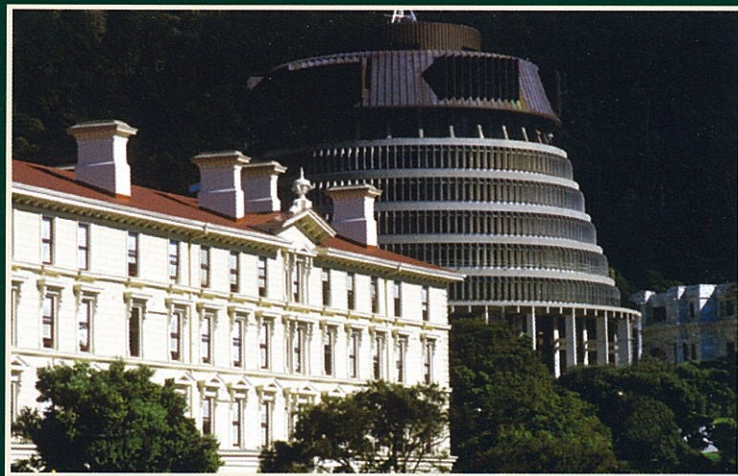


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**Victoria**

UNIVERSITY OF WELLINGTON

*Te Whare Wānanga  
o te Upoko o te Ika a Māui*



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# THE BUSY HOUSE: ALTERNATIVES TO THE URGENCY MOTION

*Sascha Mueller\**

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*The urgency motion has recently attracted the attention of the media and the public, mainly due to its use to rapidly pass controversial legislation. The power the urgency motion imparts to the government, and the ease with which it can be employed, calls the propriety of such use into question. However, the New Zealand House of Representatives has always used urgency primarily to accelerate the legislative process in general and to enable the passage of more bills in less time. In most cases, this practice has rather benign effects and is merely seen as an attempt to increase the efficiency of the House. Yet, this practice highlights deficiencies in the legislative process: the House sits for relatively few hours, lacking the time to process the large amount of bills on the Order Papers; and the legislative process itself is cumbersome and discourages the passage of uncontroversial, technical, and law reform bills. Therefore, limiting the use of urgency without simultaneously creating other ways for the House to deal with its legislative workload is not desirable. One such change could be the extension of the sitting hours of the House. Another may be altering the legislative process itself to become more efficient. A more flexible process could allow the House to pass more uncontroversial bills in less time, leaving the stricter process in place for bills in genuine need of thorough scrutiny.*

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## **I INTRODUCTION**

The House of Representatives of New Zealand spends much of its plenary time under what appears to be a state of stress. It frequently employs the urgency motion when conducting its business. However, despite what the name of the motion suggests, Parliament does not generally employ the urgency motion to address urgent or dire situations. The main reason for the frequent use of urgency is an accrual of a large backlog of unfinished business in the House: many bills are sitting on the Order Papers, waiting to be debated and progressed through the various stages of the legislative process. This, in turn, slows down the time it takes for a bill to traverse the process, as the periods between legislative stages extend from mere days to weeks or months. Urgency enables the

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House to extend its sitting hours into the night and to omit stand-down periods between legislative stages, thereby much accelerating the passage of legislation.

Lack of parliamentary time, and the accompanying slow-down of the passage of bills, obviously has negative effects on bills and the way they are passed. The performance of governments is generally judged on their actions, on how they react to the country's situation and the population's needs and desires. In order to act and implement their policies, governments have to create or manipulate the legislative framework. If changing or passing legislation is slowed down due to the legislative process, their ability to act is seriously impeded.

The result is that governments have to prioritise which bills to press ahead with. These will generally be high-profile or popular bills, in order to enhance the government's public image. On the flipside, low-profile bills, such as technical, corrective or law reform bills, receive a low priority and are either only progressed slowly, or not at all.<sup>1</sup> Furthermore, bills that would, due to their size, take a long time to pass may be split into smaller parts to allow the government to pass popular policy more quickly; the result is piecemeal legislation.<sup>2</sup> Finally, debates in the Committee of the Whole House are becoming faster.<sup>3</sup> The Committee used to discuss a bill clause by clause, to give it the utmost scrutiny. Over the past few decades, however, it has become more and more common to debate a bill part by part. Consequently, the Standing Orders today prescribe a part by part discussion as the default in the Committee of the Whole House.<sup>4</sup>

The usual way that Parliament deals with lack of time is the extensive use of urgency; currently, the House sits under urgency almost one third of the time. In this way, it can extend its sitting hours and debate several stages of a bill in one sitting. Since 2008, the House has sat for more than 30 per cent of its time under urgency, and more than 60 per cent of bills passed have been accorded urgency to more than one of their stages.<sup>5</sup>

This excessive use of urgency and the overall lack of time in the House leads to several questions:

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- 1 Parliamentary Counsel Office "Statement of Intent for the Period 1 July 2005 to 30 June 2008" [2005] I AJHR A9 at 15.
  - 2 John Burrows and Philip Joseph "Parliamentary Law Making" [1990] NZLR 306 at 307.
  - 3 Ryan Malone *Rebalancing the Constitution* (Institute of Policy Studies, Wellington, 2008) at 219.
  - 4 Standing Orders of the House of Representatives 2008 (New Zealand), SO 293.
  - 5 The 49th Parliament makes extraordinary use of urgency. However, six of the past eight Parliaments sat on average more than 20 per cent of their time under urgency. Moreover, with the exception of the 48th Parliament, at least 20 per cent of Bills passed yearly since 2000 have been accorded urgency to at least one of their stages.

- (1) *Is the way Parliament accelerates the legislative process appropriate?* This question is especially pertinent seeing that urgency can bypass constitutional safe-guards, such as mandatory stand-down periods between legislative stages.
- (2) *Should Parliament extend its sitting hours?* Compared with other parliaments around the world, the House in New Zealand sits for relatively few hours in the year. It may be desirable to increase the number of hours the House sits per week, or the number of weeks it sits per year.
- (3) *Is the legislative process in its current form unnecessarily cumbersome?* New Zealand's legislative process consists of three debates and two committee stages, the most mandatory stages among the countries surveyed. Urgency is often used to combine some of these stages to be completed in one day. This invites the question whether it is necessary to require all stages for every bill to ensure a good legislative outcome. The answer may be that, at least where bills are uncontroversial, the legislative process needs to become more flexible and allow faster passage of legislation.

By changing its practices, the House may have the opportunity to become more efficient without the quality of legislation suffering. But what could these changes be? For inspiration, one can look at other parliamentary systems that deal with their legislative process differently, but which are sufficiently similar to New Zealand that parts could be transposed. The United Kingdom, whose Westminster system New Zealand originally adopted, is an obvious choice; as is Ireland, whose system is also based on Westminster. Other countries that have a parliamentary system and are similar in size to New Zealand may also serve as comparators, such as Denmark, the Netherlands or Norway. Finally, inspiration may come from countries with similar legislative processes to New Zealand's, such as Israel and Germany.

Of course, every political system is unique and finely attuned to the political culture and traditions of its country. Therefore, it is difficult, and dangerous, to simply look at an isolated stage within any process without taking into account its complex political and cultural surroundings. For example, the United Kingdom, Ireland, and the Netherlands are bicameral systems. Germany is a federation, albeit to a lesser extent than, for example, the United States or Australia. But that does not mean that their legislative processes cannot provide ideas that may be altered and adapted to fit our unique political system. Observing and analysing the way these systems legislate, and the way that they deal with similar problems, may give us some inspiration and answers to the questions posed above.

The purpose of this article is to find alternative ways to deal with Parliament's mounting workload. The frequency with which urgency is used to address this issue is not desirable. Urgency transfers powers onto the government to circumvent constitutional processes and opposition scrutiny, while very few safe-guards are in place to prevent abuse. Moreover, rushing bills through the legislative process may impact negatively on their quality. But even if neither is the case, as is likely in the majority of urgency motions, the sheer amount of bills that are passed in this way

makes the detection of abuse or declining quality difficult. It would be preferable to give Parliament more time to deal with its workload, or allow the passage of some bills to be accelerated in a controlled manner rather than by way of the unchecked and blunt tool of urgency. This article suggests changes to the parliamentary sitting hours and the legislative process which would enable the House to deal with its backlog without having to revert to an instrument designed for dealing with emergencies and not suited to this task.

## ***II MODES OF ACCELERATION OF LEGISLATION***

Before investigating possibilities to change sitting hours and the legislative process, it is worthwhile to see how parliaments regulate the length of the process in general. They control the process in several ways: by limiting the time spent on a debate or committee, by shortening or skipping the stand-down periods between the stages of a bill, or by omitting whole stages altogether.

### ***A Length of Debates***

Debates during the various reading stages in New Zealand are limited to two hours each.<sup>6</sup> They are divided into twelve speeches of ten minutes, after which the debate automatically comes to an end.

Most of the other surveyed systems do not have mandatory time-limits on debates. They do, however, limit the speaking times and number of speeches Members of Parliament (MPs) are allowed to give. The length varies from a few minutes up to an hour. It often depends on the role of the speaker; for example, the Minister or MP who is proposing the bill may have a longer time to introduce a bill than subsequent speakers.<sup>7</sup> In some systems this is also the case for the chairman of the select committee that scrutinised the bill during the committee stage. In Ireland, each parliamentary group can nominate a spokesperson, who has 30 minutes of speaking time, while other MPs only have 20 minutes.<sup>8</sup> In other systems, the time allotted for each speaker is the same.<sup>9</sup>

The number of speeches an MP is allowed to give during a debate also differs. For example, during the debate on a select committee report in Ireland, MPs may only speak twice, the second speech lasting only two minutes.<sup>10</sup> Similarly, the Norwegian *Storting*, while allowing MPs to have as many speeches as desired, progressively shortens the time allowed so that from the third speech

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6 Standing Orders of the House of Representatives 2008 (New Zealand), Appendix A.

7 Rules of Procedure of the Stortinget 2009 (Norway), s 36.

8 Standing Orders relative to Public Business 2008 (Ireland), SO 121(3).

9 Standing Orders of the Bundestag 1980 (Germany), SO 35.

10 Standing Orders relative to Public Business 2008 (Ireland), SO 129(3).



on the MP may only speak for 3 minutes.<sup>11</sup> Other systems allow their MPs to speak only once or twice on the same subject.<sup>12</sup>

The reasons that most systems do not limit the time of debates by default is that it may not be desirable to do so from a democratic point of view. Debates allow the various MPs to present different views on a topic, thereby representing their electorate (be it a location or a list). Cutting this process short may mean that there is still a need for discussion which is not catered for. On the other hand, having no means of truncating a debate may leave the process open to abuse. A minority, which is opposed to the passage of a bill, may artificially extend the debate and thus slow the passage of the bill, or even bring it to a halt entirely.

In order to prevent a minority from impeding the legislative process in this way, most systems allow some form of closure procedure to bring a debate to an end. This is generally achieved in one of two ways: through an ad hoc time limit, or a closure motion. In some systems, an ad hoc time limit, akin to the two-hour debates in New Zealand, can be imposed either before or during the debate. For example, programme motions and guillotine motions allow the UK House of Commons to set a time by which a debate must be concluded.<sup>13</sup> In Norway, the *Storting* may decide to shorten the time limits of individual speakers in order to accelerate the debate.<sup>14</sup> The Dutch *Tweede Kammer* may limit the overall speaking time allotted to each party relative to their size in the House.<sup>15</sup> The other possibility of ending a debate is a closure motion which puts the bill to a vote. This has the effect that once the motion is passed, no additional speakers can be added to the speakers list.<sup>16</sup> In order to safeguard against an abuse by the majority of the House by moving for a division early in the debate, the Speaker of the House (or her or his equivalent) generally must be satisfied that the topic has been sufficiently debated.<sup>17</sup>

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11 Rules of Procedure of the Stortinget 2009 (Norway), s 36.

12 Standing Orders relative to Public Business 2008 (Ireland), SO 47; Rules of Procedure of the Stortinget 2009 (Norway), s 35.

13 House of Commons Information Office "Parliamentary Stages of a Government Bill" (2010) Legislation Series <[www.parliament.uk](http://www.parliament.uk)> at 10–11.

14 Rules of Procedure of the Stortinget 2009 (Norway), s 36.

15 Rules of Procedure of the House of Representatives of the States-General 1994 (Netherlands), ss 43(1), 64.

16 See for example Rules of Procedure of the House of Representatives of the States-General 1994 (Netherlands), s 67; Standing Orders of the House of Representatives 2008 (New Zealand), SO 132.

17 Standing Orders of the Folketing (Denmark), SO 31; Standing Orders relative to Public Business 2008 (Ireland), SO 66.

The two-hour time limit for debates in New Zealand prevents delay tactics by the opposition. Indeed, that is the reason the time limit for debates was introduced in New Zealand.<sup>18</sup> It has led to a smoother flow of business which had previously been plagued by tactical delays from the opposition.<sup>19</sup> However, the Standing Orders do not provide for a possibility of extending the debate, even if there is more demand. While this may appear alarming from a democratic point of view, it is important to remember that the legislative process includes three reading debates, more than any of the other surveyed systems. Furthermore, as will be discussed further below, the Committee of the Whole House stage is often used to debate the policy underlying the bill, so that there is ample opportunity in the House for discussion. Consequently, there are no strong reasons to change the speaking times in the House.

### ***B Stand-down Periods and Ability to Omit Stages***

Apart from regulating speaking times, the legislative process can be shortened by cutting out the stand-down periods between legislative stages or omitting a stage altogether.

While some systems, such as in the UK and Ireland, do not have set stand-down periods, most other systems require stages to be a certain amount of sitting days apart. The main reason for these stand-down periods is for parties to return to their caucus and discuss the previous debates before embarking on the next stage of a bill.<sup>20</sup> It is also a safeguard against overzealous governments who want to push through bills while not allowing the opposition enough time to criticise the bills. This is particularly important in parliamentary systems where governments hold the majority (or at least the support of the majority) of the House. Consequently, New Zealand,<sup>21</sup> Denmark,<sup>22</sup> Germany,<sup>23</sup> Israel<sup>24</sup> and Norway<sup>25</sup> require at least one or two sitting days to pass between stages. In addition, the Danish *Folketing* may not pass a bill within 30 days of its introduction, to ensure enough time for all interested parties and the public to form an opinion on the details of the bill.<sup>26</sup>

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18 In order to balance the resulting democratic deficit, all MPs have the possibility to speak in the Committee of the Whole House stage.

19 John E Martin *The House – New Zealand's House of Representatives 1854–2004* (Dunmore Press, Palmerston North, 2004) at 305.

20 John Burrows *Statute Law in New Zealand* (4th ed, LexisNexis, Wellington, 2009) at 75.

21 Standing Orders of the House of Representatives 2008 (New Zealand), SOs 277, 287, 290 and 301.

22 Standing Orders of the Folketing (Denmark), SOs 11–13.

23 Standing Orders of the Bundestag 1980 (Germany), SOs 81 and 84.

24 Rules of Procedure of the Knesset (Israel), ss 125 and 130.

25 The Storting's Administration "The Norwegian Parliament" (2009) <[www.stortinget.no](http://www.stortinget.no)> at 16.

26 Standing Orders of the Folketing (Denmark), SO 13.

In some systems, the stand-down period after the debate following a committee stage may be extended beyond the standard two days in order to allow more time to digest the extensive committee work and its resulting report. As such, a 40 per cent majority vote of the *Folketing* may also require 12 days to pass between the second reading (debate on the select committee report) and the third reading (final debate).<sup>27</sup> In Israel, one week must pass before the third reading if the bill has been amended in the second reading.<sup>28</sup>

On the other hand, some systems require a bill to be addressed within a reasonable time, to prevent a bill from sitting on the Order Papers for too long. In Germany, for example, no more than three weeks may pass between the introduction of a bill and its first reading.<sup>29</sup> This is to ensure that bills do not spend too long on the Order Papers before being referred to a select committee. It also makes sure that governments cannot block opposition bills. In the UK and Denmark, bills must generally be passed before the end of a sessional cycle. If the bill is not passed by that time, it has to be reintroduced in the next session and traverse the entire legislative process from the beginning.<sup>30</sup>

Although most systems employ some sort of mandatory stand-down periods, some systems also incorporate mechanisms that ensure the passage of uncontroversial bills is not unnecessarily drawn out. In Germany, for example, the third reading may follow immediately after the second if the bill was not amended during the second reading.<sup>31</sup> The rationale is that if the bill was not changed, there is no new material that needs to be publicised or discussed in caucus. Similarly, several systems do not require an additional debate if the bill remains unchanged.<sup>32</sup> If a bill was not amended during an Irish select committee stage, the subsequent report stage is held as a pure formality, without debate.<sup>33</sup> In Norway, where the select committee stage is followed by two readings, a third reading only takes place if the vote after the second reading differs from the vote after the first.<sup>34</sup> In New Zealand, a bill will go directly from the second to the third reading if the Business Committee decides that scrutiny by the Committee of the Whole House is not required.<sup>35</sup>

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27 Standing Orders of the Folketing (Denmark), SO 13.

28 Rules of Procedure of the Knesset (Israel), s 130.

29 Standing Orders of the Bundestag 1980 (Germany), SO 20(4).

30 Christian Juul Lenz (ed) "The Parliamentary System of Denmark" <[www.folketinget.dk](http://www.folketinget.dk)> at 12; House of Commons Information Office "Legislative Process" (2010) Legislation Series <[www.parliament.uk](http://www.parliament.uk)> at 8.

31 Standing Orders of the Bundestag 1980 (Germany), SO 84.

32 Rules of Procedure of the House of Representatives of the States-General 1994 (Netherlands), s 105; Standing Orders of the Bundestag 1980 (Germany), SO 84(b) and 85.

33 Houses of the Oireachtas "A Brief Guide to the Legislative Process" <[www.oireachtas.ie](http://www.oireachtas.ie)>.

34 The Storting's Administration, above n 25, at 17.

35 Standing Orders of the House of Representatives 2008 (New Zealand), SO 290.

### *C Deviation from the Legislative Process*

The Committee of the Whole House stage is rarely omitted in New Zealand. Instead, urgency is used to accelerate the passage of a bill through its remaining stages. Similarly, some of the other systems surveyed allow the House to omit stand-down periods or stages under certain circumstances, even though the Standing Orders generally require them. In this way, these parliaments may fast-track legislation either because there is an emergency, or because the bill is so uncontroversial that no serious opposition to its passage exists. However, to prevent abuse of this possibility, the threshold for circumventing the usual process is generally quite high. As such, the German *Bundestag* can omit the stand-down periods between the stages following the select committee stage; but it requires a two thirds majority to do so. Similarly, the Danish *Folketing* may deviate from its Standing Orders only with a 75 per cent majority. This shows that in these systems, it is only possible to severely shorten the legislative process with the broad support of the House. The simple majority of the government is not enough. Consequently, deviating from the regular process is only possible if the bill is uncontroversial or there is a broad consensus that rapid action is required.

The urgency motion in New Zealand gives the government quite unique powers among the surveyed systems. Under urgency, the New Zealand Parliament can (and frequently does) discuss several stages of a bill consecutively, thereby omitting the otherwise mandatory stand-down periods between them.<sup>36</sup> In extreme cases, urgency allows a bill to be passed in one sitting, taking all debates on the same day and bypassing the select committee stage altogether.<sup>37</sup> The main requirement is a simple majority in the House.<sup>38</sup> The ease with which governments can bypass the ordinary legislative process and pass legislation makes New Zealand's truly the "fastest law in the west".<sup>39</sup>

The powers that the government has through the urgency motion suggest that it should be an emergency tool, which enables governments to react to extraordinarily pressing and dire situations.<sup>40</sup> Instead, from its introduction into the Standing Orders in 1884, it has been used as a

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36 Standing Orders of the House of Representatives 2008 (New Zealand), SOs 290 and 301.

37 Burrows, above n 20, at 86.

38 Standing Orders of the House of Representatives 2008 (New Zealand), SO 54. The only other requirement is that the moving Minister must give reasons as to why urgency is moved.

39 Geoffrey Palmer *Unbridled Power?* (Oxford University Press, Wellington, 1979) at 77. Sir Geoffrey has ceased to use the phrase in the third and fourth edition of the book, presumably due to the introduction of the Mixed Member Proportional electoral system.

40 Burrows and Joseph, above n 2, at 307.

tool of convenience to expedite the legislative process.<sup>41</sup> Although it may mainly be used for the benign purpose of extending sitting hours and combining two – or at most three – legislative stages, the possibility to use the motion in less benign ways lies almost entirely with the government. This is due to the fact that the only requirement for urgency is a simple majority in Parliament, which the government generally holds.<sup>42</sup> The lack of constitutional safeguards is worrying. Denmark and Germany allow steps akin to urgency to be taken only with a qualified majority of at least 66 per cent. This ensures that the government cannot take advantage of the provision.

It would be desirable to introduce similar safeguards in New Zealand. An entrenched requirement of a qualified majority for the urgency motion would limit its use severely. Parliament would only employ it in situations where the nature of the bill or the situation in need of response had broad and cross-bench support. Another, less invasive change could be the requirement of the Speaker's consent for the motion to succeed.<sup>43</sup> This is already the case for extraordinary urgency pursuant to SO 56, and could be easily transferred onto regular urgency.

### ***III ADEQUACY OF SITTING HOURS OF THE HOUSE***

Limiting the ability to use urgency without offering alternatives is unviable, as without urgency Parliament would be incapable of dealing with its massive workload. It is therefore necessary to explore other constitutional changes that could improve the House's efficiency.

The main reason that urgency is used in New Zealand appears to be a desire to gain additional sitting hours.<sup>44</sup> With only about 400 sitting hours per year, New Zealand's Parliament meets much less than most of the other comparator countries.<sup>45</sup> Among the surveyed systems, this is comparable

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41 Standing Orders of the House of Representatives 1884 (New Zealand), SO 331. Incidentally, the original wording of the urgency motion suggested its purpose to be an emergency tool: "bills of an urgent nature are sometimes passed with unusual expedition through their several stages". See also, Martin, above n 19, at 120 and 241.

42 Since the introduction of the Mixed Member Proportional electoral system in New Zealand in 1996, only one government has held a majority in Parliament. The remaining minority governments have had to rely on their support parties. This could be seen as a satisfactory check on the government's ability to misuse the urgency motion. However, the effectiveness of support parties depends on the composition of the government and the willingness of the support parties to act as such a check. For example, the 48th Parliament employed urgency relatively infrequently, due to the reluctance of the Green Party to support the motion. See Malone, above n 3, at 212. In contrast, the 49th Parliament's use of urgency exceeds the average use by far. See The Urgency Project "Standing Orders review 49th Parliament – Submission to Standing Orders Committee" (2011) at 2.

43 The Urgency Project, above n 42, at 14.

44 Ibid, at 5.

45 Mary Harris *Annual Report of the Office of the Clerk of the House of Representatives for the year ended 30 June 2010* (2010) at 25.

only to the German *Bundestag*. The Irish, Danish and Israeli Parliaments sit for up to 700 hours per year, while the UK House of Commons regularly sits for more than 1,100 hours per year.

It is important, however, not to take these numbers out of context. For example, parliamentary business in the UK is conducted differently to some of the other surveyed countries. While in many systems committee meetings may not (or only with special leave) proceed during plenary sittings, they may do so in the House of Commons.<sup>46</sup> In fact, on Wednesdays and Thursdays, debates may be held concurrently in the Main Chamber and Westminster Hall. This makes it possible for the House to schedule more sitting hours, as they do not impinge as much on other duties of its Members as a similar amount of sitting hours would in other systems. On the other hand, much of the work of the *Bundestag* is conducted through committees, with plenary time concentrating mostly on legislating and debates on topics of special interest.

While the differing sitting hours depend to a great extent on the political culture and procedures of the systems, the 400 hours per year that the New Zealand House sits is at the low end. Given that the major reason for accelerating the legislative process via urgency is a lack of plenary time, extending the sitting hours of the House may be a viable solution. Longer hours could allow Parliament to process more legislation in a shorter time. Parliament could also devote more time to debates as well as whole House committee stages of bills. If a sitting day was added to the week, or additional sitting weeks were implemented, the periods between stages, which are in practice often much longer than prescribed in the Standing Orders, may also become shorter. Parliament could even use the opportunity to extend readings of controversial or complex bills beyond the two hour limit, in order to enhance their democratic legitimacy.

On the other hand, merely extending the sitting hours may not lead to a more efficient legislative process. Even if extended sitting hours became a permanent feature of New Zealand's Parliament, it is far from certain that the additional time would be used to advance legislation. Much of the time in Parliament is devoted to non-legislative business. In lieu of ring-fencing additional sitting time for legislative purposes, Parliament may use it for other ends. Moreover, it must be asked whether extending the time Parliament spends on legislation is even desirable, as it detracts from its other duties and diminishes its time to perform them. In particular, extending sitting hours does not address issues of inefficiencies in the legislative progress themselves, but merely their symptoms.

#### ***IV    ROLE OF THE LEGISLATIVE PROCESS***

Consequently, it is of far greater importance to improve the legislative process itself. The vast majority of urgency motions in New Zealand are accorded to more than one stage of a bill; in seven out of the past ten years, more than 80 per cent of bills passed under urgency were accorded urgency

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<sup>46</sup> House of Commons Information Office "Sittings of the House" (2010) Procedure Series <[www.parliament.uk](http://www.parliament.uk)> at 3; House of Commons Information Office "General Committees" (2010) Legislation Series <[www.parliament.uk](http://www.parliament.uk)> at 5.

for two or more of their stages. The effect is that two or more stages are compressed into a single stage; this raises the question whether the number of stages and their respective stand-down periods are still desirable. With three debates and two committee stages, New Zealand has the most mandatory stages among the surveyed countries. Denmark's is the only other system which allows for five substantial stages, albeit only in exceptional cases.<sup>47</sup> The other surveyed systems provide for only one committee stage and two or three debates. This could lead to the conclusion that a major reason for the excessive legislative workload of the New Zealand Parliament is due to its inflexible and prolonged processes.

It is, however, inappropriate simply to count stages without taking their respective roles into account. What are the roles of debates and committees? Do they differ depending on the stage of the process? Answers to these questions may aid in finding an answer to whether all stages of the New Zealand legislative process are necessary.

### ***A Role of Debates***

The role of a debate differs depending on the system and the location the debate takes within the legislative process. They appear at different stages of the legislative process: before referral to a committee, after the committee stage, and before the final vote on the bill. Generally, a debate gives MPs the opportunity to express their views on the bill. There are different types of debates: general debates on the underlying policy of the bill; and specific debates on parts of the select committee report or particular clauses within the bills.

General debates are rarely meant to change the vote of opposing parliamentarians.<sup>48</sup> Rather, they provide the interested public with alternative views on the topic of the bill.<sup>49</sup> They are a medium for the opposition to criticise the bill – constructively or destructively. As such, debates are an important part of the legislative process. As general debates concentrate on the policy underlying the bill, they are usually open to all MPs. Speeches are held in succession and are generally not responses to earlier speeches, but separate opinions on the general topic.

Specific debates, on the other hand, have the purpose of enhancing the bill. They are more constructive, as specific clauses or recommendations are discussed. For that reason, in some systems, specific debates commence with a presentation by the proposer of the bill or the chairperson of the committee that scrutinised the bill.<sup>50</sup> Subsequently, other MPs may speak on the

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<sup>47</sup> Christian Juul Lenz, above n 30, at 12. One could even say that the possible second committee stage in Denmark is equivalent to the situation in all other systems (including New Zealand's), where a bill has been recommitted to the select committee

<sup>48</sup> David McGee "Concerning Legislative Process" (2005) 11 Otago LR 417 at 423.

<sup>49</sup> Susanne Linn and Frank Sobolewski *The German Bundestag – Functions and Procedures* (Neue Darmstädter Verlagsanstalt, Rheinbreitbach, 2010) at 90.

<sup>50</sup> See for example Rules of Procedure of the Knesset (Israel), s 126.

bills, but the proposer or chairperson has the opportunity to reply.<sup>51</sup> If the subject of the debate is an amendment, the person moving the amendment may also reply. This enables a constructive debate to develop, in which the proposer of a bill, amendment or report can clarify or defend their position.

### *1 Debates prior to referral to a committee*

In many systems, the general policy of a bill will be debated in the House before it is referred to a committee.<sup>52</sup> The reason for this debate is that it may be useful to discuss the general topic of a bill before sending it to a committee. This helps the committee to get an idea of where tensions between political views may lie and which parts of the bill are acceptable. However, not all systems require (or even provide for) a debate before the committee stage. Upon introduction, the German *Bundestag* decides which select committee to refer the bill to.<sup>53</sup> The Council of Elders or a parliamentary group may request a debate prior to referral, but the topic of such a debate is merely which select committee is appropriate for the bill. In the Netherlands and Norway bills are referred to committees without prior debates.<sup>54</sup>

While a debate before the committee is an opportunity to gauge support and reactions to a bill, its usefulness is often limited. Debating a bill just days after its introduction and without the insights of a select committee report may lead to a generally uninformed discussion. Bills often emerge from the select committee in a heavily modified form.<sup>55</sup> This may render much of the previous debate obsolete.

The practicality of a first debate also depends on the subsequent progress of the bill. In New Zealand, for example, the first reading may be the only time a private member's bill is debated, as it can be voted down before referral to a select committee. In Germany, on the other hand, bills may not be voted down before the second reading, in order to ensure that opposition bills have an opportunity to be scrutinised in committee.<sup>56</sup>

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51 Houses of the Oireachtas "A Brief Guide to the Legislative Process" <[www.oireachtas.ie](http://www.oireachtas.ie)>; Rules of Procedure of the Stortinget 2009 (Norway), s 37.

52 Standing Orders of the House of Representatives 2008 (New Zealand), SO 277; House of Commons Information Office, above n 30, at 4; Standing Orders relative to Public Business 2008 (Ireland), SO 121; Standing Orders of the Folketing (Denmark), SO 11; Rules of Procedure of the Knesset (Israel), s 115.

53 Standing Orders of the Bundestag 1980 (Germany), SO 80.

54 Rules of Procedure of the House of Representatives of the States-General 1994 (Netherlands), s 90; Rules of Procedure of the Stortinget 2009 (Norway), s 28.

55 George Tanner "Confronting the Process of Statute-Making" in Rick Bigwood (ed) *The Statute – Making and Meaning* (LexisNexis, Wellington, 2004) at 76.

56 Linn and Sobolewski, above n 49, at 91.



## 2 *Debates after the committee report*

Once a committee has scrutinised a bill and tabled its report, all systems enter into a general and/or specific debate. The House discusses the select committee report and recommendations, and, depending on powers of the committees, amendments to the bills. This may be preceded by a general debate, particularly in systems that have not had general debates prior to the select committee.<sup>57</sup> In other systems, the debates following the committee stage are limited to specific debate.<sup>58</sup> The specific debate concentrates on issues and recommendations flagged by the select committee. The details of the bill are discussed, making this a particularly important debate.

At this stage, some parliaments debate a bill section by section.<sup>59</sup> Countries with a Westminster tradition do this during the Committee of the Whole House stage. In the Committee stage, the Speaker of the House leaves the chair for historical reasons, and the whole Parliament participates in the Committee discussion. However, there is functionally little difference between a clause by clause debate taking place during a reading, or a Committee of the Whole House.

Some systems require a vote on each individual clause.<sup>60</sup> Although the New Zealand Standing Orders used to require a section by section debate of each bill, the House has been predominantly discussing bills part by part for decades.<sup>61</sup> Consequently, the Standing Orders were changed in 2008 to reflect this practice. But part by part discussions have been criticised as being too general and producing inferior legislation.<sup>62</sup> Specific issues are hardly discussed; instead, the discussion is often more reminiscent of a general debate. The practice has also led to a change in how bills are drafted; today, bills often have as few parts as possible, in order to accelerate the Committee of the Whole House stage.<sup>63</sup>

An alternative way of debating a bill clause by clause while shortening the process can be observed in the *Knesset* and the *Bundestag*. While both systems require a clause by clause vote,

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57 Standing Orders of the Bundestag 1980 (Germany), SO 81(1); Rules of Procedure of the House of Representatives of the States-General 1994 (Netherlands), s 101.

58 House of Commons Information Office, above n 30, at 6; Houses of the Oireachtas, above n 51; Rules of Procedure of the Knesset (Israel), s 126.

59 Standing Orders of the Folketing (Denmark), SO 12; Rules of Procedure of the House of Representatives of the States-General 1994 (Netherlands), s 101(2); Rules of Procedure of the Knesset (Israel), s 126; Standing Orders of the Bundestag 1980 (Germany), SO 81(2).

60 Standing Orders of the Bundestag 1980 (Germany), SO 81(2); Rules of Procedure of the Knesset (Israel), s 126(b).

61 Malone, above n 3, at 221.

62 Burrows and Joseph, above n 2, at 307.

63 Tanner, above n 55, at 78.

several uncontested clauses can be combined into one vote without discussing them.<sup>64</sup> Therefore, only controversial sections will draw a debate, while uncontroversial sections can be processed quickly.

Other systems require section by section debates only under specific circumstances. The UK and Irish legislative processes features only one committee stage after the first debate of the bill. The bill is referred to either a select committee, or the Committee of the Whole House.<sup>65</sup> In this way, only important and controversial bills will be discussed by the whole House, while less controversial and simple bills can be trusted to a select committee.<sup>66</sup> Similarly, the *Tweede Kammer* in the Netherlands only debates bills clause by clause if it finds it desirable to do so.<sup>67</sup>

This shows that a full clause by clause examination of every bill is the exception among the surveyed countries. Even systems which require such detailed scrutiny of bills have ways to shorten the process. Other systems may omit such a discussion altogether. It appears to come down to the importance of the bill and the amount of trust put into the select committee process. Bills that have undergone the select committee process have already been scrutinised section by section. Any controversies and issues which it encountered will be flagged in the select committee report and can be picked up in the subsequent debate. An extreme example is the Norwegian *Storting*, where bills are *always* referred to a select committee and *never* debated clause by clause during a reading.

### 3 Final Debate

Once the bill has been scrutinised by a committee and discussed by the House, most parliaments hold a final debate. These debates may be general or specific. In the UK and Denmark, for example, a short general debate takes place before the final vote on the bill.<sup>68</sup> In Ireland, the proposer of the bill has a final chance to defend it.<sup>69</sup> The role of this debate is a final discussion of the bill as it stands after the committee and specific debate. Consequently, some systems only provide for a final

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64 Standing Orders of the Bundestag 1980 (Germany), SO 81(3); Rules of Procedure of the Knesset (Israel), s 126(c).

65 House of Commons Information Office, above n 30, at 5; Standing Orders relative to Public Business 2008 (Ireland), SO 122.

66 House of Commons Information Office, above n 30, at 6.

67 Rules of Procedure of the House of Representatives of the States-General 1994 (Netherlands), s 101(2).

68 House of Commons Information Office, above n 30, at 6; Christian Juul Lenz, above n 30, at 12.

69 Houses of the Oireachtas, above n 51.

debate if the bill has been amended in previous debates.<sup>70</sup> Israel's *Knesset* does not debate the bill at a final stage at all, only holding a vote during the third reading.<sup>71</sup>

Whether a final debate is necessary depends on whether this debate could add any new information to the process. After an extensive committee report and the subsequent scrutiny of the bill by the House, another debate may do nothing to enhance the bill. Therefore, even in systems that provide for such debates, they tend to be relatively short.<sup>72</sup> On the other hand, the stand-down period before the final debate may give MPs and caucuses time to reflect on the changed bill and formulate comments on the modifications. It also enables the opposition to voice their opinion on the bill. It appears, therefore, that final debates are useful in some cases, although they generally do not enhance the quality of the bill.

## ***B Role of Committees***

The other main part of the legislative process, and possibly the most constructive, is the discussion and scrutiny of bills in committees.<sup>73</sup> All of the surveyed systems send the majority of their bills to some form of representative body, where a bill can be examined in a smaller, more collaborative environment. Committees do not receive the same amount of public attention, making room for discussion less influenced by party politics. For that reason, select committee meetings of the *Bundestag* are generally held behind closed doors; public meetings are the exception.<sup>74</sup> In most other systems, however, committee meetings are generally public in order to ensure democratic transparency.<sup>75</sup>

### ***1 The Modus of Committees***

The composition of committees varies from system to system. Most parliaments appoint permanent committees at the beginning of a term. These often reflect the different subject areas of the various departments and ministries.<sup>76</sup> In most cases, committees do not only deal with

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70 The Storting's Administration, above n 25, at 17; Rules of Procedure of the House of Representatives of the States-General 1994 (Netherlands), s 105; Standing Orders of the Bundestag 1980 (Germany), SO 84 and 85.

71 Rules of Procedure of the Knesset (Israel), s 129.

72 House of Commons Information Office, above n 30, at 6.

73 Burrows, above n 20, at 87.

74 Linn and Sobolewski, above n 49 at 31.

75 See for example Standing Orders relative to Public Business 2008 (Ireland), SO 93; Rules of Procedure of the House of Representatives of the States-General 1994 (Netherlands), s 37.

76 See, for example, Rules of Procedure of the Stortinget 2009 (Norway), s 12; Rules of Procedure of the House of Representatives of the States-General 1994 (Netherlands), s 16; Standing Orders of the Folketing (Denmark), SO 8 and 9.

legislative business but with any business that falls within their area. As such, they scrutinise the work and finances of government departments and prepare deliberations and decisions for their respective parliaments.<sup>77</sup>

The UK House of Commons, however, distinguishes between public (or private) *bill committees*, which deal with examining legislation, and *select committees*, which deal with non-legislative work.<sup>78</sup> Similar to standing committees in other systems, United Kingdom public bill committees submit recommendations and reports of bills to Parliament. Unlike their counterparts, however, public bill committees are not permanent, but set up on an *ad hoc* basis. A new public bill committee is appointed for every new bill, and is discharged once it has reported back to the House.<sup>79</sup> The select committees, on the other hand, are permanent committees which mirror the departments and ministries.

## 2 *The Composition of Committees*

The membership of the committees is in all systems proportional to the representation in the House. This is to guarantee that the select committees, to which the scrutiny of bills has been delegated by the House, are a fair and accurate representation of Parliament. In some systems the chairperson of each committee is elected by the committee.<sup>80</sup> In Germany, chairpersons are appointed proportional to the amount of seats of each party in the House, so that every party chairs their proportion of committees. Interestingly, Cabinet ministers are excluded from sitting on select committees in New Zealand,<sup>81</sup> while they are required to do so in the UK.<sup>82</sup>

The size of select committees varies widely between the surveyed systems. The UK House of Commons and Germany's *Bundestag* have between 10 and 50 members, while in New Zealand membership generally does not exceed 12 or 13. It appears that on average, committees have between 15 and 20 members, with Denmark having 17, Norway up to 18, the UK generally around 17. As an exception, committees in Germany tend to have on average 30 to 40 members, which generally form sub-committees to deal with business.<sup>83</sup>

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77 Standing Orders of the House of Representatives 2008 (New Zealand), SO 185; Linn and Sobolewski, above n 49, at 28.

78 House of Commons Information Office, above n 30, at 5.

79 Ibid.

80 Ibid; Standing Orders of the House of Representatives 2008 (New Zealand), SO 197; Standing Orders relative to Public Business 2008 (Ireland), SO 90.

81 Burrows, above n 20, at 88. However, this is customary and not required by the Standing Orders.

82 House of Commons Information Office, above n 30, at 5.

83 Linn and Sobolewski, above n 49, at 27 and 28.

### 3 *The Bill in the Committee*

Which committee a bill is referred to is either decided by the House at the end of the first reading debate, or by some sort of standing business committee. The decision is based on which committee's area of expertise the bill falls under. Larger and more complex bills may naturally touch on more than a single subject area. There are different ways of making sure that advantage is taken of the expertise of all affected committees. In Ireland it is possible for a select committee to meet with another committee to discuss bills.<sup>84</sup> Similarly, the German *Bundestag* may refer a bill to several committees, appointing one as the coordinating lead committee.<sup>85</sup> In New Zealand, a bill is always referred to a single select committee, which can seek information or opinions from other committees.<sup>86</sup>

In committee, bills are inspected not just on the basis of their policy, but also how they fit into the legislative framework and the environment they are meant to regulate. As such, committees are generally empowered to collect information from various sources. They have access to records and can request information from the government. In Germany, where Cabinet ministers are not necessarily members, committees may also demand the presence of a member of the government, if the minister does not attend of her or his own accord.<sup>87</sup> Depending on the system, committees invite public submissions on bills more or less frequently; in New Zealand public submissions are sought on virtually every bill,<sup>88</sup> while committees of the *Bundestag* only invite submissions on complex or controversial bills.<sup>89</sup>

In New Zealand and the United Kingdom, bills with a financial aspect do not go to a select committee, but are discussed by the Committee of the Whole House.<sup>90</sup> However, while appropriation bills are not sent to select committee in New Zealand, their *contents* are.<sup>91</sup> Estimates and financial reviews are considered in select committees prior to the introduction of the appropriations bill. That leaves only imprest supply bills, which are not subjected to committee scrutiny at all, due to the rapidity of their passage (within a single sitting). Most of the other

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84 Standing Orders of the Folketing (Denmark), SO 8(10).

85 Standing Orders of the Bundestag 1980 (Germany), SO 80(1).

86 Standing Orders of the House of Representatives 2008 (New Zealand), SO 284.

87 Standing Orders of the Bundestag 1980 (Germany), SO 68.

88 Burrows, above n 20, at 88.

89 Linn and Sobolewski, above n 49, at 95.

90 House of Commons Information Office, above n 30, at 6; Standing Orders of the House of Representatives 2008 (New Zealand), SO 280.

91 David McGee "The Legislative Process" in *Parliamentary Practice in New Zealand* (3rd ed, Dunmore Publishing, Wellington, 2005) at 348.

surveyed systems send all finance bills to select committee before they are further debated in the House.<sup>92</sup>

The committee stage in all systems concludes with a report of the committee to the House. These reports identify issues and controversies within the bills and make recommendations for changes to the House. In some systems, committees may be empowered to amend bills by themselves,<sup>93</sup> while in other systems they may only recommend changes to the House.<sup>94</sup> The powers to amend or recommend may reflect the view of the role of committees within the system. If committees are seen as a representation of parliament on a small scale that can make decisions on behalf of the House, it makes sense that it may amend the bill. On the other hand, if committees are merely working groups that analyse a bill and report back to the House, they may only recommend changes.

## ***V A NEW LEGISLATIVE MODEL FOR NEW ZEALAND***

New Zealand's legislative process consists of comparatively many stages, with three general debates, the part by part debate in the whole House, and a select committee. As discussed above, the legislative processes of most other systems are shorter, mostly because they include fewer general debates. More importantly, many other systems are less rigid than New Zealand's, allowing for stages to be omitted under certain circumstances. Although the process in New Zealand allows for thorough scrutiny of most bills, it may be too cumbersome, particularly for uncontroversial and technical bills. This leads to a backlog of bills, which Parliament currently addresses by employing urgency. If the legislative process were more flexible and allowed bills, which enjoy the broad support of the House, to be passed more quickly, Parliament might not have to revert to urgency as often.

Obviously, from a democratic perspective, accelerating the legislative process bears its own dangers. The purpose of the process is not just the optimisation of legislation, but it also serves as a forum for the opposition to voice its opinions and concerns. Allowing the majority in the House to rush bills through the process diminishes this opportunity. Therefore, changes to the legislative process must take the interest of the opposition and other minorities into account, lest they face the same criticism as the current use of urgency. Many of the surveyed systems ensure that the opposition is able to sufficiently participate in one of two ways: they require a qualified majority

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92 Linn and Sobolewski, above n 49, at 126; Standing Orders of the Folketing (Denmark), SO 51(1); Standing Orders relative to Public Business 2008 (Ireland), SO 149; Rules of Procedure of the Stortinget 2009 (Norway), s 12.

93 House of Commons Information Office, above n 30, at 6; Standing Orders relative to Public Business 2008 (Ireland), SO 127.

94 See, for example, Rules of Procedure of the Knesset (Israel), s 119; Standing Orders of the Folketing (Denmark), SO 8a.

when accelerating the process; or the Standing Orders provide for objective mechanisms which govern the passage of legislation. In this way, the legislative process can be sped up without endangering the democratic legitimacy of the bill.

### ***A The Introduction and Introductory Debate***

The general debate during the first reading is an opportunity for the House to determine the differing views on the subject of the bill and may inform the select committee about frictions and issues which require particular scrutiny and deliberation. However, not all bills require a general discussion before going to committee. A general discussion only makes sense if there is genuine scope for disagreement about the policy or implementation of policy. If the House disagrees only on details, it may be wiser and more time-efficient to let the select committee inspect the bill before debating it, which may settle some of the differences.

However, this may not be the case for bills introduced by private members. There is an interest in discussing such bills before referring them to select committee. This gives the moving member the opportunity to explain the rationale of the bill, and to have her or his day in the House.

The question of whether a general debate takes place could be decided by the Business Committee. If the Business Committee cannot come to a conclusion, it could refer the question of a general debate to the House. Alternatively, the proposing Minister could decide whether a debate is necessary. In order to prevent abuse, a general debate would have to be held if a parliamentary group or a particular percentage of the House so requires. This percentage could be five per cent, the same as the threshold required for a party to enter Parliament under the Mixed Member Proportional electoral system. In order to prevent minor parties from filibustering the process, this threshold could be increased. However, the protection of minority views diminishes the higher the threshold is set. In any case, the two hour time limit on general debates serves well to prevent unnecessarily drawn out discussions.

If there was cross-bench support to omit a general debate before the select committee, the entire first stage would fall away, saving a step in (and thus accelerating) the process. If the general debate was not omitted, the question on the bill would be put upon the conclusion of the debate.

### ***B The Select Committee***

The importance of the select committee for the legislative process in New Zealand cannot be overstated. It enables thorough consultation on the bill and is the only stage where the public can have active input into the bill. The impact of select committees can be seen in the fact that they often recommend substantive changes to bills.<sup>95</sup> While not every bill has to be referred to a select

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<sup>95</sup> Burrows and Joseph, above n 2, at 307.

committee, virtually all bills are.<sup>96</sup> Therefore, the recent increase in the use of urgency to pass bills while omitting the select committee is particularly worrisome.<sup>97</sup>

Given the importance and impact of select committees, it seems desirable that most bills should be referred to them.<sup>98</sup> The ease with which governments can employ the urgency motion makes its use to omit the select committee unacceptable. Although it may be arguable that there is a need to pass legislation quickly under certain pressing and dire circumstances, it is worthwhile to note that many of the surveyed countries do not provide for such a possibility *at all*. None of the parliaments of Denmark, Norway, the Netherlands or Israel specifically allows the omission of the select committee stage. In Germany, this is only possible with a 2/3 majority of the *Bundestag*. This indicates that the danger of not having an urgency provision *at all* may be over-estimated. Instead, *emergency powers* may be better suited to deal with emergency situations. For example, in the aftermath of the February 22 Canterbury earthquake, the Government was able to deal swiftly with the situation and bypass slow parliamentary processes by declaring a national state of emergency. It used urgency to pass the Canterbury Earthquake Recovery Act 2011 six weeks later, at which point the necessity of passing the Act in one day, instead of, for example, two or three weeks, was less clear.

The real problem of select committees is the time it takes to examine the bill and report back to Parliament. Bills spend on average 30 sitting days in the select committee.<sup>99</sup> This may have several reasons. First, Malone suggests that although the six-month time limit for committee reports<sup>100</sup> was introduced to accelerate the committee stage, it may have in fact slowed it down.<sup>101</sup> The committees are overburdened with work. Consequently, they often put business which is not yet due aside, in favour of business with a more pressing deadline. Moreover, committees may overburden themselves by not exercising enough scrutiny as to which submitters to hear orally.<sup>102</sup>

Finally, select committees not only deal with the examination of bills, but are increasingly involved in non-legislative business. Consequently, their time for scrutinising bills is diminished and the legislative process is held up. A solution may be to split up committees into legislative and non-legislative committees. However, the downside may be a loss of expertise if two separate

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96 Tanner, above n 55, at 74.

97 Since November 2008, 17 bills bypassed the select committee stage and were passed in single days, compared to only nine in the preceding nine years.

98 There may be room for some exceptions, such as purely corrective bills or impost supply bills.

99 Malone, above n 3, at 215.

100 Standing Orders of the House of Representatives 2008 (New Zealand), SO 286.

101 Malone, above n 3, at 218.

102 Ibid.



committees for the same subject area compete for experts in that field. Moreover, in a parliament of only 120 Members, committees are already stretched thin. If more committees were created, they would have to be manned by even fewer members.

All of these issues lead back to the fact that committees lack the manpower to deal with all the business they have. One way of remedying this situation is to lessen their workload. However, the importance of select committees suggests that they should not be involved less in the legislative process, but *more*. To achieve this with the same amount of people that are involved, the amount of time committees can devote to bills may be increased. But between increased select committee and plenary time, MPs may find themselves with less and less opportunity for caucus meetings and electoral work.

An unpopular (but logical and efficient) possibility is to increase the number of MPs in the House. New Zealand's Parliament is comparatively small relative to its population. Large countries tend to have a lower ratio of MPs per population: in the UK and Germany, one MP represents around 100,000 people, or more. However, countries with similar populations to New Zealand, such as Ireland, Denmark and Norway, have between 166 and 179 Members in their House of Representatives. These countries have a representation of 27,000 to 31,000 people per MPs, compared to New Zealand's 37,000. The reason for the different ratios between smaller and larger countries is practical: If the United Kingdom had the same ratio as Ireland, the House of Commons would have over 2,200 Members. Raising the ratio in New Zealand to, for example, Danish levels (30,700 people per MP) would increase the membership of the House to about 145. Incidentally, the Royal Commission on the Electoral System suggested in 1986 that the size of Parliament should be increased to 140.<sup>103</sup> It listed as one of the reasons for the increase the benefit additional parliamentarians would have on the select committee process.<sup>104</sup> Obviously, additional representatives have a financial impact but the efficiency of Parliament is beneficial to everyone, both the government and the public. Given the differing number of MPs between New Zealand and comparable countries, raising the number of MPs in New Zealand would be a viable possibility. It would enable select committees to work more efficiently, hear more submissions orally and thus increase the democratic impact of committees, and enable them to deal better with both their legislative and non-legislative work. Unfortunately, it is unlikely that such a move would be popular.

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<sup>103</sup> John Hamilton Wallace and others *Royal Commission on the Electoral System* (1986) at 127. As New Zealand's population at the time was significantly lower than today, the commission may have suggested an even higher number today.

<sup>104</sup> *Ibid.*, at 124.

### ***C The Report Stage***

The current second reading debate is a general debate on the principles of the bill as it emerges from the select committee. As with the first reading, a general debate may neither be needed nor useful at this stage. If disagreement existed about details of the bill, the select committee will have flagged the issues in its report. It would therefore be a much better use of parliamentary time to debate the specific issues presented by the report. This is especially the case if a general discussion has already taken place during the first reading. A second general debate will often be a repetition of the first with only little benefit to the progress of the bill. It may therefore be appropriate to have only a specific discussion on the select committee report. However, if there has not been a general debate during the first reading, a parliamentary group or a certain percentage of the House must be able to demand such a debate.

The value of the current part by part debate during the Committee of the Whole House stage is questionable. The fact that bills are often drafted in very few parts because of this *modus operandi* – rather than the systematic need of the legislation – turns this debate more into a general one rather than a specific debate.<sup>105</sup> As such, the Committee of the Whole House faces a danger of becoming an extended second reading debate. Moreover, discussing only parts of a bill, instead of specific sections that have been identified by the select committee as problematic may lessen both the efficacy of the select committee and the quality of the bill.

However, reverting to the section by section debate on every bill seems neither efficient nor necessary. Among the surveyed countries there appear to be two approaches: having a Committee of the Whole House debate as an alternative to the select committee; or debating only those sections that are controversial. The former model appears to be counter-intuitive, as the whole House would debate particularly large, complex and controversial bills. These would, however, not go to a select committee, which may be a much more appropriate and neutral forum to deal with complex and controversial issues. The latter model seems therefore preferable. The Committee of the Whole House should have the opportunity to discuss sections which emerged from the select committee as contentious. The consequence of following the latter model is, however, that there is no actual difference between the second reading and the Committee of the Whole House. They could thus be amalgamated into a single stage, omitting a stage and the stand-down period in between.

### ***D The Final Debate***

The current third reading debate is another general debate on the final draft of the bill. As the bill cannot be amended anymore, it has no impact on the quality of the bill. However, it gives members of the House a final opportunity to comment on the bill's policy and impact. It is therefore a forum to express alternative opinions to the House and the public. This debate seems particularly

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<sup>105</sup> Malone, above n 3, at 221.

desirable if no general debate has taken place previously in the process, or if the bill has been substantially amended.

On the other hand, if the bill is uncontroversial or opinions differ only on details, a final general debate may be dispensable. It is even debatable whether the stand-down period between the second reading (including the whole House debate) and the third reading is always necessary. The stand-down period is meant to give MPs the opportunity to analyse changes to the bill and discuss them in caucus. If a bill is not amended during the second debate, however, there are no new developments for members to digest. This is reflected in the fact that the government currently uses urgency often to combine the Committee of the Whole House and the third reading.

Consequently, a final debate seems only necessary in two cases: where the bill is so complex or controversial that a final exchange of opinions would be beneficial to the democratic process; or where the bill has been amended so that a general debate on the bill in its final form has not taken place. In all other cases, it would be more efficient to have the final vote on the bill immediately following the Report Stage; in these cases, the stand-down period between the Report and Final Stage could be omitted. However, to ensure that MPs, and particularly smaller parliamentary groups, have a voice during the legislative process, they must have an opportunity to demand a final debate.

### ***E Need for Change***

By taking the rigidity out of the legislative process and making more stages optional, the legislative process may be accelerated – especially for uncontroversial bills. Minor technical or corrective bills could even be passed without general debates at all. Complex and controversial bills would still be subject to introductory and final general debates. A safeguard against abuse would be the possibility for a minority in parliament to reinstate a stage if it so desires. This minority could be a parliamentary group, such as a caucus, or a certain percentage of the House. A more flexible legislative process would hopefully allow the government to pass more technical and uncontroversial bills in less time, thus reducing the amount of bills on the Order Paper.

## **VI CONCLUSION**

The New Zealand House of Representatives uses urgency primarily to accelerate the legislative process and to enable the passage of more bills in less time. The power the government has through the urgency motion, and the ease with which urgency can be employed, makes such frequent use inappropriate. However, the current parliamentary practice highlights deficiencies in the legislative process: the House sits for relatively few hours, and the legislative process is cumbersome and discourages the passage of uncontroversial technical and law reform bills.

Therefore, as has been recommended before,<sup>106</sup> extending the sitting hours of the House may allow it to process more legislation without having to bypass the legislative process. However, the legislative process itself may need to be altered in order to become more efficient. A more flexible process may allow the House to pass more uncontroversial bills in less time, by omitting general debates for bills that are uncontested. Moreover, a larger House would have more members involved in currently overburdened select committees. This would enable committees to deal with more work, both legislative and non-legislative, thus decreasing the time a bill spends in committee.

The frequency with which urgency is used suggests either that successive governments have been overambitious in their legislative programme, or that the legislative system in New Zealand is broken. It is therefore time to reassess the legislative process and streamline it, particularly so that uncontroversial bills can be passed more easily.

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<sup>106</sup> See, for example, *The Urgency Project*, above n 42, at 12.

**Appendix – Suggestion for an Improved Legislative Process**

