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2 July 2009

Ms Julie Owens
Chair
Procedure Committee
House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Ms Owens

Contribution to deliberations of the HoR Standing Committee on Procedure:

Representatives of Civil Liberties Australia (CLA) have experience of parliamentary committees, in making written contributions and appearing before them, in person and by teleconference.

CLA strongly supports the principle of the committee inquiry system. When used efficiently and effectively, committees add a very important dimension to the democratic process by broadening and deepening consultation with the community before laws are passed. We demonstrate our commitment to the process by providing this contribution, in relation to which we do not seek privilege. We also hereby formally give the committee/parliament our permission to publish this CLA contribution on the committee's website.

There are a number of areas where the committee system may benefit from reform and/or change.

Conduct of Committees, and Members: CLA has on record our dissatisfaction with some aspects of committee conduct. (*See attached letter to chairs of committees, dated 26 May 2009*). Significantly, four weeks later, we have had no formal response from any of the 22 chairs to whom the letter was addressed. The only response has been a phone call from one Senator (a committee chair) who said he agreed with the criticisms.

Read submissions: One of CLA's criticisms was that Members (and Senators) should be obliged to read submissions. It is obvious from appearing before committees that some members browse the contents of a submission prepared by the upcoming witnesses in the few minutes gap when the witnesses are being formally introduced; the Members/Senators pick out a paragraph or two, and then quiz (a more apt word may be 'grill', possibly to demonstrate 'deep knowledge' and 'machismo') the witnesses. From our experience, the committee member least well informed and knowledgeable on the subject of the inquiry is the most likely to adopt this approach. Chairs, and other Members (and Senators), should discourage such behaviour, formally: no MP of any party should tolerate their peers of any party behaving in this manner, and 'letting the side down'. Committee work is team work.

Create precis versions: If MPs do not have time to read submissions, the value of hearings is severely diminished. An option – but not one preferred by CLA – would be to require either electorate officers or committee staff to provide a 1-2 page precis of each submission, so that all members of committees would at least be able to read a 'Reader's Digest' version. This is a second-best solution: CLA believes

that, if it is worth holding the inquiry and worth the time and effort of individuals and organisations to contribute, it is worth the time of MPs to at least speed-read all parts of all submissions before the hearings begin. It is difficult to understand how an MP can question the first group of witnesses appropriately if he/she has not read the submissions of the last group of witnesses, scheduled to appear later that day or on a subsequent day.

Commission research: As well, there is a pressing need for committees, using committee staff or outside consultants, to research issues identified by submitters and to investigate the validity of claims made by departments and agencies, as well as by submitters, before the time of the first scheduled hearing. The Parliament of Australia's Committees website page says:

*An important function of committees is to **scrutinise government activity** including legislation, the conduct of public administration and policy issues. Committees may oversee the expenditure of public money and they may call the Government or the public service to account for their actions and ask them to explain or justify administrative decisions.*

– bold is in the original, accessed 26 June, 1245 hours: <http://www.aph.gov.au/committee/index.htm>

Scrutiny of “the conduct of public administration” does not appear to be a high priority with committees, whereas scrutiny of legislation and policy issues are high priorities. Also, outside Senate Estimates, the committee process appears to rarely “call...the public service to account...” For example, if a department or agency is claiming that it will save costs by introducing a particular new initiative, there should be a review of the historical competency of that agency to actually make the savings claimed. The track record of the agency's performance on similar projects should be substantiated by the agency, and both that information and the management ability of the agency's personnel should be evaluated. It does not appear that this ‘management’ role, based on past performance, is often explored: there is a wide gap in parliament's supervisory role in this regard, compared to what the website says is the committees' role. CLA can provide a clear example of how these processes were ignored in a recent Senate committee inquiry into expanded Medicare auditing, to the detriment of the Committee, the Parliament and the nation.

Review and report: Each committee should institute a system to check whether its recommendations are implemented, and what the effect of the committee's implemented recommendations has been after a reasonable interval. It appears that many hours of conscientious deliberation by committees may be wasted if large parts of reports are bypassed or ignored at the implementation phase; further, committees don't appear to learn from their own experience. For example, CLA was able to point out to the Treaties Joint Committee that it had reviewed nearly 35 treaties, over about 15 years, in relation to extradition and mutual exchange of criminal information...and not once had it asked for a report from the agencies involved (A-G's and DFAT) as to the results, on the ground, of the treaties. To its credit, the Treaties Committee is now attempting to insist on annual reports in these critical areas of Australian foreign policy. Many parliamentary committees might choose to require a formal report-back procedure automatically.

Modernise the privilege/disclosure procedures: CLA understands, and supports, the need for some submissions to be given privilege to encourage free and open discussion before the parliament. If privilege is required and/or requested, documents should not be published until the committee decides whether or not to grant privilege. However, the vast majority of submissions to committees do not need (or request) privilege, and web publication by the authoring organisation should not be prevented if privilege is not sought. The current procedures deny distribution of documents to an organisation's members for no gain to parliament, the organisation or society. Wider publication and discussion of this contribution on the CLA website may produce, from CLA members or the public, additional ideas to assist the committee's deliberations. CLA strongly believes the privilege/disclosure rules need bringing into the modern communication era: for example, we have been told formally (by officers of the parliament) that ‘copyright’ in a submission passes to the parliament the instant a person hits ‘send’ on their email button. It is our contention that basic ‘copyright’ in a document, which we have authored, never passes to parliament. The right to grant a privileged status, and to publish a particular copy on the committee/parliament website, obviously passes under the committee processes, but it is very difficult to understand how – in either parliamentary or commercial law – the author's copyright (or right to

disseminate) can be lost to the author or authoring organisation in such circumstances, when no privilege is at issue. Currently, so as to avoid a dilemma, publishing any CLA submission on our website before emailing an almost-identical copy of it to parliament solves the problem. Perhaps the Procedure Committee could rewrite the rules to take into account the internet age. CLA would be happy to assist in deliberations, or at a workshop.

Establish a Civil Liberties Committee: Civil Liberties Australia strongly recommends the establishment of a Civil Liberties (or Human Rights) Committee, to review all legislation with a potential to have an impact on civil liberties and human rights, and to take references where significant CL/HR issues or questions arise in parliament or society. No parliamentary committee, of either chamber, fulfils the role now. The basic liberties and rights of Australians are not codified, and are not necessarily even referenced, when legislation significantly impacting the foundation principles of Australian society is introduced, debated and passed. Legislation should not be able to abrogate basic civil liberties and human rights values without the proponents justifying why proposed laws which impinge on the fundamental principles should be passed..

Recognise and recompense: CLA believes voluntary bodies, such as ours, should be recognised and recompensed for the extensive effort and expertise consistently contributed to the democratic process in Australia. This is our 10th parliamentary or similar submission this calendar year, and June is not yet finished. The costs in terms of time spent in research, writing and appearing are considerable. Subject to discussion, we envisage a scheme where reimbursement would go to voluntary organisations which receive no other government funding who make 5+ submissions a year to parliamentary committees and/or appear at 3+ hearings by committee invitation. The quantum we propose is \$5000 per submission and/or hearing, once the minimum number has been reached. Parliamentary committees (and government agencies) rely on the dedication and commitment of many unpaid people, sometimes of the highest qualifications, expertise and experience, in order to tick the “consultation” box. Where no other government funding is provided to assist organisations which consistently contribute to crafting better laws for society, it is appropriate that such effort is properly recognised by suitable remuneration...if for no other reason than to encourage continued contributions.

Sincerely,

Dr Kristine Klugman OAM
President

 Civil Liberties Australia

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(Attachment)



As sent to Chair of Chairs Committee, Sen the Hon Alan Ferguson. Please bring to the attention of your Committee members.

Observations on Senate and House of Representatives Committee hearings

Appearing before committees involves NGOs in considerable expenditure of time, money and effort. Many NGOs are community groups which are operated by volunteers, with no salaried officers, but highly committed people.

To make a submission, Civil Liberties Australia directors find an appropriate CLA member or associate who is expert in the particular field, or request a skilled person to undertake detailed research into the topic.

The submission writing often involves many hours of research, checking, and consultation before the submission is lodged. All this endeavour is expended to make the legislation "better" - that is, from a CLA perspective, more human rights and civil liberties compliant, and to improve just outcomes.

Thus it is extremely disconcerting when the attitude of some Senators and MHRs is dismissive, aggressive or patronising. Further, it is transparently evident that some MPs use a ploy of reading a few sentences of the submission just before the expert witness appears, then focus all questions on that one aspect.

It is also apparent that many MPs have not read the submission thoroughly or at all before the hearing and therefore do not grasp the main issues.

For an unpaid community representative, such a cavalier attitude is very disappointing, especially when the person appearing is more cognisant of the issue than most members of the Committee. For a Committee member to "grill" an NGO representative is not acceptable behavior.

Such an experience is hardly conducive to a person going to the effort of putting forward submissions and appearing at hearings in future. It is as though the NGO group is being punished for having the temerity to put forward concepts, ideas and critiques which differ from perceived group-think.

This issue is not new. In March 1999, the Democrats gave notice of the following motion which, after much wrangling, was withdrawn with promise of good behaviour all round!

Sen Bourne: To move on the next day of sitting - That Resolution 1 of the Privileges Resolutions of 25 February 1988, relating to the protection of witnesses, be amended by adding the following paragraph: (19) Without limiting the right of members of committees to ask any relevant questions of witnesses in accordance with the rules of the Senate, committees and their members shall conduct all their dealings with witnesses with courtesy.

CLA calls for all committee members to act in a responsible way to organisations who have put forward submissions. These community representatives should be treated with courtesy and afforded the respect of at least having their submissions read and thoughtfully considered.

If it is impossible for the Committee to properly read submissions through lack of time, then the schedule should be adjusted so they can. One day of each sitting week should be allocated for consideration of submissions. Staffers should be tasked with making dot point summaries of submissions.

Any MP who does not undertake due diligence in their role as a Committee member and show respect to the people appearing should be suspended from the Committee. The valuable contribution made by citizens in the democratic process should be acknowledged and appreciated and encouraged - all three of which are seldom evident in Committee hearings.

Dr Kristine Klugman OAM
President, Civil Liberties Australia
26 May 2009