

Submission to the inquiry into the functions, processes and procedures of the Standing Committee on Environment and Public Affairs

18 December 2019

Hon Matthew Swinbourn MLC
Standing Committee on Environment and Public Affairs
Parliament House
4 Harvest Terrace, West Perth, WA 6005

Dear Chair,

Thank you for the invitation to participate in this inquiry.

My submission addresses sub-section (a) of the inquiry's terms of reference, namely **the role of petitions in a modern parliament**.

The submission draws primarily from research conducted for my 2018 Australasian Parliamentary Review article, *Parliamentarians' Actions within Petition Systems: Their Impact on Public Perceptions of Fairness* (see attached).

Judging modern politics: A climate of mistrust and disengagement

The question of what role petitions should play in a modern parliament is raised in the context of widespread loss of public confidence and trust in political institutions throughout the developed world.¹ In Australia, recent public attitudes to politics can be summarised as:

[A]cross the age range citizens are judging their politics not through the lens of complacency but more through the lens of righteous indignation with a democratic politics too influenced by powerful sectional interests, and too prone to allowing politicians to break their promises with impunity.²

Although the exact causes remain unclear, a range of factors may be contributing to this decline, including poor political performance, falling interpersonal trust, and a polarising media sector.³ Yet whatever the reason for this mistrust and resentment, the consequence is an increased sense of economic and political disenfranchisement: citizens no longer believe they can influence policy, or that they are listened to or treated fairly by their political leaders.

This may have profoundly negative consequences for the democratic system; without an engaged and active civic culture, it will be difficult to address future challenges our nation faces.

¹ For a summary of recent evidence, see Senate Standing Committee on Legal and Constitutional Affairs, *Inquiry into nationhood, national identity and democracy: Discussion paper*, September 2019.

² Gerry Stoker, Jinjing Li, Max Halupka, Mark Evans, "Complacent young citizens or cross-generational solidarity? An analysis of Australian attitudes to democratic politics", *Australian Journal of Political Science* 52, no. 2 (2017): 218-235, 232.

³ See Angus C, "Parliamentarians' Actions within Petition Systems: Their Impact on Public Perceptions of Fairness", *Australasian Parliamentary Review* 33, no. 2 (2018).

Australians on ‘standby’ for political reengagement

Fortunately, the evidence suggests that Australian citizens still believe in the values of liberal democracy. Research into political participation indicates that many Australians are on ‘standby’ to participate in the political process, and have adequate knowledge of political issues and dynamics to participate effectively.⁴

This suggests that Australians are waiting for our political system to ‘improve’, and may reengage with the political process if they believe that positive change has occurred. The challenge for politicians and policymakers is, consequently, to convince the public that improvement *has* been made.

The modernisation of parliamentary processes is one area where reform is necessary, but not the only one. In fact, it may not even be the most important aspect of reform when it comes to reengaging the community with the political process.

While the political system must evolve in response to the many changes in our societies, it is not enough that these reforms be fair: the public must *perceive* them as fair.⁵ Indeed, research indicates that an individual’s perception of fairness around decision-making processes has a *greater bearing* on institutional legitimacy than his or her ability to influence an outcome.⁶

Whatever the Committee’s conclusions on the role of petitions in a modern parliament, it should keep in mind that public perception will play a substantial role in the success—or failure—of any reforms being introduced.

Petitions as a means of reengagement

Parliaments are the key institutions for the development of legislation, and are vital to efforts to improve engagement and trust in the political system. While there are a number of possible reforms, petitions remain one of the most common forms of political participation in many jurisdictions.

Bochel distinguishes between two types of parliamentary petition systems—‘substantive’ and ‘descriptive’—and two characteristics of participation—‘strong’ and ‘weak’—which are summarised in the following table:⁷

⁴ Mark Evans, Gerry Stoker, “Political participation in Australia: contingency in the behaviour and attitudes of citizens”, *Australian Journal of Political Science*, 51, no. 2 (2016): 272-287. See also: Cameron S, McAllister I, *Trends in Australian Political Opinion: Results from the Australian Election Study 1987-2016*, 2016.

⁵ Christopher Carman, “The Process is the Reality: Perceptions of Procedural Fairness and Participatory Democracy”, *Political Studies* 58, no. 4 (2010): 731-751, 746.

⁶ Marcia Grimes, “Organizing consent: The role of procedural fairness in political trust and compliance”, *European Journal of Political Research*, 45, no. 2 (2006): 218-315, 306.

⁷ Catherine Bochel, “Petitions: Different Dimensions of Voice and Influence in the Scottish Parliament and the National Assembly for Wales” *Social Policy & Administration* 46, no. 2 (2012): 142-160; Catherine Bochel, “Petitions Systems: Contributing to Representative Democracy?”, *Parliamentary Affairs* 66, no. 4 (2013): 798-815.

Type of petition system	Participation characteristics
<p>Substantive:</p> <ul style="list-style-type: none"> • Considers the content of each petition • Subsequent action undertaken by parliaments <p>Descriptive:</p> <ul style="list-style-type: none"> • Only records receipt of petitions • Does not require further action from the parliament or parliamentarians 	<p>Strong:</p> <ul style="list-style-type: none"> • Clear statement of purpose • Easy and direct access to petitions system • Low signature threshold • Availability of feedback and support to petitioner prior to submission • Petitions Committee that considers individuals petitions on their merit <p>Weak:</p> <ul style="list-style-type: none"> • The opposite of the above

Given the greater scope for meaningful participation by the public, a substantive system with strong participation characteristics is the preferred framework for a parliamentary petition system. While petitions have their limits—for example, they do not always change government policy or effectively engage marginalised groups—development of a strong, substantive parliamentary petitions system offers the community an improved and more meaningful way to engage with their parliament.

In sum, in order for petitions to play a consequential role in modern parliaments, it is necessary to have a modern parliamentary petitions system that provides *meaningful* opportunities for petitioners to present their views to the parliament.

For example, this may be in the form of a Petitions Committee taking evidence directly from witnesses and approaching government authorities for responses—as is done in the Scottish Parliament⁸—or requiring a government response or debate once a certain threshold of signature is met. In the NSW Legislative Assembly, 500 or more signatures on a petition requires a Ministerial response, while 10,000 or more signatures requires the House to debate the issue.⁹

Parliamentarian engagement with the petitions system

As discussed above, parliamentary petitions system reforms require more than the development of a substantive framework with a strong emphasis on public participation. The public must also *believe* that it is worth their time and effort to engage with the modernised petitions process.

Members of Parliament will invariably play an essential role in promoting a revamped petitions system and persuading the community that their activism can lead to meaningful change. Because they are the individuals who invariably support or reject the petitions presented to parliament, their privileged position as elected representatives is complemented by their role as ‘gatekeepers’ of the petition system. Not all parliamentarians have the requisite interest to work with their petition systems, nor will others have the capacity to facilitate the petition process. However, for parliamentarians who wish to be involved in the petition process, the skills and support they can offer petitioners—time, effort, resources, experience—can play as important a role as the petition system itself.

⁸ Daniel Reynolds, George Williams, “Petitioning the Australian Parliament: Reviving a Dying Democratic Tradition” *Australasian Parliamentary Review* 31, no. 1 (2016): 60-79.

⁹ Ibid SO 125A; Department of the Legislative Assembly, *Annual Report 2012-13* (Parliament of New South Wales, 2013) 6.

Nevertheless, promoting a modern parliamentary petitions system will not be easy. Because the public mistrust their political leaders, any overtures parliamentarians make to promote a revamped petitions system risk being rejected, or at best viewed with suspicion. It is possible that any misstep by parliamentarians—even accidental ones—could result in petitioners perceiving the petitions system as unfair or ineffectual, resulting in ongoing disengagement irrespective of the merits of the petitions process.

Each engagement between Member and petitioner will present its own challenges, and must ultimately be addressed on its own merits. Nevertheless, my 2018 paper analysed actions taken by Members of the NSW Legislative Assembly and considered how they could affect petitioners' perceptions of fairness.

A number of examples are summarised below to provide guidance for the Committee. These may guide the development of guidance notes or codes of conduct with respect to the petition system reforms suggested above, or may simply be taken into consideration as an optimal petitions system is developed by the Western Australian Parliament.

Examples of parliamentarian engagement with petitioners

The types of engagement recorded between Members of the NSW Legislative Assembly and petitioners in my paper are split into three categories, which are defined in the following table. Each of these categories are then discussed in turn in the following sub-sections.

Category	Definition
Treatment	Perceptions of institutional legitimacy may be affected by a person's treatment under a system, rather than the outcome of a decision.
Legitimacy	The legitimacy of authorities is connected to the legitimacy of the process by which strategies and plans are developed (e.g. informing affected parties and obtaining their consent to undertake certain actions).
Trust	Actions that affect trust may include the perceived willingness of authorities to engage in public dialogue, explain and justify their decisions, and address the concerns of citizens.

Treatment

Members of the NSW Legislative Assembly interacted with petitioners through a variety of mediums, including meetings with constituents, demonstrations, and social media. Some Members took constituent engagement beyond these initial interactions, speaking to community groups and schools about the petition matter, or making representations to the NSW Government to advocate on behalf of the petitioners. One Member helped establish a residents' action group, and approached local media and radio stations to raise awareness of the issue.¹⁰

One of the most common actions by Members in relation to the treatment of petitioners is public recognition: many Members thanked individuals involved in distributing, collecting and/or signing petitions. Other forms of recognition included one Member noting the specific impacts that coal seam gas mining could have on his local Aboriginal community,¹¹ and

¹⁰ Hansard, *NSW Legislative Assembly*, 23 November 2011, 7774 (Tanya Davies).

¹¹ Hansard, *NSW Legislative Assembly*, 15 March 2012, 9777 (Gareth Ward).

occasions where Members quoted from petitioners directly to allow their voices to be added to the public record.¹²

If the *perception* of fair treatment is as, or more, important to petitioners than obtaining a fair *outcome*, then these types of actions may demonstrate to petitioners that Members will treat them and their concerns with support and respect.

Legitimacy

If the community does not know that a petition system exists, the system will not be used, nor viewed as a legitimate means of political participation. While parliamentarians are not the only group who can raise this awareness, their efforts are likely to be important nonetheless.

Various Members noted the efforts they had made to keep petitioners informed about the petition process. Members raised awareness of petitions in a number of ways, including keeping copies of a petition in electorate offices for visitors to sign,¹³ and using social media to share information about petitions.¹⁴

One Member kept in contact with petitioners throughout the petitions process, helping manage their expectations and the limitations of the petitions process. Although in this case the lead petitioners expressed disappointment with the outcome, they determined to continue their campaign nonetheless.¹⁵ Other Members also noted that they would continue to lobby the NSW Government to have the matters brought for debate or to the attention of the relevant Minister:¹⁶ such actions likely demonstrate to petitioners that parliamentarians remain interested and engaged with their issues.

Trust

Public dialogue is a key element of gaining community trust. Although Members of the Legislative Assembly engage in public dialogue by virtue of speaking in the NSW Parliament, Members also engaged in public dialogue outside the Parliament. Several attended public meetings, summits or rallies dedicated to the petition issue,¹⁷ while others met directly with the local community to discuss petition matters or engaged with groups who were directly affected by a proposal or policy.¹⁸

¹² For example see: Hansard, *NSW Legislative Assembly*, 16 March 2010, 21450 (Victor Dominello); Hansard, *NSW Legislative Assembly*, 12 May 2010, 22627 (Dawn Fardell); Hansard, *NSW Legislative Assembly*, 18 September 2014, 878 (Andrew McDonald).

¹³ Hansard, *NSW Legislative Assembly*, 20 June 2013, 21882 (Richard Amery).

¹⁴ Hansard, *NSW Legislative Assembly*, 8 September 2015, 3230 (Greg Piper).

¹⁵ Hansard, *NSW Legislative Assembly*, 19 October 2017, 56 (Christopher Gulaptis).

¹⁶ Hansard, *NSW Legislative Assembly*, 15 September 2015, 3622 (Jamie Parker); Hansard, *NSW Legislative Assembly*, 4 August 2016, 70-71 (Anna Watson).

¹⁷ For example, see: Hansard, *NSW Legislative Assembly*, 17 March 2010, 21621 (Geoff Provest); Hansard, *NSW Legislative Assembly*, 24 September 2009, 18210 (Greg Piper); Hansard, *NSW Legislative Assembly*, 16 February 2016, 6365 (Jamie Parker).

¹⁸ Hansard, *NSW Legislative Assembly*, 12 May 2016, 74 (Stephen Bromhead).

Although not required under the sessional orders, NSW Government Ministers and Parliamentary Secretaries have attended petition debates in the NSW Legislative Assembly and responded to petitioners' concerns. While Ministers may not have determined to change policy, they nevertheless chose to outline the reasons for their decisions and detail how new programs would operate in an attempt to address concerns.¹⁹

There will inevitably be some disappointment when petitioners are unable to persuade the government of the day to reverse a policy decision or act on an issue they view as important. Yet a system that encourages governments to justify their decisions, and/or address the public's concerns, gives petitioners a substantive outcome of some form.

Conclusion

Although my submission does not delve deeply into the framework of modern petitions systems, this is because the actions of parliamentarians are of equal—if not more—importance than the structure of the petitions process itself.

Whether or not the criticisms are justified, it is clear that the public perceives the political system as untrustworthy, unfair and uninterested in them. A modern parliamentary petitions system could provide a comprehensive means by which the public can engage with their elected representatives and demand action or accountability from the government of the day, yet when it comes to increasing civic engagement, the reforms may fail if the community continue to believe that parliamentarians do not take their concerns seriously.

This submission recommends that the Committee consider adopting substantive forms of petition processes with strong emphasis on participation (such as those in Scotland or NSW). At the same time, it should also consider what actions parliamentarians take—or can take—throughout the petitions process in order to improve engagement with petitioners.

This may be done through the development of guidance notes for interested Members, or the creation of a code of conduct outlining (in general terms) optimal actions that could be taken in order to minimise the chances of petitioners coming away from the system demoralised and unhappy. Of course, it is not possible to please everyone, and there will inevitably be petitioners who are dissatisfied with the political process no matter how much support is provided to them by the parliament. Nevertheless, if even some of the easiest missteps are avoided, this may go a long way to achieving the important goal of reengaging the community with their political system.

Yours sincerely,

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¹⁹ Hansard, *NSW Legislative Assembly*, 19 October 2011, 6783 (Katrina Hodgkinson); Hansard, *NSW Legislative Assembly*, 21 February 2013, 17877 (Kevin Humphries); Hansard, *NSW Legislative Assembly*, 13 August 2015, 2655 (Mark Speakman).

Parliamentarians' Actions within Petition Systems: Their Impact on Public Perceptions of Fairness*

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* Double-blind reviewed article.

INTRODUCTION

Evidence indicates that citizens of developed nations are increasingly losing trust and confidence in their political leaders. With the risk of negative consequences for democratic systems, parliamentary petition systems have been identified as a key area through which to reengage a sceptical and mistrustful citizenry. Complementing existing research into institutional reforms of parliamentary petition systems, this paper examines the actions of Members of the New South Wales Legislative Assembly within their petition system. This analysis of Members' actions, undertaken using a framework of procedural justice, considers how these behaviours might affect public perceptions of fairness with respect to the political system.

POLITICAL MISTRUST AND REENGAGEMENT

Some may view it as an unkind characterisation, yet the evidence is uncontroversial: a significant proportion of Australians dislike their politicians, and have done so for a long time.¹ Recent surveys indicate that levels of public trust, confidence and political

¹ Murray Goot, 'Distrustful, Disenchanted and Disengaged? Polled Opinion on Politics, Politicians and the Parties: an Historical Perspective', in David Burchell and Andrew Leigh (eds.), *The Prince's New Clothes: Why Do Australians Dislike Their Politicians?* Sydney: UNSW Press, 2002, pp. 9-46.

engagement continue to fall,² with Australians ‘judging their politics not through the lens of complacency but more through the lens of righteous indignation.’³ These attitudes form part of a broader decline of public confidence in, and support for, democratic institutions in developed nations.⁴ Scholars have suggested a range of contributing factors for this decline, including poor political performance, falling interpersonal trust, and/or a polarising media sector.⁵

It is said that political disengagement is leading to the increased prevalence of populist candidates, who rely on perceptions of economic and political disenfranchisement as a means of pitting ‘ordinary citizens’ against alleged ‘elites’ in government, institutions and business.⁶ Whether or not this trend will continue, the loss of an engaged and active citizenry will nevertheless make it harder to address challenges in future.⁷

Despite this mistrust, Australians citizens still believe in the values of liberal democracy.⁸ According to Evans and Stoker, many Australians display behaviours that indicate they remain on ‘standby’ to participate in the political process, and

² For example, see: Sarah Cameron and Ian McAllister, *Trends in Australian Political Opinion Results from the Australian Election Study 1987–2016*. Canberra: Australian National University, 2016; Ann Evans and Ian McAllister, ‘Australia 2012’. Accessed at: <http://www.worldvaluessurvey.org/WVSDocumentationWV6.jsp>; Mark Evans, Gerry Stoker and Jamal Nasir, *How Do Australians Image Their Democracy? Australian Survey of Political Engagement Findings 2013*. Canberra: Institute for Governance and Policy Analysis, University of Canberra, 2013.

³ Gerry Stoker, Jinjing Li, Max Halupka and Mark Evans, ‘Complacent Young Citizens or Cross-Generational Solidarity? An Analysis of Australian Attitudes to Democratic Politics’. *Australian Journal of Political Science*, 52(2), 2017, pp. 218-235, 232.

⁴ Paul Whiteley, Harold Clarke, David Sanders, Marianne Stewart, ‘Why Do Voters Lose Trust in Governments? Public Perceptions of Government Honesty and Trustworthiness in Britain 2000–2013’. *British Journal of Politics and International Relations*, 18(1), 2016, pp. 234-254; Philip Norton, ‘Speaking for Parliament’. *Parliamentary Affairs*, 70(2), 2017, pp. 191-206.

⁵ Annika Werner, ‘Party Responsiveness and Voter Confidence in Australia’. *Australian Journal of Political Science*, 51(3), 2016, pp. 436-457; Andrew Leigh, ‘Explaining Distrust: Popular Attitudes Towards Politicians in Australia and the United States’, in David Burchell and Andrew Leigh (eds.), *The Prince’s New Clothes: Why Do Australians Dislike Their Politicians?*. Sydney: UNSW Press, 2002, pp. 47-61; Nathaniel Persily, ‘Can Democracy Survive the Internet?’. *Journal of Democracy*, 28(2), 2017, pp. 71-2.

⁶ Jan-Werner Muller, *What is Populism?* Philadelphia: University of Pennsylvania Press, 2016, pp. 19-20; William Galston, ‘The Populist Movement’. *Journal of Democracy*, 28(2), 2017, pp. 21-33.

⁷ Matthew Flinders, ‘The Problem with Democracy’. *Parliamentary Affairs*, 69(1), 2016, pp. 181-203, 199-200.

⁸ Gerry Stoker and Mark Evans, ‘The “Democracy-Politics Paradox”: The Dynamics of Political Alienation’. *Democratic Theory*, 1, 2014, pp. 26-36; Evans and McAllister, ‘Australia 2012’.

retain enough knowledge of political issues and dynamics to participate effectively.⁹ Given their lack of reengagement thus far, it appears that the public remains unconvinced that political participation is worthy of their time and effort.

REENGAGEMENT THROUGH PARLIAMENTARY PETITION SYSTEMS AND PARLIAMENTARIANS

As institutions with a central role in making public policy, parliaments are key in the battle to re-establish community trust in the political system.¹⁰ Many parliaments recognise the need for change, with a variety of reforms having been introduced or proposed.¹¹ Parliamentary petition systems have attracted particular attention, with scholars arguing that effective parliamentary petition systems may help reconnect a jaded citizenry with its political system.¹² This view is further reinforced because petitioning parliament is regarded as a fundamental right of the citizen in many jurisdictions.¹³ Indeed, it is often the only formal avenue by which the popular will can be conveyed directly to parliament.¹⁴

While parliamentary petition systems have been subject to criticism,¹⁵ a number of legislatures across the world have introduced reforms to their petition systems.¹⁶

⁹ Mark Evans and Gerry Stoker, 'Political Participation in Australia: Contingency in the Behaviour and Attitudes of Citizens'. *Australian Journal of Political Science*, 51(2), 2016, pp. 272-287.

¹⁰ Philip Norton, *Parliament in British Politics*. Hampshire: Palgrave Macmillan, 2005, pp. 224-225.

¹¹ For example, see Carolyn Hendricks and Adrian Kay, 'From 'Opening Up' to Democratic Renewal: Deepening Public Engagement in Legislative Committees'. *Government and Opposition*, 2017, pp. 1-27; Sarah Childs, *The Good Parliament*. Bristol: University of Bristol and UK House of Commons, 2016.

¹² Ulrich Riehm, Knud Bohle and Ralf Lindner, *Electronic Petitioning and Modernization of Petitioning Systems in Europe: Final Report*. Berlin. Office of Technology Assessment at the German Bundestag, 2014.

¹³ Bernard Wright (ed.), *House of Representatives Practice*. Canberra, Department of the House of Representatives, 2012, p. 628.

¹⁴ Daniel Reynolds and George Williams, 'Petitioning the Australian Parliament: Reviving a Dying Democratic Tradition'. *Australasian Parliamentary Review*, 31(1), 2016, p. 78.

¹⁵ Ralf Lindner and Ulrich Riehm, 'Electronic Petitions and Institutional Modernization'. *JeDEM* 1(1), 2009, pp. 1-11; Christopher Carman, 'Barriers are Barriers: Asymmetric Participation in the Scottish Public Petitions System'. *Parliamentary Affairs*, 67(1), 2014, pp. 151-171.

¹⁶ Reynolds and Williams, 'Petitioning the Australian Parliament', p. 61.

These legislatures include the house of parliament discussed in this paper: the New South Wales (NSW) Legislative Assembly.

The NSW Legislative Assembly's standing and sessions orders set out the requirements for the submission and presentation of petitions. Petitions can only be presented by Members of the Legislative Assembly,¹⁷ and must follow rules as to their content and presentation.¹⁸ While the Assembly does not have a petitions committee or provide for e-petitions, it has introduced several substantive changes to its petition system over the past decade.

Since July 2009, the standing orders require the relevant NSW Government Minister to respond within 35 calendar days to a petition signed by 500 or more people.¹⁹ In May 2011, the House's sessional orders were changed so that petitions signed by 10,000 or more persons would be automatically set down as an Order of the Day for debate at 4.30pm on the Thursday of the next sitting week.²⁰ These standing orders remain in force as of the current Parliament.²¹ Figure 1 sets out the yearly July-June pattern of petitions in the NSW Legislative Assembly since the 2009 changes to standing orders (the figures for 2017-18 include only the period to 30 November 2017).

¹⁷ Department of the Legislative Assembly, Parliament of New South Wales, 'About Petitions'. Accessed at: <https://www.parliament.nsw.gov.au/la/petitions/pages/about-petitions.aspx>.

¹⁸ Department of the Legislative Assembly, *Consolidated Standing and Sessional Orders and Resolutions of the House*, Sydney: Parliament of New South Wales, 2016, SO 121-122.

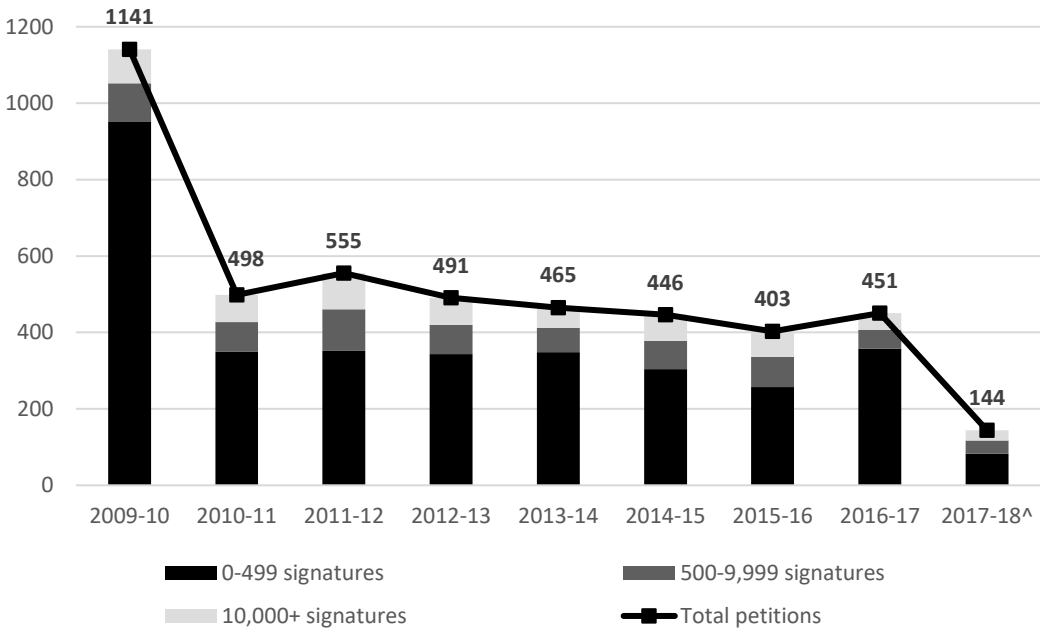
¹⁹ Department of the Legislative Assembly, *Consolidated Standing and Sessional Orders and Resolutions of the House*, SO 125.

²⁰ Department of the Legislative Assembly, *Consolidated Standing and Sessional Orders and Resolutions of the House*, SO 125A; Department of the Legislative Assembly, *Annual Report 2012-13*, Sydney: Parliament of New South Wales, 2013, p. 6. Accessed at:

<https://www.parliament.nsw.gov.au/la/department/Documents/department-of-the-legislative-assembly-annual-report-for-2012-13-images--text/Department%20of%20the%20Legislative%20Assembly%20Annual%20Report%202012-13.pdf>

²¹ Legislative Assembly, *Votes and Proceedings No 1*, Sydney, Parliament of New South Wales, 5 May 2015, pp. 45-46.

Figure 1. Petitions in the NSW Legislative Assembly, July 2009–November 2017



[^]July to November 2017.

Although institutional reforms may help increase political engagement, the actions of parliamentarians in their positions as ‘gatekeepers’ of the petition system may also help—or hinder—these reforms.²² Not all parliamentarians will wish to become involved with their petition systems, nor will others have the capacity to do so: such is the reality of an elected official with many responsibilities and limited resources. For parliamentarians who are involved though, the skills and support they can offer petitioners—time, effort, resources, experience—can play as important a role as the petition system itself. A parliamentarian who can guide petitioners through a potentially complicated and unclear process will likely enhance not only his or her personal standing with petitioners, but may also boost the reputation of the parliament itself as an institution that listens to, and can be trusted by, the wider community.

²² Christopher Carman, ‘The Process is the Reality: Perceptions of Procedural Fairness and Participatory Democracy’. *Political Studies* 58(4), 2010, p. 747.

ASSESSING FAIRNESS THROUGH A PROCEDURAL JUSTICE FRAMEWORK

One possible method of assessing the impact of reforms is to assess their fairness. For a political system already affected by a mistrustful community, reengaging the public requires reforms that must be *perceived* to be fair, as well as objectively so.²³ Should a person believe a system, such as a parliamentary petitions process, to be unfair, there is a risk that that person may develop negative views of the parliament as a whole, even if their grievances are limited to one element of the political system.²⁴

Assessing the fairness of a decision-making process can be undertaken using a framework of procedural justice.²⁵ Drawing on a range of literature, Bochel has identified six characteristics of procedural justice, including the following three 'perception' characteristics that represent individual judgements about an institution:²⁶

- **Treatment:** Perceptions of institutional legitimacy may be affected by a person's treatment under a system, rather than the outcome of a decision.²⁷
- **Legitimacy:** The legitimacy of authorities is connected to the legitimacy of the process by which strategies and plans are developed.²⁸ Behaviours such as informing affected parties and obtaining their consent to undertake actions have been identified as important antecedents for legitimacy.²⁹
- **Trust:** Actions that affect trust may include the perceived willingness of authorities to engage in public dialogue, explain and justify their decisions,

²³ Carman, 'The Process is the Reality', p. 746.

²⁴ Carman, 'The Process is the Reality', pp. 746-747.

²⁵ Catherine Bochel, 'Process Matters: Petitions Systems in Britain's Legislatures'. *Journal of Legislative Studies* 22(3), 2016, p. 371.

²⁶ Bochel, 'Process Matters', p. 372.

²⁷ Tom Tyler, 'The Psychology of Legitimacy: A Relational Perspective on Voluntary Deference to Authorities'. *Personality and Social Psychology Review*, 1(4), 1997 pp. 323-345, 326; Lynn Maguire and Allen Lind, 'Public Participation in Environmental Decisions: Stakeholders, Authorities and Procedural Justice', *International Journal of Global Environmental Issues*, 3(2), 2003, pp. 133-148, 134.

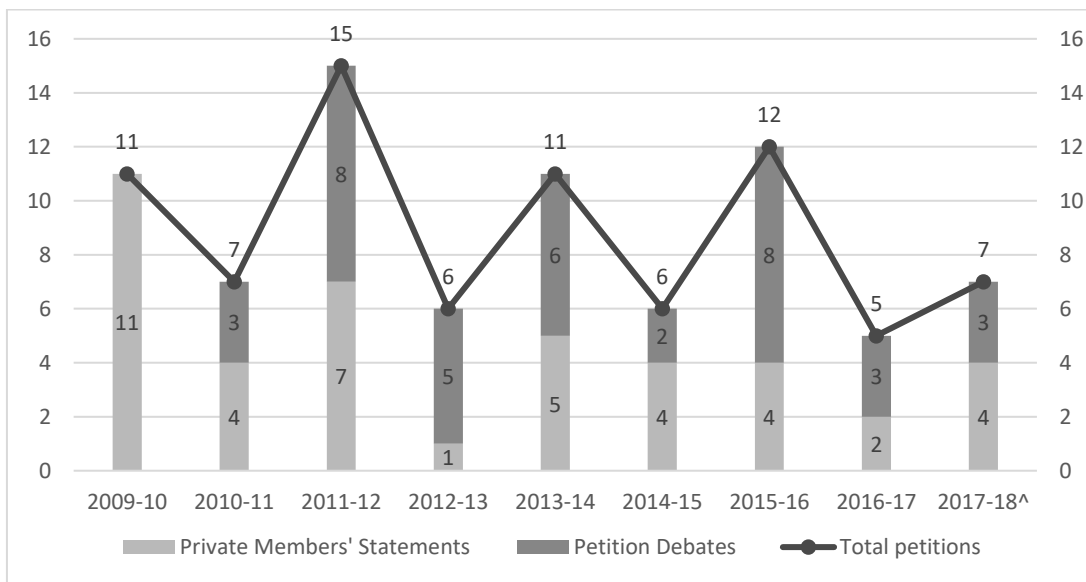
²⁸ Tyler, 'The Psychology of Legitimacy'.

²⁹ Jouni Paavola and Neil Adger, *Justice and Adaptation to Climate Change*. Tyndall Centre for Climate Change Research, Working Paper 23, 2002, p. 7. Accessed at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.119.2994&rep=rep1&type=pdf>

and address the concerns of citizens.³⁰

Using these characteristics, this paper analyses actions taken by Members of the Legislative Assembly in NSW and how they may affect petitioners’ perceptions of fairness. The paper uses case studies derived from a sample of 47 Private Members’ Statements and 33 debates on petitions that had signed by more than 10,000 persons, between July 2009 and November 2017 (see Figure 2).³¹

Figure 2. Private Members’ Statements and Petition Debates Included as Case Studies in the Research



^July to November 2017.

These case studies form an incomplete source of information with which to assess parliamentarians’ engagement within the petition system, since they do not allow analysis of petitioners’ attitudes. In addition, the analysis that follows lacks a quantitative dimension. The main difficulty in performing a quantitative analysis using Private Members’ Statements and petition debates is that these information

³⁰ Marcia Grimes, ‘Organizing Consent: The Role of Procedural Fairness in Political Trust and Compliance’. *European Journal of Political Research*, 45(2), 2006, p. 306.

³¹ July 2009 was the month when the NSW Legislative Assembly’s Standing Orders were modified to require Ministers to respond to petitions signed by 500 or more persons.

sources are invariably curated by the parliamentarians themselves. A Member may choose to spend a proportion of their limited speaking time discussing actions relating to the perception characteristics listed above. However, the absence of this information in a Member's speech does not necessarily indicate limited engagement with petitioners: he or she may have simply decided to focus wholly on the petition subject rather than the 'behind-the-scenes' activities leading to the statement or debate. These choices by parliamentarians mean that simply counting instances of the different approaches to petitions found in their speeches is likely to be misleading. Despite these possible limitations, this analysis performs two useful functions:

- 1) Identifying potentially common Member actions or behaviours that can be used in future studies to assess participant and/or public opinion;
- 2) Determining what actions the Members *themselves* believe to be of benefit for petitioners and the petition system. Subsequent research could evaluate the outcomes of these actions.

Treatment

The case studies provide numerous examples of how Members of the NSW Legislative Assembly interact with petitioners throughout the petition process. These interactions indicate that petitioners' perceptions of treatment will be an important aspect of this petition system.

Many Members first became aware of petition issues when approached by their constituents. One Member was presented with a petition while attending a local community meeting,³² while another attended a protest march organised by a local community group, where he gained first-hand knowledge of the matter and the group's concerns.³³ Another Member appears to have taken up a petition following Twitter exchanges with a local constituent.³⁴ Other Members engaged directly with

³² Hansard, *NSW Legislative Assembly*, 22 June 2010, 24454 (Paul Gibson).

³³ Hansard, *NSW Legislative Assembly*, 10 March 2010, 21234 (Greg Smith).

³⁴ Hansard, *NSW Legislative Assembly*, 21 October 2014, 1537 (Gareth Ward).

petitioners, with one regional Member meeting a petition organiser in a café to discuss a matter and offer assistance.³⁵

Some Members took constituent engagement beyond these initial interactions. Prior to discussing the matter in the Legislative Assembly, one Member spoke to schoolchildren who were using public transport in order to canvass their views of the system and any challenges they had experienced.³⁶ Another Member attended community rallies related to the petition subject (opposition to a telecommunications tower).³⁷ A regional Member organised a meeting with school-aged petitioners to discuss their matter, as well as find out what they had learnt about government and the parliamentary process through their petitioning efforts.³⁸

Some Members do not appear to have provided further assistance to petitioners beyond the initial engagement and offer of petition sponsorship. However, in some cases Members took it upon themselves to perform further advocacy, as distinct from mere constituent engagement, in support of the petition's aims. Several examples saw Members making representations to the Government to advocate for the petitioners. Two Members made written representations to the relevant Minister to request meetings or further reviews of a decision,³⁹ while other Members directly approached ministers or organised private meetings to discuss an issue.⁴⁰

Being a Government parliamentarian may provide additional influence when undertaking such representations. One Government Member stated that he had approached his Transport Minister over electorate bus services and, using information provided by petitioners, persuaded the Minister to reinstate a bus service.⁴¹ Other examples of ongoing support include a Member helping to form a residents' action group, and also being involved in public rallies and approaching local

³⁵ Hansard, *NSW Legislative Assembly*, 23 October 2013, 24636 (Andrew Gee).

³⁶ Hansard, *NSW Legislative Assembly*, 27 March 2014, 28104 (Jamie Parker).

³⁷ Hansard, *NSW Legislative Assembly*, 1 September 2010, 25008 (Victor Dominello).

³⁸ Hansard, *NSW Legislative Assembly*, 22 September 2009, 17851 (Craig Baumann).

³⁹ Hansard, *NSW Legislative Assembly*, 16 March 2010, 21450 (Victor Dominello); Hansard, *NSW Legislative Assembly*, 2 September 2010, 25204 (Clover Moore).

⁴⁰ Hansard, *NSW Legislative Assembly*, 22 September 2009, 17858 (Daryl Maguire); Hansard, *NSW Legislative Assembly*, 22 September 2010, 17851 (Craig Baumann).

⁴¹ Hansard, *NSW Legislative Assembly*, 13 November 2009, 19630 (Allan Shearan).

media and radio stations.⁴² Another Member asked Questions on Notice and filed freedom of information requests for information about the petition issue.⁴³ A third Member, upon noticing an error in the petition format, sought support from the Government to ensure that the petition could be debated in the chamber.⁴⁴

One of the most common actions by Members in relation to the treatment of petitioners is public recognition of the petitioners. Indeed, many Members thanked individuals involved in distributing, collecting and/or signing petitions:⁴⁵ an arguably effective means of acknowledging these efforts. Members recognised individuals involved in forming petitions, thanking them by name and acknowledging their work.⁴⁶ Other forms of recognition included a Member noting the specific impacts that coal seam gas mining could have on his local Aboriginal community,⁴⁷ and occasions where Members quoted from petitioners directly to allow their voices to be heard.⁴⁸

If the perception of fair treatment is potentially as important, if not more important, to petitioners than the actual outcome, these types of actions may demonstrate to petitioners that Members will treat them and their concerns with support and respect.

Legitimacy

Informing citizens about a petition system is a simple, yet essential action to enhance legitimacy of that system. If the community does not know that a petition system

⁴² Hansard, *NSW Legislative Assembly*, 23 November 2011, 7774 (Tanya Davies).

⁴³ Hansard, *NSW Legislative Assembly*, 22 November 2017, 108 (Jodi Harrison).

⁴⁴ Hansard, *NSW Legislative Assembly*, 15 September 2015, 3622 (Jamie Parker).

⁴⁵ For example see: Hansard, *NSW Legislative Assembly*, 12 May 2010, 22627 (Dawn Fardell); Hansard, *NSW Legislative Assembly*, 13 May 2010, 22751 (Paul Pearce); Hansard, *NSW Legislative Assembly*, 12 September 2011, 5407 (Andrew Gee); Hansard, *NSW Legislative Assembly*, 18 February 2016, 6546 (Yasmin Catley).

⁴⁶ Hansard, *NSW Legislative Assembly*, 13 May 2010, 22751 (Paul Pearce); Hansard, *NSW Legislative Assembly*, 13 November 2009, 19630 (Allan Shearan); Hansard, *NSW Legislative Assembly*, 13 September 2012, 15215 (Andrew Stoner).

⁴⁷ Hansard, *NSW Legislative Assembly*, 15 March 2012, 9777 (Gareth Ward).

⁴⁸ For example see: Hansard, *NSW Legislative Assembly*, 16 March 2010, 21450 (Victor Dominello); Hansard, *NSW Legislative Assembly*, 12 May 2010, 22627 (Dawn Fardell); Hansard, *NSW Legislative Assembly*, 18 September 2014, 878 (Andrew McDonald).

exists, the system will not be used, nor viewed as a legitimate means of political participation. While parliamentarians are not the only group who can raise this awareness, their efforts are likely to be important nonetheless.

Various Members noted the efforts they had made to keep petitioners informed about the petition process. One Member kept copies of the petition in his electorate office for visitors to sign,⁴⁹ while other Members purported to initiate the petitions themselves.⁵⁰ Another Member used Facebook to inform the public about a petition, with his post shared more than 600 times by site users.⁵¹ Members also informed petitioners about different stages of the petition process. One Member outlined in detail the actions he had taken prior to making his Private Members' Statement:

On 2 June 2010, I submitted a petition to Parliament with more than 200 signatures, which sought the urgent implementation of pedestrian safety measures. On that day I also followed up my letter of 11 May 2010. On 28 June 2010, I informed each of the petitioners of my request for appropriate safety measures for children crossing Victoria and Marsden roads and my correspondence with the Minister to date. ... I will provide a copy of this speech to all those who signed the petition.⁵²

Another facet of this informational role is Members' ability to manage petitioner expectations, helping them understand the limitations of the petition system and problems that may be encountered. Most Members from the case studies spoke to the petition subject rather than the petitioning process, meaning that discussion of petitioner expectations was limited. Nevertheless, there were some examples in which Members noted their discussions with petitioners.

One Government Member stated that, although he had spoken to his Minister about the issue, the response had not been supportive. The Member conveyed this response to the lead petitioners, who expressed disappointment but determined to

⁴⁹ Hansard, *NSW Legislative Assembly*, 20 June 2013, 21882 (Richard Amery).

⁵⁰ Hansard, *NSW Legislative Assembly*, 8 August 2011, 3843 (Carmel Tebbutt); Hansard, *NSW Legislative Assembly*, 15 March 2012, 9790 (Lee Evans); Hansard, *NSW Legislative Assembly*, 15 November 2012, 17004 (Bruce Notley-Smith).

⁵¹ Hansard, *NSW Legislative Assembly*, 8 September 2015, 3230 (Greg Piper).

⁵² Hansard, *NSW Legislative Assembly*, 9 September 2010, 25647-48 (Victor Dominello).

continue their campaign.⁵³ Two other Members noted in Private Members' Statements that petitions they had received did not comply with the House standing orders. Nevertheless, they were continuing to lobby the Government to have the matters brought for debate or to the attention of the relevant minister.⁵⁴

Obtaining consent to undertake action is an important antecedent for legitimacy.⁵⁵ This occurred in one example, where a Member, having made a representation to a Minister regarding respite care, sent a copy of the Minister's response to the lead petitioner for consideration. The petitioner had responded expressing her concerns, which were noted by the Member in her speech.⁵⁶ However, there were few other examples of consent in the case studies. This may simply be a matter of Members' speeches focusing on the petition issue itself rather than background processes. On the other hand, because elected representatives hold the ultimate decision-making power within the Parliament,⁵⁷ it is also possible that many Members prefer to control the petition process rather than hand power to petitioners, and unilaterally choose which measures to use to promote a petition.

However, the latter scenario may not necessarily be problematic if petitioners are adequately informed about why a Member is taking particular actions. Reviewing these attitudes is not possible within the methodological framework of this analysis, which only explores the attitudes of Members.

Trust

Members engaged in public dialogue simply by making their speeches in the Legislative Assembly. However, Members also engaged in public dialogue outside the NSW Parliament. Several attended public meetings, summits or rallies dedicated to the petition issue;⁵⁸ another Member stated in her Private Members' Statement that

⁵³ Hansard, *NSW Legislative Assembly*, 19 October 2017, 56 (Christopher Gulaptis).

⁵⁴ Hansard, *NSW Legislative Assembly*, 15 September 2015, 3622 (Jamie Parker); Hansard, *NSW Legislative Assembly*, 4 August 2016, 70-71 (Anna Watson).

⁵⁵ Paavola and Adger, *Justice and Adaptation to Climate Change*, p. 7.

⁵⁶ Hansard, *NSW Legislative Assembly*, 29 May 2014, 29499 (Anna Watson).

⁵⁷ Bochel, 'Process Matters', p. 378.

⁵⁸ For example, see: Hansard, *NSW Legislative Assembly*, 17 March 2010, 21621 (Geoff Provest); Hansard, *NSW Legislative Assembly*, 24 September 2009, 18210 (Greg Piper); Hansard, *NSW Legislative Assembly*, 16 February 2016, 6365 (Jamie Parker).

she had been directly involved in a range of community activities, including the creation of a residents action group.⁵⁹ Other Members met directly with the local community to discuss petition matters,⁶⁰ or engaged with groups who were directly affected by a proposal or policy.⁶¹

Such actions by Members may demonstrate to petitioners that, in circumstances where Government decisions are perceived to be unfair, there are other Members who will listen to petitioners and perhaps advocate for their cause. Nevertheless, if the only Members involved in the petition system are those who agree with a petition yet are powerless to change a decision, the petitioning process has, for all the effort involved, little impact. In this respect, the involvement of Government Members in responding to concerns and justifying their decisions is crucial for increasing trust.

Although not required under the sessional orders, NSW Government Ministers and Parliamentary Secretaries have attended petition debates in the NSW Legislative Assembly and responded to petitioners' concerns. In a petition debate on the closure of a fisheries research centre, the Minister for Primary Industries outlined the factors justifying the closure, and promised that the relocation would consider the needs of staff and their families.⁶² Other Ministers explained what consultation processes were undertaken to make a decision;⁶³ summarised how new Government programs would operate;⁶⁴ and outlined due diligence measures for a new Government policy.⁶⁵

There will inevitably be some disappointment emerging from the petition process, as should be expected when petitioners do not wield the power to reverse a decision or force the government of the day to take an interest in their issues. Yet a system that encourages governments to justify their decisions, and/or address the public's concerns, gives petitioners a substantive outcome of some form. In combination with

⁵⁹ Hansard, *NSW Legislative Assembly*, 23 November 2011, 7774 (Tanya Davies).

⁶⁰ See section on Treatment.

⁶¹ For example: Hansard, *NSW Legislative Assembly*, 12 May 2016, 74 (Stephen Bromhead).

⁶² Hansard, *NSW Legislative Assembly*, 19 October 2011, 6783 (Katrina Hodgkinson).

⁶³ Hansard, *NSW Legislative Assembly*, 21 February 2013, 17877 (Kevin Humphries); Hansard, *NSW Legislative Assembly*, 13 August 2015, 2655 (Mark Speakman).

⁶⁴ Hansard, *NSW Legislative Assembly*, 22 August 2013, 22692 (Katrina Hodgkinson).

⁶⁵ Hansard, *NSW Legislative Assembly*, 23 March 2016, 8169-70 (Paul Toole).

the previously discussed measures supportive Members take to help petitioners, these actions may lead to increased levels of trust for both the Members and the political system itself.

CONCLUSION

Entrenched public mistrust in—and disengagement from—the political system is a challenge for Australia and other democratic societies; addressing this problem will require concerted efforts across political institutions and politicians.

As a longstanding formal avenue to convey the popular will to their elected representatives, parliamentary petition systems have seen reforms that seek to increase fairness, and in turn, increase public participation and trust in the system. Although parliamentary petition systems are but one aspect of the wider political system, the actions of parliamentarians within petition systems likely affect public perceptions of fairness.

A comprehensive quantitative survey showing how parliamentarians engage with and treat petitioners may help pinpoint what actions can persuade the public to trust and participate in the political system, and how often such actions occur. While this paper does not purport to identify effective (or ineffective) actions, the Members' actions and behaviours identified in this analysis may inform future studies that assess petitioner or public opinion of their elected representatives.