

**Submission
No 9**

INQUIRY INTO LEGISLATIVE COUNCIL COMMITTEE SYSTEM

Organisation: State Parliamentary Labor Party

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The Director
Select Committee on the Legislative Council Committee System
Upper House Committees
Parliament House
Macquarie Street
Sydney NSW 2000

Dear Committee Members,

The State Parliamentary Labor Party would like to submit a brief contribution to your important *Inquiry into the Legislative Council committee system*.

The Legislative Council committee structure provides a mechanism to scrutinise Executive Government. It also provides an important opportunity for the Legislative Council to explore issues of importance to the residents of NSW. The Legislative Council committee system is an essential element of parliamentary scrutiny in NSW that has developed and matured since the first two Standing Committees were established in 1988.

Subject Standing Committees

The subject Standing Committees operate well. However, the fact that no Standing Committee has ever self-referred an inquiry or petition for inquiry is something the Select Committee should explore.

Both of the provisions have merit and should not be removed. The reasons for not making use of the provisions should be explored with Members and Chairs of Standing Committees.

General Purpose Standing Committees

The work of the General Purpose Standing Committees is generally in two streams; budget estimates and issue-based inquiry emanating from a House referral or a Committee self-referral.

1. Budget Estimates

It is Labor Members view that the budget estimates process requires significant overhaul. A system replicating the Senate Estimates process of the Commonwealth Parliament would provide a more effective and efficient opportunity to scrutinise the expenditure of the Executive Government.

The current budget estimates arrangements restrict the thorough examination of expenditure and portfolio activity. The limited time available to ask questions during hearings is a serious impediment to constructive and detailed analysis of the NSW State Budget and related papers, which also includes examination of the activities of government agencies and the implementation of policy. This case has been put numerous times in the past, by members from all sides of politics, yet substantive reform has so far been absent.

This Select Committee inquiry has the opportunity to make a significant contribution to reforming this process and enhancing the accountability mechanisms to which elected governments are rightly subjected. Increasing the time available for questioning and the frequency of committee hearings into expenditure will provide opportunity for far greater scrutiny of how the government of the day exercises its powers and expenditure of public money.

As recently as 2013, the then-Leader of the Opposition in the Legislative Council, the Hon Luke Foley MLC, illustrated the shortcomings of our current budget estimates process, saying:

The current estimates process of this House provides for insufficient scrutiny of Ministers and departments. I do not seek to make a partisan political point in saying that...

When I last checked the Senate estimates process I noted that there were eight estimates committees, meeting four at a time, three times a year. When one compares our system, it is revealed as grossly insufficient. Members of the Opposition and members of the crossbench get perhaps 20 minutes to scrutinise a senior Minister with an annual budget in the billions; if they are lucky, they get two lots of 20 minutes; and if they are extremely lucky, they get three lots of 20 minutes. There is much more we can do to push the boat out in the effective operations of our estimates committees.

Going back further to 2006, when in opposition, very similar cases were made by current government members about the significant limitations of our current system.

In 2006, the then-Leader of the Opposition in the Legislative Council, the Hon Michael Gallacher MLC, noted:

If the procedures are to work we must have an appropriate timetable... Only two hours have been allocated for the Roads portfolio, which is a serious issue for the people of New South Wales. If the Government soaks up its time... one can find oneself with only 45 minutes to work out the best questions to ask on the day rather than spend the time going through the entire portfolio to ensure that when the process is complete the community has a better understanding of what is going on within the Roads portfolio.

I have had numerous discussions with members of the crossbench to encourage them to realise that the current system is past its use by date and to ensure that as the estimates committee process evolves it offers true transparency and accountability.

Labor also notes the previous work of the President of the Legislative Council, the Hon Don Harwin MLC, in advancing incremental reform to the budget estimates process in previous years.

The points raised above, from members of both major parties, remain valid – for adequate transparency and accountability of executive government, the current system lends itself to operating in a restrictive manner rather than being open and investigative.

For example, in comparison with the Senate Estimates system, in 2015 Education portfolio matters were allocated a hearing of four hours from 2:00pm to 6:00pm for

Budget Estimates scrutiny in the NSW system, while the relevant Senate Committee engaged in similar scrutiny for 14 hours a day from 9:00am to approximately 11:00pm, for two days. This stark contrast clearly highlights the need for meaningful change in NSW.

Labor urges the Select Committee to explore the Senate Estimate arrangements with particular attention to the period of time available to examine the budget and associated matters relating to the portfolio. Further consideration should also be given to establishing the budget estimates process within the Standing Orders of the Legislative Council, as is the situation in the Senate.

It would be beneficial and a much more valuable exercise for all members if there were two budget estimates sessions each financial year. The supplementary hearings currently available in NSW are, in effect, very rare, while the twice-a-year arrangement currently operating in the Senate would be a superior replacement for the supplementary hearings.

Those Senate Estimates arrangements that could be used to enhance the NSW Budget Estimates process include:

- a) holding Budget Estimates hearings twice each financial year;
- b) ensuring the hearings have much more time allocated to them and the removal of time between parties for asking questions;
- c) ensuring the investigation of a budget item is allowed to run its full course.

In this way, the community can expect to obtain far more comprehensive explanations from the government on matters of state significance.

2. Self-referral and Issue-based Inquiry

The GPSC capacity to self-refer has enabled these committees to conduct inquiries that scrutinise and explore highly contentious matters. This is a facet of the GPSC system that must be continued.

Legislation and Regulation Review

The current arrangements for reviewing legislation and regulation utilising the Legislation Review Committee are inadequate and in need of reform. The work of this committee currently provides minimal, if any, support for Members of the Legislative Council as they fulfil their duties. It does not assist or complement the Legislative Council as the House of Review.

The Legislation Review Committee was established as a way to address human rights issues in lieu of a statutory bill of rights. The Select Committee should review the reasons behind the establishment of the Legislation Review Committee and determine whether the Committee does, in fact, assist the Legislative Council conduct its function as a House of Review for both legislation and regulation.

The review of regulations in recent years is also far from satisfactory. The Select Committee should examine alternative models of regulatory review to ensure the important work of regulatory review is actually undertaken and accusations of lip service are not able to be levelled at the Legislation Review Committee.

These issues were in fact forecast at the very instigation of this committee and reprised by Lovelock and Evans in 'New South Wales Legislative Council Practice' (2008):

There are signs that, as foreshadowed by the Standing Committee on Law and Justice in 2001, the combination of regulation and bills in the jurisdiction of the Committee may have had an adverse impact on the scrutiny of regulations.

So much has the function of the Committee diminished that annual reports of its work are no longer tabled to Parliament, resulting in a further degradation of the understanding of the work of this committee. Importantly, this also diminishes the capacity to undertake an analysis of the Committee's recommendations over time, such as whether it has ever utilised its important power to recommend the disallowance of a regulation.

It is not NSW Labor's view that the Committee is of low importance or not required; rather, it is that the Legislative Review Committee is of such importance that there are concerns the important reasons for its existence have been forgotten and, therefore, must be reinvigorated.

The Select Committee is urged to explore models for legislation and regulation review in other jurisdictions to determine improvements that ensure Members of the Legislative Council can have faith in the workings of the Legislation Review Committee.

On behalf of all Labor Members of the 56th Parliament, I thank the Select Committee on the Legislative Council Committee System for the opportunity to comment on these important matters.

Yours sincerely

Luke Foley MP