

Select Committee on the Legislative Council  
Committee System

# **Legislative Council committee system**

Discussion paper

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## How to contact the committee

Members of the Select Committee on the Legislative Council Committee System can be contacted through the committee secretariat. Written correspondence and enquiries should be directed to:

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The Director

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Select Committee on the Legislative Council Committee System

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Legislative Council

---

Parliament House, Macquarie Street

---

Sydney New South Wales 2000

---

Internet [www.parliament.nsw.gov.au/lccommitteesystem](http://www.parliament.nsw.gov.au/lccommitteesystem)

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Email [committeeoncommittees@parliament.nsw.gov.au](mailto:committeeoncommittees@parliament.nsw.gov.au)

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Telephone 9230 3544

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Facsimile

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## Terms of reference

1. That this House notes that on marking the 25th anniversary of the modern committee system in the Legislative Council in 2013, the House acknowledged that the work of committees enables the Legislative Council to effectively:
  - (a) hold the Government to account,
  - (b) allow for community engagement in the parliamentary process, and
  - (c) develop sound policy for New South Wales' citizens.
2. That a select committee be established to inquire into and report on how to ensure that the committee system continues to enable the Legislative Council to effectively fulfil its role as a House of Review.

These terms of reference were referred to the committee by the Legislative Council on 24 June 2015.

## Committee membership

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<b>The Hon Scott Farlow MLC</b>	Liberal Party	<i>Chair</i>
<b>The Hon Mick Veitch MLC</b>	Australian Labor Party	<i>Deputy Chair</i>
<b>The Hon Greg Donnelly MLC</b>	Australian Labor Party	
<b>Dr John Kaye MLC</b>	The Greens	
<b>The Hon Trevor Khan MLC</b>	The Nationals	
<b>Revd the Hon Fred Nile MLC</b>	Christian Democratic Party	
<b>The Hon Greg Pearce MLC</b>	Liberal Party	
<b>The Hon Dr Peter Phelps MLC</b>	Liberal Party	

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## Chapter 1 Introduction

This chapter provides an overview of the inquiry, explains the purpose of this discussion paper and briefly explores the establishment of the modern Legislative Council committee system.

### The inquiry

- 1.1 The Select Committee on the Legislative Council Committee System was established by the House on 24 June 2015. The full terms of reference are set out on page iv.
- 1.2 While the modern Legislative Council committee system is generally seen as highly effective and robust, the aim of the inquiry is to ensure that the committee system continues to enable the Council to fulfil its role as a house of review into the future.
- 1.3 The final report is likely be published in the second half of 2016.

### Purpose of the discussion paper

- 1.4 The purpose of this discussion paper is to provide a starting point for those interested in making a written submission. Before drafting this discussion paper the committee consulted with all members of the Legislative Council as well as with the Chairs' Committee to ascertain the issues of most importance to members.
- 1.5 The discussion paper highlights key matters that the committee is interested in addressing during this inquiry. Chapters conclude with a set of questions you may wish to consider when providing a submission. A consolidated set of these questions is provided on page 28. Although this paper highlights some key issues, this does not mean you cannot raise other matters of importance.
- 1.6 The discussion paper has been distributed with the call for submissions. Submissions are due by Sunday 6 March 2016. The committee intends to conduct a symposium and hearings in 2016 following the submission closing date.
- 1.7 If you are interested in attending the symposium and/or giving evidence at a hearing please indicate this in your submission.

### Background

- 1.8 The modern Legislative Council committee system had its genesis in the 1978 reconstitution of the Council into a fully elected, full-time House. Prior to this, members were indirectly elected by both Houses acting as an electoral college and served on a part-time basis. By 1984 all members of the Council were directly elected, and by 1985 received a full-time salary.

- 1.9 Following the reconstitution, the Council had a new sense of purpose with members seeing the establishment of a system of committees as a way of enabling the House to fulfil its modern role as a House of Review and provide it with a strong sense of relevance.<sup>1</sup>

### **Select Committee on Standing Committees**

- 1.10 Harnessing this renewed sense of purpose, in 1985 the Council established a select committee to inquire into the constitution, operation, funding, staffing and accommodation of a system of standing committees in the Legislative Council.<sup>2</sup>

- 1.11 The select committee, chaired by the Hon Ron Dyer, reported in 1986 and recommended the establishment of three standing committees covering state progress, social issues and country affairs and the revamping of the then existing Standing Committee of Subordinate Legislation and Deregulation.<sup>3</sup> The select committee suggested that any system of standing committees for the Legislative Council:

- (a) Must take account of factors such as the limited number of participating members.
- (b) Should recognise the interests, skills and involvement of Members so that effective participation in the system might be encouraged.
- (c) Should encourage public access to and participation in the processes of government.
- (d) Must focus on the provision of longer-term advice and recommendations for policy direction.
- (e) Must adopt an accessible practical approach which will engender the respect of Parliament, government and the public.<sup>4</sup>

### **Establishment of subject standing committees and general purpose standing committees**

- 1.12 After the 1988 election, the newly elected Coalition government agreed to establish two standing committees – on Social Issues and State Development.<sup>5</sup> Internally, the coalition leadership had proposed that five policy committees be established, but the government had

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<sup>1</sup> Select Committee on Standing Committees of the Legislative Council, NSW Legislative Council, *Standing Committees* (1986), p viii; David Clune, *Keeping the executive honest: the modern Legislative Council committee system*, A Commemorative Monograph: Part One of the Legislative Council's oral history project, (2013) p 15.

<sup>2</sup> *Minutes*, NSW Legislative Council, 28 February 1985, pp 333-334.

<sup>3</sup> Select Committee on Standing Committees of the Legislative Council, *Standing Committees* (1986), p 10.

<sup>4</sup> Select Committee on Standing Committees of the Legislative Council, *Standing Committees* (1986), p viii.

<sup>5</sup> *Minutes*, NSW Legislative Council, 9 June 1988, pp 182-186.

concerns about allowing so many committees to exist, including the cost.<sup>6</sup> The Standing Committee on Law and Justice was established some years later in May 1995, following the election of a Labor government.<sup>7</sup>

- 1.13** Then, in May 1997, the Council agreed to a Coalition opposition motion to appoint five General Purpose Standing Committees (GPSCs), each responsible for overseeing specific ministerial portfolios and for conducting the annual Budget Estimates hearings.<sup>8</sup> The GPSCs were modelled on the functions of the Senate legislation/references committees, which will be discussed in chapter 2. The establishment of the GPSCs was initially opposed by the government in both 1997 and 1999. However since 1999, the motion for their establishment has been routinely moved by the government of the day at the start of a parliament.<sup>9</sup>
- 1.14** Prior to 2015, five GPSCs were established at the start of each Parliament. The number of committees was increased in May 2015 to six committees.<sup>10</sup>

### **C25: Marking 25 years of the committee system in the Legislative Council**

- 1.15** On 19 and 20 September 2013 the Legislative Council celebrated the 25th anniversary of its modern committee system with a series of events known as C25. On 19 September the House debated and passed the following motion:

- (1) That this House notes that:
  - (a) 2013 marks the twenty-fifth anniversary of the modern committee system in the Legislative Council, and
  - (b) the committee system began in 1988 with the establishment of the Standing Committee on Social Issues and the Standing Committee State Development, followed by the establishment of the Standing Committee on Law and Justice in 1995 and the general purpose standing committees in 1997.
- (2) That this House notes:
  - (a) the significant contribution to the committee system made by former and current members of this House, along with the valuable contribution of individuals and representatives of community organisations who have participated in committee inquiries, and

<sup>6</sup> David Clune, *Keeping the executive honest: the modern Legislative Council committee system*, A Commemorative Monograph: Part One of the Legislative Council's oral history project, (2013) p 21.

<sup>7</sup> *Minutes*, NSW Legislative Council, 24 May 1995, pp 36-43.

<sup>8</sup> *Minutes*, NSW Legislative Council, 7 May 1997, pp 674-680.

<sup>9</sup> *Minutes*, NSW Legislative Council, 3 July 2003, pp 220-233; *Minutes*, NSW Legislative Council, 10 May 2007, pp 55-57; *Minutes*, NSW Legislative Council, 12 May 2011, pp 98-102; *Minutes*, NSW Legislative Council, 6 May 2015, pp 65-68.

<sup>10</sup> *Minutes*, NSW Legislative Council, 6 May 2015, pp 65-68.

- (b) that the work of the modern committee system will be celebrated and reflected on at a seminar to be held on Friday 20 September 2013 at Parliament House.
- (3) That this House acknowledges and thanks the committee staff for their hard work and professionalism in support of the committee system.
- (4) That this House notes that the work of committees has continued, and will continue, to enable the Legislative Council to effectively:
  - (a) hold the government to account,
  - (b) allow for community engagement in the parliamentary process, and
  - (c) develop sound policy for New South Wales citizens.<sup>11</sup>

**1.16** On 20 September 2013 a seminar was held at Parliament House featuring four panels of current and former members of the Legislative Council. A transcript of the event is available on Parliament's website.<sup>12</sup>

**1.17** Both the motion in the House and the seminar provided members with the opportunity to explore the historical development of the committee system, celebrate its triumphs and consider its future.

**1.18** The Legislative Council Oral History Project was also launched during C25. The first publication in this monograph series, titled 'Keeping the Executive Honest: The Modern Legislative Council Committee System', focused on the development of committees in the Council and drew on interviews with five former members who were integral in its establishment. This publication is also available on Parliament's website.<sup>13</sup>

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<sup>11</sup> *Hansard*, NSW Legislative Council, 19 September 2013, pp 23765-23796.

<sup>12</sup> NSW Parliament, *C25*, <http://www.parliament.nsw.gov.au/prod/web/common.nsf/key/C25>.

<sup>13</sup> NSW Parliament, *Oral History Project*, <http://www.parliament.nsw.gov.au/prod/web/common.nsf/key/OralHistory>.

## Chapter 2 Legislative Council committee system

This chapter outlines the current Legislative Council committee system and briefly compares it with the system in the Australian Senate.

### Current committee system

**2.1** The current Council committee system consists of three subject standing committees and, as of 2015, six GPSCs. Select committees and joint select committees may also be established on an ad hoc basis to inquire into matters of public importance. In addition, eight joint committees are established at the start of every Parliament, but these are administered by the Legislative Assembly.<sup>14</sup>

#### Subject standing committees

**2.2** The three subject standing committees are:

- Law and Justice
- Social Issues
- State Development.

**2.3** The subject standing committees have six members: three government; two opposition; and one crossbench. These committees all have government chairs.<sup>15</sup>

**2.4** Inquiries may either be referred to these committees by the House, by ministers or through a narrow self-reference mechanism where a committee can inquire into relevant annual reports or petitions tabled in the Legislative Council.<sup>16</sup> The first two referral procedures are utilised on a regular basis, however no standing committee has ever self-referred an annual report or petition for inquiry.

#### General purpose standing committees

**2.5** As of 2015 there are six GPSCs. These committees are responsible for overseeing all ministerial portfolios, with each responsible for between five to eight portfolios.<sup>17</sup> GPSCs inquire into matters relevant to their portfolios and conduct the annual Budget Estimates hearings.

**2.6** GPSCs have seven members: three government; two opposition; and two crossbench. These committees elect their own chairs and currently have one opposition and five crossbench

<sup>14</sup> Note: In addition, the Legislative Council has two standing committees supported by the Procedure Office, the Procedure Committee and the Privileges Committee.

<sup>15</sup> Note: The resolution establishing the standing committees requires the Leader of the Government to nominate the chairs.

<sup>16</sup> *Minutes*, NSW Legislative Council, 6 May 2015, pp 63-64.

<sup>17</sup> *Minutes*, NSW Legislative Council, 6 May 2015, pp 65-68.

chairs.<sup>18</sup> This is in contrast to the 55th Parliament (2011-2015) where four out of the five GPSCs were chaired by government members, and to the 54th (2007-2011) and 53rd Parliaments (2003-2007) which both had one government, two opposition and two crossbench chairs. In 2015, Revd the Hon Fred Nile MLC negotiated with the government on behalf of the opposition and crossbench to increase the number of GPSCs from five to six and to replace government chairs with opposition and crossbench chairs to increase their independence and effectiveness.

- 2.7 As well as receiving references from the House, GPSCs have the ability to self-refer an issue for inquiry on the expenditure, performance or effectiveness of any government department, statutory body or corporation, relevant to the portfolios allocated to the committee. Given this power and the fact that they have a non-government majority, these committees often conduct inquiries into highly contentious matters.

### **Select committees**

- 2.8 In addition to standing committees, the Legislative Council may establish a select committee to inquire into a particular matter. Similar to GPSCs, these committees often have seven members and a non-government majority.
- 2.9 The 55th Parliament saw an unprecedented 14 select committees established by the Council. This compares with three in the 54th, three in the 53rd and four in the 52nd Parliament.

### **Joint committees**

- 2.10 There are currently eight joint committees consisting of members from both the Legislative Council and the Legislative Assembly: five joint statutory committees and three joint standing committees. These committees have between five and eleven members.
- 2.11 All joint statutory and standing committees are supported by the Legislative Assembly Committee Office.

### ***Joint statutory committees***

- 2.12 Joint statutory committees are established in accordance with legislation by resolutions of both Houses as soon as practicable after the commencement of a new Parliament. The five committees are:
- Committee on Children and Young People
  - Committee on Health Care Complaints Commission
  - Independent Commission Against Corruption Committee
  - Ombudsman, the Police Integrity Commission and the Crime Commission
  - Legislation Review Committee.

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<sup>18</sup> Note: The five crossbench chairs consist of representatives from three parties.

**2.13** With the exception of the Legislation Review Committee, the functions of each joint statutory committee are similar. Generally speaking, the committees monitor and review the exercise of the functions of the bodies they oversight, examine each annual and other report presented to Parliament and report on any desirable changes to the functions, structures and procedures of the bodies.<sup>19</sup> The functions of the Legislation Review Committee are discussed in chapter 3.

### *Joint standing committees*

**2.14** Since 2004 three joint standing committees have been established by resolutions of both Houses at the start of each Parliament:

- Joint Standing Committee on Electoral Matters
- Joint Standing Committee on Road Safety (Staysafe)
- Joint Committee on the Office of the Valuer General.

**2.15** The Electoral Matters committee scrutinises electoral laws and practices and the public funding of political parties. Staysafe monitors, investigates and reports on road safety in New South Wales, while the Valuer General committee performs an oversight role of that statutory body.

### **Chairs' Committee**

**2.16** Since 2013 the Chairs' Committee has operated as an informal forum for Legislative Council committee chairs to raise procedural and administrative issues relevant to the operation of committees in the Council.

### **Committee workload**

**2.17** For many years Legislative Council committees have conducted in-depth inquiries that involve extensive consultation with the community. The following table provides an overview of the large amount of work undertaken by committees in recent years.

<b>Activity</b>	<b>2014-2015</b>	<b>2013-2014</b>	<b>2012-2013</b>	<b>2011-2012</b>
Inquiries	45	30	19	26
Submissions	1,202	1,882 <sup>20</sup>	2,362 <sup>21</sup>	2,153
Hearings	56	71	63	86
Witnesses (hearings and public forums)	471	592	547	850
Reports tabled	29	22	11	16

<sup>19</sup> See for example: *Advocate for Children and Young People Act 2014*, s 37; *Health Care Complaints Act 1993*, s 65; *Independent Commission Against Corruption Act 1988*, s 64; *Ombudsman Act 1974*, s 31B.

<sup>20</sup> Note: An additional 1,529 pro forma responses were also received by the inquiry into Greyhound racing in New South Wales. Due to logistical constraints these responses were not processed or published.

<sup>21</sup> Note: This number does not include an additional 5,224 responses received by the Standing Committee on Social Issues for the inquiry into same-sex marriage. Due to logistical constraints these responses were not processed or published.

## Committee system in the Australian Senate

- 2.18** The functions of the GPSCs are partially modelled on the Australian Senate's committee system. The Senate's current committee system was established in 1994<sup>22</sup> and consists of eight pairs of standing committees that each focus on different subject areas. These pairs of committees comprise a references committee (also referred to as a general purpose standing committee) and a legislation committee, which have overlapping membership and a shared secretariat.<sup>23</sup>
- 2.19** References committees inquire into and report on general matters, while legislation committees have three main functions, to:
- undertake Budget Estimates
  - scrutinise bills
  - scrutinise annual reports and the performance of government departments and agencies.<sup>24</sup>
- 2.20** Each committee has six members, with references committees having a non-government majority and non-government chairs and legislation committees having a government majority and government chairs. Committees with government chairs elect non-government deputy chairs, and vice versa.<sup>25</sup>

### Key questions

1. Do you have any comments about the current Legislative Council committee system?
2. Do you have any comments about the composition of Legislative Council committees or the appointment of chairs?
3. Is the current committee structure appropriate to ensure the Council is able to fulfil its role as a House of Review?
4. Is there scope for the committee system in the Legislative Council to incorporate aspects of the committee system in the Australian Senate?

<sup>22</sup> Note: The modern Senate committee system was established in 1970 and was based on the United States Senate model. On 11 June 1970, the Senate Opposition Leader, Lionel Murphy, successfully moved for the establishment of the legislative and general purpose standing committees.

<sup>23</sup> Note: This system was modified between 2006 and 2009 when the Howard Government gained a majority in the Senate. However, the committee system was again restructured in May 2009 to return to the system of paired legislation and references committees.

<sup>24</sup> Harry Evans and Rosemary Laing (ed), *Odgers' Australian Senate Practice* (Department of the Senate, 13<sup>th</sup> ed, 2012), p 461.

<sup>25</sup> Note: According to standing order 25 the Leader of the Government nominates the chair of each legislation committee and deputy chair of each references committee and the Leader of the Opposition nominates the deputy chair of each legislation committee and chair of each references committee.



## Chapter 3 The scrutiny of bills, Budget Estimates, government responses and confidential evidence

At the beginning of this inquiry the select committee asked Legislative Council members and the Chairs' Committee to identify issues to be considered during the inquiry. Certain aspects of committee practice were also identified during the C25 seminar. This chapter discusses these issues, as follows:

- the scrutiny of bills
- Budget Estimates
- government responses
- partially and fully confidential evidence.

### The scrutiny of bills

**3.1** The first issue identified at the beginning of the inquiry was the scrutiny of bills. In New South Wales committees undertake two types of legislative scrutiny: substantive inquiries into proposed legislation and the technical examination of bills and regulations.

#### Inquiries into bills by Legislative Council committees

**3.2** Legislative Council committees undertake minimal scrutiny of draft legislation. Since 1997 only 11 bills have been referred to its committees.

**3.3** Five of these bills were referred by the Council to GPSCs,<sup>26</sup> two were referred to the Standing Committee on Law and Justice,<sup>27</sup> a further three were referred to select committees<sup>28</sup> and one bill was referred to the Standing Committee on Social Issues by a minister.<sup>29</sup>

<sup>26</sup> GPSC No. 4, NSW Legislative Council, *Inquiry into aspects of the Transport Safety and Reliability Bill* (2003); GPSC No. 3, NSW Legislative Council, *Macedonian Orthodox Church Property Trust Bill 2010* (2010), GPSC No. 2, NSW Legislative Council, *Education Amendment (Ethics Classes Repeal) Bill 2011* (2012); GPSC No. 4, NSW Legislative Council, *Fair Trading Amendment (Ticket Reselling) Bill 2014* (2015). Note: The committee inquiring into the Correctional Services Legislation Amendment Bill 2006 did not report, *Minutes*, NSW Legislative Council, 7 June 2006, pp 100-101.

<sup>27</sup> Standing Committee on Law and Justice, NSW Legislative Council, *Crimes Amendment (Child Protection Excessive Punishment) Bill 2000* (2000); Standing Committee on Law and Justice, NSW Legislative Council, *Home Building Amendment (Insurance) Act 2002* (2002).

<sup>28</sup> Select Committee on Juvenile Offenders, NSW Legislative Council, *Juvenile Offenders* (2005); Select Committee on Electoral and Political Party Funding, NSW Legislative Council, *Electoral and Political Party Funding in New South Wales* (2008); Select Committee on the provisions of the Election Funding, Expenditure and Disclosures Amendment Bill 2011, NSW Legislative Council, *Inquiry into the provisions of the Election Funding Expenditure and Disclosures Amendment Bill 2011* (2012).

<sup>29</sup> Standing Committee on Social Issues, NSW Legislative Council, *Safety Net? Inquiry into the Classification (Publications, Films and Computer Games) 2001* (2002).

- 3.4** By contrast, the Australian Senate has a procedure for the regular referral of bills for inquiry. The Selection of Bills Committee recommends to the Senate which bills should be referred to a legislation committee for detailed inquiry, at what stage of their passage they should be referred, and the reporting date.
- 3.5** The standing order establishing the committee does not contain any criteria which the committee is required to follow in making recommendations in relation to bills. This allows the committee to take into account any grounds advanced by senators for the submission of bills to committee scrutiny.<sup>30</sup> Referral of bills may take place at any stage with recent trends indicating that most referrals occur at the earliest possible stage.<sup>31</sup>
- 3.6** This process has seen approximately 180 bills referred to legislation committees in the current Parliament alone (2013 to present). The Selection of Bills Committee is an informal committee which meets each sitting day to confer on the day's program and is comprised of three government and three opposition senators, including the government and opposition whips, and the whips of any minority parties.<sup>32</sup>
- 3.7** In the New Zealand Parliament, almost all bills are referred to the 13 subject-area select committees for inquiry before they receive a first reading,<sup>33</sup> while in the Queensland Parliament, all bills stand referred to the eight portfolio committees after they are read a first time.<sup>34</sup>

### Technical examination of bills and regulations

- 3.8** All bills introduced in the New South Wales Parliament must be considered by the joint statutory Legislation Review Committee. The committee, which is administered by the Legislative Assembly, is required to report to both Houses as to whether any bill:
- (i) trespasses unduly on personal rights and liberties, or
  - (ii) makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
  - (iii) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
  - (iv) inappropriately delegates legislative powers, or

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<sup>30</sup> Harry Evans and Rosemary Laing (ed), *Ogders' Australian Senate Practice* (Department of the Senate, 13<sup>th</sup> ed, 2012), p 455.

<sup>31</sup> Harry Evans and Rosemary Laing (ed), *Ogders' Australian Senate Practice* (Department of the Senate, 13<sup>th</sup> ed, 2012), p 308.

<sup>32</sup> Parliament of Australia, *No. 4 – Senate Committees*, [http://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/Senate\\_Briefs/Brief04](http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Senate_Briefs/Brief04).

<sup>33</sup> David McGee, *Parliamentary Practice in New Zealand*, (Dunmore Publishing Limited, Wellington, 3rd ed, 2005), p 237.

<sup>34</sup> Queensland Parliament, *Queensland Parliamentary Procedures Handbook* (2014) p 26, <https://www.parliament.qld.gov.au/documents/assembly/procedures/ParliamentaryProceduresHandbook.pdf>.

- (v) insufficiently subjects the exercise of legislative power to parliamentary scrutiny.<sup>35</sup>

- 3.9** The committee must also consider all regulations subject to disallowance by resolution of either or both Houses of Parliament.<sup>36</sup>
- 3.10** From 1960 to 1987 all regulations were reviewed by a Legislative Council committee. In 1987 a Legislative Assembly select committee recommended that this role be undertaken by a joint parliamentary committee. The bill to enact this recommendation and establish a joint Regulation Review Committee was met with resistance in the Council from members of the opposition and crossbench. The Hon Max Willis argued that the Council committee had ‘been doing its job just a little too effectively and [was] causing some embarrassment to the government’.<sup>37</sup> He suggested that ‘it might be convenient to bury its role in a new committee totally dominated by the lower house and the government control that involves’.<sup>38</sup> Nevertheless, the bill passed the Council, and the Regulation Review Committee was established in 1987. It remained in operation until 2003 when its role was subsumed by the current Legislation Review Committee.
- 3.11** The creation of the Legislation Review Committee stemmed from a 2001 recommendation from the Standing Committee on Law and Justice that a joint legislation review committee be established to work alongside the joint Regulation Review Committee.<sup>39</sup> The Law and Justice Committee recommended that a joint committee should undertake this role as it is ‘important that the protection of rights and liberties be the responsibility of the whole Parliament’.<sup>40</sup> The government supported the establishment of a joint committee but argued it was unnecessary to have separate committees to review legislation and regulations and combined both functions into the present Legislation Review Committee.
- 3.12** During the early years of the committee, concerns were raised that the joint functions of scrutinising bills and regulations was proving inefficient. This was raised in a 2003-04 report by the committee itself,<sup>41</sup> which recommended that it appoint a subcommittee to deal with regulations. The matter was again raised in 2006 by the then Legislative Council Opposition Whip who noted that the committee’s function relating to regulations was gradually diminishing.<sup>42</sup> The importance of reviewing regulations was also raised by the Hon Elizabeth Kirkby during C25:

<sup>35</sup> *Legislation Review Act* 1987, s 8A.

<sup>36</sup> *Legislation Review Act* 1987, s 9.

<sup>37</sup> *Hansard*, NSW Legislative Council, 23 November 1987, p 16799 (Max Willis).

<sup>38</sup> *Hansard*, NSW Legislative Council, 23 November 1987, p 16799 (Max Willis).

<sup>39</sup> Standing Committee on Law and Justice, NSW Legislative Council, *A NSW Bill of Rights* (2001), p 132.

<sup>40</sup> Standing Committee on Law and Justice, *A NSW Bill of Rights* (2001), p 132.

<sup>41</sup> Legislation Review Committee, Joint parliamentary committee, *Operation, Issues and Future Directions: September 2003-June 2004* (2004), p 11.

<sup>42</sup> *Hansard*, NSW Legislative Council, 5 April 2006, p 22060 (Don Harwin).

... the devil lies in the regulations. So unless the regulations are being fully policed, you will never know whether that legislation is going to work. If it is necessary to strengthen the [Legislation] Review Committee, perhaps that is something that should be done.<sup>43</sup>

- 3.13** The Australian Parliament has a Scrutiny of Bills Committee and a Regulations and Ordinances Committee, both of which are Senate committees. These committees perform a similar role to the Legislation Review Committee. The Scrutiny of Bills Committee is established according to standing order and produces both an alert digest and a scrutiny of bills report. The Regulations and Ordinances Committee, with the assistance of an independent legal adviser, meets every sitting week to check the validity of all disallowable legislative instruments tabled in the Senate.<sup>44</sup>

## Budget Estimates

- 3.14** The second issue identified at the beginning of this inquiry was the annual Budget Estimates hearings. Budget Estimates involves members of the Legislative Council questioning ministers and senior public servants on the expenditure, performance and effectiveness of their departments and is thus an integral aspect of the Council's scrutiny role.
- 3.15** The Budget Estimates inquiry has been conducted annually by GPSCs since their formation in 1997. Initially Estimates was conducted in May and June, prior to the budget being passed, however in 1999 this was changed to later in the year, usually a few months after the budget was delivered. This was considered appropriate as the Council is not able to prevent the passage of appropriation bills:

This separation of consideration of the Budget Estimates from the passage of the Appropriation Bills allows a more relaxed timeframe for their consideration ... and is particularly appropriate for the Legislative Council which, while having a scrutiny function concerning government expenditure, is not able to prevent the passage of the ordinary annual services of the government.<sup>45</sup>

- 3.16** Up until 2006, hearings were held on sitting weeks, including at night after the rising of the House, and lasted up to two hours.
- 3.17** In recent years, Estimates has consisted of one substantive week of hearings in August/September, with the timetable and procedures adopted by resolution of the House. As part of the resolution, a week is set aside a few months later for supplementary hearings.<sup>46</sup>
- 3.18** Hearings are now scheduled for up to four hours with time for questions divided evenly between the parties. For example, in a one hour hearing the government and opposition would each be allocated 20 minutes and the two crossbench members would receive 10 minutes each. If a third crossbench member from another party is involved as a participating

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<sup>43</sup> Hon Elizabeth Kirkby, Proceedings of the C25 Seminar Marking 25 years of the committee system in the Legislative Council, 20 September 2013, p 52.

<sup>44</sup> Parliament of Australia, *No. 4 - Senate Committees*, [http://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/Senate\\_Briefs/Brief04](http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Senate_Briefs/Brief04).

<sup>45</sup> GPSC No. 1, NSW Legislative Council, *Report on Budget Estimates 1999-2000: Volume 1* (1999), p 3.

<sup>46</sup> For example see: *Minutes*, NSW Legislative Council, 24 June 2015, pp 230-231.

member the committee must then determine the allocation of time between members. This could involve dividing the 20 minute crossbench allocation three ways or seeking to use a portion of the opposition's time.

- 3.19** In recent years it has become customary for the government to forgo its allocated time for questions on the proviso that hearings are shortened by this length of time.
- 3.20** In addition to the hearing process, members may ask ministers supplementary questions. The number of supplementary questions has been increasing dramatically over the past few years, with almost 5,500 questions being submitted to ministers in the 2015-16 Budget Estimates inquiry.<sup>47</sup>
- 3.21** Budget Estimates reports are much shorter than standard committee reports. Instead of analysing the evidence received, reports consist of dot points outlining the main matters discussed. These reports contain no recommendations to the government and therefore do not require a government response.
- 3.22** In consultation for this paper, members voiced their dissatisfaction with aspects of the current process, namely the limited time available to ask questions in hearings.
- 3.23** In the Australian Senate, particulars of proposed expenditure and tax expenditure statements are referred twice each year to the eight legislation committees. The Senate Estimates process effectively replaces the committee of the whole stage in the House.
- 3.24** After the introduction of the budget, the appropriation bills are debated in the House of Representatives and during this time the bills are not available for consideration by the Senate. Rather than defer examination, the Senate refers documents which reproduce the details of the appropriation bills to its eight legislation committees.
- 3.25** Senate Estimates operate differently to the Legislative Council as they occur twice each year, hearings are much longer and there is no formal division of time between the parties for asking questions.

## Government responses

- 3.26** The third issue identified at the beginning of this inquiry was the consideration or scrutiny of government responses. According to standing orders, government responses are due six months after a report is tabled. This often occurs after the report has been debated in the House. During the C25 conference one participant suggested a process where, a month after the government response is received, the committee could meet and discuss the response to see if there is a need to re-examine any matter.<sup>48</sup>
- 3.27** During consultation for this paper a member suggested that an annual report on the implementation of government responses to committee reports be produced.

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<sup>47</sup> NSW Legislative Council, 'House in Review' (2015) 56/8, p 8.

<sup>48</sup> Proceedings of the C25 Seminar Marking 25 years of the committee system in the Legislative Council, 20 September 2013, p 49.

- 3.28** Another C25 participant suggested that the take note debate in the House for reports occur after the government response is received, rather than be initiated as soon as a report is tabled.<sup>49</sup>
- 3.29** By contrast, government responses in the Australian Senate are due three months after a report is tabled. These responses are regularly subject to motions for the Senate to take note of the document.<sup>50</sup> According to standing order, debate on government responses occurs during the same time as debate on committee reports.<sup>51</sup>

### **Partially and fully confidential evidence**

- 3.30** The fourth issue identified by some members at the beginning of this inquiry concerns the acceptance and publishing of partially and fully confidential submissions and oral evidence.
- 3.31** Wherever possible, committee proceedings should be conducted in public. However, submission authors or witnesses may request that part or all of their evidence, including their name, remains confidential to all but members of the committee and the committee secretariat. Some degree of confidentiality is normally sought for one of three reasons: the disclosure of personal information, adverse comment against a third party, or concerns about retaliation due to the content of their evidence. Committees will generally agree to requests for partial or full confidentiality.
- 3.32** Members who raised this matter are most concerned with how to manage information that has been kept confidential due to adverse mention. If material is confidential, it makes it difficult for committee members to follow up on, or test the veracity of adverse remarks. Keeping allegations confidential also means that persons subject to adverse mention have no knowledge of these remarks and no chance to respond. The result is that lines of inquiry may be left incomplete. Or, if the committee does decide to publish this information, it risks reporting untested allegations where due process has not been provided and the confidentiality of an inquiry participant may have been breached.
- 3.33** Further there are no Legislative Council guidelines that dictate how a committee should respond when an inquiry participant makes adverse remarks. The committee response and degree of information kept confidential are decided on a case by case basis that depends on the nature and sensitivities of each inquiry. It should be noted that the Australian Senate has privilege resolutions (discussed in chapter 4) for the protection of inquiry witnesses. With regard to adverse mention, the resolutions provide several options including that the evidence be heard in camera, be expunged from the transcript, or that the person adversely mentioned be given an opportunity to respond either in writing or at a hearing. These practices are generally followed by Legislative Council committees.

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<sup>49</sup> Proceedings of the C25 Seminar Marking 25 years of the committee system in the Legislative Council, 20 September 2013, p 50.

<sup>50</sup> Harry Evans and Rosemary Laing (ed), *Odgers' Australian Senate Practice* (Department of the Senate, 13<sup>th</sup> ed, 2012), p 524

<sup>51</sup> Harry Evans and Rosemary Laing (ed), *Odgers' Australian Senate Practice* (Department of the Senate, 13<sup>th</sup> ed, 2012), p 200.

- 3.34** Some members also contended that inquiry participants should not be granted anonymity or confidentiality if they are concerned about intimidation or retribution for giving evidence. This is because a committee's proceedings, including the making of submissions and oral evidence given by witnesses, are protected by parliamentary privilege. Therefore, in theory, evidence can be given freely and honestly without fear or threat of legal action for defamation, or any form or intimidation.

### **Key questions**

5. Should committees in the NSW Parliament play a greater role in scrutinising legislation on a regular basis? If so, how?
6. Is the current system for scrutinising regulations effective?
7. Should any changes be made to the Budget Estimates process?
8. Is the time available for questions at Budget Estimates generally adequate or should it be expanded? If so, how should this be done?
9. In general do committees allocate sufficient time to the questioning of witnesses? Should there be a process for allowing more time with certain witnesses?
10. Should a process be introduced to examine or debate government responses?
11. Is the time allowed for a government response to a committee report (six months) too long?
12. Under what circumstances should a committee decide to keep a submission or a transcript of evidence partially or fully confidential?
13. Should inquiry participants be granted anonymity or confidentiality if they are concerned about intimidation or retribution for giving evidence?





## Chapter 4 Committee powers

This chapter discusses whether Legislative Council committees have adequate powers to undertake their inquiry role and if appropriate procedures are in place to ensure the protection of inquiry witnesses.

### Parliamentary privilege in New South Wales

- 4.1** New South Wales is unusual amongst Australian jurisdictions as no statute defines the powers and privileges of Parliament. Instead, the New South Wales Parliament relies on the common law principle of ‘reasonable necessity’ as well as a small number of statutes which bear on parliamentary privilege. This includes Article 9 of the *Bill of Rights 1689* (by virtue of the *Imperial Acts Application Act 1969*)<sup>52</sup>. Article 9 states: That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.<sup>53</sup>
- 4.2** The privileges of freedom of speech and freedom of debate are enshrined in Article 9. However, uncertainty remains on two basic points: what is covered by ‘proceedings in Parliament’, and what is meant by ‘impeached’.<sup>54</sup> It has been argued that the vagueness of the article’s wording does not match the needs of modern Parliaments.<sup>55</sup>
- 4.3** Article 9 has been the subject of legal cases in the United Kingdom, Canada, Australia and New Zealand.<sup>56</sup> These cases prompted the Australian and New Zealand parliaments to codify and consolidate their privileges in statute.<sup>57</sup> It has been argued that New South Wales should adopt similar legislation to give broad and consistent statutory meaning to Article 9;<sup>58</sup> indeed a number of unsuccessful attempts have been made since 1985 to enact such legislation.<sup>59</sup>

<sup>52</sup> Lynn Lovelock and John Evans, *New South Wales Legislative Council Practice* (Federation Press, 2008), p 47; Stephen Frappell, ‘A case for a parliamentary privileges Act for New South Wales’ (2015) 30 (1) *Australasian Parliamentary Review*, pp 8-9.

<sup>53</sup> Note: Modern wording used.

<sup>54</sup> Joint Committee on Parliamentary Privilege, Parliament of the United Kingdom, *Parliamentary Privilege First Report* (1999) Chapter 2.

<sup>55</sup> Stephen Frappell, ‘A case for a parliamentary privileges Act for New South Wales’ (2015) 30 (1) *Australasian Parliamentary Review*, p 24.

<sup>56</sup> Joint Committee on Parliamentary Privilege, Parliament of the United Kingdom, *Parliamentary Privilege First Report* (1999) Chapter 2.

<sup>57</sup> *Parliamentary Privileges Act 1987* (Cth); *Parliamentary Privileges Act 2014* (NZ).

<sup>58</sup> Stephen Frappell, ‘A case for a parliamentary privileges Act for New South Wales’ (2015) 30 (1) *Australasian Parliamentary Review*, p 24.

<sup>59</sup> Stephen Frappell, ‘A case for a parliamentary privileges Act for New South Wales’ (2015) 30 (1) *Australasian Parliamentary Review*, pp 10-11.

### ***Parliamentary Evidence Act 1901***

4.4 The *Parliamentary Evidence Act 1901* is the key statute in New South Wales regulating the powers of parliamentary committees. It provides committees with strong powers to compel witnesses to attend hearings and give evidence, including the power to:

- penalise witnesses for failing to attend following a summons to give evidence
- compel answers to lawful questions and penalise witnesses for refusing to answer such questions
- protect witnesses so they can give evidence without fear or threat of legal action for defamation
- penalise witnesses for giving false evidence.

4.5 Although the Act provides committees with significant powers, questions have been raised about aspects of the Act, including the appropriateness of its penal provisions and its archaic and arcane language. For example, under s 11(1):

... if any witness refuses to answer any lawful question during the witness's examination, the witness shall be deemed guilty of a contempt of Parliament, and may be forthwith committed for such offence into the custody of the usher of the black rod ... and, if the House so order, to gaol ...<sup>60</sup>

4.6 Flaws in s 11 have been acknowledged for at least 30 years, including the ambiguity of the expression 'lawful question', the lack of any procedure to follow to detain a witness within the parliamentary precinct and concerns as to whether Parliament's powers to punish witnesses accords with community expectations.<sup>61</sup>

4.7 It has been suggested that the *Parliamentary Evidence Act* be modernised to make its provisions both unambiguous and reflective of contemporary community standards regarding procedural fairness. This could potentially be done as part of the process to consolidate the privileges of Parliament in a New South Wales parliamentary privileges Act.<sup>62</sup>

### **Privileges resolutions**

4.8 While the *Parliamentary Evidence Act 1901* provides committees with the power to compel witnesses to give evidence, the protection of witnesses is also an important consideration for the committee system. Although Legislative Council committees act judiciously to protect their participants, there are no formal, publically available procedures in place to ensure that this occurs.

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<sup>60</sup> *Parliamentary Evidence Act 1901*, s 11(1).

<sup>61</sup> Beverly Duffy and Sharon Ohnesorge, 'Out of step? The New South Wales Parliamentary Evidence Act 1901' (Paper presented at the 2015 Australian Study of Parliament Group conference, Wellington, 2 October 2015), pp 13 and 18.

<sup>62</sup> Stephen Frappell, 'A case for a parliamentary privileges Act for New South Wales' (2015) 30 (1) *Australasian Parliamentary Review*, p 23.

4.9 In contrast, the Australian Senate adopted privilege resolutions in 1988 following the enactment of the *Parliamentary Privileges Act 1987* (Cth). This includes two types of resolutions on procedures for the protection of committee witnesses: one for general Senate committees and another for the Privileges Committee. The general Senate committees resolution details a number of matters such as the publication of evidence, the giving of *in camera* evidence and adverse mention. A full list of the Senate privilege resolutions is available on the Australian Parliament website.<sup>63</sup>

4.10 A recent paper argued that either in lieu of, or complementary to, statutory enactment of parliamentary privileges in New South Wales, the Legislative Council should consider adopting similar resolutions to the Senate that are ‘well thought-through, fair and transparent’. The resolutions should:

- set the boundaries for what committees may do
- provide procedural protection to witnesses
- provide a formal framework within which difficult issues can be resolved.<sup>64</sup>

## Challenges to committee powers

4.11 Over the past few decades the executive government has challenged various powers of Legislative Council committees, including the powers to:

- order State papers
- call for information covered by statutory secrecy provisions
- request that Parliamentary Counsel’s Office prepare draft bills.

### Order for the production of State papers

4.12 The Legislative Council has a common law power to order the production of State papers from the executive as affirmed by the High Court in *Egan v Willis* (1998). The Council’s position is that committees also have the power to order papers if considered necessary in the context of a particular inquiry.<sup>65</sup>

4.13 Between 1999-2001 the government complied with several orders for papers from committees. However, following Crown Solicitor’s advice issued in September 2001, the executive has refused to comply with a number of orders for papers from committees. Since 2001 the executive’s position is that ‘while the Legislative Council has the power to compel

<sup>63</sup> Parliament of Australia, *Appendix B - Senate privilege resolutions*, [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Privileges/Completed%20inquiries/2004-07/report\\_125/e02](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Privileges/Completed%20inquiries/2004-07/report_125/e02).

<sup>64</sup> Beverly Duffy and Sharon Ohnesorge, ‘Out of step? The New South Wales Parliamentary Evidence Act 1901’ (Paper presented at the 2015 Australian Study of Parliament Group conference, Wellington, 2 October 2015), p 22.

<sup>65</sup> Beverly Duffy and David Blunt, ‘Information is power: recent challenges for committees in the NSW Legislative Council’ (Paper presented at 45th Presiding Officers’ & Clerks’ Conference, Apia, Samoa, 30 June - 4 July 2014), p 2.

the production of State papers, it has not been determined that a committee of the Legislative Council has such a power, or can have it delegated to it by the House'.<sup>66</sup>

### Statutory secrecy provisions

- 4.14** Several laws in New South Wales contain statutory secrecy provisions, making it a criminal offence for certain information to be disclosed. It is a long held position of Australian parliaments that statutory secrecy provisions have no effect on the powers of the Houses and their committees to conduct inquiries, and do not prevent committees seeking information covered by such provisions. *Odgers* notes that the basis of this position is that the law of parliamentary privilege provides absolute immunity to the giving of evidence before a House or a committee and 'it is a fundamental principle that the law of parliamentary privilege is not affected by a statutory provision unless the provision alters that law by express words'.<sup>67</sup>
- 4.15** For many years Legislative Council committees have been frustrated in their attempts to gain information covered by statutory secrecy. A breakthrough was achieved in 2015 when senior public officials provided information that was covered by statutory secrecy to a select committee.<sup>68</sup> However it is unclear whether the executive has conceded that privilege 'trumps' secrecy, or if this was a one off, and information was provided due to the inquiry's unique circumstances.<sup>69</sup>

### Preparation of draft bills

- 4.16** Legislative Council standing order 226(3) provides that: For the purposes of preparing a draft bill for incorporation in a report to the House, a committee may, with the consent of the relevant Minister, make use of the services of any staff of the Parliamentary Counsel's Office.
- 4.17** In 2012, a select committee sought to utilise this procedure for the first time. However the Premier refused the committee's request on the basis that the 'normal' process was preferred. The matter was then referred to the Chair's Committee to consider the efficacy of the standing order in its current form.<sup>70</sup> The matter was subsequently referred to the Procedure Committee in 2014.<sup>71</sup>

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<sup>66</sup> Beverly Duffy and David Blunt, 'Information is power: recent challenges for committees in the NSW Legislative Council' (Paper presented at 45th Presiding Officers' & Clerks' Conference, Apia, Samoa, 30 June - 4 July 2014), pp 2-3.

<sup>67</sup> Harry Evans and Rosemary Laing (ed), *Odgers' Australian Senate Practice* (Department of the Senate, 13<sup>th</sup> ed, 2012), p 66.

<sup>68</sup> Select Committee on the conduct and progress of the Ombudsman's inquiry "Operation Prospect", NSW Legislative Council, *The conduct and progress of the Ombudsman's inquiry "Operation Prospect"* (2015).

<sup>69</sup> Steven Reynolds, Samuel Griffith and Tina Higgins, Asserting the inquiry power: parliamentary privilege trumps statutory secrecy in New South Wales, (Paper presented at 46th Presiding Officers' & Clerks' Conference, Hobart, Tasmania, July 2015), p 3.

<sup>70</sup> Select Committee on the Partial Defence of Provocation, NSW Legislative Council, *The partial defence of provocation* (2013), pp 235, 238 and 243.

<sup>71</sup> *Minutes*, NSW Legislative Council, 12 August 2014, p 2647.

**Key questions**

14. Would the introduction of a parliamentary privileges act in New South Wales, similar to the Australian and New Zealand statutes assist Legislative Council committees to undertake their inquiry role?
15. Should the *Parliamentary Evidence Act 1901* be amended?
16. Should the Legislative Council introduce privileges resolutions, similar to resolutions adopted by the Australian Senate in 1988?
17. Should standing order 226(3) be amended to remove the requirement for the ‘consent of the relevant Minister’ when a committee has resolved to request that Parliamentary Counsel’s Office prepare a draft bill?



## Chapter 5 Community engagement and awareness

The chapter explores how Legislative Council committees engage with the community. A particular focus is the methods that have been adopted to increase awareness and knowledge of inquiries and the committee process.

### Standard community engagement practices

**5.1** Legislative Council committees employ a number of methods typically used by parliamentary committees to engage stakeholders in inquiries, including calling for submissions, conducting public hearings and forums and more recently using social media, such as Twitter. Committees use the Legislative Council Twitter account @nsw\_upperhouse<sup>72</sup> to publicise inquiries and their activities.

### Innovative engagement practices

**5.2** Over many years Legislative Council committees have adopted a number of innovative approaches to community engagement.

**5.3** These have included advertising a survey on Facebook for an inquiry on the bullying of children and young people,<sup>73</sup> using Storify for a number of inquiries to tell the ‘story’ of an inquiry<sup>74</sup> and uploading videos of the Chair to the Parliament’s YouTube account to provide inquiry updates.<sup>75</sup>

**5.4** Other innovative approaches include conducting:

- a private roundtable discussion for key inquiry stakeholders on possible report recommendations<sup>76</sup>
- Aboriginal cultural awareness training for members and staff at the start of inquiries concerning indigenous issues<sup>77</sup>
- an online questionnaire as part of the evidence gathering process.<sup>78</sup>

<sup>72</sup> Twitter, *NSW Legislative Council*, [https://twitter.com/nsw\\_upperhouse](https://twitter.com/nsw_upperhouse).

<sup>73</sup> GPSC No. 2, *NSW Legislative Council*, ‘Bullying of children and Young People’ (2009) pp 2-3.

<sup>74</sup> See for example: Storify, *Inquiry into regional aviation Services*, [https://storify.com/NSW\\_UpperHouse/inquiry-into-regional-aviation-services](https://storify.com/NSW_UpperHouse/inquiry-into-regional-aviation-services).

<sup>75</sup> YouTube, *Parliament of NSW*, <https://www.youtube.com/user/NSWParliament/videos>.

<sup>76</sup> Standing Committee on Social Issues, *NSW Legislative Council*, ‘Domestic violence trends and issues in NSW’ (2012), p 2.

<sup>77</sup> For example: Standing Committee on Law and Justice, *NSW Legislative Council*, ‘The family response to the murders in Bowraville’ (2014), p 1.

<sup>78</sup> GPSC No. 6, *NSW Legislative Council*, ‘Results of online questionnaire: Inquiry into local government in NSW’ (2015), available at: <http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/8BC356B1B716725CCA257E90000F83DF>.

- 5.5 In addition to these examples, the Committee Office conducts a number of workshops each year in conjunction with the Council of Social Service of NSW (NCOSS) to improve non-government stakeholders' understanding of parliamentary inquiries. The workshop includes segments on how to write an effective submission and how to be an effective witness at a hearing.<sup>79</sup> The Committee Office has conducted similar workshops with a number of other groups such as the Public Interest Advocacy Centre and Community Legal Centres. There is also a committee segment in the Public Service Seminar program, held a number of times each year.
- 5.6 Further, the Legislative Council Procedure Office Training and Research team operates a Regional Secondary School Outreach program. This involves travelling with committees to rural areas to educate school students about the committee process.
- 5.7 The Parliament has also recently collaborated with the University of Sydney to implement an undergraduate subject 'Parliament and Democracy'. This subject features lectures held at Parliament House by staff of the Council and Assembly, including on the work of committees.<sup>80</sup>
- 5.8 It is important to note that the Legislative Council does not have a dedicated office to manage community engagement. Although further innovative engagement methods would be beneficial, the practical matters of staffing restrictions and budget need to be carefully considered as part of any decision to expand engagement methods.

**Key questions**

18. Is the current level of community engagement in committee inquiries adequate?
19. How could community engagement be improved?
20. How could committees better utilise social media for inquiries to engage with the community?
21. Are there any measures the committee staff could take to improve the engagement of individuals with a specific interest in addition to the peak and representative bodies?

<sup>79</sup> Annual Report 2014, *NSW Department of the Legislative Council* (2014), p 65.

<sup>80</sup> University of Sydney, *GOVT3997 - Parliament and Democracy*, [http://sydney.edu.au/arts/government\\_international\\_relations/undergraduate/units\\_of\\_study.shtml?u=GOVT\\_3997\\_2015\\_2](http://sydney.edu.au/arts/government_international_relations/undergraduate/units_of_study.shtml?u=GOVT_3997_2015_2).

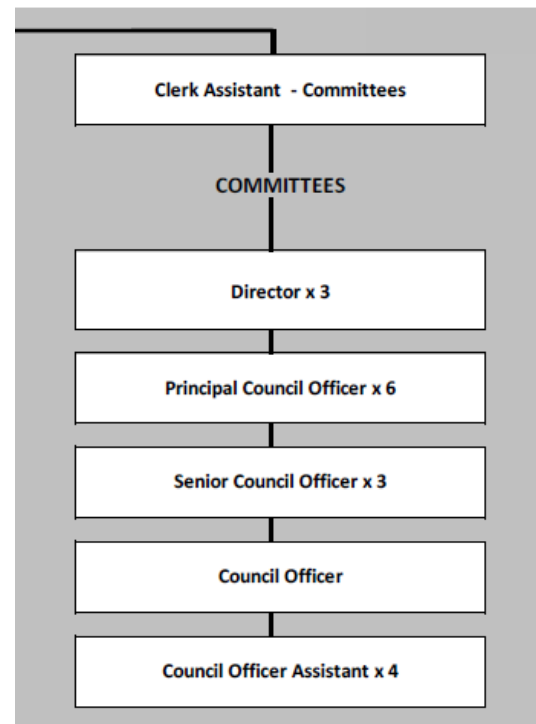


## Chapter 6 The role of the secretariat

Another important issue concerns the secretariat support provided by staff of the Legislative Council to committees.

### Current staffing

- 6.1** The Committee Office of the Department of the Legislative Council has an establishment of 17 full-time equivalent positions.
- 6.2** The Clerk-Assistant Committees is responsible for overseeing the Committee Office with three Directors managing its day to day operations. Six Principal Council Officers, assisted by three Senior Council Officers, are responsible for managing inquiries. These officers are supported by five administration staff.
- 6.3** Committee staff are responsible for the administrative aspects of inquiries, liaising with stakeholders, providing procedural advice to members and writing the Chair's draft report.
- 6.4** In the 2014/15 financial year the net cost of operating committees was approximately \$2.4 million, which includes travel, accommodation and staffing. This can be compared to approximately \$123 million for the net cost of the overall operation of the Parliament in 2014/15.



### Staffing practices

- 6.5** Secretariat staff in the Legislative Council are employed as generalists, meaning they are not permanently attached to a particular committee but may be asked to work on any inquiry of any committee. Staff are employed from a range of academic backgrounds. Prior to the late 1990s staff were attached to particular committees, however a more flexible model was introduced to ensure that work was spread evenly amongst the secretariat.
- 6.6** It is important for staff to be flexible as it is commonplace for officers to work concurrently on more than one inquiry into very different subject matters. Although this can be a challenge, it provides staff with the opportunity for professional development and diverse inquiry experience.

- 6.7** For inquiries that require specialist or technical knowledge it is not uncommon for the committee, to request a briefing from experts or from departmental staff at the commencement of an inquiry.<sup>81</sup> This can assist the members and secretariat to understand complex matters before receiving evidence.
- 6.8** On two occasions committees have employed an external actuary to assist with analysis of technical financial information.<sup>82</sup>
- 6.9** The matter of ‘experts’ being employed on an ad hoc basis to assist with inquiries was raised by a member during the consultation process for this discussion paper. It was also raised during C25 where a former member noted he had tried to introduce a system where special counsel, similar to the United States Congress, be employed to assist GPSCs.<sup>83</sup> A current member agreed with this and noted:

[Thought] should be given to bringing in specialist advice permanently, or perhaps on a case-by-case basis like a special counsel. I have had inquiries where we have had ... to bring in people to explain to the committee issues about which not many of them, if any, had any technical knowledge.<sup>84</sup>

- 6.10** This issue was initially considered by the Select Committee on Standing Committees in the 1980s which recommended that consultants only be employed for specific and specialist research that could not be possible through internal resources. In coming to this opinion, the committee noted:

...the committee believes that as a general principle as much as is feasible ... the research for committees should be carried out using internal resources. Evidence suggests that there are likely to be difficulties which arise in maintaining full control of the direction of an inquiry if the role of consultants is not carefully controlled.<sup>85</sup>

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<sup>81</sup> For example: Standing Committee on Law and Justice, NSW Legislative Council, *Review of the Crimes (Forensic Procedures) Act 2000* (2002); Standing Committee on State Development, NSW Legislative Council, *Nanotechnology in New South Wales* (2008); GPSC No. 5, NSW Legislative Council, *Coal seam gas*, (2012).

<sup>82</sup> GPSC No. 2, NSW Legislative Council, *Second Interim Report on the Inquiry into Rural and Regional New South Wales Services: Rural Doctors, Aged Care & Mental Health* (1999); GPSC No.1, NSW Legislative Council, *NSW Workers Compensation Scheme, Final report* (2002).

<sup>83</sup> Hon John Hannaford, Proceedings of the C25 Seminar Marking 25 years of the committee system in the Legislative Council, 20 September 2013, p 46.

<sup>84</sup> Hon Robert Brown MLC, Proceedings of the C25 Seminar Marking 25 years of the committee system in the Legislative Council, 20 September 2013, p 48.

<sup>85</sup> Select Committee on Standing Committees of the Legislative Council, NSW Legislative Council, *Standing Committees* (1986), pp 57-58.

**Key questions**

22. Should experts be employed by committees on an ad hoc basis to contribute to the inquiry process?
23. Should committees have access to experts who can provide advice and assistance on the drafting of report recommendations?
24. Are current staffing levels in the Committee Office sufficient to adequately support Legislative Council committees?

## Summary of key questions

1. Do you have any comments about the current Legislative Council committee system?
2. Do you have any comments about the composition of Legislative Council committees or the appointment of chairs?
3. Is the current committee structure appropriate to ensure the Council is able to fulfil its role as a House of Review?
4. Is there scope for the committee system in the Legislative Council to incorporate aspects of the committee system in the Australian Senate?
5. Should committees in the NSW Parliament play a greater role in scrutinising legislation on a regular basis? If so, how?
6. Is the current system for scrutinising regulations effective?
7. Should any changes be made to the Budget Estimates process?
8. Is the time available for questions at Budget Estimates generally adequate or should it be expanded? If so, how should this be done?
9. In general do committees allocate sufficient time to the questioning of witnesses? Should there be a process for allowing more time with certain witnesses?
10. Should a process be introduced to examine or debate government responses?
11. Is the time allowed for a government response to a committee report (six months) too long?
12. Under what circumstances should a committee decide to keep a submission or a transcript of evidence partially or fully confidential?
13. Should inquiry participants be granted anonymity or confidentiality if they are concerned about intimidation or retribution for giving evidence?
14. Would the introduction of a parliamentary privileges act in New South Wales, similar to the Australian and New Zealand statutes, assist Legislative Council committees to undertake their inquiry role?
15. Should the *Parliamentary Evidence Act 1901* be amended?
16. Should the Legislative Council introduce privileges resolutions, similar to resolutions adopted by the Australian Senate in 1988?
17. Should standing order 226(3) be amended to remove the requirement for the 'consent of the relevant Minister' when a committee has resolved to request that Parliamentary Counsel's Office prepare a draft bill?
18. Is the current level of community engagement in committee inquiries adequate?
19. How could community engagement be improved?
20. How could committees better utilise social media for inquiries to engage with the community?
21. Are there any measures the committee staff could take to improve the engagement of individuals with a specific interest in addition to the peak and representative bodies?

- 22 Should experts be employed by committees on an ad hoc basis to contribute to the inquiry process?
- 23 Should committees have access to experts who can provide advice and assistance on the drafting of report recommendations?
- 24 Are current staffing levels in the Committee Office sufficient to adequately support Legislative Council committees?



## Appendix 1 References and further reading

### New South Wales

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