

Mr Jeff Collins MLA
Chair
Select Committee on Opening Parliament to the People
GPO Box 3721
DARWIN NT 0801

Chief Executive Officer
Level 14 NT House
22 Mitchell Street
DARWIN NT 0800

Postal Address
GPO Box 4396
DARWIN NT 0801

T 08 8999 7554
F 08 8941 1491
E jodie.ryan@nt.gov.au

Dear Mr Collins

**RE: CALL FOR SUBMISSIONS FOR THE INQUIRY INTO OPENING
PARLIAMENT TO THE PEOPLE**

Thank you for your letter dated 27 October 2016 inviting my Department to make a submission to the above Inquiry. I note similar letters were also sent to Chief Executive Officers of other Northern Territory Public Sector agencies.

A decision was taken to provide a coordinated submission on behalf of NT Public Sector agencies, and I am pleased to attach this submission for the consideration of the Select Committee.

If you have any queries regarding this Submission, please contact Ms Julie Nicholson in my Department on telephone 8999 7864 or at julie.nicholson@nt.gov.au.

I wish the Select Committee well in its deliberations.

Yours sincerely



JODIE RYAN

28 November 2016

Submission to the Legislative Assembly Select Committee on Opening Parliament to the People

A coordinated submission on behalf of Northern Territory
Public Sector Agencies in response to the Green Paper on
Parliamentary Reform issued in October 2016

November 2016

1. INTRODUCTION

This submission has been prepared in response to the *Green Paper on Parliamentary Reform* issued in October 2016 by the Select Committee on Opening Parliament to the People as part of its inquiry into parliamentary reform for the Northern Territory Legislative Assembly.

The Select Committee recently wrote to Northern Territory Public Sector agency Chief Executive Officers inviting submissions to the Inquiry. The Department of the Chief Minister offered agencies the opportunity to contribute to a coordinated submission to the Inquiry, and as a result this submission has been prepared taking into account the views provided by agencies for this purpose.

Some of the independent statutory agencies within the NT Public Sector indicated they would be making their own submission to the Select Committee, as is appropriate.

This Submission addresses those topics in the Green Paper which are relevant to the operation and interests of NT Public Sector agencies.

The NT Public Sector is supportive of the intent of the Green Paper in exploring options for parliamentary reform that places an emphasis on how the Legislative Assembly and, through it, the Northern Territory Government, can be more open, transparent and accountable to the people of the Northern Territory, and increase public engagement in the legislative process and associated policy debates.

The Select Committee should note that the submission is made on behalf of the NT Public Sector and does not necessarily reflect the views of the elected Government.

The NT Public Sector is committed to putting in place processes and measures to support the reforms ultimately adopted by the Legislative Assembly following this Inquiry.

2. NEW SCRUTINY COMMITTEES

2.1 Workload allocation to the two Scrutiny Committees

The allocation of agency portfolios to the respective Scrutiny Committees would appear to place a greater share of the workload on the Children, Families and Central Agencies Committee, especially as historically a significant proportion of legislation introduced in the Legislative Assembly comes from the Attorney-General and Justice portfolio, at least due in part to the very large number of Acts administered by that agency. The Select Committee may wish to review the allocation of workloads to the two Scrutiny Committees.

2.2 Resource implications for agencies

It is not clear from the Green Paper what the relationship will be between the Scrutiny Committees and NT Public Sector agencies, the time investment which may be required from agencies in briefing the Committees and responding to questions, and whether agencies will need to develop different information frameworks in order to be able to respond to Committee requirements. Depending on the information required by the Committees (type, form, level of detail, frequency etc.) there may be significant time imposts on agencies which need to be factored into agency resourcing.

While this is to be expected and is important in supporting the aim of improving transparency and accountability, it is also important to ensure agency resources, and ultimately taxpayer funds, are deployed efficiently and for the best public value.

3. NEW SCRUTINY AND CONSULTATION PROCESS FOR BILLS

3.1 Taking account of existing stakeholder and public consultation processes

The proposed changes to the Assembly's processes for managing Bills are designed to provide for enhanced community consultation and input into the legislative process. While measures which result in enhanced consultation and engagement are supported, a consideration is that legislative reform processes undertaken by agencies often already involve extensive community and industry consultation.

It is noted that where a reform is opposed by one or more stakeholder groups, there will usually be a process of identifying and addressing their concerns during the policy developmental stage. This is not to say that a further opportunity for stakeholders to provide input and air views may not be useful but it does need to be weighed against the likely benefit of the time and resources (parliamentary, Government and stakeholder) required for this process.

The Committee may wish to take this into account in its recommendations regarding the broad framework for consultation on Bills and in any guidelines on the extent to which further consultation is undertaken on any particular Bill. It will be important to avoid the potential for confusion and fatigue in the consultation process, and to ensure that an additional consultation process adds value.

In terms of channels for inviting community input on Bills, the Green Paper refers to websites, emails to subscribers and advertisements. Given the high usage of Facebook, the Select Committee may also wish to consider a social media channel to expand its reach to the community.

3.2 Regulatory Making Framework

The Committee may wish to note the Northern Territory Government utilises a Regulatory Making Framework (RMF) to assess community impacts of proposed legislation. The RMF requires agencies to consult with stakeholders in the development of a Bill and then seek a Regulatory Impact Certificate from the Regulation Impact Committee before a Bill can be considered by Cabinet.

3.3 Strengthening existing policy development consultation practices

One option which may assist in achieving efficiencies in terms of Scrutiny Committee consultation processes is to augment existing Government agency consultation processes. Currently, the extent of consultation depends on the complexity, sensitivity, scale of impact, etc. of the proposal. The consultation process that agencies employ and the results of consultation are generally part of the broader policy development and Cabinet Submission process. It may be that Scrutiny Committee work could be informed by such agency consultation processes where appropriate.

Another area for consideration is the Regulatory Impact Statement (RIS) process which is a component of the Regulatory Making Framework mentioned above. All legislative proposals have to undergo a Regulatory Impact Assessment to determine the community impacts of the proposal. Work is currently underway to review this process.

In terms of business community consultation, including with unions, academics, professional groups and industry, the Department of Trade, Business and Innovation has suggested that its Business Round Tables may be able to be utilised, subject to available timeframes, for consultation on proposed Bills.

3.4 Scrutiny Committee timeframes

It is noted the proposed Scrutiny Committee process will in many cases extend the timeframes for passing legislation; a challenge in this is to seek a balance between allowing sufficient time for consultation and Committee consideration and not unduly delaying passage of a bill through the Assembly.

There is a question as to whether the timeframes proposed in the Green Paper will always be sufficient to permit adequate consultation and consideration by the Scrutiny Committee, particularly in the case of complex, lengthy or contentious Bills. It is not clear from the Green Paper whether the Scrutiny Committee will have the option to extend the scrutiny timeframe and, if so, what process may apply to extending the timeframe for the scrutiny process.

By way of a comparison, it is understood the Queensland legislation scrutiny process allows a Committee up to six months to provide a report on a Bill, unless there is a resolution by the House or by the Committee of the Legislative Assembly that the time period be altered.

As mentioned above, it is anticipated Government agencies may have a role to play in briefing and assisting the Scrutiny Committees and there are resource implications for Government agencies undertaking this role. These resource implications may be greater in the event of relatively short turnaround times for the scrutiny process.

The proposal is noted that the Minister responsible for a Bill would be expected to speak to the Scrutiny Committee's report on the Bill the day after the Chairperson of the Committee tables the Committee's report on the Bill, and that a report may include proposals for amendment. This timing may pose issues if the Minister requires advice from his or her agency prior to responding to the Committee's report.

3.5 Options for dealing with Bills

The Green Paper proposes that Bills introduced in the Legislative Assembly will be referred to a Scrutiny Committee for the calling of public submissions, the holding of hearings (if necessary) and reporting back to the Assembly. Alternatively, if a Bill is declared to be urgent, it can be progressed without referral to a Committee.

It is envisaged there may be situations where a Bill is not urgent but where it may not require the type of consideration and call for public submissions which referral to a Scrutiny Committee will entail. The types of Bills which could fall into this category include Statute Law Revision Bills and other Bills of a strictly technical nature which do not contain the type of substance which requires a Committee scrutiny process.

For this reason, the Select Committee may wish to consider establishing a third option for treatment of Bills, that is, where a Bill is not designated as urgent but where it is agreed it can progress through the Legislative Assembly without referral to one of the Scrutiny Committees. This option would ensure appropriate use of valuable Scrutiny Committee time and resources, and will also help to avoid "consultation fatigue" and/or unnecessary time delays.

4. CONSIDERATION OF BUDGET ESTIMATES AND ANNUAL REPORTS

The proposal in the Green Paper to separate the Budget Estimates scrutiny process and the annual report/agency performance scrutiny process, with the former to be held in June each year and the latter in November each year, provides an opportunity for more effective scrutiny of agency performance and for the Scrutiny Committees to better target these different Government activities.

For agencies too it offers the opportunity to focus the considerable effort devoted to the preparation for Estimates. It also recognises that agency annual reports contain a significant amount of performance information which has tended not to be well scrutinised in the past given the annual reports are not made public until they are tabled in the Assembly. This generally occurs in the October Sittings, which means the information in those reports is dated by the time of the next Estimates hearings the following June.

While it is noted this proposal would provide enhanced transparency, consideration must also be given to the impact on public resources and therefore on government service delivery of two separate scrutiny sessions. There is a concern that the two proposed scrutiny sessions will result in a doubling of the considerable agency preparation time which currently occurs for the June Estimates hearings. This carries a commensurate risk of significant diversion of agency resources from core service delivery provision, and what could be argued to be an unwarranted expenditure of effort and resources.

Estimates preparations are very resource intensive for NT Public Sector agencies. If this model is adopted, it will be critical to ensure that the scrutiny sessions are designed and tightly managed so that the questioning aligns with the objective of the session (the forthcoming year's budget or past year's performance). If this is done, it is expected that agency preparation effort can be focused accordingly and streamlined, although a number of agencies have expressed doubt about the likelihood of any streamlining and are concerned about the resource implications of this split approach. On this point, it is noted that agency annual reports contain elements of identification of future priorities as well as past performance reporting and it is recommended that, as suggested in the Green Paper, the annual report scrutiny sessions deal only with past performance, otherwise the exercise will likely result in overlap with the June budget scrutiny session with the risk of doubling up of effort and diversion from service delivery activity.

The Green Paper suggests a time allocation of one sittings week in June for budget scrutiny and one in November for annual report scrutiny. It is not clear to how time may be allocated for each Minister in this scrutiny structure, and whether each Scrutiny Committee would sit concurrently (which would increase the overall scrutiny hours) or whether the existing time allocation would be spread over June and November and therefore represent a similar number of scrutiny hours as currently available in the June Estimates hearings.

It is noted the Children, Families and Central Agencies Committee (with 15 agencies, 11 of which are large organisations, plus three independent agencies and one corporation¹) would likely have a greater workload than the Development, Tourism, Environment and Culture Committee (with five larger agencies, one corporation and an Authority). This may need to be taken into account in the structuring of the hearings.

It is noted that the detail of the structure of the proposed new scrutiny proceedings is yet to be identified. Considerations may include if and how to balance flexibility in the amount of time spent on issues which may be of particular interest to the Scrutiny Committees as opposed to ensuring that all portfolio areas are dealt with during the scrutiny sessions. The issue of the structure of scrutiny sessions, and the use of mechanisms such as advance questions for Ministers/agencies, are matters on which the NT Public Sector would appreciate the opportunity to provide input at the appropriate time, based on agency experience with the existing Estimates process.

¹ The Green Paper lists NT Police, Fire and Emergency Services twice and also lists its component parts in addition to the agency as a whole.

5. DEBATING PETITIONS

Some of the options, advantages and disadvantages of debating of petitions are canvassed in the Green Paper. Participative democracy is important and this is one avenue for enabling the community to determine what is considered in Parliament.

As canvassed in the Green Paper, the value of this mechanism needs to be considered in the context of the likely effect on Committee and Chamber time. The proposed threshold of 500 signatures to qualify a petition for debate is a relatively low figure, particularly if petition signatures are not restricted to Northern Territory residents. It is noted that a two hour debate on a petition in any one day is a significant component of parliamentary time.

Consideration also needs to be given to the resourcing impact on NT Public Sector agencies as it is likely that relevant agencies would be required to prepare briefings and speech notes for Ministers on issues raised through petitions. The lead time for notice of debate on a petition is also relevant to agency preparations and resourcing.

It is noted the Green Paper proposes that there must be at least four Members wanting to debate a petition before a debate can be scheduled and there would be a time limit of two hours for such debates. These conditions should, in the first case, provide a filter on the number of petitions coming forward for debate and, in the second case, maintain a balance in relation to the amount of parliamentary time spent on debating petitions.

6. PROPOSED STANDING ORDERS

The following points and/or questions are raised in relation to proposed Standing Order 176(3) at Appendix B to the Green Paper:

- (1) Although paragraph 1.4 of the Background section in the Green Paper only refers to 'regulations (also called subordinate legislation)', does the proposed Standing Order 176(3)(c) intend that the new scrutiny process will extend to any instrument of a legislative or administrative character including court rules and by-laws?
- (2) Standing Order 176(3)(c)(i)(B): It is noted that there may be the rare occasion in government decision-making where Parliament wishes to abrogate the right to natural justice.
- (3) Standing Order 176(3)(c)(i)(E): This appears to apply to Justices of the Peace – is this intended?
- (4) Standing Order 176(3)(c)(i)(G): It is suggested that the words 'without adequate justification' should apply to matters of retrospectivity rather than stating that rights and obligations can never be affected retrospectively.
- (5) Standing Order 176(3)(c)(ii)(C): There may be occasions where the amendment of an Act does not occur only by another Act e.g. the *Misuse of Drugs Act* allows for amendment of the Act's Schedules by Regulation.
- (6) Standing Order 176(3)(c)(ii)(H): Is it too narrow to say that subdelegation can only occur if authorised by the Act? Does this mean specifically authorised by the Act? It is not clear what is seen to be the policy problem with subdelegation.