

Annual Report

- 1.1 Under Section 16 of the *Public Works Committee Act 1969* (the Act), the Parliamentary Standing Committee on Public Works must table in each house of the Parliament a report of its proceedings during the calendar year just ended.
- 1.2 All public works that have an estimated cost exceeding \$15 million must be referred to the Committee and cannot be commenced until the Committee has made its report to Parliament, and the House of Representatives resolves that it is expedient to carry out the work.¹
- 1.3 The Act states that in considering and reporting on a public work, the Committee shall have regard to:
 - the stated purpose of the work and its suitability for that purpose;
 - the necessity for, or the advisability of, carrying out the work;
 - the most effective use that can be made, in the carrying out of the work, of the moneys to be expended on the work;
 - where the work purports to be of a revenue-producing character, the amount of revenue that it may reasonably be expected to produce; and
 - the present and prospective public value of the work.²
- 1.4 The year 2011 was a busy one for the Committee, having conducted inquiries into 11 works which had a combined cost of \$782.7 million. A list of the works and their individual costs is at Appendix A.

1 The Act, Part III, Section 18 (8). Exemptions from this requirement are provided for work of an urgent nature, defence work contrary to the public interest, repetitive work, and work by prescribed authorities listed in the *Regulations*.

2 The Act, Part III, Section 17 (3).

- 1.5 During 2011, the Committee also considered 48 medium works proposals (those valued between \$2 million and \$15 million), with a combined value of \$433.3 million. A list of medium works notified to the Committee can be found at Appendix B.
- 1.6 The Committee's reports, submissions to each inquiry and transcripts of associated public hearings are available on the Committee's website.³ The Committee's website also provides previously tabled reports and the procedure manual, which assists agencies to prepare projects for Committee review. A list of all Committee meetings and hearings held during 2011 is at Appendix C.

Inquiries and reports

- 1.7 The Act requires the Committee to consider and report on each referred work 'as expeditiously as is practicable'.⁴ The Committee takes this seriously and ensures that all inquiries are completed as quickly as possible. In 2011, the average time from referral of works to report tabling was 15 weeks. The average of 15 weeks is more typical for inquiry completion than the figure of nine weeks for the year 2010. There were extenuating circumstances in that year.
- 1.8 The inquiry process allows time for public comment on proposed works, and for the Committee to inspect the proposed work site(s) prior to holding public and private hearings to take evidence about the works. The Committee also considers the parliamentary sitting calendar when planning its inquiry timetable to ensure that reports can be finalised and tabled promptly when both houses of Parliament are sitting.⁵
- 1.9 The Committee raised this issue with the Department of Finance and Deregulation, suggesting that it would assist the work of the Committee if agencies were to be able to refer works out of session.
- 1.10 Substantial breaks in the parliamentary sittings and federal elections can delay projects. It is essential that agencies consider possible delays in their project planning, and include appropriate contingencies. The Committee does not condone any breach of its Act due to such delays.

3 <www.aph.gov.au/pwc>.

4 The Act, Section 17(1)

5 In any event, a work cannot commence until after the Committee has reported to both houses and the House of Representatives has resolved that the work can commence – the latter of which can only occur when the House is sitting.

Medium works

- 1.11 The Committee continues to publish a list of medium works notifications on its website. The current list includes all works approved since the beginning of the 43rd Parliament.
- 1.12 The Committee reminds Australian Government departments, agencies and authorities of their obligations under the medium works process. This process forms an important part of the parliamentary scrutiny of Commonwealth public works expenditure.
- 1.13 It is incumbent upon departments to ensure that all agencies within the portfolio are aware of the Committee's role and processes. Further, departments must provide all necessary assistance so that smaller agencies may fulfil their obligations to the Committee and the Parliament.
- 1.14 The Committee's manual gives clear instructions about the medium works process, and the Secretariat is always available to give additional information about the process to agencies. Agencies should contact the Secretariat well ahead of time, as the parliamentary calendar has a significant impact on the Committee's capacity to consider medium works proposals.

Need for a project and options considered

- 1.15 The need for a particular project must be demonstrated and fully discussed in an agency's statement of evidence or submission to an inquiry. In particular, agencies must demonstrate where the works fit in to a wider policy framework.
- 1.16 The options considered for each project or project scope element must also be discussed in detail. There have been several occasions in the past year where an agency's submission has lacked this detail, only for it to come to light during the project inspection and briefing provided to the Committee prior to the public hearing for the inquiry. It is necessary that this level of detail be provided to the Committee in the main submission or statement of evidence at the beginning of an inquiry so that it may be fully considered in advance of any public hearings.
- 1.17 In 2012, the Committee will be looking to ensure that each agency thoroughly assesses the need and options considered for each project.

Post implementation review

- 1.18 Australian Government departments, agencies and authorities must prepare a post-implementation review of each project completed.
- 1.19 On project completion, the Committee must be informed whether the project remained within the advised scope, cost and timeframe.
- 1.20 Further, the Committee expects information regarding:
- the extent to which the expected business benefits, including environmental benefits, have been or are expected to be achieved;
 - user satisfaction with the delivered works;
 - consultations with neighbouring communities that may be impacted by the works; and
 - lessons learned.

Review of the Public Works Committee Act

- 1.21 In 2011, the Committee met with representatives of the Department of Finance and Deregulation at a roundtable discussion, to consider the possibility of amending the *Public Works Committee Act 1969* to update certain aspects or provisions.
- 1.22 In particular there are some sections of the Act relating to the Committee's procedures and processes that do not reflect contemporary models for the operation of joint statutory committees. Additionally, some provisions of the Act are acknowledged to be outdated or unduly cumbersome.
- 1.23 A key example for consideration concerns urgent works. Currently, the only provision in the Act for exemption of works due to urgency (Section 18(8)(b)) requires the Minister for Finance and Deregulation to move an expediency motion in the House of Representatives. Once exempted on the basis of urgency, the Committee has no role in scrutinising the works.
- 1.24 However, catastrophic events, emergencies or natural disasters can occur at any time when the Parliament is not in session. The Act could be amended to provide that the Governor-General exempt a work on the grounds of urgency when the Parliament is not in session, in the same manner as allowed for referral of works under Section 18(4). The amendment could provide that the sponsoring agency be required to brief

the Committee on the work within an appropriate time after the work has commenced (e.g. three months), and to provide a post-implementation report when the work has been completed.

- 1.25 The Committee plans to give further consideration to these issues in the coming year.

Public Works Committee Act exemptions

- 1.26 During 2011 there were two notable circumstances where authorities were exempted from Committee scrutiny. These were:
- the National Broadband Network Co Limited (NBN Co); and
 - Aboriginal Land Trusts.

National Broadband Network

- 1.27 In 2009 the Government established the NBN Co as a Government Business Enterprise. NBN Co's responsibilities are to plan, rollout and operate the NBN.
- 1.28 The Act allows that the Governor General may make regulations declaring that the Act does not apply to that authority when she 'is satisfied that an authority of the Commonwealth is engaging in trading or other activities, or is providing services, in competition with other bodies'.⁶
- 1.29 On 1 July 2010, the Select Legislative Instrument 2010 No. 173 - Public Works Committee Amendment Regulations 2010 (No. 1) (the Regulations) was registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. The Regulations were to amend the Public Works Committee Regulations 1969, to include NBN Co and its wholly-owned subsidiaries as an exempt Commonwealth authority under subsection 6A(3) of the *Public Works Committee Act 1969*. On 28 September 2010, the Regulations were tabled in both houses of the Parliament.
- 1.30 Notice was given of a disallowance motion on 18 November 2010. The disallowance motion was debated in the House of Representatives on 1 March 2011 where it was negatived, endorsing the Regulations that make the NBN Co an exempted authority.⁷

6 PWC Act, Subsection 6A(3).

7 <www.comlaw.gov.au/Details/F2010L01725>

- 1.31 While exempted from Public Works Committee scrutiny, the NBN Co is still subject to Parliamentary scrutiny. In March 2011, the Joint Committee on the National Broadband Network was established by resolution of both houses to inquire into the rollout of the NBN project. The Joint Committee reports to the Parliament, the Minister for Broadband, Communications and the Digital Economy and the Minister for Finance every six months. NBN Co is also required to table its annual report in Parliament.⁸
- 1.32 Notwithstanding its establishment, the Joint Committee does not possess the powers of the Public Works Committee.

Aboriginal Land Trusts

- 1.33 On 2 June 2011, the Family Assistance and Other Legislation Amendment Bill 2011 (the Bill) was introduced into the House. The Bill comprised five schedules, four of which propose amendments to legislation in order to give effect to 2011–12 Budget measures. The fifth schedule in the Bill, proposed to exempt Aboriginal Land Trusts from the *Public Works Committee Act 1969* by inserting a new section into the *Aboriginal Land Rights (Northern Territory) Act 1976*.⁹
- 1.34 The Aboriginal Land Trusts are established under the *Aboriginal Land Rights (Northern Territory) Act 1976* to hold title to land in the Northern Territory for the benefit of Aboriginal people entitled by Aboriginal tradition to use or occupy the land concerned.
- 1.35 The Bill's Explanatory Memorandum described the purpose of the fifth schedule as follows:

This Schedule amends the *Aboriginal Land Rights (Northern Territory) Act 1976* (the Land Rights Act) to clarify that the *Public Works Committee Act 1969* (the PWC Act) does not apply to Aboriginal Land Trusts.¹⁰

8 <www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jcnbn/index.htm>

9 <[parlinfo/parlInfo/search/display/display.w3p;adv%3Dyes;orderBy%3Dcustomrank;page%3D0;query%3DFamily%20Assistance%20and%20Other%20Legislation%20Amendment%20Bill%202011%20Dataset%3AbillsCurBef,billsCurNotBef;rec%3D0;resCount%3DDefault](#)>

10 <[parlinfo/parlInfo/search/display/display.w3p;adv%3Dyes;orderBy%3Dcustomrank;page%3D0;query%3DFamily%20Assistance%20and%20Other%20Legislation%20Amendment%20Bill%202011%20Dataset%3AbillsCurBef,billsCurNotBef;rec%3D0;resCount%3DDefault](#)>

- 1.36 On 2 June, the Bill was referred for inquiry to the following committees:
- House of Representatives Standing Committee on Social Policy and Legal Affairs; and
 - Senate Community Affairs Legislation Committee.
- 1.37 While the reports of both Committee inquiries supported the schedule 5 amendment, each noted that concerns had been raised. In its report of 14 June 2011, the House of Representatives Standing Committee on Social Policy and Legal Affairs noted:
- If this amendment is passed, it is unclear what scrutiny and accountability processes will be put in place for the administration and expenditure of these funds if the PWC requirement is removed. Regardless of which authority administers the funding, FaHCSIA or Aboriginal Land Trusts, it is important that proper processes of scrutiny and accountability are in place.¹¹
- 1.38 Reporting on 22 June 2011, the Senate Community Affairs Legislation Committee observed that it was aware that the Public Works Committee has expressed concern about ensuring that all relevant works are subject to the scrutiny intended by the Act, but also noting:
- The committee was concerned whether the schedule would set a precedent in how exemptions to the Public Works Committee Act occur. It was concerned that there was a difference of view between that Parliamentary committee and FAHCSIA about the application of the Act.¹²
- 1.39 Notwithstanding these observations, the Bill was debated in both houses of the Parliament and passed on 23 June 2011. The Bill received assent on 28 June 2011.

Committee comment

- 1.40 The issue of authorities seeking to use provisions of the Act inappropriately to exempt individual works from Committee scrutiny is a consistent theme and has been raised over the years in the Committee's Annual Reports. While acknowledging that in some cases there may be genuine reasons for individual works to be exempted on the grounds of

11 <www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=spla/bill_family_assistance/report.htm>

12 <www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=clac_ctte/family_assistance_11/report/index.htm>

urgency or national security, the Committee has clearly asserted that exemptions should not be sought simply because authorities have not allowed sufficient time for projects to be subject to parliamentary oversight by the Committee.

1.41 While acknowledging that the Act also makes provision for authorities of the Commonwealth to be exempted from Committee scrutiny through regulations, as noted this requires approval of the Governor-General who must be satisfied that the authority is engaged in trading or other activities, or is providing services, in competition with other bodies. Where blanket exemptions of this type are sought, the Committee is keen to ensure that they can be fully justified.

1.42 Furthermore, the Committee has concerns about the capacity of authorities to use amendments to establishing legislation in order to exempt themselves from scrutiny and the precedence that this may set for other statutory authorities. The Committee reminds authorities that the Public Works Committee process should not be viewed as an impediment, but rather an opportunity for the Parliament and the authorities concerned to ensure that their capital works expenditure represents the best value for money, and that resulting works are fit for purpose.

Conclusion

1.43 The Committee thanks everyone who has assisted or participated in the Committee's inquiries in 2011. In particular, the Committee appreciates input from members of the public.

1.44 The Committee makes particular acknowledgement of the contribution made by the Special Claims and Land Policy Branch of the Department of Finance and Deregulation. This branch assists agencies with their preparation of proposals for consideration by the Committee, and assists the Minister in his management of the *Public Works Committee Act 1969*.

1.45 The Committee acknowledges the recently retired Senator Judith Troeth and Senator Michael Forshaw, and greatly appreciates their contribution to the Committee's work. Both Senators displayed a high level of commitment and integrity, and helped new members of the Committee learn the Committee's role and processes. The Committee thanks them and wishes them well in their future endeavours.

1.46 The Committee also thanks the Hon Malcolm Turnbull, Mr Bernie Ripoll MP and Senator Gavin Marshall for their service to the Committee.

- 1.47 The Committee welcomes Senator Alex Gallacher, Senator Anne Urquhart, Senator Sue Boyce and Mr Patrick Secker MP, who joined the Committee in 2011.

Ms Janelle Saffin MP

Chair

15 March 2012