

## INQUIRY INTO CONSULTATION ON HIGHLY CONTENTIOUS BILLS

**Organisation:** NSW Council of Social Service (NCOSS)

**Date Received:** 6 November 2019

---

8 November 2019

Stewart Smith  
Director Committees  
Parliament House  
Macquarie St  
Sydney NSW 2000



Via email: [ProcedureCommittee@parliament.nsw.gov.au](mailto:ProcedureCommittee@parliament.nsw.gov.au)

Dear Mr Smith

***Re: Consultation on highly contentious bills***

Thank you for the opportunity to provide a submission to the inquiry into consultation on highly contentious bills.

NCOSS is the peak body for social and community services in NSW and represents over 400 organisations who work with people and communities experiencing inequality and disadvantage. We advocate as an independent voice to progress social justice and shape positive change in NSW.

Enshrined in our constitution, our role includes representing the needs of disadvantaged and vulnerable individuals and groups to all levels of the government and non-government sector. It also includes developing informed public opinion. We believe a critical part of this process is strengthening opportunities for civil society voices to be heard on the issues that matter to and impact them.

The following comments are provided in response to the inquiry Terms of Reference and proposed approach outlined in the discussion paper.

**The definition of ‘highly contentious’ legislation**

The Terms of Reference indicate that for the purposes of this consultation, highly contentious legislation is ‘defined as a bill likely to substantially alter economic, employment, social, legal or environmental conditions in New South Wales and to provoke widespread public interest in the proposed changes’.<sup>1</sup> However, the Discussion Paper did not go into further detail about how such a definition could be refined or applied. The challenge will be in determining what constitutes a ‘substantial alteration’ to trigger the consultation process.

NCOSS would also caution against using ‘widespread public interest’ as a measure of contention. Proposed legislation that would significantly and/or disproportionately impact vulnerable and disadvantaged communities are often not matters of widespread public interest. For example, changes to the *Children and Young Persons (Care and Protection) Act 1998* in 2018 expanded the grounds to dispense with parental consent for adoption, and introduced a two-year limit on family restoration. These changes were made despite inadequate consultation, fierce opposition from community organisations and legal services, and significant concern that the changes would disproportionately impact Aboriginal families, with 38% of children in out of home care being Aboriginal. This was legislative change with a significant impact on vulnerable populations – but not necessarily of widespread public interest – that should have triggered a thorough and meaningful consultation process prior to its introduction.

---

<sup>1</sup> Legislative Council Procedure Committee 2019, *Terms of reference*, Consultation on highly contentious bills

By contrast, NCOSS understands that some of the legislation cited as the catalyst for this inquiry include the greyhound racing ban, council amalgamations and lockout laws;<sup>2</sup> all issues impacting the general public rather than specific vulnerable groups. NCOSS would therefore caution against a definition of 'highly contentious' legislation that hinges on whether it provokes widespread public interest, when issues affecting our most vulnerable so often fly under the radar.

### **Consultation processes for highly contentious legislation**

All governments should be required to carry out fair and transparent consultation processes before introducing any highly contentious legislation. NCOSS supports this being a standardised process in NSW that includes green and white papers. NCOSS also believes there should be NSW Government consultation guidelines established that:

- Are co-designed with stakeholders;
- Encompass principles of transparency, integrity and fairness;
- Include obligations to actively seek out a range of voices; and
- Include minimum timeframes for seeking input.<sup>3</sup>

NCOSS supports the Legislative Council exploring ways in which it can enhance its role in scrutinising government bills, and expanding opportunities to consider the public's views. To this end NCOSS supports in principle exploring options to incorporate deliberative democracy processes, with the caveat that these processes complement rather than replace meaningful consultation with relevant stakeholders.

Particularly for legislation that would significantly impact vulnerable populations, it is critical to consult and engage existing peak and consumer representative bodies with appropriate subject matter expertise, membership and networks.

I would also like to draw the Committee's attention to our 2014 [report on improving public participation](#) and 2019 [submission to the Independent Commission Against Corruption investigation into the regulation of lobbying, access and influence in NSW](#), which discussed the importance of transparency, integrity and fairness in policy-making.

If you require further information or would like to discuss the above, please contact Director of Policy and Research

Yours sincerely,

Joanna Quilty  
Chief Executive Officer  
NSW Council of Social Service

---

<sup>2</sup> Legislative Council, *Hansard*, 20 June 2019, p 103 (Mr Latham)

<sup>3</sup> NCOSS 2019, *The regulation of lobbying, access and influence in NSW*, submission to ICAC, May, available at: <https://www.ncoss.org.au/policy/the-regulation-of-lobbying-access-and-influence-in-nsw>