

**Submission  
No 19**

## **INQUIRY INTO LEGISLATIVE COUNCIL COMMITTEE SYSTEM**

**Organisation:** The Greens NSW

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Friday, 8 April 2016

The Director  
Select Committee on the Legislative Council Committee System  
Parliament House  
Macquarie St  
SYDNEY NSW 2000

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

To whom it may concern,

**The Greens NSW Submission to the Inquiry into the Legislative Council  
Committee System**

Thank you for the opportunity to make a submission to the Select Committee's inquiry on the Legislative Council Committee System. The Greens have had representatives elected to the Legislative Council since 1995 and our Members have been involved in Legislative Council committees since 1999. This brief submission draws on input from our current Members along with Senator (and former MLC) Lee Rhiannon.

In the following sections we provide our comments in response to some of the key questions provided in each chapter the Discussion Paper.

**Chapter 2: Legislative Council committee system**

***Comments on the current committee system***

The Greens regard the Legislative Council's committee system as an effective and important component of the NSW Parliament's processes that promote Government accountability and enhance the connections between the public and the legislation and policies that affect them.

In debate on the motion marking the 25<sup>th</sup> anniversary of the modern committee system,<sup>1</sup> Greens MLC Dr John Kaye noted that the benefits of the Legislative Council's committee system come from four separate but overlapping functions:

1. The provision of Government accountability, including the capacity for detailed examination of government spending and government actions.

<sup>1</sup> <http://www.parliament.nsw.gov.au/prod/parliament/hansart.nsf/V3Key/LC20130919007?open&refNavID>

2. Examination of the provisions of proposed legislation, aided by expert opinion and advice.
3. The unravelling of complex or contentious issues that are not necessarily partisan but are usually complex and difficult.
4. Allowing the public to have a voice and to have an impact on public policy.

We commend the existing system as one which offers a great deal in addressing these four functions, but we encourage this Committee to examine and recommend reforms and extensions to the existing system that could enhance the system's capacity to perform each of those functions.

### ***Committee composition, structures and processes***

At present, the standing orders provide that committee membership is determined by the House when adopting the resolution appointing each committee. The committee system's effectiveness in promoting accountability and resolving complex issues is enhanced by having diversity in committee membership and minimising the control exerted by any single party, especially the Government, over the direction of any committee. Government members make valuable contributions to committees but the structure and process of each committee should ensure that the focus is on accountability and scrutiny when it is examining the decisions and actions of the Government.

Particularly in the event that one party or a formal coalition of parties holds a majority of seats in the Legislative Council, a more diverse committee system will continue to provide an avenue for transparent scrutiny of Government actions and input from the public and stakeholders. We encourage the Committee to consider options to ensure that the diversity of committee membership and the appointment of non-Government chairs to committees are principles that are maintained regardless of the balance of numbers within the House itself, such as by specifying general provisions relating to membership of standing committees directly in the standing orders.

The self-referral power of the General Purpose Standing Committees provides an important capacity for committees to undertake inquiries into important issues. Because referrals by the House must typically be adopted as a formal motion that could be blocked by a single objection (including by the Government), we regard it as important that this self-referral power is retained and encourage the Committee to consider potential expansions of the capacity for self-referral.

Some aspects of the Senate committee system could usefully be incorporated into the Legislative Council system, including the following possibilities:

- Legislation committees (which typically have a Government chair and balanced composition of Government and non-Government membership) are one option to promote the scrutiny of bills, which we will address below in response to Chapter 3.
- The capacity of Senate committees to continue their work after the prorogation of the Parliament should also be considered.
- The scope for dissenting statements in the Legislative Council system is limited and the scope for detailed dissenting statements or additional



comments to be made by any member of a committee, including participating members, should be considered.

- More fundamentally, the provision of meaningful names to the committees that inquire into issues within Government portfolios and departments, as opposed to the numbering of General Purpose Standing Committees, would be a change that may improve public understanding of the roles of each committee.

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

#### ***Scrutiny of Bills***

The Greens strongly support increasing and improving the use of committee processes to provide thorough and transparent scrutiny of proposed legislation. The Discussion Paper notes how infrequently Bills have been referred to committees in the NSW Legislative Council, which is a shortcoming of the NSW system relative to the Senate and some other legislatures. We urge the Committee to consider and develop recommendations for an approach that would ensure the regular referral of proposed legislation for scrutiny and advice to the House through an appropriate inquiry process.

Inquiries into the provisions of legislation allow stakeholders and the public to provide submissions and evidence that may not have been available or adequately considered in the drafting of the legislation, allow all members of the inquiry to consider and examine the issues raised and provide an opportunity for the diverse members of the committee to seek to identify whether amendments may address those issues.

The increased use of inquiries to scrutinise Bills has the potential to improve the quality and integrity of legislation passed by the Parliament, prevent unintended consequences and clarify areas of legal ambiguity, improve the efficiency of the Committee of the Whole stage of the passage of Bills through the House, and improve the capacity for public engagement and equity of input for different types of stakeholders into the legislative process.

We also note that the existing Legislation Review Committee process provides limited scrutiny of proposed legislation and regulations and does not always feed into the considerations of both Houses due to the timing of the release of the Committee's reports having no formal connection to the timing of the business of each House.

#### ***Budget Estimates***

The Budget Estimates process provides the most comprehensive and direct opportunity for scrutiny of Government spending and actions, and the Greens encourage the Committee to consider ways that the process may be improved to promote greater accountability. This may include:



- Holding multiple hearings at fixed times throughout the year rather than having one main series of hearings with a possibility of supplementary hearings that follow relatively soon afterward.
- Increasing the time available for questions – we note that the practice of the Government members forgoing their time for questions avoids wasted time on “Dorothy Dixers”, but the opportunity of taking up this time for more genuine scrutiny rather than cutting the hearings short is one that should be considered.
- Promoting improved responses to supplementary questions and questions taken on notice. Along with questions on notice submitted in the House, Greens MLCs have reported increasing dissatisfaction with the response to Budget Estimates questions that request specific details (often financial figures or other data) that are often answered by referral to an annual report or website that does not contain the information being sought. Options to promote more directly relevant and complete answers to questions should be considered.

### **Government responses**

Although standing orders require the Government to provide a response to the recommendations in each committee report within six months, these responses are subject to limited scrutiny and there is little opportunity for ongoing scrutiny and dialogue about the decisions and actions made by the Government following the completion of an inquiry.

The Greens urge the Committee to consider reforms that would establish a stronger ongoing process requiring Government reporting to the House and for consideration of those reports by Members, including the following possible approaches:

- The timeframe for initial Government responses could be reduced from six months, noting that the Senate requires Government responses within three months. Combined with approaches that allow ongoing reporting and consideration as outlined in subsequent points, an earlier initial response would ensure that the Parliament and the public receive a timely indication of the Government’s degree of support for, and reasoning about, the recommendations made by each inquiry.
- Motions to take note of Government responses could become a regular part of debate in the House, with a regular time assigned for debate on such reports as it is with debate on the committee reports themselves. This would provide the opportunity for consideration and analysis of the Government’s response to each inquiry.
- Although the requirement to provide responses ensures the Government must indicate whether or not they intend to address each recommendation, the current system does not provide for any ongoing reporting or examination of the implementation of those recommendations that the Government has indicated it supports. In some cases, subsequent inquiries may revisit issues, as with the current General Purpose Standing Committee No. 3 inquiry into Reparations for the Stolen Generations, which to some extent has examined the actions by federal and state Governments toward implementing the recommendations of the Bringing Them Home report and the NSW



Government response to that report. However, options for formal updates on implementation such as an annual report from the Government on its actions to implement inquiry recommendations should be considered.

## **Chapter 4: Committee powers**

### ***Challenges to committee powers***

The Greens encourage the committee to examine approaches that clarify the powers of Legislative Council committees in a way that promotes scrutiny and accountability while resolving concerns about the extent of those powers appropriately, including the following:

- It should be made explicit that committees of the Legislative Council have the power to compel the production of State papers consistent with the power that the House itself has.
- The requirement for the consent of the relevant Minister to permit a committee to request that the Parliamentary Counsel's Office prepare a draft bill should be removed.

We also encourage the committee to consider the capacity of committees to compel Members of Parliament, and in particular Ministers, to appear and provide evidence. Section 4 of the *Parliamentary Evidence Act 1901* provides that committees may summon witnesses with the exception of Members of the Council or Assembly. Section 5 of the Act provides that the attendance of Members is to be procured following the procedure observed in the British House of Commons.

Given the crucial role of committees in ensuring the accountability of the executive Government and in examining matters of policy, evidence from both Government departments and Ministers is of central importance to many inquiries. Although we acknowledge that both Ministers and staff from their departments often provide written submissions and accept invitations to attend hearings, there may from time to time be situations in which a committee's capacity to examine issues would be significantly disadvantaged if the relevant Minister declined to appear. Accordingly, we suggest that the committee considers whether amendments to the *Parliamentary Evidence Act 1901* or other changes relating to the attendance of Members, in particular Ministers, would promote the effective work of the committee system.

## **Chapter 5: Community engagement and awareness**

Public input into public policy is a fundamental function of the committee process. Although inquiries often receive submissions and evidence from organisations that are familiar with the committee system and have extensive expertise in the relevant policy issues, individual members of the public who may not have had any prior involvement with Parliamentary processes often bring knowledge, opinions and experiences that are often an extremely valuable source of contributions to an inquiry.

In addition, public engagement by the committee system promotes broader understanding of the work that Members of the Legislative Council carry out, which

can often challenge some of the stereotypes of partisan politics and promote an appreciation that committee members often work across party lines to give serious consideration to important and complex issues.

For these reasons, the Greens strongly encourage the Committee to consider options that would enhance the capacity of the committee system to promote public awareness and engagement, in particular with disadvantaged and marginalised groups and individuals whose capacity to inform public policy must be increased.

### **Chapter 6: The role of the secretariat**

All Greens Members of the Legislative Council recognise that the great efforts and extensive knowledge and skills of the staff in the secretariat are essential to the success of the current committee system. This submission has made a number of arguments for expansions of the activity and role of Legislative Council committees, which may require additional staffing. We note that in particular the scrutiny of legislation may introduce new requirements for specialist expertise and encourage the Committee to consider approaches to ensure that the Committee Office's permanent staffing is adequate and suited to addressing the changing nature of the committee system's work.

### **Conclusion**

Thank you again for the opportunity to contribute to this inquiry. We hope the Committee will bring forward recommendations that reflect the spirit of the committee system itself and find opportunities to promote the scrutiny and analysis of important issues affecting the people of New South Wales.

Yours sincerely,

**Debbie Gibson & Hall Greenland**  
*Co-Convenors, The Greens NSW*