

**INQUIRY INTO CONSULTATION ON HIGHLY
CONTENTIOUS BILLS**

Organisation: NSW Business Chamber

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CONSULTATION ON HIGHLY CONTENTIOUS BILLS



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Introduction

The NSW Business Chamber (the Chamber) welcomes the opportunity to provide a submission to the Procedure Committee in relation to its inquiry into the parliamentary modernisation proposals relating to highly contentious bills being brought before NSW Parliament.

The Chamber is one of Australia's largest business support groups, with a direct membership of more than 20,000 businesses, providing services to over 30,000 businesses each year. Tracing its heritage back to the Sydney Chamber of Commerce, established in 1825, the Chamber works with thousands of businesses ranging in size from owner operators to large corporations, and spanning all industry sectors from product-based manufacturers to service provider enterprises.

The Chamber strongly supports proper regulatory impact analysis (RIA) as the basis for informing Parliament as to the most appropriate policy response to meet a given policy objective. We also believe embedding RIA into the policy development cycle is essential to addressing our concerns that policy interventions are being developed where 'corporate knowledge' on the part of the government risks getting lost.

To be clear, the Chamber believes RIA should apply to any policy intervention (including those contained in a bill before Parliament) which are likely to substantially alter economic, employment, social, legal or environmental conditions in New South Wales.

This is essential to ensuring the objectives of policy interventions are clearly set out so that policy makers can identify policy options which achieve policy objectives at least cost. Best practice RIA also requires broad stakeholder consultation to ensure all impacts of policy interventions are taken into account.

The purpose of best practice RIA requirements is to ensure policy makers have access to the best possible information (to support an evidence-based approach) and to provide discipline on policy agencies in their capacity as policy advisers to Ministers and the Parliament in turn. While the Parliament retains ultimate accountability for its decisions, the implementation of RIA requirements reflect an upfront commitment to best practice policy development and improves the quality of policy advice.

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The Greiner Review

Many of the issues raised in the discussion paper were considered as part of the Greiner Review of the NSW Regulatory Policy Framework (Greiner Review).¹ The Chamber is strongly supportive of its recommendations having participated in the consultation process. The Chamber's views on RIA remain unchanged and are best summarised in our two submissions to the Greiner Review process. For your information, we **attach** a copy of the Chamber's two submissions to the Greiner Review (one dated December 2016 and the other dated June 2017).

The Greiner Review was commissioned in response to a NSW Auditor-General report which found deficiencies in the NSW regulatory policy architecture.² In its 2016 report 'Performance Audit Red tape reduction', the NSW Auditor-General referred to a:

"lack of sufficient oversight of the regulatory policy process to improve the quality of regulatory process to improve the quality of regulatory proposals"

We note many of the Greiner Review's recommendations remain unimplemented though we understand they may be under active consideration by Government (with the Government response³ noting it broadly supports the intent of the recommendations made in the Greiner Review's final report).

We urge the NSW Government to implement the Greiner Review recommendations as a matter of priority.

In what form?

Best practice RIA requires robust analysis and thorough consultation.

The Chamber considers stakeholders should have an opportunity to provide early input to support the development of policy options and a second opportunity to comment on the impact of specific policy options under consideration.

Equally important is that RIA processes (whether in a Green/White Paper process or otherwise) follow accepted best practice. Principles of best practice policy making have been set out and developed by the OECD and have been widely adopted in many countries including by the Australian Government.⁴

Sequencing of RIA

The Chamber appreciates this inquiry concerns parliamentary procedure insofar as it relates to the presentation of a bill before the Parliament. In this regard, the Chamber maintains that legislation should be presented to Parliament only at the conclusion of a robust RIA process informed by impact analysis and recommended options. It is essential that the decision maker responsible for selecting which, among alternative policy options,

¹ See <https://www.dpc.nsw.gov.au/updates/2018/02/22/independent-review-of-the-nsw-regulatory-policy-framework/>

² See https://www.audit.nsw.gov.au/sites/default/files/pdf-downloads/2016_Aug_Report_Red_Tape_Reduction.pdf

³ See https://www.treasury.nsw.gov.au/sites/default/files/2018-02/NSW_Government-Response_Independent_review_NSW_Regulatory_Policy_Framework_20180219.pdf

⁴ See <https://www.oecd.org/regreform/regulatory-policy/ria.htm>

should be brought before the Parliament (for example a Minister and the Cabinet), are informed by RIA which weighs up the costs and benefits of alternative options developed through consultation with affected stakeholders.

In practice, RIA consultation processes will usually be led by Ministers and policy agencies. The outcomes of a robust consultation process (such as a decision regulation impact statement) would then accompany the introduction of legislation to inform the Parliament and explain its purpose.

While there may be reasonable exceptions on some occasions (such as where time is of the essence), ex-post analysis should confirm the appropriateness of policy interventions after implementation (such as the Commonwealth's Post Implementation Review process).