

**Submission
No 9**

OPERATION OF THE LEGISLATION REVIEW ACT 1987

Organisation: New South Wales Parliamentary Friends of Reconciliation
Name: The Hon Trevor Khan MLC
Date Received: 30 January 2018

Submission to the Inquiry into the operation of the
Legislation Review Act 1987

New South Wales Parliamentary Friends of Reconciliation

January 2018

30 January 2018

Michael Johnsen MP
Chair
Legislation Review Committee
Parliament of New South Wales
Parliament House, Macquarie Street, Sydney NSW 2000

BY EMAIL: Legislation.Review@parliament.nsw.gov.au

Dear Chair,

RE: Submission to the Inquiry into the operation of the *Legislation Review Act 1987*

We write in respect of the above. Please find our submission herewith.

The New South Wales Parliamentary Friends of Reconciliation (“the Friendship Group”) is pleased to make a submission to the Inquiry into the operation of the *Legislation Review Act 1987*.

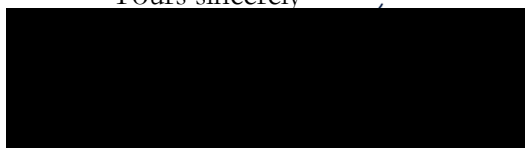
The New South Wales Parliamentary Friends of Reconciliation was established in 2015 as a forum for Reconciliation in the Parliament of New South Wales wherein Parliamentarians are able to directly connect with members of the Aboriginal and Torres Strait Islander communities. The Friendship Group is focused on advancing the cause of Reconciliation by drawing attention to the need for legislative and policy reform as regards Aboriginal and Torres Strait Islander people.

This submission is made on the basis that the Friendship Group is of the view that there is a need for legislation and regulations to be systematically assessed in respect of their direct and consequential impacts on Aboriginal and Torres Strait Islander people. The Legislation Review Committee is the most appropriate mechanism for this to occur.

To that end, as the submission outlines, the *Legislation Review Act 1987* should be amended so as to enable the Legislation Review Committee to inquire into the impact of legislation and regulations on Aboriginal and Torres Strait islander people.

Should the Friendship Group be able to provide anything further, please do not hesitate to contact the office of the Hon. Trevor Khan MLC. We are prepared to appear before a public hearing of the Committee on behalf of the NSW Parliamentary Friends of Reconciliation if the Committee so wishes.

Yours sincerely



The Hon. Trevor Khan MLC



The Hon. Shaoquett Moselmane MLC



David Shoebridge MLC

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Background

The New South Wales Parliamentary Friends of Reconciliation has been active in the advancement of Reconciliation within Parliament, and make this submission in accordance with the objectives for which the Friendship Group was established.

We acknowledge that New South Wales has made some inroads in this area, both in policy and symbolic ways, however there is no systemic measure in the NSW Parliament to deliver reconciliation with Aboriginal Australians.

To that end, this submission is made in two parts:

1. The review of the impacts of legislation and regulations on Aboriginal and Torres Strait Islander People, and
2. The accordence of legislation and regulations with Australia's treaty obligations.

The first is self-explanatory; the second is an ancillary matter that the Friendship Group views as a related and necessary matter that is within the spirit of the current Legislation Review Committee's review criteria. It is not expressly provided for, but should be.

To the best knowledge of the Friendship Group, these are unique and novel proposals, however, that does not mean they are not warranted. If the committee were to accept the submissions, it would be consistent with the inroads New South Wales has made to date in the area of advancement of Aboriginal and Torres Strait Islander people, and human rights more generally.

The Legislation Review Committee already has an established role in inquiring into and reporting on the impacts of legislation and regulation. The issues of Reconciliation and treaty obligations are matters of significant public importance, and as such, the Friendship Group submits that any additional workload that would be placed on the Committee by adopting the proposals herein would be outweighed by the benefit it would provide to the people of New South Wales.

The Friends of Reconciliation points to the history of legislative intervention by the Parliament of NSW, the intent of which was to address the negative impacts of colonisation, however, the outcome of these legislative interventions, including the establishment of Aboriginal Protection Boards, has had far from positive impacts. Specifically, we refer to the: poor health outcomes, high suicide rates, high number of Aboriginal children in care, poor educational outcomes, the high levels of arrest and incarceration rates of juveniles and adults, all commonly experienced by Aboriginal and Torres Strait Islander people.

All these indicators point to the need for legislators to consider the impact of any new laws upon this country's First Peoples.

The review of the impacts of legislation and regulations on Aboriginal and Torres Strait Islander People

The NSW Parliamentary Friends of Reconciliation submits that the *Legislation Review Act 1987* (“the Act”) be amended so as to confer upon the Legislation Review Committee the power to report on the impact of any legislation or proposed legislation, or regulations or proposed regulation, on Aboriginal and Torres Strait Islander people.

The Friendship Group submits that s 8A of the Act, in respect of the review of legislation, be amended in a manner that has the effect of the proposed amendment as follows:

Insert after s 8A(1)(b):

- (c) *to report to both Houses of Parliament as to what impact any such Bill has on Aboriginal and Torres Strait Islander People, having regard to:*
 - (i) *any negative or detrimental impact the Bill may have, or*
 - (ii) *any positive or advancing impact the Bill may have, or*
 - (iii) *any other matters the Committee sees fit to relevantly consider.*

The Friendship Group further submits that s 9 of the Act, in respect of regulations, be amended in a manner that has the effect of the proposed amendment as follows:

Insert after s 9(1)(b):

- (c) *consider the impact any such regulation has on Aboriginal and Torres Strait Islander People, having regard to:*
 - (i) *any negative or detrimental impact the regulation may have, or*
 - (ii) *any positive or advancing impact the regulation may have, or*
 - (iii) *any other matters the Committee sees fit to relevantly consider.*

Rename s 9(1)(c) as s 9(1)(e).

The nature of the proposed amendments has a dual purpose: to bring exposure to Aboriginal disadvantage and the role legislation and regulations play in the disadvantage, and to highlight the positive role properly developed legislation and regulations can have on the advancement of Aboriginal and Torres Strait Islander people.

The Friendship Group firmly believes it is firmly within the ambit of the Legislation Review Committee to consider such matters and submits the Committee is the best placed mechanism by which Parliament can scrutinise the impact of Parliamentary and Executive decisions on some of the most vulnerable members of the New South Wales population.

The accordence of legislation and regulations with Australia's treaty obligations

The Friendship Group has identified Australia's treaty obligations as another area that is pertinent to the Legislation Review Committee's lines of inquiry. As noted above, while this submission does not directly arise out the work of the Friendship Group, it is a relevant consideration that Friendship Group feels the Committee would do well to inform itself of, as it is in keeping with the spirit of the work of the Committee.

The Friendship Group submits that s 8A of the Act, in respect of the review of legislation, be amended in a manner that has the effect of the proposed amendment as follows:

Insert after (the proposed) s 8A(1)(c):

- (d) *to report to both Houses of Parliament on the accordence of any such Bill with Australia's treaty obligations*

The Friendship Group further submits that s 9 of the Act, in respect of regulations, be amended in a manner that has the effect of the proposed amendment as follows:

Insert after (the proposed) s 9(1)(c):

- (d) *consider the accordence of any such regulation with Australia's treaty obligations*

Rename s 9(1)(c) as s 9(1)(e).

It is appropriate that if the Committee's currently addresses criteria relating to personal rights and liberties, the impact regulation on the business community, the extent to which legislation seeks to delegate power, and the extent to which the regulation in question is in keeping with the spirit of the relevant legislation, that the scope of the inquiry in this frame be expanded to allow for the Committee to consider the accordence of any legislation or regulation with Australia's treaty obligations.

While the operation of treaties in respect of New South Wales are the product of complex interactions between international law, federal and state public law, and private law generally, it is critical that there be a mechanism of assessment by the Parliament of the extent to which legislation and regulations passed or to be passed by the Parliament are in accordence with our treaty obligations.