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28 November 2016

Mr Jeff Collins MLA
Chair
Select Committee on Opening Parliament to the People
Legislative Assembly of the Northern Territory
GPO Box 3721
Darwin NT 0801

Dear Sir

Re: Submission for the Inquiry into Opening Parliament to the People

I refer to your letter of 27 October 2016 calling for submissions for the Inquiry into Opening Parliament to the People. I make this submission in relation to aspects of the proposed bills and subordinate legislation scrutiny committees.

It is noted that the Green Paper on Parliamentary Reform, at p 8, proposes establishing two portfolio based scrutiny committees to inquire into and report on, among other things, the provisions of bills and regulations and also their impact on 'rights, liberties and the institution of Parliament'.

Various structures have been adopted by the Commonwealth and the Australian States and Territories for the scrutiny of legislation and/or delegated legislation.¹ Presently, in the Northern Territory there is a single committee which reviews delegated legislation only. The portfolio committee model has been adopted by Queensland, and includes the review of both bills and subordinate legislation, though in that State there are 7 portfolio Committees.² In a recent article, Michael Johansen MP, Chair of the Legislative Review Committee of the NSW Parliament, suggested that an advantage of the portfolio system is that it enables the Committees to develop expertise in specific legislative subject areas.³

Though differing wording is used, the grounds for review by the various scrutiny committees are broadly similar. For the Northern Territory, they are set out in the

¹ See Michael Johansen MP, *Comparative Approaches to Legislative Scrutiny*, paper presented at Australia-NZ Scrutiny of Legislation Conference, Perth 2016 at p 4.

² *Parliamentary Scrutiny, Parliamentary Sovereignty: Where are we now and where are we headed?*, paper presented at Australia-NZ Scrutiny of Legislation Conference, Perth 2016 at p 7.

³ See footnote 1, above, at p 5.

Standing Orders at 176(3), and include whether the instrument is in accordance with the general objects of the law of the head statute and whether it trespasses unduly on personal rights and liberties. There are two grounds under the Queensland 'Fundamental Legislative Principles' not presently included under the Northern Territory Standing Orders and which might be considered for inclusion: whether the legislation is 'unambiguous and drafted in a sufficiently clear and precise way' and whether it 'has sufficient regard to Aboriginal tradition and Island custom'.⁴

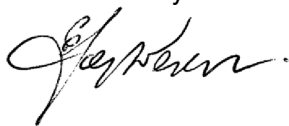
However, the main objective of this submission is to remind the Select Committee of an approach adopted in New Zealand, which, I understand, has not been adopted in any Australian jurisdiction. The various Australian scrutiny committees focus on proposed legislation and subordinate legislation, so that the focus is on how the legislative instrument might operate and what impact it might have and whether it complies with the set standards. On the other hand, there is a process by which the New Zealand Committee might, in addition, look at how regulations have in fact operated after their introduction (as is presently the case in the NT, the NZ scrutiny committee looks only at delegated legislation).

This is achieved through an informal 'complaint' making process pursuant to SO 320 of the NZ House of Representatives Standing Orders. Under that process, any person can make a 'complaint' to the scrutiny committee in relation to any regulation.⁵ Any such complaint (providing that it relates to one of the grounds on which the committee can review regulations – and that does not include a review of the merits of the underlying government policy) must be placed before the committee at its next meeting and the person making the complaint has a right to address the committee, unless the committee by unanimous resolution agrees not to proceed with the complaint.

This process has the advantage of not only opening the Parliament to the people in a meaningful way, but it also allows the scrutiny committee to look at the practical and not just theoretical impact of legislative instruments. In that sense, the Committee has a public watch-dog role. The New Zealand experience is that it has not been overly onerous, there having been 58 'complaints' in 29 years.⁶ Under the New Zealand process, any complaint is sent to the Minister and Department administering the legislation. There is a subsequent interactive 'open hearing', at which the complainant and Departmental representatives might appear. Ultimately, the committee will make a recommendation to the Government.⁷

Please let me know if clarification or further information is required.

Yours sincerely



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⁴ See footnote 2, above, at p 2.

⁵ As to the operation of the NZ provision, see Hon David Cunliffe, *The Evolution of the New Zealand Regulations Review Committee: Systems, Scrutiny and Complaint*, paper presented at Australia-NZ Scrutiny of Legislation Conference, Perth 2016.

⁶ See footnote 5, above, at p 7.

⁷ See footnote 5, above, at p. 5-6.