

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

**Organisation:** Australian Lawyers Alliance

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

7 April 2016

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

Dear Sir

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

The Australian Lawyers Alliance welcomes the opportunity to make a submission to the Inquiry into the Legislative Council committee system.

### **ABOUT THE ALA**

The Australian Lawyers Alliance (ALA) is a national association of lawyers and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or Religious belief. We oppose oppression and discrimination and support democratic accountable systems of Government and an independent judiciary.

We value immensely the right of the individual to personal autonomy in their lives and to equal treatment under the law.

### **KEY QUESTIONS FROM DISCUSSION PAPER**

*1. Do you have any comments about the current Legislative Council committee system?*

The ALA has commented on this in more detail in its concluding paragraph. In summary, the ALA is strongly supportive of the current Legislative Council committee system.

*2. Do you have any comments about the composition of Legislative Council committees or the appointment of chairs?*

The composition of Legislative Council committees is reflective of the overall composition of the Council, which is clearly desirable. The chairing arrangements favour the Government in relation to Standing Committees, but the current composition of the Council has led to all

General Purpose Standing Committees being chaired by non-Government members. This is a clear example of the Parliament performing its function of providing checks and balances in relation to the Executive.

3. *Is the current committee structure appropriate to ensure the Council is able to fulfil its role as a House of Review?*

From our experience, and on review of the current institutional arrangements discussed in our response to Question 2, we agree it is appropriate.

4. *Is there scope for the committee system in the Legislative Council to incorporate aspects of the committee system in the Australian Senate?*

The system in the Senate where there are references committees and legislation committees operating in a paired fashion has merit. If adopted by the Council, it would mean that the whole range of government activity would be scrutinised by committees. This would make its role as a house of review more effective.

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?*

Questions 5-8 draw largely on the Senate practice as a means of enhancing the role of the Council as a house of review and providing checks and balances on the Executive. The position in relation to examination of legislation and regulations appears from paras 3.2-3.13 to have become less effective in the last 10 years, and it is desirable for that situation to be reversed.

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?*

It is desirable that there be flexibility in the conduct of hearings. The ALA's experience with principally the Standing Committee on Law and Justice is that the time allowed for questioning of witnesses is generally suitable, and that times have been varied as required.

10. *Should a process be introduced to examine or debate government responses?*

Yes, the relevant Committee should convene to consider the government response and either initiate a debate, have further submissions or sessions, or simply have the response noted.

11. *Is the time allowed for a government response to a committee report (six months) too long?*

Yes, the three month period noted for the Senate is more appropriate. If the matter was of sufficient significance to be dealt with by a committee and report, the government should be in a position to respond. In many cases, the lapse of time between a report and the government response may mean that the issue has been overtaken by other events in the Government and Parliament, to the detriment of proper consideration of an important matter.

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?*

The balancing of the benefits of disclosure of information relevant to the discharge of Committee functions, and the privacy confidence of witnesses in the material disclosed is an evaluative exercise to be carried out in each case. ALA members have experience of the exercise of this discretion in the court system. There has to be a substantial risk of harm to an individual's interest in personal security or their reputation or financial interests to depart from the general principle of public proceedings. The contempt power may only be invoked at too late a time for protection where an individual is concerned about potential harm from giving evidence to a committee. The ALA considers the contempt power inadequate to secure advance protection.

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?*

The situation outlined in paras 4.1-4.3 of the Discussion Paper make it clear that the question of "proceedings in Parliament" and the prohibition against "impeachment" need to be defined to ensure that there is no gap in coverage of Committee proceedings. The ALA supports consideration of the Commonwealth and New Zealand legislation for adoption, as providing greater certainty on the scope of privilege in committee proceedings.

15. *Should the Parliamentary Evidence Act 1901 be amended?*

The ALA believes strongly that the summary procedure for contempt does not accord with current standards of procedural fairness and that this should be addressed in any review of parliamentary privileges. The only penalties at present are custody and subsequent imprisonment which may be out of all proportion to the seriousness of the offence.

16. *Should the Legislative Council introduce privileges resolutions, similar to resolutions adopted by the Australian Senate in 1988?*

The ALA considers that the Privileges Resolutions provide a workable charter of procedural fairness for engagement between committees and witnesses, and they should be adopted in a suitable form for the Council committees.

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?*

The ALA considers the case noted in para 4.17 of the Discussion Paper is unfortunate. Although the Government may have almost complete responsibility for initiating legislation in the modern Parliamentary system, the making and passing of legislation is one of the key functions of Parliament. In its power to review and amend legislation, the Council is exercising its primary function as a house of review, and it should have the resources to carry out that role effectively. It is, after all, the Office of Parliamentary Counsel which is being employed here. Dispensation with the requirement for Ministerial consent would be appropriate.

## OBSERVATIONS AND CONCLUSION

The ALA is a strong supporter of the work that the modern committee system in the Legislative Council does to effectively hold the government to account, permit and allow for community and stakeholder engagement in the parliamentary process, and develop sound policy for New South Wales' citizens.

The ALA recommends that the current (modern) committee system be retained. The ALA has provided written submissions and appeared before various upper house committees of inquiry. In this current Parliament, the ALA has made a submission to the *Inquiry into elder abuse in New South Wales* and *Remedies for the serious invasion of privacy in New South Wales*. The opportunity that the modern committee system provides for ordinary citizens and community organisations to contribute to government policy making is invaluable.

The ALA has enjoyed a long period of engagement with the Standing Committee on Law and Justice, particularly in relation to its annual or biannual reviews of the operation of the Motor Accidents Authority, the Lifetime Care and Support Authority and the WorkCover Authority (now known as State Insurance Regulatory Authority 'SIRA').

Reflecting on our engagement with the Standing Committee on Law and Justice over the past years we believe the committee system has

- enabled Members of Parliament to develop knowledge, understanding and expertise in the area into which they are conducting an inquiry by permitting citizens to address them
- allowed a range of expert knowledge to be provided directly to Parliament on complex policy areas where simple one-dimensional solutions dominate media discussions
- provided the opportunity for ordinary citizens, community and industry groups to voice and articulate their concerns on legislative proposals directly to Parliament

Again, the ALA thanks you for the invitation to make this submission. Any inquiries in relation to this submission should be directed to the ALA NSW Branch Secretary,

Yours sincerely

Roshana May  
NSW Branch President  
Australian Lawyers Alliance