

ATSIA Committee received over 110 submissions and spoke at length with the Family Responsibilities Commissioner, Mr David Glasgow.

- 1.94 The ATSIA Committee also undertook to consider coordinated models of service delivery and increasing positive community engagement.
- 1.95 This Committee refers the House of Representatives to the more detailed findings of the ATSIA Committee in relation to the FRC and the effectiveness of the Cape York welfare reform trial in overcoming Indigenous disadvantage and building positive social norms. The ATSIA report is expected to be tabled in June 2011.
- 1.96 The Committee is of the view that Schedule 4 provides opportunity for Indigenous communities in Cape York to drive social change through an extension of the Trial. Future evaluations on the continuation of the Trial should include consultation with the Indigenous communities who have been engaged in the process. The Committee recommends that the House of Representatives agree to pass Schedule 4 of the Family Assistance and Other Legislation Amendment Bill 2011 without amendment.

Recommendation 4

- 1.97 **The Committee recommends that Schedule 4 – Extending Cape York welfare reform trial of the Family Assistance and other Legislation Amendment Bill 2011 be passed by the House of Representatives without amendment.**

Schedule 5—Public Works Act exemption

Amendment proposed

- 1.98 Schedule 5 of the Family Assistance and Other legislation Amendment Bill 2011 proposes to amend the *Aboriginal Land Rights (Northern Territory) Act 1976* to stipulate that the *Public Works Committee Act 1969* (PWC Act) does not apply to Aboriginal Land Trusts.
- 1.99 The substance of this proposed amendment is to remove the requirement for works carried out by Aboriginal Land Trusts to be subject to the scrutiny of the Public Works Committee (the PWC).

- 1.100 The *Aboriginal Land Rights (Northern Territory) Act 1976* provides for the granting of traditional Aboriginal land in the Northern Territory for the benefit of Aboriginal people. The *Aboriginal Land Rights (Northern Territory) Act 1976* was the first legislation to provide the basis for Aboriginal people in the Northern Territory to claim rights to Crown land based on traditional occupation and association with land.
- 1.101 The *Aboriginal Land Rights (Northern Territory) Act 1976* establishes Aboriginal Land Trusts 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. Land trusts hold communal title for land granted to them as inalienable Aboriginal freehold, meaning that the land cannot be bought, acquired or forfeited.
- 1.102 The PWC Act provides for the establishment of a joint Parliamentary Standing Committee on Public Works (the PWC) to scrutinise expenditure on capital works undertaken by or for the Commonwealth, utilising Commonwealth funds.
- 1.103 The PWC is one of the oldest investigative Committees of the Parliament and is one of very few avenues for the Parliament to scrutinise capital works expenditure proposed by the Executive. It plays an important role in the scrutiny and accountability of Commonwealth agencies and embodies the fundamental right of the Parliament to scrutinise the appropriations of the Executive.
- 1.104 There are very few grounds for exemption from the PWC Act. For individual projects these are:
- urgency;
 - defence purposes where scrutiny would be contrary to the public interest; and
 - the work is of a repetitive nature.²²
- 1.105 The PWC Act sets out that a request for exemption must be justified to the Finance Minister, the PWC, the Governor-General and/or the House of Representatives prior to approval.
- 1.106 Similarly, there are very few circumstances under which an authority may be given blanket exemption from PWC scrutiny. The PWC Act provides that this may only be approved by the Governor-General where she is satisfied that the authority 'is engaging in trading or other activities, or is providing services, in competition with another body or other bodies, or

22 *Public Works Committee Act 1969* (Cth) s18(8) and s18(8A).

with persons'.²³ An exemption on these grounds must be justified to the House of Representatives, where it sits as a disallowable instrument for 15 sitting days.

- 1.107 For those authorities, such as Australia Post, which are granted exemption from the PWC, this has been enshrined in the PWC Act itself or in its regulations, rather than in legislation relating to another authority.
- 1.108 The PWC has consistently noted in its annual reports to the Parliament, concerns about exemption provisions being inappropriately utilised by agencies to avoid scrutiny.²⁴

Committee Comment

- 1.109 The Explanatory Memorandum to the amendment notes that section 5AA of the PWC Act will still apply to works undertaken by or for the Commonwealth. Section 5AA sets out the meaning of a public work.
- 1.110 The Committee understands that, currently, capital works for Aboriginal Land Trusts are undertaken by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and therefore section 5AA of the PWC Act applies.
- 1.111 Indeed, under Part IIb of the *Aboriginal Land Rights (Northern Territory) Act 1976*, it appears that the Commonwealth holds statutory rights over Commonwealth funded buildings and infrastructure on Aboriginal lands unless transferred to the another body. It is clear in this circumstance that the PWC Act applies.
- 1.112 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.
- 1.113 The PWC should not be regarded as an impediment to capital works, but rather the opportunity to ensure expenditure is value for money, and that the resulting work is apt and fit for purpose.

23 *Public Works Committee Act 1969* (Cth) s6A3.

24 See for example, Parliamentary Standing Committee on Public Works, *Seventy-Fourth Annual Report*, March 2011, p. 3.

Recommendation 5

- 1.114 **The Committee recommends that the exemption of the *Aboriginal Land Rights (Northern Territory) Act 1976* from the *Public Works Committee Act 1969* be passed by the House of Representatives without amendment.**

General comments—Bills referral process

- 1.115 The Committee takes this opportunity to make some general comments about the reforms introduced in the 43rd Parliament which have enabled the Selection Committee to refer bills to a House of Representatives committee for an advisory report.
- 1.116 The Social Policy and Legal Affairs Committee states from the outset its strong support for bill referrals to committees and its desire to engage in a number of bill inquiries through the course of the parliament.
- 1.117 As at May 2011, a total of 15 bills were referred to four different House of Representatives committees. Since the beginning of the 43rd Parliament, some 25 bills have been referred. Of those tabled to date, the average inquiry length is nearly 27 days.²⁵
- 1.118 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.
- 1.119 In addition, with the increase in the number of bill referrals to House committees, there are obviously instances when Senate committees will be tasked to conduct inquiries into the same bill. The Committee considers this an important element in the independence of both Houses. However it also considers that the work of House and Senate committees should inform consecutive debate and scrutiny, rather than concurrent inquiries placing additional demands on stakeholders.

25 This does not include the advisory reports on the Wild Rivers (Environmental Management) Bill 2010 which took 176 days or the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2010 which took one day.

- 1.120 These issues have been noted by other committees in their advisory reports to the House.²⁶ In addition, the previous bill referred to this Committee for inquiry was already the subject of a lengthy and intensive inquiry by a Senate committee.²⁷
- 1.121 The Committee expresses its reservations that the bill referral process as it currently operates can undermine the capacity of committees to fulfil their independent and investigative functions. The Committee makes these comments as general observations to the House in order to promote a dialogue on the processes and value of parliamentary committees.

Mr Graham Perrett MP
Chair
14 June 2011

26 See for example the 22 December 2010 and 24 March 2011 advisory reports from the Standing Committee on Climate Change, Environment and the Arts <www.aph.gov.au/house/committee/ccea/reports.htm> viewed 10 June 2011.

27 See advisory report into the Family Law Legislation Amendment (Family Violence and Other Measures) Bill 2011, <www.aph.gov.au/house/committee/spla/reports.htm> viewed 10 June 2011.