, added:

For a committee such as the House of Representatives Standing Committee on Economics, it is perhaps not unsurprising that there has been a marked increase in the amount of regulation and legislation that it will be looking at and reviewing as a very active House of Representatives committee. It is one of the main committees, indeed, for this parliament. Economics is, of course, at the forefront of what the Australian government should be dealing with. I think it is absolutely warranted for a committee like the

14 Standing Committee on Education and Employment, *Advisory Report on the Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010*, November 2010, Parliamentary Paper No. 333/2010, p 3.

15 Viewed 14 June at :
<<http://www.aph.gov.au/house/committee/ee/highereducation/media/media01.pdf>>.

16 HR Deb (Proof), 15 June 2011, p 7.

17 HR Deb (Proof), 15 June 2011, p 7.

House of Representatives economics committee to ensure that its secretariat is fully able and equipped to deal with all the necessary trials, tribulations and challenges that go with a very active and heavy workload of such committee.¹⁸

- 1.18 Some committees have expressed reservations about the bill referral process continuing in the same way as it has been operating so far in the 43rd Parliament – due to some extent to the urgency with which committees are being asked to complete their inquiries. The Standing Committee on Social Policy and Legal Affairs noted that the current system:

...can undermine the capacity of committees to fulfil their independent and investigative functions.¹⁹

- 1.19 The Social Policy and Legal Affairs Committee received a referral from the Selection Committee on 2 June 2011 to inquire into the Family Assistance and Other Legislation Amendment Bill 2011. The Committee presented its advisory report in the House on 14 June, noting that the Minister had encouraged a deadline of 14 June to enable consideration of the Bill by the House in the same week. In its advisory report, the Committee remarked on the bill referral process:

The Committee appreciates the urgency of the House in considering some bills; however, timeframes must also balance the need for careful investigation when a bill has been referred to a committee for inquiry and report. In this instance, due to the omnibus nature of the bill referred, the Committee has only been able to highlight issues of concern which it considers require clarification, rather than conduct its own detailed investigation into these matters.²⁰

Opportunities for stakeholder input

- 1.20 In addition to the workload implications for committee members and committee support staff, the short timeframes for completion can inhibit participation by stakeholders. On several occasions bills inquiries have called for submissions to be received within one week of the inquiry being advertised, giving minimal time for committees to identify and target

18 HR Deb (Proof), 15 June 2011, p 7.

19 Standing Committee on Social Policy and Legal Affairs, *Advisory report: Family Assistance and Other Legislation Amendment Bill 2011*, 14 June 2011, p 20.

20 Standing Committee on Social Policy and Legal Affairs, *Advisory Report: Family Assistance and Other Legislation Amendment Bill 2011*, 14 June 2011, p 19.

potential stakeholders. In the case of the Economics Committee's inquiry into the Temporary Flood and Cyclone Reconstruction Levy bills, the sole public hearing for the inquiry was conducted the day following the closing date for submissions.²¹

- 1.21 When presenting the Standing Committee on Education and Employment's advisory report on the Higher Education Legislation Amendment (Student Services and Amenities) Bill 2010, Deputy Chair, Mr Rowan Ramsey MP was critical of the short timeframe for the inquiry and consequent limited opportunities for consideration of stakeholders' views:

...We had seven days to receive submissions. In the end we received 36, but only 29 of those were lodged by closing time. Then we had less than a week to consider those submissions, with no chance to meet in person and no chance to enter into any one-on-one, face-to-face interviews. We believe that there was considerable interest shown in this inquiry, as evidenced by the number of submissions – and we may well have received more had we had more time – and so we decry the lack of process. It would seem that if we are to have any inquiries at all, they should be more diligent than this.²²

Perceived duplication

- 1.22 Some committees have suggested the new arrangements may result in duplication when Senate and House committees conduct concurrent reviews of the same bills. Some committees have taken deliberate steps to minimise perceptions of duplication among inquiry participants and stakeholders. For example, upon presenting the Climate Change, Environment and the Arts Committee's advisory report on three bills relating to the proposed establishment of a carbon farming initiative, Committee Chair, Mr Tony Zappia MP, stated:

I draw the attention of the House to the fact that concurrent referral of identical bills to committees of both houses is a rare occurrence. However, under the new parliamentary arrangements in the 43rd parliament, and particularly the expanded role of the Selection Committee, it is possible that this may occur more frequently. The committee is of the view that, for such reviews to

21 See Standing Committee on Economics inquiry website: <<http://www.aph.gov.au/house/committee/economics/Floodlevy/hearings.htm>>. Viewed 15 June 2011.

22 HR Deb, 15 November 2010, 2184.

be fully effective, they should avoid perceptions of duplication among inquiry participants and other stakeholders. On this basis, the committee deliberately sought not to duplicate the Senate committee's inquiry but to broaden and extend the range of evidence obtained by the two committees. For this reason, the committee has focused its report on a number of specific issues raised in written submissions and during its public hearing.²³

- 1.23 In the case of concurrent bills inquiries conducted by the Standing Committee on Climate Change, Environment and the Arts and its Senate counterpart, the House Committee noted that the publicly available evidence of one committee would have been considered by the other to assist its deliberations.²⁴
- 1.24 Similarly, the Standing Committee on Social Policy and Legal Affairs expressed concern over the demands placed on inquiry participants where the same item of legislation is reviewed concurrently by both House and Senate committees. While acknowledging the importance of the independence of both Houses, the Committee stated that:
- ...the work of House and Senate committees should inform consecutive debate and scrutiny, rather than concurrent inquiries placing additional demands on stakeholders.²⁵
- 1.25 In one instance where a bill²⁶ was referred by the Selection Committee to the Social Policy and Legal Affairs Committee at a time when the Senate's Legal and Constitutional Affairs Committee was conducting an inquiry into the same bill, the Committee unanimously agreed not to inquire further into the bill on the grounds that it did not consider it could significantly add to the work being undertaken by the Senate Committee.²⁷

Concluding comment

- 1.26 Feedback from Members serving on House and joint committees suggests that they are enthusiastic about the increase in opportunities to review
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23 HR Deb (Proof), 23 May 2011, p 30.

24 Standing Committee on Climate Change, Environment and the Arts, *Advisory report on bills referred 24 March 2011*, 23 May 2011, Parliamentary Paper No. 115/2011, p 2.

25 Standing Committee on Social Policy and Legal Affairs, *Advisory report: Family Assistance and Other Legislation Amendment Bill 2011*, 14 June 2011, p 19.

26 The Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011.

27 Standing Committee on Social Policy and Legal Affairs, *Advisory report of the inquiry into: Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011*, 12 May 2011.

proposed legislation in the 43rd Parliament. Bills inquiries provide an important opportunity for House committees to assist in the timely development of improved legislation and to facilitate wider participation in the work of the House.

- 1.27 The Committee acknowledges that in the past there have been separate inquiries by House and Senate committees on the same bill, reflecting the appropriate independence, and different composition and committee traditions of each house. Whatever the Senate and its committees choose to do with items of proposed legislation should not in any way inhibit the House Selection Committee's determinations in referring bills to House and joint committees for examination. Where inquiries into the same item(s) of legislation are being run concurrently by House and Senate committees, some committees are already adopting measures to reduce perceptions of duplication and to minimise the requirement for witnesses to provide comparable evidence to two different committees.
- 1.28 The considerable increase in the rate at which bills are being referred to House and joint committees appears to have affected significantly the workload and resourcing of some committees, as well as the time commitments of those Members who serve on them. The Committee notes that an external review of staffing in the House of Representatives committee office has been conducted and the Committee does not wish to pre-empt the findings of this review.
- 1.29 The referral process may be enhanced if greater regard were given to a committee's workload prior to determining whether it should be referred a bill for inquiry and some indication were provided of the aspects of the bill that are expected to be the focus of the Committee's attention. This may be achieved by amending the existing provision whereby one member of the Selection Committee is sufficient to select a bill for referral, so that any referral must be supported by a majority of the Committee, and by requiring the Committee to provide a short statement of reasons for the referral. A majority decision and provision of reasons for referral should ensure that during the Selection Committee's deliberations appropriate consideration is given to:
- the need for and the potential benefits of committee scrutiny of the bill, including opportunities for stakeholder participation;
 - the workload and resources of relevant House and joint committees; and
 - the potential for duplication of stakeholder input.

- 1.30 Accordingly, the Committee supports an amendment to the relevant standing order to provide that a majority decision of the Selection Committee is required to refer a bill for advisory report and that the Committee indicate the reasons for referral. The Committee will continue to monitor the effectiveness of the mechanism for the referral of bills to House and joint committees as the 43rd Parliament progresses.

Recommendation 1

- 1.31 **The Committee recommends that standing order 222(a)(iii) be amended to remove the provision that one member of the Selection Committee is sufficient to select a bill for referral to a House or joint committee for advisory report – thereby requiring a majority decision of the Committee – and to require that the Committee provide reasons for the referral of bills to committees.**

JULIE OWENS MP
Chair

23 June 2011