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Australian Democrats Reform Proposals for the Senate

With the advent of a new Commonwealth Government, there is an opportunity for the Government and the Senate to review certain process matters so that changes can be made to apply early in the new Parliamentary year.

Leaving aside reforms which would require constitutional or statutory alterations, a number of reforms are possible only with the cooperation of the Government, for example carrying out the recommendations of the Senate Finance and Public Administration Committee on financial transparency and accountability.¹

There are two categories of reforms the Australian Democrats suggest the Government and the Senate consider:

procedural reforms which could be put in place by the Senate's own resolution, without constitutional or statutory change; and

institutional reforms which would not require constitutional or statutory change but which would require the cooperation of the Government.

Procedural reforms

The following is a list of procedural reforms which could be made by the Senate by its own resolution. The list does not include changes which could come about only by constitutional amendment or statute, for example, fixed-term parliaments.

(1) Any claim by government (ministers or officers) that information should not be produced in response to a request in, or by, the Senate or a Senate committee, to be based on a properly formulated claim by a minister of public interest immunity, that is, that production of the information would be harmful to the public interest for a specified and established reason (prejudice to legal proceedings, invasion of personal privacy, etc). Any such claim, raised in, and not accepted by, the Senate by resolution, to be referred to a neutral adjudicator, whose decision is to be binding, (similar to the arrangement in New South Wales).

(2) All committees to reflect in their memberships the balance of numbers in the Senate, with chairs and deputy chairs to be shared between groups. Places available for, but not taken up by, minor parties to be available to the Opposition. The changes made to committees after 2005 to be reversed, restoring the separate references and legislation committees with the former chaired by opposition and cross bench members and the latter by government members.

(3) Committees to be empowered to initiate their own inquiries, in addition to scrutiny of departments and agencies and annual reports, subject to any direction by

¹ Senate Finance and Public Administration References Committee: Transparency and accountability of Commonwealth public funding and expenditure: 1 March 2007.

the Senate. Petitions should be referred to committee for consideration and response to the Senate.

(4) Committees to be empowered, on the European model, to initiate their own legislative proposals.

(5) The resolution of 1999², concerning the relevance of questions in Senate Estimates hearings, to be confirmed and put in standing order 26.

(6) The pre-2005 times³ for estimates hearings, including ‘spill-over days’, to be specified as a minimum.

(7) Ministers to table statements of reasons for all estimates questions on notice not answered by the time of expiration of deadlines set by the committees.

(8) Committees to have a minimum of 21 days to consider bills referred to them, unless a shorter time is specified by motion on notice for specified reasons.

(9) All bills presented to the Senate to be accompanied by one or more impact statements selected on the basis of relevance to the bills concerned. In addition to financial impact statements the checklist of possible impact statements could include: their effect on federal and state powers and responsibilities; their effect on civil liberties/human rights; on the economy; on the environment; on women, on privacy and so on.

(10) Bills not to be exempted from standing order 111 (the ‘cut-off’) except by separate motion on notice, with the reasons tabled when the notice is given.

(11) Time for debate on bills not to be limited except in accordance with standing order 142 (to avoid other motions to limit time on which debate is more restricted), and then only after the President has certified that unsuccessful negotiations have occurred to attempt to set time limits by agreement.

(12) Question time to continue until 28 questions, including supplementary questions, have been asked by non-government senators and answered. The time for answering to be limited to 3 minutes and standing orders amended to require answers to be relevant and non-repetitive.

(13) The Senate’s order of 29 October 2003 for the publication of lists of government advertising projects to be reaffirmed reasserted and enforced.

Institutional reforms

The following reforms affecting the operations of the Parliament would not require constitutional or statutory change but would require the cooperation of the government.

² Senate Procedure Committee, second report of 1999, adopted by the Senate 22 November 1999.

³ See the discussion of this matter in the estimates hearing of the Finance and Public Administration Committee, 22 May 2006, pp 12-13.

- (1) Implementation of the recommendations of the Senate Finance and Public Administration Committee report of March 2007 on transparency and accountability of Commonwealth public funding and expenditure, plus the separate listing of all new government programs in Appropriation Bill No. 2.⁴
- (2) All schemes for granting public funds to development projects (such as the Regional Partnerships scheme) to be administered by impartial authorities on the basis of guidelines and criteria approved by both Houses of the Parliament. Review and response to of recommendations of the relevant Senate and ANAO reports.⁵
- (3) Review of the recommendations of the Senate Finance and Public Administration Committee report of 6 December 2005 on Government advertising and accountability⁶, and early implementation of impartial guidelines and criteria.
- (4) Implementation of the recommendations of the Senate Finance and Public Administration Committee report of February 2007 on contracts.⁷
- (5) Review of and response to the recommendations of the Senate Finance and Public Administration Committee report of Staff employed under the Members of Parliament (Staff) Act 1984, of 16 October 2003.⁸
- (6) Australian Defence Force personnel not to be committed to operations overseas likely to involve hostilities without debate and consideration in both Houses of the Parliament, which are to be recalled for that purpose if necessary (note: a requirement for formal parliamentary approval would require statutory enactment).
- (7) Treaties not to be ratified until after the process of parliamentary scrutiny has occurred. Parliament should also be provided with a statement of reasons for substantive/significant votes by Australia at the UN and other international bodies, on the next sitting day.
- (8) Major appointments, including judicial appointments, to be based on publicly-disclosed consultation and merit selection processes.
- (9) Codes of conduct for members of parliament and ministers to be approved by both Houses of the Parliament.
- (10) An Appropriations and Staffing Committee to be established in the House of Representatives to consider the budget of that House and to confer with its Senate

⁴ Senate Finance and Public Administration References Committee: Transparency and accountability of Commonwealth public funding and expenditure: 1 March 2007.

⁵ Senate Finance and Public Administration References Committee: Regional Partnerships and Sustainable Regions Programs: 6 October 2005. ANAO Performance Audit Report No. 14 2007-08.

⁶ Senate Finance and Public Administration Committee: Government advertising and accountability: 6 December 2005.

⁷ Senate Finance and Public Administration Committee: Departmental and agency contracts: Second report on the operation of the Senate order for the production of lists of departmental and agency contracts (2003-06): 27 February 2007.

⁸ Senate Finance and Public Administration Committee: Staff employed under the Members of Parliament (Staff) Act 1984: 16 October 2003.

counterpart on the budget of the Department of Parliamentary Services, as envisaged when the Senate committee was established. The two committees also to confer on measures to enhance the budgetary independence of the Houses, bearing the principle of the separation of powers in mind.

(11) Both Houses, through an appropriate committee, to undertake a review of the relationship of the Houses, their members and ministers with lobbyists, and particularly to consider whether there should be a register of lobbyists with access to Parliament House or a wider registration and disclosure scheme for lobbyists and lobbying.