

40TH PARLIAMENT



Report 54

STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS

The functions, processes and procedures of the Standing Committee on Environment and Public Affairs - are they clear for petitioners and do they reflect its core petitions role?

Presented by
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September 2020

Standing Committee on Environment and Public Affairs

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CONTENTS

Executive summary	i
1 Introduction.....	1
Inquiry procedure.....	1
Purpose of inquiry.....	1
2 History and role of petitions	2
History of petitioning Parliament	2
The role of petitions in a modern Parliament.....	3
Expectations of the role played by petitions.....	5
3 The Committee's petitions function	7
Process for inquiring into petitions.....	7
Criteria that may limit the consideration of petitions in other parliaments	9
Committee practice in how inquiries into petitions may be limited	11
Reasons for closing petitions	21
Guidance on the petitions process	23
Reporting on petitions	24
'Public Affairs' or 'Petitions'	26
'Inquire' vs 'consider'	27
Other matters considered.....	29
4 The Committee's environment function	31
Background.....	31
Should the Committee's environment function be retained?	34
5 Term of Reference 2.3(b) – bills referred by the Council.....	36
6 Term of Reference 2.5—referral of a petition to another committee	38
7 Conclusion.....	38
Terms of Reference.....	38
Guidance material	39
Appendix 1 Stakeholders, Submissions and Public Hearings	40
Appendix 2 Petitioning the Scottish Parliament.....	46
Glossary.....	50

Figures

Figure 1. <i>Number of overview of petitions reports tabled over time</i>	25
Figure 2. <i>Number of environment focussed inquiries over time</i>	33

Tables

Table 1. <i>Roles performed by parliamentary petitions systems</i>	5
Table 2. <i>Comparison of criteria located in Standing Orders or guidance material for the tabling of and inquiry into petitions between Western Australian Legislative Council, the Scottish Parliament and the United Kingdom House of Commons</i>	10

EXECUTIVE SUMMARY

- 1 Since its establishment nearly 20 years ago, the core function and workload of the Standing Committee on Environment and Public Affairs (Committee) has been the consideration of petitions referred to it by the Legislative Council.
- 2 This, however, is not currently reflected in either the Committee's name or its Terms of Reference, which provides for the additional functions of inquiring into and reporting on various matters which may affect the environment and any bill referred by the Legislative Council. It would be fair to say that these two functions have been underutilised.
- 3 The Committee has concluded that its Terms of Reference should focus on its core function of considering petitions and has made a number of recommendations which will, if adopted by the Legislative Council, result in it becoming a dedicated petitions committee and renamed the Standing Committee on Petitions.
- 4 These recommendations do not detract from the importance of the capacity of the Legislative Council to inquire into environmental issues of concern to the community, which can arise from a petition or be the focus of a select committee inquiry. Should the Committee's recommendations be adopted, the Committee has also recommended the Legislative Council consider how inquiries into environmental issues that are not the subject of a petition will be undertaken.
- 5 The Committee has also reviewed its processes and procedures in carrying out its petitions function. A significant theme that emerged during the inquiry was the challenge in recognising and addressing the gap between petitioners' expectations about the process for considering, and the outcomes arising from, their petition and what occurs in practice.
- 6 The Committee recognises the important role it has in meeting this challenge of providing sufficient guidance material and information to assist petitioners to have a better understanding of how their petitions are considered and what can practically be delivered by the Parliament. This includes information on the various factors or circumstances that may limit the Committee's enquiries into petitions.
- 7 Accordingly, the Committee, before the end of the 40th Parliament, will develop guidance that gives clear information for petitioners, which will be provided to the Committee in the 41st Parliament for its consideration.
- 8 The Committee extends its appreciation to those who provided evidence and information during the course of the inquiry.

Findings and recommendations

Findings and recommendations are grouped as they appear in the text at the page number indicated:

FINDING 1

Page 3

The Legislative Council of Western Australia is the only House of Parliament in Australia that routinely enquires into and reports on petitions.

FINDING 2

Page 5

Petitions are an important mechanism in parliamentary democracies that enable engagement between citizens and their parliament.

FINDING 3

Page 6

Clear communication to petitioners is crucial to ensure they have an understanding of the process for considering, and possible outcomes arising from, petitions.

FINDING 4

Page 7

While parliament may not always be the appropriate body to resolve matters the subject of petitions, petitioners will often obtain an explanation for government decisions or actions.

FINDING 5

Page 13

Evidence received by the Standing Committee on Environment and Public Affairs supports the view that petitions committees should not consider petitions containing matters which are *sub judice*.

RECOMMENDATION 1

Page 13

Where it is apparent, on the face of a petition, that it is the subject of current legal proceedings, it should not be received by the Legislative Council.

RECOMMENDATION 2

Page 13

If it becomes known a petition is the subject of current legal proceedings following its referral by the Legislative Council to the Standing Committee on Environment and Public Affairs, the Committee should not inquire into specific aspects of that petition unless it raises broader, systemic issues.

RECOMMENDATION 3

Page 14

The Legislative Council amend Standing Order 101 of the Standing Orders of the Legislative Council as follows (amendment of text in red):

101. Form and Contents of Petitions

(2) A petition shall not –

(g) seek relief in a dispute the subject of current legal proceedings.

FINDING 6

Page 15

A petition tabled in the Legislative Council that could be regarded as frivolous or vexatious continue to be considered by the Standing Committee on Environment and Public Affairs on a case by case basis.

FINDING 7

Page 16

Any petitions tabled in the Legislative Council that may be regarded as repetitious or substantially similar to a previous petition or petitions continue to be considered by the Standing Committee on Environment and Public Affairs on a case by case basis.

FINDING 8

Page 20

Regular communication between the Standing Committee on Environment and Public Affairs and the Parliamentary Commissioner for Administrative Investigations (Ombudsman) may assist the consideration of petitions and avoid duplication of investigations.

RECOMMENDATION 4

Page 21

The Standing Committee on Environment and Public Affairs in the 41st Parliament establish a working arrangement with the Parliamentary Commissioner for Administrative Investigations (Ombudsman) for the exchange of information on issues raised in petitions.

FINDING 9

Page 21

Where a petition tabled in the Legislative Council has raised issues that could be dealt with by other decision making processes, this has been taken into account by the Standing Committee on Environment and Public Affairs in its consideration of that petition, on a case by case basis.

RECOMMENDATION 5

Page 21

If a petition tabled in the Legislative Council raises issues that could be dealt with by other decision making processes, this should be taken into account by the Standing Committee on Environment and Public Affairs in its consideration of that petition, on a case by case basis.

FINDING 10

Page 23

Providing reasons for the finalisation of petitions in appropriate circumstances can assist petitioners in understanding the rationale for decisions taken on petitions.

RECOMMENDATION 6

Page 23

The Standing Committee on Environment and Public Affairs should, as far as reasonably practicable and where appropriate, provide the principal petitioner and tabling Member with sufficient information to understand the reason why the Committee has chosen to finalise and close a petition.

FINDING 11

Page 24

Providing guidance to petitioners on the petitions process enables them to better understand this process and what outcomes they can expect from the tabling of their petition.

FINDING 12

Page 26

Reporting to the Legislative Council on petitions considered by the Standing Committee on Environment and Public Affairs on a regular, consistent basis enables the Legislative Council to receive updates in a timely manner and provides more frequent opportunities to debate the subject matter of petitions.

RECOMMENDATION 7

Page 26

The Terms of Reference of the Standing Committee on Environment and Public Affairs require the Committee to table a biannual report containing an overview of petitions before the Legislative Council rises for its winter and summer recess.

RECOMMENDATION 8

Page 27

The name of the Standing Committee on Environment and Public Affairs be changed by including 'Petitions' and deleting 'Public Affairs'.

FINDING 13

Page 28

Clause 2.3(c) of the Terms of Reference of the Standing Committee on the Environment and Public Affairs is potentially misleading given the Committee's staged approach to considering petitions.

RECOMMENDATION 9

Page 29

The Terms of Reference of the Standing Committee on Environment and Public Affairs be amended as follows (amendment of text in red):

2.3 The functions of the Committee are to **consider and, if deemed appropriate,** inquire into and report on

–

(c) petitions.

FINDING 14

Page 30

The number of signatures on a petition does not necessarily reflect the merits of the matters raised in the petition.

FINDING 15

Page 30

A minimum signature threshold of at least one signature for the acceptance and consideration of petitions in the Legislative Council is appropriate.

FINDING 16

Page 30

Giving a principal petitioner the opportunity to reply to government and other responses to their petition before a decision is taken on finalisation may, in some circumstances, enhance the quality of the petitions process.

FINDING 17

Page 31

An opportunity for the principal petitioner to reply to government and other responses to their petition before a decision is taken on finalisation is not an automatic right and is at the discretion of the Standing Committee on Environment and Public Affairs.

RECOMMENDATION 10

Page 31

The Standing Committee on Environment and Public Affairs should consider giving a principal petitioner an opportunity to reply to government and other responses to their petition in appropriate circumstances, at its discretion.

FINDING 18

Page 36

The Terms of Reference of the Standing Committee on Environment and Public Affairs should focus on its core role of considering petitions.

RECOMMENDATION 11

Page 36

The name of the Standing Committee on Environment and Public Affairs be amended to delete 'Environment'.

RECOMMENDATION 12

Page 36

Clauses 2.3(a), 2.4 and 2.6 be removed from the Terms of Reference of the Standing Committee on Environment and Public Affairs.

RECOMMENDATION 13

Page 36

Should recommendations 11 and 12 be adopted, the Legislative Council consider how inquiries into environmental issues that are not the subject of a petition will be undertaken.

FINDING 19

Page 37

The referral power in clause 2.3(b) of the Terms of Reference of the Standing Committee on Environment and Public Affairs has been rarely exercised by the Legislative Council and duplicates the role of the Standing Committee on Legislation.

RECOMMENDATION 14

Page 37

Clause 2.3(b) be removed from the Terms of Reference of the Standing Committee on Environment and Public Affairs.

FINDING 20

Page 38

Clause 2.5 of the Terms of Reference of the Standing Committee on the Environment and Public Affairs should be retained.

1 Introduction

Inquiry procedure

- 1.1 The Standing Committee on Environment and Public Affairs (Committee) resolved, on 18 September 2019, to commence an inquiry with the following terms of reference:
- To inquire into the environment and petitions functions of the Standing Committee on Environment and Public Affairs to ensure they are best practice and fit for purpose.
- In particular, the Committee will examine:
- (a) the role of petitions in a modern parliament;
 - (b) the Committee's practice and procedure in inquiring into petitions referred by the Legislative Council;
 - (c) the Committee's practice and procedure in carrying out its environment function;
 - (d) the approach of other parliamentary committees in carrying out environment and petitions functions; and
 - (e) any other matters considered relevant by the Committee.
- 1.2 The Committee invited submissions from chairs of petitions and parliamentary environment committees, clerks of Australian and selected overseas parliaments as well as academics, Members and past Presidents of the Legislative Council. Twenty-two submissions were received (see Appendix 1).
- 1.3 Five public hearings were held by the Committee and transcripts of evidence are available from the Committee's webpage at www.parliament.wa.gov.au/env.
- 1.4 The Committee extends its appreciation to those who provided evidence and information during the course of the inquiry.

Purpose of inquiry

- 1.5 The Committee initiated this inquiry to review the functions it has performed on behalf of the Parliament and people of Western Australia since its establishment almost 20 years ago¹ and determine whether any changes are required to improve the way it undertakes its role.
- 1.6 In particular, the Committee considered:
- the nature and effectiveness of its communication with petitioners about Committee processes;
 - petitioners' expectations about potential outcomes from petitions; and
 - if its Terms of Reference accurately reflect the Committee's core role of considering petitions.
- 1.7 The scope of this inquiry does not cover the introduction of an e-petitions system in the Legislative Council, which has been the subject of a report by the Standing Committee on

¹ Although the Standing Committee on Environment and Public Affairs of 2001–2005 was technically a different committee with a larger membership, it had the same Terms of Reference as the current Standing Committee on Environment and Public Affairs.

Procedure and Privileges,² with a proposed Standing Order governing an e-petitions process currently before the Legislative Council for consideration.

2 History and role of petitions

History of petitioning Parliament

Generally

2.1 There is a long history of petitions providing a mechanism for the public to directly bring issues of concern to the attention of Parliament.

2.2 In its submission, the United Kingdom House of Commons provides a summary of the history of petitions:

The right of the subject to petition the Monarch for redress of personal grievances has a long history, having been recognised in the Magna Carta and restated in the Bill of Rights 1689.

The first known petitions to the Lords and to both Houses of Parliament date from the reign of Richard II (1377 to 1399) but the practice seems to have become more widespread from the reign of Henry IV (1399 to 1413) onwards.

During the 16th and early parts of the 17th centuries, petitions relating to issues of public policy became increasingly popular. As petitions during this time were taken before the start of debates, they were often used as a way of obstructing business. A Select Committee in 1832 was established to tackle this problem and the House agreed to introduce more stringent rules via standing orders.

In 1912-13 there were 10,221 petitions presented, this however fell dramatically in 1919 to 121. In 1939-40 only one petition was presented to the House.

In more recent times, the 2016-17 session saw 328 petitions presented, of which 296 were formally presented on the floor of the House of Commons. 308 petitions received a Government response.³

Petitioning the Legislative Council

2.3 From as early as 1836, the Standing Orders of the Legislative Council of Western Australia (Standing Orders) have provided for the presentation of petitions by a Member.⁴ This was inherited from the United Kingdom House of Commons.

2.4 The practice of presenting petitions, including certification by the Clerk as complying with the Standing Orders, has changed very little since the granting of responsible government to Western Australia in 1891.

² Western Australia, Legislative Council, Standing Committee on Procedure and Privileges, report 40, *E-Petitions*, 28 June 2016.

³ Submission 7 from United Kingdom House of Commons, 7 January 2020, p 1. See also House of Representatives, Petitions. See: https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7/HTML/Chapter17/Petitions. Viewed 17 June 2020; Erskine May, A brief history of petitioning Parliament. See: <https://erskinemay.parliament.uk/section/5072/a-brief-history-of-petitioning-parliament/?highlight=petitions>. Viewed 18 June 2020 and Western Australia, Legislative Council, Standing Committee on Procedure and Privileges, report 40, *E-petitions*, 28 June 2016, p 1.

⁴ Rules and Orders for the Proceedings of the Legislative Council of Western Australia, 1836, Standing Order 32.

- 2.5 Until 1989, the Legislative Council's process for dealing with petitions was limited to the Member presenting a petition by moving a motion stating that the petition be received, read and ordered to lie upon the table of the House.⁵

Establishment of a committee to which petitions are referred

- 2.6 In September 1985, a select committee established to provide advice on the need for additional committees in the Legislative Council recommended that a standing committee be established to inquire into petitions as one of its functions.⁶
- 2.7 Consequently, when a formal standing committee system was introduced in the Legislative Council on 21 December 1989,⁷ one of three new standing committees was the Standing Committee on Constitutional Affairs and Statutes Revision,⁸ to which petitions would be referred after presentation.⁹
- 2.8 Later renamed the Standing Committee on Constitutional Affairs, it was merged with the Standing Committee on Ecologically Sustainable Development in 2001.¹⁰ The new committee, the Standing Committee on Environment and Public Affairs, combined the petition and environment functions.
- 2.9 The Terms of Reference for the Committee, as appointed on 17 August 2005,¹¹ have not changed significantly since 2001 and the Legislative Council remains the only House of Parliament in Australia that routinely enquires into and reports on petitions.¹²

FINDING 1

The Legislative Council of Western Australia is the only House of Parliament in Australia that routinely enquires into and reports on petitions.

The role of petitions in a modern Parliament

- 2.10 Petitions are an important mechanism for the public to bring grievances to the Parliament:

The petitions process, through which the general public can bring issues of concern to the attention of the Parliament, provides a fundamental link between the community and the Parliament.¹³

⁵ Malcolm Peacock and Kelly Campbell, *Petitions and referral to committees*, paper presented at the Society of Clerks at the Table Australian Chapter, professional development seminar, Adelaide, 23-6 January 2000, p 2.

⁶ Western Australia, Legislative Council, Select Committee on a committee system in the Legislative Council, 18 September 1985.

⁷ On Motion by Hon R. G. Pike MLC, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 21 December 1989, pp 6872-87.

⁸ *ibid*, p 6872.

⁹ *ibid*, p 6878.

¹⁰ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 1, *Overview of petitions and inquiries*, 12 March 2002, p 1.

¹¹ Hon Kim Chance MLC, Leader of the House, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 17 August 2005, pp 4086-95.

¹² Western Australia, Legislative Council, Standing Committee on Procedure and Privileges, report 40, *E-petitions*, 28 June 2016, p 3.

¹³ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 48, *Overview of petitions 16 May 2017 to 30 June 2018*, 22 November 2018, p 1.

Through the petitions process, the public can bring to the attention of the Parliament and the Executive important matters that may not have been adequately addressed by other means.¹⁴

- 2.11 Evidence to the Committee consistently recognises the important role petitions play. The Republic of Ireland submitted that:

The purpose of the petitions system in the Houses of the Oireachtas is to enhance engagement between parliament and citizens on matters of general public concern or interest.¹⁵

- 2.12 The South African Select Committee on Petitions and Executive Undertakings submitted that petitions allow members of the public to communicate directly with elected public representatives and voice their grievances or concerns about government policies, programmes or structures.¹⁶

- 2.13 Hon Barry House spoke about the role of petitions giving the public a voice in Parliament:

Petitions are a very important way of empowering the public to provide a voice to the Parliament. Whether it is effective varies in degrees, but it is important that they still have that empowerment to take an issue to the Parliament—their elected representatives—in a joint form.¹⁷

- 2.14 The Clerk of the Northern Ireland Assembly explained that petitions connect an issue to the political process:

A petitions system allows citizens to raise the awareness of an issue whilst bolting it into a political process. Citizens should feel closer to their government and add weight to a current or emerging issue through the petition system.¹⁸

- 2.15 This connection between the public and the Parliament was emphasised by the Republic of Ireland:

The petitions system of the Houses of the Oireachtas provides a direct link between parliament and citizen, gives the petitioner an opportunity to inform policy and seek legislative scrutiny on a matter of general public interest or concern.¹⁹

- 2.16 In his submission, Chris Angus, a Research Officer, formerly with the New South Wales Department of Parliamentary Services, explained the role petitions can play as a means of reengagement with the public in the context of 'widespread loss of public confidence and trust in political institutions'.²⁰

¹⁴ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 48, *Overview of Petitions 16 May 2017 to 30 June 2018*, 22 November 2018, p i.

¹⁵ Submission 21 from Houses of the Oireachtas Service (Republic of Ireland), 11 February 2020, p 4.

¹⁶ Submission 16 from South African Parliament, 15 January 2020, p 3 (FAQs document). See also Submission 5 from Chris Angus, 18 December 2019, p 6 and Hon Barry House, transcript of evidence, 18 May 2020, p 2.

¹⁷ Hon Barry House, transcript of evidence, 18 May 2020, p 2.

¹⁸ Lesley Hogg, Clerk of the Northern Ireland Assembly, answers to written questions, 2 June 2020, p 2.

¹⁹ Republic of Ireland, answers to written questions, 6 June 2020.

²⁰ Submission 5 from Chris Angus, 18 December 2019, pp 1-3.

2.17 According to Professor Cristina Leston-Bandeira, the Co-Director of the Centre for Democratic Engagement at the University of Leeds:

petition systems can have a much wider impact on the mediation between citizens and decision-making than just a form of participation or a way to affect policy.²¹

2.18 Professor Leston-Bandeira has identified four key roles petitions can play, illustrated in the following table:

Table 1. *Roles performed by parliamentary petitions systems*

Areas	Roles
Linkage	<ul style="list-style-type: none">• Legitimacy• Safety-valve• Grievance resolution• Education• Public engagement• Political participation
Campaigning	<ul style="list-style-type: none">• Mobilisation• Group identity strengthening• Dissemination• Recruitment
Scrutiny	<ul style="list-style-type: none">• Fire-alarm• Agenda-setting• Evidence gathering• Questioning
Policy	<ul style="list-style-type: none">• Policy review• Policy improvement• Policy influence• Policy change

Source: Submission 12 from Professor Cristina Leston-Bandeira, 14 January 2020, p 2

2.19 In addition to being a form of participation and a means to affect policy ‘petitions systems can have a much wider impact on the mediation between citizens and decision-making.’²²

FINDING 2

Petitions are an important mechanism in parliamentary democracies that enable engagement between citizens and their parliament.

Expectations of the role played by petitions

2.20 Petitions cover a wide range of subject matter. The expectations of petitioners may range from having their petition read out in Parliament to publicise their concerns, to a full parliamentary inquiry conducting a detailed examination of the relevant issues.

2.21 One of the challenges faced by petitions committees is recognising and addressing the gap between petitioners’ expectations about the process for considering, and the outcomes

²¹ Submission 12 from Professor Cristina Leston-Bandeira, 14 January 2020, p 1.

²² *ibid.*

arising from, their petition and what occurs in practice. This emerged as a significant theme during the inquiry. The Committee heard evidence that:

- there is a misconception by some petitioners that a parliamentary committee is a decision-making body with the power to overturn or recommend the overturning of decisions of other bodies,²³ such as those involved in planning;
- there is often a perception that a petition will lead to a significant change such as legislation or a new policy;²⁴
- some petitioners believe there is an automatic right to attend a hearing before a committee²⁵ and that there will be a full inquiry and a report with findings and recommendations;
- it is impossible to please every petitioner and it is important to manage expectations by being very clear in guidance what will occur and why decisions can be made.²⁶

2.22 The gap between expectations and outcomes highlights the importance of effective communication with petitioners to ensure they have a clear understanding of how petitions are dealt with.

FINDING 3

Clear communication to petitioners is crucial to ensure they have an understanding of the process for considering, and possible outcomes arising from, petitions.

- 2.23 Contrary to the expectations of some petitioners, it is not within the power or capacity of parliament to address every concern raised in a petition. In many cases, parliament is not the appropriate body to resolve the matter and there are other established appeal and decision-making mechanisms.
- 2.24 For instance, the *Environmental Protection Act 1986* provides rights of appeal from decisions of the Environmental Protection Authority regarding its assessment of proposals and planning schemes.²⁷ Also, planning legislation and schemes govern decision-making by various bodies and authorities.
- 2.25 Furthermore, committees of the Legislative Council have the power to make recommendations for the Government's consideration rather than binding determinations to resolve matters the subject of petitions.
- 2.26 While a petition will not always achieve the specific objectives desired by petitioners, the Committee's enquiries will often provide them with an explanation for government decisions or actions.²⁸

²³ South African Parliament, answer to written question following hearing held 11 May 2020, p 2.

²⁴ Steve Farrell, Clerk Team Leader, Rural and Economy and Collectivity Committee, Scottish Parliament, transcript of evidence, 18 May 2020, p 4.

²⁵ Lynn Russell, Clerk to the Public Petitions Committee, Scottish Parliament, transcript of evidence, 18 May 2020, p 6.

²⁶ Steve Farrell, Clerk Team Leader, Rural and Economy and Collectivity Committee, Scottish Parliament, transcript of evidence, 18 May 2020, p 4.

²⁷ Government of Western Australia, Office of the Appeals Convenor, *Environmental Protection Act 1986, Environmental impact assessment – EPA Reports/Decisions*. See: <https://www.appealsconvenor.wa.gov.au/environmental-impact-assessment>. Viewed 19 August 2020.

²⁸ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 48, *Overview of petitions 16 May 2017 to 30 June 2018*, p i.

FINDING 4

While parliament may not always be the appropriate body to resolve matters the subject of petitions, petitioners will often obtain an explanation for government decisions or actions.

3 The Committee's petitions function

- 3.1 In this Report, the Committee's recommendations to amend its Terms of Reference will, if implemented, result in the Committee becoming a dedicated petitions committee, focussing solely on what has always been its core function—considering petitions referred by the Legislative Council. This reflects recommendations previously made by the Committee²⁹ and the Cash Report,³⁰ referred to below.

Process for inquiring into petitions

- 3.2 The Committee's process for inquiring into petitions is summarised as follows:

The nature and extent of inquiries relating to each petition will vary depending on the nature of the issues raised. In most cases, the Committee will request a submission from the principal petitioner and tabling Member. These submissions enable the Committee to better understand the issues involved and the action, if any, already undertaken by the petitioner to resolve the matter.

Once submissions are received, the Committee will usually request a response to the petition from the relevant government Minister. The Committee may also seek responses from other organisations (such as local governments) and carry out other investigations as required.

In many instances, the Minister's response to the petition will provide an explanation for the policy or action in question, although sometimes the Committee will need more information to clarify the issues to its satisfaction. These inquiries may take the form of further correspondence with the relevant parties or a hearing to obtain more detailed evidence. On occasion, the Committee will resolve to conduct a formal inquiry into the matter.³¹

- 3.3 Copies of the petition, submissions, responses and other relevant documentation given a public status are placed on the Committee's webpage. The progress of the Committee's inquiries into each petition is regularly updated and may include the following descriptors:

- tabled
- 30 day submission period for principal petitioner/tabling Member
- awaiting government response
- government response received
- enquiries continuing

²⁹ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 14, *Sessional report: an overview of petitions and inquiries – second session of the Thirty Sixth Parliament (August 2002 to November 2004)*, 19 November 2004, p 95.

³⁰ Western Australia, Legislative Council, *Reflections on the Legislative Council Committee System and its operations during the Thirty-Sixth Parliament: discussions with the Chairs and Deputy Chairs of parliamentary committees*, 19 May 2005, p 7.

³¹ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 48, *Overview of petitions 16 May 2017 to 30 June 2018*, p 1. This is also outlined on the Parliament's website. See <https://www.parliament.wa.gov.au/WebCMS/webcms.nsf/content/what-is-a-petition>.

- public hearings scheduled
 - report tabled in Parliament
 - finalised.
- 3.4 In many cases, the Committee's inquiries will conclude once the Government response has been received if it clearly explains the reason for a decision or policy. Occasionally, the Committee may conduct public hearings to gather further information³² and on some occasions will also table a report regarding a specific petition.
- 3.5 When the Committee resolves to finalise a petition it advises the tabling Member and the principal petitioner in writing. In addition, a summary of each petition and submissions and responses received is set out in an overview of petitions report to the Legislative Council.
- 3.6 If the Committee resolves to conduct a detailed inquiry into a petition, it may:
- advertise for public submissions;
 - conduct hearings;
 - gather additional written and oral evidence;
 - conduct site visits; and
 - prepare a report on the petition for tabling in the Legislative Council.
- 3.7 In the 40th Parliament, the Committee conducted detailed inquiries into mechanisms for compensation for economic loss to farmers arising from contamination by genetically modified material³³ and the mandatory registration of children and young people on the Sex Offenders Register,³⁴ which both arose from petitions.
- 3.8 The Committee provided the following explanation for inquiring into mechanisms for compensation for economic loss caused by genetically modified material:

Since the commercial introduction of genetically modified crops, there have been calls for compensation of farmers who suffer economic loss as a result of contamination by genetically modified material (GM contamination).

Marsh v Baxter concerned an unsuccessful claim for economic loss by an organic farmer against a neighbouring farmer for GM contamination. The decision of the Western Australian Supreme Court and Court of Appeal gave rise to debate on whether the common law provides an adequate remedy for any economic loss.

A number of petitions calling for the introduction of farmer protection legislation tabled in the Legislative Council have drawn further attention to this issue. This included a petition tabled in the Legislative Council on 13 June 2017 calling for the introduction of farmer protection legislation to compensate non-GM farmers who suffer economic loss from contamination by GM crops.

In light of the public and government interest in this matter, the Committee resolved to commence this inquiry. This has included an assessment of whether

³² For example, the hearings into Petition 24—Oppose logging in Nannup and Petition 123—Southern Forests Irrigation Scheme.

³³ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 49, *Mechanisms for compensation for economic loss to farmers in Western Australia caused by contamination by genetically modified material*, 14 February 2019.

³⁴ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 52, *Punitive not protective: when the mandatory registration of young people is not based on risk*, 21 May 2020.

there is sufficient evidence of economic loss by farmers in Western Australia to justify a departure from the current common law mechanism of compensation.³⁵

3.9 The Committee also explained why it inquired into mandatory registration on the Sex Offenders Register:

This inquiry stems from Petition Number 70 of the 40th Parliament which expressed concern about the inappropriate registration of young people as sex offenders. After consideration of the matters raised in the petition, the Committee resolved to commence an inquiry into the mandatory registration of children and young people under the *Community Protection (Offender Reporting) Act 2004*.

Evidence to this inquiry, and the overwhelming view of stakeholders, is that children should not be treated the same as an adult who sexually offends against children.³⁶

3.10 The Committee may decide to finalise or otherwise limit its enquiries into a petition in the following circumstances:

- If the Committee has not received a submission from the principal petitioner and the tabling Member.
- If the Committee considers that the issues raised in the petition have been or are being adequately dealt with by the relevant authority, including where there are appropriate appeal processes provided.
- If the issues raised in the petition will be or have been considered and/or debated by the Legislative Council.
- Where a petition's subject matter is, in substance, the same or substantially similar to a petition or petitions the Committee has already considered.
- Where the petition is the subject of a current commercial dispute or legal action.

3.11 Sometimes these circumstances can overlap. For instance, a petition that is substantially similar to a previous petition may make a request that is being dealt with by another authority.

3.12 Some of these circumstances are considered in greater detail below.

Criteria that may limit the consideration of petitions in other parliaments

3.13 Different parliaments apply their own criteria for tabling and enquiring into petitions. These are contained in standing orders and other rules governing the tabling of petitions.³⁷

3.14 Criteria includes:

- signature thresholds that must be met before a petition is considered;³⁸

³⁵ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 49, *Mechanisms for compensation for economic loss to farmers in Western Australia caused by contamination by genetically modified material*, 14 February 2019, p 2.

³⁶ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 52, *Punitive not protective: when the mandatory registration of young people is not based on risk*, 21 May 2020, p i.

³⁷ Both paper and e-petitions.

³⁸ Submission 7 from United Kingdom House of Commons, 7 January 2020, p 5.

- requiring reasonable³⁹ or moderate language⁴⁰ to eliminate offensive words and personal reflections;⁴¹ and
- not being subject to current legal proceedings or be substantially similar to a previous petition.⁴²

3.15 The Standing Orders do not contain all of the criteria imposed by other jurisdictions, such as the United Kingdom and Scottish Parliaments. This is illustrated by the following comparison:

Table 2. *Comparison of criteria located in Standing Orders or guidance material for the tabling of and inquiry into petitions between Western Australian Legislative Council, the Scottish Parliament and the United Kingdom House of Commons*⁴³

Substantive admissibility criteria	Western Australian Legislative Council	Scottish Parliament ⁴⁴	United Kingdom House of Commons ⁴⁵
Frivolous/vexatious	No	Yes	Yes
Substantially similar	No	Yes	Yes
<i>Sub judice</i>	No	Yes	Yes
Repetition	Yes	Yes	Yes
Reasonable language/adverse reflections	Yes	Yes	Yes
Parliament not appropriate body/failure to pursue other available avenues for redress	No	Yes	Yes

Source: Standing Orders and guidance material of the Western Australian Legislative Council, the Scottish Parliament and the United Kingdom House of Commons.

3.16 The Committee notes the different approaches taken by these jurisdictions. For example, the Legislative Council does not prescribe as many admissibility criteria in its Standing Orders or guidance material on its webpage. On the referral of a petition, the Committee has the role of making enquiries which may uncover details affecting the extent to which a petition will be considered, on a case by case basis.

³⁹ Western Australia, Legislative Council, Standing Orders of the Legislative Council, Standing Order 101(1)(d).

⁴⁰ Parliament of Australia, House of Representatives, Standing Order 204(c).

⁴¹ Parliament of Australia, *Petitions*. See: https://www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/Practice7/HTML/Chapter17/Petitions. Viewed 18 June 2020.

⁴² Scottish Parliament, *Getting involved: petitioning the Scottish Parliament*. See: [http://www.parliament.scot/S5_PublicPetitionsCommittee/General%20Documents/Petitions_leaflet_-_Aug_2019_\(web\).pdf](http://www.parliament.scot/S5_PublicPetitionsCommittee/General%20Documents/Petitions_leaflet_-_Aug_2019_(web).pdf). Viewed 24 June 2020.

⁴³ This covers admissibility criteria contained in Standing Orders as well as guidance documentation.

⁴⁴ Submission 13 from Scottish Parliament, 15 January 2020, p 2.

⁴⁵ United Kingdom Government and Parliament, *How petitions work, standards for petitions*. See <https://petition.parliament.uk/help>. Viewed 22 June 2020.

- 3.17 The operation of the e-petitions systems in the United Kingdom and Scottish parliaments involves a greater role for parliamentary staff in checking petitions against criteria set out in Standing Orders or guidance material before they are published and considered by their petitions committees.

Committee practice in how inquiries into petitions may be limited

- 3.18 The Committee, in its discretion, decides how detailed its enquiry into a petition will be. In the 40th Parliament, the Committee has adopted an informal, case by case approach. The circumstances that may limit the Committee's enquiries are not, currently, articulated in formal guidance material.⁴⁶
- 3.19 An example of the exercise of this discretion during the 40th Parliament concerned the Committee's consideration of various petitions opposing the fluoridation of public water supplies in different locations.⁴⁷
- 3.20 After obtaining a comprehensive Government response,⁴⁸ the Committee finalised subsequent petitions opposing fluoridation⁴⁹ without inviting submissions. The Committee was of the view that these petitions were substantially similar to previous petitions and, effectively, requested the Committee re-visit an issue it had already considered.
- 3.21 Grounds upon which the Committee may limit its enquiries are considered below with a view to assessing how these should be reflected in either the Standing Orders or Committee guidance.

Sub judice convention

- 3.22 The *sub judice* convention was articulated by the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations:

The privilege of freedom of speech in Parliament places a corresponding duty on Members to use the freedom responsibly. Part of this responsibility is to ensure that Parliament does not interfere with the work of the courts. This is the basis of the *sub judice* rule. Under the rule the Legislative Council generally abstains from discussing the merits of disputes about to be tried and decided in the courts of record.

The convention requires:

- a) an assessment of the risk of a particular parliamentary discussion or inquiry prejudicing proceedings before a court; and
- b) the danger of prejudice must be balanced against the benefit flowing from the right of the Houses and their committees to discuss and inquire into the matter.

Only when the risk outweighs the benefit does a House or committee decide whether to voluntarily forego its right to discuss and inquire. Note that it is not a rule – rather it is a convention that operates to ensure that Parliament's role as

⁴⁶ Hon Matthew Swinbourn MLC, Chair, Standing Committee on Environment and Public Affairs, transcript of evidence, 11 May 2020, Session Two, p 11.

⁴⁷ Petition 16—Oppose fluoridation chemicals to public water supply in Kununurra; Petition 23—Fluoridation of water in Port Hedland; Petition 23—Fluoridation of public water in WA.

⁴⁸ Hon Roger Cook MLA, Minister for Health, letter, 5 December 2017.

⁴⁹ Petition 45—Fluoridation of water in Yanchep; Petition 55—Fluoridation of Public Water Supplies Act 1966.

supreme inquisitor is respected but that the role is not carried out in a manner that may interfere with or prejudice matter before the courts.⁵⁰

3.23 Standing Order 52 encapsulates this convention. It provides a power to the President to prohibit referral in any motion, debate or question to any matter before any court of record if it appears there is a real or substantive danger of prejudice to the adjudication of the case.⁵¹ This is subject always 'to the right of the Council to debate any matter it deems appropriate.'⁵²

3.24 Prior to the most recent reform of the Standing Orders in 2011, Standing Order 133(c)(vii) provided:

A petition shall not:

Seek relief or a declaration in circumstances where the matter is justiciable and legal remedies available to the petitioner have not been exhausted.

3.25 The Legislative Council Guide to petitions, at the time, stated:

The petition **must not**:

Attempt to bypass the courts or tribunals (a matter that can be taken to court cannot be the subject of a petition until the court or tribunal process has been exhausted).

3.26 The previous Standing Order and guidance, which are wider in scope than the *sub judice* rule, were removed as part of the 2011 reforms. The Standing Committee on Procedure and Privileges stated the Standing Order 'was impractical to enforce'.⁵³

3.27 There was broad support from those who gave evidence to the Committee for a prohibition on petitions dealing with matters that are the subject of court proceedings. The House of Commons explained the rationale for excluding court proceedings:

The Commons has a self-denying ordinance that governs all its proceedings, which, in effect, debars it from debating issues that are live before the courts. I think that is a fairly common arrangement in many Parliaments. The e-petition system has a slightly different rule, which is that no court proceedings can be the subject of a petition. It is, in effect, doing the same thing. I think it is worth thinking through the reasons for that. The first reason is, of course, that it is for the courts to decide court cases, not for anyone else, and they should not be brought under any undue influence and no attempt should be made to look as if they are being brought under undue influence. But there is a separate issue too, which is that the separation between Parliament and the courts is a constitutional principle and it is best served by Parliament respecting it, as well as by the courts respecting it.⁵⁴

⁵⁰ Western Australia, Legislative Council, Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations, 13 November 2007, p 81.

⁵¹ Western Australia, Legislative Council, *Standing Orders of the Legislative Council*, Standing Order 52.

⁵² *ibid.*

⁵³ Western Australia, Legislative Council, Standing Committee on Procedure and Privileges, report 22, *Review of the Standing Orders, comparative table* 20 October 2001, p 47. See also Hon Barry House, transcript of evidence, 22 May 2020, p 6.

⁵⁴ Mark Hutton, Clerk of the Journals, House of Commons, transcript of evidence, 18 May 2020, p 7. See also Professor Cristina Leston-Bandeira, Professor of Politics, School of Politics and International Studies, University of Leeds, transcript of evidence, 11 May 2020, pp 7-8 and Republic of Ireland, answers to written questions, 6 June 2020, pp 10-11.

- 3.28 Professor Leston-Bandeira is of the view parliamentary and legal processes should be kept separate to avoid 'interference between the judicial and the political'.⁵⁵
- 3.29 It is often not possible to tell, on the face of a petition, whether the issues raised are the subject of a legal dispute. This may only subsequently become apparent following referral of the petition to the Committee.
- 3.30 It is also important to distinguish between petitions which seek a resolution to a current legal dispute before the courts and those that raise broader systemic issues arising out of past or current legal proceedings. The latter might quite properly become the focus of a Committee inquiry if legislative reform can correct the systemic issue.⁵⁶
- 3.31 The Committee is of the view petitions should not seek a resolution to any dispute that is the subject of current legal proceedings. It is inappropriate for the Legislative Council or the Committee to become involved in the particulars of a dispute which is before the courts. Such action may interfere with and prejudice the outcome of those proceedings. This is consistent with the *sub judice* rule contained in Standing Order 52 and can be reflected in an amendment to Standing Order 101.

FINDING 5

Evidence received by the Standing Committee on Environment and Public Affairs supports the view that petitions committees should not consider petitions containing matters which are *sub judice*.

RECOMMENDATION 1

Where it is apparent, on the face of a petition, that it is the subject of current legal proceedings, it should not be received by the Legislative Council.

RECOMMENDATION 2

If it becomes known a petition is the subject of current legal proceedings following its referral by the Legislative Council to the Standing Committee on Environment and Public Affairs, the Committee should not inquire into specific aspects of that petition unless it raises broader, systemic issues.

⁵⁵ Professor Cristina Leston-Bandeira, Professor of Politics, School of Politics and International Studies, University of Leeds, transcript of evidence, 11 May 2020, p 8. See also Submission 21 from Houses of the Oireachtas Service, 11 February 2020, p 8.

⁵⁶ Both inquiries into *Mechanisms for compensation for economic loss to farmers in Western Australia caused by contamination by genetically modified material* and *Punitive not protective: when the mandatory registration of young people is not based on risk* are examples of potential systemic issues the subject of legal proceedings.

RECOMMENDATION 3

The Legislative Council amend Standing Order 101 of the Standing Orders of the Legislative Council as follows (amendment of text in red):

101. Form and Contents of Petitions

(2) A petition shall not –

(g) seek relief in a dispute the subject of current legal proceedings.

Frivolous or vexatious petitions

- 3.32 Standing Order 113(2) provides that the Standing Committee on Procedure and Privileges may decide not to consider a submission from someone claiming to be adversely affected in reputation by reference in the House if it considers:
- that the subject of the submission is not sufficiently serious or the submission is frivolous, vexatious or offensive in character...
- 3.33 While the Standing Orders do not define frivolous or vexatious, evidence from other jurisdictions provide some guidance.
- 3.34 The Republic of Ireland gave the following definitions of frivolous and vexatious petitions:
- A frivolous petition is where the matter in question has no merit whatsoever, while a vexatious petition is made for the sole purpose of harassing or injuring another party, through or by bringing various petitions on different issues that are not based on facts or have no merit.⁵⁷
- 3.35 The Scottish Parliament described frivolous petitions as light-hearted in nature:
- I think the suggestion that we do not deal with frivolous petitions, for example, is something that was introduced quite a few years ago because you do occasionally—and I do stress “occasionally”—get petitions where it is a fairly lighthearted response to something that is happening in the media or a political statement, if you like, which is meant to not necessarily be serious.⁵⁸
- 3.36 Both the Scottish Parliament and the Republic of Ireland prohibit petitions regarded as frivolous and/or frivolous and vexatious.⁵⁹
- 3.37 Often it is obvious from the outset that a petition is frivolous or vexatious, such as light-hearted (or joke) petitions that cannot be taken seriously and are clearly a misuse of parliamentary time. Sometimes, though, a determination is not so straightforward, when a value judgement is required.
- 3.38 Historically, there have been very few petitions referred to the Committee that lack sincerity or are purely for the purposes of abusing the petitions system. This has also been the

⁵⁷ Republic of Ireland, answers to written questions, 6 June 2020, pp 12-13.

⁵⁸ Steve Farrell, Clerk Team Leader, Rural and Economy and Collectivity Committee, Scottish Parliament, transcript of evidence, 18 May 2020, p 8.

⁵⁹ Submission 21 from Republic of Ireland, 11 February 2020, p 14; Submission 13 from the Scottish Parliament, 15 January 2020, pp 3-4; Steve Farrell, Clerk Team Leader, Rural and Economy and Collectivity Committee, Scottish Parliament, transcript of evidence, 18 May 2020, p 8.

experience of other parliaments which gave evidence to the Committee.⁶⁰ One reason could be that Members would be unwilling to table such a petition.

- 3.39 The Committee is of the view any tabled petitions that may be regarded as frivolous or vexatious are better dealt with by the Committee on a case by case basis, once referred. This is especially the case given the subjective nature of the judgement that may be required by the Committee in deciding whether they can be defined in this way.

FINDING 6

A petition tabled in the Legislative Council that could be regarded as frivolous or vexatious continue to be considered by the Standing Committee on Environment and Public Affairs on a case by case basis.

Repetitious or substantially similar petitions

- 3.40 Repetitious or substantially similar petitions relate to the same or a very similar issue that has already been considered by the Parliament or the relevant petitions committee. They are inadmissible in some parliaments⁶¹ on this basis.
- 3.41 While a repetitious petition will be the same as a previous petition,⁶² deciding whether a petition is 'substantially similar' is often a matter of judgement. Some petitioners may even attempt to change the wording of a petition to avoid it being characterised in this way.⁶³
- 3.42 As discussed previously, the Committee has considered a number of petitions opposing fluoridation of water supplies in the 40th Parliament that were regarded as repetitious or substantially similar to a previous petition or petitions. The Committee has also considered petitions which requested an inquiry into the operations of various local governments which had been previously considered.
- 3.43 There may be circumstances where there are reasonable grounds to inquire into what appears on the face of it to be a repetitious or substantially similar petition. For example, a petition may identify a systemic issue of public concern that is not being dealt with by another authority or where the passage of time has changed the political landscape. The fact there were six petitions opposing genetically modified crops and supporting the compensation of farmers tabled in the 38th, 39th and 40th Parliaments was taken into account by the Committee in resolving to inquire into mechanisms for compensation.⁶⁴

⁶⁰ Steve Farrell, Clerk Team Leader, Rural and Economy and Collectivity Committee and Lynn Russell, Clerk to the Public Petitions Committee, Scottish Parliament, transcript of evidence, 18 May 2020, p 8; Submission 21 from Republic of Ireland, 11 February 2020, p 15.

⁶¹ Submission 13 from Scottish Parliament, 15 January 2020, p 2; Submission 21 from Republic of Ireland, 11 February 2020, p 14; Submission 16 from the South African Parliament, 15 January 2020, p 4 (Frequently Asked Questions document).

⁶² To be distinguished from duplicate petitions that are a second and subsequent tabling of the same petition. These are regularly accepted by the Legislative Council to enable the collection of additional signatures supporting the original petition.

⁶³ Steve Farrell, Clerk Team Leader, Rural and Economy and Collectivity Committee, Scottish Parliament, transcript of evidence, 18 May 2020, p 9. See also Hon Matthew Swinbourn MLC, Chair, Standing Committee on Environment and Public Affairs, transcript of evidence, 11 May 2020, p 9.

⁶⁴ Petition 11—W.A. as a Genetically Modified (GM) Free Zone, 13 November 2008; Petition 22—To Maintain W.A. as a Genetically Modified (GM) Free Zone, 18 March 2009; Petition 118—Genetically Modified Canola – Inquiry Request, 21 June 2011; Petition 69—Genetically Modified Crops Free Areas Act 2003, 20 November 2014; Petition 138—Compensate GM-Free farmers, 16 November 2016; Petition 10—Compensation for non-GM farmers, 13 June 2017.

- 3.44 For this reason, the Committee supports a continuing degree of flexibility in assessing the extent to which the Committee will consider and inquire into repetitious or substantially similar petitions.

FINDING 7

Any petitions tabled in the Legislative Council that may be regarded as repetitious or substantially similar to a previous petition or petitions continue to be considered by the Standing Committee on Environment and Public Affairs on a case by case basis.

Alternative avenues for addressing issues

- 3.45 Numerous bodies and authorities oversee established decision making processes and investigate complaints relating to issues raised by some petitions. These include the Parliamentary Commissioner for Administrative Investigations (Ombudsman), the Environmental Protection Authority (EPA) and various planning and appeal authorities.
- 3.46 In many cases, the referral of an issue to these bodies and authorities will be the most effective option in having it considered or resolved.
- 3.47 Furthermore, it is important to note that:
- the Parliament and the Committee may have minimal influence on, or oversight of these decision making processes; and
 - parliamentary time should not be taken up duplicating the work of established oversight and appeal bodies.
- 3.48 Accordingly, it is not unreasonable to expect that petitioners have made an attempt to avail themselves of these existing avenues for resolving disputes before petitioning Parliament.
- 3.49 Once these avenues have been pursued and exhausted, Parliament may be able to consider and, if appropriate, address the relevant issues if they are within its power to do so, such as through legislative action or reform, or undertaking enquiries by committees.
- 3.50 Evidence was provided to the Committee that in some parliaments a petition will not be admissible if it concerns an individual complaint that comes within the jurisdiction of, and has been subject to a decision of, another body.
- 3.51 In the Republic of Ireland, a petition is inadmissible if it:
- require[s] the Committee to consider an individual complaint which has been the subject of a decision by the Ombudsman, by another Ombudsman, or by a regulatory public body or a body established for the purpose of redress.⁶⁵
- 3.52 Guidance issued by the Scottish Parliament (considered below) states:

What can you petition the Parliament about?

Basically, petitions to the Parliament must:

- be about something that is within the powers of the Scottish Parliament
- be about an issue of national policy or practice

⁶⁵ Submission 21 from Republic of Ireland, 11 February 2020, pp 8, 14, 20.

- not ask the Scottish Parliament to become involved in a local or individual matter, or to intervene in a decision that should be taken by another organisation.⁶⁶

Petitions should not:

Seek an adjudication or decision on an individual or commercial matter.

Seek to involve the Public Petitions Committee in a decision that is more properly the domain of another body (for example complaints, court appeals, planning appeals, local authority expenditure decisions etc.).⁶⁷

- 3.53 The Joint Committee on Public Petitions of the Republic of Ireland has a very specific directive to ensure all available avenues to resolve the issue had been used:

In relation to admissible petitions, where a petition deals' with

- (a) local or regional matters
- (b) matters which are more appropriate to a regulatory public body or a body established for the purpose of redress

the Committee shall establish that all available avenues of appeal or redress have been utilised by the petitioner prior to the Committee considering the matter.⁶⁸

- 3.54 Both the Republic of South Africa and the Republic of Ireland require the petitioner to provide proof they have reasonably exhausted other available avenues before their petition committees will consider their petition.⁶⁹

- 3.55 The Petitions Committee of the United Kingdom House of Commons will assist petitioners in directing them to where their complaint can more appropriately be dealt with. This can occur before the acceptance of the petition by the committee or after it has been considered.⁷⁰

- 3.56 The Committee has, in previous Parliaments, raised the issue of petitioners not having pursued all other avenues available for redress and petitions being a matter of last resort.

- 3.57 In a submission to the then President as part of the Standing Orders Review, the then Hon Brian Ellis MLC stated:

During its consideration of the prayer for relief petition referred to it by the President on 17 November 2009, the Committee found that the petitioner had not pursued all other avenues available for redress before submitting the prayer for relief to the Legislative Council. This issue has also arisen in the past in relation to petitions generally. The Committee is concerned that such practise draws the

⁶⁶ Scottish Parliament, *Getting involved: petitioning the Scottish Parliament*, p 1. See: [http://www.parliament.scot/S5_PublicPetitionsCommittee/General%20Documents/Petitions_leaflet_-_Aug_2019_\(web\).pdf](http://www.parliament.scot/S5_PublicPetitionsCommittee/General%20Documents/Petitions_leaflet_-_Aug_2019_(web).pdf). Viewed 24 June 2020. See also Lynn Russell, Clerk to the Public Petitions Committee, Scottish Parliament, transcript of evidence, 18 May 2020, p 10.

⁶⁷ Scottish Parliament, *Getting involved: petitioning the Scottish Parliament*, p 4. See: [http://www.parliament.scot/S5_PublicPetitionsCommittee/General%20Documents/Petitions_leaflet_-_Aug_2019_\(web\).pdf](http://www.parliament.scot/S5_PublicPetitionsCommittee/General%20Documents/Petitions_leaflet_-_Aug_2019_(web).pdf). Viewed 24 June 2020. See also Hon Zukiswa Ncitha, Chairperson, Select Committee on Petitions and Executive Undertakings, Parliament of South Africa, transcript of evidence, 11 May 2020, p 7 and Republic of Ireland, answers to written questions, pp 1 and 9.

⁶⁸ Submission 21 from Republic of Ireland, 11 February 2020, p 14.

⁶⁹ Hon Zukiswa Ncitha, Chairperson, Select Committee on Petitions and Executive Undertakings, Parliament of South Africa, transcript of evidence, 11 May 2020, p 7 and Republic of Ireland, answers to written questions, 6 June 2020, pp 13-14.

⁷⁰ Catherine McKinnell, Chair, Petitions Committee and Mark Hutton, Clerk of the Journals, United Kingdom House of Commons, transcript of evidence, 18 May 2020, p 6.

Committee's resources away from consideration of petitions and issues to which the Committee's attention would be better directed.⁷¹

3.58 In its 19th Report, the Committee stated:

Petitions should only be employed as a last resort after all other avenues for redress have been exhausted.⁷²

3.59 In the 40th Parliament, a number of petitions have raised issues that could have been dealt with by established decision-making processes. These included petitions objecting to the actions of local governments and opposing planning schemes.⁷³ The Committee considered these petitions on a case by case basis and did not require the petitioner to provide details of any previous action taken to have their issues resolved.

The Ombudsman

3.60 The Committee examined the role of the Ombudsman in investigating complaints against public authorities.⁷⁴ This provided an instructive example of an alternative avenue for addressing some issues raised in petitions. It also assisted the Committee in considering whether it should place greater weight on the fact that a petitioner has or has not pursued alternative avenues.

3.61 The Ombudsman's role is to investigate complaints relating to matters of administration, namely, 'the decision-making practices and actions of public authorities in providing services to the public'.⁷⁵ Accordingly, the Ombudsman's remit will not cover petitions raising matters about private individuals or businesses.

3.62 The Committee previously consulted regularly with the Ombudsman to ascertain whether matters raised in petitions had been referred to that office as complaints:

Certain issues or matters raised in a petition may come under the Ombudsman's jurisdiction as set out in the *Parliamentary Commissioner Act 1971*.

The Committee regularly liaises with the Ombudsman's office in recognition of the fact that a matter raised by a petition may have been previously considered or is currently being considered by that office.⁷⁶

3.63 The Clerk of the Legislative Council advised the Committee of an agreement in 2002 between the then Ombudsman and Clerk under which procedures were developed to ensure effective communications between the Ombudsman and the Legislative Council Committee Office to avoid the risk of:

- the duplication of resources associated with carrying out inquiries into the same issue; and
- the Ombudsman and a parliamentary committee making conflicting findings arising from an investigation into the same issue.

⁷¹ Hon Brian Ellis, Chairman, Standing Committee on Environment and Public Affairs, Letter, 3 March 2010.

⁷² Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 19, *Petition—Prayer for Relief*, Report 19, 1 April 2010, p 2.

⁷³ For example, Petition 146—Subiaco Approved Local Planning Scheme No. 5.

⁷⁴ *Parliamentary Commissioner Act 1971*. See also Ombudsman Western Australia, *The role of the Ombudsman*. See: http://www.ombudsman.wa.gov.au/About_Us/Role.htm. Viewed 24 June 2020.

⁷⁵ Ombudsman Western Australia, *What you can complain about*. See: <http://www.ombudsman.wa.gov.au/Complaints/What.htm>. Viewed 25 June 2020.

⁷⁶ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 10, *Overview of petitions*, 27 September 2007, p 3.

- 3.64 As part of this process, the Committee periodically sent the Ombudsman a detailed list identifying petitions that:
- have been tabled since the previous list was sent to the Ombudsman; and
 - the Committee believes may fall within the Ombudsman's jurisdiction.
- 3.65 The Committee, when inviting a submission from the principal petitioner, requested they state whether or not they had taken their complaint to the Ombudsman.
- 3.66 In his evidence, Hon Barry House recounted how consultation could assist in ascertaining whether the Ombudsman was investigating an issue before the Parliament:
- I recall when officers of the Parliament used to have, and probably still do, a good informal relationship, if you like, with officers of bodies like the Ombudsman or like the Inspector of Custodial Services, so that officers could liaise with officers there, and without divulging any details of anything, they could get an indication of, "Yes, this issue has been lodged with the Ombudsman" or, "No, it hasn't." I do not think that would be breaking any serious confidentiality. It is just, "Yes, it has been raised with us" or, "No, it hasn't." That way, you might be able to short-circuit a lot of these issues where people's first stop should have been the Ombudsman, keeping in mind the Ombudsman is not a decision-making body either; they can only make recommendations. Therefore, your committee will just know then how far down the track this query, question or complaint has gone.⁷⁷
- 3.67 The Joint Committee on Public Petitions of the Republic of Ireland consults with the Ombudsman:
- to establish whether they have received a complaint with regards to the subject of the petition, if necessary.⁷⁸
- 3.68 That committee also has the power to refer a petition to the Ombudsman.⁷⁹
- 3.69 In recent years there has not been regular communication between the Committee and the Ombudsman nor a consistent Committee practice of requesting the principal petitioner to state in their submission whether or not they have taken their complaint to the Ombudsman.
- 3.70 The Committee is aware individual ombudsmen may interpret confidentiality provisions in the *Parliamentary Commissioner Act 1971* in a way that may affect the type of information they are prepared to share with the Committee without the issue of a summons.⁸⁰
- 3.71 The Standing Committee on Public Administration has previously expressed the following views on summoning documents from the Ombudsman:
- The Ombudsman considered, on advice from the State Solicitor's Office, that section 23 of the *Parliamentary Commissioner Act 1971* (WA) (PCA) prevented him from disclosing information the subject of the Committee's request on the basis that:
- a request from the Committee is not sufficient to override the PCA; and

⁷⁷ Hon Barry House, transcript of evidence, 18 May 2020, p 3.

⁷⁸ Republic of Ireland, Answers to written questions, 6 June 2020, p 13.

⁷⁹ Submission 21 from Republic of Ireland, 11 February 2020, p 11; Republic of Ireland, Answers to written questions, 6 June 2020, p 13.

⁸⁰ *Parliamentary Commissioner Act 1971* s 23.

- only the exercise of the Committee's powers under section 4 of the Parliamentary Privileges Act 1891 (WA) by summoning the documents was sufficient to override the PCA.

The Committee considers that it should not be necessary to resort to its power to summons documents when seeking to obtain the type of documentation requested from the Ombudsman. This is on the basis that:

- the power to summons should only be used as a last resort and not as a standard process to obtain information; and
- a parliamentary committee should not be unnecessarily delayed in carrying out its functions under its terms of reference when parliamentary privilege clearly overrides restrictions on disclosure in other legislation.⁸¹

3.72 In a hearing before the Committee, these issues were explored with the Ombudsman to ascertain whether regular communication can be reinitiated to assist the Committee in its consideration of petitions and avoid any potential duplication of investigations. In his evidence, the Ombudsman expressed a willingness to work with the Committee by exchanging information on investigations undertaken on issues raised in petitions:

The CHAIR: Jumping ahead a little bit to the arrangements that may have been in place before your time, back in 2002, and what your views are about that kind of arrangement; you know, to have that understanding that existed essentially with the Clerk. I presume you have got a copy of the correspondence that you wrote to the Clerk and the Clerk of the day wrote to you. Is that a fair reflection? I do not want to put words into your mouth, obviously, but maybe the committee could look to putting in place an arrangement of that kind.

Mr FIELD: I would be unambiguously supportive of such an arrangement. To me, it is an honour and a privilege, to be honest, for me to have that arrangement with this committee. If I can serve you, but I am also serving the public interest. I am serving this Parliament more generally and the citizens of the state if I can assist you with the most efficient way of examining matters that come to you. It is unsurprising that there will be petitions that come here that could be resolved by the office of the Ombudsman. We are delighted to do so. We would be delighted to inform you of the outcome of those complaints. As I say, such a mechanism would be one that I would support without hesitation.⁸²

3.73 On the question of the need for the Committee to summons documents, the Ombudsman stated:

Mr FIELD: I do not foresee at this stage any information that this committee could request that would require a summons to my institution.⁸³

FINDING 8

Regular communication between the Standing Committee on Environment and Public Affairs and the Parliamentary Commissioner for Administrative Investigations (Ombudsman) may assist the consideration of petitions and avoid duplication of investigations.

⁸¹ See Western Australia, Legislative Council, Standing Committee on Public Administration, report 15, *Omnibus Report – Activity During 38th Parliament*, 6 November 2012, pp 39-40.

⁸² Chris Field, Western Australian Ombudsman, transcript of evidence, 12 August 2020, p 8.

⁸³ *ibid*, p 14.

RECOMMENDATION 4

The Standing Committee on Environment and Public Affairs in the 41st Parliament establish a working arrangement with the Parliamentary Commissioner for Administrative Investigations (Ombudsman) for the exchange of information on issues raised in petitions.

- 3.74 The Committee can be assisted in its consideration of petitions by having more information available about whether the principal petitioner has pursued alternative avenues to have issues resolved. Greater weight should be placed on whether this has occurred.

FINDING 9

Where a petition tabled in the Legislative Council has raised issues that could be dealt with by other decision making processes, this has been taken into account by the Standing Committee on Environment and Public Affairs in its consideration of that petition, on a case by case basis.

RECOMMENDATION 5

If a petition tabled in the Legislative Council raises issues that could be dealt with by other decision making processes, this should be taken into account by the Standing Committee on Environment and Public Affairs in its consideration of that petition, on a case by case basis.

Reasons for closing petitions

- 3.75 When a petition is finalised, the Committee's usual practice is to advise the principal petitioner and tabling Member that it has concluded its enquiries and provide a summary of the response(s) received, without providing a specific reason for closing the petition.⁸⁴ It is implicit, arguably, the Committee is satisfied that the response provides an explanation for the decision or action and that, in its view, no further action is warranted. Notwithstanding this, it is not always apparent to the principal petitioner and tabling Member that the Committee is satisfied with the responses received and the Committee appreciates there is a need to ensure there is a clear understanding of the rationale behind the decision to finalise a petition.
- 3.76 These are some examples of further explanations that have been provided by the Committee:
- 'The Committee considered that the subject matter of the petition appears to relate to a commercial dispute which does not warrant the Committee conducting further enquiries.'⁸⁵
 - 'The Committee considers that further enquiries are not warranted, noting in particular that:

Planning decisions are made by reference to an established decision making process and the Committee has minimal influence over these processes.'

⁸⁴ This excludes instances such as where the issue is currently before the Legislative Council, where the Standing Committee on Environment and Public Affairs has advised it would be inappropriate for it to consider the matter further.

⁸⁵ Petition 137—Fremantle Markets.

The Western Australian Planning System is undergoing reform and the Minister for Planning has released an Action Plan regarding reform which is available at: <https://www.dplh.wa.gov.au/action-plan>.⁸⁶

- 'The Committee notes that the EPA is currently conducting a review of the project. The Committee considers that it is appropriate for the EPA to complete its review and that it would be premature for the Committee to consider the petition further in these circumstances.'⁸⁷
- 'The Committee considers it is appropriate for the EPA to finalise its Public Environmental Review given its subject matter is similar to that of the petition, and that it would be premature for the Committee to consider this petition further in these circumstances.'⁸⁸

3.77 A number of submitters and witnesses who provided evidence to the Committee support giving reasons for closing a petition. The Scottish Parliament regards it as assisting petitioners understanding the process:

Rather than just having petitions closed and no background given to that, it is very important that the petitioner understands the way in which the committee has taken forward its consideration of issues. That is documented, of course, by all the various submissions that we receive, so the petitioner can clearly see that. Ultimately, the committee has to make a decision based on that evidence, and when it does, the committee is very clear of the reasoning why the petition has been closed.⁸⁹

3.78 The Scottish Parliament pointed out that providing reasons for the closure of a petition can avoid frustration with the petition process:

That also guards against, I think, perhaps, a petitioner being further frustrated and coming back with a further petition later if they can clearly see the reasons behind a petition closure and that that is clearly justified.⁹⁰

3.79 The South African Parliament regards the giving of reasons as critical in light of the decrease in public trust in parliaments:

You will probably note over a period of time that the trust in Parliaments has decreased in a number of countries. There is a view that Parliament does not necessarily do its job. I think that element of giving feedback, giving reasons, explaining the committee's decision is critical to try and reverse that particular view of Parliament just being a rubber stamp.⁹¹

3.80 Unlike a court, tribunal, panel or other judicial or quasi-judicial body, the Committee's inquiries into petitions are proceedings in Parliament and do not constitute decisions of an administrative or judicial character. It would not therefore be appropriate for the Committee to provide the type of reasons that are given by those bodies for the closing of petitions.

⁸⁶ Petition 146—Subiaco Approved Local Planning Scheme No 5.

⁸⁷ Petition 134—Southern Section of the Bunbury Outer Ring Road.

⁸⁸ Petition 123 – Southern Forest Irrigation Scheme.

⁸⁹ Steve Farrell, Clerk Team Leader, Rural and Economy and Collectivity Committee, Scottish Parliament, transcript of evidence, 18 May 2020, p 12.

⁹⁰ *ibid.* See also House of Commons, answer to question on notice asked at hearing held 18 May 2020, dated 1 June 2020, p 1.

⁹¹ Ressida Khatoon Begg, Division Manager, Core Business Support, South African Parliament, transcript of evidence, 11 May 2020, pp 3-4.

- 3.81 However, the Committee recognises the importance of the petitions process being as open and transparent as possible and that, accordingly, petitioners should be provided with sufficient information to understand the reason why a particular decision on a petition was made.

FINDING 10

Providing reasons for the finalisation of petitions in appropriate circumstances can assist petitioners in understanding the rationale for decisions taken on petitions.

RECOMMENDATION 6

The Standing Committee on Environment and Public Affairs should, as far as reasonably practicable and where appropriate, provide the principal petitioner and tabling Member with sufficient information to understand the reason why the Committee has chosen to finalise and close a petition.

Guidance on the petitions process

- 3.82 Guidance on the petitions process in the Legislative Council appears on the Parliament's website. The section dedicated to the role of the Committee explains:
- The Committee reviews petitions to help provide a forum for public discussion.
 - The steps taken by the Committee in its review of petitions:
 - A short submission is usually requested from the principal petitioner and tabling Member
 - Further investigations may be conducted, such as writing to other stakeholders
 - Information is reviewed and a decision taken on options moving forward, such as holding hearings, visiting sites and commencing a formal inquiry
 - Investigations may be followed by the tabling of a report
 - The Committee will always advise the principal petitioner and tabling Member of the outcome of its investigations.
- 3.83 However, the website does not include information on the various factors or circumstances that may limit the Committee's inquiries. It also does not explicitly state that the outcome that can be expected from most petitions is an explanation about the decisions or actions of the Government or related authority.
- 3.84 The Committee does not currently issue any guidance to principal petitioners once a petition has been referred by the Legislative Council beyond that which appears in letters to the principal petitioner and tabling Member inviting a submission.⁹² Information on the Committee's processes is limited to that which appears on the website as well as in its overview of petitions reports.⁹³
- 3.85 Examples of guidance issued by other petitions committees is instructive. An excellent example is the Scottish Parliament's plain English guide, 'Getting involved: petitioning the Scottish Parliament', which contains an easy to understand description of how to lodge a

⁹² The purpose of the submission, the maximum length of two pages and the timeframe of 30 days to make a submission.

⁹³ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 48, *Overview of petitions 16 May 2017 to 30 June 2018*, 22 November 2018, pp i and 1.

petition.⁹⁴ Significantly, it clearly sets out restrictions on what petitions can address, including seeking to involve the committee ‘in a decision that is more properly the domain of another body’⁹⁵ (see Appendix 2).

- 3.86 It is open to the Committee to communicate to petitioners what they can expect from the petitions process so they are aware of potential outcomes at the earliest stage possible. Chris Angus articulated this approach in his evidence:

In my view, a Petitions Committee and Secretariat should be proactive at the beginning of the petitions process, making clear what a petitioner is guaranteed to receive, what may occur if the matter goes to the Minister or Committee hearing for consideration, and, equally importantly, clarify the expected outcomes of using this system. As part of this interaction, a petitioner must be informed about what is outside the scope of the petitions process.⁹⁶

- 3.87 The Committee is of the view that its first communication with the principal petitioner (the letter inviting them to make a submission) is the most appropriate time to provide guidance on its processes. This will assist in addressing the expectation gap outlined previously.
- 3.88 Before the end of the 40th Parliament, the Committee will develop guidance that gives clear information to petitioners on what they can expect from the tabling of their petition, which will be provided to the Committee in the 41st Parliament for its consideration.

FINDING 11

Providing guidance to petitioners on the petitions process enables them to better understand this process and what outcomes they can expect from the tabling of their petition.

Reporting on petitions

- 3.89 The Committee has examined the frequency of its reporting to Parliament on petitions and whether this should change to more regular reporting within set timeframes.
- 3.90 From June 1994 a report providing an overview of petitions considered by the Committee and its predecessors has been tabled in the Legislative Council on a periodic basis.⁹⁷ These reports have, since September 2000, followed a similar format, including a summary of the Committee’s petitions function; the process followed by the Committee and an overview of each petition considered in the relevant period.⁹⁸
- 3.91 The number of reports tabled in each Parliament and the periods they cover has varied considerably since the 34th Parliament, as demonstrated by the following graph:

⁹⁴ Scottish Parliament, *Getting involved: petitioning the Scottish Parliament*, p 1. See: [http://www.parliament.scot/S5_PublicPetitionsCommittee/General%20Documents/Petitions_leaflet_-_Aug_2019_\(web\).pdf](http://www.parliament.scot/S5_PublicPetitionsCommittee/General%20Documents/Petitions_leaflet_-_Aug_2019_(web).pdf). Viewed 26 June 2020.

⁹⁵ *ibid*, p 4.

⁹⁶ Chris Angus, Research Officer, Parliamentary Research Service, Parliament of New South Wales, answers to written questions, 25 May 2020, p 3.

⁹⁷ Western Australia, Legislative Council, Standing Committee on Constitutional Affairs and Statutes Revision, report 8, *Overview of petitions: June 1993–March 1994*, 26 June 1994.

⁹⁸ See Western Australia, Legislative Council, Standing Committee on Constitutional Affairs, report 56, *Overview of Petitions August 1999–August 2000*, 7 September 2000. Some petitions committees in other parliaments are required to report to parliament, while others are not, see Submission 21 from Republic of Ireland, 11 February 2020, p 19 and Steve Farrell, Clerk Team Leader, Rural and Economy and Collectivity Committee, Scottish Parliament, transcript of evidence, 18 May 2020, p 12.

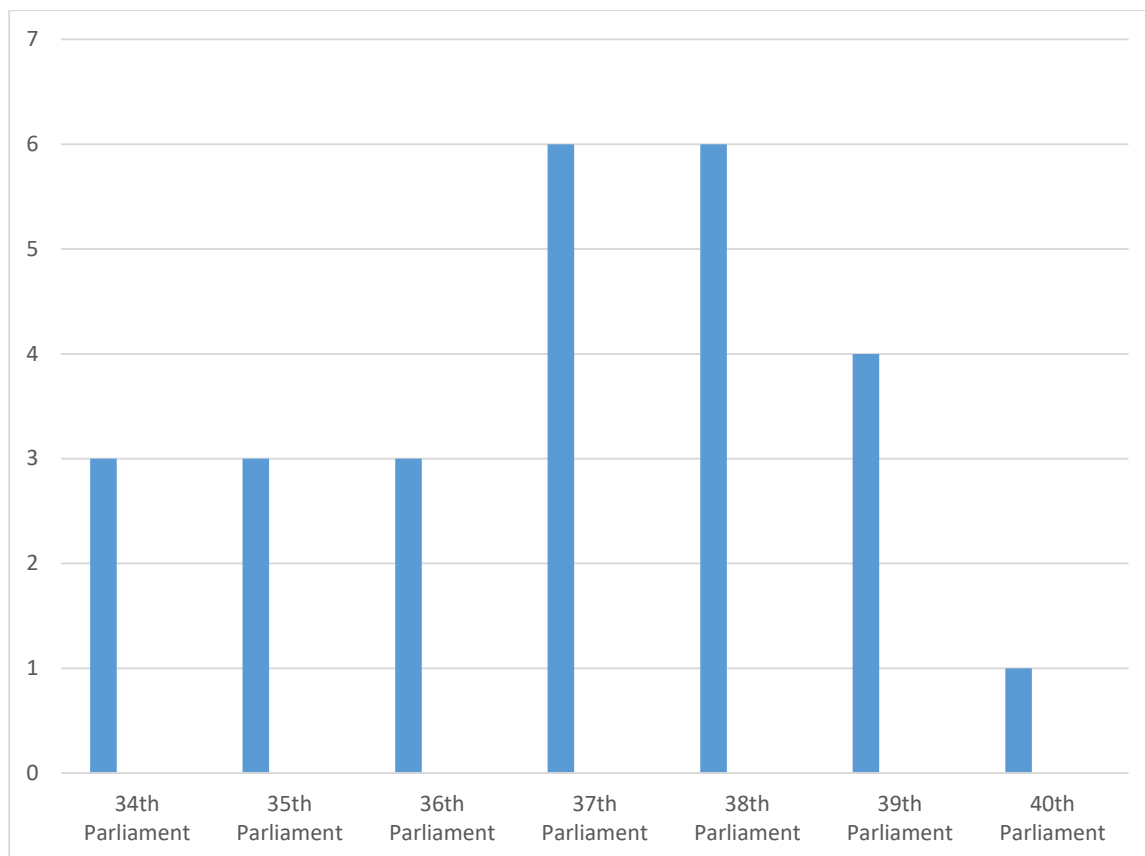


Figure 1. *Number of overview of petitions reports tabled over time*⁹⁹

Source: Standing Committee on Environment and Public Affairs

3.92 The Committee has considered the following options for reporting to Parliament on petitions:

- Retaining the current practice of the Committee determining the frequency of reporting, as its workload permits.
- Making a Sessional Resolution requiring regular reporting.
- Recommending its Terms of Reference require the Committee table an overview of petitions report within regular timeframes.

3.93 The Committee recognises there may be operational reasons affecting the frequency of reporting on petitions to Parliament, including workload. A flexible approach to reporting takes this into account. However, regular reporting, within a consistent timeframe, gives Parliament a timelier update on the Committee's work and provides more frequent opportunity for debate on petitions.¹⁰⁰

3.94 The Committee has therefore concluded that the best method for achieving this is by its Terms of Reference requiring the Committee table a report in Parliament before the Legislative Council rises for its winter and summer recesses. This will ensure the Parliament receives an update on the Committee's work around every six months.

⁹⁹ Data for the 40th Parliament, the term of which is incomplete as at the date of tabling of this report, covers the overview of petitions reports tabled on 22 November 2018 and 20 August 2020.

¹⁰⁰ While no debate is allowed on presentation of a petition to the Legislative Council except on a motion that it not be received, other opportunities for debate include the time set aside for the consideration of Committee reports: *Legislative Council Standing Orders* 102(4) and 21 respectively.

FINDING 12

Reporting to the Legislative Council on petitions considered by the Standing Committee on Environment and Public Affairs on a regular, consistent basis enables the Legislative Council to receive updates in a timely manner and provides more frequent opportunities to debate the subject matter of petitions.

RECOMMENDATION 7

The Terms of Reference of the Standing Committee on Environment and Public Affairs require the Committee to table a biannual report containing an overview of petitions before the Legislative Council rises for its winter and summer recess.

'Public Affairs' or 'Petitions'

- 3.95 Despite the Committee and its predecessor, the Standing Committee on Constitutional Affairs, having had the responsibility for inquiring into petitions since 1991, 'Petitions' has never formed part of the Committee's name. This has the potential to cause confusion about the Committee's core function of considering petitions.
- 3.96 It is unclear why 'Public Affairs' and not 'Petitions' was included when its current name was created in 2001. 'Public Affairs' appears to refer to any issues raised in petitions rather than conveying any wider meaning. For this reason, the term would be superfluous should 'Petitions' form part of the Committee's name.
- 3.97 Furthermore, 'Public Affairs', as a stand-alone term, unconnected to petitions, is broad and imprecise and runs the potential risk of causing confusion, including overlapping with the functions of other committees and raising questions about the scope of the Committee's functions.
- 3.98 Interestingly, amongst the jurisdictions considered during this inquiry, Western Australia is the only one with a petitions committee whose name does not include 'Petitions'.¹⁰¹
- 3.99 The Committee received evidence from Hon Barry House and Professor Leston-Bandeira in favour of the Committee's name changing to include petitions.¹⁰²
- 3.100 Professor Leston-Bandeira advised:

From having a quick look at the processes online and from what I know of other Parliaments, I would say that one of the things that would help would be to change the name of the committee so that people understand better that this committee deals with petitions, because it is not necessarily that clear for people from outside that this is the petitions committee.¹⁰³

¹⁰¹ For instance, the committees tasked with considering petitions in the Scottish, Welsh, United Kingdom, South African, European Union and Republic of Ireland legislatures all have 'petitions' as part of their name.

¹⁰² Hon Barry House, transcript of evidence, 18 May 2020, p 2; Professor Cristina Leston-Bandeira, Professor of Politics, School of Politics and International Studies, University of Leeds, transcript of evidence, 11 May 2020, p 14.

¹⁰³ Professor Cristina Leston-Bandeira, Professor of Politics, School of Politics and International Studies, University of Leeds, transcript of evidence, 11 May 2020, p 14.

- 3.101 The Committee notes there have been at least two recommendations made to the Legislative Council to establish a petitions committee with the sole function of inquiring into and reporting on petitions, which have not been taken up.¹⁰⁴
- 3.102 In its 14th Report in the Second Session of the 36th Parliament, the Committee recommended that 'in the next Parliament a discrete petitions committee be established.'¹⁰⁵ The basis for that recommendation was the heavy workload experienced by that committee, which it regarded as:
- a major constraint to its ability to inquire into and report on some of the matters that have come before it, to the extent that it would have liked.¹⁰⁶
- 3.103 The Cash Report subsequently made the same recommendation.¹⁰⁷
- 3.104 To assist in clarifying its role, the Committee considers that 'Petitions' should form part of its name.

RECOMMENDATION 8

The name of the Standing Committee on Environment and Public Affairs be changed by including 'Petitions' and deleting 'Public Affairs'.

'Inquire' vs 'consider'

- 3.105 Clause 2.3(c) of the Committee's Terms of Reference provides that:
- The functions of the Committee are to inquire into and report on –
- ...
- (c) petitions.
- 3.106 'Inquire' may be interpreted to mean conducting an inquiry, receiving evidence and producing a report and 'consider' may be a more appropriate term to describe the approach adopted by a petitions committee. The Chair of the Petitions Committee of the United Kingdom House of Commons stated:
- I think use of "consider" is appropriate for what we do with our processes, and it does leave the outcome of that consideration very much open to what we feel is most appropriate. For us, we use "inquiry" very specifically in the sense that we will take evidence and generally produce a report at the end of it. Generally, I think that is how people would interpret "inquiry" or "inquire" from our Parliament, particularly select committee, and also government. Where they say they are having an inquiry, you would generally expect some output from that in a formal written report. There is experience where, for example, the government has said it is going to inquire into something and that there is dissatisfaction where there is

¹⁰⁴ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 14, *Sessional report: an overview of petitions and inquiries—Second Session of the Thirty Sixth Parliament (August 2002 to November 2004)*, 19 November 2004, p 95.

¹⁰⁵ *ibid.*

¹⁰⁶ *ibid.*

¹⁰⁷ Western Australia, Legislative Council, *Reflections on the Legislative Council Committee System and its operations during the Thirty-Sixth Parliament: discussions with the Chairs and Deputy Chairs of parliamentary committees*, 19 May 2005, p 7.

not a formal written report at the end of that, even though it was not necessarily promised. I think we are careful to use “consider” rather than “inquire”.¹⁰⁸

- 3.107 Hon Barry House shared the view that the use of the word ‘inquire’ may give an impression at odds with the Committee’s approach:

I can appreciate that some people may read those words and think there is going to be an automatic major inquiry into their issue. That needs to be explained very clearly that you have got a staged approach and you will go to a major inquiry if, and only if, the issue is serious enough, or you judge it to be serious enough, or it is not dealt with in any other sphere. I think that is a consideration the committee should take, too. But change the word to “consider”, if you wish, to clarify your role a bit better, but you should also retain the option of going to a major inquiry if you feel it necessary.¹⁰⁹

- 3.108 The Scottish Parliament supports explaining the distinction between consideration and an inquiry, though questioned whether the choice of term would make a difference in light of the high expectations of the outcomes from petitions:

We would not ever want that to be confused or a raised expectation for the petitioner, so consideration is a really good, consistent and clear way of trying to explain why that is different for us from an inquiry.¹¹⁰

I am not entirely sure that the language really matters that much because there will always be that expectation that something big will happen with a petition ... there is a debate as to whether or not that would make a difference to a petitioner on the street, but we need to be clear in our terminology.¹¹¹

- 3.109 Some petitioners expect the Committee to conduct a full inquiry into their petition, undertaking a detailed examination of the issues and table a report. However, the Committee may consider that this is not always necessary or appropriate. It is also not practical for the Committee to undertake a formal inquiry into every petition.
- 3.110 The Committee is of the view its petitions function should be described in its Terms of Reference to reflect a staged approach of considering all petitions and inquiring into some in more detail when appropriate. The current wording in clause 2.3(c) of its Terms of Reference risks unrealistically raising the expectations of petitioners.

FINDING 13

Clause 2.3(c) of the Terms of Reference of the Standing Committee on the Environment and Public Affairs is potentially misleading given the Committee’s staged approach to considering petitions.

¹⁰⁸ Catherine McKinnell, Chair, Petitions Committee, United Kingdom House of Commons, transcript of evidence, 18 May 2020, p 10.

¹⁰⁹ Hon Barry House, transcript of evidence, 18 May 2020, p 4.

¹¹⁰ Lynn Russell, Clerk to the Public Petitions Committee, Scottish Parliament, transcript of evidence, 18 May 2020, p 7.

¹¹¹ *ibid.*

RECOMMENDATION 9

The Terms of Reference of the Standing Committee on Environment and Public Affairs be amended as follows (amendment of text in red):

2.3 The functions of the Committee are to **consider and, if deemed appropriate,** inquire into and report on

–

(c) petitions.

Other matters considered

3.111 The following further aspects of the Committee's petitions process was examined during this inquiry.

Minimum signature threshold

3.112 Setting a minimum signature threshold is one method for managing the number of petitions accepted by a parliament as well as actions that can be taken.

3.113 Minimum signature thresholds vary across jurisdictions. For a petition to be accepted, some parliaments, including the Parliament of Western Australia, require a petition to contain at least one signature.¹¹² Others require three¹¹³ or five signatures.¹¹⁴ In the United Kingdom, for a petition to be eligible for a response from the Government, the threshold can range from one to 10 000 signatures and 100 000 signatures for debating a petition in Parliament.¹¹⁵

3.114 In the Australian Capital Territory, a petition must contain at least 500 signatures to be referred from the Legislative Assembly to the relevant general purpose standing committee.¹¹⁶

3.115 The rationale behind the setting of signature thresholds for petitions is to ensure that there is a reasonable level of public support to justify their consideration, given limited parliamentary time.

3.116 The Committee is of the view that the validity and importance of a matter raised in a petition, as well as its consideration by the Committee, should not be determined by the number of signatures. A good example was the Committee's inquiry into mandatory registration of children and young people on the Sex Offenders Register, which dealt with a very sensitive subject matter.¹¹⁷ This inquiry arose out of Petition 70, which only contained two signatures. Also, some principal petitioners may face greater challenges in obtaining signatures due to location and other factors.

¹¹² Victoria, Australian Capital Territory, Tasmania.

¹¹³ Canadian province of Saskatchewan.

¹¹⁴ United Kingdom House of Commons (excluding the principal petitioner).

¹¹⁵ United Kingdom House of Commons. See Catherine McKinnell, Chair, Petitions Committee, United Kingdom House of Commons, transcript of evidence, 18 May 2020, p 3.

¹¹⁶ Submission 14 from Standing Committee on Environment and Transport and City Services, Legislative Assembly for the Australian Capital Territory, 15 January 2020, p 3.

¹¹⁷ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 52, *Punitive not protective: when the mandatory registration of young people is not based on risk*, 21 May 2020.

FINDING 14

The number of signatures on a petition does not necessarily reflect the merits of the matters raised in the petition.

FINDING 15

A minimum signature threshold of at least one signature for the acceptance and consideration of petitions in the Legislative Council is appropriate.

Opportunity to reply to responses to petitions

- 3.117 Some petition committees in other jurisdictions invite the principal petitioner to reply to Government responses to the petition.¹¹⁸
- 3.118 While the Committee does not currently extend such an invitation it has, on occasion, received replies from principal petitioners, but only after advising them their petition has been closed.
- 3.119 The Committee has considered factors in favour of, and against, giving a principal petitioner the opportunity to reply to responses to their petition before a decision is taken on finalisation.
- 3.120 Factors in favour include:
- enhancing the principal petitioner's engagement in the petitions process by giving them an opportunity to provide the Committee with their feedback;
 - facilitating greater communication between the principal petitioner and the Committee;
 - giving the Committee more information to take into account when deciding whether it will continue its consideration of the petition.
- 3.121 Factors against include:
- increasing the length of the petitions process;
 - unnecessarily raising the expectations of principal petitioners;
 - introducing uncertainty by opening up a circular process of debate over the status of a petition.

FINDING 16

Giving a principal petitioner the opportunity to reply to government and other responses to their petition before a decision is taken on finalisation may, in some circumstances, enhance the quality of the petitions process.

¹¹⁸ Scottish Parliament, *Getting involved: petitioning the Scottish Parliament*, p 3. See [http://www.parliament.scot/S5_PublicPetitionsCommittee/General%20Documents/Petitions_leaflet_-_Aug_2019_\(web\).pdf](http://www.parliament.scot/S5_PublicPetitionsCommittee/General%20Documents/Petitions_leaflet_-_Aug_2019_(web).pdf). Viewed 4 June 2020. See also Republic of Ireland, answers to written questions, 6 June 2020, p 8.

FINDING 17

An opportunity for the principal petitioner to reply to government and other responses to their petition before a decision is taken on finalisation is not an automatic right and is at the discretion of the Standing Committee on Environment and Public Affairs.

RECOMMENDATION 10

The Standing Committee on Environment and Public Affairs should consider giving a principal petitioner an opportunity to reply to government and other responses to their petition in appropriate circumstances, at its discretion.

4 The Committee's environment function

4.1 Clauses 2.3(a) and 2.4 of the Committee's Terms of Reference provide that:

2.3 The functions of the Committee are to inquire into and report on –

(a) any public or private policy, practice, scheme, arrangement, or project whose implementation, or intended implementation, within the limits of the State is affecting, or may affect, the environment;

...

2.4 The Committee, where relevant and appropriate, is to assess the merit of matters or issues arising from an inquiry in accordance with the principles of ecologically sustainable development and the minimisation of harm to the environment.

Background

Term of Reference 2.3(a)

4.2 The Committee's environment function was inherited from the former Standing Committee on Ecologically Sustainable Development (ESD Committee) when that committee was amalgamated with the Standing Committee on Constitutional Affairs to form the Committee. The primary function of the ESD Committee was to inquire into and report to the House on:

(a) any matter in Western Australia concerning or relating to the planning for or management, use or development of natural resources and the environment having particular regard to demographic, economic, ecological, technological and lifestyle and settlement factors and concerns

(b) any Bill or matter referred to it by the House.¹¹⁹

4.3 Prior to the establishment of the ESD Committee, any inquiry into an environmental issue would be undertaken by a select committee appointed by the Legislative Council.

4.4 Hon Barry House gave the Committee some historical insight into the origins of the committee's environment function in the Legislative Council:

¹¹⁹ Parliament of Western Australia. See: <https://www.parliament.wa.gov.au/Parliament/commit.nsf/WCurrentNameNew/FE9977F0312A370E48257831003AFF3C?OpenDocument#reports>. Viewed 11 September 2020.

From the 1990s on—the 1993 election on particularly—there was the advent of different parties, the Greens and the Democrats initially and since then of course we have had quite a few other parties elected to a presence in the Legislative Council so that now it is almost an impossibility for a government of the day to have an absolute majority in the Legislative Council.

When the environment and public affairs committee was first set up, it was a vehicle to recognise that change, I believe, particularly in view of the Greens and Democrats membership of the Legislative Council. Their stated platform, I guess, revolved around environmental issues to a large degree. There was no other vehicle at that stage, apart from select committees and the usual questions and motions in the house, for a significant public affair to be taken up and examined. That was the thinking behind the establishment of the committee.¹²⁰

Term of Reference 2.4

- 4.5 The former ESD Committee tabled nine reports on matters ranging from the Environmental Protection Amendment Bill 1997¹²¹ to the management and sustainability of the western rock lobster¹²² and the quality of Perth's water supply.¹²³
- 4.6 'Ecologically sustainable development' is a mainstream concept and has been part of Australia's national policy to protect and conserve the natural environment since 1992.¹²⁴ Although it has no universally accepted definition, a Commonwealth Government discussion paper offers the following:

using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased.¹²⁵
- 4.7 The Western Australian State Sustainability Strategy, 'focuses on the need to integrate environmental, economic and social principles and outcomes to ensure that trade-offs are minimised.'¹²⁶
- 4.8 The concept is referred to in a number of Acts in Western Australia.¹²⁷ The *Biodiversity Conservation Act 2016* enshrines the following principles:

4. Principles of ecologically sustainable development

The principles of ecologically sustainable development are as follows —

¹²⁰ Hon Barry House, transcript of evidence, 18 May 2020, p 1.

¹²¹ Western Australia, Legislative Council, Standing Committee on Ecologically Sustainable Development, report 1, *Report in relation to the Environmental Protection Amendment Bill 1997*, 29 April 1998.

¹²² Western Australia, Legislative Council, Standing Committee on Ecologically Sustainable Development, report 6, *The management and sustainability of the western rock lobster*, 20 June 2000.

¹²³ Western Australia, Legislative Council, Standing Committee on Ecologically Sustainable Development, report 9, *The quality of Perth's water supply*, 23 November 2000.

¹²⁴ Australian Government, Department of Agriculture, Water and the Environment, *Ecologically sustainable development*, <http://www.environment.gov.au/about-us/esd>. Viewed 11 September 2020.

¹²⁵ Australian Government, Department of the Prime Minister and Cabinet, *Ecologically sustainable development: Commonwealth discussion paper*, Canberra, Australian Government Publishing Service, 1990.

¹²⁶ Government of Western Australia, *Hope for the future, The Western Australian State Sustainability Strategy*, http://www.nrm.wa.gov.au/media/19609/state_sustainability_strategy_2003.pdf. Viewed 11 September 2020.

¹²⁷ *Fish Resources Management Act 1994* s 3(2)(b); *Aquatic Resources Management Act 2016* long title; *Water Services Act 2012*, s 46(a); *Biodiversity Conservation Act 2016* s 4 and *National Environment Protection Council (Western Australia) Act 1996*.

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (c) the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the conservation of biodiversity and ecological integrity should be a fundamental consideration in decision-making;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.¹²⁸

Environmental inquiries undertaken by the Committee

4.9 Since the 36th Parliament, the Committee has undertaken 16 inquiries with an environmental focus or element. Two of these inquiries have been initiated by the Committee under its own motion, unconnected to a petition (four when counting those that initially arose from a petition and then resumed under an own motion inquiry); and two were referred by the Legislative Council, with the remainder arising from a petition. This is illustrated by the following graph:

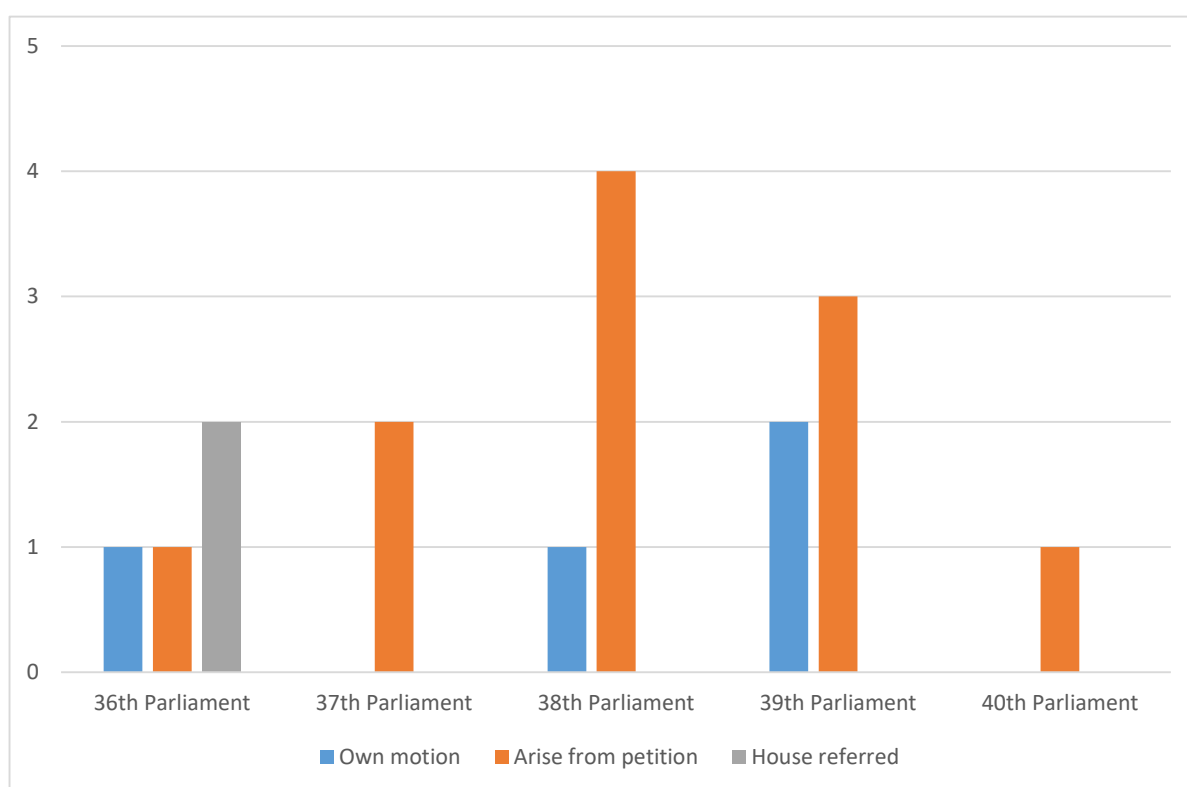


Figure 2. *Number of environment focussed inquiries over time*

Source: Standing Committee on Environment and Public Affairs

¹²⁸ Biodiversity Conservation Act 2016 s 4.

- 4.10 The two own-motion inquiries that did not arise from a petition were the inquiries into the:
- Alcoa Refinery at Wagerup;¹²⁹
 - Implications for Western Australia of hydraulic fracturing for unconventional gas.¹³⁰
- 4.11 The two inquiries referred by the Legislative Council were about:
- the Gene Technology Bill 2001 and Gene Technology Amendment Bill 2001;¹³¹
 - chemical use by the Agriculture Protection Board 1970–1985.¹³²
- 4.12 Accordingly, it has been rare for the Committee to exercise its function under Term of Reference 2.3(a). Reasons for this include its significant petitions workload in each Parliament as well as the number of petitions with an environment focus or element.
- 4.13 The Committee’s workload can impede its ability to inquire into additional matters:
- The Committee has found, however, that its heavy workload has been a major constraint to its ability to inquire into and report on some of the matters that have come before it, to the extent that it would have liked. In particular, the Committee has found it difficult to conduct thorough investigations into each and every petition received. Further, some petitions are often extremely complex in the issues that they raise and generally require more time to consider than the Committee has available.¹³³

Should the Committee’s environment function be retained?

- 4.14 The Committee has taken into account a number of factors in assessing whether its power to conduct own motion inquiries under its Term of Reference 2.3(a) should be retained.
- 4.15 Relevant factors in favour of removing the Committee’s environment function include the following:
- A possible misconception that the Committee’s core role is dedicated to environmental issues, rather than considering petitions.¹³⁴
 - The historical statistics indicating that:
 - in most instances, environmentally focussed inquiries arise from petitions;
 - there have been very few referrals from the Legislative Council to the Committee to inquire into environmental issues or legislation.
 - It represents a distraction to the core role of the Committee of considering petitions.

¹²⁹ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 11, *Alcoa Refinery at Wagerup Inquiry*, 28 October 2004.

¹³⁰ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 42, *Implications for Western Australia of hydraulic fracturing for unconventional gas*, 17 November 2015.

¹³¹ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 8, *Gene Technology Bill 2001 and Gene Technology Amendment Bill 2001*, 11 July 2003.

¹³² Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 10, *Chemical use by the Agriculture Protection Board 1970–1985*, 21 October 2004.

¹³³ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 14, *Sessional report: An overview of petitions and inquiries—Second Session of the Thirty Sixth Parliament (August 2002 to November 2004)*, 19 November 2004, p 95.

¹³⁴ Hon Barry House, transcript of evidence, 18 May 2020, p 8.

- The power had its genesis in the political makeup of the Legislative Council in the 1990s when environmental issues were less mainstream than they are now.¹³⁵
- There is no logical connection between the environment and petitions in the sense that the latter covers a wide range of issues, rather than just the environment.
- The Legislative Council has an existing capacity to establish select committees to undertake inquiries into environmental matters.
- The environment is a mainstream portfolio issue alongside others such as health, education, housing and law and order, which are the responsibility of dedicated standing committees in the Legislative Assembly.¹³⁶
- There should be as little duplication as possible between committee responsibilities in the Legislative Council, as a House of review and scrutiny and the Legislative Assembly, dedicated to portfolio oversight.¹³⁷

4.16 Relevant factors in favour of retaining the environment function include the following:

- Despite there being other examples of potential duplication between the Legislative Council and the Legislative Assembly, such as estimates hearings, it is not always necessary to defer to what another House is doing as a basis for no longer undertaking a function.
- Other jurisdictions with bicameral parliaments have committees in both houses that have responsibility for inquiring into environmental matters. For instance:
 - the Senate's Standing Committee on Environment and Communications (comprising the Legislation¹³⁸ and References¹³⁹ committees);
 - the House of Representative's Standing Committee on Environment and Energy;
 - the Parliaments of New South Wales and Victoria have environment committees in each House.
- Term of Reference 2.3(a) is different to those governing the functions of the committee responsible for the oversight of the environment portfolio, amongst others, in the Legislative Assembly, the Community Development and Justice Standing Committee (CDJS Committee) and is, arguably, wider in its terms. For instance:
 - the Committee can inquire into not only public policies, practices, schemes, arrangements or projects that is affecting, or may affect, the environment but also their private counterparts;
 - the CDJS Committee is focussed on the outcomes and administration of departments within its portfolio responsibilities as well as the adequacy of legislation and regulations.¹⁴⁰
- There are many environmental issues that will not form the basis of a petition in a Parliament and the Committee's environment function enables it to avoid having to rely

¹³⁵ *ibid*, pp 1 and 5.

¹³⁶ *ibid*, pp 2-3 and 7.

¹³⁷ Hon Barry House, transcript of evidence, 18 May 2020, p 7.

¹³⁸ Deals with bills referred by the Senate, the estimates process and oversee the performance of departments, including their annual reports.

¹³⁹ Deals with all other matters referred by the Senate.

¹⁴⁰ *Legislative Assembly Standing Orders*, Standing Order 287.

on a petition to initiate an inquiry into an environment issue it believes is in the public interest.

- 4.17 The Committee is of the view its Terms of Reference should reflect its focus on its core role of considering petitions rather than contain functions which may distract from this role and are otherwise underutilised. This does not detract from the importance of the capacity of the Legislative Council to inquire into environmental issues of concern to the community, which can arise from a petition or be the focus of a select committee inquiry.

FINDING 18

The Terms of Reference of the Standing Committee on Environment and Public Affairs should focus on its core role of considering petitions.

RECOMMENDATION 11

The name of the Standing Committee on Environment and Public Affairs be amended to delete 'Environment'.

RECOMMENDATION 12

Clauses 2.3(a), 2.4 and 2.6 be removed from the Terms of Reference of the Standing Committee on Environment and Public Affairs.

- 4.18 Should recommendations 8, 11 and 12 be adopted by the Legislative Council, the name of the Committee will become the Standing Committee on Petitions.

RECOMMENDATION 13

Should recommendations 11 and 12 be adopted, the Legislative Council consider how inquiries into environmental issues that are not the subject of a petition will be undertaken.

5 Term of Reference 2.3(b) – bills referred by the Council

- 5.1 Clause 2.3(b) of the Committee's Terms of Reference provides:

The functions of the Committee are to inquire into and report on –

...

(b) any Bill referred by the Council;

- 5.2 This Term of Reference is shared with the Standing Committee on Public Administration (Term of Reference 5.3(a)(iv)) and the Standing Committee on Estimates and Financial Operations (Term of Reference 3.3(a)(iii)).
- 5.3 Bills referred to these committees must relate to their functions, whereas Term of Reference 2.3(b) has no such restriction. While the reason for this is not clear, it does enable any bill, including those the subject of a petition, to be referred to the Committee, rather than restrict this to bills with an environmental or other focus.
- 5.4 In recent history, it has been relatively uncommon for a standing committee to be referred a bill for inquiry and report by the Legislative Council that is not an automatic referral (the

Standing Committee on Uniform Legislation and Statutes Review) or not part of its primary function (the Standing Committee on Legislation).

- 5.5 In the last 20 years, only these three bills have been referred by the Legislative Council to the Committee:
- Gene Technology Bill 2001 and Gene Technology Amendment Bill 2001¹⁴¹
 - Local Government Amendment Bill (No. 2) 2006.¹⁴²
- 5.6 In August 2016, a motion to refer the Biodiversity Conservation Bill 2015 to the Committee was defeated.¹⁴³
- 5.7 It is unclear why there have been so few bills referred to the Committee, despite an undoubted awareness of this option. By contrast, the ESD Committee was referred three bills in just over two years.¹⁴⁴
- 5.8 The Committee recognises that the power of the Legislative Council to refer a bill to a standing committee for inquiry and report is an important one, as it enables the House to call upon the expertise of the most appropriate committee. The Committee also notes the unrestricted nature of the referral power in clause 2.3(b) gives the Legislative Council a degree of flexibility in its exercise, enabling a bill to cover practically any subject matter.
- 5.9 However, in light of the underutilisation of this power since the Committee's establishment and duplication with the existing role of the Standing Committee on Legislation, the Committee questions the need for the retention of this clause in its Terms of Reference.

FINDING 19

The referral power in clause 2.3(b) of the Terms of Reference of the Standing Committee on Environment and Public Affairs has been rarely exercised by the Legislative Council and duplicates the role of the Standing Committee on Legislation.

RECOMMENDATION 14

Clause 2.3(b) be removed from the Terms of Reference of the Standing Committee on Environment and Public Affairs.

¹⁴¹ Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 8, *Gene Technology Bill 2001 and Gene Technology Amendment Bill 2001*, 11 July 2003.

¹⁴² Western Australia, Legislative Council, Standing Committee on Environment and Public Affairs, report 8, *Local Government Amendment Bill (No 2) 2006*, 3 April 2007. See also Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 23 November 2006, pp 8728–43 and pp 8753–54. This does not appear to have been the subject of a petition at the time.

¹⁴³ Western Australia, Legislative Council, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, 17 August 2016, pp 4719–24 and 18 August 2016, pp 4830–41.

¹⁴⁴ Western Australia, Legislative Council, Standing Committee on Ecologically Sustainable Development, report 1, *Report in relation to the Environmental Protection Amendment Bill 1997*, 29 April 1998 and report 7, *The Conservation and Land Management Amendment Bill 1999 & the Forest Products Bill 1999*, 20 June 2000.

6 Term of Reference 2.5—referral of a petition to another committee

6.1 Clause 2.5 of the Committee's Terms of Reference provides that:

The Committee may refer a petition to another Committee where the subject matter of the petition is within the competence of that Committee.

6.2 The power of a petitions committee to refer a petition to another committee is longstanding and commonplace in a number of Westminster jurisdictions.¹⁴⁵

6.3 The purpose of this power is to avoid duplication with the work of other committees and enable a petition falling within the terms of reference of another committee to be considered by it, at its discretion.¹⁴⁶ This may be as part of an existing inquiry.¹⁴⁷

6.4 For these reasons, the Committee concludes this power should be retained.

FINDING 20

Clause 2.5 of the Terms of Reference of the Standing Committee on the Environment and Public Affairs should be retained.

7 Conclusion

Terms of Reference

7.1 The Committee has made a number of findings and recommendations about changes to its Terms of Reference, including:

- reporting to the Legislative Council on its petitions work on a more regular and consistent basis;
- 'Petitions' forming part of its name to reflect its core role; and
- the removal of its environment function, as well as the power of the Legislative Council to refer bills due to their underutilisation and distraction to its core function of considering petitions.

7.2 Should these changes be made, the Committee will become a dedicated petitions committee, with the consideration of petitions referred by the Legislative Council becoming its sole function.

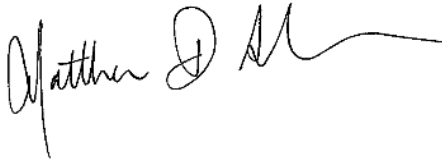
¹⁴⁵ Submission 13 from Scottish Parliament, 15 January 2020, p 3; Submission 16 from the Parliament of the Republic of South Africa, 15 January 2020, p 13 and United Kingdom House of Commons, Petitions Committee, *When will the Committee refer petitions to select committees?* See <https://committees.parliament.uk/committee/326/petitions-committee/news/99341/committee-opens-consultation-on-its-working-methods/>. Viewed 14 September 2020.

¹⁴⁶ A committee is not obliged to accept or inquire into a petition referred by the Committee. Hon Kate Doust MLC, President of the Legislative Council, letter, 6 March 2020, p 3.

¹⁴⁷ An example is where the Standing Committee on Environment and Public Affairs referred Petition 35—Metro Central Joint Development Assessment Panel to the Standing Committee on Uniform Legislation and Statutes Review, which was undertaking an inquiry into the Planning and Development (Development Assessment Panels) Regulations 2011 at the time, see Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, *Review of the Planning and Development (Development Assessment Panels) Regulations 2011*, report 93, 8 September 2015, pp 51 and 95–6.

Guidance material

- 7.3 The Committee has found that there is insufficient information provided to petitioners on its process for considering petitions, including the circumstances that may limit its inquiries. This has the potential to leave some petitioners with expectations on the outcomes from their petition which do not reflect those in practice.
- 7.4 The development of guidance material by the Committee will enable petitioners to have a better understanding of how their petition will be considered, enhancing their overall experience with the process and reducing the disconnect between their expectations and what can be delivered by Parliament.

A handwritten signature in black ink, appearing to read 'Matthew D M', with a long horizontal flourish extending to the right.

Hon Matthew Swinbourn MLC
Chairman

APPENDIX 1

STAKEHOLDERS, SUBMISSIONS AND PUBLIC HEARINGS

Stakeholders contacted

Number	Name
1.	Members of the Legislative Council of Western Australia
2.	Neil Laurie, Clerk of Parliament, Legislative Assembly of Queensland
3.	Rick Crump, Clerk of the House of Assembly, Parliament of South Australia
4.	Chris Schwarz, Clerk of the Legislative Council, Parliament of South Australia
5.	Shane Donnelly, Clerk of the House of Assembly, Parliament of Tasmania
6.	David Pearce, Clerk of the Legislative Council, Parliament of Tasmania
7.	Tom Duncan, Clerk of the Legislative Assembly for the Australian Capital Territory
8.	Michael Tatham, Clerk of the Legislative Assembly, Northern Territory Legislative Assembly
9.	David Wilson, Clerk of the House, New Zealand House of Representatives
10.	Klaus Welle, Secretary General, European Parliament
11.	John Benger, Clerk of the House, House of Commons, United Kingdom
12.	Ed Ollard, Clerk of the Parliament, House of Lords, United Kingdom
13.	David McGill, Clerk/Chief Executive, Scottish Parliament
14.	Manon Antoniazzi, Chief Executive & Clerk of the Assembly, National Assembly of Wales
15.	Lesley Hogg, Clerk/Chief Executive, Northern Ireland Assembly
16.	Peter Finnegan, Clerk of Dáil Éireann, Houses of the Oireachtas
17.	Martin Groves, Clerk of Seanad Éireann, Houses of the Oireachtas
18.	Charles Robert, Clerk of the House of Commons, Parliament of Canada
19.	Richard Denis, Interim Clerk of the Senate and Clerk of the Parliaments, Parliament of Canada
20.	Kate Ryan-Lloyd, Acting Clerk, Legislative Assembly of British Columbia
21.	Greg Putz, Clerk, Legislative Assembly of Saskatchewan, Canada
22.	Penelope Tyawa, Acting Secretary to Parliament, Parliament of the Republic of South Africa

Number	Name
23.	Romeo Adams, Secretary, Western Cape Provincial Parliament, Republic of South Africa
24.	Richard Pye, Clerk of the Senate, Parliament of Australia
25.	Clarissa Surtees, Clerk of the House of Representatives, Parliament of Australia
26.	Helen Minnican, Clerk of the Legislative Assembly, Parliament of New South Wales
27.	David Blunt, Clerk of the Legislative Council, Parliament of New South Wales
28.	Andrew Young, Clerk of the Legislative Council, Parliament of Victoria
29.	Bridget Noonan, Clerk of the Legislative Assembly, Parliament of Victoria
30.	Environment and Communications Legislation Committee, Parliament of Australia
31.	Environment and Communications References Committee, Parliament of Australia
32.	Standing Committee on Environment and Energy, Parliament of Australia
33.	Committee on Environment and Planning, Parliament of New South Wales
34.	Portfolio Committee No. 7—Planning and Environment, Parliament of New South Wales
35.	Environment and Planning Committee, Parliament of Victoria
36.	Environment and Planning Committee (Legislation and References), Parliament of Victoria
37.	Innovation, Tourism Development and Environment Committee, Parliament of Queensland
38.	Environment, Resources and Development Committee, Parliament of South Australia
39.	Legislative Council Sessional Committee B on Government Administration, Parliament of Tasmania
40.	Standing Committee on Environment and Transport and City Services, Legislative Assembly for the Australian Capital Territory
41.	Standing Committee on Environment and Sustainable Development, House of Commons, Parliament of Canada
42.	Standing Committee on Energy, the Environment and Natural Resources, Senate of Canada
43.	Environment, Food and Rural Affairs Select Committee, House of Commons, United Kingdom
44.	Environmental Audit Select Committee, House of Commons, United Kingdom

Number	Name
45.	Food, Poverty, Health and the Environment Committee, House of Lords, United Kingdom
46.	Climate Change, Environment and Rural Affairs Committee, National Assembly for Wales
47.	Environment, Climate Change and Land Reform Committee, Scottish Parliament
48.	Committee for Agriculture, Environment and Rural Affairs, Northern Ireland Assembly
49.	Environment Select Committee, New Zealand Parliament
50.	Committee on the Environment, Public Health and Food Safety, European Parliament
51.	Committee on Environment, Nature Conservation and Nuclear Safety, German Bundestag
52.	Joint Committee on Communications, Climate Action and Environment, Houses of the Oireachtas, Republic of Ireland
53.	Standing Committee on Petitions, Parliament of Australia
54.	Committee on Petitions, European Parliament
55.	Select Committee on Petitions, House of Commons, United Kingdom
56.	Public Petitions Committee, Scottish Parliament
57.	Petitions Committee, National Assembly for Wales
58.	Committee on Public Petitions, Houses of the Oireachtas, Republic of Ireland
59.	Petitions Committee, Western Cape Provincial Parliament, Republic of South Africa
60.	Select Committee on Petitions and Executive Undertakings, South African Parliament
61.	Dr Harry Phillips, Parliamentary Fellow (Education), Parliament of Western Australia
62.	Professor George Williams and Daniel Reynolds, University of New South Wales
63.	Chris Angus, New South Wales Parliamentary Research Service, Parliament of New South Wales
64.	Professor Adrian Kay, Crawford School of Public Policy, Australian National University
65.	Professor Christopher Carman, School of Social and Political Sciences, University of Glasgow
66.	Associate Professor Laura Grenfell, Adelaide Law School, University of Adelaide

Number	Name
67.	Professor Cristina Leston-Bandeira, School of Politics and International Studies, University of Leeds
68.	Dr Martin Drum, Senior Lecturer, Politics and International Relations, University of Notre Dame Australia
69.	Hon Barry House AM, former President of the Legislative Council of Western Australia
70.	Hon John Cowdell AM, former President of the Legislative Council of Western Australia
71.	Hon Nick Griffiths OAM, former President of the Legislative Council of Western Australia
72.	Hon George Cash AM, former President of the Legislative Council of Western Australia

Submissions received

Number	From
1.	Murray Nixon JP OAM
2.	Environment and Communications References Committee, Senate, Parliament of Australia
3.	Legislative Assembly of Saskatchewan, Canada
4.	European Parliament
5.	Chris Angus, Research Officer, Parliamentary Research Service, Parliament of New South Wales
6.	Bridget Noonan, Clerk, Legislative Assembly, Parliament of Victoria
7.	Mark Hutton, Clerk of the Journal, House of Commons, United Kingdom
8.	Environment Resources and Development Committee, House of Assembly, Parliament of South Australia
9.	Tom Duncan, Clerk of the Legislative Assembly for the Australian Capital Territory
10.	Lesley Hogg, Clerk/Chief Executive, Northern Ireland Assembly
11.	Shane Donnelly, Clerk, House of Assembly, Parliament of Tasmania
12.	Professor Cristina Leston-Bandeira, Professor of Politics, School of Politics and International Studies, University of Leeds
13.	David McGill, Clerk/Chief Executive, Scottish Parliament
14.	Standing Committee on Environment and Transport and City Services, Legislative Assembly for the Australian Capital Territory

Number	From
15.	Hon Barry House AM
16.	Parliament of the Republic of South Africa
17.	Department of the House of Representatives, Parliament of Australia
18.	Standing Committee on Petitions, House of Representatives, Parliament of Australia
19.	Andrew Young, Clerk, Legislative Council, Parliament of Victoria
20.	Standing Committee on Environment and Energy, House of Representatives, Parliament of Australia
21.	Houses of the Oireachtas Service, Republic of Ireland
22.	Western Cape Provincial Parliament, Republic of South Africa

Public hearings

Date	Participants
11 May 2020	<p>Parliament of the Republic of South Africa</p> <p>Hon Zukiswa Ncitha, Chairperson, Select Committee on Petitions and Executive Undertakings</p> <p>Penelope Tyawa, Acting Secretary to Parliament</p> <p>Ressida Khatoon Begg, Division Manager, Core Business Support</p> <p>Tasneem Sterris-Jaffer, Acting Content Adviser/Researcher, Select Committee on Petitions and Executive Undertakings</p> <p>Professor Cristina Leston-Bandeira, Professor of Politics, School of Politics and International Studies, University of Leeds</p>
18 May 2020	<p>Hon Barry House AM</p> <p>Scottish Parliament</p> <p>Steve Farrell, Clerk Team Leader, Rural and Economy and Connectivity Committee</p> <p>Lynn Russell, Clerk to the Public Petitions Committee</p> <p>United Kingdom House of Commons</p> <p>Mark Hutton, Clerk of the Journals</p> <p>Catherine McKinnell MP, Chair of the Petitions Committee</p>

Answers to written questions

Date	From
26 May 2020	Chris Angus, Research Officer, Parliamentary Research Service, Parliament of New South Wales
2 June 2020	Lesley Hogg, Clerk/Chief Executive, Northern Ireland Assembly
6 June 2020	Houses of the Oireachtas Service, Republic of Ireland

APPENDIX 2

PETITIONING THE SCOTTISH PARLIAMENT



The Scottish Parliament
Pàrlamaid na h-Alba

Getting Involved: Petitioning the Scottish Parliament

Would you like to raise awareness of an issue or try to change something about the way things work in Scotland?

The petitions process allows you to get your issue on the Parliament's agenda and ask us to look at issues that the Parliament has the power to do something about.



Petitions to the Scottish Parliament

There are some rules on the types of issue that you can petition the Scottish Parliament about, and on the way that a petition to the Parliament should be set out.

What can you petition the Parliament about?

Basically, petitions to the Parliament must:

- be about something that is within the powers of the Scottish Parliament
- be about an issue of national policy or practice
- not ask the Scottish Parliament to become involved in a local or individual matter, or to intervene in a decision that should be taken by another organisation.

For example, a petition cannot ask the Scottish Parliament to stop the closure of a local health centre but could ask for a review of the national policies or guidance that sets out the actions health boards should take when closures are being considered.

The standards for petitions are set out on pages 3 & 4 of this guide. You should read the rules before writing your petition. If you have any questions, the petitions team is available to help; just contact them at petitions@parliament.scot or on 0131 348 5254.

How should your petition be set out?

There is a specific format for petitions to the Scottish Parliament. The format has five main sections:

- **Details about you:** You need to provide us with your name, postal address and email address. The Parliament's [privacy notice for the petitions system](#) explains how this information will be used and managed.
- **Petition title:** This should explain in as few words as possible what your petition is about.
- **Petition summary:** This is where you tell the Parliament what you want it to do. This section should be one or two sentences and should state clearly what action you want the Parliament to take.
- **Previous action taken:** Before you petition the Scottish Parliament, you need to have already taken some action to raise the issue. This can be a range of activities but should include contacting at least one of your MSP(s) or the Scottish Government.
- **Background information:** Any other information you want to let the Parliament know about to help MSPs to understand why you would like them to consider the issue you have raised. This section should be no longer than three A4 pages in Arial 12pt.

Please note, if your petition does not meet this specific format, it will be considered inadmissible and returned to you for further action. We are also unable to accept petitions via other online petitions systems.

Creating your petition

After you have read the rules you will be ready to start your petition. You should do this using the Parliament's petitions system.

The first thing you will need to do is register an account on the online system. As part of registering an account you will receive an email asking you to verify your email address – if you don't see this email in your inbox, please check your junk email folder. Your account details will be held as described in the [privacy notice for the petitions system](#).

After you are registered you will be able to type the text of your petition into each of the sections that we have explained are part of the format for petitions to the Parliament.

Helpful hint: For security reasons, the system will automatically log you out if you have been on the same page for around 15 minutes. If this happens you may lose information that you have entered. To prevent this from happening, we would suggest that you write your petition out in Word or similar before you create your account.

When you have completed each section, you should read through your petition one last time and then press the 'Submit' button. If you do not hit this button, it will not be received by the petitions team.

If you cannot access the online system, it is possible to submit your petition using a template that can be provided by the petitions team.

The petitions team will send you an email to confirm your petition has been received. We try and do this as quickly as possible, but please allow extra time for petitions received over the weekend, bank holidays and parliamentary recess. It will then be reviewed by one of the petitions team who are there to check that petitions meet the Parliament's rules and to make sure that petitions are as clear as possible. One of the team will then provide you with advice on your petition.

Note: If your petition does not meet the Parliament's rules, the petitions team will explain why.

After you've considered any advice from the petitions team and the final wording of your petition is agreed, your petition will be published on the petitions website. At this stage, you have the option to collect signatures and comments on your petition for a maximum period of six weeks, although this is not a formal requirement of the petitioning process.

What happens next?

Once your petition has been published on the Scottish Parliament's website, it will be scheduled for consideration by the Public Petitions Committee. The petitions team will let you know when your petition will be considered and if the Committee would like to invite you to give evidence in person to ensure they understand the issue you have raised.

After your petition has been discussed, the Committee will decide what action they wish to take on your petition. Actions that the Committee can consider taking include:

- getting information from the Scottish Government and other organisations
- taking oral evidence on the petition from the Scottish Government, public bodies or other organisations
- referring the petition to another committee of the Parliament
- making recommendations for action by the Scottish Government
- asking for time in the Chamber to allow the petition to be debated by the Parliament
- closing the petition.

The petitions team will get in touch with you to let you know each time your petition is to be considered and will confirm the outcome of each meeting. When further information is received we will invite you to provide your views on this information before the Committee considers your petition again.

Consideration of a petition ends when the Committee decides to formally close it. When this happens we will write to you to confirm the Committee's decision and the reasons for closing your petition

Scottish Parliament Petition Rules

The rules for petitions to the Scottish Parliament are set out in two places: the Standing Orders of the Scottish Parliament (the rule book for how the Parliament works) and a document (known as a determination) agreed by the Public Petitions Committee.

Standing Orders Rules:

Rule 15.4.2

A petition must clearly state: (a) the name of the petitioner; (b) an address of the petitioner to which all communications concerning the petition should be sent; and (c) the name and address of any person supporting the petition.

Rule 15.5.1

A petition is admissible unless it: (a) does not comply with Rule 15.4.2 or is otherwise not in proper form; (aa) is frivolous; (ab) breaches any enactment or rule of law; (ac) refers to any matter in relation to which legal proceedings are active; (b) contains language which is offensive; (ba) fails to raise issues of national policy or practice; (c) requests the Parliament to do anything which the Parliament clearly has no power to do; or (d) is the same as, or in substantially similar terms to, a petition brought during the same session of the Parliament and which was closed less than a year earlier.

Public Petitions Committee

Determination on proper form of petitions

To be read alongside the Parliament's rules on public petitions, the Public Petitions Committee has made the following determination under Rule 15.4.3 on proper form of petitions.

- Petitions should be submitted using the Scottish Parliament's online petitions site. All sections should be completed.
 - If an individual has no access to or difficulty in using the online petitions site, or if the site is unavailable, a petition may be submitted in paper form using the word template (available from the clerks).
 - A petition may be brought in any language. Where a language other than English is used, the Parliament will provide a translation.
 - Petitions should be brief and state clearly what action is being sought.
 - No supplementary information (such as correspondence, legal information, photographs, or copies of Freedom of Information requests) will be accepted as part of a petition.
 - Petitions must relate to national policy or practice as opposed to a local or individual matter.
 - Petition titles should be a short factual description of what is being looked for not a slogan or campaign name. For example "changes to the law governing fatal accident inquiries" would be an appropriate title. "Betty's Law" or "Justice for Betty" would not be.
 - Previous action taken on a petition must include raising the issue with a relevant decision maker such as the Scottish Government (or other relevant public body) or an elected representative such as an MSP.
- A petition will not be considered by the Public Petitions Committee if the same (or substantially similar) petition, submitted by the same petitioner, has previously been considered by the Committee and closed at its first consideration on three consecutive occasions.
 - Petitions should not:
 - Name individuals or otherwise contain information that could lead to the identification of any individual. This excludes elected representatives and senior managers of public bodies.
 - Contain any false statements. It is the responsibility of the petitioner to ensure that statements are accurate.
 - Refer to any matter that is the subject of continuing court proceedings.
 - Seek an adjudication or decision on an individual or commercial matter.
 - Seek to involve the Public Petitions Committee in a decision that is more properly the domain of another body (for example complaints, court appeals, planning appeals, local authority expenditure decisions etc.)
 - Include language or wording that is defamatory, offensive or inappropriate, for example swear words, insults, sarcasm or other language that could reasonably be considered offensive by a reader.

All petitions which meet the Parliament's rules will be published and considered by the Public Petitions Committee. Petitions should be submitted using the Parliament's online system but may be submitted in hard copy or email if a petitioner is not able to use the petitions system or the system is unavailable.

GLOSSARY

Term	Definition
CA Committee	The former Standing Committee on Constitutional Affairs
CDJS Committee	Community Development and Justice Standing Committee of the Legislative Assembly
Committee	Standing Committee on Environment and Public Affairs
EPA	Environmental Protection Authority
ESD Committee	The former Standing Committee on Ecologically Sustainable Development
Ombudsman	Parliamentary Commissioner for Administrative Investigations
Standing Orders	Standing Orders of the Legislative Council

Standing Committee on Environment and Public Affairs

Date first appointed:

23 May 2017

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

'2. Environment and Public Affairs Committee

- 2.1 *An Environment and Public Affairs Committee is established.*
- 2.2 The Committee consists of 5 Members.
- 2.3 The functions of the Committee are to inquire into and report on –
 - (a) any public or private policy, practice, scheme, arrangement, or project whose implementation, or intended implementation, within the limits of the State is affecting, or may affect, the environment;
 - (b) any Bill referred by the Council; and
 - (c) petitions.
- 2.4 The Committee, where relevant and appropriate, is to assess the merit of matters or issues arising from an inquiry in accordance with the principles of ecologically sustainable development and the minimisation of harm to the environment.
- 2.5 The Committee may refer a petition to another Committee where the subject matter of the petition is within the competence of that Committee.
- 2.6 In this order "environment" has the meaning assigned to it under section 3 (1) and (2) of the *Environmental Protection Act 1986*.'



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Website: <http://www.parliament.wa.gov.au>