

PETITIONING THE AUSTRALIAN PARLIAMENT: REVIVING A DYING DEMOCRATIC TRADITION

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Introduction

Parliamentary petitions serve a unique purpose in Australia and other Westminster democracies, offering the only formal avenue by which community concerns can be conveyed directly to Parliament outside of elections. A petition is a document signed by members of the public that requests Parliament to undertake action such as amending a law or asks the government to perform some administrative action. At the federal level in Australia, if a petition is found to comply with procedural requirements, its title is read out in the House of Representatives or Senate by a parliamentarian and the full text of the petition is recorded into Hansard. Often, the petitioners will later receive a letter from a Minister outlining the government's position on the issue, typically explaining why it cannot or will not accede to the petitioners' request.¹

For the past thirty years, the number of petitions lodged in the federal Parliament has been in decline. In 1986, 5,528 petitions were presented in the House of Representatives. By 2015, that number had fallen to 105. This reflects a widely held perception that petitions are not particularly effective, or worse, 'a waste of time and paper'.² General awareness of petitions also appears to be low, with little recent academic commentary on the subject and very few

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¹ Standing Committee on Petitions, Parliament of Australia, *The Work of the Petitions Committee: 2010–2013 – An Established Part of the Democratic Process* (2013) 2.29.

² Rosalind Berry, Submission No 5 to House of Representatives Standing Committee on Procedure, *Making a Difference: Petitioning the House of Representatives*, 8 February 2007, 1.

responses being made to parliamentary inquiries on how petitioning might be reformed. As one Senator bluntly put it: ‘No one takes any notice of petitions. They have no effect at all on governments.’³

The contemporary irrelevance of petitions in the federal Parliament sits uneasily with the long and often effective record of the device. In 17th century England they were thought so important that the right to petition was included in the *Bill of Rights 1689*. By the 18th and 19th centuries, petitions had come to play a very significant role in civic society, generating substantial amounts of parliamentary debate and frequently resulting in new legislation. Indeed, by 1842 they dominated parliamentary business, causing the House of Commons to adopt a series of standing orders banning debate on petitions except in rare cases. This had the intended effect of stymying the influence of petitions in Victorian England.

The fact that the petition has fallen well short of its potential in Australia’s federal Parliament has been widely recognised. Since 1986, the problem has been analysed by a series of parliamentary standing committees in eleven separate reports, resulting in recommendations for reform that have at times been adopted by the government of the day, and in turn enacted by Parliament. The most important of these was a set of reforms enacted in 2008, which among other things set an expectation that Ministers would respond to petitions within 90 days, and established a new Petitions Committee to receive and process petitions lodged in the House of Representatives and to inquire into matters relating to them. While these reforms have yielded some benefits, such as improved Ministerial responsiveness, they have not succeeded in halting the decline of petitions.

³ Commonwealth, *Parliamentary Debates*, Senate, 29 April 1982, 1684–5 (Robert Ray).

Other jurisdictions have also reformed their petition processes in the past decade, including the United Kingdom, Scotland, Canada, Germany as well as subnational jurisdictions in Australia, namely Queensland, Tasmania, NSW and the ACT. Of these, the most instructive is the United Kingdom, as its suite of reforms in mid-2015 has recast the role of petitions in modern British society, leading to a surge in petitioning, Ministerial responses, parliamentary inquiries and debates. The result has been renewed popular engagement in the work of Parliament.

Our aim in this article is to determine whether the right of petition in Australia's federal Parliament can be further reformed and improved. We first set out the history of the device, before exploring the experience of petitions and their recent decline in the Australian Parliament. Finally, we look to other jurisdictions for guidance as to how the tradition might be revived.

History

Petitions have a long and diverse history that spans many societies. Their usage can be traced as far back as Ancient Rome, in the form of the 'epistolary supplication': a practice whereby Roman citizens could send written pleas, requests and complaints to their emperor.⁴ For example, in 238BC, the residents of the Thracian village of Skaptopara petitioned Emperor Gordian, complaining of exploitation by itinerant soldiers who demanded their hospitality free of charge, and alleging that their local governors had been ineffective at curbing the extortion. They sought an imperial ruling, to be engraved on stone and prominently displayed, which would 'compel every person to keep to the route prescribed for him and not, by

⁴ Fred Naiden, *Ancient Supplication* (Oxford, 2006) 385.

leaving other villages, to invade our village nor to compel us to supply him with necessities gratuitously'.⁵ Perhaps disappointingly for the petitioners, the Emperor delegated the issue back to the governors.

In England, petitions emerged during the reign of King Edward I (1272–1302), and were originally addressed to the sovereign (although were still submitted to the Commons in writing, and then sorted by 'Receivers' and heard by parliamentary committees known as 'Triers'). In 1305, nearly five hundred such petitions were presented.⁶ Over time, as the power of the sovereign was eclipsed by that of Parliament, the form of the petition changed such that it came to be directed not to the sovereign, but to Parliament.⁷ This shift also came to reflect the notion that in a democracy, parliament is answerable to the people. Such ideas have deep roots in the evolution of these institutions. An early form of parliamentary petition comes from the Tynwald – the legislature of the Isle of Man and the oldest continuous parliament in the world. Each year on Tynwald Day (which began in 1417), a citizen may approach Tynwald Hill and present a petition for redress of grievance, which a member of the Tynwald may request the legislature to consider.⁸

In the English Parliament, from the 14th century onwards petitions were used to initiate legislation, and indeed a large number of statutes originated as Commons' petitions. Petitions would be received and considered by the House of Commons and, if deemed suitable, judges would draft a statute by combining the petition with its response from the King.⁹ As a British parliamentary committee recently noted, the 'importance of the practice of petitioning cannot

⁵ Allan Johnson, Paul Coleman-Norton and Frank Bourne, *Ancient Roman Statutes* (Austin, 1961) 230–231.

⁶ Sir Gilbert Campion, *An Introduction to the Procedure of the House of Commons* (Macmillan, 2nd ed, 1947) 11.

⁷ Robin Handley, 'Petitioning Parliament' (1993) 21 *Federal Law Review* 290.

⁸ Standing Committee on Petitions, Parliament of Australia, *Making a Difference: Petitioning the House of Representatives* (August 2007) 50.

⁹ Campion, above n 5.

be overstressed, as it was from medieval petitioning that gradually there emerged the procedure of legislation by both public and private bills'.¹⁰ This is reflected in the practices of the House of Commons today, whereby private bills, while now uncommon, are still raised by means of a petition.¹¹

By the 17th century, petitioning had become a fixture of parliamentary life, so much so that the House of Commons formally recognised the right to petition in a pair of resolutions passed in 1669:

That it is an inherent right of every Commoner of England to prepare and present petitions to the House in case of grievance; and of the House of Commons to receive them;

That it is the undoubted right and privilege of the House of Commons to adjudge and determine, touching the nature and matter of such Petitions, how far they are fit and unfit to be received.¹²

Soon after, the right to petition was codified in the *Bill of Rights 1689*, which further secured the right by adding that 'all commitments and prosecutions for such petitioning are illegal'.¹³

¹⁰ Select Committee on Procedure, *Second Report from the Select Committee on Procedure*, House of Commons Paper No 202, Session 1972–73 (1972) Appendix I.

¹¹ William McKay et al (eds), *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (LexisNexis, 23rd ed, 2004) 969. Each year the House receives about one or two such bills, which are typically promoted by local councils or cities requesting expanded powers: see further United Kingdom Parliament, Private Bills <www.parliament.uk/about/how/laws/bills/private/>.

¹² Sir Donald Limon and W R McKay (eds), *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (LexisNexis, 22nd ed, 1997) 809.

¹³ *Bill of Rights 1689*, 1 Will & Mar, sess 2 c 2.

Over the next two centuries, the number of petitions presented to Parliament grew, as petitioning came to be seen as an indispensable link between the people and their government, and indeed the only way by which commoners could place their concerns before their representatives. An example of a petition that succeeded in bringing a serious grievance to the attention of Parliament was lodged in the House of Commons in 1736 by ‘Druggists, and other dealers in Tea ... complaining of the unequal Duties upon Tea and the pernicious Practice of Smuggling.’ In relation to the latter of those concerns, the petition alleged:

[N]otwithstanding the regulations made by [an earlier tea excise Act], and the many penalties the smugglers of Tea and their accomplices were liable to by law, the Petitioners had fatally experienced, the clandestine importation of that commodity was so far from being prevented that it was carried on to such a degree, that the Petitioners had the strongest reasons to believe, near one half of the Tea consumed in this kingdom paid no duty.¹⁴

The petition continued that:

[U]nless some remedy should be applied effectually to prevent that known evil, the Petitioners and all fair traders would be under extreme difficulties in carrying on their trade, by reason of the disadvantages they were under, from the practices of smuggling... [The petitioners therefore pray to] the House to take the premises into consideration, and give the Petitioners such relief, as to the House should seem meet.¹⁵

¹⁴ William Cobbett, *Cobbett's Parliamentary History of England: From the Norman Conquest in 1066 to the Year 1803* (T C Hansard, 1811) vol IX, 1045.

¹⁵ *Ibid* 1045–6.

Once the petition had been read out, the House decided to ‘resolve itself into a Committee of the whole House, to consider of the most effectual means to put a stop to the great and growing evil arising from the unwarrantable and illegal methods of importing Tea and other goods into this kingdom’.¹⁶ Less than two months later, a bill establishing a comprehensive regime to prevent smuggling was introduced into the House of Commons. It was passed with amendments soon after as the *Offences against Customs and Excise Laws Act 1737*.¹⁷

As time went on, petitions became a victim of their own success. In the early 19th century, as political scientist Professor Colin Leys notes, ‘petitions enjoyed an unprecedented boom as a political implement in the general conditions of rapid economic change, agricultural unrest, popular radicalism and incipient working class organisation’.¹⁸ Whereas in the five-year period of 1785–89 an average of 176 petitions had been presented each year, in the five years 1840–44, an average of 18,636 flooded in annually, including massive petitions on the Corn Laws, the Poor Laws, Factory Legislation, and the enactment of a ‘People’s Charter’.¹⁹ Because of a convention of parliamentary practice whereby petitions were presented at the beginning of each sitting of the House, the debating of petitions quickly came to dominate parliamentary business, thereby frustrating the programme of the government.

This state of affairs did not commend itself to the leaders of either of the two main political parties at the time, the Whigs and the Tories. In order to limit the extent of popular control of the legislative agenda, they embarked upon a campaign to tighten the regulations governing

¹⁶ Ibid 1046.

¹⁷ 9 Geo 2, c 35.

¹⁸ Colin Leys, ‘Petitioning in the 19th and 20th Centuries’ (1955) 3 *Political Studies* 45.

¹⁹ David Judge, ‘Public Petitions and the UK House of Commons’ (1978) 31(4) *Parliamentary Affairs* 391, 392.

the presentation of petitions.²⁰ This culminated in a series of standing orders in 1842, preventing the presentation of petitions from giving rise to debate (except in rare cases).²¹ Unwittingly, petitioners had contributed to the demise of their own favoured instrument, as ‘the glut of petitions, many thousands in excess of what the tactical situation in Parliament required, created a climate of opinion in Parliament in which the “gag” rule and other expedients for side-tracking petitions were permitted to become established’.²² This succeeded in demoting the petition to a mostly symbolic role to which, for the most part, it has been consigned ever since.

The Australian experience

For most of the first sixty years of Australia’s federal Parliament, petitions were a mere footnote. While 100 to 200 per year were presented in each of its Houses in the years following 1901, this quickly tapered off. Between 1908 and the end of the Second World War, the number of petitions per annum presented to the House of Representatives never surpassed 16,²³ while in the Senate, in thirty of the years between 1901 and 1968, no petitions were presented at all.²⁴

This changed in the late 1960s when each of the Houses experienced a surge in the number of petitions being received annually, with thousands being presented in the House of Representatives and hundreds in the Senate. This continued for roughly the next 20 years.

²⁰ Ibid 393.

²¹ Ibid.

²² Leys, above n 17.

²³ Sonia A Palmieri, ‘Petition Effectiveness: Improving Citizens’ Direct Access to Parliament’ (Paper presented to the ASPG Conference, 23–25 August 2007, Adelaide).

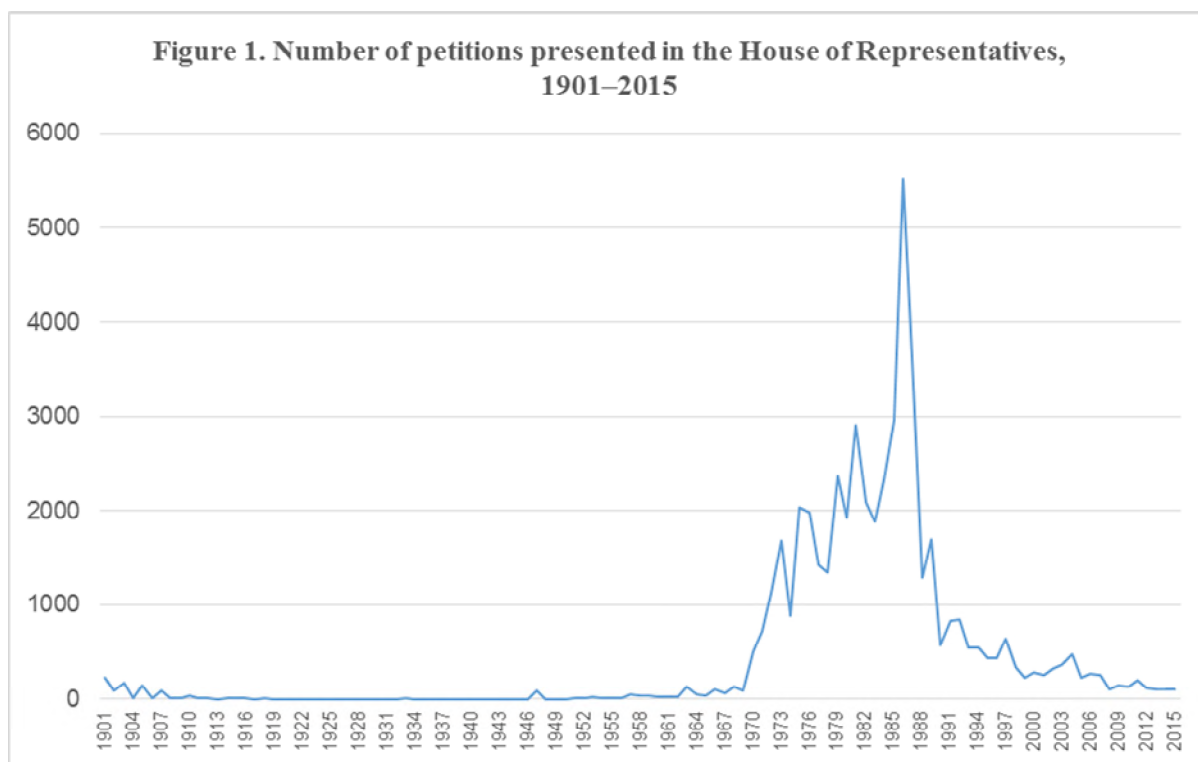
²⁴ Paula Waring, ‘Is It Futile to Petition the Australian Senate?’ (Papers on Parliament No 59, Parliamentary Library, Senate, 2013).

The variety of these petitions is almost as remarkable as their quantity, as Paula Waring recounts in her description of the period:

There were petitions on the perceived evils of new technologies from television violence and mobile phone towers to internet gambling and pornography. There were calls for research into solar energy, learning disabilities, breast cancer, chronic fatigue syndrome and white tail spider bites. Petitioners asserted the need for political rights, land rights, humanitarian rights, children's rights, a bill of rights and plant variety rights. They took up the cause of political prisoners in Chile, logging in Sarawak, famine in the Ukraine and huskies in Antarctica.²⁵

Then at the start of the 1990s, just as quickly as petitions had burst onto the parliamentary stage, they all but disappeared. The sudden nature of both the rise and fall of petitions can be seen in the following figure:

²⁵ Ibid.



Several explanations have been offered for the rapid decline. One is that in the House of Representatives there had been a practice amongst petitioners of forwarding their petition to multiple MPs on multiple occasions, with a view to amplifying the impact of the petition in question, but also having the consequence of increasing the reported number of ‘presentations’ of petitions in the House.²⁶ This precipitated a rule that petitions could only be introduced on one day of the sitting week, thus leading to bigger groupings of sheets of petitions and lower reported numbers of presentations. However, even given such factors, it is clear that petitioning the federal Parliament dramatically went out of fashion. The annual rate of petitions dropped from 5,528 in 1986 to exactly 104 in each of the last three years.²⁷

²⁶ I C Harris (ed), *House of Representatives Practice* (4th ed, Department of the House of Representatives, 2001) 595.

²⁷ Chamber Research Office, Parliament of Australia, *House of Representatives: Petitions Presented Since 1973* (3 December 2015).

This decline was likely driven by factors such as disillusion with the effectiveness of petitions, general disengagement from the political process, and the proliferation of other means for obtaining redress, such as ombudsmen and administrative tribunals. Negative perceptions of petitions were evident even during their heyday, as is evident from Hansard. In April 1982, following a year in which the Senate had received its highest ever number of petitions, Senator Colin Mason said in debate, ‘we all know that when petitions hit this place no further action is taken about them.’²⁸ Senator Robert Ray added his voice to this sentiment two days later:

If people bring me a petition and say that they want to send a petition to parliament I simply say to them that it will be ineffective.²⁹

Such views have not gone away. As Senator Bob Brown observed in 1997:

An enormous amount of effort goes into signing petitions, some of them with tens of thousands of signatures. Yet at the end of the day they have little above zero impact on the thinking of we senators.³⁰

More recently still, in response to the Procedure Committee’s inquiry into petitions in 2007, Rosalind Berry, who professed to being a serial petitioner, wrote in her submission that petitions ‘seem to disappear into the bowels of Parliament House and, although we know they are presented to the House by the relevant Member, there is little or no feedback’.³¹ The

²⁸ Commonwealth, *Parliamentary Debates*, Senate, 27 April 1982, 1544 (Colin Mason).

²⁹ Commonwealth, *Parliamentary Debates*, Senate, 29 April 1982, 1684–5 (Robert Ray).

³⁰ Commonwealth, *Parliamentary Debates*, Senate, 6 March 1997, 1426 (Bob Brown).

³¹ Berry, above n 1.

statistics support her concerns. From 1999 to 2007, 2,589 petitions were received by the House of Representatives, but only three ministerial responses were lodged with the Clerk.³²

Parliamentary committees have been tasked with identifying the causes of, and solutions to, the decline of petitions in Australia. Eleven reports have been produced since the downturn began, most of them by the House of Representatives Standing Committee on Procedure.³³ These reports have led to a variety of recommendations, to which governmental responses have been mixed. Broadly speaking, proposals of a procedural nature have been adopted: for instance, most of the recommendations in the Procedure Committee's *Days and Hours* report in 1986, which were to do with the formal rules relating to how petitions should be presented, were implemented.³⁴

By contrast, recommendations of a substantive nature have been largely ignored. A case in point is the proposal for an inter-committee referral power. In 1986 the Standing Committee on Procedure suggested that a power be given to consider the terms of petitions received and to make recommendations that petitions be referred to other House committees for further consideration. That recommendation was rejected on the ground that 'programming ought to remain the prerogative of the Government'.³⁵ In 1990, the Committee undertook a more concerted inquiry entitled *Responses to Petitions*, arguing again for an inter-committee referral power, as well as for a power to refer petitions to Ministers, with a requirement that a response be given within 21 sitting days. These recommendations were not adopted.

³² Standing Committee on Petitions, above n 7, 8.

³³ *Ibid.*, Appendix D.

³⁴ *Ibid.*

³⁵ Standing Committee on Petitions, Parliament of Australia, *Making a Difference: Petitioning the House of Representatives* (August 2007) 64.

In 1996, the Committee renewed its recommendations from the previous report. The government did not respond. In 1998, another recommendation for an inter-committee referral power was, again, not adopted. That report, in examining the responsiveness of successive governments to reports on petitions and other reports of the Committee, noted politely that:

Members and others associated with committee inquiries expressed concern at the current procedures for responding to committee reports. Given the effort and expense involved in preparing submissions it was frustrating and disappointing that governments did not respond to reports in a proper and timely manner.³⁶

Then in 1999, another in-depth appraisal of petitions was undertaken in the *It's Your House* report, again advocating for an inter-committee referral power. A first-term Howard government rejected the recommendation in terms that reaffirmed underlying problems with the petitioning process:

The time and resources available for committees to undertake inquiries into matters is limited. Requiring specific references ensures that committee activities are not directed to matters which are not relevant to the priorities of the House or the Government, and which have little prospect of being acted on.³⁷

³⁶ Standing Committee on Petitions, Parliament of Australia, *Ten Years On: A Review of the House of Representatives Committee System* (1998) 4.16.

³⁷ Australian Government, 'Government Response to the Report of the House of Representatives Standing Committee on Procedure: "It's Your House: Community Involvement in the Procedures and Practices of the House of Representatives and its Committees"' (October 2000) 2.

No major inquiries took place in the following eight years. In 2007, however, in response to a wide-ranging terms of reference to inquire into ‘all aspects of the petitioning process’, the Committee handed down its landmark *Making a Difference* report. The report was so named in order to acknowledge that if petitions could not be expected to make a difference, then it would be better for the House to refuse to receive them, rather than ‘raise false expectations’.³⁸ That report made sweeping recommendations for reform to the House of Representatives petitions process, of which the first two were the most significant:

Recommendation 1: The Committee recommends that a petitions committee be established to receive and process petitions and to inquire into and report on any possible action to be taken in response to them.

Recommendation 2: The committee recommends that where a petition has been referred to a Minister for response, the Minister be expected to table a response in the House within 90 days of its presentation.³⁹

In January 2008, the newly elected Rudd government adopted these recommendations, as well as the majority of the other (more procedural) suggestions. The last recommendation, however, that an ‘electronic petitioning system be introduced in the House of Representatives’, was not adopted. In a nice piece of symmetry, the new Petitions Committee made only two substantive recommendations for reform in its first three years of operation.

³⁸ Standing Committee on Petitions, above n 7, vii.

³⁹ *Ibid* xi.

The first was for the introduction of an electronic petitioning system;⁴⁰ the second was for an inter-committee referral power.⁴¹ Neither was adopted.

Now in its ninth year of operation, the Petitions Committee can lay claim to a limited measure of success. Most significantly, Ministerial responsiveness has dramatically improved, with 65% of petitions presented since 2008 having received a response, compared to 0.001% in the decade before that.⁴² It has also held ‘round table’ meetings with petitioners, and these meetings have sometimes been attended by government employees. The Committee has also succeeded in simplifying the process for submitting petitions by providing guidance on the formal requirements of petitions online and to anyone who contacts the Committee directly.

Nevertheless, the impact of these reforms should not be overstated. Petitions are still rarely, if ever, debated in Parliament. The number of petitions presented annually has continued to decline, and now at 104 per year is the lowest it has been since 1969.⁴³ Public interest in, and awareness of, petitions is also low. For instance, when the Committee set out in March 2010 to undertake a review of the petitions system since its inception, it announced the inquiry on its website, called for submissions by sending letters to all Members of the House of Representatives as well as to academics and other stakeholders, and placed an advertisement in *The Australian*. Despite this, the Committee received only one submission.⁴⁴ It came from the Clerk of the House. Even Ministerial responses, though more frequent, typically serve

⁴⁰ Standing Committee on Petitions, Parliament of Australia, *Electronic Petitioning to the House of Representatives* (October 2009) xii.

⁴¹ Standing Committee on Petitions, Parliament of Australia, *The Work of the First Petitions Committee: 2008–2010* (June 2010) ix.

⁴² Calculations by authors based on data in Chamber Research Office, above n 26.

⁴³ House of Representatives, Parliament of Australia, *House of Representatives Practice* (Department of the House of Representatives, 6th ed, 2012) Appendix 20.

⁴⁴ Standing Committee on Petitions, above n 39, 4.

only to explain the government's reasons for refusing the request. As the Committee has noted: 'It is rare for the actions sought in petitions to be achieved.'⁴⁵

The state of petitioning in the Senate is even more dismal. Its historical record of petitions has a similar contour to that of the House of Representatives, although it has dropped lower still: since 2007 the annual number of petitions presented has remained in the double digits, last year's tally being 25.⁴⁶ While in 1970 the Clerk of the House, James Odgers, recommended the creation of a Senate Petitions Committee 'with the special function of seriously considering petitions and the grievances of petitioners', that recommendation has never been adopted.⁴⁷ While the Senate also lacks a dedicated online page for filing electronic petitions, it does allow petitioners to print out and lodge petitions that have been collected on third-party websites.⁴⁸ However, given the low volume of petitions to the Senate generally, this allowance has clearly not restored the popularity of Senate petitions. A comprehensive analysis of Senate petitioning by Paula Waring in 2013 concluded that 'their impact is undeniably small'.⁴⁹

Lessons and reforms

Australia's recent federal experience of petitions begs the question: if petitions rarely succeed in achieving substantive outcomes, and if people have lost faith in them as a useful tool for making their voices heard, then what ongoing purpose do they serve? Or in other words, why

⁴⁵ Ibid 1.4.

⁴⁶ Parliament of Australia, *Petitions 2015*

<http://www.aph.gov.au/Parliamentary_Business/Statistics/Senate_StatsNet/documents/pets/2015>.

⁴⁷ Standing Orders Committee, *Report from the Standing Orders Committee Relating to Standing Committees* (Parliamentary Paper No 2, 1970) 19.

⁴⁸ Parliament of Australia, *How to Lodge a Petition to the Senate*

<http://www.aph.gov.au/Parliamentary_Business/Petitions/Senate_Petitions/senators>.

⁴⁹ Waring, above n 24.

not abolish them? The answer is to be found in an evaluation not of the recent performance of petitions in Australia, but rather their potential. To arrive at this, it is necessary first to pause and consider the nature of the federal Parliament within Australia's constitutional framework. Of the three branches of government, it 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.⁵⁰ The legislature has been called inaccessible to outsiders,⁵¹ unresponsive to the day-to-day needs of ordinary people,⁵² and weak with respect to resisting the demands of the Executive and in holding that arm of government to account.⁵³ 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

⁵⁰ Janette Hartz-Karp and Lyn Carson, 'Putting the People into Politics: The Australian Citizens' Parliament' (2009) 3(1) *International Journal of Public Participation* 9.

⁵¹ Julian Glover, 'Time for a People's Parliament', *The Guardian* (online), 15 April 2002 <<http://www.theguardian.com/politics/2002/apr/15/openup.parliament6>>.

⁵² Simon Tatz, 'There's a Reason Our Political Class is Out of Touch', *ABC* (online), 21 August 2015 <<http://www.abc.net.au/news/2015-08-21/tatz-there's-a-reason-our-political-class-is-'out-of-touch'/6713982>>.

⁵³ John Warhurst, 'What's the Matter with Parliament?', (Order of Australia Association-Australian National University Lecture, delivered 31 October 2011)

<<http://www.theorderofaustralia.asn.au/downloads/ACT20111031-OAA-ANULectureNotes.pdf>>.

more effective petitioning process could contribute to a perception that parliamentarians do in fact listen to electors, and not only at election time.

Such potential is being realised in other jurisdictions that have until recently experienced a similar public indifference to petitions. The best example – because the improvement has been the most pronounced – is the United Kingdom. Before 2015, petitions to the UK’s House of Commons had been relegated to a parliamentary backwater: in 1998–99 for example, only 99 petitions were lodged, 34 of which called for a ban on fox-hunting, while the remainder were predominantly concerned with local issues.⁵⁴ These petitions were often not read on the floor until late at night, and then hurriedly.⁵⁵ As in Australia, Members were precluded from debating petitions (except under very unusual circumstances), and Ministers were not required to respond.⁵⁶ A report of the House of Commons Procedure Committee in 2008 noted that ‘very often the outcome of the procedure is perceived by petitioners to be inadequate’.⁵⁷

In May 2014, after a decade of false starts, the House of Commons agreed to a motion supporting the establishment of a ‘collaborative’ e-petition system, the mechanics of which were worked out over the following year.⁵⁸ The central feature of an ‘e-petition’ or ‘electronic petition’ system is that members of the public may visit a purpose-built website allowing them to create a petition online, with supporters adding their assent by visiting the page for the particular petition and ‘signing’ it (by entering their name, email address and

⁵⁴ Robert Blackburn and Andrew Kennon, *Parliament: Functions, Practice and Procedures* (Sweet & Maxwell, 2nd ed, 2003) 538.

⁵⁵ *Ibid.*

⁵⁶ *Ibid* 381.

⁵⁷ UK House of Commons Procedure Committee, *Public Petitions and Early Day Motions* (First Report of Sessions, 2006-07) 8.

⁵⁸ House of Commons Procedure Committee, *E-Petitions: A Collaborative System*, House of Commons Paper No 235, Session 2014–15 (2014) 3.

postcode). The UK system is collaborative in the sense that it is jointly hosted by Parliament and the Executive, subsuming an earlier ‘No. 10 e-petition site’ which enabled online petitions to the government only. The new system is overseen by a purpose-created Petitions Committee, which has a substantive role to play in determining how petitions ought to be progressed. Under this system, any petition receiving 10,000 signatures is guaranteed a response by the relevant Minister, while any petition receiving 100,000 signatures is considered for parliamentary debate.⁵⁹

The results so far have been striking. Since the new site went live on 20 July 2015 until early June 2016, 10,512 petitions have been submitted online. If this rate continues, it will equate to nearly 12,000 petitions per year, compared to an average of 316 per year between 1989–2010.⁶⁰ The only figures comparable to these in the history of the House of Commons are those of the mid-19th century.⁶¹ Since the reforms, there have been 228 petitions which, by virtue of amassing enough signatures, have received a Ministerial response, while 26 have been debated in Parliament, the most famous example being the petition to ban Donald Trump from entering the UK. While it is too early to assess public attitudes to the new petitions model, the enormous rise in the extent of engagement shows a high level of public willingness to engage in this channel of communication. It demonstrates just how effective a petitioning system can be as a form of civic expression in a Westminster democracy.

Australia can learn three lessons from the experience of the UK (and other jurisdictions that have adopted elements of the British strategy). First, an e-petition system, ideally hosted

⁵⁹ Ibid 20.

⁶⁰ Calculations by authors based on House of Commons Information Office, *Public Petitions*, Factsheet P7 (August 2010) <<http://www.parliament.uk/documents/commons-information-office/P07.pdf>>.

⁶¹ House of Commons Information Office, *Public Petitions*, Factsheet P7 (August 2010) <<http://www.parliament.uk/documents/commons-information-office/P07.pdf>> 7.

jointly by the House of Representatives and the Senate, is long overdue. As many other jurisdictions have already realised – including Scotland, Germany, Canada, Queensland, Tasmania and the ACT – a move from written to electronic petitions (usually with provision for the old method still to be followed by those who prefer it) can deliver a boost to petition activity and substantially reinvigorate public engagement in parliamentary affairs, particularly among young people. This can have a wider benefit: modern parliaments that fail to keep up with technology risk exacerbating the impression that they are ‘out of touch’ with the people.⁶²

Queensland provides an example of this. Its Parliament in 2002 became the first jurisdiction in Australia to introduce an e-petition system. From early on, the system enjoyed a ‘high level of support ... in the community and among Members of Parliament’.⁶³ As the Clerk of the Queensland Parliament attested in his submission to the federal Petitions Committee in 2009, the number of petitions lodged annually, as well as the number of signatures each petition received, began to increase once the new system was introduced.⁶⁴ It is worth noting that this increase applied to both written and electronic petitions, suggesting that the introduction of an e-petition system can have a spill-over effect on traditional petitioning. Similarly, the assessment offered by Paul Williams of Griffith University at the time of the Petitions Committee’s inquiry was that e-petitions were ‘growing, undermining the claim that Queenslanders feel so disenfranchised that they are “dropping out” of the political system’, and that they had become ‘effective instruments for voicing public opinion on executive

⁶² Sonia Palmieri, ‘Petition Effectiveness: Improving Citizens’ Direct Access to Parliament’ (2008) 23(1) *Australasian Parliamentary Review* 121, 132.

⁶³ Michelle Hogan, Natalie Cook and Monika Henderson, ‘The Queensland Government’s E-Democracy Agenda’ (Paper presented at the Australian Electronic Governance Conference, 14 April 2004) 8.

⁶⁴ Standing Committee on Petitions, above n 38, 6.2–6.4.

policy'.⁶⁵ Two years after the Queensland system began, Tasmania followed suit with a system expressly modelled on that of its northern counterpart, even using the same software.⁶⁶ In 2013, the ACT introduced an e-petitions system of its own.⁶⁷

The state of the website for the Australian Parliament strengthens the case for an e-petitioning system, along with other changes that would make the process more accessible.⁶⁸ On the homepage of the Australian Parliament, the link to the Petitions part of the site is buried at the foot of the page among 45 other links. Once reached, the Petitions page provides links to various further resources, including a guide on 'How to Petition the Senate', but no corresponding guide for the House of Representatives. For that, the user must click on a link to the 'House of Representatives Petitions' page, which resembles a heading to a paragraph of descriptive text rather than a link. That page then offers a large volume of petition-related information in small text, as well as ten links to other petitions resources, which are scattered around the page. The system is so difficult to navigate that one might even wonder whether its inaccessibility is designed to discourage would-be petitioners.

The exceptional position of the federal Parliament has perhaps become so stark that changes are afoot. In February 2015 the Australian government finally responded to a report of the Petitions Committee, tabled some six years earlier, that had recommended the adoption of an e-petitions system.⁶⁹ The government stated that it 'supports the recommendation in principle,

⁶⁵ Ibid 6.9, 6.11.

⁶⁶ Palmieri, above n 22, 12.

⁶⁷ ACT Legislative Assembly, Parliament of the Australian Capital Territory, *Petitions* <<http://www.parliament.act.gov.au/learn-about-the-assembly/fact-sheets/petitions>>.

⁶⁸ Parliament of Australia, *Welcome to the Parliament of Australia* <<http://www.aph.gov.au/>>.

⁶⁹ Standing Committee on Petitions, Parliament of Australia, *Electronic Petitioning to the House of Representatives* (October 2009).

but notes that there may be resource implications'.⁷⁰ Any such reform though has still not eventuated. An update from the Speaker of the House on 22 October 2015 did at least indicate:

I inform the House that the Department of the House of Representatives will work with the Department of Parliamentary Services to develop an electronic petitions website and system for the House... I anticipate that the electronic petition system will be available early in the new year. The work will be done within existing resources and will involve consultation with the petitions committee and the secretariat to ensure that the system meets requirements. Once the system is developed, I will update the House. The House will need to consider amendments to the standing orders to establish an e-petitions system for the House.⁷¹

This will be a useful improvement to the federal petitioning process. Ideally, such a system should be jointly hosted by both houses of Parliament rather than just the House of Representatives, as the Senate, though accepting electronic petitions from third-party websites (which it expects to be printed out and delivered to a Senator), also lacks its own locally hosted e-petitions tool.⁷² A harmonised system shared by the two Houses could no doubt reduce the possibility of confusion and thereby make the system simpler and more accessible. There are good reasons to expect that the community would use such a system. There is a growing public appetite for online petitioning options, as evidenced by the rapid growth of e-petitioning organisations such as GetUp! and Change.org: indeed a survey

⁷⁰ Letter from Christopher Pyne MP to Dr Dennis Jensen MP, 10 February 2015 <http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_committees?url=peti ons/epetitioning/govresponse-e-petitioning.pdf> 2.

⁷¹ Commonwealth, *Parliamentary Debates*, House of Representatives, 22 October 2015, 6009 (Tony Hawthorn).

⁷² Senate, Parliament of Australia, *Senate Petitions* <http://www.aph.gov.au/Parliamentary_Business/Petitions/Senate_Petitions>.

conducted last federal election recorded that 29% of Australians had signed an electronic petition in the past five years, more than double the percentage a decade earlier.⁷³

The second lesson that Australia can learn from the UK system and its counterparts is the value of giving the Petitions Committee substantive work to do. The House of Representatives Petitions Committee has a remit under the Standing Orders to ‘receive and process petitions, and to inquire into and report to the House on any matter relating to petitions and the petitions system’.⁷⁴ It might have been thought that a power to inquire into ‘any matter relating to petitions’ would be broad enough to enable the Committee to consider the actual terms of petitions, and produce reports offering suggestions as to what substantive action should be taken in response to the concerns of petitioners. As the Committee has noted, ‘the Standing Orders bind the Committee to operate within the formal arrangements of the House but they do not prescribe how it should conduct its business’, but rather, leave it with the ‘latitude to determine how it would fulfil its role most effectively’.⁷⁵

Instead of availing of itself of this latitude, the Committee has interpreted its functions narrowly in favour of a confined, mechanical role:

The fundamental role of receiving and processing petitions remains the most significant part of the current Committee’s work, with most private meeting time

⁷³ Ian McAllister and Sarah M Cameron, *Trends in Australian Political Opinion: Results from the Election Study 1987–2013* (Australian National University, 2014) <www.ada.edu.au/documents/aes-trends-pdf>.

⁷⁴ Standing Committee on Petitions, above n 39, 2.1.

⁷⁵ Standing Committee on Petitions, Parliament of Australia, *The Work of the Petitions Committee: 2010–2013 – An Established Part of the Democratic Process* (2013) 7–8.

devoted to assessing petitions for compliance and deliberating over correspondence on petitions.⁷⁶

As for its power of inquiry, the Committee has interpreted this as enabling ‘the Committee to review and report on *its activities*’ and ‘to inquire into specific aspects of *the petitioning system*’.⁷⁷ It does not see its power of inquiry as extending to the issues that petitioners raise. Indeed, the Committee has made explicit that it ‘cannot ... resolve matters raised in petitions’, and ‘the Committee Chair regularly advises witnesses at round table meetings and the House that this is beyond the role of the Committee’.⁷⁸ Similarly, the weekly statement given to the House by the Chair of the Committee on Monday evenings is a mundane affair, with the titles of that week’s petitions read out, alongside the occasional update on petitioning statistics generally – but with no petitions read out in full, and with no further material that has any connection to the petitioners’ concerns.

There is more that Petitions Committees can do. For example, the remit of Scotland’s Public Petitions Committee (PPC) is to ‘consider and report on – whether a public petition is admissible; and what action is to be taken upon the petition’.⁷⁹ It has a wide range of actions it may pursue for those ends:

The Committee may consult the Executive and/or other public bodies to request additional information or clarification, or to request that a minister or other official appear before the Committee to give evidence. It may refer petitions to relevant

⁷⁶ Ibid 2.7.

⁷⁷ Ibid 2.8 (emphasis added).

⁷⁸ Ibid 2.9.

⁷⁹ Public Petitions Committee, The Scottish Parliament, *Remit & Responsibilities* <<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29875.aspx>>.

subject committees for information, consideration or action; or it may recommend that a petition be debated in Parliament.⁸⁰

As a matter of course, the PPC normally begins its consideration of new petitions by taking further evidence from the lead petitioner and other witnesses.⁸¹ For example, in July 2011 the PPC received a petition lodged by Martin Crewe calling on the Scottish Parliament to ‘commission new research on the nature and scope of child sexual exploitation in Scotland’ and to develop ‘new guidelines’ on tackling that problem.⁸² Two months later, the Committee took evidence from the chief petitioner and another witness, agreeing at that meeting to ‘write to the Scottish Government, Child Exploitation and Online Protection Centre, Association of Chief Police Officers Scotland (ACPOS), a selection of local authorities (Glasgow, Edinburgh, Highland) and NHS Scotland seeking responses to points raised in the petition and during the discussion’.⁸³ It followed this up with further letters the following month. After taking additional evidence and producing a scoping paper on the issue, it launched a public inquiry, involving the convening of public panels, two tranches of evidence, the production of an official committee report containing substantive recommendations for reform, and a series of responses from the Scottish government, including ultimately the creation of a National Action Plan on Child Sexual Exploitation.

Whatever the merits of the policy involved in that plan and any subsequent legislation, a petitioner in that situation would be hard-pressed to feel that their concerns had not been

⁸⁰ Karen Ellingford, ‘The Purpose, Practice and Effects of Petitioning the Victorian Parliament’ (2008) 23(2) *Australasian Parliamentary Review* 86, 109.

⁸¹ Professor Derek Birrell, Written Submission to the Committee on Procedures, *Review of Public Petitions Procedures*, 2014, <<http://www.niassembly.gov.uk/globalassets/documents/procedures/inquiries/public-petitions-procedures/6.-professor-derek-birrell---university-of-ulster.pdf>>

⁸² Public Petitions Committee, The Scottish Parliament, *PE01393: Cut Them Free: Tackling Child Sexual Exploitation in Scotland* <<http://www.scottish.parliament.uk/GettingInvolved/Petitions/PE01393>>.

⁸³ *Ibid.*

taken seriously. As the Scottish Parliament's Presiding Officer, Mr George Reid MSP, has stated in regard to the PPC's process: 'This is a very innovative way of engaging with the public. The agenda ... is set entirely by the public and I think that's one of the best things that it has in its favour.'⁸⁴ Similarly, the UK Petitions Committee has a broad remit: for instance, it announced an inquiry into funding for research into brain tumours on 20 October 2015.⁸⁵ An enlargement of the Australian Petitions Committee's remit to a level approximating that of its contemporaries would have significant potential to breathe new life into the petitions process in Australia. At the very least, the Petitions Committee should be granted the inter-committee referral power that it, and the Procedure Committee before it, have been requesting now for 30 years.

The third and final lesson from other jurisdictions is the value of having guaranteed outcomes for petitions that reach certain thresholds of signatures. As mentioned above, the UK is the leading model in this respect, with its promise that any petition receiving 10,000 signatures will 'get a response from the government', while any petition receiving 100,000 signatures 'will be considered for a debate in Parliament'.⁸⁶ Compliance with the first requirement has been high, with 93% of petitions that contain 10,000 signatures so far having received responses, and more than two thirds of those on the waiting list having been on it for less than a month.⁸⁷

While the words 'will be considered for a debate in Parliament' do not appear to offer much of a guarantee, the Committee in practice has been predisposed in favour of holding debates.

⁸⁴ Ellingford, above n 66, 109.

⁸⁵ Petitions Committee, Parliament of the United Kingdom, *Funding for Research into Brain Tumours* <<http://www.parliament.uk/business/committees/committees-a-z/commons-select/petitions-committee/inquiries/parliament-2015/funding-for-research-into-brain-tumours/>>.

⁸⁶ *Ibid* 20.

⁸⁷ UK Government and Parliament, *Petitions* <https://petition.parliament.uk/petitions?state=awaiting_response>.

Indeed, of the 41 petitions that have passed the threshold so far, 26 have led to a debate, while for three petitions a debate has been scheduled.⁸⁸ To date, there have been ten petitions that the Committee has decided not to debate, representing slightly less than a quarter of all petitions passing the signature threshold. This is in line with Committee policy, which states:

Petitions which reach 100,000 signatures are almost always debated. But we may decide not to put a petition forward for debate if the issue has already been debated recently or there's a debate scheduled for the near future. If that's the case, we'll tell you how you can find out more about parliamentary debates on the issue raised by your petition.⁸⁹

A recent example is a petition received in 2015 (bearing 111,129 signatures) which called for the UK government to scrap its plans to force small businesses and self-employed people to complete quarterly tax returns.⁹⁰ That petition came before Parliament on 25 January 2016 in a debate lasting over three hours. The tone of the debate, which can be viewed online,⁹¹ was respectful. Some 20 Members spoke, and the quality of speeches was of a generally high standard. Again, whatever the ultimate outcome, there is value in serious public deliberation of this kind on issues of concern to a broad segment of the community.

NSW also introduced a system in 2013 whereby Ministers are required to lodge a response to any petition with 500 or more signatures, while Parliament is required to debate any petition

⁸⁸ There are a further two petitions that have passed the threshold and on which a debate decision is pending.

⁸⁹ UK Government and Parliament, *How Petitions Work* <<https://petition.parliament.uk/help>>.

⁹⁰ UK Government and Parliament, *Petition: Scrap Plans Forcing Self Employed & Small Business to Do 4 Tax Returns Yearly* <<https://petition.parliament.uk/petitions/115895#debate-threshold>>.

⁹¹ Parliamentlive.tv, *Monday 25 January 2016* <<http://parliamentlive.tv/Event/Index/33734d0f-5461-4fa4-9c1c-3d0db3798d55>>.

with 10,000 or more signatures.⁹² Such a debate was held on 13 August 2015 after 12,400 petitioners called on the Parliament to ban single-use plastic bags in New South Wales on environmental grounds. Of particular note was the positive contribution of the Minister for the Environment, Mark Speakman SC MP, who embraced the issue, stating that ‘the Government is committed to addressing this challenge’, and detailing the next steps that it would take.⁹³

By contrast, at the federal level in Australia there are no guaranteed outcomes for any petitions, regardless of how many signatures they receive. The expectation that Ministers will respond to all petitions within 90 days is only that: an expectation. Although there has been significant improvement since 2008, some 35% of petitions since then have received no response.⁹⁴ Nor are there debates on petitions, as Standing Order 119(a) provides that ‘no discussion upon the subject matter of a petition is allowed at the time of its presentation’. This prohibition can be lifted if leave is granted or the standing order suspended, however it appears that this has never occurred.

During its 2010 inquiry, a Member suggested introducing a measure providing ‘opportunities for backbench Members to debate petitions in the House or in the Main Committee’. The Committee declined to recommend such a reform, as it ‘might subject Members to unreasonable pressure from petitioners to propose a motion and to advocate a particular stance’.⁹⁵ Similarly, the Committee’s 2013 report mentions the idea of a signature threshold beyond which debate would be considered. It rejected the idea, suggesting instead that a

⁹² Legislative Assembly, Parliament of New South Wales, *Petitions* <<https://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/key/FactSheetNo16>>.

⁹³ New South Wales, *Parliamentary Debates*, Legislative Assembly, 13 August 2015, 2653 (Mark Speakman).

⁹⁴ Above n 40.

⁹⁵ Standing Committee on Petitions, above n 39, 3.17–3.18.

future incarnation of the Petitions Committee could begin writing regularly to the Selection Committee to notify it of petitions received in the last month, allowing the latter Committee to allocate times for the discussion of petitions during private Members' business. Such a mechanism would 'avoid the need to include elaborate mechanisms in the Standing Orders directly linked to petitions... [and] the potential for disappointment and manipulation if particular numbers of signatories, for example, were set as guaranteeing some kind of debate'.⁹⁶ Such responses are unpersuasive in light of the successful, recent experience of other jurisdictions, especially the UK.

The promise of substantive engagement from the Executive and Parliament is a goal of all petitions, yet the national system provides no guarantees of this happening. Not surprisingly, many see petitioning as a 'waste of time' because 'petitioners spend a considerable amount of time and effort in preparing and circulating petitions, only to receive nothing in return'.⁹⁷ Likewise, in a debate on petitions in the Canadian House of Commons in 1994, it was argued that the fact that petitions were being dismissed regardless of the number of signatories or the importance of the issue was 'really a slap in the face for both the signatories and for democracy'.⁹⁸ Providing clear pathways and outcomes by way of executive responses and parliamentary deliberation is the appropriate way of responding to such concerns.

Conclusion

The right of petitioning Australia's federal Parliament is in a poor state. Engagement with the process is at a low ebb, and there is much cynicism about what, if any, utility petitions now

⁹⁶ Standing Committee on Petitions, above n 62, 3.41.

⁹⁷ Ellingford, above n 66, 112.

⁹⁸ Canada, *Parliamentary Debates*, House of Commons, 21 February 1994, 1583 (Ian McClelland).

have. The few petitions that are lodged with the Petitions Committee are never debated, rarely acted upon, and frequently not even responded to by government.

The reality of petitioning the federal Parliament belies its potential. The mechanism can play an important and useful role in Australian democracy by connecting the community with their elected representatives and government. At a symbolic level, petitions are a manifestation of the principle that the legitimacy of Parliament derives from the will of the people. Practically speaking, they are the only formal avenue by which the popular will can be conveyed directly to Parliament outside of elections. History shows that they can be a highly effective way of doing this, generating substantial debate and catalysing new legislation. However, history also shows that where the influence of petitions becomes too great, there is a risk of Executive pushback and a disabling of the mechanism entirely.

In Westminster-tradition jurisdictions where Executives not infrequently exercise a dominating influence over parliaments, recent comparative experience shows that petitions have the potential to restore public enthusiasm for engagement with Parliament. Jurisdictions within Australia and abroad have wagered successfully that giving petitions a more significant role would signal to members of the public that Parliament and the Executive are prepared to hear their grievances, and to respond meaningfully to them. Similarly, creating online tools that enable petitioning has succeeded in enhancing the utility of the device and transparency in how the legislature deals with issues raised.

Our exploration of this issue has shown that the current moribund status of petitioning in the federal Parliament can be remedied. In particular, the experience of comparable jurisdictions supports the need for the following reforms:

- (1) Establishing a joint e-petition system for the House of Representatives and Senate;
- (2) Empowering the Petitions Committee to inquire into and engage substantively with the issues raised in petitions; and
- (3) Setting signature thresholds beyond which petitioners can expect a Ministerial response or the holding of a parliamentary debate.

These reforms offer the promise of reviving the dying democratic tradition of the petition in Australia's federal Parliament. At a time when disenchantment with politics is high, this would be a welcome development. It would provide a more effective means by which members of the public can have their voice heard in Parliament and by government. This might assist in building confidence in the role of Parliament and more broadly Australia's democratic traditions. It might also alleviate the frustration and anger felt in sections of the community that their concerns are being ignored, and that there is no effective way of bringing these to the attention of their elected representatives.