

LAW REFORM

Introduction

NSW Young Lawyers is the largest body of young and newly practising lawyers, and law students, in Australia with over 15,000 members. Each lawyer under 36 years of age and/or in their first five years of practice, and each law student, within NSW is a Member of NSW Young Lawyers.

NSW Young Lawyers Members represent a significant proportion of the legal profession in NSW. This statement of policy reflects the views of the Members of NSW Young Lawyers. It does not reflect the views of The Law Society of New South Wales.

Responsiveness

Law reform is necessary to ensure that the law reflects the values of the community. Those values are demonstrated in various ways, and law reform may be proposed in response to the decisions of superior and appellate courts, the findings of law reform commissions, and parliamentary and independent inquiries.

Law reform, particularly in areas such as crime, sentencing and bail, is a popular topic of media comment. Media comment can be a valuable source of information regarding the values and expectations of the community in these areas. However, NSW Young Lawyers is of the view that media calls for law reform should be supported by empirical evidence, and by public consultation (discussed below), before a legislative response is considered.

Consultation

NSW Young Lawyers is of the view that adequate consultation is critical to successful and effective law reform.

Wherever possible, a meaningful opportunity for public consultation should be given. In the case of substantial legislative amendments appropriate consultation should include:

- The release of draft legislation for public comment;
- The opportunity for the public and interested parties to make further submissions; and

- A reasonable timeframe for the preparation of detailed submissions. As a guide, NSW Young Lawyers considers a minimum reasonable timeframe to be six weeks.

In many cases where legislation is proposed that affects personal or property rights, appropriate consultation would include:

- A referral to the NSW Law Reform Commission;
- An inquiry by the appropriate committee of the NSW Legislative Council or the Australian Senate; and
- Timely, statutorily mandated legislative review by an appropriate Ombudsman.

NSW Young Lawyers recognises that multi-stage public consultation will not always be possible. For more routine legislative amendment, the cost of that process may outweigh its benefit.

Sometimes a swift legislative response will be necessary that will preclude a lengthy public consultation process. In those situations, targeted consultation with experts in the subject matter of the legislation and with legal professional bodies such as NSW Young Lawyers,

The Law Society of New South Wales, and the NSW Bar Association is of critical importance.

Judicial review

NSW Young Lawyers is of the view that judicial review of administrative decisions is a fundamental safeguard to the rule of law and the separation of powers in Australia.¹

Judicial review by the High Court of Australia is 'entrenched' in the Commonwealth Constitution.² Broader access to judicial review by legislation should be limited only in the most exceptional circumstances, such as where judicial review would present a real risk to personal safety or national security. Where the administrative decision at first instance has a more severe impact on an individual, such as an infringement on that person's rights, interests or legitimate expectations, it is especially important that judicial review of that decision is available.

Content

NSW Young Lawyers supports the use of plain-language drafting techniques in legislation and legislative instruments. Summary sections and visual aids such as flowcharts are useful in assisting both lawyers and laypeople to understand the law (assuming those simplified explanations do not depart from the meaning of the operative sections themselves).

Explanatory memoranda and guidance notes also assist in the interpretation of newly enacted laws that are yet to be considered by the courts. NSW Young Lawyers supports the development of these documents wherever possible.

Submission writing

The Committees of NSW Young Lawyers regularly make submissions to law reform bodies, parliamentary and government inquiries, and in response to draft legislation.

Members of NSW Young Lawyers dedicate a large amount of their time each year to producing these submissions, references to which regularly feature in the reports ultimately produced by their recipients.

To ensure the continuing high quality of NSW Young Lawyers submissions, Members should ensure that submissions are:

- well-researched, with any factual assertions based on empirical evidence;
- accurate, measured, and apolitical; and
- written in plain language and well-structured, so that NSW Young Lawyers' input can be easily understood and referenced by any reader.

The purpose of any submission is to assist the consulting body to make a decision or recommendation. Accordingly, NSW Young Lawyers submissions should, whenever possible, make positive recommendations. Those recommendations should likewise be apolitical and supported by empirical evidence.

Endotes

- 1 See for example *Church of Scientology v Woodward* [1982] HCA 78.
- 2 See *Plaintiff s157/2002 v Commonwealth of Australia* [2003] HCA 2 at [103].