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27 November 2018

Committee Secretary
Standing Committee on Petitions
PO Box 6021
Parliament House
Canberra ACT 2600

By email: petitions.committee.reps@aph.gov.au

Dear Committee Secretary,

Inquiry into the future of petitioning in the House

Thank you for the opportunity to make a submission to the inquiry into the future of petitioning in the House of Representatives. The submission of the Law Society of NSW is informed by its Public Law Committee.

The Law Society notes that the issue of effective petitioning has been the subject of a number of reviews and inquiries over the years. The more recent and significant reports include the 2007 report of the House of Representatives Standing Committee on Procedure, *Making a difference: Petitioning the House of Representatives* ("2007 report") and more recently, the 2013 report of the House of Representatives Standing Committee on Petitions on its own constitution and effectiveness, *The work of the Petitions Committee: 2010-2013 - An established part of the democratic process*. It appears that all the recommendations made in the 2007 report have now been implemented.

House of Representatives statistics¹ show that in 2016 the number of petitions presented was 101, but we note that since e-petitions were introduced in 2016, the annual number of petitions increased in 2017 to 329 and so far in 2018, 290 petitions have been presented. We also note that since the reforms following the 2007 report, the number of Ministerial responses presented increased significantly (from 5 at the highest in 1996 to 227 in 2018, where statistics are available only from 1993).

However, despite these improvements, these figures still represent a significant decline in the number of petitions presented to Parliament compared to the highest number of petitions presented in a year since 1901, which was 5,528 in 1986.

In the 2007 report, the House of Representatives Standing Committee on Procedure stated a number of principles of petitioning, the first of which is that "petitions belong to the public":

¹ Chamber Research Office, Parliament of Australia, *House of Representatives: Petitions Presented Since 1901* (25 October 2018), online:

https://www.aph.gov.au/Parliamentary_Business/Statistics/House_of_Representatives_Statistics

Petitions are the most direct form of communication between the public and the House. Despite the growth of alternative forms by which matters may be raised and grievances aired, petitions continue to serve as a community building process underpinned by the key objective of having the public voice heard. This process is important to our democratic system.²

Parliamentary petitions are the only direct means by which an individual can ask Parliament to take action. We recommend to the attention of the Standing Committee on Petitions the 2016 *Australasian Parliamentary Review* article by Daniel Reynolds and Professor George Williams³ ("Reynolds and Williams article"). Reynolds and Williams argue that Parliamentary petitions have fallen short of their potential in Australia and that the right to petition in Australia's federal Parliament can and should be further reformed and improved, because of the potential of petitions to play a remedial role between the current disconnect (whether perceived or actual) between Parliament and the wider community:

Of the three branches of government, [Parliament] alone has an expressly democratic foundation, with ss 7 and 24 of the Constitution requiring that its members be 'directly chosen by the people'. Its purpose derives from, and its legitimacy depends on, its ability to represent the common will of the people. In turn, it confers that legitimacy onto the other branches of the government by virtue of their accountability to Parliament: the Executive through the notion of responsible government, and the Judiciary through its duty to interpret and apply legislation and through Parliament's power to remove federal judges.

In spite of this, there is a well-documented disjunction between the democratic ideals that Parliament ought to embody, and the way that it is operates and is perceived to operate in practice.

[...]

Petitions in their present form do nothing to ameliorate this impression, and if anything exacerbate community concerns about the unresponsiveness of Parliament. On the other hand, petitions could play a remedial role in this context, as a more effective system could give members of the public the chance to meaningfully raise their concerns for consideration by their elected representatives. A more effective petitioning process could contribute to a perception that parliamentarians do in fact listen to electors, and not only at election time.

We agree with the recommendations for reform made in the Reynolds and Williams article⁴, and extract and summarise these recommendations, based on the experience of comparable jurisdictions, below:

1. Establish a joint e-petition system for the House of Representatives and Senate. A harmonised e-petition system would make the system simpler and more accessible;
2. Empower the Standing Committee on Petitions to inquire into and engage substantively with the issues raised in petitions. The Petitions Committee's remit could reflect that of its Scottish and/or UK counterparts, detailed in the Reynolds and Williams article. At the very least, it should be granted an inter-committee referral power; and
3. Setting signature thresholds beyond which petitioners can expect a Ministerial response or the holding of a parliamentary debate. Providing clear pathways and outcomes by way of Executive responses and Parliamentary deliberations is an appropriate way of responding to public concerns raised by petition.

² House of Representatives Standing Committee on Procedure, *Making a difference: Petition the House of Representatives*, August 2007, Canberra, [1.13]

³ Daniel Reynolds, George Williams, "Petitioning the Australian Parliament: reviving a dying democratic tradition," (2016) 31(1) *Australasian Parliamentary Review* 60, online:

http://www.gtcentre.unsw.edu.au/sites/gtcentre.unsw.edu.au/files/petitioning_the_australian_parliament.pdf

⁴ *Ibid*, 79

In addition to these recommendations for reform, we make an additional recommendation that the relevant Minister should be required, when presenting petitions, to make a statement to the House. Currently, petitions may be presented in the Federation Chamber. The Law Society is of the view that requiring formal responses to petitions addressed to a Minister be made in the House of Representatives (and Senate) rather than in the Federation Chamber would increase the visibility of petitions and increase the opportunity for engagement with the petition. In making this recommendation, the Law Society is conscious of how valuable sitting time is in the House and it would not be inappropriate for petitions, and the Ministerial responses, to be grouped by subject matter. It would also be appropriate for any debate on the petitions to be conducted in the Federation Chamber unless the House resolved otherwise.

Thank you for the opportunity to make these submissions. Questions at first instance may be directed to Vicky Kuek, Principal Policy Lawyer, at (02) 9926 0354 or victoria.kuek@lawsociety.com.au.

Yours sincerely,

Doug Humphreys OAM
President