STANDING COMMITTEE ON ENVIRONMENT AND PUBLIC AFFAIRS INQUIRY INTO TERMS OF REFERENCE: RESPONSE TO COMMITTEE QUESTIONS

Question One

Managing the expectations of petitioners

Based on my research into petition systems, it is vital that petitioners understand what outcomes they can—and cannot—attain using the parliamentary petitions process. If this does not occur, their expectations may extend far beyond what can be realistically achieved. As explained by Riehm et al in relation to the United Kingdom (p 141):

> Many citizens incorrectly interpret petition services and especially their internet-based variants as a promise of direct democratic participation. The greater the number of signatures generated, the greater the expectation that the concern will also be implemented on the political stage.

In their 2016 research on the Commonwealth parliamentary petitions system, Reynolds and Williams cited various examples of parliamentarians being uninterested in petitions presented to them, or at best, cynical about the likelihood of a positive outcome. Even the most meritorious or popular petitions may lead to no change at all, and in this respect, clear guidance is needed to emphasise what a parliamentary petitions system 'guarantees' in terms of outcomes, and what it does not.

For example, the NSW Legislative Assembly guarantees certain responses if a signature threshold is met, but does not guarantee that the grievance will be acted upon by the NSW Government. Outlining this clearly and early in the petitions process minimises the risk that petitioners continue through the system erroneously believing that their views are sure to be acted upon by the parliament.

The Scottish Parliament is a good example of a jurisdiction whose petition system lowers the risk of these pitfalls. As shown in its petitions factsheet, the Scottish Parliament outlines what petitions can be heard by the Parliament's Public Petitions Committee, the correct manner and form of petitions, and the steps that occur once a petition is submitted. This information is available in multiple languages and formats (e.g. video, PDF, website), with a petitions team also available to provide advice and support if needed. Importantly, a dedicated petitions team informs the petitioner when certain stages of the petitions process have been reached, such as its receipt by the Parliament, the date the Committee will consider the petition, and the final outcome.

The Committee publishes official reports of its consideration of petitions, while recent petition outcomes are also listed on the Parliament's website. This helps prospective petitioners understand what outcomes have led to tangible results, or alternatively, the reasons why the Committee chose not to further consider an issue.

Managing the administrative burden of petitions

With regard to managing large numbers of petitions within limited parliamentary sitting times, setting thresholds such as those in the NSW Legislative Assembly may help reduce the administrative burden. Assembly data collected in my 2018 paper[1] shows a substantial drop in the overall number of petitions once signature thresholds were introduced. However, I would argue that the changes have enhanced the petitions process and outcomes for petitioners, rather than locking them out of the process.

Such thresholds could operate in tandem with the Environment and Public Affairs Committees' existing scrutiny function in order to help manage the administrative burden of petitions. For example,

[1] As well as reported in the NSW Department of the Legislative Assembly's Annual Reports, for example 2008-09, p 40.

a certain number of signatures could be required for Committee consideration to take place. Lower signature numbers may justify different responses that are less onerous on parliamentary resources, while higher numbers may allow a petition to be 'fast-tracked' to a House debate, perhaps bypassing the Committee entirely.

Question Two

A detailed quantitative survey into how petitioners feel about their engagement with—and treatment by—parliamentarians is probably the most viable means of identifying which aspects of a petitions system are viewed favourably (or unfavourably) by participants.

Unfortunately, community perceptions of their political system are affected by a wide range of different experiences and events, not all of which are in the direct control of a government or parliament. A parliamentary petitions system may meet all possible expectations of those who use the system, with most parliamentarians actively involved in supporting petitioners and advocating on their behalf, but this may not be enough to counter a political scandal or major global event that has serious consequences for Australians.

A petitions system is only one part of a far larger and more complex political environment, and accordingly only so many engagement opportunities can be offered to prospective petitioners. In this respect though, measures and practices that increase communication and collaboration between petitioner and parliamentarian would offer the most valuable means of engagement.

Question Three

One example of a meaningful opportunity for engagement is the signature threshold used in the NSW Legislative Assembly. Under the Assembly's Standing and Sessional Orders, a petition with 500 or more signatures requires a Ministerial response to be made within 35 calendar days, while 10,000 or more signature results in the petition being automatically set down as an Order of the Day for debate at 4.30pm on the Thursday of the next sitting week.

In other jurisdictions with dedicated Petitions Committees, meaningful opportunities have included the Committee scrutinising the terms of select petitions in detail, holding hearings or workshops on the petition topic with key petitioners invited to provide evidence, and producing reports advising what substantive action could be taken in response to the concerns of petitioners.[2]

Meaningful engagement should also involve ongoing and effective interaction throughout the entire petitions process. As noted in my response to question one, the Scottish Parliament does this quite well by intensively addressing petitioners' concerns and guaranteeing a high level of procedural publicity.[3]

Question Four

The taking of oral evidence by a Petitions Committee would likely be of benefit to all parties involved in the petitions process, and may act as a step towards rebuilding trust in the political system. As noted in my submission, reforms must be *perceived* to be fair by petitioners to be effective, not simply fair *in practice*. While a petitions system with clear processes, strong levels of Secretariat support, and

---

[2] Reynolds D, Williams G, 'Petitioning the Australian Parliament: Reviving a Dying Democratic Tradition' (2016) *Australasian Parliamentary Review* 31(1), p 74; Marzocchi O, *The right to petition*, European Parliament, December 2019.

[3] Riehm U, Bohle K, Lindner R, *Electronic petitioning and modernization of petitioning systems in Europe*, 2014, p 144.

defined outcomes is better than one without such attributes, interpersonal relationships between petitioner and parliamentarian are also critical for success.

Such relationships already occur both inside and outside parliamentary petition systems. However, oral evidence provides another opportunity for parliamentarians to meet with petitioners to discuss grievances and possible responses. Even if the Committee disagrees with a petitioner's view on a matter, oral evidence gives parliamentarians the opportunity to express the reasons why they are unable or unwilling to progress the matter. It would not be possible to avoid disappointment in these circumstances, but face-to-face communication may lower the risk of outright cynicism that might occur otherwise: for example, if a petitioner receives little more than a perfunctory rejection letter from the Committee.

As for when it is appropriate to receive oral evidence from petitioners, this would ultimately be a matter for the Committee to determine. It is likely that most witnesses giving oral evidence would be experts or key stakeholders who can better explain aspects of a matter to the Committee, but there will also be occasions where members of the public can share their personal experiences to provide context to an issue.

An illustrative example of this occurred during the 2012 NSW Legislative Council inquiry on use of cannabis for medical purposes. The Committee heard not only from health and legal experts, but from individuals whose health issues led them to use cannabis to treat their illness or pain. It was this evidence that led this cross-party Committee to unanimously recommend that medical marijuana be legalised. Speaking in the House, one Committee Member expressly stated that the evidence of a particular individual moved the Committee so much as to persuade them to adopt this recommendation.[4]

Question Five

It is acceptable for certain petitions to be rejected by a Petitions Committee or the Parliament. If all petitions required the same level of acceptance and response without consideration of their contents, the petitions system would be exposed to abuse. While some inappropriate petitions may be humourous—for example, the 2012 petition demanding the Obama administration build a Death Star—others may be grossly offensive, defamatory or simply waste limited parliamentary resources.

In terms of appropriate criteria or benchmarks, a number of parliamentary petition systems expressly state that they will not accept petitions that fall outside their powers, use irrelevant statements, contain offensive or disrespectful language, or attack individuals in a hyperbolic fashion without evidence.[5] I cannot comment on the adequacy of the Parliament of Western Australia's existing petition rules, however if the Committee is receiving a surfeit of frivolous or vexatious petitions it may be necessary to amend the rules so that these petitions can be rejected more readily.

I do not believe that the existence of minimum petition standards would undermine the greater goal of improving public participation and engagement with parliament and the political system. The vast majority of petitioners would likely understand and accept such screening processes, particularly if it is communicated to them early and clearly. For example, questioning petitions could be informed that, by spending less time addressing frivolous and vexatious petitions, a parliament or Petitions Committee can devote its resources to addressing the more serious issues they are being presented with.

---

[4]NSW Hansard, *Report: The Use of Cannabis for Medical Purposes* (Charlie Lynn) 27 August 2013.

[5] Standing Committee on Petitions, *Your voice can change our future*, Australian Parliament, 2019, Ch 3.

Question Six

There is no inherent issue with rejecting a petition on grounds of similarity with another petition. As noted by the Committee in the House of Representative's 2019 Inquiry into the future of petitioning in the House, there were a number of 'campaign' style petitions during the 45th Parliament that were essentially identical. While the Committee saw value in petition campaigns—namely, that they increased public engagement with the petitions system—replicating this approach at a State level may be too resource-intensive and could undermine the ability of a parliament to address serious grievances.

The Committee referred to a recent review of the ACT Legislative Assembly, which recommended combining identical petitions submitted on the same day in order to meet signature thresholds for committee referral. This may be an option for the Parliament of Western Australia.

Alternatively, the introduction of a NSW-style signature threshold may persuade petitioners to work together on a single petition, rather than 'splitting' their numbers and falling short of the threshold for a House debate. As noted in my response to question one, the NSW Legislative Assembly has experienced a reduction in absolute petition numbers once it introduced signature thresholds that guaranteed either a Ministerial response or House debate. This suggests that when these incentives are offered to petitioners, they will work together on one petition rather than presenting multiple similar or identical petitions to the parliament.

With regard to the effect on public participation and engagement, I do not see rejecting identical petitions as necessarily undermining these goals. If the parliament provides clear guidance and support to prospective petitioners as to what is needed to have their grievances considered—as well as noting the limitations of the process—the risk of participants ending their involvement upset and disillusioned would be reduced.

Question Seven

In the context of my submission, 'easy missteps' largely involve occasions where lack of communication or support by parliamentarians[6] lead to petitioners exiting the system believing that their advocacy efforts were easily dismissed or ignored by their elected representatives. While my 2018 paper looked only at positive actions by Members of the NSW Legislative Assembly, the opposite behaviours to those I listed would be examples of missteps. Three hypothetical examples are:

1) A parliamentarian who ends contact with a petitioner after their initial petition sponsorship loses the opportunity to provide additional guidance and reassurance to that person. The petitioner may interpret this as the Member no longer caring about the matter even if this is not the case (e.g. the Member is occupied with similarly high priority matters);
2) A parliamentarian who sponsors a petition but does not perform any advocacy work on its behalf may be viewed as uninterested in the grievance, perhaps only accepting the petition as a matter of routine rather than genuine interest. The petitioner may lose confidence in the ability of the Member to properly pursue the matter in parliament;
3) A signature threshold is met for a Ministerial response, but the response is brief and poorly addresses the petition matter. However, rather than seek further clarity or detail, a parliamentarian or the Petitions Committee simply returns the response to the petitioner and ends the process. The petitioner may conclude that the petitions process functions as little more than a 'forwarding address' to an uninterested Minister, rather than the substantive process they believed would occur.

[6] And by extension, a Petition Committee or Secretariat.

It is these situations and others like it that should be avoided wherever possible, especially if there is a desire to improve the processes of a parliamentary petitions system and offer more substantive outcomes for participants. Although there is no guarantee that all petitioners will be happy with the outcome they receive, frustration and disillusion with the process itself can be addressed regardless of whether or not the government of the day acts on the petition demands.

Question Eight

The third hypothetical example above indicates a pitfall that may occur if a Petitions Committee deems that the petition process is concluded once a Minister provides a response. However, while it would be easy to argue that a Petitions Committee should diligently seek further information in all circumstances, this ignores both the finite resources of these committees as well as the discretionary role members have to decide whether or not further action is warranted. Just as a Petitions Committee should not function as a 'forwarding address' to a Minister, it also should not act on the demands of every petitioner.

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.

If a petitioner is told *early* that their petition, with a modest number of signatures, may not be given much consideration by the parliament, then they are more likely to be prepared for a disappointing outcome should it occur. Being informed early also offers petitioners more time to remedy the shortcomings of their petition: for example, they may withhold their petition until additional signatures are found in order to obtain a better outcome.

The Official Reports of the Scottish Parliament's Public Petitions Committee may be of guidance in such circumstances. The Official Report dated 19 March 2020 shows Committee Members offering comments and suggestions for action on petitions, such as referring a matter to the relevant committee, or raising the issue with the Scottish Government. Even when the Committee determined a petition matter be closed, Members offered to continue monitoring some petitions, or, at minimum, offered their reasons why the Committee would not take further action.

As stated in response to questions six and seven, clear guidance and ongoing support to petitioners at all stages of the petitions process may go a long way to reduce frustration and disillusion with both the petitions system and politics more generally.

Question Nine and Ten

I do not have any additional comments or recommendations for the Committee in response to these questions.