Influences on parliamentary procedure in New Zealand 1935 - 2015

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Abstract

New Zealand parliamentary procedure has been reformed gradually over the 80-year period between 1935 and 2015. It has moved away from its Westminster roots in some important respects, but its origins remain recognisable. This thesis studies how parliamentary procedure in New Zealand has changed and what has caused those changes in the period 1935 to 2015.

Taking an interpretive approach, this project examined change from the perspective of the participants in it. The thesis drew on the model developed by James Mahoney and Kathleen Thelen in 'A Theory of Gradual Institutional Change' (2010), which categorises rule changes as displacement of existing rules by new ones; layering of new rules on existing ones; drift in which rules remain the same but their effect is altered; and conversion where rules are unchanged but are reinterpreted.

It found that the New Zealand parliament favours change by layering and displacement, which occur in institutions where discretion to interpret rules is low. Because of a preference for written rules and regular review of procedures, there is little scope for conversion of rules or drift in their meaning. There has been a greater use of layering of new rules on existing ones since the change to the MMP electoral system, reflecting an increase in the number of veto players and the greater complexity in reaching consensus about change. Over the period of the study, detailed work of scrutiny of the executive, law-making and House management shifted from the plenary to committees. Layering was the preferred way to make changes to rules governing select committees, reflecting caution changing a part of the parliamentary machine that is well-regarded. The creation of the House business committee has been enthusiastically received and many additional responsibilities layered onto it since its inception in 1996. This reflects the general preference for layering, post-MMP, and the nature of the committee lending itself to the addition of responsibilities, rather than replacement of one role with another.

While elected members are sensitive to public opinion, almost all changes to rules and practice are proposed by members or parliamentary officials. New Zealand has

institutionalised regular review of its rules and takes a consensus approach to rule changes. This approach generally ensures incremental change but also makes regular review and change part of parliamentary culture. Ongoing reform is likely in light of the desire of parliamentary actors to keep the institution relevant to the public, the institutionalised review process and continued proposals for change.

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My interest in this research arose from my role as Clerk of the House and my curiosity about events that occurred before I began working in parliament. I am grateful to the 13 people who have preceded me as Clerk of the House, particularly for their meticulous record-keeping and propensity to write about parliament.

Contents

List of abbreviations

The following abbreviations are used throughout this thesis.

Primary Sources

Advice – Advice from the Clerk to the Standing Orders Committee (with date)

AJHR – Appendices to the Journals of the House of Representatives (with year and shoulder number)

BC Minutes – Minutes of the Business Committee (with date)

JHR – Journals of the House of Representatives (with date)

Minutes – Minutes of the Standing Orders Committee (with date)

NZPD – New Zealand Parliamentary Debates (with volume number and year)

SO – Standing Orders of the House of Representatives (with year and standing order number)

Submission – Submission to the Standing Orders Committee (with author and date)

Political parties

A - ACT

All - Alliance

F - Future New Zealand

G - Green

I - Independent

L - Labour

LIB - Liberal

N - National

NL - New Labour

NZF - New Zealand First

PC - Progressive Coalition

TT - Te Tawharau

UF - United Future

Chapter 1 – Change in the New Zealand House of Representatives

The New Zealand House of Representatives was, at one point, procedurally indistinguishable from its UK counterpart. That is not surprising, since it was modelled on the House of Commons. In 1949, a former Westminster Clerk of the Parliaments commented that the New Zealand parliament had, in fact, changed less than the Commons (Martin, 2011).

The New Zealand Constitution Act 1852 (Imperial) authorised the establishment of representative parliamentary government in New Zealand and enjoined the Legislative Council and the House to prepare standing orders for approval by the governor. In accordance with that instruction, the first select committee appointed by the House of Representatives was a Standing Orders Committee (SOC) tasked to "prepare such Standing Orders as they may from time to time deem advisable to be adopted by the House" (NZPD A, 1854, p.6). The first Standing Orders were adopted and came into force on 16 June 1854 (McGee, 1985). They mirrored the Standing Orders of the House of Commons to a large degree.

Today, the House of Representatives' procedure is, in some respects, barely recognisable as originating in Westminster. In a proportionally elected legislature many practices are based in a multi-party, proportionally allocated environment. Members' votes are usually exercised by their parties, on their behalf. Select committees consider almost all legislation and have a wide remit to scrutinise the executive, consider petitions and, crucially, to initiate inquiries on their own motion. Most debates are strictly time-limited, enabling the government to make best use of limited sitting hours, and the business of the House is arranged by near-unanimity off the floor of the House. While the vast majority of legislation originates with the government, individual members' bills receive attention and can bring about significant change. Unusually among parliaments, the New Zealand House has a well-established and regular cycle of reviewing its own procedure which results in incremental reform that has broad cross-party support.

This thesis studies how parliamentary procedure in New Zealand has changed and what has caused those changes in the period 1935 to 2015. The start date was chosen as the point that marked the beginning of the two-party dominance of parliament, with the election of a Labour government and the subsequent formation of the National Party. The time period

proceeds through the change to the MMP electoral system in 1996 and the ensuing decades of multi-party parliaments. It ends in 2015 for practical and ethical reasons. I was appointed as Clerk of the House of Representatives in 2015 and it is difficult to study one's own actions in a dispassionate way. Parliaments are not static institutions. Since I started work on this study (in 2019), New Zealand's Standing Orders have been reviewed and changed twice. Some of the content of this study has been updated as a result. The changes all fall outside the period of focus for this study (1935 to 2015) but the updated procedures are referred to where relevant. Similarly, I note where changes proposed in the period up to 2015 were subsequently adopted

The New Zealand House of Representatives makes an interesting case study of how and why legislatures change because of the variety of endogenous and exogenous factors that have shaped it and because its members and officers have generally been explicit in their reasons for proposing change. Changes to procedure have been recorded in reports and debated in the House. These records enable anyone interested in studying the institution to trace changes and to categorise them for analysis, as this thesis does.

The basis of parliamentary procedure

This study focuses on changes to the rules and practices of the New Zealand House of Representatives. Before considering those changes, it is necessary to understand something of their character. All deliberative bodies operate under some form of agreed process for transacting their business. This is certainly true of legislatures, which operate under rules of procedure that have been developed over many years, or even many centuries, of practice. In addition to codified rules, legislatures operate under precedents, conventions and traditions that may have distant origins but which are adapted to suit local needs. The Standing Orders are adopted by the House and the procedures they contain are not subject to external review, including by the courts. They stay in force until they are amended, revoked or suspended by the House. The exclusive right to regulate its own proceedings, along with the right to free speech, underpin parliamentary autonomy (Wilson, 2023). The Standing Orders form part of New Zealand's constitutional framework but are not provided for in any of the formal, written, parts of its constitution, including in legislation.

The rules and practices by which a legislature operates are important. They place responsibilities upon members and other participants and grant rights. They constrain the government so that it must explain its proposals and answer for its actions (Norton, 2001; Barker & Levine, 2000). Like other institutional rules, they "give order to social relations, reduce variability in behaviour and restrict one-sided pursuit of self-interest" (March & Olsen, 2006, p.7). Crucially, in a parliamentary context, the Standing Orders enable the minority to express its dissenting views, uphold the principle of decision by majority, mandate the advance notice of business, and require actors to disclose their interests.

New Zealand's Standing Orders are much greater in number and detail than their UK House of Commons counterpart (Rodriguez Ferrere, 2014; May, 1972) and matters that are specified in writing in New Zealand's Standing Orders may be a convention in the Commons. Despite numbering over 400, there is not a standing order to govern every situation. Where questions arise as to the interpretation of Standing Orders, or where cases not provided for in Standing Orders occur, the Speaker rules. There is no appeal from a ruling by the Speaker, except to the House itself. Rulings by Speakers and other presiding officers, as well as guidance in reports from the SOC, can be looked to as precedents for the application of Standing Orders or the practices of the House. Valuable rulings and extracts from SOC reports are selected and published by the Clerk of the House as *Speakers' Rulings* and a revised volume is published each parliament. Previous rulings provide guidance to Speakers. Though there is no strict doctrine of binding precedents, Speakers tend to follow previous rulings unless they were plainly wrong or have been superseded by changes to Standing Orders (Harris & Wilson, 2017, p.17).

In addition to its own formal rules and precedents, Parliament operates under a number of important conventions. Some have arisen from the growth of practices that acquire persuasive form and, perhaps, become obligatory because they promote ideals that accord with public expectations or standards that political actors find satisfactory (Robinson, 1978). Others might arise because political actors agree to abide by customs governing their relationships. An example is the single entrenchment of the Electoral Act 1956, where parties agreed to abide by the need for a super-majority to amend certain entrenched elements of electoral law and not to overturn the provision requiring a super-majority that

was not, itself, entrenched. That convention continues to be observed in respect of the Electoral Act 1993 (McLeay, 2018).

In some instances, norms of behaviour may take on a greater level of formality and become enshrined as written rules. Conventions and rules are different things (Dinton, 2004). Both can be practices of a parliament, but conventions may evolve whereas rules are fixed, unless formally amended. Conventions must be mutually accepted as being obligatory and cannot be imposed (Marshall, 1984). They represent norms of behaviour, which implies that exceptions or exemptions might exist in certain circumstances (Palmer, 2006; Bowden & MacDonald, 2012). In the case of parliamentary rules and conventions, neither can be reviewed by the Courts because of the operation of Article 9 of the Bill of Rights 1688. However, breaches of conventions cannot result in sanctions even from within parliament (House of Lords & House of Commons, 2006), though they may attract opprobrium from parliamentarians, the news media, and the public (Harland, 2011; Dinton, 2004). Breaches of parliamentary rules may be dealt with by the Speaker or the Privileges Committee, according to their nature and severity.

Some conventions may be unwritten, while others are recorded in writing. A surprising number of important elements of the New Zealand constitution are not codified. The expectation that the sovereign must assent to any bill properly passed by the House, the responsibility of ministers to answer to the House, the caretaker role of a defeated government, and Parliament's role in funding officers of Parliament are important conventions (McGee, 2009; Robinson, 1978). Some are codified in the *Cabinet Manual*, though that document is a written record of certain conventions as they currently exist, not a book of rules (Palmer, 2006).

'Codification' is a broad term, which may include the recording of conventions in the body of a committee report, endorsing a code through resolutions of the House, inclusion in Standing Orders or enshrinement in law (House of Lords & House of Commons, 2006, p.372). For example, expectations of the conduct of select committee proceedings have been set out in several SOC reports, but no sanctions can flow from failing to meet these expectations. The usual consequence of breaching conventions in a select committee is that

offenders find it much more difficult to secure the ongoing trust or cooperation of other members.

Conventions may also be changed, because they are flexible and represent what ought to be done, not what must be done. They cannot be changed unilaterally because conventions require the consent of the parties they affect. They are more likely to change incrementally and in ways that are difficult to notice, usually as a result of endogenous forces (Barry et al., 2018). This 'softening' of conventions is more likely in established democracies with resilient institutions, than is the occurrence of a crisis leading to radical change. An example is the softening of the convention that members' first duty is to attend the House. During the COVID-19 pandemic, remote participation in select committees was permitted for the first time. This was codified in the Standing Orders in 2020.

In this study, the word 'rules' is used interchangeably with 'standing orders' and 'sessional orders', while 'practice' is a coverall term referring to conventions that are accepted by the House and precedents set by decisions of the House or rulings of the Speaker. The terms 'rules and practices of the House' is commonly used in legislation to refer to the way that the parliament does things.[1]

The rules and practices of the New Zealand House of Representatives have their origins in those that developed over many centuries in the United Kingdom. The next section describes how they were originally applied to New Zealand.

The development of New Zealand parliamentary rules and practice

The United Kingdom only reluctantly established New Zealand as a colony. Under pressure from early settlers, the New Zealand Company and French territorial ambitions in the Pacific, it extended the Colony of New South Wales to include New Zealand and, shortly afterwards, signed the Treaty of Waitangi (Joseph, 2014). Initially, the colony was administered by a governor, advised by an executive council and a legislative council. In practice, the power rested with the governor. But colonists had firm views about the sort of

[1] For examples see s.7B of the New Zealand Bill of Rights Act 1990; s.204(2) of the Intelligence and Security Act 2017; s.92WB of the Human Rights Act 1993; s.5 of the Legislation Act 2019.

governance they wanted. The Durham Report of 1839 had recommended self-government for Canada and there was talk of political reform in Britain, including universal male suffrage, equal-sized electorates, and payment for members of parliament. These ideas came to New Zealand with its early immigrants, who agitated over their lack of control over local affairs (Martin, 2004).

The Governor, George Grey conveyed these concerns to the Colonial Office and in 1852 Sir John Pakington, the Secretary of State for War and the Colonies sought leave to introduce a bill "to grant a Representative Constitution to the Colony of New Zealand".[2] The proposal had already been well canvassed in the Queen's Speech at the opening of the session, which said that:

> no obstacle any longer exists to the enjoyment of Representative Institutions by New Zealand. The form of these Institutions will, however, require your consideration; and the additional information which has been obtained since the passing of the Acts in question, will, I trust, enable you to arrive at a decision beneficial to that important Colony (House of Lords Debate 3/2/1852, Volume 119, cc 1-5).

The main area of contention was the constitution of the upper house, which was proposed to be appointed by the Governor. Former Prime Minister Lord John Russell agreed that "Legislative Councils nominated by the Crown… had not that amount of authority which they ought to have" but, at the same time:

> the Constitution of New Zealand should be an image of the British Constitution, and that such should be generally established in the Colonies. They had not, of course, an hereditary peerage, and the deficiency was therefore supplied by nominees of the Crown... The chief thing was, no doubt, to establish Representative Institutions, and if it were found that there were parts of such institutions which worked with dissatisfaction in the Colonies, there could be no interest either in the Minister of the Crown or in Parliament to oppose the just wishes of the Colonies in that respect. (House of Commons Debate 3/5/1852 Volume 121, cc 103-138).

[2] 'Leave' in the UK and New Zealand is the unanimous agreement of the House.

The debate concluded with the Secretary of State for War and the Colonies acknowledging "the favourable and indulgent spirit with which the House had received his proposal".

The resulting New Zealand Constitution Act 1852 established representative government with six provincial councils as well as a General Assembly. The Assembly comprised the Governor (representing the monarch), an appointed Legislative Council and an elected House of Representatives. The provincial councils had no jurisdiction exclusive from the General Assembly, played no part in amending constitutional arrangements and were not represented in the upper house. The Act required the Legislative Council and House of Representatives, at their first sittings to "prepare and adopt such standing rules and orders as shall appear… best adapted for the orderly conduct of the business". The resulting rules and orders were subject to approval by the Governor and confirmation or disallowance by the Queen. Section 56 of the Act empowered the Governor to assent to bills, refuse assent, amend bills and return them to the legislature or to reserve bills for the Queen's assent (Joseph, 2014; Harrison, 1964). Such an arrangement would enable the administration of the colony without encroaching on the Crown's prerogative or the Parliament's power (Madden, 1980).

The Westminster system of government had not been developed for export to other nations. It grew and adapted to local conditions in Britain over many centuries. A constitution, particularly an unwritten one, is an evolving 'organism' and, even if it were intended to export a perfect copy of a system of government it would be distorted by time, distance and circumstance (Madden, 1980). While colonial administrations initially operated under the system implanted from the United Kingdom, that was "something analogous" to Westminster, later administrations selectively adopted components of Westminster that suited them and added other elements as they saw fit. All political systems in the colonies (later dominions), were hybrids that continued to evolve (Rhodes et al., 2009). Very early on, New Zealand began to modify aspects of its colonial inheritance by creating triennial elections and Māori seats (McLeay, 2006). Nevertheless, New Zealand's parliament has undeniable Westminster roots. The early colonists adhered to the familiar, aiming to imitate the institutions of the United Kingdom, while recognising that they would not be identical. Rather, the colonists aimed to put in place bodies that would fulfil the same functions, seeing the British constitution as a model for colonial emulation (Madden, 1980).

It is not surprising then, that the early parliaments adopted British parliamentary procedure and applied it to local institutions. A similar approach was taken by colonists in Australia and British Canada. The transplantation of the Westminster tradition represented a starting point in each colony. Over time, the ways these institutions operated were changed by their members, just as British parliamentary procedure was altered. Now Britain and three of its former colonies (New Zealand, Australia and Canada) have parliaments with distinct and diverse procedures, practices and conventions.

At a macro level, New Zealand retains most of the generally agreed features of the Westminster tradition. It has a legislature from which the executive is drawn, ministers are accountable to the House, there is a recognised opposition, parliament is sovereign and constitutional arrangements are flexible. But beneath the surface, there is a legislature that has developed a way of operating that differs in many significant respects from the British, Australian and Canadian legislatures. The operations of New Zealand committees and the management of the House differ from these comparators, so do the processes of debating, voting, questioning and reviewing parliamentary rules. Itis my contention that New Zealand's parliament has been developed differently to these other parliaments so that it is now something of an outlier, despite having once been "a virtually perfect example of the Westminster model of democracy" (Lijphart, 1984, p.16). To assert that the New Zealand parliament has departed markedly from its Westminster origins invites comparison with other legislatures. This thesis does not offer a comprehensive comparative study of how New Zealand's parliament differs from other Westminster-derived parliaments, but for purposes of contextualisation briefly contrasts between the New Zealand experience and the experience of other countries with shared colonial and parliamentary histories.

Comparison with other parliaments

The United Kingdom and three of its former Dominions – Canada, Australia and New Zealand – are the most readily comparable and provide examples of how parliamentary practice diverged from a common origin. There remains, among the four countries, a strong sense of parliamentary community. Although *Erskine May*[3] is no longer the primary

[3] Erskine May: Parliamentary Practice, first published in 1844 and now in its 25th edition, is the authoritative text on the rules and practices of the UK parliament.

reference on parliamentary procedure in Australia, Canada or New Zealand, having been replaced by home-grown works, there is sufficient commonality to provide for ready comparisons (Natzler, et al., 2017). This shared constitutional history makes comparisons between Canada, Australia, the United Kingdom and New Zealand relevant.

While the parliaments of the United Kingdom, New Zealand, Canada and Australia operate differently, both in their official procedures and in their norms and cultures there is much they still share. The four parliaments have a shared sense of community and look to each other's experiences to reform themselves (Larkin, 2008). For example, clerks from Australia and New Zealand operate a joint professional organisation that studies parliamentary procedure, shares ideas, and provides development programmes for staff.[4] It interacts regularly with visitors from the UK legislatures and the Canadian legislatures. Some reforms of Australian committees were shaped by a study of their overseas counterparts (Larkin, 2008).

There are important differences between the four national parliaments as well. These, too, shape the form and function of the respective legislatures and should be considered when comparing them. Canada and Australia are federations of states, where state legislatures hold significant power. New Zealand is a unitary state, while the United Kingdom has somewhat dispersed decision-making to devolved legislatures in Wales and Scotland. New Zealand is an outlier in terms of being unicameral[5] since 1950 and in having adopted a European-style proportional representation electoral system in 1996 (Kaiser, 2008). It is also significantly more isolated geographically and has a much smaller population than the three other Westminster parliaments.

The term 'dominion' was first used to refer to Canada but, since the 1907 Imperial Conference, was used to refer to British-settled, self-governing colonies that were ruled by predominantly British settlers and recognised the sovereignty of the British monarch despite being autonomous (Rhodes, et al., 2009, p.14). The First World War resolved questions about the extent to which the Dominions could exercise separate authority over their foreign affairs. Canada, Australia, New Zealand and South Africa were separate signatories

[4] ANZACATT (Australian and New Zealand Association of the Clerks at the Table) is an incorporated society founded by clerks from New Zealand and Australia. It was based on a similar Canadian organisation.
[5] 'Unicameral' refers to a legislature with a single chamber.

to the Treaty of Versailles and, therefore, members of the League of Nations created by the treaty. From that point, the status of the Dominions evolved rapidly, as evidenced by Lord Balfour's eponymous declaration that Great Britain and the Dominions were:

> … autonomous communities within the British Empire, equal in status, in no way subordinate to one another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown.

By 1931 the legal steps to ultimately separate the Dominions from Great Britain were in place. The Statute of Westminster was the result. New Zealand was uncomfortable with the pace of change and would not adopt those arrangements for another 16 years. Australia had adopted the Statute of Westminster in 1942 and it had applied in Canada since it received Royal assent in 1931. In 1947, when New Zealand had emerged from the Second World War with a greater sense of national identity it was willing to embrace an autonomous role on the world stage (Quentin-Baxter & McLean, 2017, pp.22-27).

The greater sense of autonomy was expressed, to a degree, in the parliament. The National Party followed through on its election promise to abolish the Legislative Council, the Upper House of the parliament. The Council had long been an ineffectual and unpopular repository of patronage and National leader Sidney Holland had introduced a bill to abolish it when in opposition, hoping to embarrass and possibly divide the Labour government (Jackson, 1991). After winning the 1949 election, National found itself in the position of having to deliver on its campaign promise. An abolition bill was passed in 1950, though National was open to arranging an alternative upper house in the future if it was needed. Despite being a significant alteration to the structure of the legislature, the shift to unicameralism resulted in surprisingly little procedural change, probably because of the uncertainty over the future with a single chamber (Jackson, 1991). The House of Representatives continued to operate much as it had in a bicameral parliament, albeit without an upper house to review and revise its legislative output (Martin, 2004). The House of Representatives, even as a unicameral legislature, still closely resembled the House of Commons on which it had been modelled. A former Clerk of the House observed, in 1969, that "the Parliament of New Zealand has adhered more closely than most of the former colonies to the patterns of the House of Commons" (Littlejohn, 1969). The same could not be said of the current House and

this chapter examines some of the key points of difference between the lower houses of the national parliaments of New Zealand, the United Kingdom, Australia and Canada.

The subject areas of this study are reviewing parliamentary rules (Chapter 3), management of House business (Chapter 4), debate and voting (Chapter 5), parliamentary questions (Chapter 6) and select committees (Chapter 7). They do not encompass all parliamentary activity but they are fundamental to a legislature maintaining confidence in a government, legislating and scrutinising the executive. Representing the public is also a key duty of a parliamentarian. Some of that work is done through debate and questioning but much of it is done outside of parliamentary proceedings and hence not subject to the rules and practices that are at the heart of this study.

Reviewing parliamentary rules

Like other Westminster-derived parliaments, New Zealand's House of Representatives determines its own rules and procedures, without interference by any outside body. The House's freedom to control its proceedings, the right of "exclusive cognisance", is a fundamental element of parliamentary privilege. New Zealand is unusual for the way in which it reviews and amends its own procedures. Since 1984, there has been a regular, triennial review of the rules and practices of the House which inevitably resulted in amendments or adjustment of those procedures. This work is done by the SOC, on behalf of the House. It is chaired by the Speaker and members includes the Leader of the House, Shadow Leader of the House, whips and senior members of parties.

The SOC considers changes to Standing Orders through a process of consultation with political parties, interest groups and the public. It holds public hearings of submissions. The SOC reviews the Standing Orders and reports to the House with recommendations towards the end of a parliament. The changes are adopted, by resolution, before the parliament is dissolved for a general election but take effect only in the new parliament. The House makes changes to its procedures without members knowing whether they will be in in government or opposition when those new rules start to apply. The SOC has a convention of operating on the basis of consensus or near-consensus. Amendments to the Standing Orders are made by way of a motion on notice, which will normally only be debated if it is lodged and moved by a minister. Moreover, because Standing Orders are part of New Zealand's

constitutional arrangements, the House is only likely to adopt those measures that have overwhelming support. Such measures are likely to endure changes of government and are unlikely to be oppressive of minority groups in the House (Boston, et al., 2019, p.67; Bagnall, 2016). Instead, they balance the interests of all parties to ensure the interests of Parliament are protected. This is an essential component of effective parliamentary reform (Norton, 2001).

In the United Kingdom House of Commons the Procedure Committee performs a similar role to the New Zealand SOC.[6] Since 1997 the Procedure Committee has been a permanent committee, replacing the temporary predecessor that had existed since 1992. (Natzler & Hutton, 2019). As in New Zealand, select committee reports are not usually debated by the House and non-ministers have no ability to schedule House time (Russell & Paun, 2007). It has been observed that the House lacks an effective mechanism of its own to implement procedural reforms, since the executive, rather than the legislature, controls the business of the House (Norton, 2000; Armitage, 2010). Votes on changes to procedure in the House of Commons are usually free votes. That certainly does not guarantee them success. For example, in 2002 the wide-ranging reforms that would have led to greater independence from parties for select committees were defeated. In voting, members were torn between their role as parliamentarians and their role as party members, with the power of parliamentary parties winning through (Kelso, 2011). While New Zealand members also balance their party and parliamentary roles, it is inconceivable that parliamentary reforms that have already built cross-party support in the SOC would fail to be passed in the House.

New Zealand's Standing Orders are much greater in number and detail than their UK House of Commons counterpart (Rodriguez Ferrere, 2014) and matters that are specified in writing in New Zealand's Standing Orders may be a matter of convention in the Commons. That is hardly surprising, because the House of Commons has many centuries of accepted parliamentary practice to draw upon. Indeed, many of the essential procedures employed there have their origins in the first few centuries of its existence (Norton, 2001). New Zealand had no such history when its Standing Orders were first agreed. Now, any

[6] The House of Commons Standing Orders Committee examines bills found not to comply with SO and determines whether the SO ought to be dispensed with to allow the bill to proceed.

conversion of written rules to unwritten practices would appear to be a diminution of their authority or importance.

In Australia, the Standing Orders are amended by a normal motion on notice, usually following a report of the Standing Committee on Procedure. The committee is established by a standing order of the House of Representatives to inquire into and report on the practices and procedures of the House. The House does not always adopt the recommendations of the committee. Its proposal to simplify the rules governing oral questions was rejected by the House in 1992, for example (Surtees, 2019). Amendments to Standing Orders may be made by agreements outside of parliamentary proceedings. In 2010, after the election and prior to the commencement of the parliament, an 'Agreement for a Better Parliament' was developed by a group of members and agreed to by parties. It set out rules about the selection of the Speaker, question time, time limits for debates, pairing, committees, creation of a Parliamentary Budget Office and a review of resourcing (Surtees, 2019). Some of those changes were discontinued at the start of the following parliament (Standing Committee on Procedure, 2016), on the motion of the Leader of the House, despite the dissent of the opposition (House of Representatives Debate, 13/11/2013, p.92).

The Canadian House of Commons also makes changes to its Standing Orders by resolution of the House. The Standing Committee on Procedure and House Affairs has a continuing mandate to recommend amendments and may also be instructed to do so by a specific order of reference from the House. The reports of the committee may be debated and adopted. On other occasions, a government motion reflecting the unanimous view of members has been used to amend the Standing Orders. Some controversial amendments have been made by government majority, such as the decision to adopt closures in 1931.[7] Unusually, the Standing Orders have been altered on the motion of a private member, to require private members' public bills to be reported to the House within six months of reference to a committee (*Journals*, 9/4/1997, p.1368.) Provisional or sessional Standing

[7] A closure motion is moved by any member during a debate and, if agreed, results in the debate ending and a vote being held immediately.

Orders are occasionally adopted on an experimental basis (Bosc & Gagnon, 2017, pp.213-218).

Management of business

One of the most important changes made to New Zealand's parliamentary procedure was the creation of a Business Committee, in anticipation of future multi-party MMP parliaments. Prior to 1996, the whips of the Labour and National parties liaised with each other to arrange parliamentary business. The likely prospect of parliaments composed of many smaller parties made essential the establishment of a Business Committee, along the lines of those in the Netherlands, Denmark, Norway and Germany (AJHR, I.18A, 1995). The committee is chaired by the Speaker and all parties in the House are members. The Clerk of the House attends all meetings to advise the committee. In practice, larger parties often send several senior members to meetings of the committee. However, the committee works on the basis of unanimity or, where that is not possible, near-unanimity so the precise numbers of members attending is not important, unlike in committees that operate on a majority basis.[8] The Business Committee has a wide remit to arrange House business and the committee is unusual in that the House has delegated to it decision-making power, not just recommendatory powers, so its determinations may take effect without reference to the House. The role of the Business Committee has grown since its inception. While the Business Committee has developed an important function, there should be no doubt that government business remains firmly under the control of the Leader of the House. The government arranges its business on the order paper, within a few limits prescribed by Standing Orders. The order paper reflects the government's decisions as well as the determinations of the Business Committee. Private, local and members' business is arranged on the order paper by the Clerk, in accordance with the Standing Orders.

In the Canadian Australian procedure relating to the business of the House is similar to that in Canada. The Leader of the House determines the order of business, and the Clerk publishes it on the notice paper. A Selection Committee determines the order of private

[8] The Business Committee is required by Standing Order 78 to make unanimous, or near-unanimous, decisions. The only other committees that operate similarly (the Officers of Parliament Committee and SOC) do so by convention.

[9] 'Supply' refers to the process of a government seeking parliamentary approval for its spending plans.

members' business, the time allocated to it and whether it will be dealt with in the House or the Federation Chamber.[10] It meets each week, and its determinations are deemed to take effect once they are reported to the House. Changes in the order of any business are effected by a motion to suspend Standing Orders (Elder, 2018).

The United Kingdom has had a Backbench Business Committee since 2010. While committee membership is proportional to seats in the House, the committee is too small to include minor parties (Kennon, 2011). The committee arranges backbench business and was intended to be an intermediate step towards establishing a House business committee to deal with both government and backbench business by 2013 (*Commons Debates*, 15/6/2010: Column 778). However, no further progress has been made and there is insufficient agreement between parties on how a House business committee might operate. As a result, most House of Commons business is still arranged through the euphemistically-named 'usual channels' – the informal discussions that take place between the Leader of the House, Shadow Leader of the House, and party whips. Matters that, in New Zealand are resolved in the Business Committee, such as the amount of time to spend are dealt with through 'the usual channels' in the House of Commons either at weekly meetings or informal discussions conducted behind the Speaker's chair (Rogers & Walters, 2017; Russell & Paun, 2006).

Debating motions

The rules of debate vary relatively little between New Zealand, Australia, Canada and the United Kingdom. Generally, a motion is proposed to the House, it is debated and then voted upon. When speaking in the House, members address the Speaker rather than other members. In principle, they may not read speeches but may refer to notes. Speeches must be relevant to the motion before the house, may not refer to confidential committee proceedings or matters awaiting judicial decision. Discreditable references to the Sovereign may not be made and language, in general, is required to be respectful and moderate, though this latter requirement is frequently tested. These rules of debate were adapted from Westminster by the legislatures of Australia, Canada and New Zealand. They have

[10] The Federation Chamber is a parallel debating chamber that deals with business referred to it, including consideration in detail of bills.

changed very little over time. However, some important elements of debates have been modified, including their length, subject matter, manner of allocating calls and way of ending them.

In New Zealand, almost all debates have a time limit. The only debates without a time limit are those in the committee of the whole House stage of bills, where members may speak multiple times. Such debates are also subject a closure motion in which a member moves that the question being debated is voted on right away, with no further debate (Wilson, 2023). In practice the calls in almost every debate are allocated on a proportional basis, according to arrangements made by the Business Committee.

Debates are far less subject to time constraints in the UK House of Commons, though it is more difficult to gain a chance to speak because of the large membership. Members may write to the Speaker to indicate their interest in speaking in a debate, which increases the chance of being called. When there is a great deal of interest in speaking in a particular debate, the Speaker may impose a time limit on speeches. The usual time limit is between 4 and 12 minutes. On occasion, an informal time limit may be proposed by the Speaker. No list of members who will speak in a debate is prepared ahead of time, unlike in many other parliaments including New Zealand. Instead, members must 'catch the Speaker's eye' when they wish to speak. The House of Commons has maintained a strong tradition of 'giving way' during a speech to allow another member to make a short intervention and ask a question or make a point. This makes debates quite lively, and members are given extra time to respond to such interventions (Rogers & Walters, 2015). Such interventions are possible in New Zealand but are exceedingly rare.

Speeches in the Australian House of Representatives are generally time limited. The Speaker allocates the call, usually based on an agreed speaking list. Where two members seek the call at the same time, the Speaker allocates it to the one who rose first. The House may overrule the Speaker's judgement though by agreeing to a motion that the member who was not called 'be heard now'. The Speaker usually alternates allocation of the call between the government and opposition sides of the House. Speeches on bills generally last 15 minutes, though the mover of the motion and the first member speaking in opposition have 30 minutes each. Unlike in New Zealand or the UK, most motions, except those moved by ministers, require a seconder. A motion that is not seconded is not debated or recorded. A

'guillotine' motion may be passed by the House, usually at the initiative of the government, to limit the total time available for a debate (Department of the House of Representatives, 2017; Elder, 2018).

Motions in the Canadian House of Commons, like Australia, require seconding before they can be debated. Debates last until no further members are seeking to speak. At that time the Speaker asks the House if it is ready for the question. Debates on government bills and general motions have no time limit, though each member is able to speak for 10 or 20 minutes. Debates on the Budgets, Estimates and private members' bills are time limited. Parties may agree time allocations for business but, where no agreement can be reached, the government may move a motion, on notice, to allocate time. However, a government motion of this sort must specify no less than one sitting day for the debate – a substantial portion of time. Sitting days in Canada, except Fridays, conclude with a 30-minute adjournment debate on up to six topics selected by the Speaker. It is a way of putting further questions to ministers (Bosc & Gagnon, 2017).

Voting on motions

One feature of New Zealand's parliamentary system that differs notably from other Westminster-derived parliaments is the way that members vote in the House. All votes are initially cast by members voicing their support or opposition to a motion. If a member calls for a more formal vote, that is almost always done by party vote. The party voting system essentially allows a single member, usually a whip, to cast all of a party's votes collectively by declaring them when called on by the Clerk. Party voting is the norm, accounting for 98 per cent of votes conducted since its adoption (Wilson, 2023). The entire process takes under two minutes (Wilson, 2018).

In the United Kingdom, the Speaker takes the sense of the House by calling for members to declare in favour or against a question. The Speaker then declares a result, based on the loudness of the voice vote for and against and the probabilities of each side winning. If the House acquiesces to the Speaker's decision, then the question is either agreed to or 'negatived'. If those who are declared to be in the minority dispute the Speaker's opinion on the outcome of the vote, the Speaker will call for a division to be held (House of Commons, 2018). When a division is called, the bells are rung to call members to vote and they record

their votes with a teller for the Ayes or Noes in the appropriate lobby. At the conclusion of voting, the tellers inform the Clerk of the result, and it is recorded on a division paper. The Clerk then hands the division paper to the Speaker who declares the result (Natzler and Hutton, 2019).

In Canada at the conclusion of a debate, the Speaker puts the question. Members may opt to record a question as being carried or lost 'on division' by saying so. The result is recorded as such, with no vote being held. However, if the House is clearly divided on a question, the Speaker will take a voice vote; listening to the voices stating "yea" and "nay" and stating an opinion on the result. At that point, if five or more members rise to seek a recorded vote, a division is held. When the party whips indicate to the Speaker that their members are ready to vote, the question is put to the House. Members then stand in their place and have their names called and recorded by the clerks-at-the-Table, with the members voting in favour of a motion being recorded first, followed by all those against it. Members may abstain by not standing at all (Bosc & Gagnon, 2017, pp.481-491).

Australian procedure for voting on questions has some similarities with Canada. When a debate on a motion has concluded, the Speaker puts the question and then states an opinion about whether the majority of voices for "ayes" or "noes" have it. A single member may record their dissent with the Speaker's opinion. If more than one member challenges the Speaker's opinion, a division is held. Bells are rung to call members to the chamber, then the doors are locked. Members in favour of the question are asked to move to the right of the Chair and those who oppose to are asked to move to the left. Tellers are appointed for the Ayes and Noes and they record the names of members based on where they are sitting in the Chamber. Members are not permitted to move seats until the results are declared. Once voting is complete, the Clerk checks the count on the division lists and hands them to the Speaker (Elder, 2018; Department of the House of Representatives, 2017). A comparison of voting methods in the four parliaments is set out in Table 1.1. below.

Table 1.1: comparison of voting methods

	Initial voting method	Method of Speaker deciding winner	Method of disputing outcome	Formal voting method
New Zealand	Voice vote	Probability of side winning vote judged by Speaker	Any member present may call for party vote	Party vote exercised by whip and recorded by Clerk
United Kingdom	Voice vote	Volume of voices judged by Speaker	Those declared in the minority may call for division	Division where all members vote in person in Ayes and Noes lobbies with result recorded by tellers
Canada	May be recorded 'on division' with no vote. Voice vote used where House is clearly divided	Speaker states opinion on which side has won	Five or more members call for a division	Members stand in their place and have their vote recorded by Clerk
Australia	Voice vote	Speaker states opinion on which side has won	A single member may record dissent. If multiple members dissent a division is held	Members vote by sitting on one side of the House or the other while tellers record their names

Parliamentary questions

The public questioning of the executive is one of the core features of Westminster-derived parliaments and sits at the heart of the concept of responsible government. Question time is the most direct way in which the executive is held to account for its performance and policies. It is probably the best-known and most-watched element of the parliamentary day. The four legislatures each have a dedicated period for oral questions to ministers and the ability to ask written questions. The rules governing the relevance of questions are broadly similar; they must relate to public affairs, administration or proceedings of the House for which a minister is responsible or officially connected. Questions must not intrude into court proceedings and many not contain opinion or argument. Supplementary questions, which flow from the answer, are permitted. Government ministers may usually answer questions for each other, in keeping with the doctrine of cabinet collectivism. These principles have deviated very little from their origins at Westminster. The greater change has been in the mechanics of questions; how they can be asked, about what, when and for how long.

In Australia, questions are asked without notice, creating a significant challenge for the presiding officer in ruling on relevance on the spot. Each question may be no longer than 30 seconds and answers are limited to three minutes. Throughout its history, the House has permitted a limited number of supplementary questions at times. However, provision for them was removed in 2013, on a government motion (Surtees, 2019). The duration of question time is in the hands of the government. It ends at the instruction of the government, with further questions being placed on the notice paper. The control of the government over question time arises from the fact there is no obligation for a minister to answer questions at all. In calling for an end to question time, the government is indicating that it would not answer any more questions, even if they were asked. Answers must be directly relevant to the question, though ministers have long been criticised for being evasive in their answers to opposition questions (Rasiah, 2006 & 2010). Question time generally lasts around 70 minutes. Questions may also be submitted in writing and there is no limit on the number that may be submitted. As with oral questions, there is no obligation on a minister to provide an answer. However, if one is not received within 60 days, a member may ask the Speaker to write to the minister and seek an explanation for the delay (Elder, 2018).

Canadian parliamentary practice allows for spontaneous oral questions to the government. No formal notice of questions is given. The Speaker calls on each opposition party, in order of size, to ask questions. Members of the governing parties may also ask questions but they are generally called on less often than opposition members and, by convention, ministers do not ask questions. Unlike in New Zealand, questions may not be hypothetical or seek an opinion. Supplementary questions are permitted by the Speaker. Ministers may answer a question, defer their answer, explain why they cannot answer or not answer a question at all. Like in Australia, there is no obligation to answer. Canadian members may lodge up to four written questions each, with the Clerk, and may request that they receive an oral reply to the question. Written questions are usually longer than oral questions but operate under similar guidelines in terms of scope and content. When lodging a question, a member may request that it be answered within 45 days. If a question is not answered in that timeframe, it is automatically referred to a standing committee to investigate the failure to reply. Nevertheless, the government is still not compelled to reply to a question and the Speaker

has no power to compel an answer, in keeping with the rules for oral questions (Bosc & Gagnon, 2017).

In the United Kingdom, most questions are asked on notice by lodging them with the Clerk. Uniquely, among the four parliaments under consideration, ministers are available to answer questions on a schedule determined by the government. There is a strong expectation that ministers will answer questions, refusing to do so only when it would not be 'in the public interest', but there is no absolute requirement to do so. Question time lasts for approximately one hour and most of the time is spent on substantive questions of which three days' notice has been given. The remaining time is spent on topical questions for which no notice is given. There are more questions lodged each day than can be answered in the time available, so they are selected by ballot. Questions that are not selected by the ballot are 'lost' and are not answered. The House of Commons has a Prime Minister's question time every week, where 15 questions on notice are answered. At each question time, supplementary questions are allowed, at the Speaker's discretion. Written questions are also a feature of the UK House of Commons, with approximately ten times as many written as oral questions being answered. Members may ask any number of ordinary written questions, which are answered within two weeks, and up to five 'named-day' questions, for answer on a specified sitting day (Rogers & Walters, 2015; Natzler, 2018).

In New Zealand, 12 oral questions may be lodged with the Clerk on a sitting day, for answer later that day. Questions are allocated to parties in proportion to seats in the House, excluding seats held by members of the executive. The Speaker allocates a set number of supplementary questions to each party, also in proportion to the seats they hold in the House. Questions are expected to be brief, containing no more words than are required, though there is no time limit for questions or answers. Ministers' answers to questions are, usually, longer than the questions but the Speaker will call a minister to order if they speak irrelevantly or for too long. Question time generally lasts one hour. There is no limit on the number of written questions that may be lodged and they follow the same general rules as oral questions. However, unlike oral questions, the same question may not be asked more than once in a calendar year. Ministers have six working days to provide an answer, though they may provide a 'holding' answer if it requires significant research or compilation. The Speaker will intervene if answers are regularly late (Wilson, 2023). A comparison of key

features of voting in each of the four parliaments is contained in Table 1.2.

Table 1.2: comparison of parliamentary questions

	Method of lodging	Allocation method	Time limit	Supplementary questions	Written questions
New Zealand	12 questions, on notice lodged with Clerk 3.5 hours in advance	Proportional to non-executive seats held in House	Questions and answers must be brief. Ends after final question	Allocated proportionally, at Speaker's discretion	Unlimited number. No duplicates in the same year. Answered within 6 working days
United Kingdom	Unlimited questions. Lodged with Clerk 3 days in advance (substantive), or no notice (topical)	Selected by ballot each day	Speaker's discretion	Speaker's discretion	Unlimited number. Answered with within 2 weeks. Up to 5 'named day' questions
Canada	No notice required but often given directly to ministers	Parties by called in order of size, with preference given to opposition parties	45 minutes	Speaker's discretion	Up to 4 questions, Answered within 45 days
Australia	No notice	Allocated between government and opposition by the Speaker	Questions 30 seconds. Answers 3 minutes. Ends at government discretion	None	Unlimited number. Answered within 60 days

Role of parliamentary committees

An important factor when considering the role of committees in parliaments is the part played by upper house committees. One study of committees in the Australian parliament, (Halligan et al., 2007), found that Senate committees performed "fairly strongly" in carrying out review, legislation, investigation and scrutiny work whereas House and joint committees tended to focus on review and scrutiny inquiries respectively. Similarly, the committees of the Canadian Senate have been regarded as most effectively carrying out long-term studies, though the ability to do so is often constrained by the legislative workload (O'Neal, 1994). The way the House of Lords deals with legislation has been shaped by its composition, as an appointed House that sees itself as complementary to the House of Commons, rather than in competition with it (Norton, 2016, p.117). Its work in scrutinising legislation is widely

regarded as constructive and useful and the Lords is seen to be most effective when it influences change rather than coerces it (Crewe, 2005, p.195). New Zealand is notable, among this company, for being unicameral since 1950.

Larkin (2008) in his comparative study of committee systems suggests that, although the relative size of the parliament might be expected to be the determining factor in the power of committees because large backbenches tend to have more autonomy from the executive, it does not appear to be the case. The committees of the smallest parliaments in his study, Scotland and New Zealand, have the greatest formal powers. While that is true, it overlooks one other crucial difference between these smaller parliaments and those of Australia, Canada and the United Kingdom – they are unicameral. In New Zealand and Scotland, the committees carry a far larger burden of responsibility for scrutiny, since there is no other body to do it.

New Zealand select committees have a breadth of responsibility unparalleled in many other jurisdictions. They scrutinise almost all legislation. Only a narrow range of financial bills and legislation passed under urgency are not referred to select committees. The scrutiny of legislation invariably involves public submissions, to the extent that making submission is often viewed as a right, rather than a discretionary part of a committee's consideration.

While select committees spend a significant amount of their time on legislation their role is much broader than law-making. Committee subject areas cover every area of government activity (Ganley, 2001). The Standing Orders require that 12 subject committees are established in every parliament, for the life of the parliament. These committees may initiate inquiries on their own motion, rather than requiring a reference from the House. In effect, they have a permanent delegation from the House to inquire into any matter they see fit. At times they have shown considerable independence from the executive in the subject-matter, findings and recommendations of their inquiries. Select committees routinely use their inquiry power to seek briefings on matters of public policy, international relations or other topics of interest to better inform members without necessarily conducting deeper investigations.

British House of Commons' select committees are established by the House, as required, and empowered to conduct inquiries on its behalf. The House of Commons has 19

departmental select committees, which oversee the work of all government departments. Their role is to scrutinise the expenditure, administration and policy of relevant departments and associated public bodies. Departmental committees may inquire into matters within their subject area on their own motion and report to the House. They continue to exist for the life of a parliament. Recent evaluations of the committees have been largely favourable. The work of the departmental committees is generally assessed to be positive (Russell & Benton, 2011) and, in fact, may be more effective in their oversight role than the more common model of committees that combine legislative scrutiny with oversight of the executive (Benton & Russell, 2012).

The investigatory powers of the Australian House of Representatives are claimed to be exceptionally wide, by virtue of section 49 of the Constitution:

> The powers, privileges, and immunities of the Senate and of the House of Representatives, and of the members and the committees of each House, shall be such as are declared by the Parliament, and until declared shall be those of the Commons House of Parliament of the United Kingdom, and of its members and committees, at the establishment of the Commonwealth.

By the time of the establishment of the Commonwealth of Australia in 1901, the role of the House of Commons as the 'Grand Inquest of the Nation'[11] was well established (Lindell, 1995). The power of the House and its committees to conduct inquiries have been said, by the High Court, to be without restriction. A contrary view has been expressed, based on a judgment by the Judicial Committee of the Privy Council, that the House may only exercise or delegate powers for which it may legislate. The matter may be moot, in any case, because it is only likely to be tested if a committee tried to compel the production of documents or witnesses, was challenged in court and found that there were matters about which an inquiry was to be held that were not relevant to the power of the Commonwealth parliament to legislate (Lindell, 1995; Laurie, 2001).

Australian committees established by resolution of the House gain their powers to inquire and to gather evidence from the House. However, some committees are created by statue rather than by resolution of the House. For example, the Public Accounts and Audit

[11] The phrase was used in Australia by Forster J in Attorney-General (Cth) v MacFarlane (1971) 18 FLR 150, 156.

Committee Act 1951 establishes a joint House and Senate Public Accounts and Audit Committee and sets out its functions and powers. In almost all cases inquiries are referred to committees by the House or a minister. The Procedure Committee, like New Zealand committees, has the power to determine its own inquiries within its subject area. Referral of an inquiry to a committee sets the terms of reference, the powers of the committee and any directions in relation to procedure (Rodrigues, 2008; Elder, 2018). The Senate created its standing committees in 1970 and the House did so in 1987, a similar timescale to the UK House of Commons (Monk, 2008).

Canadian standing committees have permanent powers to examine and inquire into matters referred by the House of Commons and to delegate their powers to subcommittees. Like New Zealand, standing committees are provided for in Standing Orders and have mandates over matters such as Canadian heritage, finance, justice and human rights and public accounts. Separate legislative committees are created when the House desires to refer a bill for committee scrutiny. Similarly, special committees may be appointed by the House, on motion, to carry out specific inquiries. Interestingly, some Canadian committees may appoint *ex officio* members, who are not members of the House but may participate in proceedings and ask questions, though they may not vote.

Petitions are one of the most ancient parliamentary instruments, which began as a way of requesting that the monarch make laws or address grievances. In general, petitions have similar content requirements in each of the four jurisdictions. They must be respectful and moderate in tone and written in an official language. A petition must request that the House undertake some action and, correspondingly, the action must be one that is within the power of the House. Petitions relating to foreign affairs, matters before the courts or the prerogatives of the Crown are generally not in order. In Australia and Canada, petitions must originate with residents of those countries. In the United Kingdom, petitions from Commonwealth citizens are acceptable and, in New Zealand, there is no residency requirement for petitioning the House. Petitions are always presented to the House by members. Although they are not compelled to present any given petition, members generally regard it as their duty to do so. Presenting a petition does not imply that a member endorses it and they are not required to advocate for the petitioner. The Speaker

does not usually present petitions since that would require them to participate in the proceedings of the House, at odds with the essential neutrality of their role.

The popularity of petitions, as a means of citizens raising grievances directly with the legislature, has waxed and waned throughout New Zealand's parliamentary history. From a peak in 1906 petition numbers declined and then experienced a resurgence in the mid-1980s, when numerous petitions were lodged with only a few signatures each, rather than the more familiar pattern of a smaller number of petitions with many signatures. Petitions again declined in popularity in the early 21st century, and the 50th parliament (2011-2014) saw only 127 being presented (Wilson, 2023). There was a sudden upswing again in the 52nd parliament (2017-2020), following the introduction of electronic petitioning, with 755 petitions presented to the House in 2019.

From 1985 to 2020 in New Zealand, all subject select committees received petitions for consideration, allocated by the Clerk of the House. Previously, petitions were considered by two specialist committees. Since 2020 petitions have again been dealt with by a specialist Petitions Committee (see Chapter 7). Committees are expected to receive evidence from petitioners and are able to call for evidence from any person or organisation. They are also expected, though not required, to deal with petitions promptly and to report them to the House (AJHR 2014, I.18A). Petitions are not routinely debated, though a committee may make a case to the Business Committee for a debate to be held in respect of a particular petition.

Petitions in the UK House of Commons receive markedly different treatment from their New Zealand counterparts. They may be presented by a member on the floor of the House or informally, by placing them in a petitions bag without being announced. Petitions are referred by the Clerk to a minister for response. The Petitions Committee oversees the petitions system and scrutinises government responses to petitions. It can seek evidence on a petition, refer a petition to a select committee, seek further information on a petition from the government or set down a petition for debate in Westminster Hall (Natzler & Hutton, 2019).

In Australia, petitions may be received by the House on matters of public policy or in relation to individual grievances. A petition may seek the introduction amendment or repeal

of legislation as well as action on behalf of an individual or on a public issue. Petitions may be submitted in hard copy or electronically and must be in English. Unlike in New Zealand, a member of the House may not be a petitioner. An uncommon feature of the Australian system is that, since 2008, petitions are submitted to a standing Petitions Committee, which checks them for compliance with Standing Orders and approves presentation to the House. In New Zealand, this role is performed by the Clerk of the House. Petitions that are in order are usually presented to the House by the chairperson of the Petitions Committee, though any member may do so. Following presentation, the Petitions Committee may refer a petition to a minister for response to the committee. It may also select petitions for public hearings. It is possible for the House to refer a petition to another standing committee, which has similar subject areas to their New Zealand counterparts, but this has not occurred to date. A proposal to automatically refer petitions to the relevant standing committee was made by the Procedure Committee in 1999 but not adopted (Hough, 2012; Elder, 2018).

Similar to New Zealand and the United Kingdom, petitioning enjoyed a resurgence in Canada in the 1980s. In each country, the increase in petitions was, at least in part, a result of many petitions with small numbers of signatures being presented rather than a small number of very large petitions. In Canada, petitions are checked for compliance with form and content requirements by the Clerk of Petitions prior to presentation. Petitions must be presented in hard copy in French or English. Members present petitions orally by summarising each petition at a dedicated time. Alternatively, a member may present a petition at any time by handing it to the Clerk. Once a petition is presented, no further parliamentary action is taken but the government is required to respond to it within 45 days. The government response is tabled in the House (Bosc & Gagnon, 2017; Hough 2012). A comparison of the core features of petitioning systems in each of the four parliaments is contained in Table 1.3.

Table 1.3: comparison of petition systems

	How received	Where referred	How considered	Result of consideration
New Zealand	Presented to House by member delivering to Clerk	Referred to Petitions Committee, which can transfer them to minister or another committee	Evidence received from petitioner and others. Possible public hearings	Report to House (not debated) and government must respond to recommendations
United Kingdom	Presented in House by member or 'informally'	Referred by Clerk to minister	Internal government process. Petitions Committee considers response	Petitions Committee may hold hearings, refer to a select committee or set down petition for debate
Canada	Presented in House with a short speech or by delivery to Clerk at Table	To government	Internal government process	Government response tabled
Australia	Presented to Petitions Committee for approval	To government but may retain for hearings	Internal government process or committee hearing	Possible committee report to House

New Zealand's parliament has developed from one closely modelled on the Westminster to an institution that differs notably from the UK House of Commons and Westminster-derived legislatures in Canada and Australia. As I have shown above, the New Zealand Parliament developed significantly differently from the other three institutions, including in the areas that are the subject of this study: the process of rule change; the management of House difference, questions, debating, voting and the use of committees.

Literature on procedural change in the New Zealand parliament

New Zealand politics, particularly the actions of the executive, has received considerable scholarly attention. There has been little written about procedural change in the New Zealand parliament, however, though there is a sizeable body of more general work on the parliament. *Parliamentary Practice in New Zealand*, by the Clerk of the House, details contemporary practice in its five editions (McGee, 1985, 1994 & 2005; Harris & Wilson, 2017; Wilson, 2023). It provides a snapshot of contemporary parliamentary procedure but, by design, does not recite its history. John Martin's *The House* is a comprehensive history of parliament. It discusses some procedural changes but cannot cover them in detail given the breadth of the subject matter. Usefully, it places these changes in their historical context and addresses the motivations of the promoters of change. Its extensive references are valuable

to any researcher. Martin (2012) has also written a paper which sets out procedural changes in the twentieth century and assesses the shifting balance between the executive and legislature.

The notable author on parliamentary reform is Geoffrey Palmer (1992, 2013), the architect of the sweeping reforms introduced by the fourth Labour government. His writing is especially valuable because it discusses the reasons for change provided by an important change agent. An assessment of reviews of Standing Orders immediately prior to these reforms criticised the "modesty of their proposals, complacency and reluctance of MPs to lift their eyes beyond the existing Standing Orders" (Wood, 1983, p.340). Another writer agreed, finding that that the parliament had not "entertained significant departures from the parliamentary framework" (Halligan, 1980). One of the few articles examining ongoing reform concludes that "tradition, content, practice and circumstances all help explain how New Zealand's system of parliamentary committees has developed" (McLeay, 2001, p.137). McLeay (2001) discusses factors that may have led to change in the New Zealand parliament:

- the institution's small size and unicameralism;
- the short parliamentary term encouraging urgency in reform;
- the professionalisation of MPs , creating an incentive to change the rules so that more parliamentarians can be influential;
- the influence of 'constitutional entrepreneurs';
- cohorts of new members who frequently challenge the existing of order of things;
- transfer of ideas about how other parliaments operate; and
- changes in an institution's external environment.

There has been analysis of the nature and extent of reforms undertaken by the fourth Labour government (Skene, 1987; Palmer, 2013). There was a considerable amount written about New Zealand's change, in 1996, to the MMP electoral system. Boston et al (1996) described the changes to Standing Orders and speculated about the likely impact of the changed electoral system. The paper also noted that some of the changes made were not strictly required for MMP but were the result of an opportunity for reform. Elizabeth McLeay (2005) described changes to committees under MMP and assessed what was required to develop an effective scrutiny system. Andrew Geddis (2016) discussed the impact of MMP

on the legislative process and executive dominance. Fiona Barker and Stephen Levine (2000) examined the role of individual members of parliament in institutional change. Although they discussed the Standing Orders, the focus was on the influence of MPs throughout the entire parliamentary institution. Expectations of elected representatives under MMP have been studied also (Lamare, 1998). Mulgan (1994) recorded the widespread hope that MMP would mean that committees would gain some autonomy from the executive, though he predicted that members would likely still defer to their caucuses.

Parliamentary officer David Bagnall (2016) and former Speaker Trevor Mallard (2019) have both written about the consensus-based, triennial review of Standing Orders in New Zealand, encouraging its adoption by other parliaments. Another former parliamentary officer examined the work of the Standing Orders Committee on Bill of Rights issues (Workman, 2016). There is an interesting article critiquing the Standing Orders as an unimpeachable repository of legislative procedure (Rodriguez Ferrere, 2014), though it does not consider the making of standing orders, beyond the fact that they are solely made and enforced by the House.

New Zealand's approach to constitutional change, including parliamentary reform, has been described as pragmatic and incremental (Mitchell, 1966; Palmer, 2007; Palmer and Dean, 2022). Former Prime Minister Jack Marshall (1978, p.7) described constitutional change as "a slow growth" and parliamentary reform as a result of "bi-partisan decisions reached after much discussion and often by way of compromise".

A survey by Stella Daniell (1983) of members' attitudes to parliamentary reform provides a fascinating insight into views on topics such as review of Standing Orders, opening select committees to the public, a regular sitting calendar, limiting debate time, strengthening committees and legislative review. An interesting paper by Geoffrey Palmer (1984) proposes a range of reforms to strengthen parliament, including the creation of a parliamentary timetable, better scrutiny of primary and secondary legislation and legal protection of human rights.

John Halligan's 1980 PhD thesis 'Continuity and change and the New Zealand Parliament' considered procedural and administrative changes across several subject areas, including legislating and committee work. He noted that change in parliament is often overlooked

because continuity is more evident. In tracing changes between 1950 and 1978, Halligan found that most were initiated by senior MPs and were the result of a consensual process.

Some authors have called for further reform (Marshall, 1978; Robinson 1978; Rodriguez Ferrere, 2014); most notably Geoffrey Palmer (1984, 1992, 2011, 2014, 2017, 2021).

Although Levine and Roberts (2004, p.49) say "not a lot has been written about New Zealand's parliamentary committees or its parliamentarians", those committees have received more attention than most other New Zealand parliamentary institutions. Halligan (1980) studied changes to committees but noted they were still considerably circumscribed in the late 1970s because they could only act on the instruction of the House. Skene (1990 & 1992) details the work of committees and some of the ways they had changed over the years. Harrison (1964) chronicled the development of a Public Expenditure Committee. Ganley (2001 & 2002) considered the effectiveness of New Zealand select committees and assesses some of the changes made to their procedures. Similarly, Hill (1974) wrote about the effect of the creation of an ombudsman on parliamentary petitions. The inquiry power of committees and limitations on its use was examined in a paper (Lambert, 2007). The abolition of the upper House and the limitations of select committees as a substitute was discussed by Jackson (1991) and so was the dominance of the governing party on committees (Jackson, 1993). The role of committees in scrutinising international treaties has been studied (Keith, 1964; Law Commission, 1997). Assessments of the effectiveness of committees are contained in papers by Elizabeth McLeay (2006 & 2006b). The speed and weight of legislative work has been said to adversely affect the quality of scrutiny that select committees can perform (Palmer, 2014).

The Business Committee is occasionally mentioned in works on parliament (Jackson & Tan, 2000; Palmer, 2011) but the details of its work and the changes in powers delegated to it have received scant attention. Indeed, the most thoroughgoing examination of its work comes from a UK paper proposing such a committee for the House of Commons (Russell & Paun, 2006). This may be because of the difficulty for people outside parliament to observe or understand its work, though the changes to its role are detailed in reports of the Standing Orders Committee.

Voting in the House is often mentioned but seldom given much attention. An article on voting patterns and party discipline (Kelson, 1955) is an exception, though it predates the major reform of the method of voting. Another article describes the combination of proxy voting and party voting as “offensive” because it does not require substantial numbers of members to be in the debating chamber during a vote (Waldron, 2008)

Debate has not often been examined, except to criticise its adversarial nature. But the growth in the use of te reo Māori in debate, largely as a result of the efforts of Māori members has been written about (Stephens, 2010; Flavell, 2010; Mahuta, 2010.) Question time has also received little attention, particularly in relation to changes made about the rules governing it. Lockwood Smith (2011), when he was Speaker, wrote an article about his own role in reinterpreting the rules to require answers to be given. The role of question time in influencing voters has been studied (Salmond, 2004) and a former Speaker wrote of some of the difficulties in presiding over oral questions (Wilson, 2007). Question time also has been examined in terms of the patterns of questioning (Ladley, 2006), which briefly surveyed some changes to the Standing Orders.

The process of change, the topic of this thesis, has scarcely been studied. The fact that the Standing Orders Committee meets and recommends changes is acknowledged (Palmer, 1992) but the process by which it works is seldom discussed. Results of changes, descriptions of existing situation and calls for reform are more common. Thomas McRae (1992) described and critiqued the changes to Standing Orders between 1951 and 1985, based on the reports of the Standing Orders Committee and debate in the House. He found that no wide policy community proffering ideas for reform existed.

Several Speakers have written about their role in presiding over the House, interpreting Standing Orders and promoting reform (Algie, 1962; Wilson, 2007; Smith, 2010). No similar work exists about the role of the Clerk in changing parliamentary institutions, though some outline the Clerk’s duties (Harrison, 1964; McRae, 1992; Palmer & Dean, 2022; Wilson, 2023). Reginald Harrison’s, (1964) thesis ‘Organisation and procedure in the New Zealand parliament’ described administration and procedure at the time and assessed the way it was used to discharge parliamentary functions of providing political leadership, deliberating, controlling finances and representation.

This thesis aims to address some gaps in the current literature by studying the process of changing the New Zealand parliament's rules and practices as well as the reasons for the changes. It focuses on matters that have received very little attention such as the work of the Standing Orders Committee and Business Committee and the role of office holders in promoting change.

Before considering specific cases of rule and practice changes in the New Zealand House of Representatives, it is important to consider the theories and approaches to understanding those changes. These are detailed in the following chapter and will be used to explain the changes studied and draw conclusions about them.

Chapter 2 - Understanding the drivers of change in a parliament

Legislatures are interesting institutions to study, particularly in relation to the ways and means through which they change. They are often regarded as being particularly difficult to change and are sometimes designed that way. However, legislatures are not all static institutions. Certainly, the New Zealand Parliament has changed substantially, though incrementally, over its history. This chapter sets out some of the major ways of understanding how political institutions change and describes the methodology used in this thesis for understanding institutional change.

Approaches to understanding change in legislatures

Much of the literature on the Westminster tradition, focuses on the role of executive government. That is not surprising, given its close connection to the legislature, its dominance of the policy agenda and its high media profile. There have been several dominant approaches to studying executives in the Westminster-derived political systems, which might be applied to studying Westminster-derived legislatures. Of course, the Westminster model is only one of many parliamentary systems around the world and it is subject to wide variance in practice.

The formal-legal approach was the foundation of political science, when the discipline was largely confined to study of Western nations. It focuses on the study of formal government institutions as embodied in public law. Constitutions, rules, parliamentary procedures and laws are studied by seeking to understand their formal organisation and function. It is less concerned with how people behave than the nature of the legal rules that govern their functioning (Eckstein, 1979). The formal-legal approach has been criticised for ignoring larger debates beyond legal form, being insensitive to non-political determinants of political behaviour (March & Olsen, 2006, p.5) and for a tendency to "revel in archaism" (Rhodes, et al., 2009, p.25). However, it can also be seen as the heart of institutionalism, since it focuses on the political institutions and takes an inductive approach to understanding and comparing them (Rhodes, 2006).

The comparative-empiricist approach contrasts institutions and behaviours across nations, focussing on what can be observed, not inferred from observation. While it allows for examination of similar and differing observed behaviours across nations, it runs the risk of

false equivalence between events or institutions that appear similar or have the same name but perform different functions (Rhodes, et al., 2009, p.25). Institutions are infused with local traditions, meanings and possibilities. For example, both the UK and New Zealand parliaments have a rule referred to as the 'same question rule'. In the UK, the rule means that a motion or an amendment which is the same, in substance, as a question which has been decided during a session may not be proposed again during that same session. In New Zealand, the rule only prohibits the proposing of bills or amendments to bills that are the same in substance during a calendar year. While the rules are superficially similar, and have a common origin, they now have different applications.

The functionalist approach, based on examination of core activities and roles, evolved in relation to the study of the British executive but it has been applied more broadly, since. Functionalism can suffer from a similar problem to the comparative-empiricist model of imprecise terminology obscuring or conflating functions. It can also overlook the multiplicity of functions that some components of an institution may perform, reducing them to a handful of core activities and overlooking the interplay between them (Groth, 1970; Rhodes et al., 2009). Functional treatments of institutions are useful in hypothesising about their origin and role but it is too simplistic to consider that the function of an institution explains its existence (Pierson, 2000). Functionalism might explain the origin of an institution since it may have been created by rational actors to achieve their goals. However, it offers an inadequate explanation for the development of an institution to its current state. Political actors generally operate with short time horizons. Political careers may be brief and their length of tenure is in the hands of the voter. Electoral cycles are also short, particularly New Zealand's three-year parliamentary term. It is difficult to reconcile a short-term environment with the achievement of long-term goals, in purely functional terms, since many political decisions only play out in the long run (Pierson, 2000). Political actors may make decisions with long-lasting consequences that may restrict their own future options, anticipating a time when their opponents will be in control (Pierson 2000a). Institutions do not always act towards functionalist ends and factors such as path dependence, short-term focus and protection of a future self may cause outcomes that do not appear rational or optimally functional. Rather than assuming that institutions change to meet functional

requirements, we should seek to understand the motivations and views of the people who shape them.

The principal-agent model, informed by rational choice institutionalism has been a popular way to assess political actions and to make predictions about political behaviour. This approach has been used particularly when analysing Prime Ministers and Cabinets, people at the top of a formal political hierarchy, who are assumed to be self-serving utility maximisers. Indeed, the rational choice approach is predicated on people always acting to maximise their own personal benefit. While it can be a useful predictive tool, rational choice theory is incapable of dealing with the inherent unpredictability of humans (Hay, 2004; Shepsle, 2006). For example, from outside the period of this study, in 2017 the government shared out the chairpersonship of select committees on a broadly proportional basis, breaking with the established pattern of behaviour (C. Hipkins interview, 3/8/2022). There was no apparent benefit to the government in doing so, since non-government chairpersons are more likely to scrutinise critically the activity of the Executive and less likely to co-operate with Ministers in the passage of legislation. Rational choice appears to be an inadequate assumption to make in analysing such a decision. However, some political scientists have commented on the more recent weakening of boundaries between approaches as practitioners of rational choice theory have become less doctrinaire and more open to adopting elements of other institutionalist views (Shepsle, 2006). March and Olsen (2006, p.4) state that views of legislatures as rational actors participating in an organised exchange between calculating, self-interested actors and as a cultural community organised by shared values in a common culture are not mutually exclusive.

One synthesised approach to analysing political institutions is that proposed by Rhodes et al. (2009), who argue for an interpretive approach based on revamped formal-legal, historical analysis of traditions and beliefs. Such an approach draws on the voices of political elites to understand their beliefs and preferences and actions as they are located in traditions, more so than on secondary analysis (Rhodes, 2006). An interpretive approach to understanding institutional change focuses on the meaning of the beliefs and practices of the political elite, derived from its history and traditions. Such an approach seems well-suited to help understand changes in parliamentary practice over many decades since members of

parliament are the political elite, parliament's actors make the rules of the institution and it is steeped in received tradition. This is not to say that other approaches are without value in understanding institutional change in a parliament. Indeed, a synthesis between approaches is likely to be very useful. Parliamentary practices and rules are part of New Zealand's constitutional arrangements. An interpretive approach aligns with the view that a constitution is determined, to a large extent, by the beliefs and behaviour of those who are involved in its operation in the past and the present (Palmer, 2007; Fitzgerald, 1966).

This study, primarily, takes an interpretive approach to understanding change in the New Zealand House of Representatives. This approach seeks to understand the history of events by understanding their meaning from the perspective of their participants (King et al., 1994). It moves beyond describing events or institutions in terms of their formal-legal function to attempt to understand them from the viewpoints of the actors. An interpretive approach requires a deep understanding of the culture of an institution, to "marinate herself in the minutiae of the institution" to understand its customs, and practices and to understand how it adapts (King, et al., 1994). One thing that assists my understanding of the institution is having spent the majority of my working life as an officer of the House of Representatives.[12]

Institutional change is generally related to the strategies and priorities of political actors so understanding the impact of their ideas and assumptions is key to explaining the changes they bring about (Béland, 2007). One way to understand the ideation of institutional actors is to examine their statements about what they think and what they want to achieve. But that is not always a reliable source of information, since people may be engaged in a strategic context, responding to political rivalries that incentivises them to misrepresent true preferences (Bennett & Checkel, 2015). Self-interest is a likely motivation in a political context but that self-interest is unlikely to be served by admitting it (Longley & Olsen, 1991; Elster, 1995).

We can infer an actor's preferences through their earlier speech and actions and use these to explain subsequent behaviour, while considering the possibility of preferences changing

[12] I have been an officer of the House of Representatives for 21 years and Clerk of the House of Representatives since 2015.

over time. Signalling in speech or actions that convey apparent preferences and which impose a high political cost if they are not followed through may be taken as a fairly reliable indicator of preferences (Bennett & Checkel, 2015). We can also observe the behaviour of decision-makers over substantial periods of time. Beliefs and cognitive commitments are slow to change so we should be able to observe stability in a political actor's ideas over time, even as conditions change (Jacobs, 2015). This study will examine the ideas of individual political actors and of decision-making bodies such as the Standing Orders Committee (SOC) over the time period 1935 to 2015 for enduring signals of intent and ideation that remained stable for extended periods in order to complement the statements of ideas and beliefs made at the time change was enacted.

The context in which practices occur is what gives them effect and that is key to the interpretive approach. Practices are ways of doing things that have meaning to the practitioners. In this study, parliamentary practices form a basic constitutive process of behaviour in parliamentary proceedings. Practices have causal power in the sense that they make things happen. For example, legislating causes debate, public consultation, voting, broadcasting, record-making, transcribing, amendment, discussion and news reporting. These processes have meaning within their parliamentary context, which may change or not exist at all in a different context. In parliament, sheets of paper with words imprinted on them count as the law once it has been agreed to by a majority and signed by certain people. What is said by those who participate in parliamentary practices are a useful source of information, particularly when it touches on the tacit knowledge specific to the context in which the practices occur (Pouliot, 2015). For that reason, formal records of parliamentary proceedings (Hansard, minutes and reports) as well as interviews with political actors form an important part of this study.

Legislatures are often studied as institutions, from a range of different perspectives. Studies may be comparative or, as in this case, focus on a single institution over a period of time. Institutional research has considered legislatures as shaped purely by functional requirements, as being products of rational choice or as being able to be understood by examining their structures. There is nothing inherently wrong in any of these approaches but at the heart of an institution, and particularly in the ways it changes, are its actors. A synthesis of approaches, focused on the actions of those who have the power to shape

institutions is likely to be most effective, particularly in understanding an institution that was transplanted into a country and then shaped by local conditions as was the case in New Zealand (Patapan, et al., 2005; Dollimore, 1973).

The Westminster tradition

If we say that the New Zealand parliament is a Westminster-derived body, then it is important that we understand what that means. The term 'Westminster' means different things. It can mean a set of criteria, derived from the parliament of the United Kingdom, that an institution can be checked off against. A two-party system, ministerial responsibility to the House, Cabinet dominance, winner-takes-all elections could be some of the taxonomic criteria involved in denoting an institution as belonging to the Westminster tradition. The term 'Westminster' can refer to an objective, normative concept against which actions or models can be considered. For example, the presidential political system or the parliamentary systems of Western Europe could be compared with a Westminster concept. Perhaps most importantly for this study, 'Westminster' can be viewed as a shared set of myths or traditions, through which political actors shape their world views (Patapan & Wanna, 2005). Such traditions may be invoked when debating matters of constitutional significance. In the final year of the period covered by this thesis (2015), members referred to Westminster traditions and norms in debate on topics as diverse as ministerial accountability (Vol.703, p.1479), form of legislation (Vol.703, p.2183), oral questions (Vol.704, p.2785), bi-partisanship (Vol.704, p.2864), the role of the Clerk (706, p.4971), New Zealand's flag (Vol.707, p.5349), ministers acting for each other in the House (Vol.708, p.6326), the role of the public service (Vol.708, p.6326), parliamentary privilege (708, p.6693), freedom of information (Vol.709, p.7250) and advice to ministers (Vol.709, p.7707). The concept of a shared tradition is a useful one when examining an institution such as the New Zealand House of Representatives, which lacks some of the normative features of a 'Westminster parliament' but which, despite this, considers itself to be in the Westminster tradition. Distinctly Westminster traditions such as responsible government still form part of New Zealand's parliamentary practice, even if it is not bicameral and MMP has removed other elements such as a two-party political system and winner-takes-all elections.

Political traditions are socialised through the personal relationships between political actors that are a vital part of the functioning of a parliament (Knauf, 2005). Traditions are a starting point of belief about a subject, not entrenched folklore that is fixed and immutable. Traditions are not necessarily present in everything that a person does and viewing them in that way ignores personal agency. Because traditions are reasoned and reflected upon, they may be modified or abandoned. When faced with a dilemma, where a new idea stands in opposition to existing beliefs or practices, traditions can guide one's reaction, but they do not determine it. Equally, the tradition can be re-thought and adjusted in response to a dilemma (Bevir, et al., 2003). The result is a complex and continuous process of interpretation, conflict and practice that produces ever-changing patterns of governance. It is usually evolutionary but sometimes it can be transformative, as in the case of the electoral reform in New Zealand (Rhodes, 2006; Rhodes, et al., 2009).

An example of a tradition being adapted to a dilemma is the lockdown during the COVID-19 outbreak in New Zealand in 2020. With physical sittings of the House of Representatives no longer advisable, in the face of a highly communicable disease, the House collectively adapted. Oral questions were, temporarily, supplanted by an ad hoc committee that conducted extensive online questioning of ministers and officials. Select committees met online, an idea that previously had limited support but became acceptable when it was the only viable alternative to not meeting at all. Notifications of the state of national emergency were presented to the House electronically, rather than in paper copy. During the epidemic, political actors had choices to make. Following a tradition of physical meetings as the only legitimate form of parliamentary proceedings, would have meant no meetings at all and would have conflicted with the tradition of the executive being answerable to the legislature for its actions and spending (Wilson, 2021). When people confront challenges, their actions are informed, but not constrained, by tradition. While traditions are not immutable, they shape institutions and understanding the traditions of an institution is an important part of learning how it operates and changes.

Institutions and institutionalisation

An institution is a relatively enduring set of rules and organised practices, embedded in structures of meaning and resources that change little in the face of turnover of individual

members and are resilient to the preferences of individuals and changing external conditions (March & Olsen, 1984). They have constitutive rules and practices that prescribe appropriate behaviour for participants in certain situations. Institutions also have 'structures of meaning' – common purposes and accounts that give direction and meaning to behaviour and explain and justify behavioural codes (March & Olsen, 2006). These structures of meaning are what Rhodes (2009) might define as traditions – sets of understandings passed between generations and linked conceptually.

Legislatures are often regarded as being institutionalised and resistant to change. Institutionalised parliaments occur in stable systems and may be a cause and a result of that stability. They are enduring and autonomous and operate with a high degree of formality, uniformity and complexity (Patterson & Copeland, 1997). Institutionalisation is "the process by which organizations and procedures acquire value and stability" (Huntingdon, 1965). It has both an internal element (established ways of doing things) and an external element (recognition by other actors) (Koskimaa & Raunio, 2020). Even long-standing legislatures that are described as being 'institutionalised' undergo change that may be multi-directional and temporary. However, such change is generally not arbitrary because the histories and traditions of institutionalised legislatures are encoded in their rules that are defended by insiders (March and Olsen, 2006, p.7).

The theory of institutionalisation has been critiqued for having little agreement on its defining characteristics and having no known, measurable end point (Judge, 2003). One study of organisational change in the New Zealand parliament argued that institutionalisation is a developmental concept most appropriately applied during the formative stages of a legislature's history (Halligan, 1980). However, further institutionalisation took place after Halligan's thesis and well beyond the parliament's 'formative' stage. The development of the select committee system and the growth of the importance of the Business Committee are obvious examples. Institutionalisation is best understood as a process by which organisations undergo development and external differentiation. Institutions may change because of the influence of political figures and other endogenous factors or because of exogenous factors such as war or an aggregation of

demands for change (March & Olsen, 1984).[13] Legislatures are persistent and durable and can endure pressure for change for some time. Deliberate changes can be hard to achieve and may have unintended consequences.

Frameworks for understanding stability and change in legislatures

Norton (2000) described three factors required to bring about change in a legislature. The first is a window of opportunity; a set of proposals for change and a time when reform is likely to be considered. The second is the political will to consider change to place those proposals before the House. Finally, the proposals must normally have the support of the Leader of the House (Norton, 2000). This final condition has two elements. The Leader of the House is a senior Minister who represents the interests of the government. They also manage the government agenda in the House so can grant time to debate reform proposals. Opportunity, political will and the support of political leaders are generally agreed as the requisite conditions for change in parliamentary rules or practices (Hill, 2010; Ryan, 2009; Rasiah, 2010). Widespread support from members of parliament is also a necessity, since changes to rules and practices require a positive resolution of the parliament and will only be sustained if members have the will to do so. Procedures that are seen as undesirable or as being solely the property of the government are not likely to endure (Norton, 2000).

Norton's triumvirate of conditions for change – opportunity, desire and political support – are difficult to argue against. They would all appear to be essential foundations for reform. However, it has been suggested that they are not, in themselves, enough to ensure change. In an examination of the defeat of a significant package of reforms of the UK House of Commons committee system in 2002, Kelso (2003) argues that contextual conditions are of equal importance. The adversarial nature of Westminster politics inhibits reform and demonstrates the significance of institutional rules and values in shaping change. A reassertion of parliament's power is dependent on fragmenting or reducing the power of the executive, but the executive's dominance of the House means that it must sanction any diffusion of its own power. Members of parliament have a dual role as parliamentarians and

[13] In this study exogenous factors are those which occur outside the parliamentary institution and endogenous factors are those that occur exclusively within the institution (Koning, 2016).

party members and can be conflicted over whether to support the parliament reaching independent decisions or their parties securing their own agendas.

In New Zealand, the need for executive approval for parliamentary reform is undoubted. Reforms proposed against the wishes of the executive could simply be denied an opportunity for debate. But for the past 40 years, that is not how the practices and rules of the House have been changed. The consensus basis on which the SOC works and the near-unanimous basis on which the Business Committee operates means that the agreement of all, or most, parties must agree to change. In practice, the approval of the parties in government is only as important as the approval of the parties in opposition. By convention, parties all follow a single process for parliamentary reform through a review of Standing Orders near the end of a parliament, when no-one knows who will form the next government, and by consent of all parties (Bagnall, 2016; Mallard, 2019). Of course, parties weigh the potential benefits of enhancing the effectiveness of parliament against their own political agendas, but they do it in a tradition where reform is normal, incremental and done only with broad support.

In a study of institutional change in three parliaments that became unicameral,[14]the authors place considerable emphasis on self-interest as a determining factor in institutional change (Longley & Olsen, 1991; Benoit, 2004). They note that motives of self-interest are seldom articulated in politics and that the justifications for change will usually differ markedly from the motives (Elster, 1995). Self-interest is complex, even for individuals, when decision-makers belong to several different groups that may be affected differently by institutional change. A change may be perceived to have positive outcomes for a political party but may well have different effects on the executive, the opposition or the legislature as a whole. Unintended consequences of institutional change are always a possibility (Pierson, 2000; Longley & Olson, 1991). For example, placing time limits on speeches may be introduced as a way to save time in a legislature. However, those time limits may become targets where each member speaks for the maximum possible time, having the opposite effect to that intended.

[14] New Zealand, Denmark and Sweden

Lone actors with considerable personal power or influence may also be important agents of change (March & Olsen, 2006, p.11). The abolition of the upper House in the New Zealand legislature was, to a large degree, the result of the persistence and drive of Sidney Holland, first as Leader of the Opposition and then as Prime Minister. What began as a move to pressure and embarrass a Labour government that, in principle, supported unicameralism became an election platform in 1949. Ultimately, Holland achieved his goal while leading a National Party that, in principle, supported bicameralism (Jackson, 1991).

The influx of unusually high numbers of new members of Parliament after an election may be an important factor in institutional change (Norton, 1998; McLeay, 2001). Such an influx may lead to the questioning of existing norms by a sizeable group of people who have not been inculcated in the traditions of the institution. They may overwhelm the usual processes of socialisation into parliamentary parties and be less deferential to the norms of behaviour (Halligan, 1980). An unusually high number of new members is a likely source of pressure for structural change, where the new members differ from senior members in a way that results in a conflict between existing structures and attainment of goals by the new members (Sinclair, 1988).

New members of the US Congress in 1974 and 1994 are often cited as agents of change (Longley & Hoffman, 2000). The reforms that led to the creation of departmental select committees in the UK House of Commons in 1979 are credited, in large part, to the support of the backbenches (Norton, 2019). Labour and Conservative MPs grew frustrated at the reluctance of their leaders and wanted greater involvement in scrutinising and influencing policy than was previously the case. When the opportunity arose, in the form of a report from the Procedure Committee recommending the creation of departmental select committees, backbench members supported it enthusiastically. Despite the opposition of the Leader of the House and some senior members on both sides of the House, the proposal was overwhelmingly supported (Norton, 2019).

Proportionally large intakes of new MPs are relatively common in New Zealand. Since 1999, the average rate of turnover of MPs per term of Parliament has been 25.9 percent, peaking at 31.1 percent for the 2008–2011 term (Boston et al., 2019). However, individual MPs have usually had little influence and, in New Zealand under MMP, parties play a paramount role

in all decision making (Barker & Levine, 2000). There are exceptions, of course. An individual, senior member can, with the support of their party, make an enormous impact. However, new MPs are not usually part of the formal discussions about change to parliamentary rules and procedures. These occur in two committees – Standing Orders and Business – that are dominated by presiding officers[15], House leaders and whips. It may be that large numbers of new members create conditions that support change, even if they do not initiate the change themselves.

Organisations play an important role in reform of institutions and are inherently interwoven with individual actions (Longley & Olsen, 1991). In New Zealand, reform of parliament was a platform for the Labour Party in the 1984 election, a reaction to the strong executive control of the National government under Robert Muldoon (McLeay, 2006a). The reforms made to parliamentary organisation and procedure by the fourth Labour government were sweeping and long-lasting. They are most strongly associated with Minister of Justice and Attorney-General Geoffrey Palmer, though they were party policy (T. Mallard, interview 21/9/2022; Skene, 1987). While parliamentary reform has not been a policy for a major party since that time, the process of pursuing and trading conflicting objectives in the regular reviews of Standing Orders are informed by party, as well as individual, views. Non-partisan organisations can also play a role in change in legislatures. The Clerk of the House and the Chief Parliamentary Counsel routinely submit proposals for reform, and so do academics, community groups and a few interested individuals. The process of negotiating and exchanging competing views to create outcomes that reflect political conflict and trading have been described as 'conflict design' (March & Olsen, 2006, p.11).

Events elsewhere may influence institutional change through policy transfer, a process by which knowledge about how politics, administration, institutions, and ideas operate in one setting are used in another (Stone, 2004, p.545). The influence may be direct, where actors in one institution adopt designs from other institutions to meet a particular need or indirect, a 'soft transfer' where lessons and ideas diffuse from one setting to another (Stone et al., 2020). Policy transfer is not a static or uniform process. The transfer may be imposed by one institution on another, or it may be adopted voluntarily. It may involve the outright copying

[15] Presiding officers are the Speaker, Deputy Speaker and Assistant Speakers.

of ideas, as well as emulation, adaptation or the drawing of inspiration (Dolowitz & March, 2000).

Countries may be primarily 'borrowers' or 'lenders' in policy transfer but they can be both (Dolowitz & March, 2000). For example, New Zealand's parliament was originally established in emulation of Westminster, and it frequently looked to the UK for knowledge, as well as to Australia. In the lead-up to the first MMP election, the House looked to European parliamentary democracies that used proportional representation for ideas instead (McLeay, 2001). New Zealand has also been a contributor of ideas, particularly to Australia and Pacific parliaments. Technological advances have made it easier and faster for policymakers to communicate with each other. Information is easy to access through the internet and international organisations play a significant role in gathering and sharing knowledge (Stone, et al., 2004; Serra-Silva, 2022). Generally, the occurrences of policy transfer have increased. We could expect this to be true for the New Zealand parliament and its international counterparts.

Changes in an institution's external environment may also be a driver of reform. An increasing interest in constitutional matters, growing concern about a lack of government accountability or a strong drive for electoral reform can pressure political actors to enact change (McLeay, 2001). Politicians may react to externally generated political turbulence by changing parliamentary rules to enhance their own profiles or prospects (Sinclair, 1988).

Political institutions are usually change resistant. They achieve stability and predictability through 'nested' rules that are costly to change. Generally, the rules at the apex of a hierarchy are the most difficult to change, often requiring super-majorities or consensus to alter. Members of institutions who wish to make change are confronted by earlier institutional choices that are 'sticky' and constrain future options through the cumulative weight of their history (Pierson, 2000). Political actors may make decisions with long-lasting consequences that may restrict their own future options. They must anticipate that, at some point in the future, their opponents will be in control and so they may act to protect their future selves. Another reason for political actors binding themselves may be to make 'credible commitments' for the future in exchange for shorter-term gain. Institutions can be designed to make it difficult to undo such commitments (Pierson, 2000a).

Path dependence is an explanation for institutions not turning back from changes that have had unintended and, possibly, disadvantageous consequences. Once an institution has started down a particular path, the costs of reversal may be high and the entrenchment of institutional arrangements may obstruct an easy reversal of earlier choices (Pierson, 2000a; Halligan, 1980). Equally, events may occur that reinforce the path taken (Thelen, 2000). Thus, preceding steps in a particular direction induce further steps in the same direction. Social adaptation within an institution to its norms increases the cost of changing them. For example, while there are strong arguments in favour of small parliamentary committees, members of committees may adapt to membership of larger bodies by taking on specialist subject-area functions. Subsequently reducing the size of committees would require members to abandon speciality areas in favour of becoming generalists. Understanding path dependence requires an understanding of the history of an institution and consideration of the timing and temporality of events (Pierson, 2000a; Thelen, 2000). Path dependence does not imply that a particular alternative is permanently locked into, or out of, a self-reinforcing path. Instead, understanding such paths helps gives us insights into why certain institutional practices are persistent and why some alternatives are difficult to pursue.

The nature of institutional change

Change can be gradual, subtle and incremental or it can involve radical reconfiguration of institutions. The causes of gradual change, brought about by endogenous factors are often more difficult to understand since institutions are generally thought of as being enduring and persistent (Mahoney & Thelen, 2010; Thelen, 2009). One way of understanding the nature of institutions and, therefore, how they permit change is to examine the dynamic tensions and pressures built into institutions. By considering the interplay between the characteristics of the institution, the characteristics of its political context and the nature of the change agents we can understand more about the nature and causes of change.

The rules of an institution are never ‘simply’ applied. They are interpreted, enforced and enacted by actors who have differing and, sometimes conflicting, interests. The context in which rules are applied is important because there are, almost inevitably, ‘gaps’ between what was intended when an institution’s rules were designed and how its users apply them (Thelen, 2009). Mahoney and Thelen (2010) propose a model that considers how the

characteristics of the political context and the institution together drive the type of institutional change by shaping the dominant type of change agent likely to flourish in any given institution and the strategies the change agent is likely to pursue to be successful. In this model, understanding the types of change most commonly seen in an institution and the roles change agents play helps explain how and why one change type is more prevalent. The authors describe four modes of incremental change and the conditions in which they are most likely to flourish.

Displacement, where existing rules are replaced by new ones. Displacement can be abrupt though it can, equally, be gradual. Displacement is most likely to occur when there is limited scope for discretion in the interpretation of rules and little possibility of veto by defenders of the status quo (Mahoney and Thelen, 2010). The 2022 decision by the House to enable members to participate in proceedings remotely is an example of displacement, though it falls outside the period of this study. As soon as the change was agreed, the requirement to be physically present in the debating chamber in order to participate in House proceedings was replaced with the ability to participate remotely.

Layering, when new rules are introduced beside or on top of existing ones. Existing rules are revised or added to rather than replaced (Mahoney and Thelen, 2010; Béland, 2007). Layering can bring about considerable change, particularly if it alters how existing rules operate. Layering is most common where there is limited scope for discretion in the interpretation of rules but the possibility of veto by defenders of the status quo is high. An example of layering is the 2023 change to Standing Orders to add requirements for select committees to develop scrutiny plans and to conduct in-depth hearings with ministers and departments as part of the scrutiny process. These requirements were added to existing rules for scrutiny procedures, without replacing any of them.

Drift in which rules remain formally the same but their effect is altered because the external environment shifts and the rules are not adjusted to reflect the change or are deliberately held in place (Shpaizman, 2017; Hacker et al., 2015). This form of change is more likely to be seen when the settings of an institution are neglected or not reviewed for long periods of time. In New Zealand, for example, Standing Orders were not reviewed between 1929 and 1951, a period of substantial international, social, political, constitutional and economic

change. Where there is low possibility of exercising discretion over the interpretation of rules and veto power is strong, rules are likely to drift without formal review or amendment.

Conversion where rules formally remain the same but are reinterpreted or redirected in new ways (Shpaizman, 2017; Béland, 2007). Ambiguities in the rules are 'exploited' by actors to use them differently (Hacker, et al., 2015). An unsuccessful attempt at conversion occurred in 2016 when members argued that there should be a debate on referring a bill back to a select committee on the basis that Standing Orders did not specifically say that there should be no debate, though there was a general rule to that effect. This would have reversed the long-established practice of the House and the Speaker ruled to uphold the existing practice (Vol.718, 2016, p.14981) Conversion is most probable when weak veto powers exist alongside high levels of discretion in the interpretation of rules.

In addition to analysing the nature and causes of gradual incremental change, Mahoney and Thelen (2010) describe the nature of the change agents that may operate in an institution, centred on their propensity to abide by institutional rules and their desire to preserve existing rules. The so-called 'insurrectionists' seek to eliminate existing institutions or rules and do not generally follow the rules. They are likely to prefer displacement of existing rules, rather than reform. Symbionts rely on existing rules and may either exploit them for their own gain (parasitic) or use them in novel ways to advance their interests (mutualistic). Parasitic symbionts are associated with drift, since they use the gaps in existing structures for their own ends. Mutualistic symbionts tend to support the institution and the rules on which it rests. Actors who work within the existing system to bring about change are called subversives and are associated with layering by promoting new rules on the edges of existing ones. Finally, opportunists neither support institutions nor seek to overthrow them. They exploit possibilities within the existing rules. Opportunists are a force for inertia and are, therefore, natural allies of defenders of the status quo.

My thesis examines the nature of changes made to parliamentary practice as well as the sequence in which they occurred and the reasons for them. By understanding whether institutional changes have been characterised by conversion, drift, displacement or layering, it is possible to understand something of the nature of the institution and its actors.

Grand theories of change

Change in New Zealand's parliament can also be viewed through the wider lens of a grand theory of movement towards a consensus-based democracy. Political scientists dispute the extent to which democracies worldwide are converging towards an ideal form that is consensual rather than majoritarian and is less dominated by the executive (Vatter, Flinders & Bernauer, 2014; Armingeon, 2004; Plümper & Schneider, 2009). Such movement is posited to be a result of globalisation of the economy and politics and the growth in the importance of supra-national organisations such as the European Union. Convergence may be conditional and limited to some countries, rather than universal, and New Zealand is frequently identified as an outlier among developed democracies for the extent to which it has moved away from majoritarianism; in its change to the MMP electoral system and the coalition-building that has resulted (Vatter et al., 2014; Plümper & Schneider, 2009; Gerring & Thacker, 2008). This movement is seen as a reaction to the executive-dominated politics of the 1970s and 1980s. It is possible that this reaction has infused parliamentary practice too and that changes to make the parliament more effective, in the view of political actors, are likely to enhance the role of the legislature with respect to the executive. The introduction of rules to encourage ministers to appear before select committees more often and to answer questions about their bills in detail in the House are examples, from outside the period of this study (AJHR 2020, I.18A).

Research methods

I aimed to answer the research question by analysing documentary evidence and through interviewing key parliamentary actors.

Because of my interpretive approach I selected a group of potential interviewees with personal experience of parliamentary rule changes. Their beliefs and experiences were important for looking behind the documentary sources and understanding the reasons for, and methods of, change. I selected potential interviewees for their closeness to the work of the Standing Orders Committee and the Business Committee. Former and current Speakers, Leaders of the House, whips, party leaders and former Clerks of the House were invited to be interviewed. I approached people from small and large political parties and political affiliation is shown in the list of interviewees in Appendix E. Potential interview subjects

were approached by email, setting out the topic of my thesis and providing the ethical information required to enable them to give informed consent to be interviewed.[16] Everyone whom I approached agreed to be interviewed.[17] Sadly, former Leader of the House Michael Cullen and former Speaker Robin Grey died during the period of my study before I was able to interview them. Every interviewee but one had participated in the Business Committee and Standing Orders Committee.[18]

I provided interviewees with a copy of my questions prior to the interviews. Because some of the events studied in this thesis occurred many decades ago, it was useful to give interviewees an opportunity to recall memories and make notes if they wished. I took a relational approach to interviews, which entailed recognising that interviewees were actors in their own right and partners in the interview, not passive study subjects (Fujii, 2017). Indeed, their role as parliamentary actors was the reason for interviewing them. While I had a list of questions to cover in each interview, I conducted the interviews in a semi-structured fashion, allowing interviewees to talk about topics in any order they wished and in the way they preferred. I listened actively so that I could adjust follow-up questions and identify areas where further information was needed (Beery, 2003). Given the senior public roles the interviewees had held, they were all experienced public speakers and interview subjects. It was not difficult to elicit their opinions and memories. In common with many elite interviews, the interviewees were comfortable explaining situations, challenges and opportunities as they saw them (Dexter, 1970). I aimed to give respondents room to talk and so did not try to control the interview strictly. This resulted in them raising points I had not considered and, sometimes giving unorthodox opinions (Leech, 2003).

In undertaking interviews, I was mindful of the relationship between me as Clerk of the House and the interviewees, who were mostly former or current members of parliament. On one hand, this was of considerable assistance in getting access to them and in convincing them to participate in the study. All members and former members had interacted with me or one of my predecessors and placed considerable trust in the role of Clerk. The two

[16] This approach to interviewing was approved by the Victoria University of Wellington Human Ethics Committee (reference number 0000028981).
[17] A full list of interviewees is set out in Appendix E.
[18] Sir Kenneth Keith was with Sir Geoffrey Palmer when I interviewed him. Sir Kenneth offered to talk with me about the role of parliament in reviewing international treaties (see Chapter 7), one of his areas of academic focus.

former Clerks I interviewed had been my employers and so we also had a trusted relationship. Our shared lexicon made understanding participants easier, and this was particularly important when trying to understand changes in parliamentary procedure from their perspective (Fujii, 2017). On the other hand, my professional role as a non-partisan adviser to all MPs requires that they maintain confidence in my discretion. This could have been undermined if the interview subjects thought I was using my professional interactions with them for the purposes of my study. For that reason, the period studied in this thesis ends at the time that I was appointed Clerk[19] and I made it clear to interviewees that I was talking to them as a PhD student.

Interviews were conducted online, on the telephone or in person at a place and time preferred by the interviewee. Most lasted for 60 to 90 minutes. Every interview was recorded and I used the Trint audio transcription software to transcribe the interviews. I searched the transcripts for key terms related to the areas of change that are the subject of the study. Interviewees were offered a copy of the transcript and two requested it. One interviewee asked to be informed of any direct quotations I used in my thesis and this was done.

In addition to interviewing parliamentary actors, I read and analysed a substantial body of documentary evidence. The written sources included the 20 reports of the Standing Orders Committee made between 1951 and 2014, which I used to identify the changes in the five areas I studied (review of practice and procedure, management of House business, questions, debate and voting, select committees).[20] The minutes and papers of the Business Committee between 1996 and 2015 were analysed for Chapter 4 on managing House business. All records of parliamentary committees are held initially by the Clerk of the House and then deposited in National Archives.[21] In addition I analysed the transcripts of debates on changes to Standing Orders produced by Hansard.[22]

The final source of information for the thesis were the rulings made by Speakers in the period 1935 to 2015. These have been collated and published by the Clerk in volumes of

[19] I received my warrant as Clerk of the House in July 2015.
[20] The reports are published as part of the Appendices to the Journals of the House of Representatives (AJHR).
[21] The Clerk is the custodian of all parliamentary records but stores them with National Archives, under a memorandum of understanding with the Chief Archivist.
[22] The transcripts are published as the New Zealand Parliamentary Debates (NZPD).

Speakers' Rulings and a full set of the volumes is held in the Clerk's office. I searched these to identify practices and conventions that were recorded but may have fallen into disuse. Examples include the asking and answering of questions, the allocation of supplementary questions, tolerance for the reading speeches and the use of te reo Māori in debate. Rulings are updated or removed from the book by the Clerk when they are supplanted by a more relevant ruling or no longer reflect House practice. For that reason, it was important to examine previous editions of the rulings, not just the most recent. The use of Speakers' Rulings was also important in gaining a more complete picture of change in the New Zealand parliament. Changes made to the rules can be recorded and observed as such. Changes made by way of interpretation or changed circumstances may be less visible. However, since they also impact upon the rules and practices of the House and its committees, they also need to be identified. In the terminology of Mahoney and Thelen (2010), I wanted to capture not only formal rules changes (layering and displacement) but also changed application of existing rules (drift and conversion).

Data came from examining every change in the five subject areas covered by this thesis. Once I identified a change through a SOC report, I then examined the minutes and papers related to the report, looking for the source of each change and the reasons given for it. These changes were arranged by subject area and in chronological order. The major analytical challenge was to develop a framework for coding the rule changes that employed the methodology of Mahoney and Thelen (2010). Thus, each change was coded by asking the following questions:

1. Was it a formal rule change?
2. If it was, did it replace an old rule (displacement) or sit alongside the existing rule (layering)?
3. If it was not a formal rule change, was it interpreted differently (conversion) or neglected and had its application changed by external events (drift)?

As Greener and Powell (2021, p.282) point out in their study of changes to the UK welfare state using Mahoney and Thelen's (2010) model, a degree of interpretation is involved in assessing the nature of change. Some examples of my decisions and the evidence used to support the categorisation of the changes are set out in Appendix D.

Having coded every rule change, I was then able to draw some conclusions about the nature of change in the New Zealand parliament. I did not label each change throughout the thesis using Mahoney and Thelen's (2010) nomenclature because it would be distracting and somewhat monotonous to read. Instead, I analysed the mass of data and discuss it in Chapter 8.

Chapter 3 – Review of practice and procedure

It is a matter of functional necessity that parliaments, like any deliberative body, have a set of rules of procedure. In New Zealand's case the Standing Orders of the House of Representatives (SO) are those rules, supported by conventions and accepted practices, precedents (selected ones being published by the Clerk as *Speakers' Rulings*) and some legislative requirements. To be effective, the Standing Orders need to reflect and support the actual practice and culture of the legislature. If they do not, opportunists will find ways to achieve their goals in spite of the rules. Parliamentary minorities, without the numbers to temporarily set aside the rules, are likely to be disadvantaged (Mahoney & Thelen, 2010; Shpaizman, 2017; Béland, 2007). To ensure the rules reflect practice and remain relevant, they should be reviewed regularly (Commonwealth Parliamentary Association [CPA], 2018). There are differing opinions about whether rule changes should be agreed by consensus. While it ensures widespread support for the rules and contributes to their long-term stability (Mallard, 2019; Bagnall, 2016; Russell & Paun, 2007), it can also act as a brake on radical change (Rodriguez Ferrere, 2014). More generally agreed is the importance of the legislature's rules being easily accessible to members and to the public (Norton, 2010; CPA, 2018) and that any member should be able to promote changes to them (Russell & Paun, 2007).

This chapter will examine the way that the rules and practices of the House are reviewed, the primary influences on reforms of the rules and the roles played by various actors in the process. It will consider the nature of changes to the process and compare its current state with the norms identified above.

Timing and frequency of Standing Orders reviews

Frequent, regular reviews of the practices and rules of the House of Representatives are a relatively recent development in the history of the Parliament. The review of 1929 was the first for 35 years. No reviews were held again until 1951 when the abolition of the Legislative Council necessitated at least some consequential amendments. Even the adoption of a major procedural change such as closure[23] in 1931 did not occasion a review

[23] A closure motion is when a member moves that the question being debated is voted on right away, with no further debate, 'closing' the debate.

by the Standing Orders Committee (SOC) (see Chapter 4). The ad hoc nature of such reviews was underscored by a comment in the 1962 report of the SOC that "the wording of Standing Order 259 which was introduced in 1929 is defective" (AJHR 1962, I.17, p.16). It took 33 years to notice and then remedy the defect.

The lack of formal revision of Standing Orders between 1929 and 1951 seems curious. Thomas Hall (1950, Chapter 17, pp.1-3) was Clerk of the House between 1930 and 1945 and attributed the lack of reviews to a variety of reasons, including:

> The sessions were usually short and the business of Parliament in the main confined to matters of local importance. The staff was small in consequence; many were employed only for the session e.g. the Clerks of Select Committees and Bill Clerks and the Clerk of the House and the one or two permanent officers were not required to be in attendance for any length of time during the long recesses. Later as business grew administrative duties were placed upon the Clerk foreign to his proper function and taking a disproportionate part of his time. There was thus no continuity of tradition and no body of trained men from whom the higher offices could be filled.

In addition to the short sessions and lack of professional, permanent parliamentary officials, Hall noted a shortage of members with procedural knowledge:

> Within the House itself there is evidence of considerable knowledge of constitutional theory and of Parliamentary practice amongst the earlier members, who were largely drawn from the same class as those who entered the House of Commons… In more recent times Members have reflected to a greater degree the character and local need of the constituencies they represented.

He also pointed to a strong institutionalisation of existing practices:

> There were several whose mastery of precedent and of the procedural forms of the House was outstanding. They came however to a practice already built up and stabilised and did not approach it with the same regard to principle and theory as in the more formative period.

Finally, he blamed a nostalgic attachment to rules copied from the House of Commons:

> In general, the loyalty and affection felt for the homeland of the parents or grandparents of most of the adult population made for a conservative attitude towards changes made in the interest of an independence which did not need to be asserted which might suggest a lessening of that feeling.

Political scientist Leslie Lipson, Hall's contemporary, shared his views and lamented that "the average calibre of legislative personnel is not good enough even though a few members on both sides are outstanding" (Lipson, 1948, p.335). In their analysis, traditions as well as structural influences acted as a check on innovation.

The Great Depression and Second World War are likely to have focussed the minds of members on important external issues rather than the systematic review of their own rules of operation. The House did not reduce its sitting hours during the Depression, possibly reflecting the fact that executive and legislative measures could be taken to address it. The House sat for significantly fewer hours during the Second World War than before or after it, reflecting the degree of cooperation between government and opposition particularly during the early years of the war (Martin, 2004, pp.212-214; Bassett, 1995, pp.252-256).[24]

Reviews became more frequent in the decades following and reports on them were presented in 1962, 1967 and 1968, 1972, 1974, 1979 and 1985. After that point a review of Standing Orders was held in each parliament except the 46th (1999-2002), where an early election did not leave sufficient time for the SOC to report (AJHR 2003, I.18B, p.5). Until 2003, a SOC was established on a motion moved by the Prime Minister or the Leader of the House, on an 'as-required' basis. The committee was not necessarily established in each parliamentary term. Requests by other members, to establish the committee were, on occasion, refused (NZPD 408, 1976, p.4787). In 1976 Prime Minister Muldoon declined a request for a review of the Standing Orders on the grounds that they had little effect on the conduct of members (NZPD 407, 1976, p.3851).

Appointing the SOC on a motion was consistent with the way that all committees were created until 1985, when select committees were automatically established under Standing Orders at the start of a parliament. By 2003, the SOC was the only specialist select

[24] The House sat for an average of 446 hours a year in the five before the Second World War. It sat for an average of 368 hours each year during the war and for an average of 797 hours a year in the five years following.

committee not established this way. One sign that the committee started to view itself as a continuous entity was its decision in 1997 to create a practice of electing the longest-serving member of the committee as the deputy chairperson (Minutes 26/11/1997). It rejected automatic establishment, though, reporting that "the present practice of appointing a committee as required should continue" (AJHR 1999, I.18B, pp.15-16). There was no recitation of the reasons for making the SOC a 'standing' committee in 2003, with functions specified in Standing Orders. The only submission that appears to have raised the matter was that of journalist and political science student Tom McRae (Submissions, 21/9/1994 and 2003) and the committee agreed in principle with his suggestion (Advice of the Clerk, 7/10/2003). The change signalled that review of parliamentary practice would be a regular feature of each future parliament (AJHR 2003, I.18B, pp.29-30). The panel of former Speakers who offered advice on reform of parliament commented that "the regular review of Standing Orders by the Standing Orders Committee is another strong point, not necessarily known about by the wider public." (Harrison, Gray and Tapsell, 1998, p.18)

The timing of Standing Orders reviews changed too. Up to and including 1985, they were generally commenced near the beginning a parliament. Parties had often campaigned on parliamentary or constitutional reform and the reviews were a way of delivering on campaign promises. There was an element of the 'spoils of war' about such reviews for the victorious party, though changes were usually made unanimously. After that time, when reviews became a regular part of the parliamentary calendar they tended to be held in the second half of a parliament, often reporting near the dissolution of the parliament for an election. This shift in timing is more important than it would first appear. At the point in the parliamentary cycle when the rules and practices of the House are changed, no-one knows who will form the next government. Changes made to the advantage of the incumbent government may be less welcome if it finds itself in opposition.

There was some variation in when the new rules would take effect after their adoption by the House. The provision for closure of debate in 1931 came into force immediately upon the motion being agreed to. The 1979 amendments came into force the next day, which was the final sitting of the House for six months (NZPD 428, 1979, p.4824). The sweeping reforms of 1985 came into force less than two weeks after they were agreed (NZPD 464, 1985, p.5969). The amendments made in 1992 came into force for the last sitting period of

the year, enabling the adjournment that preceded it to be used to print the new rules (NZPD 529, 1992, p.10970). The comprehensive reforms of 1995 took effect at the start of the final year of parliament under the First-Past-the-Post electoral system, to enable them to be monitored and amended before the general election (AJHR 1995, I.18A, p.11).

It is difficult to situate New Zealand's relatively frequent reviews in an international context because of the different ways some parliaments adopt or revise their rules. A 2010 study of 15 European parliaments found that an average of 49 reforms were made to their standing orders between 1945 and 2010 (Sieberer et al., 2016). By contrast, New Zealand made just 17 changes, well below the median point of 35 changes.[25] However, New Zealand has never followed the practice of adopting its Standing Orders afresh at the commencement of each new parliament, which is common in many other parliaments. If that practice had been followed, then New Zealand's total number of reforms would sit above the median at 40.[26] New Zealand does not count sessional orders[27] as changes to Standing Orders. If it did, then the total number of revisions would be in the hundreds.[28] A more useful comparison can be drawn with the UK's six reviews (J. Benger personal communication, 10/8/2022) and Australia's two reviews (C. Surtees personal communication, 8/8/2022) in the period of this study.

Major changes made outside formal reviews

Before regular reviews of procedure became a feature of the parliamentary calendar, it was relatively common for Standing Orders to be changed by motion in the House without notice. Closure had been introduced that way to break filibuster over depression austerity measures (NZPD 227, 1931, pp.433-720). This was a significant procedural change to make by majority, since its purpose is to curtail debate by non-government parties, who are the minority. In such an environment, it was not surprising that even when a select committee conducted a review of the Standing Orders that they would be amended during the debate on them. Following the 1929 review, Speaker Statham (I)[29], who had chaired the SOC,

[25] The European study counted only instances where change was made to the text of the standing orders of each country, not suspensions of rules or temporary changes.
[26] This figure is arrived at by adding the 17 substantive Standing Orders reforms to the 23 Parliaments held between 1945 and 2010.
[27] Sessional orders are temporary rules that expire at the end of a parliament.
[28] There were 15 sessional orders in force at 5 February 2022, for example.
[29] MPs' names are followed by an abbreviation of their party affiliation, which is detailed in the glossary.

nevertheless moved an amendment to require members to sign a certificate that a question was genuinely urgent. Members objected and Statham replied that he had "wished to take the opinion of the House on the matter" but that he was "prepared to leave the standing order un-amended if members would undertake not to take advantage of it" (NZPD 221, 1929, p.895).

In 1953, the Prime Minister Sidney Holland (N) moved a motion to amend Standing Orders to clarify the business that would interrupt urgency. While notice of the motion had been given, members did not appear to be aware that it would come up for debate when it did. Former Speaker Robert McKeen (L) opposed the amendments. Indeed, Holland did not anticipate that the amendments would be debated at all because his "clear understanding was that we had reached agreement on it. This [was] really a motion agreed on by both sides to clear up some little uncertainty" (NZPD 299, 1953, pp.226-227). It was only when Speaker Oram (N) explained that he had drafted the amendments and asked the Prime Minister to move it to create some procedural certainty that it was agreed by the House (NZPD 299, 1953, pp.229-230).

In February 1996 Don McKinnon (N), the Leader of the House, moved a series of sessional orders to amend specified standing orders. This was curious in the wake of a comprehensive review of the Standing Orders completed in 1995. The new Standing Orders had been adopted with effect from 1 January 1996 in order to give the House a chance to trial them before the first MMP parliament was elected.[30] The sessional orders extended the ringing of the bells to summon members to the debating chamber for a personal vote; empowered senior whips to cast party votes (in addition to leaders); reduced the quorum of select committees from four to three; removed the requirement for committees to elect a deputy chairperson and enabled the Business Committee to meet in evenings on days when the House had sat[31] (NZPD 553, 1996, p.10979) The changes were not debated and were adopted unanimously by the House, having been discussed at the Business Committee the day before (BC Minutes 20/2/1996). The changes to the time for ringing the bells and enabling party whips to cast proxy votes became permanent changes, following the 1996

[30] The general election was held on 12 October 1996.
[31] Normally committees may not meet after 6pm on a day on which the House sits.

review of Standing Orders. The other changes expired at the end of the parliament and were not revived.

It has become more common, in the MMP era, to make changes to Standing Orders following recommendations of select committees, rather than with an element of surprise or against the wishes of non-government parties. An example was a motion moved by Wyatt Creech (N), Leader of the House, to empower a committee to seek the opinion of another committee on a clause in a Statutes Amendment Bill[32] and enabling the committee from which the opinion was sought to call for public submissions (NZPD 563, 1997, pp.4358-4364). The change had been agreed by the Business Committee, in response to concerns from opposition members that the bill was unusually broad and that some of the amendments had sufficient substance to warrant being in separate bills (NZPD 563, 1997, pp.4323-4324). It was made permanent following the 1999 review of Standing Orders, despite not having been used to that point (AJHR, 1999, I.18B, p.24).

In 2003 a standing order that gave preference in committee of the whole House debates to members who had not spoken previously was suspended by resolution of the House, after discussion in the Business Committee (BC Minutes, 29/4/2003). The rule, intended to give speaking opportunities to a wide range of members acted to prevent members with expertise in an area continuing to speak on it. This was incongruous with the purpose of committee of the whole House; to examine in detail the provisions of a bill and amend them where necessary (NZPD 608, 2003, p.5164). The suspension was made permanent following the review of Standing Orders later in the year (AJHR I.18B, p.22). Since 2003, when the SOC became a standing committee and a triennial review of Standing Orders was assured, it is almost inconceivable that any significant changes to Standing Orders would be moved without scrutiny by that committee.[33] Indeed, the committee has gone so far as to recommend future sessional orders in anticipation of the passage of legislation that would need to be reflected in the House's rules (AJHR 2011 I.18B, p.5).[34] It has also done so where it recommended rule changes be made during a parliament, rather than from the beginning

[32] Statutes Amendment Bill contain minor, technical amendments to Acts. The require the unanimous support of the House so are generally uncontroversial.
[33] One exception was the 2020 sessional orders made to enable the Parliament to function during Covid-19 lockdown where they were agreed unanimously by the all-party Business Committee (Wilson, 2021).
[34] The enactment of the Legislation Bill necessitated the creation of a streamlined process for revision bills, which would more clearly re-state the law but not make policy changes.

of the next one. When changes to the way in which financial scrutiny debates were recommended by the SOC in 1998 (AJHR 1998, I.18A), they included draft sessional orders which were adopted by the House (JHR, 17/12/1998, pp.987-993) and then later included as a permanent part of the Standing Orders after the next triennial review (AJHR 1999, I.18B, p.29).

An example of this caution around making significant procedural changes outside of the regular cycle of reviews arose in 2013 when the United Future Party was de-registered by the Electoral Commission. This potentially gave rise to serious consequences for the party in parliament, since only recognised parties receive taxpayer funding. The situation was unprecedented, and the Standing Orders did not anticipate that a party may be deregistered during a parliamentary term. Speaker Carter (N), on being informed by the party leader that he expected to file for re-registration shortly, elected not to take precipitate action. Instead, he continued to recognise the party for parliamentary purposes, gave it time to put its affairs in order and signalled his intention to raise the matter with the SOC (NZPD 690, 2013, p.10841). The decision was unpopular with opposition parties (NZPD 691, 2013, p.11175; D. Carter interview, 14/6/2022) and New Zealand First made a submission to the review of Standing Orders in opposition to the Speaker's approach (Submission, 23/10/2013). However, in the review, all parties agreed with Clerk Mary Harris' recommendation (Submission 11/2013, pp.22-23) to reflect the Speaker's approach in Standing Orders, consistent with the principle that the results of an election should be reflected in the procedures and administration of parliament (AJHR 2014, I.18A, pp.8-9).

Form of review

Reviews of Standing Orders, during the period of this study, have always involved a specialist committee, advised by the Clerk of the House. In 1951, the first revision of Standing Orders in 21 years occupied six meetings held between May and June 1951. A subcommittee of Messrs Harker, McCombs (L), Webb and McKeen was appointed to consider and report to the main committee on the imprest supply bill[35], introduction of bills, extensions of time, pairs and the opening of parliament (Minutes, 15/5/1951). The Clerk,

[35] An imprest supply bill is one that provides temporary approval of spending to a government, pending the passage of the main appropriation bill.

Henry Dollimore, also attended the meetings and advised the committee, including advice that the procedure for introducing bills was "not in line with Bill procedure in any other part of the Commonwealth" (Minutes of the Standing Orders Subcommittee, 15/5/1951). He was asked to prepare a statement on "the introduction of bills under the British and Australian procedure" for the committee's consideration (Minutes, 30/5/1951).

SOCs established between 1929 and 1979 were generally tasked with revising Standing Orders to progress parliamentary business more efficiently (AJHR 1951, I.17, p.1) or to improve Standing Orders (AJHR 1962, I.17, p.4). In some instances, their order of reference was to review earlier reforms (AJHR 1968, I.14, p.4). The 1985 committee developed detailed terms of reference of its own, setting out the matters it intended to consider covering legislation, select committees, timetabling of parliament, financial scrutiny, questions, discipline and rules of debate. It commissioned the Clerk, Charles Littlejohn, to study frequent points of order to see whether any should be reflected in changes to Standing Orders (Minutes, 24/8/1984).

Submissions on the review of Standing Orders

From 1961 the SOC accepted public submissions on its reviews. It is likely that the first submissions; from the Victoria University School of Political Science and Public Administration, the Controller and Auditor-General and the Harbours Association; were unsolicited (AJHR 1962, I.17, p.5). The committee was reported to be "not really interested in what the public or academia felt parliament ought to be doing" before 1984 (D. McGee interview, 21/4/2022). The submission of the Controller and Auditor-General made no mention of being requested (submission, May 1962). Members of parliament and members of the public would continue to make submissions on the review of Standing Orders. The Constitutional Society's 1967 submission was the first from outside the House to have been presented orally to the committee (Minutes, 22/5/1968). The committee deferred consideration of the matters raised by the Society and it did not address any of them in its report. The draft report had initially contained a fuller response but it was recast into only a few lines of text in the final report, at the instruction of the committee (Draft report, 1968, p.20). Jonathan Hunt (L) expressed his disappointment that the Society had been "fobbed off" (NZPD 355, 1968, p.120). The committee received a small number of submissions from

academics in 1972 and recorded that it "found these of great interest" (AJHR 1972, I.19. p.5), though it did not refer to them again in its report.

In the debate that followed the 1972 review, Martyn Finlay (L) advocated for broader involvement in reviewing procedure including new members, students, journalists and businesses (NZPD 378, 1972, p.55). Submissions were invited from select groups (submission of the International Commission of Jurists, 10/4/1979) in 1979; while non-government organisations[36], members of the public and members of parliament[37] made unsolicited written submissions (NZPD 428, 1979, p.4820). In 1984 the future pattern of calling for submissions by public advertisement was established (Minutes, 24/8/1984).

The number of submissions received has never been very great. In 1995, the most thoroughgoing review of Standing Orders since calling for submissions became a regular process, attracted 52 submissions[38] and the 2014 review received 18. The 1996 review was not open to public submissions, requesting them only from members and the Clerk, David McGee. It was "not a major review", according to the committee, since it focussed improving the 1995 amendments in light of experience with them (AJHR 1996, I.18B, p.3). In the next review, reported in 1999, the committee also declined to hear all public submissions, on the basis that it "was not a major review" (Minutes 6/5/1998). The largest number ever received was 70 in 2003, mostly from parliamentary insiders.[39]

Reports on the review of Standing Orders

Until 1968 reports of the SOC briefly explained the important changes they were recommending. A separate document containing the revised Standing Orders was prepared as a supplementary order paper.[40] The 1968 report included a schedule setting out the amendments so they could be matched to the narrative text of the report (AJHR I.14). Such

[36] National Council of Women, Federation of University Women, National Council of Churches, Christian Science Committee on Publication.
[37] Richard Prebble (L), Martyn Finlay (L), Marilyn Waring (N), John Falloon (N), Ian Shearer (N), Minister of Justice Jim McLay (N), Minister of Trade and Industry Lance Adams-Schneider (N).
[38] 32 of these submissions came from parliamentary 'insiders' – MPs, parties, select committees, officers of Parliament and officers of the House.
[39] Select committees, MPs and former MPs, political parties, the Clerk of the House, and Officers of Parliament.
[40] The Order Paper, the House's agenda, used to contain details of matters being debated and 'supplementary' order papers set out amendments to those matters.

a schedule has always been included in reports since that time, often as an appendix. The 1985 and 1995 reports contained completely new sets of Standing Orders.

Reports of the committee grew substantially over time as they provided more discussion of ideas adopted and those rejected. For example, the 2014 report contained 32 pages of narrative text and 26 pages setting out the drafted amendments to Standing Orders (AJHR, I.18A). The 1951 report was four pages in length (AJHR, I.17). Despite the greater length of more recent reports they have still focused on explaining significant amendments, rather than detailing all of them. This is in keeping with the approach other select committees take with bills, where minor amendments and drafting changes are not commented on (AJHR 1996, I.18B, p.3).

Debate on report

The growth in the size of reports from the SOC and the level of detail they contain has been accompanied by a decrease in time spent debating them in the House. The 1996 amendments, made immediately before the first MMP parliament, were not debated at all (NZPD 557, 1996, p.14312) and the 1999 changes were described by the Leader of the House as "minor" in the only speech made about them (NZPD 580, 1999, p.19431). The lack of debate on Standing Orders now is hardly surprising since the recommendations of the committee are the result of negotiation and trade-offs to decide a package of reforms agreeable to all parties. Changes to Standing Orders are developed by senior members and are approved by party caucuses before the report of the committee is presented. Generally, caucuses trust their representatives on the committee to get it right (Interviews with D. McKinnon 18/5/2022; C. Hipkins, 3/8/2022; T. Mallard, 21/9/2022; L. Smith 23/5/2022). Accordingly, there is little left to debate, though parties sometime use the debate as an opportunity to record changes they advocated but that were not agreed. The fact that the debate on the report is held on or near the last sitting day of a calendar year likely also contributes to its brevity.

Table 3.1: Length of SOC report compared with length of debate on amendments to Standing Orders

Year	Report length (pages) excluding appendices	Debate length (*Hansard* pages)
1951	4	26
1962	21	65
1967/68	19	23
1972	8	18
1974	4	6
1979	17	14
1985	33	82
1986	10	10
1990	25	18
1992	32	33
1995	79	93
1996	9	0
1999 (+1998 interim report)	31	1
2003	76	10
2005	19	11
2008	36	6
2011	61	8
2014	32	12

Note: one page of Hansard equates to approximately five minutes of speaking time

Despite the consensus basis on which the SOC has operated, the debates on its recommendations have not always been so co-operative. The 1951 report and appended re-draft of the Standing Orders was not circulated to members before the debate on it commenced, leading to points of order and dispute in debate (NZPD 294, 1951, pp.4-8). The 1962 debate was interrupted by Prime Minister Holyoake (N) admitting that he had not understood the effect of some of the amendments, the hasty re-convening of the committee and then heated debate over amendments tabled by the Prime Minister more in keeping with his earlier understanding of what had been recommended (see Chapter 5). The 2003 debate on the review of Standing Orders was brought to an end by a closure moved by

the government. That led to an animated series of points of order from New Zealand First members, including Winston Peters who argued that:

> I have heard lengthy debates on the Standing Orders, and what they mean, when there were just three parties in this House. This is an open debate, and it is within your power to allow a proper discussion of the report (NZPD 614, 2003, p.10735).

Speaker Hunt (L) replied that previous debates had involved two speeches from large parties and a single speech from smaller parties. In any case, he had accepted the closure motion and that decision was always a final one. Unusually but not surprisingly, in the circumstances, there was a party vote called for on the adoption of the revised Standing Orders. New Zealand First voted against the motion and all other parties voted in favour (NZPD 614, 2003, p.10736).

Until 2003 the debate on the report of the SOC was conducted in the committee of the whole House, with the Speaker taking the role of a 'minister' in charge of the report.[41] This arrangement enabled the Speaker to participate in the debate on the standing orders, which was useful since they were charged with interpreting and upholding the standing orders. The Speaker has invariably chaired SOCs and so was well-placed to comment on the reports. Speakers used the opportunity to explain how rules would be applied and to address any concerns other members might have about their interpretation (NZPD 294, 1951, p.21; NZPD 395, 1974, p.5749). On some occasions, Speakers moved amendments to the proposed rules (NZPD 299, 1953, pp.229-230). In 1968 Speaker Jack (N) indicated that he agreed with "almost all of" the amendments to Standing Orders; a level of candour only possible in debate (NZPD 355, 1968, p.122). From 2003, the debate was held during a sitting of the House, rather than the committee of the whole. The Speaker can preside over the debate but not participate in it and no amendment to the Standing Orders could be moved in such a debate.[42] This change perhaps reflects the more settled nature of rules changes before they are reported to the House but the Speaker's inability to contribute to the debate makes it less informative. While the House could certainly resolve itself into

[41] This was not the usual way of debating a select committee report. Instead, it mirrored the process of the committee of the whole House stage of a bill where the Speaker's chair is vacated and the minister in charge of the bill sits at the head of the table of the House with the chairperson of the committee and the Clerk.
[42] Only in the committee of the whole House can amendments be made to the substance of a bill or other matter.

committee to consider Standing Orders amendments (Wilson, 2023, p.283), the practice has fallen into disuse.

Consensus basis for change

Two features of New Zealand's treatment of its parliamentary rules and practices have been emphasised by those involved in their review and development. The first is that change is usually incremental and evolutionary, rather than revolutionary. The second is that the process is one of collective agreement in contrast to the majority rule that is a feature of most parliamentary proceedings (Interviews C. Hipkins, 3/8/2022; T. Mallard, 21/9/2022; L. Smith 23/5/2022; M. Harris, 20/4/2022; M. Turei 18/8/2022). Consensus is not required to change the Standing Orders. A simple majority is sufficient but, in practice, consensus has been the basis of decision-making on the Standing Orders throughout the period of this study.

In 1979 the select committee system, which was primarily used for *ad hoc* scrutiny, was described as "a result of evolution" (AJHR 1979, I.14, p.12). While this statement was used as an argument against fundamental change, it accompanied a recommendation that almost all bills be referred to select committees, which was one of the important changes made to the role of committees (D. McGee, interview 21/4/2022). At the next review, the SOC commented that:

> The select committee system in New Zealand as it exists now is the result of successive review by SOCs… Overseas experience has been drawn on in certain notable instances, for example the establishment of the Public Expenditure Committee. Otherwise, the system has evolved in keeping with the general traditions of the New Zealand House and reflecting its particular, and in some respects unique, characteristics (AJHR 1985, I.14, p.28).

Members speaking in debate on the review process have regularly referred to the constructive, non-partisan nature of the work (NZPD 330, 1962, pp.25-26; NZPD 355, 1968, p.110; NZPD 464, 1985, pp.5598 & 5606; NZPD 522, 1992, pp.6649 & 6652; NZPD 529, 1992, p.10962). A 1982 survey of members showed a majority of respondents supported parliamentary reform and shared the view that such reforms would not favour one party over another. There was little variation between parties on these matters (Daniell, 1983). In

1995, when extensive changes were made to the rules and practices of the House, the SOC recommended that a future committee monitor and review those changes. The subsequent committee took the view that it should not make major changes and that the new standing orders "should have a longer period of testing" (AJHR 1996, I.18B, p.3). The 1995 changes were radical but were in response to a major exogenous change – the shift to a proportional electoral system that would likely lead to coalition government and the end of a largely two-party parliament. Former Leader of the House Don McKinnon (N) summarised the usual, incremental approach to reform of the House's practices in 1998:

> It is always appropriate that the House not overreact to anything about the House that may not appear to be working very well. One has to give it a little bit of time to see whether it can resolve the issue itself. If it cannot, the Standing Orders Committee should be allowed to look at the issue, come by consensus to a conclusion as to the workings of the House and then come back to the House with an appropriate report. Invariably the Standing Orders Committee does come to a collective conclusion, because there is no desire to have any one party in the House literally say, by virtue of numbers, that this is the way we will change the workings of the House (NZPD 574, 1998, pp.14700-14701).

His speech also described the second feature of review of Standing Orders – the way they are arrived at by consensus. SOC reports and the debates on them are full of references to the importance of unanimous support for changes. In 1985 Robert Muldoon (N) reported to the House that the work of the SOC, on major reforms, "had been done in a thoroughly co-operative manner. There was no degree of dissent… We came together to try to reach agreement…" (NZPD 464, 1985, p.5602). He had not been supportive of change but complimented the manner in which it was carried out (Interviews D. McKinnon 18/5/2022; D. McGee, 21/4/2022). Muldoon's opinion on the nature of the committee's work was shared by Geoffrey Palmer (L), (p.5600), Ian McLean (N) (p.5858) Don McKinnon (N) (p.5848), Jim Bolger (N) (p.5610) and Jonathan Hunt (L) (p.5603). Indeed, the only motion

that was not agreed unanimously in the committee was on the size of the quorum for the House (Minutes 3/7/1985).[43]

In 1998 Leader of the House Michael Cullen (L) opined that:

> The recommendations of the SOC are often somewhat strange beasts in that probably nobody supports them but we all vote for them – or pretty well all of us vote for them – because they represent a series of compromises and trade-offs between different positions people have taken (NZPD 574, 1998, pp.14701-14702).

The comment that "nobody supports them" is not entirely borne out by the statements of other members or of the SOC, which emphasise that not all members necessarily support every change but that:

> the overall package of amendments to be recommended has the support of members who represent an overwhelming majority of the House. This approach does not mean that all of us support every measure but on the other hand a significant number of proposals that might have obtain majority support have not been adopted (AJHR 2003, I.18B, p.5).

The introductions to three recent SOC reports make explicit reference to concepts of fair play:

> The current basis for decision-making also recognises that a majoritarian approach would undermine respect for the Standing Orders and thus their standing as part of New Zealand's constitutional framework (AJHR 2008, I.18B, p.6).

> The SOC recognises that the Standing Orders are akin to constitutional rules, and seeks to arrive at an overall package of proposals that enjoys the overwhelming support of members around the House, even if full unanimity cannot always be reached. This process involves "give and take" across parties, to ensure that changes do not confer unfair advantage (AJHR 2011, I.18B, p.8)

[43] Muldoon and Social Credit leader Gary Knapp opposed the reduction of the quorum from 20 to 15 members. Notably, other National members voted in favour of it.

> We recognise that the Standing Orders are akin to constitutional rules, and seek to arrive at a package of proposals that enjoys the overwhelming support of members around the House, even if unanimity cannot always be reached. This process involves "give and take" among parties, to ensure that changes do not confer unfair advantage (AJHR 2014, I.18A, p.4).

Kennedy Graham (G), a former member of the SOC emphasised the importance of fair-dealing between parties (interview 15/6/2022):

> You've got to be very careful as a minority body. You don't abuse that. But the flipside of that is that the two majority parties have to be very careful that they don't abuse their majority. Let's say numerically they have 75 to 80% of the vote and therefore in parliament. They have to be careful they don't stretch that from, you know, 80% to 95% in terms of procedural decision making. And equally the flip side of that each party, if you're 5% or 10% of your electoral vote in an election that you don't try to act as if you think you're 40%.

One matter that tested the committee's convention of consensus was the recording of members' pecuniary interests. In 1985 the Leader of the House, Geoffrey Palmer (L), presented proposals to the committee for a public register of members' financial interests (Minutes 26/11/1985). It had been part of the Labour Party's Open Government policy (Palmer, 2013, p.655). However, "in light of the fact that there was not unanimity among the committee members to the scheme being incorporated in the Standing Orders the Leader of the House subsequently indicated that he would not seek to proceed with it" (AJHR 1986, I.18A, p.13). Such a scheme was again proposed by the Alliance in the lead-up to the first MMP parliament (Submission 17/8/1994) but not supported by other parties. Tony Ryall (N) (Submission 18/6/1997) and Tim Barnett (L) (Submission, undated, tabled 4/3/1998) advocated for similar registers but it was not agreed to. The Labour-led government in 2003 sought the support of parties for the introduction of a register but introduced legislation to give effect to the proposal when National, ACT and New Zealand First would not support it. Labour, United Future, the Greens and the Progressives supported the bill. The National Party expressed a preference for incorporating such a regime in Standing Orders rather than law (NZPD 627, 2005, pp.22357-22358). The ACT Party reluctantly acquiesced to this approach, as the least-bad option while New Zealand

First remained opposed to it (Members of Parliament (Pecuniary Interests) Bill, 81-2). The divisions on the proposal led the SOC to address the basis of its decision making in the report:

> It is important to note that the consensual principle on which the SOC operates is not the same as the principle of unanimity or near-unanimity on which the Business Committee operates. The Business Committee's principle is not a convention, but a rule of the House embodied in the Standing Orders. The Business Committee takes executive decisions on behalf of the House (extensions to reporting times, personnel of committees, etc). It can take these decisions only if there is near-unanimity. The SOC, on the other hand, does not make decisions on behalf of the House. There is no presumption that every party in the House will agree with every recommendation made by the committee. (Members of Parliament (Pecuniary Interests) Bill, 81-2, pp. 3-4).

In 2011, a proposal to review the words of the oath or affirmation of allegiance taken by members had the support of the majority on the SOC. However, in the face of opposition from ACT and the National Party the committee did not recommend any change. The Green Party, which supported the idea opted to express its views in the main body of the committee report, rather than in a minority view, in keeping with the committee's preferred mode of operation (AJHR 2011, I.18B, pp.11, 16 & 38).

This approach of consensus decision-making likely has its roots in concepts of fairness, which feature prominently in descriptions of New Zealand's national character (Levine, 2012; Lipson, 1948) and in political discourse (Fisher, 2012). A study of facets of New Zealand national character (Sibley et al., 2011) found that egalitarianism, respect for others, tolerance and equality were among the most common self-identified values amongst New Zealanders. Political actors in New Zealand reflect these same values and 'fairness' features regularly in party manifestoes and political slogans, in relation to youth, taxation, the environment, the Treaty of Waitangi and pay equity (Fisher, 2012). Justice and fairness were reported to be strong themes in constitutional discussions with the public held in New Zealand in 2013 (Constitutional Advisory Panel, 2013). In examining New Zealand's constitutional culture, Palmer (2007) noted that New Zealand culture has a marked ethos of egalitarianism and values pragmatism. Māori tribal dynamics preferred consensus. Chiefs

and elders were facilitators of consensus, not autocrats (Waitangi Tribunal, 19897, p.20). Settler society showed general preferences for fairness and equality rather than rule by decree (Hawke, 1979; Lipson, 1948).

Palonen (2019) argues that fair play is a concept deeply ingrained in Westminster traditions, reflecting the procedural equality of all members. It is seen in rules about debate, which is dissensual[44] but impersonal; in the requirement to give notice of motions to guard against surprise; and in the right for members to debate motions before making decisions. Concepts of fair play can be appealed to by the minority in the face of action to curtail scrutiny and debate. The majority cannot oppose fairness but can only counter that their own measures are 'sufficiently fair' that makes a combination with efficiency possible (Palonen, 2019, pp. 95-96). In New Zealand, reference has been made to the fairness or unfairness of particular rules and practices of the House in the majority of debates on reports of the SOC (see Appendix B), reflecting the importance of appeals to fairness as a persuasive tool. Members have also acknowledged that acting fairly involves an element of self-interest. The Privileges Committee noted that a degree of cooperation between parties "is not only to the advantage of the Government, thereby enabling it to transact its business; nor is it simply of advantage to an Opposition should it at some time in the future become the Government" (AJHR 1982, I.6, p.7).

Whether New Zealand is measurably more fair or equal than other countries is not especially relevant to this study. When taking an interpretive approach to studying an institution, the fact that actors see fairness as important and appeal to it in political discourse is more relevant, since it shapes discussion and the acceptability of actions.

The predominant conventions in relation to amending the Standing Orders are institutionalised in New Zealand, whether or not individual political actors are motivated by fairness or self-interest or both. Consensus decision-making was first mentioned in debate in 1972, when the cooperative nature of the committee was praised (NZPD 378, 1972, p.47). Two years later, its general lack of division was mentioned with approval (NZPD 397, 1975, p.5748). It has featured in almost every debate or report of the SOC since that time. An

[44] The Westminster tradition is built around dissensus (as opposed to consensus) – the idea that the pros and cons of any idea may be debated and alternative views proposed before a decision is made.

explicit statement about the advantages of this approach has been repeated in the 2008, 2011 and 2014 reviews. It would be very difficult for a future government, even one with a single-party majority in the House, to undo the convention without facing difficult questions about fairness and transgressing parliamentary conventions.

This consensus-seeking approach to reform has been criticised because the "unattainably high" degree of agreement required leads to an entrenchment of legislative procedures (Submission of Legislation Advisory Committee, 2006, pp.82-83). It has also been described as "a form of entrenchment of current rules (which may protect or harm the minority) and limit the ability of Parliament to adapt and improve" (Submission of New Zealand Law Society, 31/10/2019). The SOC has previously addressed these views, saying that they were "based on a slight misunderstanding of the SOC. Members seek to achieve a good balance of support across the amendments proposed to the Standing Orders, rather than full support for every measure" (AJHR 2008, I.18B, p.6). The SOC has not made any move to alter the basis of its decision-making.

Suspension of Standing Orders

A standing order may be formally set aside if a motion to suspend it is agreed. This can be until the end of the session of parliament, for a specified period or for a specified item of business (Wilson, 2023, p.165). The barrier to doing so now is relatively high. A minimum of 60 members must be present in the Chamber, usually signalling that more than one party agrees to the motion, and every member may speak on the motion for up to 10 minutes, which could lead to a very long debate. It is now only done to trial new procedures, which have been agreed at the Business Committee or SOC. For example, in 2003, a new method for allocating calls in debate was trialled and some Standing Orders had to be suspended to facilitate the trial (NZPD 608, 2003, p.5164).

However, the suspension of Standing Orders used to be a common occurrence. In 1976 Bob Tizard (L) broke with tradition and sought to debate the second reading of the Supplementary Estimates.[45] This led to a fiery exchange of points of order between Prime Minister Muldoon (N) and the opposition. The Speaker ruled that, while the 1968 SOC

[45] Supplementary Estimates are an update to the governments initial Budget, with changes to spending levels and new areas of spending.

report had proposed that there would be no debate, the Standing Orders themselves had not been amended to prevent it. Muldoon moved immediately to suspend the relevant Standing Orders to prevent the debate continuing but such a motion could not be moved to interrupt a debate. The Speaker gave a useful guide to applying rules and conventions in saying "I am bound by the Standing Orders unless there is a procedural practice so firmly established that is considered of equal authority and that, in my judgment, is a very rare circumstance" (NZPD 544, 1994, pp.3645-3649).

In one remarkable instance, the House decided not to align its rules with its practice. A government bill, when first introduced to the House, was subject to debate in which each member could speak up to four times. The SOC considered reducing the time spent on this debate but decided to make no change "to cover the comparatively few cases where matters of conscience or local interest were affected or where there was strong opposition to the Bill" (AJHR 1972, I.19, p.9). Instead, it called on members to exercise restraint in the length of the debate. Prime Minister Marshall (N) asked his ministers to observe the recommendation and explained that "the present rules were about as good as we could have; it was the practice rather than the rules to which we should look" (NZPD 378, 1972, p.44). The House agreed.

In 1991 a standing order was suspended to enable the House to amend a local bill in ways that went beyond the scope of the notices advertising the bill.[46] This was a relatively common practice in respect of local bills. The suspension of Standing Orders fell into disuse since the introduction of MMP. The regular review of parliament's rules and the ability of the Business Committee to arrange parliamentary business obviates the need to do so (see Chapter 4).

Influences on Standing Orders reform

There are a variety of influences on the nature of Standing Orders. Shifting societal expectations, overseas procedural developments, changes in the law and external events have also become apparent through examination of the proceedings of the SOCs. The SOC sometimes recommended that conventions and practices be codified.

[46] The limitation of amendments to only the subject areas advertised is a requirement for local and private bills only and is intended to prevent stakeholders being surprised by unexpected changes.

Shifting societal expectations

It is hardly surprising that elected representatives are sensitive to public opinion. This was in the minds of members and reflected in their revision of Standing Orders (Interviews D. McKinnon, 18/5/2022; P. Dunne, 5/9/2022; M. Wilson, 16/5/2022; K. Graham 15/6/2022). Prime Minister Keith Holyoake (N) highlighted public criticism of parliament as a reason to review its procedures (NZPD 326, 1961, p.101) and the SOC focussed on providing opportunities for debate relevant to the public (AJHR 1962, I.17, p.18). The SOC removed from its 1962 report Clerk Henry Dollimore's draft text that sittings of the House to midnight "were not in the best interests of Members" (Draft report, 26/3/1962, p.1) and remained silent on the matter (Draft report 15/5/1962, p.3). The news media criticised the 1979 review of Standing Orders, calling it "timid" (*New Zealand Herald*, 15/12/1979), "toying with problems" (*Evening Post* 8/11/1979), and "having laboured mightily and produced a mouse" (*The Press*, 19/11/1979). In the time immediately preceding the referendum to change the electoral system, members referred to public demand for changes in the way parliament worked (NZPD 522, 1992, pp.6649, 6650, 6652, 6657). Five years later, in expressing support for the firm line Speakers had taken against allegations made against those outside the House, the SOC emphasised the importance of public opinion to the legitimacy of parliament. It went as far as to say that if the privilege of free speech was not respected by members then public opinion would cause it to be removed (AJHR 1999, I.18B, p.10).

Evolving practice

The House kept an eye on developments in overseas parliaments and frequently referred to their example when making changes to parliamentary rules. The 1962 amendment to remove voting separately on the title of a bill from the question of whether it should pass was noted as bringing New Zealand practice into line with the UK and Australia (AJHR 1962, I.17 p.14). The close alignment with the UK was criticised by Mick Moohan (L) who said that "the only reason for suggesting the new procedure is that it is the system adopted in the British House of Commons" (NZPD 330, 1962, p.33). The House of Commons was looked to again in 1968 when its rules of debate in relation to matters before the courts were adapted for New Zealand (AJHR 1968, I.14 p.12). Erskine May's definition of the scope of the Estimates debate was also re-purposed to apply in New Zealand (AJHR 1985, I.14, pp.24-25). In preparation for MMP, New Zealand looked to European countries using similar electoral

systems instead (AJHR 1995, I.18A, pp.18, 27-28 & 30). Some individual members considered overseas developments when formulating their own proposals for reform in New Zealand (Interviews D. McKinnon, 18/5/2022; M. Wilson 16/5/2022) while others "didn't pick up a lot of particular relevance to New Zealand" from overseas (L. Smith interview, 23/5/2022).

Reports of select committees could also trigger action by the SOC, even if they had not requested it. The review of Standing Orders governing financial scrutiny in 1991 was begun with two reports from the Government Administration Committee (AJHR 1989, I.6A & I.6B; AJHR 1991, I.18A, pp.3-4). That committee wrote to the SOC proposing the adoption of its recommendations which would "greatly enhance parliamentary scrutiny of departments" and asking that they be given urgent consideration (Letter 20/06/1989). A special report of the Health Committee clarifying that amendments to the Smoke-free Environments (Enhanced Protection) Amendment Bill were not unanimously supported, despite not asking to record a vote against them was addressed in the 2003 review (AJHR 2003, I.18B, p.37). The committee's report re-stated the basis for the rules and did not amend them.

An amendment to Standing Orders to reflect "a longstanding practice" was recommended in 1992 (AJHR 1992, I.18B, p.21). Standing Order 237 provided that the Chairman of Committees[47] could make "verbal or formal" amendments to bills after the committee of the whole House stage to tidy up typographical errors and fix cross-references. That had not occurred for many years and, instead, the Clerk's staff checked bills before preparing them for Royal Assent and made such changes at that point. The SOC, with the agreement of the Chairman of Committees, recommended that this practice be reflected in the Standing Orders.

Codifying practice and convention

A desire to codify a practice that has emerged in the House has also led to changes to Standing Orders. Conventions and practices can have considerable persuasive power but, because they are not formal rules, they are not enforceable. This can lead to them being codified where they have been challenged or ignored (Sieberer, et al., 2016, p.63). In the early 1980s Speaker Harrison (N) devised a "sin bin" system to deal with disorderly

[47] The Chairman of Committees was re-named Deputy Speaker in 1992.

behaviour in the House that was not serious enough to warrant the suspension of a member for the remainder of the day. Such a suspension, reserved for "grossly disorderly" conduct, deprived the member of the right to vote. Instead, under the Speaker's general authority to maintain order, Harrison would invite a disorderly member to leave the House for a while until things cooled down (NZPD 455, 1983, p.4271). Some members disputed whether the Speaker had the authority to use it (NZPD 455, 1983, p.4277), since it was not provided for in Standing Orders. On the whole, members felt the approach was fair and proportionate and it was adopted as a new Standing Order in 1985, to be used when members conduct was "highly disorderly" (AJHR 1985 I.14, p.14). The power of the Speaker to suspend members for the remainder of the day and, thereby, deprive them of the right to vote, was deleted (NZPD 464, 1985, pp.5906-5907). The 1999 SOC expressed support for the Speaker's use of the "sin bin" to deal with members who frequently caused disruption, particularly during oral questions (AJHR 1999, I.18B, p.10).

The tabling of documents by leave of the House became a popular practice that was eventually recognised in Standing Orders.[48] Governments, on occasion, objected to the misuse of the procedure as a way of introducing debatable material to the House and refused to give leave (NZPD 522, 1992, p.7016). Deputy Prime Minister Wyatt Creech (N) raised the growing popularity of the practice and need for accurate descriptions of what was to be tabled (Submission 30/6/1999). The SOC did not consider that it needed to be provided for in Standing Orders, preferring to leave it in the hands of the Speaker (Minutes, 29/7/1999). However, it asked that members "exercise discipline in requesting leave to table papers" and not try to table press cuttings or documents already on the table such as *Hansard* (AJHR 1999, I.18B, p.30). Little heed was paid to the request and members frequently sought leave to table documents including individual standing orders, industry newsletters, constitutional documents and press clippings (NZPD 633, 2006, pp.5299-5321). This was a tactic to score political points and to delay the progress of government bills. In 2008 the tabling of documents was recognised in Standing Orders and the SOC repeated the warning against tabling documents already available to members (AJHR 2008, I.18B, p.40). Changing technology and disputes over what constituted a 'document' led to the committee

[48] Only ministers and the Speaker have a right to table documents, as a means of presenting them to the House and making them available to members. Other members are also able to do so only with the unanimous agreement of the House.

clarifying that electronic media containing text and/or graphics could be tabled (AJHR 2011, I.18B, p.13). The details of the procedure for tabling documents remains in the rulings of Speaker Smith (N) who required members to state the source of a document before leave to table it would be sought (NZPD 676, 2011, p.21493) and Speaker Carter (N) who added requirements for the member to identify the date of publication and the nature of the contents (NZPD 705, 2015, p.3131). These measures combined to limit misuse of the procedure.

Sometimes, the report of the SOC was used to reinforce an existing convention. In 2011, the committee reported that:

> In many aspects of parliamentary practice, the proper functioning of the House and its committees is dictated by convention and not prescribed in the Standing Orders. We wish to strengthen the convention that differing views should be fairly reflected in reports. There is a strong presumption that this will occur. Members who are in the minority have a legitimate expectation that all reasonable steps will be taken to ensure that this convention is followed, even though Standing Order 241 gives some discretion to committees (AJHR 2011, I.18B, p. 32).

Increasingly, such guidance was also reflected in the volume of *Speakers' Rulings*, selected and published by the Clerk in each parliament, to give it additional prominence and for ease of reference. In the 2020 edition of *Speakers' Rulings*, there were 106 rulings that refer to reports of the SOC.

Changes in law

Changes to the law can have flow-on effects to parliament's rules, where the two intersect (D. McGee interview, 21/4/2022). Generally, the House has preferred to reflect policy requirements in the Standing Orders, rather than legislate for parliamentary procedure. This is an expression of the House's privilege of exclusive cognisance - the right to determine its own procedures and to judge their observance. Prescribing House procedure in statute is an abrogation of that privilege and may make elements of parliamentary procedure justiciable and so it is generally avoided.[49] The significant reforms to public finance legislation followed

[49] The right of the House to deal with perjury by participants in its proceedings was abrogated and delegated to the courts by section 108(4)(b) of the Crimes Act 1961.

this pattern (see Chapter 7). During the passage of the Epidemic Preparedness Act 2006, the Government Administration Committee recommended that the Speaker be able to delay a sitting of the House in response to a serious outbreak of disease (Law Reform (Epidemic Preparedness) Bill 39-2, p.7). A procedure to do so was recommended by the SOC in 2008 (AJHR 2008, I.18B, p.9) and adopted by the House.[50] The passage of the Parliamentary Privilege Act 2014, which gave statutory recognition to privilege, predictably, required amendments to Standing Orders (AJHR 2014, I.18A, p.7)

External events

Exogenous factors have also influenced the shape of Standing Orders. Most notably, the referendums on the electoral system, which culminated in the adoption of MMP led to the Standing Orders being entirely rewritten. Given the immediate and deep ramifications for parliament of a new electoral system (Geddis & Morris, 2004), a complete re-write of its own rules was inevitable (Interviews D. McGee 21/4/2022; M. Harris 20/4/2022). The House debated changes to the Standing Orders three days before the first referendum on the electoral system, which asked voters whether to keep the existing first-past-the-post system and, if not, what to replace it with. While Leader of the House, Paul East (N), said that the debate "had nothing to do with the electoral reform referendum" it was commonly referred to in speeches. Several members noted that electoral reform would not, in itself, change the way that the House operated (NZPD 529, 1992, p.10945).

The First Gulf War highlighted a problem with the sitting pattern adopted by the House. The fact that it was no longer prorogued[51] at the end of the annual session meant that it could not be summoned to sit early in the face of an emergency. In 1991, the government wished the House to sit and debate New Zealand's involvement in the Gulf War. The only way to do so was to revive the old practice of prorogation by the Governor-General and the calling of a new session of parliament (Wilson, 2023, p.179). At the next review of Standing Orders, the Speaker was given the power to call the House to sit while it was adjourned if the Prime Minister requested it (AJHR 1992, I.18B, p.33).

[50] The power was used for the first time by the Speaker in 2021 to delay the sitting of the House for a week, in response to the COVID-19 pandemic.

[51] Prorogation ends a session of a parliament. Typically, New Zealand parliaments had one session each year. Since 1993 parliaments have had a single session, lasting for their entire duration.

The 2009 parliamentary expenses scandal in the UK[52] resonated in New Zealand and led to reforms of the Civil List Act 1979 and the Standing Orders, as well as the creation of a regime to disclose members' expenses. When the events in the UK became widely known, the Law Commission was working on a review of the Civil List Act 1979. In its final report, which recommended greater independence and transparency in decision-making about MP allowances, the Commission reported that it had "been significantly influenced by developments in the United Kingdom in response to the scandal concerning payments to MPs" (Law Commission, 2010, iv). In response to the report, the government announced its intention to introduce legislation to replace the Civil List Act 1979 and to implement the Commission's recommendations. The SOC recommended that when legislation to replace the Civil List Act 1979 was to come into force, a sessional order be adopted requiring the Clerk to record and publish members' attendance at parliamentary business and approved absences. It also recommended that the new legislation provide for an effective penalty for members who absented themselves from parliament (AJHR 2011, I.18B, p.19).

Role of office-holders in changing parliamentary practice

Role of the Leader of the House

The Leader of the House is responsible for the government's parliamentary agenda and so leads on the floor of the House and manages the government's legislative programme. The Leader of the House is a member of the Business Committee and the Parliamentary Service Commission[53] (Wilson, 2023, p.65). The first Leader of the House who was not Prime Minister was David Thomson (N), appointed by Robert Muldoon (N) in 1978; a decision that marked the beginning of the withdrawal of the Prime Minister from the day-to-day affairs of the House (Gustafson, 2000, p.263; Martin, 2004, p.286). Since then, the Leader of the House has always been a senior minister. They are invariably an experienced member with a good knowledge of parliamentary procedure and an understanding of the government's legislative priorities (C. Hipkins 3/8/2022). The Leader of the House often develops a relationship of trust with the opposition in order to progress business in the House (D. McKinnon interview, 18/5/2022) They are a significant contributor to discussions about

[52] The scandal centred on the widespread misuse of MP expenses and allowances.
[53] The Parliamentary Service Commission advises the Speaker about the services to be provided to the House and to members of Parliament by the Parliamentary Service but not by the Clerk.

changes to procedure and are always a member of the SOC. Motions to adopt new standing orders, to make sessional orders or to temporarily adjust the procedures of the House are moved by the Leader of the House. Many points of order, which are essentially invitations to the Speaker to make a ruling, will come from the Leader of the House or their opposition counterpart. Proposals to deal with parliamentary business in ways that differ from the norm are also likely to come from the Leader of the House, since the majority of parliamentary business is government-initiated.

The Shadow Leader of the House is a senior opposition member with a strong knowledge of parliamentary procedure. They do not have a formal role in managing House business but are always a member of the Business Committee and SOC and the person the Leader of the House is most likely to liaise with about House business.

Role of the Speaker

Central to the proceedings of parliament is the Speaker, elected by members as their first act upon taking their seats in the House after a general election. The Speaker is expected to perform their duties in a wholly impartial way, though they are not required to resign from their party (Wilson, 2023). The Speaker represents the House in its interactions with the Crown, chairs the Parliamentary Service Commission, performs statutory functions in relation to vacancies in the membership of the House and is responsible for parliamentary agencies in budgetary matters.[54] Best known, though, is the Speaker's role in presiding over sittings of the House (Wilson, 2023, pp.194-195). As presiding officer, the Speaker determines who will speak in debates and adjudicates disputes raised through points of order. The Standing Orders charge the Speaker with ruling on their interpretation and application and for deciding cases not otherwise provided for (SO 2020, 2). Importantly, the Speaker is also elected chairperson of the SOC and so plays a key role in leading its consideration of issues.[55] Speakers are well-placed to interpret the rules since they are

[54] The Officers of Parliament and the Clerk answer to the Speaker for the management of their offices but carry out their substantive duties independently.
[55] This is a convention. In theory, any member of the Standing Orders Committee could be elected chairperson.

experienced members of parliament and, since the 1980s, have served as ministers before being elected Speaker (D. Carter interview, 14/6/2022).[56]

The Standing Orders cannot provide for every foreseeable event and, in many places, are deliberately sparse to enable the House and its committees to operate flexibly in the way preferred by members. The Standing Orders establish a principled framework for operation and place some obligations on the House (Bagnall, 2016). Along with some enduring conventions, they determine the usual operations of the House (C. Hipkins interview, 3/8/2022). In any situation not provided for, and these are common in an assembly of parties competing for high stakes, the Speaker must determine what happens. Areas of procedure that have been long-neglected or set aside as too difficult to address as well as novel procedural developments are the domain of the Speaker. They are guided by precedent in rulings of previous Speakers but also by their own judgement and view of parliament. Speaker Smith (N) applied his own test by asking "what interpretation of Standing Orders best serves the rights of the House in holding the Crown to account?" (Smith, 2011). Speaker Mallard (L) has pointed to the need for regular review of Standing Orders and of not clinging to traditions that have lost their relevance (Mallard, 2019). In doing so he echoed Speaker Algie (N) who wrote that "these rules (which are made, and changed from time to time, by the members themselves) require revision to keep them in line with changing conditions" (Algie, 1963).

The Speaker's authority to make rulings to provide clarity about the application of rules or where there are none is not unfettered. The Speaker is elected by the House and remains in office until they resign, a new parliament is formed, or they are removed by the House. The Speaker may be censured or lack of confidence in them may be expressed through a motion on notice (NZPD 684, 2012, p.5879). Their rulings are subject to review and revision by the House by motion on notice (NZPD 228, 1931, p.725). Ultimately the Standing Orders belong to the House, not solely to the Speaker (Harrison, 1964, p.395).

[56] In the period of this study Speakers Statham (I), Barnard (Lib), Schramm (L), McKeen (L), Oram (N), Macfarlane (L), Allen (N), Whitehead (L), Harrison (N), Wall (L) and Gray (N) had not been ministers. Speakers Algie (N), Jack (N), Arthur (L), Burke (L), Tapsell (L), Kidd (N), Hunt (L), Wilson (L), Smith (N) and Carter (N) had been ministers.

The Speaker plays a particularly significant role in periods of change by drift, where the rules are neglected for a long time but external events change drastically. We see this in the period 1929 to 1951 when the Standing Orders were not amended. Many Speakers' rulings of this period, where Speakers acted to interpret the rules in a changing environment, endure today.[57] Institutional change by conversion, where rules formally remain the same but are reinterpreted or redirected in new ways, frequently involves the Speaker too. Speaker Smith (N) interpreted the rules about the tabling of documents in the House to limit their use for the sole purpose of political point-scoring (Smith, 2011; interview 23/5/2022). The written rules did not change but their application did (NZPD 655, 2009, p.4581; 658, 2009, pp.7621-7622).

Role of the Clerk

The Clerk of the House of Representatives is the principal permanent officer of the House and the primary adviser on matters of parliamentary practice, as well as its record-keeper and a source of 'institutional memory'. Fourteen people have served as Clerk since 1854, seven of them in the period of this study.[58] Most have served in the role for long periods of time, giving them institutional memory and exposure to the workings of other parliaments. The Clerk, Henry Dollimore, drafted the amendments to the Standing Orders for agreement by the committee in 1951 and wrote the report that accompanied them, a pattern that would continue through all future reviews. From 1962 onwards the Clerk made a submission to the review, recommending changes and Prime Minister Holyoake (N) acknowledged Dollimore's guidance, suggestions and advice "showing the implications of what we had in mind" in the 1968 review (NZPD 355, 1968, p.108).

The establishment, in 1988, of the Clerk as a statutory officer who gave advice and carried out procedural and constitutional functions independently of the Speaker[59] cemented the Clerk's position as a distinct party to the reform of parliamentary practice (AJHR 1989, A.8, pp.2-3). The Clerk not only advised on proposals for reform made by others but advocated for changes themselves.[60] That advocacy was never more evident than in 1992 when the

[57] Many of Speaker Statham's (I) rulings on questions made in the 1930s still endure, for example.
[58] Clerks Hall (1930-1945), Bothamley (1945-1946), Dollimore (1946-1971), Roussell (1971-1976), Littlejohn (1976-1985), McGee (1985-2007) and Harris (2007-2015).
[59] Clerk of the House of Representatives Act 1988, section 16.
[60] The Clerk made 66% of their successful proposals for change from 1988 onwards.

Clerk, David McGee, set out a 22-point blueprint for parliamentary reform in a letter to the Speaker that was subsequently circulated to all members (Letter, 20/7/1992).[61] The Alliance party reflected many of those proposals in its submission on the 1995 review of Standing Orders (Submission 17/8/1994). The 2003 report of the SOC recorded that "the Clerk made a strong submission that the hours of the House should be increased" (AJHR 2003, I.18B, p.9). The impetus to involve the House in the scrutiny of international treaties came from the Clerk (AJHR 1996, I.18B, p.3), as discussed in Chapter 7.

The Clerk, as the keeper of parliamentary records and a permanent officer of the House, also reminded the SOC of matters that had arisen during the parliament, without necessarily taking a stance on them. Many such matters are identified to the Clerk by their staff through their work in select committees and the House.[62] Notably, in the 1995 review, the Clerk characterised his submission (10/1994) as "more of a discussion document raising topics for the committee to consider". In 2003 Clerk David McGee submitted that "in the course of our duties, my staff and I have identified a number of points arising from the Standing Orders that would benefit from clarification" (Submission 5/2003). In the 2010 review Clerk Mary Harris said "through our involvement in proceedings, my staff and I also build perspectives that inform our own ideas about how the work of parliament could be enhanced" (Submission 10/2010).

The position of Clerk is influential in matters of parliamentary practice and constitutional arrangements (M. Palmer, 2006). Palonen (2019) warns of the possible danger of the bureaucratisation of parliaments by staff who rely more on the authority of superior knowledge than on debate to have influence. This point is true to the extent that only members can engage in parliamentary debate and officers of the House, such as the Clerk, rely on persuasion and the independent exercise of their powers, rather than engaging in public debate. The Clerk and their staff are advisers to members and participants in proceedings but, of course, do not exercise a vote. Palonen (2019, p.158) notes that such staff have arguably a professional ethos of solidarity with members of parliament. In New Zealand, the Clerk views advocacy on behalf of the institution of Parliament as a part of their

[61] In the years since the paper was written, 10 of McGee's recommendations have been implemented and 12 have not.
[62] The Clerk, in 2023, employs approximately 100 staff to support the House and committees as well as engagement with Parliament.

role (Submission 10/2010, p.2), with one former Clerk describing the role as that of "a parliamentary policy analyst, a thinker for parliament, a protector of the institution" (M. Harris interview, 20/4/2022).

Accessibility of Standing Orders

The SOC's 1995 re-write of the Standing Orders re-organised the rules and presented them in a plain English drafting style to make them more understandable (AJHR 1995, I.18A, p.11). It responded to criticism of the seemingly open-ended nature of its privileges and particularly of the concept of contempt of parliament. In 1995, it recommended that contempt be defined and a list of the types of conduct that may be treated as contempt be included in the Standing Orders, in an attempt to make them more accessible (AJHR 1995, I.18A, p.78). The original list was not exhaustive, and it has been modified over time.

Select committees have expressed concern at the lack of knowledge of parliament's rules exhibited by state agencies. In 2006, the Privileges Committee expressed surprise that Television New Zealand Limited did not consider its accountability to parliament or how its action in disciplining an employee for giving evidence to a select committee might breach Standing Orders (AJHR 2006, I.17A). Three years earlier the Privileges Committee had criticised New Zealand Post Limited for its apparent lack of understanding of its accountability obligations in providing misleading answers to a select committee (AJHR 2003, I.17B).

Although the plain English drafting style has continued, suggestions by the Clerk that the SOC modernise parliamentary jargon such as 'supplementary order paper'[63], 'notice of motion'[64], 'order paper'[65] or 'cognate bill'[66] were not agreed to (Submission 11/2016, p.34).[67]

Discussion

Effective rules for meetings facilitate the consideration of business in ways that reflect and support the culture and practice of the institution to which they belong. New Zealand's

[63] A published amendment to a bill that has not been a supplement to the Order Paper for decades.
[64] The text of a motion, published in the Order Paper.
[65] The agenda of the House.
[66] A bill that progresses through the House in conjunction with another bill.
[67] Changes to the jargon were agreed to in 2023, after the period of this study.

Standing Orders reflect a shifting balance between prescribing rules and rights and accommodating unwritten conventions and practices. With no established constitutional history of its own, the early colonial legislature imported Westminster practice. While it slowly adapted to local conditions, three developments moved New Zealand away from British practice. The first, the abolition of the Legislative Council, registered very little in the 1951 review of Standing Orders and was seldom mentioned subsequently. Nevertheless, it changed the New Zealand parliamentary landscape forever. The 1985 rewrite of the Standing Orders, on the basis of the fourth Labour government's manifesto for parliamentary reform, modernised many practices that had drifted and only been tinkered with in the preceding decades (Palmer, 2013, p.652). Although they built on some important changes in the 1960s and 1970s such as the greater use of select committees, they were revolutionary changes. The triennial review of Standing Orders with public and member and officer input became entrenched at this time. The next revolutionary change came a decade later and was driven exogenously by the change in electoral systems. The approach of MMP necessitated an entirely new approach to many long-established parliamentary practices. Proportionality rather than alternation became the governing principle, in the shift from a two-party system to a multi-party system. The Business Committee was established and would grow to take on a central role in the management of parliamentary business and the trialling of new procedures. In the years following, the automatic review of Standing Orders shortly before an election has become an important principle.

In New Zealand the changing of rules only by consensus has become institutionalised. The parties, through their representatives on the SOC, operate a collective veto. This tends to entrench the status quo unless there is strong support for change. It may, perhaps, explain why changes now originate from two main sources. The shared negative experiences of a particular procedure by members can be a strong driver for change. Where a rule or practice causes exceptional delay or appears manifestly unfair, members will often unite to address it. Changes to prevent amendments being used to drag out proceedings and to proxy voting rules fall into this category (see Chapter 5). The Clerk has had a greater role in proposing change, since 1988. This reflects the change in the role from heading a part-time secretariat to leading a permanent, professional organisation with the statutory independence to act in the interests of parliament.

The Standing Orders are a work in progress. The institutionalised triennial review brings with it a tacit understanding that something needs to be adjusted or improved at each review. Critics of the consensual approach say that it results in too little change, too late (Palmer, 2013, p.700; interview 15/8/2022). Reviews had been criticised previously as being "marked by their modesty of the proposals, complacency and reluctance of MPs to lift their eyes beyond existing Standing Orders" (Wood, 1983). However, there is a high level of policy stability in the Standing Orders. Newly-elected governments do not use their majority to alter the rules to their advantage, though no rule prevents them from doing so (C. Hipkins interview, 3/8/2022). It is now unheard-of for the majority to temporarily set aside the Standing Orders by resolution, even in the face of obstruction or legislative delay. The SOC very seldom recommends the reversal of earlier changes and new governments never overturn existing rules (T. Mallard interview, 21/9/2022). That is because the changes have broad support and because, for the past 20 years, they have often been trialled on a temporary basis before adoption. Parliamentary actors interviewed for this study were happy with an evolutionary and incremental approach because it is enduring (M. Turei interview, 18/8/2022) and helps keep the institution relevant to the public (Interviews C. Hipkins, 3/8/2022; P. Dunne, 5/9/2022; M. Harris, 20/4/2022). The consensual approach filters "superficially attractive, but fundamentally nutty, ideas" (P. Dunne interview, 5/9/2022) and ensures that changes are careful and deliberate (M. Harris interview, 20/4/2022).

There is still work to do. The Standing Orders are not widely understood or accessible to the public. While they have been largely written in plain English, they still use some ancient terminology. Interpretation of Standing Orders requires an understanding of the principles that underlie them and of the practices that operate alongside them. That is difficult for a submitter to a select committee, a new MP or a public servant. It may be that the professionalisation of administrative services supporting the House and its committees has made the interpretation of Standing Orders the preserve of the Speaker, clerks and a few interested MPs. In any case, the current approach to revising and updating them appears set to continue.

The review of practice and procedure has developed through a mix of drift, layering and displacement, when considered through the lens of Mahoney and Thelen's (2010) model for

understanding institutional change. The practice of Prime Ministers establishing an SOC when they felt it was warranted was displaced by routinely establishing one in each parliament. A regular, triennial review of the House's rules and practices was layered on top of this structure. Curiously, the making of submissions on the review of Standing Orders is an example of drift. The SOC started receiving unsolicited submissions in 1961 and, in 1984, made the calling for public submissions a routine part of its procedures. The consensus basis for decision-making has always been a feature of the SOC so it has not resulted from a rule change.

Chapter 4 – Management of House business

One of the main expressions of parliamentary autonomy is the ability of a legislature to set its own agenda (Palonen, 2016, p.197). Parliamentary business, in Westminster-derived legislatures, is often managed through the euphemistic 'usual channels', whereby the government essentially informs other parties of its intentions and engages in a limited degree of negotiation to give them opportunities to debate and propose business of their own (Russell & Paun, 2006). This reflects the Westminster norm of executive dominance of a legislature with limited autonomy. New Zealand, as part of its adaption to a proportionally elected parliament, married Westminster-style executive control of the legislature to cross-party agenda-setting for the House. The approach attempts to balance the government's capacity to implement its programme, with the role of the legislature to question, make laws and authorise spending. The tensions inherent in such a model are worth considering in light of benchmarks for democratic institutions which emphasise the value of autonomy from the executive in controlling business and setting timetables (Inter-Parliamentary Union [IPU], 2008; Russell & Paun 2006; CPA, 2016). In New Zealand an all-party business committee provides some access to decision making, and certainly to information, for all parties within a parliament and may better enable non-government members to participate in debate and advance legislative proposals (CPA, 2018; IPU, 2008).

Other important norms around managing parliamentary business include the protection of the rights of the minority in the legislature to ensure it has an opportunity to participate and propose alternatives (CPA, 2016). In addition, all parliamentarians and parliamentary staff are greatly assisted by transparent decision-making, where decisions are made public and the pattern of sittings is agreed in advance, rather than left in the hands of the government (Russell & Paun 2006; CPA, 2016).

This chapter examines the way that parliamentary business is managed in New Zealand. Particular developments of note are the introduction of an annual sitting programme to replace sporadic sittings at the initiative of the government and the use of an annual sitting calendar. The chapter tracks the gradual diminution of time spent on debate and the introduction of time limits for speeches. Most significantly, it details the development of the cross-party Business Committee and the central role it has come to play in arranging house and committee business. It considers the use of urgency as a tool for managing scare House

time and the introduction of extended sittings as a way of creating further sittings hours without hastening the legislative process. Finally, it assesses the changes against Mahoney and Thelen's (2010) framework for understanding institutional change.

Sitting calendar

The sitting pattern of the House was largely unchanged from the start of the period of this study until 1985. Generally, it sat in the second half of each year, with few breaks. In December the session of parliament was prorogued[68] until May or June of the following year. Short adjournments of the House during the session were uncommon (Halligan, 1980, pp.131-134) and the sitting pattern of the House was entirely in the hands of the Prime Minister, who was Leader of the House. This gave the Executive significant control and enabled it to operate for almost half of the parliamentary term without any parliamentary scrutiny.[69] The orthodox view was expressed by Rex Mason (L) in 1962:

> everyone must recognise that the actual details of the arrangements must lie in the hands of the Prime Minister. He has a sessional programme, but as long as the members receive notice of what he proposes to do, and make their arrangements accordingly, it should work out well (NZPD 330, 1962, p.27).

A decade later that view had changed among some members and Jonathan Hunt (L) expressed his view that "one of the worst features of our current parliamentary procedure is that we have no set timetable", unlike Australia. He proposed a three-day sitting week for three weeks a month with regular adjournments to allow for select committee work (NZPD 378, 1972, p.46). Members called for regular adjournments (NZPD 378, 1972, p.54), particularly to enable select committees to meet without competing with the House for members' time. Hunt introduced a private members' bill in 1976 to require the Parliament to be summoned within 90 days of the return of the writs after a general election, in attempt to regularise sittings of the House (Electoral Amendment Bill 32-1). There was, at the time, no express obligation on the Governor-General to summon a new parliament to meet by a particular time, except in the case of a proclamation of emergency. The usual practice was to allow four or five months to elapse before Parliament met (Harris & Wilson,

[68] Prorogation ends a session of a parliament. Typically, New Zealand parliaments had one session each year. Since 1993 parliaments have had a single session, lasting for their entire duration.
[69] Between 1952 and 1978, 18 of the 28 parliamentary sessions commenced in May or June.

2017, p.142).[70] The bill was opposed by the government and ruled out of order by the Speaker because it required the appropriation of public money; something that only the government could do at that time.

In 1979 Ralph Maxwell (L) introduced a private members' bill to require the House to sit from mid-February each year, provide for regular adjournment, establish three-week blocks of sittings, prevent the House sitting beyond midnight and to require the house to be broadcast any time it sat (Reform of Parliament Bill, 74-1). The Government opposed the bill, with Leader of the House David Thomson (N) remarking "Opposition members think that Parliament should run the country. God forbid!" (NZPD 425, 1979, p.2792). The opposition intended the bill to curb the power of the Executive and to make Parliament more accessible and relevant. It was to introduce "a system that can wrench itself away from the farming calendar of New Zealand" and guard against hasty legislation (NZPD 425, 1979, pp.2794-2795) by preventing the House sitting for long hours in a few months of the year. Jonathan Hunt (L) asked "The Australian House of Representatives knows the days on which it will sit between now and next June. Why does the Leader of the House have to determine secretly on which day Parliament will begin and end?" (NZPD 425, 1979, p.2797). Eric Holland (N) argued against reforming Parliament by legislation stating "that is too inflexible. The proper way to bring about reform is through the Standing Orders" (NZPD 425, 1979, p.2802). The motion to refer the bill to the Standing Orders Committee (SOC) was defeated and so the bill did not progress (NZPD 425, 1979, p.2807). However, it foreshadowed some of the changes to the pattern of sittings that the Labour Party would introduce when it was next in government (Palmer, 2013, p.654).

In the 1978 election Labour had promised a 15-step reform of parliament, including a revised timetable (Martin, 2004, p.285). Having criticised the last review of Standing Orders as "timid, frightened, archaic and conservative" (NZPD 428, 1979, p.4818) the Labour Party signalled its interest in introducing sweeping parliamentary reforms. When it was able to implement its manifesto in 1985, the new Standing Orders included a sitting pattern that spanned most of the year, with regular adjournments to enable select committees to meet for longer. The annual sitting calendar was determined by the government but it was

[70] Section 19 of the Constitution Act 1986 now requires parliament to be summoned to meet within six weeks of the date for the return of the writ.

circulated to all members so they could plan their time and travel accordingly. The House has retained a predetermined sitting calendar ever since then. However, from 1996, it was set by the Business Committee and recommended in a report to the House near the end of the prior year.

Sitting hours

The current sitting hours of the House were set in place shortly before the period that is the focus of this study, pre-dating the period of two-party dominance that commenced after the 1935 election. In 1928 Prime Minister Joseph Ward (Lib) activated the SOC days after the commencement of the 23rd . His motion establishing the committee instructed it to "consider such amendment of the procedure and Standing Orders of this House as will facilitate the despatch of business" but he elaborated in a short speech that made it clear:

> He was moving to appoint the Committee with the object of seeing whether it would not be possible to arrange for daylight sittings of Parliament. It would, he believed, be a good thing for the country if that were done (NZPD 220, 1928, pp.163-4).[71]

Ward (Lib) had long agitated for daytime sittings and, at the start of his second premiership, saw his chance (Martin, 2003, p.191). The SOC's brief report recommended changes to sitting hours under which the House would commence at 2.30pm each sitting day and adjourn at 10.30pm, except on Friday when it would adjourn at 5.30pm to allow most members to return home for the weekend (AJHR 1929, I.18, pp.1-2).

There has always been a tension between members' parliamentary responsibilities and their electorate responsibilities. Time spent in Wellington is time away from constituents for most members. One of the areas in which this tension was most visible was in the approach to Friday sittings of the House. These were reduced incrementally to enable members to spend more time in their electorates. In 1962 the Standing Orders were amended to reflect the practice of adopting a sessional order to conclude at 4pm "to meet the convenience of members" (Memo from the Clerk 1/3/1962). Labour members unsuccessfully promoted the abolition of Friday sittings in 1972, when in opposition (NZPD 378, 1972, p.46). In 1974 the House began to adjourn at 1pm on Fridays, reflecting a mood among newer members that

[71] Hansard was written in the third person at the time.

the sitting hours were too demanding (*Otago Daily Times*, 10/12/1973; *Evening Post*, 7/11/1974). In 1985 Friday was removed entirely as a sitting day, to enable members to return to their electorates, but sitting times were extended by an hour each day (NZPD 464, 1985, p.5603).[72] The change reflected members' views that they were much busier than they had been 20 years earlier (NZPD 464, 1985, p.5849). Other measures also aimed to make the most of the time available for parliamentary business. The default time for speeches was reduced from 20 minutes to 10 minutes (AJHR 1985, I.14, p.14). Reports would now be presented to the House by delivering them to the Clerk, rather than reading them out in the House, to save time (AJHR 1985, I.14, p.22).

In 1998 the SOC addressed, through an interim report, the time pressures that still confronted the House and the demands on time for members from a growing select committee workload. Having only Wednesday morning each week dedicated to select committee meetings had proved impractical. Some members were on more than one committee, generally to preserve the government majority on each, and could not regularly attend all meetings. Committees could also sit for up to three additional hours each week on another day. Busy committees inevitably chose Thursday morning, which clashed with the sitting of the House. The SOC received submissions from the Commerce (21/5/97), Primary Production (13/8/1997), Education and Science (26/6/1997 and Finance and Expenditure (13/11/1997) committees, as well as from the ACT Party (9/2/1998), Federated Farmers (7/7/1998) and the whips of all parties (28/7/1998) expressing dissatisfaction with the situation and recommending a variety of remedies. Submissions from the Alliance (undated), PSA (28/7/1997) and the Parliamentary Service Family Friendly Network (4/9/1997) expressed concern at the House sitting until 10pm two nights a week, to the detriment of members and staff. However, that was the preferred solution among most members (Minutes, 2/12/1998), though not of New Zealand First or the Alliance (Minutes, 23/9/1998).[73] The sitting pattern of the House was altered so that it sat on Tuesday evenings instead, leaving Thursday mornings free for select committees (AJHR 1998, I.18A, p.1). The fact that the demands of committee work led to an enduring change in the sitting times of the House reflects the conflicting demands on members' time and the way that

[72] Current sitting hours are 2pm until 10pm on Tuesday and Wednesday and 2pm until 5pm on Thursday.
[73] No party voted against the proposal but the Alliance formally recorded its opposition in the minutes (2/12/1998)

committees had grown in prominence since 1979. This alteration was made by way of a sessional order and then adopted as a permanent rule in 1999 when the SOC confirmed that it considerably eased the problem (AJHR 1999, I.18B, p.7).

The new sitting hours reduced the time available to the House by 30 minutes a week. To address this, the SOC reviewed and reduced times for most financial debates, from a total of 55 hours to 40 hours (AJHR 1998, I.18A, pp.7-8). The time saving continued in the committee's main report in 1999. It recommended a mechanism for removing items from the order paper by advising the Clerk, rather than by moving a debatable motion in the House (AJHR 1999, I.18B, p.9), after it was raised for consideration by the Clerk, David McGee (Submission 2/1998). This was part of a pattern of delegating to the Clerk things that had occupied significant House time and were better dealt with administratively than on the floor of the House such as scrutinising motions and questions, receiving papers, petitions, bills and reports and correcting minor errors in bills before Royal assent.[74]

Ending debate and closure

Originally, debates had no time limit and could continue until every member had spoken, though it was rare that they would all do so. A possible method for limiting the length of debates was the closure, a motion which ends a debate immediately if agreed. The closure procedure had been introduced in the United Kingdom in 1882 to combat obstruction of government business in the House of Commons (Lee, 2021) and in Canada in 1913 (C. Robert, personal communication 12/8/2022). In New Zealand, the idea was rejected by a majority of the 1929 SOC, which proposed a reduction in the length of speeches "with a view to avoiding, if possible, the application of the principle of the closure" (AJHR 1929, I.18, p.1). The matter was debated in the House's consideration of the committee's report. The Leader of the Opposition, Gordon Coates (R) "failed to see how the proposed Standing Orders would be workable" without the application of the closure (NZPD 221, 1929, p.876). It became clear that the closure was favoured by Coates' Reform Party but that it was in a minority on the SOC and in the House (NZPD 221, 1929, pp.876-878).

[74] The Clerk certifies that each bill they present to the Governor-General is an authentic copy of the one passed by the House.

Since the government would not budge on the issue of closure, it received relatively little attention until 1931, when it was introduced on the motion of Prime Minister George Forbes (U) to end a filibuster on a Finance Bill (JHR 1932, p.11). The bill was a response to the Great Depression and proposed reductions in public expenditure; notably, on the salaries of public servants. The Labour Party opposed the bill and delayed its passage by two weeks of long sittings under urgency "by using almost every device allowed under the Standing Orders (Hall, 1950, Chapter 14, p.5). On 27 March, Forbes gave notice that he intended to move a motion to amend the Standing Orders by providing for closures. The motion had been drafted by the government, based partly on the House of Commons' procedure and partly on a South African model. Curiously, Speaker Statham and Clerk Thomas Hall had opted not to involve themselves in the preparation of the motion because it was so controversial (Hall, 1950, Chapter 14, p.5). The motion was debated the following day with the Prime Minister Forbes (U) making it clear that the new standing order was a response to the current stonewall:

> I exceedingly regret that honourable members were not able to enter into the discussions in the House in a reasonable spirit, which the members of the Standing Orders Committee expected would be the case. It was then thought that there would be an end to what would be called a prolonged obstruction. However, that was not so, and it shows that under the test the business cannot be put through without the motion I am proposing. I would like to say that the contemplated alteration in the Standing Orders is nothing new. All the dominion Parliaments, with the exception of New Zealand, have the power to close debates, I have always been proud of the fact that our Parliament has been able to get along with that spirit of sweet reasonableness which has always been characteristic of the members of this House but… when we come down to a session of this sort, which is the most urgent in the history of this country, we cannot afford to have all this fiddling while Rome is burning. We have to get down to business (NZPD 227, 1931, pp.546-547).

Harry Holland (L) reminded the House that:

> …this matter of the closure was discussed from every angle by the Standing Orders Committee. We had before us extracts from the Standing Orders of the different Parliaments of the Empire, and among the members of the Committee there was a

> consensus of opinion against adopting the closure. The Prime Minister knows that the Standing Orders Committee was wholly against the closure as part of the procedure of this Parliament (NZPD 227, 1931, p.550).

Despite the opposition of Labour members, after some 16 hours of debate the new standing order was adopted by 48 votes to 21. The *Evening Post* acknowledged that the rule was necessary "to safeguard against obstructive tactics by a minority" (28/3/1931, p.8) while the *Evening Star* opined that "responsibility must rest with the obstructors who make it necessary" (30/3/1931, p.8). The provision for closure ended with the dissolution of the 23rd parliament but Forbes renewed it with a fresh motion following the 1932 election, this time without a sunset provision (Wilson, 2023a). The Labour government that came to power in 1935, did not repeal the provision for closure and was noted to have used it extensively (Hall 1950, chapter 14, p.5). Closure has remained in the Standing Orders ever since, though it is usually only resorted to in committee of the whole House consideration of bills because most other debates now have a time limit.[75]

The parliamentary jurisprudence governing the use of closures was established by Speaker Statham (I) shortly after its introduction. His rulings in relation to closure on the Meat-export Control Amendment Bill[76] in 1931 endure today and have been the basis of more recent rulings. He established that the Speaker and the chairperson in committee of the whole House have discretion about whether to accept a closure motion and that they should not do so if it was oppressive of the minority in the House (NZPD 228, 1931, pp.725 & 941) or if it infringed the rules of the House (NZPD 228, 1931, pp.24 & 34).

Although the 1951 SOC reported that it had only "slightly modified" the procedure for closure it did, in fact, recommend some important and enduring changes (AJHR 1951, I.17, p.2). The procedure was put in place on the motion of the Prime Minister in 1931 and, consequently, had only appeared as an addendum to Standing Orders. It was amended by removing the ability to interrupt a member's speech to move a closure and by requiring the Speaker to permit the motion only if they judged that it was not an abuse of the rules of the House or an infringement of the rights of the minority, as Speaker Statham had earlier ruled.

[75] A closure may not be moved if a debate has a time limit set by Standing Orders or the Business Committee.
[76] A private members bill to alter the way the Meat Export Control Board was appointed, introduced by Douglas Lysnar (R).

Reflecting the challenging and sensitive nature of the judgement required on this latter point, the closure could only be moved if the Speaker or Chairman of Committees was presiding (SO 1951, 197; Hall 1950, Chapter 14).

Use of the closure peaked in 1961, when the National government moved it successfully on 31 occasions, often under urgency, to pass contentious legislation such as the International Finance Agreements Bill[77], the Industrial Conciliation and Arbitration Amendment Bill[78] and the National Military Service Bill.[79] The use of the closure waned over the middle years of the second National government but built up again to be used 30 times in 1970 and 25 times in 1971 (JHR 1961-1972). The Clerk Eric Roussell tried, unsuccessfully, to persuade the SOC to adopt a 'guillotine' procedure to enable the House to set the maximum length of individual debates, as an alternative to closure (Martin, 2004, p.279).

The rule about who could accept a closure was considered again in 1972 (AJHR 1972, I.19, p.8) and changed in 1974 to enable the newly created positions of Deputy Speaker and Deputy Chairman of Committees to accept the closure (AJHR 1974, I.14, p.5). This change caused some contention because, by custom, the Deputy Chairmen were government whips with a vested interest in progressing government business as quickly as possible (NZPD 395, 1974, p.5751). Closures did not receive much additional attention from the House. In 1985, the SOC reported "the view is expressed that closure motions should not be accepted too readily" but it did not recommend any formal changes (AJHR 1985, I.14, p.14). Geoffrey Palmer (L) emphasised that there had been no substantive change to the rule and expressed some pride in the fact that New Zealand did not have a mechanism for a guillotine motion, explaining:

> We are unusual in that, because Canada, Australia and the United Kingdom all have guillotine motions available to the Government to force measures through the House at great speed. We have a closure motion. Of course, we have no upper

[77] The International Finance Agreements Bill made provision for New Zealand to become a member of the International Monetary Fund (IMF).
[78] The Industrial Conciliation and Arbitration Amendment Bill removed the presumption of compulsory unionism, though industries could still opt into compulsory unionism.
[79] The National Military Service Bill required men to register for a ballot for compulsory military training at age 20, at a time when conscription was falling out of favour.

> House as those other countries do, and it is particularly important that we do not hurry matters too much (NZPD 464, 1985, p.5906).

The 1990 report of the SOC remarked that presiding officers "should not be required to rehearse, at length, the reasons for the decision" to accept or decline a closure motion. This remark was not accompanied by any changes to Standing Orders and was, primarily, intended to save time by avoiding lengthy points of order, rather than to reinforce the authority of the presiding officers (AJHR 1990, I.18B, p.19). Since 1996, the Business Committee has been able to set time limits for debates so it is unlikely that a guillotine procedure will be adopted for the House.

Time limit for debate

In the review of Standing Orders that followed the abolition of the Legislative Council, the primary change recommended was the insertion of a delay between the committee of the whole House stage and third reading stage of a bill. Previously, bills originating in the lower house had been referred to the upper house for consideration before third reading. That gave time for the bill to be re-printed with any amendments and for members to consider the bill, prior to the vote on passing it (NZPD 294, 1951, p.10). The SOC invited the Clerk Thomas Hall to re-cast the relevant standing orders and the new version required that a bill be set down for third reading on "a future day" (Minutes of the SOC, 30/5/1951; SO 1951, 238). The proposal was generally supported but Arthur Osborne (L) lamented that it disadvantaged private members bills because they had a limited number of days available to them when compared with government bills. He preferred the system of "the old days" where "it went through the third reading and final stages immediately, but now, because of the absence of the Upper House, there would be further consideration on another day" (NZPD 296, 1951, pp.8-9). Prime Minister Sidney Holland (N), attempted to reassure members that "the person who happened to be Prime Minister and in charge of the House would have complete control of the situation" and "while he had anything to do with the control of proceedings he would see that private members got a reasonable run with their bills" (NZPD 294, 1951, p.9). An appeal to the goodwill of the government of the day was a common theme of the time, essentially relying on the honour of the Prime Minister to preserve the rights of all members. It does not feature in debates from 1975 onwards, possibly reflecting the more combative and competitive approach taken by the last Prime

Minister to also be Leader of the House, Robert Muldoon (N) (Henderson, 1980; Roberts, 1976; Levine, 1977; Gustafson, 2000, p.470). This is an interesting cultural change in the parliament and a reflection of the influence on House norms of single-party majority government.

In 1962 the SOC returned to the delay that had been built into proceedings between the committee stage and third reading in 1951 in response to the abolition of the Legislative Council. It commented that the delay in passing government bills was desirable and should be retained but that private members ought to able to proceed with their bills to third reading immediately, if they had not been amended by the committee of the whole House. The proposed change reflected concerns raised about slowing the legislative process for private members' bills in 1951, since they had little legislative time relative to the government (NZPD 296, 1951, pp.8-9), as Arthur Osborne (L) had predicted. Rex Mason (L)[80] had taken a keen interest in this provision and his advocacy for amending it was acknowledged by the Prime Minister (NZPD 330, 1962, pp.69-70). However, the new standing order recommended by the committee did not specify that it excluded government bills (AJHR 1962, I.17, p.26), as was agreed. An amendment was suggested during the debate on the committee's report. Speaker Algie cautioned that in "redrafting a rule by rapid amendment we will create more difficulties than we solve" (NZPD 330, 1962, pp.69-70). Members were not persuaded, and the Leader of the Opposition indicated that he was satisfied with the amendment if the Prime Minister was. The amendment was agreed to (NZPD 330, 1962, p.71).

In 1950 the SOC considered at length time limits for speeches and discussed the setting of time limits for debates, because of the "continuous growth of the business of the House" (Hall, 1950. Chapter 13, p.4). Members had, in fact, seen a sharp growth in the sitting hours of the House in the decade leading up to the review, with average annual sitting hours increasing from 342 to 797 over the 20-year period (JHR, 1970, p. 628). The committee recommended a default time limit of 30 minutes for any speech, unless otherwise specified (NZPD 294, 1951, p.22). It also agreed "it should be a matter of arrangement between leaders of parties to set aside a definite time for certain debates to run" (AJHR 1951, I.17,

[80] Mason is the longest-serving MP to date, having been in office continuously for 40 years.

p.3). The committee recommended that the time limits for speeches in some debates be shortened and 30 minutes became the standard speaking time for each member. It also proposed that an extension to speaking time could be no more than 50 per cent of the original time (AJHR 1951, I.17, p.3). Extensions of time have now fallen into disuse, as the Business Committee has played a growing role in arranging debates.

The 1962 review of Standing Orders further reduced default speaking times in debates from 30 minutes to 20 minutes. The SOC considered trends in overseas parliaments towards shorter speeches and advised "that some reductions in time limits of speech are desirable and that the provision of additional opportunities for members to address the House as suggested elsewhere in this report such reductions can be made without unduly restricting their rights of speech" (AJHR, 1962, I.17, pp.11-13). The ongoing truncation of speaking time reflected the mounting pressure on governments to progress legislation as a consequence of "the gradual extension of State activities" (AJHR 1962, I.17, p.18). A proposal by Labour members to extend some speaking times was rejected in 1968 (AJHR 1968, I.14, p.15; NZPD 355, 1968, pp.120-122). Government members were also opposed to reducing some speaking times (Memo from the Clerk 24/4/1968). While some members felt that the shorter speaking time "restricted the rights of the ordinary member" others thought that "most members who have a case of real importance to make find that 20 minutes is enough" (NZPD 355, 1968, p.115). Now speaking times are usually limited to no more than 10 minutes in most debates.

The whips' committee

In 1972, the SOC suggested that time could be saved on many stages of debate but preferred to create a mechanism for setting the total length of debates rather than reducing the speaking time for individual members (AJHR 1972, I.19, p.10). It proposed the creation of a whips' committee, convened by the chief government whip which could determine the time allocated for any debate. Such agreements would be reflected on the order paper, which would make them official and unalterable, except by the leave of the House. The whips would then allocate speaking time among their own members, instead of the Speaker and Clerk doing it (McRae, 1992, p.141). Where agreement could not be reached, the time limit for the debate set out in Standing Orders would prevail. This proposal was to make official the existing informal arrangements between whips (NZPD 378, 1972, p.48).

In debating the recommendations, Prime Minister Jack Marshall (N), expressed hope that the whips' committee would be successful and said it would "require considerable cooperation between the whips and between members on both sides of the House" (NZPD 378, 1972, p.44). Norman Kirk (L), the Leader of the Opposition, also endorsed the idea of a whips' committee, particularly for the flexibility it would bring in speaking times and total debate length (NZPD 378, 1972, p.52). Henry May (L) hoped that the opposition would not be "crucified by the press for agreeing to shorten a debate" after the House had been "hammered from time to time by the press to reorganise our structures" (NZPD 378, 1972, p.457). The power of the whips' committee to set times for debates on the second and third readings of bills and on select committee reports was reflected in the Standing Orders (SO 1973, 230, 247 & 349).

Jack Marshall (N), in endorsing the whips' committee, indicated that, if the House was able to make "expeditious progress" he would be willing to schedule regular recesses (NZPD 378, 1972, pp.42-43). The whips' committee was initially successful but it fell into abeyance as parliamentary conflict intensified after Robert Muldoon (N) became Prime Minister in 1975 (Martin, 2004, p.274). The Leader of the Opposition, Bill Rowling (L), twice complained in 1976 about the standard of conduct in Parliament and asked for the SOC to be convened, with the power to hear public submissions (NZPD 407, 1976, pp.3851-3852; NZPD 408, 1976, pp.4787-4789). Prime Minister Muldoon replied that the conduct of parliament was a "two-way street" and that "the standing orders had never had any particular effect on the conduct of Parliament" (NZPD 407, 1976, p.3852). The committee did not report again until 1979, when it observed that the whips' committee:

> worked reasonably well until 1974, but from 1975 onwards it has scarcely been used. The Committee considered whether the Whips' Committee should be invited to resume its functions. Some members felt that on the contrary the references to the Whips and the allocation of functions to them in the Standing Orders was undesirable – that the references should be deleted from the Standing Orders (AJHR 1979, I.14, p.14).

A motion to this effect, moved in the committee but defeated, reflected the level of division over the subject. Prime Minister Muldoon (N) blamed the opposition whips for the failure of the whips' committee:

> When a Whip makes an arrangement and says, for example, that he has one speaker on a Bill, but several members speak on the Bill… I wonder whether there should be some kind of Standing Order that covers such a matter, and states that an arrangement made by a Whip is binding. It cannot be done this time, because the committee did not report accordingly. I know that the Government Whips have reported to me, not once but several times, that they have made a certain arrangement across the House, but that it has been broken (NZPD 428, 1979, pp.4814-4815).

The decline of the whips' committee was complete when references to it were removed from Standing Orders and whips were specifically prohibited from presiding in committee of the whole House (SO 1986, 37). Cooperation between parties did not cease to be useful to the management of House business and the 1990 SOC report encouraged the resumption of the "past practice of Whips agreeing debate times and them being reflected on the Order Paper" (AJHR 1990, I.18B, p.19).

The Business Committee

A short-lived Business Committee was established in 1985 but its sole role was to administer the new select committee system. It had the power to resolve conflicts over which committee would carry out an inquiry; change membership of select committees; monitor the workload of committees; and issue guidelines for committee procedure (AJHR 1985, I.14, p.36; SO 1986, 321). It issued a comprehensive set of guidelines for select committee chairs in 1987, which provided detailed explanations of standing orders and step-by-step guides for presiding over different types of business (Business Committee, 1987).

By 1992, the Business Committee's role had diminished, and it did nothing apart from call the first meetings of select committees in the 43rd Parliament. The SOC recommended that the functions of the Business Committee be brought within its own role and that of the presiding officers. In future, the SOC could review the workload of committees and issue guidance on their procedures. The Speaker would appoint first meeting times, resolve conflicts over committee jurisdictions and delegate to other members responsibility for making changes in committee membership (AJHR 1992, I.18B, pp.30-31).

The most important change to the management of House business was made in 1995 with the introduction of a new Business Committee. Unlike the ill-fated body that last bore the name, the Committee was given substantial power and influence, and both have grown over time. It had its origins in the lead-up to MMP, when the SOC considered how to arrange the business of the House more effectively in a multi-party parliament. The 1995 Standing Orders would be the first to recognise political parties, rather than simply a government and opposition (AJHR I.18A, p.15). This was an interesting development considering that parties had occupied a central place in New Zealand politics for more than a century (Wilson, 2023, p.53).

The SOC examined the operation of the legislatures of Ireland, the Netherlands, Denmark, Germany and Norway which had formal or de facto parliamentary committees to manage parliamentary business (AJHR, I.18A, pp.260-261). The resulting Business Committee recommended for New Zealand drew on some of the characteristics of overseas examples, including the Speaker chairing the committee[81] and the government whip or House leader setting out the proposed business[82] for agreement. The main tasks of the committee were - to:

- determine the order of business and the time spent on it;
- select and recommend to the House membership of select committees; and
- recommend an annual House sitting programme.

The initial proposal put to the SOC was for a Business Committee representing all parties and independent members on which the Speaker would make the final determination on any matter for which there was no consensus (Submission of the Clerk 9/1994). However, the SOC early in its consideration determined that membership would extend to every party with six or more members, while others could attend as observers. The committee would operate by consensus "wherever possible" but "near-unanimity", determined by the Speaker, would be the minimum level of agreement needed for decision-making (Memo from the Clerk 17/11/1994). The preference for near-unanimity was to prevent a small party from being able to "thwart the overwhelming majority of the House". However, the Speaker

[81] A presiding officer chaired the committees in the Netherlands, Denmark, Norway and Germany.
[82] In Ireland, the Netherlands the whips took a leading role and in the other parliaments consulted, whips or party leaders were consulted.

was also required to ensure that near-unanimous decisions did not discriminate against or oppress minority parties (AJHR 1995, I.18A, pp.20-21) and the SOC later observed that "it would be unusual for near-unanimity to be reached in the face of opposition from a number of smaller parties" (AJHR 2011, I.18B, p.9). There continued to be a default time provided for debates, to fall back on where agreement was not possible (Salt, 1996), and, in keeping with New Zealand's Westminster roots supporting the primacy of the elected majority, the government would still have the choice of "ploughing on" in the absence of Business Committee agreement (AJHR 1995, I.18A, p.21).

While the powers of the Business Committee did not, at first, appear momentous, they represented a substantial shifting of power in determining parliamentary business away from the Executive (Martin, 2004, p.325). This was a core role of the executive and, on occasion, a weapon with which to surprise the opposition. The reliance on assurances by the Prime Minister or Leader of the House to ensure individual members and other parties would have ample speaking time were replaced by a multi-party committee not controlled by the government of the day. While the parties of government would retain the initiative in proposing most House business, they had only the same rights as other parties in the committee and their majority counted for little where near-unanimity was the required standard for decision-making. While a government could choose to proceed without the agreement of the Business Committee, substantial time-savings and considerable goodwill could be achieved by co-operation.

In debate on the proposed establishment of the Business Committee, Michael Cullen (L) encapsulated the intent behind it:

> In the past, the actual arrangement of parliamentary business has been very much a Government dictatorship whereby the Government seeks to force its business through. The new arrangement will require consensual management of the House. I have always argued that one will not see consensual decision-making---that is a rather different thing. But the management of the House is a different matter. The decision on this matter should be a consensual one that brings all parties into the business of deciding how best to run the House. That, of course, has then to be a two-way thing. Opposition parties will have to get used to a different mind-set, in which dying lengthily in the ditch is not always the only activity in which Oppositions

> can engage. If that is the maintained mind-set of Opposition parties, then consensual management under an orderly business arrangement will in fact not be possible... (NZPD 552, 1995, p.10805)

Members clearly saw considerable value in the Business Committee and began to meet informally as a sort of proto-committee before officially coming into existence (Memo from the Clerk, 14/2/1996 & 19/2/1996 in BC Minutes).[83] The Government's Initial concerns at the extent and nature of the committee powers were soon assuaged by the way it operated (Interviews D. McKinnon, 18/5/2022; D. McGee, 21/4/2022; M. Harris, 20/4/2022). At its early meetings, the committee placed on record that any member of Parliament could attend its meetings and agreed to provide papers to regular attendees who were not members of the committee (Minutes of the Business Committee, 20/2/1996).[84] While early meetings were brief (usually no more than 10 minutes) they addressed matters such as amendments needed to Standing Orders (BC Minutes, 16/4/1996) and the system for approving draft Hansard (BC Minutes, 23/4/1996). Later, it became a forum for discussing matters such as the procedure for urgent debates and supplementary questions (BC Minutes, 16/6/2003).

The Business Committee was given other tasks, in keeping with its role as the "House's executive" (AJHR 1995, I.18A, p.20). In addition to determining the length of debates, it could determine their form by deciding how the committee of the whole House would be conducted and whether it would be held at all (AJHR 1995, I.18A, p.56). Crucially, it would agree the roster for oral questions; allocating them to parties in proportion to the seats held in the House but excluding the Executive from the calculation for government parties (AJHR 1995, I.18A, p.75).

Somewhat unusually, the committee was also to ration drafting services for members' bills[85] (AJHR, 1995, I.18A, p.58). The SOC noted that members' bills had become a "growth industry" and supported the Clerk David McGee in establishing a drafting service separate from the Parliamentary Counsel Office, a department of the Executive which drafted

[83] The informal meetings included the Speaker, Leader of the House, leaders of small parties, party whips and the Clerk.
[84] Any MP can attend a meeting of any committee but they can only participate in the meeting with the unanimous agreement of the committee members.
[85] Called 'private members bills' until 1995 when the name was changed to reduce confusion with private bills.

government bills. The SOC was asked to consider whether the rationing should be done by ballot or whether the Business Committee should authorise the drafting of bills from an allocation available to each party (Submission of the Clerk, 10/1994, p.7). It chose the latter option, with the intention of insulating the Clerk from an impossible workload or from having to favour one party over that of another, which could undermine the non-partisan nature of the role.[86] There is no evidence in the minutes of the Business Committee that it ever made any rationing decisions, though it was informed of communications from the Clerk to all members about bill drafting (BC Minutes, 16/3/1999). This function was not written in Standing Orders and appears to have been forgotten.

The new powers of the Business Committee took some adjustment for members. Jim Anderton (All) complained, on a point of order, that the committee had not given his party a fair share of oral questions. Former Prime Minister David Lange (L) agreed that "the mysterious Business Committee has done all sorts of things, apparently now formally, whereas it hitherto did things informally" but Speaker Tapsell (L) replied "I take to heart the point the member makes, but under the new rules the Business Committee is entitled to make that decision and has made it" (NZPD 553, 1995, p.10963).

After only a year of operation, the Business Committee was given the task of improving the financial review debate, which was considered "not satisfactory" because it did not focus on particular government entities. The committee would nominate entities to be debated to enable a more coordinated approach from members and responsible ministers. It began to do so immediately (BC Minutes, 6/5/1997 & 13/5/1997). It was also encouraged to use its power to arrange debates to extend second readings on members bills where there was a high level of member interest (AJHR 1996, I.18B, pp.7-8). This did not occur and the impetus behind the suggestion abated in 1999 with the recommendation that second readings of members bills be of the same duration as those of all other bills (AJHR 1999, I.18B, p.24).

In 1998 a panel of former Speakers recorded its approval of the work of the Business Committee but suggested that it return to the 1972 proposal of allocating total time to debates as a preferable alternative to setting individual speaking times:

[86] No such rationing is carried out by the Business Committee today. The Clerk employs a team of legislative counsel who draft members' bills and manages the allocation of this work.

> … the Business Committee has made some worthwhile innovation to the organisation of business in the House. We suggest the Committee consider allocating time for debate on the basis of the total amount of time for a particular topic instead of setting the limit on the time any one member may speak. Currently, members typically get no more than 10 minutes, and the occasions on which they may be allocated time are infrequent. This does not encourage debate of depth and coherence (Harrison, Gray &Tapsell, 1998, p.21).

The committee's first years of operation were not without conflict. The Green Party found that it was not listened to and opted to apply public pressure to the committee on contentious issues (M. Turei interview, 18/8/2022). This, inevitably, led to distrust by the larger parties (Interviews D. McKinnon, 18/5/2022 & L. Smith 23/5/2022). Another small party had a different experience and found that raising concerns would sometimes find that others had similar opinions (P. Dunne interview, 5/9/2022). There was general agreement among every person interviewed for this study that the committee was better than informal whips' agreements.

The powers of the Business Committee continued to be extended as it was observed to operate successfully (AJHR 1999, I.18B, p.9). In 1999 it was given authority to determine select committee membership in addition to its existing power to alter membership, at the suggestion of the Clerk David McGee (Submission 2/1998). Until that point the House had determined membership and this could be a long, unwieldy process requiring every allocation to be finalised for a notice of motion, which was then debated. The cumbersome nature of this process was highlighted following the first MMP election. Committees were not able to be established until March 1997, three months after the commencement of the parliament and well into the time in which they would normally be conducting annual financial scrutiny.[87] The debate on the allocation of select committee places was lengthy and acrimonious (AJHR 1999, I.18B, p. 15). McGee observed that the process was pointless because of the ability for the Business Committee to change membership (Submission,

[87] The late start for the parliament was a result of protracted coalition negotiations.

2/1998) and so the Business Committee was given sole responsibility for determining membership.[88]

In 2003 the power to determine the size of committees was delegated to the Business Committee, rather than being set out in Standing Orders (AJHR 2003, I.18B, p.26). Official recognition was given to the practice that had "evolved" for members of small parties not represented on committees to be afforded status as non-voting members (see for example NZPD 608, 2003, p.5163). The power to do so was given to the Business Committee, at the suggestion of Clerk David McGee (Submission 5/2003) rather than requiring leave of the House each time. The Business Committee was warned by the SOC to be judicious in making such appointments because "an increased capacity to participate fully in select committees is a tangible reward for parties that win more seats" (AJHR 2003, I.18B, p.27).

A practice developed in the Business Committee during the 45th parliament of agreeing extensions to deadlines for select committees reporting on private, local and members' bills and then formally giving effect to the agreement by leave of the House (Minutes of the Business Committee 24/6/1997). The committee already had authority to extend deadlines for government bills but not for other types of bill because "the SOC in 1995, without any experience at that time of how the Business Committee would work in practice, was not prepared to concede it this power" (AJHR 1999, I.18B, p.26). The Clerk, David McGee, recommended the removal of the "unnecessary complication of having different procedures for bills of the same type" (Submission 5/2003). This would become the pattern for many changes to the role of the Business Committee. It was the one place that all parties gathered each week to discuss parliamentary business and it became a forum for conferring on matters outside its official mandate. In several instances, alternative practices were discussed in the Business Committee and then trialled before being reflected in Standing Orders. This enabled members to test the operation of new procedures to their satisfaction before making them permanent rules, which are difficult to later undo because of the consensus approach to rule-making.

[88] The Business Committee, while powerful, is a still a creature of the House, which can overrule it and could make select committee appointments. It has not done so since 1999.

In 2003, the power to grant extensions was stretched further so that the Business Committee could extend reporting dates for any committee business, even when they were set by the House (AJHR 2003, I.18B, p.61). This change was suggested by Clerk David McGee (Submission 5/2003) and ended the necessity of occupying House time with such matters.[89]

In 2011, as part of a comprehensive reform of the management of parliamentary business initially suggested by Clerk Mary Harris (Submission 10/5/2011), the Business Committee was empowered to allow committees to meet at times otherwise prohibited by Standing Orders.[90] It was also able to set the time for committee reports, rather than just extend them. The intention was to encourage members in charge of bills to negotiate such arrangements with parties through the Business Committee (AJHR 2011, I.18B, pp.41-42). In practice, to date, it has tended to be select committees themselves that have approached the Business Committee to make such arrangements.

In 2008 the power of the Business Committee to determine the order of business and the time spent on it was extended to enable it to determine when business would be transacted in the House and to interrupt business where required (AJHR 2008, I.18B, pp.10-11). Previously, the Business Committee was used as a forum to make such arrangements but the House gave effect to them by leave, such as in 2002 where the Acting Leader of the House sought leave:

> …to take as one question, without debate, Government motions Nos 1 through to 5 inclusive. That reflects matters discussed at the Business Committee. I have touched base with each party in the House on the proposal (NZPD 602, 2002, pp.308-309).

Membership of the Business Committee was opened to all parties from 2008. Until then, parties with fewer than six members shared a single representative on the Business Committee. In practice, members of small parties had attended to better inform themselves of upcoming business and advocate for themselves (NZPD 650, 2008, p.18842). At the request of members, the SOC recommended that practice be reflected in the rules, noting that "the numerical make-up of the Business Committee is not directly significant, in the

[89] See for example NZPD 608, 2003, p.5163.

[90] A select committee may normally meet while the House is sitting or on a Friday in which the House has sat, only with the unanimous agreement of its members.

light of the Speaker's power to judge near-unanimity on the basis of the size of the parties that members represent". It was consistent with the rules governing the recognition of parties, which were re-worked in 2003 to recognise every party from which members were elected, regardless of size (AJHR 2008, I.18B, pp.10-11).

The 2011 report of the SOC contained a substantial discussion about how to best manage House business. It noted that proposals for House procedure had tended to focus on truncating proceedings or increasing sitting hours and proposed changing the way business is managed as an alternative. The committee presented a package of proposals to "make use of the House's time more effective in terms of the scrutiny and passage of legislation, and the provision of opportunities for members to debate matters that are important to them" (AJHR 2011, I.18B, p.9).

The committee of the whole House stage of the legislative process[91] had long been a source of delay and frustration for members, particularly for the government of the day. Because there was no overall time limit on this stage, it presented a significant opportunity to delay the passage of legislation through making numerous speeches, tabling of many amendments and the taking of spurious points of order (C. Hipkins interview 3/8/2022). These practices reached their zenith in 2009 during the passage of the Local Government (Auckland Reorganisation) Bill (see Chapter 5). The SOC recommended an "enhancement of the Business Committee's ability to determine how a committee of the whole House will consider a bill" by enabling it to determine how the consideration would operate for an individual bill before it was introduced. That could have enabled bills to be debated by themes or issues, or spending more time on contentious parts, as well as by the default part-based approach. Select committees were also to be able to write to the Business Committee to request a different approach be taken to the debate (AJHR 2011, I.18B, pp. 44-45). This power has rarely been used, since it requires detailed consideration of the structure of a bill and the future form of debate at an early stage, with little incentive to do so. Occasionally, thematic approaches to debates have been agreed shortly before the

[91] Committee of the whole House occurs after the second reading of a bill and is the last opportunity to amend a bill.

committee of the whole House stage of bills (BC Minutes, 6/5/2003; NZPD 683, 2012, p.4851).

To facilitate preparation for the committee of the whole House stage, which was usually the longest debate on a bill involving the greatest number of members, the government was required to advise the Business Committee a week in advance of bills it intended to take to committee stage. This would be reflected on the order paper.[92] There was no penalty for failing to do so but the lack of notice made it less likely that the Business Committee could make special, often time-saving, arrangements for debate (AJHR 2011, I.18B, pp.44-45). The Business Committee's ability to arrange debates was further enhanced by the power to determine that a committee of the whole House stage was not needed at all. Some technical bills, which did not require amendment and were not contentious, could bypass the committee stage either through a provision in Standing Orders[93] or a Business Committee determination.[94] However, they sometimes needed dividing into multiple bills if they amended more than one Act. To save House time, the power to do so was given to the Clerk to use following a determination of the Business Committee (AJHR 2011, I.18B, pp.47-48).

The growing utility of the Business Committee was recognised in the debate on the 2011 review of Standing Orders. Judith Collins (N) stated that:

> One of the underlying themes to emerge from the review of the Standing Orders is the growing status of the Business Committee as a mechanism by which the Government and other parties can make the best use of House time to advance measures with broad-based support (NZPD 676, 2011, p.21759).

Trevor Mallard (L) agreed:

> There is, I think, quite a lot of extra power going to the Business Committee. Again, I reiterate my surprise at how well that committee is working. Frankly, Mr Brownlee

[92] The order paper is the House's agenda, published by the Clerk on the morning of each sitting day.
[93] Confirmation and validation bills, revision bills and imprest supply bills only have a committee stage if the minister in charge of the bill wishes to or if amendments have been lodged in advance.
[94] Treaty of Waitangi claims settlement bills often bypass committee stage by Business Committee determination because they seldom require amendment and are unanimously supported.

> and especially Mr Power[95], with whom I have worked more often on that committee recently, have been open with the committee as to their intentions (NZPD 676, 2011, p.21761).

The final adjustments to the functions of the Business Committee, in the period of this study, were made in 2014. They resulted from an ongoing desire to use it as the forum for "constructive negotiations about arrangements for the sittings and business of the House" rather than using scarce House time or informal and non-binding agreements (NZPD 700, 2014, p.19749). At the suggestion of Clerk Mary Harris (Submission 11/2013) it was given the ability to vary sitting hours of the House to fit around State events; maiden and valedictory speeches, which should not be interrupted; and to alter the timing of an extended sitting. In keeping with its role in managing House business, the committee was granted authority to determine whether oral questions would be held when the House was sitting under urgency.[96] It was noted that the committee was the usual forum for negotiation on this matter but House time previously had to be used to formalise any agreement reached (AJHR 2014, I.18A, p.10).

The Business Committee's authority to make arrangements for State occasions (AJHR, 2014, I.18A, p.12) was a result of a visit of the Australian Prime Minister, Julia Gillard, who addressed members in the debating chamber but could not address a sitting of the House because she was not a member.[97] The House did not make any precipitate rule changes to facilitate 'strangers' addressing the House but Clerk Mary Harris gave advice (24/6/2014) setting out ways this could happen in the future, after consulting the Cabinet Secretary. The SOC envisaged events involving visiting dignitaries or the Governor-General, where it may be appropriate for them to take part in proceedings and the Business Committee was well-placed to make such arrangements (AJHR 2014, I.18A, p.6).[98]

[95] Gerry Brownlee and Simon Power had been Leader of the House for the National-led government.
[96] The taking of urgency generally precludes the consideration of any other business.
[97] Anyone who is not a member or officer of the House is considered a 'stranger' and not permitted to set foot on the floor of the debating chamber or to speak in the House.
[98] The procedure has only been used once; in 2022 to facilitate the President of Ukraine addressing the House.

Urgency and extended sittings

Urgency has always been a contentious matter in the House because of its two major effects of extending the hours during which the House can sit and enabling multiple stages of a bill, or an entire bill, to be passed in one sitting. The longest-ever sitting under urgency was in 1889 where the House sat continuously for 125 hours, debating electoral legislation (JHR 1889, pp.91-98). The rules governing its use have changed little over the period of this study, except that all-night sittings have been practically eliminated.

The 1951 review of Standing Orders clarified that the House could not sit on a Sunday, even under urgency (AJHR 1951, I.17, p.2; NZPD 294, 1951, p.14). It did not otherwise address urgency, though the abolition of the Legislative Council made urgency a much more effective tool for the government to fast-track legislation (McRae, 1992, p.69). Bills now had to pass only through one house and all stages could be taken concurrently whenever the government judged that it was "in the public interest" to do so (SO 1951, 309). Former Clerk Thomas Hall recounted the ordeal of urgency:

> The longest sitting in my period of service, commenced at 2.30 one Tuesday and continued without break until 6 p.m. on the Friday…There was practically no sleep except perhaps one dozed in a chair. On one night the division bells rang 55 times (Hall, 1952).

In 1953, at the request of the Speaker, the Prime Minister Sidney Holland (N) moved a motion to clarify the circumstances under which urgency would end. The motion, moved without notice and to the surprise of some members, provided that urgency lapsed if other proceedings commenced, with certain specified exceptions.[99] Some members, including former Speaker, Robert McKeen (L), thought the amendment superfluous and opposed it. Only the intervention of Speaker Oram (N), who explained that he had drafted the amendment for the avoidance of doubt, caused it to be agreed without dissent (NZPD 238, 1934, pp.226-230). Oram opposed the over-use of urgency and urged the Prime Minister to use it sparingly. He preferred that the House sit for extended hours instead of using urgency; a procedure that would be adopted only in 2011. The government did not support

[99] Those proceedings that did not end urgency included matters of privilege, disorder, and the swearing-in of a new member.

his proposals, fearing they would hinder its programme of business (Martin, 2004, p.242). In 1979 the Clerk, Charles Littlejohn, cautioned the SOC against streamlining the passage of legislation so much that opportunities for spotting errors in bills before submitting them for Royal Assent would be lost (Advice from the Clerk, 1979).

In 1985, all-night sittings of the House were practically eliminated as part of the new Labour government's moves to regularise sitting hours. Under urgency, the House would suspend at midnight and resume at 9am, ensuring members and staff got some rest. Only in exceptional circumstances could the House sit through the night and the minister moving extraordinary urgency would have to explain why it was warranted (AJHR 1985, I.14, p.9; NZPD 464, 1985 p.5862). In 1996 the standing order was amended so that the Speaker had to agree that extraordinary urgency was justified before it could be taken. It had only been used twice in a decade at that point (AJHR 1995, I.18A, p.20).

On one occasion the Speaker intervened to bring urgency to an end. In 1995 the government moved urgency for the remaining stages of the Land Transport Law Reform Bill but there were still several hours of the annual debate on the performance of State enterprises and public organisations to be completed before the end of the financial year, which was the following day. Speaker Tapsell ruled that:

> I believe that it is my duty as Speaker to ensure that the requirement for such a debate is observed. If I did not do so the Government could with impunity simply not allocate any time at all. The debate is divided equally between the Government and the Opposition. It is reasonable to take note of the Government's intention not to use all the time available to it. I consider, therefore, that at a minimum of 2 1/2 hours before the conclusion of today's sitting it will be necessary for me to interrupt any other business in progress, for the purpose of moving to the State enterprises debate. If the House is in Committee, the Committee should report progress at that point (NZPD 548, 1995, p.7863).

In the event the government interrupted debate on the bill to leave sufficient time for the State enterprises debate, without the Speaker having to intervene further (NZPD 548, 1995, pp.7862-7866), an interesting example of a contest for authority in parliament between the executive and legislature.

The 1995 Standing Orders changes addressed a matter that had been a source of confusion and contention since 1953 about what business, if any, could end urgency. They clarified that urgency could not be interrupted or ended inadvertently and would end only when the business to which urgency was accorded concluded or the government indicated it no longer wished to proceed with urgency. While that clarity was welcome it raised a further procedural quandary the following year when urgency was moved before the Speaker delivered a ruling on an application for an urgent debate.[100] The Speaker held that, had he granted the urgent debate, it would have brought the urgency to an end. Parties agreed that there was a need to find a way to ensure that a "an urgent debate can be dealt with before the next item is entered into" and the Speaker undertook to raise it with the SOC (NZPD 561, 1997, pp.2581-2582). The committee agreed that the easiest way to address the matter was to provide that urgency could only be moved after the conclusion of general business (AJHR 1999, I.18B, p.8).

Urgency frequently was used to pass bills through all stages but that was not its only application. Its most common use was to bypass the usual delay between introducing a bill and holding a first reading debate and then allow the bill to run its normal course, including consideration by a select committee. In 1999 the SOC recommended that this possibility be made explicit (AJHR 1999, I.18B, p.25). Most commonly, urgency is taken to because governments perceive that there are insufficient scheduled sitting hours to get through their legislative agendas (Geiringer, Higbee & McLeay, 2011, pp.54-55). Between 1987 an2011 urgency accounted for a significant portion of House time, as shown in Table 4.1.

[100] An urgent debate is permitted at the Speaker's discretion on recent matters of urgent public importance for which there is ministerial responsibility.

Table 4.1: Use of urgency 1987-2014

Parliament	Urgency as % of sitting hours
42nd (1987-1990)	31.4
43rd (1990-1993)	30.3
44th (1993-1996)	9.2
45th (1996-1999)	30.7
46th (1999-2002)	13.1
47th (2002-2005)	21.4
48th (2005-2008)	9.9
49th (2008-2011)	28.2
50th (2011-2014)	5.6

Source: Submission of the Clerk, 10/2016

Note: Extended sittings were introduced for the start of the 50th parliament and accounted for 7.8 % of sitting hours.

The Business Committee continued to develop as the primary method for negotiations on managing House time, arranging House business and informing parties of the Government's parliamentary intentions. In 2003, an incentive to keep parties informed about upcoming urgency was introduced. Until that time, if urgency was taken on a Thursday it followed the rule of other parliamentary sitting days which meant that the extended sitting hours did not take effect until the following calendar day. So, under urgency on a Thursday the House would adjourn at 6pm (its normal adjournment time) and resume at 9am the next morning. This wasted potential House time and member time by requiring them to stay in Wellington but not attend to parliamentary business. Parties agreed that if the government informed the Business Committee that it intended to move urgency on a Thursday, an evening sitting would be held. This was, as Leader of the House Michael Cullen (L) pointed out, "a constraint upon the Government to give early notice", though it was rewarded with additional sitting hours (NZPD 614, 2003, p.10727). However, early notice did not just assist the government; it enabled all parties to arrange their affairs more effectively and reflected the growing centrality of the Business Committee to parties in the House.

The SOC responded to advice from several sources that urgency was over-used. Clerk David McGee advocated for an increase in House sitting hours in a submission to the committee (Submission, 2003). Time available for legislating and financial scrutiny had reduced by two hours and 30 minutes when compared with the period 1986 to 1999 and the more numerous members had fewer chances to speak. McGee felt that hours had been eroded to the point that the House could not deal with its business effectively (D. McGee interview,

21/4/2022). He proposed Thursday evening or Friday morning sittings; sitting through the 90-minute dinner break; or operating a parallel chamber for non-contentious business (Submission 5/2003). The SOC could not agree on any of the proposals and no change was made (AJHR 2003, I.18B, p.10).

The Legislation Advisory Committee drew attention to the need for more time to progress technical, administrative, or uncontroversial legislation (Submission, 2008). The Minister for Treaty Settlements requested additional sitting hours to consider Treaty of Waitangi claims settlement bills (Submission, 7/2/2011) and so did the Chief Parliamentary Counsel (Submission, 7/2/2011), because of the growing volume of such legislation. The Human Rights Commission advocated for an increase in sitting hours and greater discipline in the use of parliamentary time, instead of resorting to urgency (Submission 11/5/2011). Academics from the Urgency Project[101] submitted that urgency came at a cost to the principles of good law-making and proposed that increased sitting hours, rather than further speeding-up of proceedings, was required (Submission, 2011).

For two years, the Leader of the House, Gerry Brownlee (N) had had a motion on the order paper to enable the House to extend a Wednesday sitting into Thursday morning (order paper, 10/12/2009). He had asked the Clerk, Mary Harris, to draft the motion to assist the government in managing its legislative programme without the use of urgency (M. Harris interview 20/4/2022). While notice of the motion had been given[102], it had never been moved. The motion would provide a model for the SOC to respond to calls for more sitting hours without resorting to urgency. The committee modified Brownlee's proposal to provide additional sitting hours with procedural safeguards to ensure they did not become "routine manifestations of urgency by another name" (AJHR 2011, I.18B, pp.14-15). These extended sittings could be moved by the government without notice and extended a sitting into either a Wednesday or Thursday morning until 1pm. Only bills already available for debate could be considered in an extended sitting, multiple stages of a bill could not be taken and select committee consideration could not be bypassed. With Business Committee agreement, sittings could be extended more than once in a week and into Thursday evening

[101] The Urgency Project was a research project under the auspices of the New Zealand Centre for Public Law, Victoria University of Wellington, and the New Zealand Law Society.
[102] Notice of a motion is given by lodging it with the Clerk who then places it on the table of the House and, the following day, publishes it in the order paper so it is available for debate.

and Friday morning (AJHR 2011, I.18B, p.15). This incentivised consultation with the Business Committee and almost all extended sittings since 2011 have been held pursuant to a determination of the Business Committee. The SOC reported that urgency should be confined to situations that genuinely require an urgent approach but added the qualifier that it could be used to progress the government's legislative programme where attempts to negotiate constructive arrangements in the Business Committee had failed (AJHR 2011, I.18B, p.15). Parties seemed satisfied with arrangements with Trevor Mallard (L) stating "I think the extended sittings give the right compromise… that will give the Government a bit more power but will move it back from using urgency" (NZPD 676, 2011, p.21760).

In addition to providing for extended sittings, the SOC considered ways of limiting the use of urgency. It rejected proposals to require the Speaker's agreement to sit under urgency, fearing that it would politicise the office by involving it in politically contentious matters. It favoured greater political accountability for taking urgency and recommended that ministers be required to inform the House, with some particularity, of the circumstances that warranted urgency (AJHR 2011, I.18B, p.17). Reasons for urgency were already required by standing orders but the desire by the government to progress its business was all the explanation usually given. Frequently, reasons were dispensed with entirely because it was assumed that members knew well the reason for urgency. (NZPD 405, 1976, p.2019). Speakers had ruled that a failure to give reasons did not render the motion nugatory but necessitated it being moved again properly (NZPD 421, 1978, p.4042). A member of the public raised the inadequacy of such reasons in his submission (Submission of Robert McKinnon, 28/10/10). Since 2011 ministers moving urgency have taken care to specify why the business included in the urgency motion had to progress rapidly.

Discussion

The management of House business has shifted from being purely a matter for the government of the day to one which informs and involves, to a degree, all parliamentary parties. The government will always have the greater stake in managing House time since most of it is spent advancing the government's legislative programme. But the parliament as a whole, including non-executive members of governing parties, has an important role to play in holding the government to account. All members play a representative role as well. Question time (see Chapter 6) and the general debate (see chapter 5) are the major

opportunities to hold the government to account in the House. These are thoroughly institutionalised to the extent that they are seldom dispensed with in order to create more legislative time.[103] While there is a difficult balancing act for governments to perform in order to progress their policy agendas in the House, the balance is now more easily achieved by involving the whole legislature in decision-making through the Business Committee. The committee provides a trusted forum for the balancing of competing priorities between legislation and scrutiny, legislature and executive and government and non-government parties.

The Business Committee has been the most important innovation in managing the business of the House and its committees in New Zealand. It represents an evolution from the "usual channels" to a whips committee and then to the pre-MMP Business Committee. While that committee achieved relatively little in its short history, the version implemented in 1995 grew from modest beginnings to play a significant role in the daily work of the House. The committee is not truly autonomous from the executive because, by the very nature of a Westminster-style system of government, the majority controls the House. However, engagement with the Business Committee offers governments the opportunity to progress legislation more smoothly and over a larger number of non-urgent sitting hours. For parties not in government, the Business Committee provides an opportunity to learn about the upcoming business of the House and to advocate for debates on matters of importance to them. Increasingly, the committee has become a forum for discussing a wide range of matters because it is a place where senior members from all parties gather each week. That has enabled grievances to be aired, compromises reached and new procedures to be discussed and trialled. It is generally regarded as operating effectively (Interviews T. Mallard, 21/9/2022; D. Carter, 14/6/2022; D. McGee, 21/4/2022; M. Harris, 20/4/2022), though smaller parties may still view it as the preserve of the National and Labour parties (Interviews M. Turei, 18/8/2022; K. Graham, 15/6/2022).

Two events, outside the period of this study, reflect the significant role the Business Committee now plays. The response to the COVID-19 pandemic was developed and approved through the committee and formally adopted in the House. The Business

[103] Only urgency generally overrides question time and, even then, the Business Committee can determine that it is held.

Committee was empowered, in 2021, to make the decision to hold virtual sittings of the House – a decision that the House itself cannot ordinarily make, under the rules agreed by all parties.[104] This reflects considerable confidence in the committee and, particularly in its near-unanimous mode of decision-making.

The Business Committee meets in private, attended by representatives of all parties and the Clerk. Its decisions take effect only when they are notified to all MPs. In practice, the determinations are circulated to Business Committee members by email and then published on the Parliament website. No confidentiality attaches to the discussion regarding those determinations once they have been notified. As a result, the decision-making is more immediately transparent than most other parliamentary committees, where there is a considerable delay between confidential deliberations and release of proceedings because of the need to prepare a report.

One of the committee's most anticipated determinations is the release of the House sitting programme for the next year. Over the period of this study, control of the sitting programme has shifted in two main ways. Since 1985, it has been published a year in advance. And, since 1995 decisions about when the House would sit have shifted away from the Leader of the House to the Business Committee. Since 1995, these arrangements have been enshrined in Standing Orders, which require the Business Committee to produce an annual sitting programme before the end of the preceding year and to ensure that the House sits for approximately 90 days. The Leader of the House or the Clerk drafts a programme for the committee's agreement and it is sometimes amended by the committee. The executive does not control the sitting programme and cannot hold surprise sittings or delay sittings, except in prescribed emergency circumstances.

The major step still to take in arranging House business is for the actors to make use of the Business Committee. It has an array of powers and they can be applied very flexibly. The mode of decision-making, by near-unanimity, ensures widespread agreement with any decision its takes (Interviews M. Wilson, 16/5/2022; P. Dunne, 5/9/2022; C. Hipkins 3/8/2022). However, actors need to understand the options available and seek to make use of them. The committee's role in disseminating information about the government's

[104] Sessional Order, adopted 17 February 2021.

legislative programme, proportionally allocating debating time, considering select committee requests for extensions to reporting dates and agreeing a sitting programme have become routine. Its use as a forum to discuss and test new practices and rules is also quite well established. However, the Business Committee could play a much greater role in arranging debates to enable the House to make better use of its time. That is something that can only be initiated by political actors since only they know what is of political importance to them. While clerks can propose solutions to problems and can recommend new procedures, as non-partisan officials they cannot make judgements about what is politically important. Arranging such debates requires members to engage in detailed consideration of alternative ways to debate a bill. Such debates are likely to be of most benefit to parties that are not in government since they extend the opportunity to advance alternative proposals. To date, only a handful of proposals have been made on alternative ways to debate bills and only at the instigation of government parties.[105]

The use of urgency has diminished, primarily as a result of extended sittings in 2011. From 1996 to 2011 urgency accounted for, on average, 20.5 per cent of the House's total sitting time. Since the introduction of extended sittings, 9 per cent of total sitting time was under urgency (Submission from the Clerk, 10/2019, p.16). Extended sittings have been utilised to create more sitting hours, usually for the consideration of government legislation though, occasionally, for members' bills. It is common for extended sittings to be agreed by the Business Committee, though governments have arranged extended sittings by motion where such agreement has not been forthcoming. It does not appear that extended sittings have become "routine manifestations of urgency by another name" (AJHR 2011, I.18B, pp.14-15) and their use is generally supported across the House (Interviews P. Dunne, 5/9/2022; L. Smith 23/5/2022; D. Carter, 14/6/2022; T. Mallard, 21/9/2022; C. Hipkins, 3/8/2022). Despite that, the use of extended sittings has declined somewhat (Submission of the Clerk, 10/2016, p.16). It will be more useful to consider any trends in the use of new procedures like extended sittings over a longer period of time. The legislative exigencies of any given year may distort the interpretation of relatively recent data, particularly given the need to respond urgently to COVID-19 since 2020. Concerns remain over a lack of sitting

[105] For example, the Education (Update) Amendment Bill was debated in themes at the suggestion of the government.

hours (G. Palmer interview, 15/8/2022) and an over-use of urgency (K. Keith interview, 18/8/2022) leading to poor law-making.

Changes in the arrangement of House business studied in this chapter were the result of displacement and layering, in Mahoney and Thelen's (2010) framework for understanding institutional rule changes. Existing rules that provide for long sittings of the House and extended debate were displaced by a shorter parliamentary week, time limits for speeches and changes to sitting hours. The layering of a Business Committee, extended sittings and closure of debate have been significant changes added on top of existing procedures. Layering was the more prevalent means of changing the management of House business, as additional duties were delegated to the Business Committee.

Chapter 5 – Debate and voting

This chapter considers two inter-related parliamentary procedures – debate and voting. Key developments include the changes to the time available to private members to debate issues of concern to them and changes to the form of debates in responses to dilemmas experienced in the House. The chapter examines the growth in use of te reo Maōri, including the rule changes and administrative arrangements needed to support eh use of the language. The second matter covered in the chapter is the shift to party voting from the more common Westminster deliberative form of the division. It addresses the use of 'pairing' to maintain proportionality of voting and then its abandonment when proxy voting was introduced. The chapter concludes by considering changes to debate and voting in the context of Mahoney and Thelen's (2010) model for understanding gradual institutional change.

Free debate by representatives is the most essential feature of a parliament (Palonen, 2016, p.107). Any question proposed for a legislature to decide should be debateable, unless that right has been expressly removed by the legislature itself (Wilson, 2023, p.214; IPU, 2008). It is one of the most important ways in which all members, in particular opposition and minority parties, can effectively contribute to the work of parliament (IPU, 2008). It follows, then, that adequate opportunity to debate bills and other matters before the House should be provided (CPA, 2018). Such opportunities support scrutiny of proposals by members, the media and the public and enable decision-makers to record reasons for their actions (Geiringer et al., 2011, pp.5-19; CPA, 2018). Law-making, in particular, requires the use of a deliberate and stable set of procedures (McGee, 1995, p.86; IPU, 2008)

In the New Zealand parliament, debate has been held in English and in te reo Māori from its beginning, though adequate arrangements for interpretation of te reo Māori were a long time coming. Simultaneous interpretation is now the accepted standard in multi-lingual parliaments (CPA, 2018).

Voting is the most significant procedure of the House, through which the will of the people is expressed by their elected representatives. It is the way that every deliberative debate concludes and it is of fundamental importance that such decisions are settled with absolute clarity and certainty (Wilson, 2023). While the New Zealand parliament often operates on a

consensus basis, the right of the members in the minority on any question before the House to demand a vote is fundamental (CPA, 2018).

Almost every proceeding in the House involves a motion being moved (usually after a period of notice); a question being put on that motion (usually that it be agreed to); the question being debated and then resolved by a vote.[106] That is the distinctive parliamentary form of acting politically (Palonen, 2019, pp.76-79). A member of New Zealand's early Legislative Assembly would likely recognise that pattern in the House of Representatives today, though they would be surprised at the comparative brevity of debate and the speed with which the vote was taken.

Members have freedom of speech in debate, and in all parliamentary proceedings, a privilege that precedes the New Zealand parliament by several centuries in the United Kingdom. There can be no legal liability for words spoken in any proceedings of the House, unless it has been abrogated by statute[107] and the right to freely express opinion is fundamental to an effective legislature (IPU, 2008; Wilson, 2023). The only other limits on free speech are those that the legislature itself chooses to place on its members, through its rules and practices.

Private members' debates

One of the enduring tensions for the House has been achieving a balance between time for the government to advance its policy agenda and the rights of individual members to represent their constituents, scrutinise the executive and legislate. A matter that the Standing Orders Committee (SOC) was asked to consider, at each review, was how to expedite the business of the House, generally to enable governments to advance their legislation. Invariably, the answer was to place time limits on debates and to limit the speaking time for individual members (both dealt with in Chapter 4). Such decisions raised concerns about the lack of opportunities for private members to debate matters of concern, as time was increasingly devoted to government business.

[106] The General Debate, held every Wednesday, and urgent debates follow the form of other debates but neither concludes with a vote, since there is no substantive matter to decide.
[107] For example, Parliament had abrogated its privilege of free speech to enable prosecution for corruption of a member or perjury in parliamentary proceedings (see Crimes Act 1961, ss. 102 & 109)

Attempts to bolster time for individual members peaked in the 1960s, only for the rules that provided for them to later be removed. The Speech from the Throne following the 1960 election indicated that the Standing Orders would be reviewed "to examine ways of expediting the business of the House" (NZPD 326, 1961, p.12). In moving the establishment of the SOC, Prime Minister Keith Holyoake (N) highlighted the growth in parliamentary work and public criticism of parliament as reasons to review its procedures.

> For the past 25 years the proceedings of this House have been broadcast and therefore the people are very closely associated with our parliament. A considerable amount of criticism has arisen over the years as to the methods of conducting our business… We are criticised for the length of our debates…and also for the length of time each member is entitled to speak… we might find a more effective way of using the time and energy that we have (NZPD 326, 1961, p.101).

The resulting 1962 SOC report recommended additional opportunities for members to speak in the House, including the daily question time (see Chapter 6). It also recommended in favour of the proposal from Clerk Henry Dollimore (Memo, 1/3/1962) that the time previously used to debate responses to questions be reserved for the discussion of members' notices of motion, which was "in line with overseas practice and has much to commend it" (AJHR 1962, I.17, p.18; NZPD 330, 1962, p.25). The proposal would enable members to discuss almost any matter of interest to them. The SOC reported that the value of such motions "is appreciated overseas and your Committee is of the opinion that their use by the New Zealand Parliament would be of value" (AJHR I.17, p.20). The House accepted the recommendation, with Arnold Nordmeyer (L) commenting that "it will have a very considerable effect on the influence of Parliament throughout the country" (NZPD 330, 1962, p.47).

Interestingly, members were simultaneously given another opportunity to raise matters of concern through a 30-minute adjournment debate, composed of 5-minute speeches, which was proposed by the Speaker as a means to "raise our own prestige" by debating matters of interest to the public (memo from the Clerk 1/3/1962). The committee reported that "overseas this opportunity is regarded as a useful, if not indispensable, safety valve" (AJHR 1962, I.17, pp.18-19). The debate would be held except during urgency or days on which

other prescribed wide-ranging debates were held (AJHR 1962, I.17, p.20).[108] There would be approximately five days each session when the debate would not be held.

Extraordinarily, the debate on these proposals was interrupted by the Prime Minister admitting that he had misunderstood them and confessing that he "did not read the report carefully enough" (NZPD 330, 1962, pp.44-45). Holyoake (N) had thought that adjournment debates would not be held during the entirety of the financial debate, the Budget debate and the Address in Reply debate. He said that he had no authority from his party to commit to the more frequent adjournment debates and asked that the SOC be re-constituted to further consider the matter. The opposition agreed "to meet again to iron out any matters raised by the Prime Minister after he has had a further meeting with his members" (NZPD 330, 1962, p.46). The committee hastily re-convened and reported to the House the following day. The committee did not recommend further amendment but the Prime Minister did in order to adjust the procedure to operate as he had understood it would. He explained that the adjournment debates would be:

> …quite a revolutionary procedure for us. There are some considerations which do not apply in some other Parliaments. The proceedings of the House of Commons, for example, are not broadcast; ours are broadcast. I am not fearful or timorous of these changes but I am anxious that they should commence in the best possible fashion. I think members will take time to adjust to the changes… (NZPD 330, 1962, pp.77-78).

The Leader of the Opposition, Walter Nash (L), disagreed, calling the new proposal "a very limited procedure" that, when combined with loss of debate on ministers' replies to questions, reduced opportunities for members to speak. He asked the Prime Minister not to proceed with the amendment, arguing that it "is the direct opposite of what was originally presented to the meetings of the parties and I believe the way it is being done now is wrong" (NZPD 330, 1962 p.83). Despite this plea and the cross-party support for the original proposal, the Prime Minister's amendment was proceeded with and agreed.

The adjournment debate did not last for long. By 1967 both parties agreed that the debate was "not working out as anticipated" (Memo from the Clerk 3/3/1967) and the SOC's report

[108] There would be no adjournment debate on the day the financial debate commenced, the financial statement was presented, the Address in Reply debate commenced or when a substantive adjournment motion was moved.

contained the rather bald recommendation that "the special Adjournment Debate on Tuesdays and Thursdays be discontinued" (AJHR 1967, I.14, p.4). In debating the report, the Leader of the Opposition Norman Kirk (L) said:

> I think there will be no general unhappiness about the passing of the adjournment debate. Originally this was intended to provide an opportunity for a private member to discuss answers to questions and was in lieu of the old Wednesday afternoon question-answer period which we had when I first came into Parliament. However, it did not work out that way, and I think the debate was doing very little for the standing of Parliament in the eyes of the public, and I do not think its passing will be mourned by anyone (NZPD 350, 1967, p.65).

The debates had been used to attack the government, including by alleging corruption (JHR 5/10/1966, p.254). The Prime Minister agreed, suggesting that the debate had become excessively partisan because it was broadcast nationwide:

> As we saw this originally, it was agreed that this would provide an opportunity for members to raise grievances, and so on, but it quickly developed into a confrontation between the Government and the Opposition on major questions of the day. I think the reason for that was that, although we followed the House of Commons procedure, the proceedings of this House are broadcast. I certainly see no point in continuing that kind of debate (NZPD 350, 1967, p.64).

Decades later Tony Ryall (N) was a lone voice advocating for its return as an opportunity for "MPs to address local matters" (Submission 9/9/1994). His suggestion was not adopted.

The debate on members' notices of motion, also introduced in 1962, was somewhat curtailed too because the motions had tended to overload the order paper (Martin, 2004, p.263). By 1964, the House resolved to print them separately to the order paper (JHR 7/7/1964, p.70). The SOC observed that most notices of motion were never reached because the government had been "obliged" to use the majority of Wednesday sittings for its own business. Debate on each motion was halved to one hour and individual speeches reduced from 15 minutes to 10, in order to facilitate the discussion of a greater number of motions. The committee also observed that most notices would never be reached though they might have "publicity and propaganda value" and so it recommended delegating to the

Clerk the ability to remove them from the order paper after four weeks (AJHR 1967, I.14, pp.6-7). These debates also tended to be highly partisan, being used to condemn the government (JHR 11/6/1969, p.44; 4/5/1967, p.33) and the opposition (JHR 31/7/1968, p.66; 6/8/1969, p.99) alike, depending on the allegiance of the member who lodged the motion.

The time occupied by debate on members' notices of motion was again examined in 1974. The SOC reported that "the present procedures in relation to this matter are unsatisfactory…A number of possibilities were considered including doing away with the procedure" (AJHR 1974, I.14, p.7), meaning there would be no debate on members' notices of motion at all. Suggested changes were considered by the National and Labour caucuses and they agreed that the notices of motion would now only remain on the order paper and available for debate for two weeks, instead of four; that the party whips would mutually select motions for debate; and the length of speeches and of each debate would be reduced (AJHR 1974, I.14, p.7). Notices of motion would also be presented to the Clerk for scrutiny so that any "contentious language" could be dealt with (NZPD 395, 1974, p.5747). This approach had been agreed by the SOC in 1968 (Minutes 12/3/1968), at the suggestion of the Clerk, Henry Dollimore (Memo, 26/2/1968), but was not presented in its draft or final report (AJHR 1968, I.14). A pattern began to emerge of lodging matters with the Clerk for scrutiny 'on the papers', rather than proposing them orally in the House, where it was difficult for the Speaker to give matters proper consideration before accepting or declining them.

Notices of motion were revisited in 1985, in light of the changes made in 1974 and the general dissatisfaction with the whole procedure. Former member Martyn Finlay (L) described the debate on them as "a grotesque burlesque" (Submission 20/2/1979). The SOC described them as "one of the least satisfactory aspects of parliamentary procedure. The time spent dealing with them both on and off the floor of the House seems particularly inordinate in view of the very few notices that the House ever gets around to debating" because of the small amount of time available for such debates (AJHR 1985, I.14, p.19). It concluded that radical change was required. While notices of motion could still be lodged and would be vetted prior to being accepted by the Clerk, they would not be read or debated. Former Speaker Harrison recommended it (Submission 13W, undated) and both

parties appeared already willing to dispose of the procedure. Notices would simply be available on the table of the House and published in the order paper (AJHR 1985, I.14, pp.19-20). Jim Bolger (N), the Deputy Leader of the Opposition, predicted that they would fall into disuse, while Michael Cullen (L) thought the end of debate on notice of motion would "lead to greater sanity in the conduct of the business of the House" (NZPD 464, 1985, pp.5609-5610). A two-hour general debate each week took the place of debates on notices of motion (NZPD 464, 1985, p.5870). Many years later Don McKinnon (N) a former whip and Leader of the House expressed his relief:

> Dare I say notices of motion, which I was introduced to 20 years ago, were some of the most appalling things that this House had to put up with especially when one was in Government. In fact, we traded them off for questions of the day eventually. That was a very major move forward (NZPD 574, 1998, p.14701).

In 1990, the two-hour debate was re-cast as two separate one-hour debates on topics specified by members through the lodging of a notice with the Clerk (Minutes 20/6/1990). The intention was to give "greater focus" to a debate that was, essentially, a free-for-all. The SOC expected that the two parties would lodge one notice each week and they would alternate in priority. In anticipation of a third party in parliament, the committee suggested that the party whips could arrange a system fair to all parties (AJHR 1990, I.18B, pp.23-24).[109]

In 1994, Deputy Speaker Jim Gerard (N) submitted that the debate was "too long and time wasting" (Submission 25/8/1994). While the SOC also considered a two-hour debate every second Wednesday (Memo from the Clerk 5/12/1994), it eventually agreed with him and the general debate was reduced to a single hour each week. In recommending this change, the committee referred to the origins of the general debate as "a vehicle for backbench members to speak on matters of individual concern to them, rather than a debate essentially orchestrated by parties" (AJHR 1995, I.18A, p.77). It appears to have abandoned attempts to reform the debate, noting that it should be focussed on back-bench concerns but not proposing any further rules governing its content. The general debate remains today as a one-hour 'free-for-all' debate, where members can speak on any topic. It is primarily

[109] The Democrats (formerly Social Credit) did not win any seats in the 1990 election.

used to make political attacks on other parties. However, it is one of a few remaining opportunities for members to speak on matters of concern to them.

Free speech and sub judice

Fundamental to parliament's privileges is free speech. Nothing said by a participant in parliamentary proceedings[110] can be questioned or impeached in any court, consistent with Article 9 of the Bill of Rights 1688. Most commonly, this protection applies to members but it extends to officers of the House, as well as officials and members of the public who participate in House or committee proceedings. While the privilege is virtually unfettered, members have placed some limits on it, particularly in recognition of the role of the Sovereign as a constituent part of Parliament and the judiciary as a separate branch of government. The Standing Orders have always reflected those limits.

The SOC, in its second report for 1968, recommended modernising the rules governing reference in debate to matters before the courts by adopting new United Kingdom procedure, after it was detailed for the committee by the Clerk, Henry Dollimore (Memos 22/2/1968; 24/4/1968 & 16/5/1968). The extant New Zealand standing order was taken from the House of Commons' practice in 1844. In 1961 it had been widened to apply to civil cases as well as criminal cases. The SOC considered that Speakers' rulings had "greatly widened the interpretation" of the rule over time. In addition to the standing order stating that "no member shall refer to any matter on which a judicial decision is pending" (SO 1929, 62), Speakers had ruled that:

- the court system could be criticised but not the court itself (NZPD 212, 1927, p.479)
- the general principle involved in a case affected by a bill before the House may be discussed, but not the particular case (NZPD 217, 1928, p.1090)
- the discussion of antecedent circumstances was allowed (NZPD 287, 1949, p.1638)
- preliminary investigations were not covered by the standing order (NZPD 346, 1966, p.593)

[110] Proceedings in Parliament are defined as all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of the House or of a committee (section 10(1) Parliamentary Privilege Act 2014).

- judgments of a court may be read and criticised but criticism must not extend to a judge (NZPD 265, 1944, p.374; NZPD 294, 1951, p.229)

The new British rules to guide the Speaker were thought to be suitable to the New Zealand context with "minor amendment" (AJHR 1968, I.14, p.12). The new standing orders encapsulated many of the Speakers' rulings, to guide future Speakers.[111] The revised standing orders on *sub judice* matters were revisited in 1979 but were not altered. They had been the subject of a comprehensive ruling by Speaker Harrison in 1979 who had emphasised that the prescription against reference to matters before the court only applied if there was a real and substantial danger of prejudice to the trial of the case (NZPD 423, 1979, pp.1386-1387). The SOC took the advice of Clerk Charles Littlejohn (Working Paper E.7C, 1979) and endorsed the ruling, noted that it was in accordance with House of Commons practice and reported that since the ruling was "an interpretation and clarification of the present standing order" no change was needed (AJHR 1979, I.14, pp.18-19).

The Standing Orders were amended to refine the rules governing *sub judice* matters following a 2009 report of the Privileges Committee (AJHR I.17A). A complaint that a member had breached a court suppression order was referred to the committee, which heard evidence from legal academics, Solicitor-General David Collins, Clerk Mary Harris and journalists. It recommended that the Speaker have the power to waive the prohibition on discussing matters that were before a court or subject to a suppression order. It would be a contempt of parliament to otherwise knowingly breach a suppression order. A notice of motion to give effect to these changes was lodged in June 2009 but never moved.

Clerk Mary Harris, in her submission on the 2011 review of Standing Orders, expressed support for the recommendations of the Privileges Committee and proposed that they be incorporated into Standing Orders (Submission 10/2010, p.8). The SOC recommended that the rules be amended to reflect the new approach but required that members give advance notice to the Speaker, in writing, of their wish to raise matters subject to court proceedings to enable it to be properly considered and competing interests weighed before deciding (AJHR 2011, I.18B, p.25).

[111] Compare, for example, *Standing Orders of the House of Representatives*, 1963, SO 183 with 1969, SO 186.

Form of debates

The form and nature of debate continued to develop through the period of this study and the rules governing them often changed to reflect the practice of the House. For example, the general right of the mover of a motion to speak in reply at the end of a debate fell almost completely into disuse by the late 1990s when nearly all debates had a time limit. It required a member, most often a minister, to be in the House at the end of a debate to speak in reply and, once they had, no further debate was permitted after it. Where the right was exercised, the SOC considered that it now "operated as a trap" that prematurely ended debates. This was an unintended consequence of placing time limits on debates (AJHR 1999, I.18B, pp.11-12) and Clerk David McGee recommended its removal (Submission 2/1998). The right to speak in reply is now only preserved for the Minister of Finance in the Budget debate, reflecting the importance of that debate to parliament. The member in charge of a member's bill, at first reading, may also speak in reply to address matters raised by other members in debate and to rally support of the bill.

One change also reflected practices of the House which had become standard operating procedure in the first years of MMP parliament. Members of smaller parties, who had few opportunities to speak in the House because of the proportional allocation of speaking time, frequently sought leave to split a single call between two members. Members raised and discussed the matter at the first meeting of the SOC in 1997 (Minutes 22/10/1997) and agreed that the rules should recognise the practice. It was established as a right of members, rather than something needing unanimous agreement of the House (AJHR 1999, I.18B, p.12).

Increasingly in the 1990s, bills were being debated in parts in committee of the whole House, rather than clause-by-clause.[112] Select committees were conducting detailed scrutiny of bills and minute examination of each provision in committee of the whole House was seen as superfluous. However, the default form of debate was clause-by-clause and instructing the committee of the whole House to do otherwise entailed an additional debate. This instruction was changed to be no longer debatable (AJHR 1999, I.18B, p.14). The Clerk, David McGee, subsequently raised concerns that a consequence of this change

[112] Clauses of most bills are arranged into parts, rather like chapters of a book.

was that bills were drafted in fewer parts to reduce the length of debate in committee of the whole House. He and the Chief Parliamentary Counsel argued that the structure of legislation should not be shaped by considerations of timesaving (Submission 5/2003; AJHR 2003, I.18B, p.62). The SOC did not take any action but pointed to a ruling by Speaker Hunt (L) on complaints that the Resource Management Amendment Bill (No. 2) had been drafted in only two parts to foreshorten debate:

> It was asserted, and I think that this is fair comment, that this form of drafting has been employed so as to cut down the length of debate in the Committee stage… I think that this form of drafting, however, is a matter that the chairpersons should take into account in Committee in deciding when to accept a closure motion. I would expect that a considerably longer debate would be permitted on a part with numerous subparts than would otherwise be the case (NZPD 607, 2003, pp.4270 & pp.4421-4422)

In 2005, recognising that part-by-part consideration of bills by committee of the whole House had become "near universal" it was made the default approach (AJHR, 2005, I.18C, pp.14-15). While the structure of legislation was left to the member in charge of a bill, the House determined that the annual provision setting levels of income tax ought to be subject to specific parliamentary scrutiny. Recognising the principle of taxation being approved by parliament expressed in Article 4 of the Bill of Rights 1688, the SOC recommended that the annual taxing provision be subject to a separate debate, regardless of how the bill containing it was drafted (AJHR 2008, I.18B, p.35). This recommendation was on the advice of the Clerk, Mary Harris (submission 10/2010, p.13), following an instance where the committee of the whole House had unanimously agreed to debate all provisions of a taxation bill together, including the annual taxing provision (NZPD 666, 2010, p.13441). She advised "I consider that the annual taxing provision is of such significance that it is unwarranted for the committee to have the power to avert its separate consideration in this way" and the SOC agreed.

Two events, in particular, led to the SOC substantially revisiting the operation of the committee of the whole House (C. Hipkins interview, 3/8/2022). In 2009, the passage of the Local Government (Auckland Reorganisation) Bill, under urgency, had led to the lodging of an unprecedented number of amendments by the Labour opposition in an attempt to delay

the bill. In total, 30,046 amendments were lodged and 962 of them went to a vote (JHR, 13/5/2009). As a result, the sitting lasted from Wednesday to Saturday, for over 31 hours. A similar tactic was adopted in relation to the Injury Prevention, Rehabilitation and Compensation Amendment Bill in 2010, with numerous amendments that differed only a minor detail being lodged. The use of spreadsheets enabled the easy generation of huge number of amendments, in a way that could not have been foreseen by rules that had not changed significantly for 60 years (Hoare, 2014). In the latter instance, the chairperson ruled that amendments that were substantially the same as one already voted down would not be admissible (NZPD 660, 2010, pp.9258-9265).[113] The Speaker upheld the ruling and said:

> I suggest to members that this matter be looked at further by the Standing Orders Committee. I think that what is different in our practice from the practice at Westminster is that at Westminster the Chair can select, from a range of dates, two or three amendments that are substantially different, and test them. Once they are tested, the rest are out. It may be that we should look at something similar (NZPD 660, 2010, p.9265).

In response, Clerk Mary Harris suggested and the SOC recommended that the chairperson in committee of the whole House have the power to group similar amendments together for a single vote to maximise time spent in debate rather than voting and to encourage members to develop "coherent alternative propositions" (Submission, 10/5/2011. It also recommended that the chairperson be able to select a sample of amendments to test the will of the committee where there were numerous amendments to the same provision (AJHR 2011, I.18B, p.45). The selection of amendments by the chairperson had been proposed by former Clerk, Thomas Hall, as early as 1950, as a response to the growing number of time-consuming divisions taken on numerous amendments being proposed (Hall, 1950, Chapter 14, pp.15-16). Grouping of amendments had also been proposed by Clerk David McGee in 1992, to reduce the number of divisions (Letter to the Speaker 20/7/1992). He proposed it again in 1995 but it was rejected by the SOC (Minutes, 5/7/1995).

[113] The Speaker and other presiding officers have the power to rule on the application of Standing Orders and to decide cases not otherwise provided for. This power is used to make determinations about unusual, unforeseen occurrences.

Te reo Māori in debate

One of the most important changes to practice about the content of speeches was that, from 1985, they could be made in te reo Māori[114] as well as English (Minutes 3/7/1985; 9/7/1985). While the Standing Orders had not prohibited the use of te reo Māori, members were expected to address the House in English if they could speak it (NZPD 163, 1913, pp.362-363; NZPD 296, 1951, pp.1193-1198). Speeches in te reo Māori could be made so long as an interpretation into English was provided but no additional time was given to allow for the interpretation (NZPD 119, 1901, p.970), effectively foreshortening them. As a result, use of the language was often limited to formal, ceremonial statements to commence or end speeches and these were sometimes not recorded in *Hansard* at all (Stephens, 2010).

An exchange between Prime Minister Holland (N), Leader of the Opposition Nash (L), Speaker Oram (N) and Eruera Tirikatene (L) in 1951 led to a slight softening of the stance against the use of te reo Māori. Tirikatene sought leave of the House to make some brief remarks in Māori during the debate on the Maori Social and Economic Advancement Amendment Bill. Holland opposed it saying:

> I cannot see the point in the honourable member for Southern Maori District wanting to speak to me in the Maori language. I would not understand a single word of what he says, and he would interpret his remarks back to me; why not say it in English in the first place? (NZPD 296, 1951, p.1195).

Speaker Oram ruled that Māori members could address the House in te reo Māori if they felt they "could think better or express himself better in Maori", even if they could speak English (NZPD 296, 1951, p.1195). Members and the Speaker acknowledged that practice had evolved beyond the original standing order and that the Speaker's ruling changed things further (NZPD 296, 1951, pp. 1195-1198). Some members expressed a preference for a sessional order to be made to temporarily change the application of the standing orders but the Speaker's ruling was the sole authority on the matter until 1985 (McGee, 1985, p.131).

[114] The macron has been used in the word 'Māori', except where it is used in a quote or in reference to legislation where no macron was used at the time. The macron was adopted for parliamentary usage in 1995, at the request of Koro Wetere (L) (Minutes, 6/12/1995).

The Clerk, Thomas Hall, later recalled a Māori member who clearly felt he could express himself better in te reo Māori:

> One of the Māori Members I had to provide an interpreter for. The only one in my time and he used to tell me beforehand. One night to my astonishment he got up to speak when there was some debate on a Māori subject, and it was quite impossible to get an interpreter then. However, he started off 'Mr Speaker. When I speak in this House, I speak in Māori. I can speak English, but when there are ladies in the gallery I think it better to speak in Māori. I learned my English from a bullock driver.' The House received this statement with very great joy I may say (Hall, 1952).

The 1985 change was a product of developing social attitudes. Throughout the 1970s and 1980s, Māori had been reasserting their identity (Belich, 2001). Māori language schools and Māori radio stations had opened. Māori petitioned the House to have Māori language and culture taught in schools (*JHR* 1972, p.228), to support Māori broadcasting (*JHR* 1978, p.335) and to make Māori an official language in New Zealand (*JHR* 1981, p.372). In 1984, the Prime Minister had intervened to save telephone operator Naida Glavish from being disciplined for using “kia ora” as a greeting to callers. In 1985, the Waitangi Tribunal found that te reo Māori was a taonga that the Crown was obliged to protect (New Zealand History, 2021; Ahu, 2012) and in 1987 te reo Māori became an official language, with unanimous parliamentary support (NZPD 482, 1987, p.10423).

Some members were concerned that the use of te reo Māori would disadvantage members who could not speak it (NZPD 464, 1985, p.5898) but Bruce Gregory (L), the member for Northern Māori, reassured them that it was likely te reo would be used for matters that were “essentially ceremonial in nature”. The Minister of Māori Affairs, Koro Wetere (L) took a different view, saying that te reo would be spoken “in debate on any bill that had a Māori connotation” and offering to give members an instant interpretation (NZPD 464, 1985, pp.5898-5899). George Gair (N) asked the SOC to “keep this new development under review… because there would inevitably be an opportunity for potential misunderstanding if Māori were used extensively beyond a ceremonial nature” (NZPD 464, 1985, p.5899). Speaker Wall (L) assured the House that interpreters would be provided when required but that interpretation would be given seriatim, rather than simultaneously, with no additional time allowance (NZPD 464, 1985, p.5901).

The 1990 review of Standing Orders made no progress on the use of te reo. The issue was becoming more pressing. Minister of Māori Affairs, Koro Wetere had answered an oral question in te reo Māori and did not provide an interpretation, though he indicated that he would provide a translation for *Hansard* (NZPD 508, 1990, pp.2336-2340). Speaker Burke (L) upheld his right to do so but conceded that the Standing Orders would need to be reconsidered, opining that future Speakers may need to be bilingual (Burke, 1990). The SOC considered advice from the Clerk, David McGee, that interpreters for the debating chamber and translators for *Hansard* were required and notice of an intention to speak Māori would be helpful. It also agreed that the Speaker should have the discretion to allow additional time for interpretation (Minutes 24/7/1990). The committee went as far as to resolve to include recommendations about the use of te reo Māori in its report (Minutes 24/7/1990) before deferring the decision at its next meeting (Minutes 7/8/1990) when Jonathan Hunt (L) stated that "members required more time to consider the proposals" and then finally setting it aside (Minutes 28/8/1990). The committee reported "the issues are complex and the committee is not at this time in a position to present the House with its concluded view on the matter" (AJHR 1990, I.18B, p.17).

The committee would be considerably better prepared in the subsequent review, primarily thanks to a paper prepared by Minister of Māori Affairs, Doug Kidd (N) and Koro Wetere (L), in consultation with the Māori Language Commission. They considered it an "unconditional right of any member to use the Maori language in the House" and argued that the impediments to the use of te reo Māori should be addressed by providing the "necessary human, fiscal and technical resources". In support of their case, they pointed to the policies of the National and Labour parties on te reo Māori, the Treaty of Waitangi and the views of "Maoridom" (AJHR 1992, I.18B, pp.65-67). The SOC adopted that view and asked the Clerk, David McGee, to investigate the provision of translation and interpretation services on a permanent basis (AJHR 1992, I.18B, pp.6-7). An interpreter was present in the debating chamber from 1993 to interpret into English speeches made in te reo Māori. However, Tuariki John Delamere (TT) complained that interpreters were only available when a member advised they would speak in te reo Māori (Submission 23/7/1999). The Clerk and the Parliamentary Service were requested to investigate the provision of a more readily available service (Minutes 29/7/1999). The growing number of Māori members resulted in

greater use of the language and increased advocacy for its use to be facilitated by the parliament and its agencies. This was recognised by Leader of the House, Roger Sowry (N) in 1999:

> Other issues such as speeches in Maori have taken a step forward with the recognition in the Standing Orders that the Speaker will have the right to facilitate Maori speakers as we invariably move into an environment with more Maori members and more people wishing to use Maori in this Parliament (NZPD 580, 1999, p. 19432).

Former Speaker Doug Kidd (N) saw the period following the first MMP election as a time of "amazing momentum and change" in the use of te reo Māori (Kidd, 2010, p.195). So did Nanaia Mahuta (2010, p.153). The growing use of the language led to Speakers ruling on the status of the interpreter, clarifying that the interpretation was under the control of the Speaker and that interpreters were not there to second-guess members' words or to give evidence to the committee of the whole House (NZPD 623, 2005, p.18735).

Te Ururoa Flavell (M) observed that the Māori Party's use of te reo Māori "sent the system into a bit of a spin" and resulted in changes (Flavell, 2010, p.182). The party successfully advocated for the establishment of a simultaneous interpretation facility in 2008. It argued that the regeneration of te reo Māori required its increasing usage as an ordinary everyday language and that simultaneous interpretation would assist members in understanding the language and support those who used it. Little use was made of the existing interpretation service "because of the frustration it incurs for speakers" (AJHR 2008, I.18B, p.14), who had to stop and start frequently during their speeches to wait for interpretation (M. Turei interview, 18/8/2022). It recommended a staged introduction of simultaneous interpretation from Māori to English. The Clerk, Mary Harris, implemented the service in 2010 with interpretation available to MPs through earpieces in their seats and on the television broadcast and webcast of proceedings (NZPD 660, 2010, p.8641). A similar service had been provided for all meetings of the Māori Affairs Committee since 2000.

The Speaker was called upon to rule on several new matters in the early days of simultaneous interpretation. Members asked which version of an answer given in the House prevailed where a minister and the interpreter gave different interpretations. He ruled that:

> an interpretation, especially one given off the cuff, is always liable to be rough and ready. Members must make allowance for that. We must appreciate, too, that the process of interpretation is not merely a matter of transliterating word for word from one language into another. Especially with languages as different in their origins as English and Māori, this is not possible (NZPD 615, 2004, pp.11383 & 11495).

The frequency of use of te reo Māori has remained relatively static since that time, though it is used more during Māori Language Week and when speaking on Treaty of Waitangi settlement bills.

Reading of speeches

There has been a long-standing rule that members do not read speeches in the House but are permitted to refer to notes, reflecting the fact the debates are not intended to be a series of prepared speeches. Members have been almost universal in the view that reading speeches diminishes the quality of debate and proposals to address the matter have generally originated with them (Interviews D. McKinnon, 18/5/2022; C. Hipkins, 3/8/2022; L. Smith 23/5/2022; P. Dunne, 5/9/2022). Speakers gave leeway to members speaking about technical subjects or delivering speeches on behalf of other members to read more fully from notes (NZPD 234, 1932, p.211). The 1985 SOC considered that reading a prepared speech was not in the true spirit of debate but also registered that some members spoke better from full notes. The committee came down in favour of retaining the existing rule but only requiring it to be enforced when a member was clearly reading a text prepared for them, rather than by them. The Speaker would retain the discretion to allow reading of text when it was technical, legal or factual information that had to be presented accurately (AJHR 1985, I.14, pp.26-27). This recommendation was the culmination of many years of debate on the issue of reading speeches. Speaker Oram (N), in the 1950s, was known to take a particularly hard line against reading speeches. Warren Freer (L) recalled:

> If the speaker denied he was reading his speech Sir Matthew [Oram] would allow him to continue but would watch the member very closely. I have seen him interrupt proceedings, ask the member who was speaking to send his notes to the Table, and ask him to proceed with his speech (NZPD 442, 1981, p.4352).

Since that time, the application of the rule had been relaxed by successive Speakers. Members would simply deny that they were reading the speech and others would use points of order, alleging a member was reading a speech, to distract or annoy their opponents (Martin, 2004, p.306). Speaker Jack (N) in 1969 expressed his view on the rule, saying "I do not think the rule is of particular importance and I will apply it only very lightly, more particularly when the subject under discussion is of a technical nature" (NZPD 363, 1969, p.3099-3100). Speaker Harrison (N) ruled, in 1979, that members were not permitted to draw attention to the reading of a speech (NZPD 424, 1979, p.2054), to prevent the use of pedantic points of order to disrupt speeches. By 1982 he all but gave up on enforcing the prohibition on reading speeches, telling the House:

> I do not believe that members do themselves any good by reading their speeches but neither do I believe that I should intervene to stop them from doing so, because so often it is difficult to tell whether a member is reading his speech word for word, or following notes fairly closely. I will not intervene in that way. Perhaps if I were to do so there would be far fewer speeches (NZPD 445, 1982, pp.2362-2363).

In 1990 the SOC considered the matter again, at the request of Robert Muldoon (N). No consensus about the desirability of reading speeches could be reached, though the committee recommended that the ban on doing so continue but with an exemption for members introducing bills or moving their second reading (Minutes, 2/8/1989). This, it said, recognised the House's acceptance of such an approach "for some time" (AJHR 1990, I.18B, pp.21-22). The party whips were asked to remind their members of the prohibition, after which the Speaker would begin to interrupt members reading speeches (Minutes 20/6/1990). The explicit prohibition on reading speeches was removed from the Standing Orders in 1995 at the urging of Michael Cullen (L) who argued that "parliament will cease to be a simple two-sided debating forum. There will be more complexity and nuances" (Submission 25/5/1994). In 2011, wishing to enliven debate, the SOC agreed with the submission of the Clerk, Mary Harris, (October 2010, p.7) and restated the ban on reading speeches as a convention rather than a rule. It advised that "where possible, members should not read speeches. However, no member other than the Speaker, may interrupt a member who is speaking to suggest a breach of this convention" (AJHR 2011, I.18B, p.28). The extent to which Speakers enforce this rule in now entirely in their hands and this

reflects a shift in the thinking of the House about how to support its preferred practices. In this instance, members recognised that the rule could only be enforced by the Speaker and, if Speakers were unwilling to take action, then there was little point allowing for fruitless points of order drawing it to their attention.

Mechanised voting

Almost every debate concludes with a vote.[115] Voting is done 'on the voices' initially and only if there is a call for a formal vote will one be held. Since 1996 that formal vote has usually been a party vote, which takes less than a minute, but prior to that time voting was done by division. This was, and is, a time-consuming process requiring every member to file out of the debating chamber, to the 'Ayes' or 'Noes' lobbies to record their vote with a teller.[116] In 1951, in keeping with its remit to consider amendments that would "facilitate the despatch of business", the SOC gave consideration to the mechanical recording of votes. However, it reported that it "does not recommend that any action be taken until further information is available; the Committee recommends that the existing system be continued in the meantime" (Minutes, 15/5/1951). The committee recommended that the bells used to summon members to the debating chamber to vote be rung for three minutes on the first occasion and only one minute on each subsequent vote, in order to save time (NZPD 294, 1951, p.19). The use of technology to record votes, as a means of saving House time, would become a recurring theme of Standing Orders reviews.

The issue was again considered in 1967. Minister of Justice Ralph Hanan (N) had observed systems in Finland and Sweden and was:

> impressed by the great saving in time that the employment of such methods produced and urged the installation of similar facilities in the New Zealand House of Representatives. Mechanical recording of votes has recently been the subject of an exhaustive investigation by a Select Committee of the United Kingdom House of Commons. That Committee was unable to make a recommendation in favour of such

[115] The general debate and urgent debates are exceptions to this rule.

[116] Modern divisions, now called 'personal votes', take 10 to 15 minutes each. It is likely that divisions in 1951 took less time because the House had only 80 members who spent more time in the Chamber and had offices closer to the Chamber than they do now. They had three minutes to get to the Chamber vote before the doors were locked. Currently members have seven minutes before the doors are locked.

an installation. In that case, however, the estimated cost was of the order of £45,000 (AJHR 1967, I.14, p.11).

The Ministry of Works, in response to a request from Clerk Henry Dollimore, estimated a cost of £3,310 for such a system in New Zealand (Letter from Commissioner of Works, 27/7/1967). With considerable prescience, the Ministry indicated that the proposed system could cope with up to 120 members; 40 more than it had at the time. However, the committee did not support the introduction of mechanical voting, reportedly because it felt that the saving in time from such a system would not be very great. Hanan disputed that finding and predicted that "mechanical voting will eventually come" (NZPD 355, 1968, p.116). The committee requested that Dollimore make further inquiries about such a system (Minutes 21/3/1968).

The new Executive Wing, or Beehive, was opened in 1977 and ministers moved into it in 1979. The move out of Parliament House and into the new building put ministers at a greater distance from the debating chamber. A messenger was timed walking the distance to the debating chamber and, as a result, the SOC recommended that the division bells that rang to call members to vote should be rung for five minutes instead of three (Advice of the Clerk, Working paper E.4B, 1979). It considered electronic voting again, having received a submission recommending it from former Prime Minister Jack Marshall (N) is his capacity as Chairman of Philips Electrical Industries (Submission 14/12/1978). The Committee considered technical information on the Philips voting system, (Advice of the Clerk, Working Paper E.4B, 1979) but rejected electronic vote recording, by majority, preferring other methods of reducing the time taken to vote. One such method was to allow voting to commence as soon as the bells starting ringing, rather than after they concluded (AJHR 1979, I.14A, p.3). The focus for saving House time shifted to shortening the length of individual speeches and whole debates and arranging business through a cross-party whips committee (see Chapter 4).

Voting was revisited in 1990 when the SOC reflected again on the length of time divisions took, reporting that it was "tiring and frustrating for members, and is viewed by the public as a poor use of their representatives' time and the taxpayers' money". The matter had been raised by whip Robin Gray (N) in a letter to the committee (5/5/1988). It rejected Clerk David McGee's suggestion, in response, that the Speaker could be given the discretion to

dispense with divisions on a closure motion as a way of saving time (Minutes, 2/8/1989). Such motions were invariably moved by the government and their result was never in doubt in a two-party parliament.

The SOC estimated that members spent 18 sitting days voting during the 1986/87 year (AJHR 1990, I.18B, p.18). It again considered electronic means of voting such as that used in the United States House of Representatives, which had halved voting time. It concluded that electronic voting was unlikely to save much time unless members were able to vote from outside the debating chamber; an idea that was rejected because it would effectively be proxy voting and would mean an end of voting as a public act. It was possible that time saved would encourage more divisions to be called, in the committee's view. The cost of an electronic system was estimated to be high and, given that it was thought likely to save little time, the committee decided not to recommend any change. A fixed time for taking all votes was rejected because some matters had to be decided before moving on to further business (AJHR 1990, I.18B, p.19). Although some submitters continued to advocate for electronic voting (Submissions of National Council of Women 15/8/1995; Douglas Graham (N) 1/9/1994; Wyatt Creech (N) 19/9/1994; Nick Smith(N), 30/9/1992; Gail McIntosh (L), 10/11/1992; Joy McLauchlan (N), 7/9/1994) it was never adopted. The need for it was largely obviated by the adoption of party voting in 1995.

Pairing

Until 1996, members were required to be present in the debating chamber to cast a vote. When a member was absent, the semi-official practice of 'pairing' was used to maintain the proportionality of votes between parties. A 'paired' member would abstain from voting when a member of the other party needed to be absent from the chamber. Until 1951, the House took the official approach that pairing was not recognised (NZPD 205, 1924, p.209), though conventions around its use were established. That is not surprising, given the long existence of the practice of pairing in the United Kingdom and the transfer of those traditions and practices to New Zealand. Pairs were arranged between the whips of each party (Mitchell, 1966, p.137), were required to be submitted to the Clerk three days before they took effect and the Clerk had to be satisfied that both members agreed to being paired (Hall 1950, Chapter 12, p.40). Where a member had, by mistake, not accepted a pair they were permitted to make a personal explanation to the House (NZPD 169, 1914, p.348). If a

member agreed to a pair and but was caught up in a vote by not leaving the debating chamber in time, it was customary to vote the way the member they were paired with would have voted (NZPD 237, 1933, p.736).[117]

The 1951 review of Standing Orders was preceded by some disputes over pairing. During the Address in Reply debate in 1947, Fred Hackett (L) complained that "five members of the Opposition were not only not in the House, but not in Wellington. Those members, when asked to pair, had simply refused… If that is the kind of co-operation we can expect from the Opposition, then we know just what we are going into" (NZPD 276, 1947, p.185). The opposition replied saying "[t]here are two parties in the House today each with thirty-eight European seats. Why should one half of the European members give a blank cheque to the other half?" (NZPD 276, 1947 p.371). The members of the four Māori seats, in essence, held the balance of power. While they were members of the Labour Party, they had strong connections to the Ratana movement, which had allied with Labour in 1936.[118] The introduction of proxy voting for absent members in the face of opposition intransigence over the granting of pairs was considered to be a real possibility (*The Evening Post*, 23/6/1947), particularly because of the long absence of Arthur Richards (L) due to illness (*The Evening Post*, 26/6/1947).[119]

The Prime Minister, Peter Fraser (L), sought advice on introducing proxy voting, as a result of the four-seat majority. The Clerk, Thomas Hall, advised him that the duty of members to attend the House lay in statute and that a law change would be the safer way to provide any exemption from that duty since the House could not override the law by resolution.[120] Proxy voting was not pursued further because, according to Hall, "[t]he give and take of pairs in certain circumstances and an appeal to the country when the margin is too small is the British and better practice" (Hall, 1950, Chapter 2, p.1).

By the following year, the matter appears to have resolved itself. Leader of the Opposition Sidney Holland (N) said "our Whips have had the closest cooperation from the Government

[117] The doors to the debating chamber and lobbies are locked during divisions (votes) and every member inside is required to vote.
[118] The members were Āpirana Ngata, Tapihana Paraire Paikea, Eruera Tirikatene and Matiu Ratana.
[119] Richards died in office in August 1947. Warren Freer (L) won the ensuring by-election.
[120] The Legislature Act 1908 had conferred on the House all the privileges, immunities and powers enjoyed by the House of Commons. The Clerk appears to have considered that this included the statutory requirement for members to attend the House.

Whips throughout the session. Little misunderstandings arise, but never has the integrity of any person been called into question. The understanding we have regarding pairs has been honourably observed" (NZPD 284, 1948, p.4349). When one of these misunderstandings over pairs led to the government actually losing a vote, on a closure motion, Holland (N) refused to take advantage of it, saying "the last thing the Opposition wished to do was to win a division by any unfair method" and suggested that the House proceed to vote on the substantive question, as if the closure had been won by the government (NZPD 287, 1949, pp.2369-2370).

The SOC also briefly considered the matter of pairing, concluding that "this is a private Party arrangement and does not require to be covered by a Standing Order" (Minutes, 15/5/1951). However, it referred the matter to a subcommittee[121] for further examination. There is no record of the subcommittee coming to a different finding. To underscore the conclusion of the committee the standing order that permitted pairs to be recorded in *Hansard* was amended to clarify that the House took no official notice of pairs (SO 1951, 218). For this reason, when the issue of the recording of pairs was raised by the Editor of Debates in 1989, the SOC declined to consider it (Minutes, 2/8/1989). However, in 1982 the Privileges Committee had allowed that pairs were recognised as part of the proceedings of the House (AJHR 1982, I.6, p.7).[122] The apparent conflict between these positions became irrelevant when pairing was ended by the introduction of proxy voting in 1995 (Minutes, 5/7/1995). Michael Cullen(L) and Wyatt Creech (N) were the primary advocates for its abolition and replacement (Submissions 25/3/1994 and 19/9/1994). Both members argued that pairing would not operate successfully in a multi-party parliament and that proxy voting was the preferable alternative.

Party voting

The shift to proportional representation at the 1996 election led to important reforms in debating and the most significant change to the system of voting in the House in its history. German experience of MMP made it clear that multi-party parliaments, minority governments and proportional sharing of House time were common features of a

[121] The subcommittee was chaired by Cyril Harker (N) and comprised Thomas Webb (N), Terry McCombs (L) and Robert McKeen (L). It reported its findings to the main committee.

parliament elected under a proportional representation system (Wilson, 2018). Since parties would hold seats in the House proportional to their share of the party vote, all parties agreed that speaking times in debate were to be shared out proportionally (AJHR 1995, I.18A, p.26). This change ended a system of debate, which had operated since 1935, predicated on alternating between two parties and making *ad hoc* accommodations for any additional parties.

In the largely two-party parliament that had existed in New Zealand between 1935 and 1995, it was expected that government members would vote with the Ayes on government matters and opposition members would vote with the Noes. The SOC examined the procedures of the parliaments of Ireland, Norway, Denmark, the Netherlands and Germany in its consideration of reforms to New Zealand procedure. While those legislatures did not derive their procedure from Westminster, they were all parliamentary systems elected under proportional representation and their experiences were invaluable to the New Zealand committee (AJHR 1995, I.18A).

The committee considered electronic voting as one way of reducing the time spent on voting, particularly in committee of the whole House, where bills were examined in detail, and numerous votes could occur on contentious matters. Each division took five minutes or more to produce a result. Ultimately, it followed the suggestion of Michael Cullen (L) that parties be able to vote on behalf of all of their members (Cullen, 2021, pp.195-196) and recommended the three-level voting system used in the Second Chamber (lower house) of the Netherlands Parliament (Minutes, 5/7/1995):

> A vote on the voices is able to be taken, but if a party wished to record formally how its members had voted it could request a 'party vote'. Each party's name is called and the representatives in the Chamber responsible for that party's vote, usually the whip, states how many members it has voting for or against the question. The record of the House then shows how a party has voted without all members being required to attend the House to achieve this. The Second Chamber also has provision for a 'personal vote', where each member records how he or she votes… They are requested only when a vote is going to be very close and members wish it to be known how they, as individuals, voted (AJHR 1995, I.18A, p.28).

Such a system was preferred because of the cost of installation and maintenance of an electronic voting system (Minutes, 5/7/1995), though the idea of such a system was not abandoned (Minutes, 26/7/1995). It also enabled the multi-party nature of the parliament to be reflected and allowed for more time to be spent on debate rather than voting. Interestingly, theGerman Bundestag from which the New Zealand electoral system was derived, uses a show of hands and, if necessary, a division to vote (Wilson, 2018). Members retained the option of casting their vote personally if they were voting contrary to their parties. In 2005, members formally gained the ability to vote contrary to their party, through a split party vote where a whip would cast some votes for a question and some against it. This procedure had been allowed by leave of the House but, at the request of New Zealand First, it was added to Standing Orders (NZPD 627, 2005, p.22354).

Support for the change to party voting was not universal. It had not been identified as an option in most submissions that addressed voting. Margaret Austin (UNZ) favoured electronic voting and criticised the SOC for "rejecting the whole business of electronic voting, without any explanation as to why". She viewed voting as an activity that should be carried out by individual representatives, rather than party blocs (NZPD 552, 1995, p.10810). Winston Peters (NZF) also opposed a system he said would allow parties to "frogmarch members into certain positions" (NZPD 552, 1995, p.10814). Attempts to amend the rules by both members were unsuccessful (NZPD 552, 1995, pp.10824-10825).

Voting by division, now called 'personal voting', was retained for two purposes. It would be used for conscience votes, where members vote free of party instruction (AJHR 1996, I.18A, p.6) and treated as a transitional provision as the parliament moved to party voting in 1996 where there was confusion about the result of a party vote. To date, a personal vote has never been used to clear up confusion arising from a party vote. In parliaments elected under proportional representation, minority government and close margins on most party voting is the norm (Wilson, 2018). Rulings by Speakers on the matter had made it clear that such a vote was almost impossible to justify, saying:

> The fact that the House may, on a party vote, divide rather closely might well be a pattern on every vote throughout a session. It is clearly not intended by the Standing Orders that there should be a personal vote more often than not. Closeness on a party vote is not enough, of itself, for a personal vote unless there is something that

> might make a material difference. That might arise, for example, out of some elements of confusion (NZPD 558, 1996, p.41; NZPD 681, 2012, p.3404).

The retention of a personal vote to clear up confusion was a conciliatory gesture to reassure members wary of the move to party voting. Party votes have accounted for approximately 98 per cent of votes conducted in the House, since the adoption of that system (Wilson, 2023, p.235).

Proxy voting

In conjunction with party voting, proxy voting was introduced as a replacement for pairing. Parties could exercise their full allocation of votes provided no more than 25 per cent of their members were absent from the parliamentary precincts. Once that limit was exceeded, parties had to reduce the number of votes cast accordingly. This arrangement was more suited to a multi-party parliament than pairing, which worked as an informal arrangement between two large parties (AJHR, 1995, I.18A, p.29). Robert Anderson (N) described proxy voting as a "sensible alternative" to pairs (NZPD 552, 1995, p.10807) though not all members were supportive. Tau Henare (NZF) predicted that the front bench of each party would take advantage of proxy voting and "it will be left up to the poor individuals at the back of the House to carry out the legwork" (NZPD 552, 1995, p.10812). Sandra Lee (A) agreed that her party would not participate in pairing but saw proxy voting as an example of "those who have been beneficiaries of the first-past-the-post system going kicking and screaming into MMP" (NZPD 552, 1995, p.10822). Michael Cullen (L) rebutted those criticisms:

> …it is a nonsense, that the actual effect of the voting system should be nullified by the fact the members have family responsibilities, that members may be ill, or that members have public responsibilities they ought to fulfil (NZPD 552, 1995, p.10819).

The review of the new Standing Orders carried out in 1996 reported that there was general agreement that the new system of party voting, including the use of proxy votes, had been successful. It recommended that the general authority given to party whips and party leaders to cast proxy votes, made by a sessional order in early 1996, be confirmed as a permanent rule (AJHR 1996, I.18B, pp.6-7) and it was.

The new voting system was criticised by a panel of former Speakers that agreed with some submissions it received that:

> It is poorly understood by the public who expect members to vote in person. The long-established practice of pairing to allow members to be absent on proper grounds was better understood, and certainly better accepted. We recommend that the SOC consider abolishing the proxy vote procedure (Harrison, Gray & Tapsell, 1998, p.21).

There was little criticism of party voting or proxy voting in the news media, though it undoubtedly resulted in the debating chamber being regularly occupied by a small number of members. This was a consequence foreseen and, to a degree, endorsed by the SOC which thought that it would "allow some flexibility for Ministers and members to attend to public business outside Wellington". The House has retained its firm attachment to party voting. The SOC considered a proposal by Bill English (N) (Submission 27/11/1997) and community group Parliament Alive! (Submission 17/2/1998)[123] to hold a personal vote on the third readings of all bills and on all confidence matters,[124] in order that "the public might have more confidence in the integrity of a vote if each member had to declare a view". While some committee members supported the view, most were of the view that "the party vote was working well" (AJHR 1999, I.18B, p.12). In any case, the Labour Party did not support the proposal (Letter, 30/3/1999) and so consensus could not be reached.

In 2003, the SOC considered the limit on proxy voting in party votes. It could not reach agreement on proposals to raise or abolish the limit of no more than 25 per cent of a party's membership in the House. Whip John Carter (N) supported an increase to 100 per cent but reported that his party did not (NZPD 614, 2003, p.10727). However, the committee agreed that the limit disadvantaged small parties, in particular. A strict application of "no more than 25 per cent" meant that a party with seven members was only entitled to one proxy vote. The standing order was amended to round upwards when calculating proxy voting limits. The requirement to have a member of a party in the debating chamber in order to cast

[123] Parliament Alive! described itself as a group comprising first term MPs, members of political parties, former parliamentary staff, community organisations, academics and civil servants.
[124] Confidence matters are those votes which, if lost by the government, would indicate that it no longer commands a majority in the House. Examples are the Budget and the Address in Reply debate.

proxy votes was difficult for parties with two or three members and this was raised by "a committee member" (Advice from the Clerk, 24/3/1999, p.2).[125] The committee recommended that the Standing Orders allow for votes to be cast on behalf of a party with three or fewer members, regardless of whether any of its members were present in the debating chamber (AJHR 2003, I.18B, p.21). This was the same rule that already applied to parties with one member or independent members (AJHR, 1999, I.18B, p.13).

Members who were at select committee meetings outside Wellington were not automatically counted as being present in parliament for the purposes of party voting. Instead, the Business Committee considered applications from committees and parties indicated whether they would give leave in the House to treat absent members as being present for the purposes of voting (BC Minutes, 28/7/1998; 23/2/1999; 2/3/1999). The Business Committee wrote to all committees explaining the situation and indicating that the SOC may address it (Letter, 24/9/1998). The SOC had been clear that "when the House was sitting members' priorities should be with the House", though it made an exception for absences as part of the official inter-parliamentary programme[126] (AJHR 1999, I.18B, p.13). At the commencement of the 46th and 47th parliaments, the House had adopted a sessional order so that members travelling as part of that programme were counted as being present for the purposes of voting (NZPD 582, 2000, p.948; NZPD 602, 2002, p.126). The SOC recommended that the sessional order be made permanent but required the absence to also be approved by the Business Committee because provisions for absence from the House "should not be invoked lightly" (AJHR 2003, I.18B, pp.21-22). Despite this change, the House agreed the same sessional order at the start of the 48th parliament, effectively removing the need for Business Committee approval (NZPD 628, 2005, p.470) and formalised it as a standing order at the next review (AJHR 2008, I.18B, p.19).

During the 2011 review of Standing Orders the Māori Party argued that the rules governing proxy voting unfairly penalised a small party with members who were ministers with public engagements and with members who had very large electorates. These circumstances, it

[125] By the end of the 45th Parliament there were four single-member parties and two independent MPs to whom this new rule could have applied in the future.
[126] The Office of the Clerk receives a separate appropriation from parliament to manage a programme of overseas and domestic events to enable members to attend conferences and professional development events.

said, made it difficult for its members to maintain a presence in the House and meet their other responsibilities. It suggested that the limit for proxy votes be increased to 50 per cent of party membership in the House (Submission, 28/10/2010, pp.1-2). The SOC rejected that proposal "as there is a strong expectation that members of Parliament will be in the precincts when the House is in session" (AJHR 2011, I.18B, pp.28-29) and did not support differing limits for smaller parties (Advice from Clerk 20/6/2011). However, it sought to alleviate the problem to a degree by recommending that votes be able to be cast on behalf of a party with five or fewer members, regardless of whether any of its members were present in the debating chamber (AJHR 2011, I.18B, p.29).

A second concern raised by the Māori Party was the disproportionate effect on small parties if a member were unable to attend because of a family bereavement or illness. The SOC sought advice from Clerk Mary Harris, who suggested that the Business Committee, Speaker or party whips could be given the discretion to excuse members on the occasion of a bereavement or illness without affecting proxy limits (Advice from Clerk 20/6/2011). No action was taken at that time but, in 2013, the matter was raised with the Speaker, following members giving birth during the term of the parliament (NZPD 693, 2013, pp.13803-13805). He sought cross-party agreement to resolve it (D. Carter interview, 14/6/2022). The House agreed a sessional order giving the Speaker authority to grant leave of absence to members "on account of illness or other family cause of a personal nature". A member absent with leave from the Speaker would not be penalised for their absence and their party could exercise a proxy vote for them (JHR, 26/9/2013). The sessional order was adopted as a standing order the following year (AJHR 2014, I.18A, p.10).

The 2011 earthquakes in Canterbury made it necessary for members from the region to be away from parliament and in their constituencies for an extended period of time. By leave of the House, members from Canterbury were treated as being present for the casting of party votes for a four-week period (NZPD 670, 2011, p.16948). In the subsequent review of Standing Orders, the House agreed with Clerk Mary Harris' proposal (Advice, 20/5/2014) that there would be no limit on the number of proxy votes that could be exercised during a state of national emergency. This would enable members to attend to the welfare of their families and constituents, to deal with situations where members could not travel to Wellington or where the meeting place of parliament had to be relocated (AJHR, 2014,

I.18A, p.13). The same approach was taken during the COVID-19 pandemic in 2020 and 2021. The development of proxy voting has been a contest between traditional notions that members' first duty is to vote in person in the House (typified by a personal vote or division) and the convenience of proxy voting by party. As the House grew increasingly used to proxy voting, and it occasioned little public criticism, it has grown to become more permissive even allowing a single member to vote for a party that was largely absent, in emergency situations.

Removal of the Speaker's casting vote

Speakers in the United Kingdom, Canadian, Australian and New Zealand parliaments were able to exercise a casting vote to determine the outcome in the case of a tie. In New Zealand, with its small legislature and even number of members,[127] the way to determine the outcome of a tied vote is an important institutional element. The closeness of the result of the 1981 election, in which the National government held a two-seat majority, led to an important ruling by Speaker Harrison (N) on the use of the casting vote. The vote in the second reading of the Local Authorities Loans Amendment Bill resulted in a tie. The Speaker, who had been considering the probability of tied votes, had prepared an extensive ruling. He pointed to British practice because the Standing Orders provided that where a case was not specifically provided for "Mr Speaker shall decide, taking for his guide the rules, forms, and usages of the House of Commons" (SO 1979, 2). Noting differing practices between the two parliaments and pointing to previous New Zealand rulings (NZPD 111, 1900, p.297; NZPD 121, p.531; NZPD 123, 1902, p.693; NZPD 157, 1912, p.339), he ruled that:

> The guiding principles are: (1) that the Speaker should always vote for further discussion, when that is possible… (2) that, when no further discussion is possible, decisions should not be taken except by a majority… the law should be changed by the deliberative votes of the members of Parliament, not by the casting vote of the Speaker, who, in the chair, is not party political but is impartial; (3) that a casting vote on an amendment to a Bill should leave the Bill in its existing form; (4) on questions of conscience, on which members are free to vote regardless of party

[127] An odd number of seats in an MMP parliament is possible if a party wins more constituency seats than its share of the party vote. This 'overhang' has occurred in 2005, 2008 and 2011. An 'underhang', where a party wins more list seats that it has candidates for is also possible but has not occurred in New Zealand.

> affiliation, the Speaker should be entitled to use his casting vote either in accordance with his conscience or in accordance with the general rule of maintaining the status quo; (5) on express questions of confidence, and on supply, which is a matter affecting the ability of the Government to remain in office, or of the Parliament to remain in being, the Speaker should use his casting vote with the Government (NZPD 448, 1982, pp.4916-4919).

These principles, distilled into a single ruling, endured until the introduction of MMP made these obsolete.

In 1995, the SOC considered the voting rights of the presiding officer in European countries operating under proportional representation. They concluded that the proportionality of the House should not be disturbed by the Speaker losing their deliberative vote and decided to follow the example of the Netherlands and Germany in giving the Speaker a deliberative vote but removing their casting vote (AJHR 1995, I.18A, p.30). The Speaker's vote would be cast with the rest of the votes held by their party, though every member retained the right to vote contrary to, or separately from, their party. This had the effect of depoliticising the Speaker's vote, since it would be cast on their behalf rather than by them to break a deadlock in sometimes highly-charged situations (AJHR 1999, I.18B, p.12). Select committee chairpersons also lost their casting vote but retained their deliberative vote.

Without a casting vote, a method for deciding tied votes had to be devised. The SOC settled on tied votes being lost, which was the case in the European parliaments they had examined (AJHR 1995, I.18A, p.30). Any motion would require a positive majority to be successful. This decision was revisited in 1999, following an unintended consequence identified during select committee consideration of a bill in 1997. The Social Services Committee had an even split of government and opposition members and could not agree on proposed amendments to the bill. When voting on it, the lack of a majority in favour of any motion, caused every clause in the bill to be struck out. As a consequence the bill was reported to the House with no title and no content; effectively a blank piece of paper (Health and Safety in Employment Amendment Bill, 202-2, i). Such a situation was not satisfactory and nor was it foreseen by the 1995 reforms. The SOC reconsidered the relevant standing order and concluded that:

> To strike a clause out of a bill is effectively to amend the bill and it does not seem appropriate that this should happen on a tied vote. If the question that the clause stand part is tied, the clause should remain part. An amendment… making it clear that in the case of a tie on the question that the clause stand part, the clause does stand part, has been included (AJHR 1999, I.18B, pp.26-27).

The Standing Orders were amended accordingly, creating the only exception to the rule that a tied vote is lost.

Discussion

Fundamentally, practices around debate have altered little in the period of this study. A motion is moved, a question on the motion is put to the House and it is debated. Almost every question is resolved by a vote. The only questions not open to debate are those where the House has expressly determined that in Standing Orders. Generally, such questions were debatable in the past and that right has been abrogated by the House to save time. Crucially, no body other than the House itself can determine what it debates.

One of the noticeable changes over time has been the reduction in the length of debates as the number of members has grown and the quantum of parliamentary work increased. The usual pattern has been to put time limits on debates that previously allowed every member a chance to speak and to put limits on the duration of speeches. These limits have then been tightened. While there are ample opportunities to debate government business, which dominates House time, private members' business and select committee business get little attention. Indeed, the number of instances in which select committee reports, on matters other than bills, have been debated is extremely small.

There has been major growth in the use of te reo Māori in the House since the mid-1990s. MMP and the growth of the Māori population have resulted in a greater number of Māori members in the House. The resurgence of the Māori language means many more members can speak it. Institutional arrangements including the explicitly stated right to address the House in te reo Māori and the provision of simultaneous interpretation have supported greater use of the language. These arrangements have been the result of the efforts of Māori members to advocate for the use of their language in proceedings.

Rules about how to participate in debate have varied over time and appear to have settled in a place that minimises the ability of disputes on such matters to disrupt proceedings. Only the Speaker can intervene if a member reads their speech. However, several interview subjects expressed concern at the quality of debate, being little more than the reading of a prepared speech, often written by party staff (Interviews L. Smith, 23/5/2022; D. McKinnon, 18/5/2022; P. Dunne, 5/9/2022; C. Hipkins, 3/8/2022).

By way of contrast with the form of debate, voting has undergone fundamental change. After decades of discussion about electronic voting, party voting has obviated any need for it. Party voting is fast and the result is certain. House time is primarily spent in debate, not on voting. It is telling that a personal vote has never been used to resolve any confusion arising from a party vote (Wilson, 2018). However, party voting serves to reinforce the already-strong party discipline in the House. Its convenience and certainty have likely cemented party voting in place. Personal voting has been retained for conscience matters, which arise a few times in each parliament. Crucially, the ability to call for a vote on any question is preserved in all but a handful of circumstances where the House has, by consensus, agreed that a vote is not required.[128] This is such an institutionalised, fundamental element of a parliamentary system that it seems very unlikely to change.

The institutionalisation of proxy voting as a normal feature of every party vote has removed the need for pairing. It represents a significant shift in thinking about the role of members, including where and how they perform their legislative and scrutiny duties. Increasingly, that work is done outside the debating chamber in select committees, in the community and on social media. It also enables members to attend to family commitments, including parental leave, which have become more important since the membership of the House has changed to be more representative of the general population. The result is a more sparsely attended debating chamber but that does not appear to raise much public comment or to concern members. Outside question time, it has become the norm.

The changes to the rules and practices related to debate and voting fall in equal numbers within the categories of layering and displacement, in the framework developed by Mahoney and Thelen (2010) for understanding change. The growth in the use of te reo

[128] For example, the motion that commences general and urgent debates is never voted upon.

Māori in debate, the grouping and selecting of amendments and the resolution of tied votes are all examples of the layering of new rules on top of existing ones. There was significant displacement of old rules by new ones that led to the replacement of personal voting by party voting, the replacement of pairing by proxy votes, the removal of casting votes and the changes in 'private members' and 'general' debates. The sole example of conversion in this subject area was the way that the reading of speeches was dealt with. Rules against doing so were progressively reinterpreted by Speakers between the 1970s and 1990s, who wished to take a more lenient stance. The standing order was removed in 1995 when many years of reluctance to enforce it rendered it obsolete.

Chapter 6 – Questions

Questions to ministers are the best-known element of parliamentary procedure in New Zealand. This chapter examines how the questions process has developed from being primarily written to the oral questions that are the centrepiece of the modern parliamentary day. The need for a notice period for oral questions, the vetting of draft questions and a requirement to actually answer questions are important developments that are detailed here. Speakers' rulings have been particularly central to change in questions procedures and feature in this chapter. Finally, it considers the nature of changes to questions in relation to Mahoney and Thelen's (2010) framework for understanding institutional change.

Responsible government underpins New Zealand's representative democracy. The government must answer to the House to retain its confidence. Question time is at the heart of executive accountability, though it is not the only way in which the government must answer to the parliament. Simply put, "if a government is required to answer on the floor of the House for its actions there is a real incentive for ministers to avoid improper or imprudent actions that are likely to be revealed by parliamentary scrutiny" (McGee, 2002, p.10). Governments tend to be nervous about facing parliamentary questions because they do not control them and the answers attract considerable media attention (Martin, 2011; Sanchez de Dios & Wiberg, 2011; van Santen et al, 2015). In New Zealand, question time is broadcast and replayed on Parliament Television daily. It is the parliamentary proceeding that receives the most media coverage and, therefore, the most public attention. Question time is one of the few occasions when governments relinquish control of the legislature's agenda.

In order to function effectively, questions must be able to be asked about any action of the executive, requiring ministers to explain and justify its decisions and actions to the parliament and, through it, to the people (CPA, 2018; McGowan, 2008; Macpherson, 2008). Questions are one of the opportunities that parties not in government have to set the parliamentary agenda and they must be free to ask questions of their choosing (Otjes & Louwerse, 2017; Salmond, 2004; IPU, 2008). Spontaneous supplementary questions which may be used to probe and, potentially, embarrass the government are a feature of effective

questioning (McGowan, 2008; Salmond, 2004). The same norms apply to written questions, with an additional requirement that prompt answers must be delivered (CPA, 2018). The extent to which an answer must adequately address a question is contested and, in any case, subjective. At a minimum, an answer should be relevant to the question asked. Relevance underpins almost all parliamentary interactions and is a matter that must frequently be judged by Speakers. The answers to questions must be able to be tested and judged by the voting public by being subject to parliamentary, media and expert critique (Roycroft, 2017; CPA 2018; Salmond, 2014; Palonen, 2019). Oral questions to ministers are among the best-known parliamentary proceedings because they are frequently reported by the news media. The far more numerous written questions, which are often used to gather information for oral questions, garner little public attention (Martin, 2011; Otjes & Louwerse, 2017).

Very few standing orders govern the asking and answering of questions. In 1935, there were eight such rules and in 2015 there were ten. In each case, they represented approximately two per cent of all standing orders. However, oral questions are the subject of more Speakers' rulings than any other proceeding of the House, accounting for approximately 17 per cent of all rulings.[129] This reflects the central role questions play in holding the government to account, the dynamic nature of question time and the energy invested in it by members of parliament.

The basic premise of questions has not changed very much.

In 1935, Standing Order 92 provided that:

> Questions may be put to Ministers relating to public affairs, and to other Members in relation to any Bill, Motion, or other public matter connected with the business of the House in which such members are concerned.

In 1951, Standing Orders 72 and 73 provided, respectively:

> Questions may be put to a Minister relating to public affairs with which he is officially connected, to proceedings in the House, or to any matter of administration for which he is responsible.

[129] Rulings on questions occupy 40 of the 231 pages of *Speakers' Rulings*; approximately 17%.

> Questions may be put to a member (not being a Minister) relating to any Bill, Motion, or other public matter connected with the business of the House, of which the Member has charge.

That same wording existed in the 2015 Standing Orders. Only two changes had been made. The first was to state explicitly the convention that the Speaker, who presides over the House during oral questions, cannot be asked oral questions. The second was to express the rules in gender-neutral language.

Scope of questions

The revision of Standing Orders carried out after the abolition of the Legislative Council, altered the procedure for questions. The changes did not appear to be related to that shift in New Zealand's constitutional landscape and it is not clear who proposed them. The report recommending the changes stated that:

> The rules relating to Questions have been amended to accord with English practice, but not so as to disturb the existing procedure for debating questions, while the rules for urgent questions have been slightly modified (AJHR 1951, I.17, p.2).

Reports of the Standing Orders Committee (SOC) did not, until 1962, describe changes in any detail. Instead, they appended a new draft of the Standing Orders. Nevertheless, it is possible to identify changes by comparing the 1929 and 1951 Standing Orders. The primary change was to provide an extensive list of matters that were not allowed to appear in questions. These included statements of facts or names of people unless strictly necessary to render the question intelligible and authenticated; arguments, inferences, imputations, epithets, ironical expressions, expression of opinion or hypothetical matters and discreditable references to the House. Questions could not seek a Minister's opinion or a legal opinion; could not refer to proceedings of the current session or current committee proceedings; or to cases before a court. They could not anticipate discussion of current business or repeat questions already answered or disallowed, without the Speaker's permission (SO 1951, 78). Most of these changes were based on Speakers' rulings, reflecting the influential role of the Speaker and the difficulty in agreeing rules about questions, which are a keenly contested item of parliamentary business.

Many of the matters now prohibited or regulated had been the subject of rulings by Speakers, since the late 1880s. They had been disallowed on the basis of previous precedents but not based on the rules of the House until 1951. For example, Speaker O'Rourke (L) had ruled that the opinions of Ministers could not be sought (NZPD 57, 1887, p.225) and that questions about business of the current session could not be asked (NZPD 111, 1900, p.366). Questions containing epithets, controversial or ironical statements, innuendo, satire or ridicule had been disallowed by a ruling of Speaker Barnard (L) in 1938, which was based on British precedent (NZPD 250, 1938, p.58). Perhaps the most important matter of all, the requirement to actually answer questions, was contained in a ruling by Speaker Steward (Lib), in 1892, which simply stated that "an answer to a question ought to be given if it can be given consistently with the public interest" (NZPD 78, 1892, pp.374-375). This ruling was codified in Standing Orders in 1995.

The prohibition on asking questions about select committee proceedings was undone by events in 1974. The debate on the New Zealand Superannuation Fund Bill had been contentious and opposition to it was led by Robert Muldoon (N). The bill had gone through protracted debate and 67 hours were spent in committee of the whole House on it, with 222 divisions taken and 104 closures moved (Martin, 2004, pp.278-279). Adding to the ill-will surrounding the bill had been Standing Order 86(3)(a) which prohibited questions about proceedings in a select committee not reported to the House. Muldoon attempted to lodge questions about the bill while it was before a select committee and these were ruled out of order. Former Speaker, Sir Roy Jack (N), suggested that the reason for the rule was to prevent confidential committee proceedings being disclosed, rather than to place an absolute ban on discussing matters related to a bill while it was before a select committee but this view was not accepted. The Speaker, Prime Minister and Leader of the Opposition asked the SOC to consider the matter (NZPD 389, 1974, pp.294-299; NZPD 390, 1974, p.575). The standing order was duly amended to permit questions in respect of matters before select committees that were open to the news media. The SOC report referred to the difficulties encountered during the passage of the New Zealand Superannuation Fund Bill as a reason for the change (AJHR 1974, I.14, p.6)

Ministers had always been able to answer questions on behalf of other ministers, as a result of the convention of a ministry collectively responsible to the House. The SOC thought it

desirable that a parliamentary under-secretary answer on behalf of their minister, in the absence of the minister. The under-secretary, who assisted a minister with a portfolio, was more likely to be able to give an informed answer than a minister with no subject knowledge acting for a ministerial colleague (NZPD 395, 1974, p.5747).

New rules for replies to questions were created in 1985, applying similar rules to asking and answering questions so that there would "be a slightly more disciplined form of reply without being too tightly in control of the Minister in reply" (NZPD 464, 1985, p.5602). This change was described by Ian McLean (N) as rectifying an anomaly in the Standing Orders which applied different rules for members asking questions and Ministers answering them:

> Briefly, the member asking the question had to comply with very tight rules indeed. The member was not allowed to use arguments, epithets, or abuse. The Standing Order did not provide for Ministers to be equally restrained, and, sad to say, one or two Ministers seem to enjoy using to the limit the freedom that the Standing Order gave them. That was clearly not fair. It was unreasonable, and did not help the work of the House, and it did not work towards good government. The proposed change to Standing Order 84 is a marked improvement, and the same rules as apply to members' questions will now apply to Ministers' answers (NZPD 464, 1985, p.5869).

The rules about the content of question and the contents of replies were further aligned in 1990, at the request of George Gair (N) (Minutes 16/5/1989; 2/8/1989). Replies, like questions, were no longer able to refer to debates held in the same session or to committee proceedings not yet reported to the House (AJHR 1990, I.18B. pp.13-14). While the SOC initially agreed to report that the new rules invalidated previous Speakers' rulings on the relevancy of replies to oral questions, it did not do so (Minutes 2/8/1989). However, Clerk David McGee removed the obsolete rulings from the next volume of *Speaker's Rulings*.[130]A procedure as dynamic and confrontational as oral questions did not lend itself to tight regulation. Instead, the SOC and members in debate on its reports madestatements to guide the Speaker's interpretation of Standing Orders over many years. In 1985, the SOC reported that the rules on the content of questions had not been altered but that the rules

[130] *Speakers' Rulings* 138/5 and 139/6 from the 1989 volume do not appear in the 1996 volume, which is produced by the Clerk.

on authenticating statements of fact in questions were "applied too rigidly" and that the application of the rules should be relaxed (AJHR 1985, I.14, p.21). Former Prime Minister, Sir Robert Muldoon (N), who supported the change said:

> rather than the rules being applied very strictly so that many questions are cut out or forced to be amended, the general rule should be that if a member wants to ask a question, and it is in the public interest that he or she should be able to do so, as far as is possible that should be facilitated. Although it is not specifically stated in the report, that rule should also apply to supplementary questions (NZPD 464, 1985, p.5602).

This approach was reflected in the next review of Standing Orders, where the scope of supplementary questions was widened to enable ministers to be questioned about their replies to supplementary questions as well as to the primary question (AJHR 1986, I.18A, p.6).

The SOC looked to overseas examples in 1990 when considering whether to allow questions to be asked that sought information that was publicly available. New Zealand Speakers had ruled on the matter in 1974 and 1982, determining that such questions were in order and that ministers could respond by directing a member to the information (NZPD 392, 1974, p.3043; NZPD 445, p.2389). Canada and Australia had no rules on the matter but the British House of Commons had disallowed such questions when the information could be easily obtained. The SOC recommended no change but observed that some information was more readily sought from the Parliamentary Library than by way of a question (AJHR 1991, I.18B, pp.28-29).

The House debated procedures for questions twice in 1992; once following a report of the SOC and once in the days before the first referendum on proportional representation. In the first debate the Leader of the Opposition, Helen Clark (L), argued that the Speaker ought to have more power in relation to ministers' answers to questions. She considered that "Ministers get away with far too much when it comes to answering supplementary questions. It is common for a Minister not to address a supplementary question in any way at all" (NZPD 522, 1992, p.6652). The conduct of members during question time was also a

focus. Jim Gerrard (N) expressed a widely-held concern that "the public has a terrible view of Parliament and parliamentarians" and went on to blame question time, in large part:

> … question time portrays Parliament's very worst image – it is rowdy and there are senseless interjections, political grandstanding and so on. The Standing Orders do not need to be looked at very much in that regard, as that issue is really a matter of self-discipline of Parliament and parliamentarians. (NZPD 529, 1992, p.10955).

Michael Cullen (L), argued that parliamentary reform was not an effective alternative to electoral reform and that contending ideas were a core feature of parliament;

> It is the battleground of political movements and political parties represented within the parliamentary system. It is a place where the essential and great issues of State are argued out. Some people find that confrontational… That is not something that is wrong, and it is not something demeaning to our political system or to society. There are honest and deep differences about what should be done in our country and about our future direction (NZPD 529, 1992, p.10957).

No changes were made at that time.

The changes to questions made in advance of the first MMP parliament were informed by overseas experience and were accompanied by an unprecedented level of commentary by the SOC. It stated that:

> Questions are one of the most public ways in which Ministers are held accountable for the administration of their portfolio responsibilities. Opposition parties place high significance on the process as one way of ensuring Ministers answer for their actions (AJHR 1995 I.18A, p.73).

The committee rejected proposals to allow questioning of opposition leaders on their parties' policies, viewing the question process as an opportunity for parliament to supervise the performance of the Executive (Submissions of Nick Smith (N), 28/9/1992; Jim Gerard (N) 25/8/1994). Responsibility to parliament was described as "inherently something that attaches to the Executive" (AJHR 1995, I.18A, p.73). It did not support members of the Executive being able to ask questions because "the convention of collective ministerial responsibility requires that all members of the ministry take responsibility for the

Executive's actions and it would therefore be in breach of that convention for a Minister to be questioning the Executive" (AJHR 1995, I.18A, p.73). Despite this view there is no prohibition on Ministers asking questions (NZPD 495, 1988, p.8604; NZPD 637, 2007, p.8045). The committee encouraged more rigorous questioning of the executive by backbenchers from government parties and expressed support for the Speaker in discouraging 'patsy' questions that, in effect, allow Ministers to announce good news stories (AJHR 1995, I.18A, p.73).

The SOC continued the approach of giving guidance to the Speaker through its reports in the lead-in to MMP. It indicated that the exclusion of hypothetical questions and questions seeking an opinion "have long been the source of frustration" and recommended that such questions be allowed (Memo from the Clerk 24/2/1995). Speakers have ruled accordingly since that time (NZPD 615, 2004, p.11430; NZPD 707, 2015, p.5419). The committee called for more flexibility in applying rules of relevance to supplementary questions and for the Speaker to "take the initiative more readily" to interrupt lengthy answers (AJHR 1995, I.18A, pp.74-75).

The 1998 report of three former Speakers, published at the invitation of the Association of Former Members of Parliament, critiqued the quality of questions asked in the House. The report opined that the "questioning of Ministers has become a less powerful tool for members, in part because of the formality of the question submitted in advance and prepared reply by the Minister. We would like to see opportunities for more off-the-cuff questions and answers". It recommended arranging question time each day around questioning a small number of ministers who would handle a greater number of questions (Harrison, Gray & Tapsell, 1998, p.21). This proposal was not taken up by the House, which had recently favoured a system of questions on notice to all ministers, since it was thought that this allowed better preparation of answers (AJHR 1995, I.18A, p.73-74). That system has endured, with little formal modification since that time.

Notice of questions

Questions were originally lodged by reading them to the House and then providing a written copy to the Clerk (SO 1951, 95), in the same way as motions were lodged. The Speaker had to rule on their admissibility on the spot. Such a system was open to abuse since questions

could become "a vehicle for propaganda" and "the broadcast [gave] an immediate and widespread publicity" to them, even when subsequently ruled out of order by the Speaker (Hall, 1950, Chapter 9, pp.17-19). Answers to questions were delivered in writing and then debated on Wednesday evenings. Former Clerk Thomas Hall observed that question time became a more central feature of parliamentary business in his time in office (1930-1945) and was only lightly regulated by Standing Orders. Instead, rules pertaining to other proceedings were adapted and applied by Speakers (Hall, 1950, Chapter 9, pp.21-22).

One of the most significant developments in relation to questions came during the 1962 review of Standing Orders. The SOC was of the view that the system of questions was not satisfactory and recommended that a system "modelled on that of the British House of Commons should be adopted" which would "enable the admissibility of Questions to be checked before notice of them appears" (AJHR 1962, I.17, p.8). Questions would be written and submitted to the Clerk for scrutiny before being published (Memo from the Clerk, 1/3/1962). They would be asked the day after they had been published and the member lodging the question could indicate whether they wished to receive an oral or written answer.

The House had some previous experience of lodging questions for scrutiny before they were asked. During the Second World War members had agreed to submit all questions to the Speaker for approval prior to asking them to prevent information disclosed in questions or answers being "the vehicle by which information of value was conveyed to the enemy" (NZPD 257, 1939, pp.6-18). The resolution to permit this restriction of members' privilege of free speech was accompanied by a list of topics that should not be discussed and an offer to hold secret sessions in which sensitive information could be disclosed.[131] The resolution was rescinded in 1946 when "there appeared to be unanimity in the House in connection with the discontinuance of the war-time measure" (NZPD 274, 1940, p.129).

Also in 1962, the previous practice of submitting questions orally and then debating written replies on a Wednesday evening was abolished and the time it used to occupy was given over to debating members' motions (see Chapter 5). Instead, there would be a 30-minute

[131] The House had 18 secret sessions during the Second World War, from which everyone except MPs and the Clerk were excluded. The proceedings were not broadcast or reported in Hansard. Instead, the Clerk prepared a short summary of the session for Hansard.

question time on each sitting day (Tuesday to Friday, inclusive). Questions not addressed on that day would be set down for the following day, ahead of any new questions. Questions could be asked on behalf of absent members and answered on behalf of absent ministers. Supplementary questions could be asked "at the discretion of Mr Speaker" in order to "elucidate an answer". A 30-minute adjournment debate at the end of each sitting day was intended to replace the Wednesday evening debate (AJHR 1962, I.17, pp.8-9).

The changes were not universally popular. Member for Petone, Mick Moohan (L), argued against submitting questions in advance to the Clerk, preferring to have the Speaker deal with them as they arose in the House. He was concerned that only 30 minutes a day were available to questions and that ministers may use up the time with long answers because "some Ministers have elastic views on what is brief" (NZPD 330, 1962, p.32). His colleague Phil Connelly (L) disagreed, believing that "this will ultimately prove to be a good idea", though he thought that 30 minutes might prove insufficient (NZPD 330, 1962, p.35). Some members felt they could rely on the Prime Minister, as Leader of the House, to move for an extension if more time was needed to answer questions. This reliance on the goodwill of the Prime Minster is a common theme in discussion of standing orders during the predominantly two-party era between 1935 and 1995 (NZPD 330, 1962, p.35). In 1962 Moohan (L) proposed to move that the adoption of the new standing orders on questions be postponed. The Prime Minister expressed his hope that "the honourable member will not press his view" and proposed an amendment, requiring a reply to a question to be "concise, confined to the subject matter of the question asked and not contain any argument or controversial matter" (NZPD 330, 1962, p.49). This was adopted and Moohan's proposal was not pursued.

Members felt that, with the abolition of the Wednesday debate on questions and replies, backbenchers had lost an opportunity to debate matters of local importance or topical interest. Some suggested an hour-long debate on replies to questions each Friday afternoon. As a compromise between the old system and the new, one hour a fortnight was to be set aside to enable replies to questions to be debated (AJHR 1967, I.14, p.5). The Leader of the Opposition, Norman Kirk (L), saw this as a "very considerable incentive… to increase the number of written questions". It is an example of the House putting in place a compromise measure to meet the wishes of both sides.

Generally, members were in favour of the new system of questions, with Prime Minister Holyoake (N) observing:

> …in neither the House of Commons nor any other Commonwealth Parliament is information made available so readily and so quickly to members by way of answers to questions as it is here in New Zealand. I hope we can continue that, although it does mean that Ministers and their secretaries and Government departments are working under great pressure… (NZPD 350, 1967, p.64).

Requirement to answer questions

In the debate on the amendments to Standing Orders in 1962, there was some discussion over whether a minister could be compelled to answer a question. Speaker Algie (N) said that the requirement to answer was already set out in *Erskine May*, which was "the law and custom of the constitution" but Holyoake (N) replied that "he was not very fond of [Erskine] May at all. He has written such lengthy tomes that take a lot of wading through" (NZPD 330, 1962, pp.42-43). He preferred that the obligation to answer be made explicit. The Speaker argued against the change because of the difficulty of enforcing it (NZPD 330, 1962, p.66). The amended standing order, requiring a minister to answer, was revisited the following day and agreed unanimously (NZPD 330, 1962, pp.66-67).

The obligation on ministers to answer questions was tested in 1968. Ralph Hanan (N), acting for the Minister of External Affairs, did not respond to two questions about the Nigerian civil war, thinking that time for questions had expired. Ruling on a point of order, Speaker Jack (N) stated:

> It does not seem to me that it is obligatory upon a Minister to answer a question. It is certainly customary, but I am not aware of any sufficient reason for saying it is binding on a Minister to answer questions, and, more particularly, supplementary questions, in view of the lack of notice of such questions, the vagueness with which supplementary questions are sometimes framed, and their remoteness at times from direct elucidation of a previous answer (NZPD 357, 1968, pp.2181-2182).

In this instance, the House gave leave for the time to be extended to enable the questions to be answered but the ruling that it was not obligatory to answer questions endured.

In 1979, the Labour Opposition accused the Postmaster-General Ben Couch (N) of evading questions and pointed to Speaker Steward's 1892 ruling that an answer "ought to be given". Speaker Harrison (N) ruled that:

> It states that it ought to be given, but it does not have to be given. The member for New Lynn did say in discussing the point of order that there was an obligation on the Minister to give an answer. There is no obligation in that Speaker's ruling. It states that an answer ought to be given. Certainly I cannot force the Minister to give an answer to a question (NZPD 422, 1979, p.509).

The ruling was confirmed by Speaker Arthur (L) in 1984 (NZPD 458, 1984, p.1014).

When the Minster of Police, John Banks (N), refused to answer an oral question in 1991, Speaker Gray (N) was called on to reconcile the expectation that an answer to question ought to be given if it can be given in a manner consistent with the public interest. In 1980, Speaker Harrison (N) had ruled that a minister is not obliged to answer a question (NZPD 433, 1980, pp.3244-3245). He explained that the House had an expectation that questions would be answered and that:

> if a Minister thinks that a question is not in order, the proper course is to raise a point of order about it. The Speaker will then decide whether the question is permitted. It is not for a Minister to decide whether or not a question is in order (NZPD 514, 1991, p.1241).

The obligation on ministers to answer questions was recognised in Standing Orders by requiring a minister to provide an answer if it could be given consistently with the public interest. The SOC was of the view that ministers should attempt a reasonable answer (AJHR 1995, I.18A, p.75). However, it was for the House and the public to determine the accuracy and adequacy of the answer, not the Speaker (NZPD 522, 1992, p.6887; 603, 2002, p.1622)

Since the advent of MMP there has been greater emphasis placed by Speakers on ministers' obligations to address questions. Speaker Tapsell (L) ruled that "a Minister must attempt to give a reasonable answer to a question" (NZPD 553, 1996, p.11124); Speaker Hunt (L) ruled that ministers should "endeavour to give informative replies to questions" (NZPD 620, 2004, p.15443) and Speaker Wilson (L) ruled that a minister "must give an answer if it can be given consistently with the public interest" (NZPD 648, 2008, p.17177). However, Speakers do not

judge the quality of an answer beyond assessing that it addresses the question (NZPD 595, 2001, p.11634; NZPD 625, 2005, p.20447) leaving assessment of the quality of any answer to the House, the news media and the public (NZPD 694, 2013, p.14705). Nevertheless, answers sometimes have been so manifestly inadequate that Speakers have allowed members additional questions to seek a more informative answer (Interviews D. Carter 14/6/2022 & L. Smith 23/5/2022).

The House has defended its right to question ministers broadly on their portfolios. When the Public Finance (State Sector Management) Bill, introduced in 2003, would have limited ministerial accountability to matters for which they had legal responsibility, all parties opposed this, following a submission by Clerk David McGee (2003, pp.10-11; NZPD 622, 2004, p.17841). The Finance and Expenditure Committee reported that:

> Currently, Ministers are responsible by convention to the House both for their official acts and for the general conduct of their departments and officials. This is based on political accountability, and is not limited to matters where the Minister has a legal ability to exercise control over the matter in question. Enacting the provisions contained in clauses 69 and 131 could potentially allow Ministers to refuse to answer questions to Parliament on the basis that they have no legal responsibility for the particular matter, severely reducing the scope of ministerial accountability (Finance (State Sector Management) Bill 99-2, p.23).

The offending provisions were removed at second reading, when the committee's amendments were agreed.

Supplementary questions

Speakers were called to rule on the scope and length of supplementary questions in the years following the implementation of the new system of questions in 1962. Speaker Algie (N) had chaired the SOC that had recommended its adoption and so was well-placed to address this matter. He indicated that if a minister introduced additional information into a reply then that could be the basis for a supplementary question, even if the subject matter was somewhat wider than the original question:

> …Ministers are encouraged in their own interests to be as brief as they reasonably can in their replies. I have found that rarely in the House of Commons do Ministers exceed that practice by giving too much information. A supplementary question is generally designed to drag out what they have withheld (NZPD 330, 1962, p.452).

However, he also ruled against members asking several supplementary questions in the form of one (NZPD 337, 1963, p.2698).

The place of supplementary questions continued to be a topic of importance to the House. There was "some dissatisfaction" among members with the exercise of the Speaker's discretion to allow supplementary questions "for the purposes of elucidation only" (AJHR 1967, I.14, p.5). The dissatisfaction appeared to be with the latitude shown by Speakers in allowing numerous supplementary questions. While the SOC felt that it was not feasible to write a rule prescribing limits to the Speaker's discretion:

> It might be helpful as a guide if it were to suggest that, unless the subject-matter of the question was of great importance, three supplementary questions should normally suffice to obtain elucidation of any reply given by a Minister (AJHR 1967, I.14, p.5).

The SOC reported that supplementary questions at the discretion of the Speaker had "caused difficulty" and that "it would be in the best interests of the House if such discretion was exercised with firmness" (AJHR 1972, I.19, p.7). In debating the recommendation, Prime Minister Jack Marshall (N) said that:

> If the House adopts this report, the Speaker will be expected to cut off supplementary questions earlier than has been the practice. In 1967 the Standing Orders Committee suggested that unless the subject matter of questions was of great importance, three supplementary questions should normally be sufficient to obtain elucidation of any reply by a Minister, I think that is still a reasonable guide (NZPD 378, 1972, p.43).

Martyn Finlay (L), took a different view, considering that three supplementary questions could be "quite insufficient to exhaust the potentiality of a topic". Instead, he suggested that the Speaker interpret the word "elucidate" differently to enable members to seek

explanation of answers to supplementary questions, not only of the primary question. He was of the view that interpretation would give the Speaker "more freedom and, at the same time he will not be quite so much bound and irritated by this kind of ritual" (NZPD 378, 1972, p.54).

Questions, and particularly supplementary questions, continued to vex the next parliament and the 1974 SOC again provided guidance to the Speaker. The report, wrongly, claimed that the previous committee had "recommended that up to three supplementaries should be allowed but the practice seems to have developed for every question to be followed by three supplementaries" (AJHR 1974, I.14, p.6). In fact, the previous committee had simply repeated the 1967 committee's recommendation that "unless the subject-matter of the question was of great importance, three supplementary questions should normally suffice" (AJHR 1972, I.19, p.7). The committee agreed that the Speaker was placed in a difficult position in the exercise of discretion to allow supplementary questions (AJHR 1974, I.14, p.6) and members complimented Speaker Whitehead (L) on the way he had handled questions (NZPD 395, 1974, p.5750). The SOC recommended, with some optimism, that:

> A more flexible approach should be adopted and that where a question is of major importance and of general interest to members a considerable number of supplementaries should be allowed. Hopefully this approach would result in many minor questions passing without any request for a supplementary (AJHR 1974, I.14, p.6).

The committee's recommended approach did not appear to result in a greater concentration of supplementary questions on major matters and some members clearly felt they had a right to ask supplementary questions whenever they wished. When Jim Bolger (N), asserted that he had a right to ask supplementary questions, Speaker Whitehead (L) ruled that "[t]he honourable member has no right. No member has an absolute right to be given the call to ask a supplementary question" (NZPD 399, 1975, p.2682). A further practice that became firmly established and still endures was the allocation of the first supplementary question to the member who asked the original question. This practice was based on the decision of a Speaker and then quickly established as a norm (NZPD 416, 1977, p.4995).

In 1979 former member Martyn Finlay (L) recommended a more permissive approach to supplementary questions, arguing that the strict application of the rules meant that "we have needlessly denied ourselves of a most valuable parliamentary and democratic weapon" (Submission, 20/2/1979). Supplementary questions could only be asked to elucidate an answer, limiting the scope of supplementary questions. The matter had been the source of frequent points of order because it did not allow topics raised in questions to be explored very broadly (NZPD 330, 1962, pp.268 & 452). They continued to be the focus of reform after 1985, when Robert Muldoon (N) advocated for change:

> There has been some difficulty with supplementary questions in recent times, as all members know. As the House gets into the feel of the new Standing Orders and the matters in the report it may well be that that position can be eased as well. The principle should be that when there is doubt the member should be allowed to ask the question - it will save time and the House will be able to get on with its business (NZPD 464, 1985, p.5602).

The following year, the National Party raised the matter with the SOC (Submission, 8/8/1986; Minutes, 23/7/1986). The matter was "debated at some length and no firm consensus was reached" (Minutes, 5/8/1986) and later "discussed at length" (Minutes, 13/8/1986). The committee ultimately recommended a change enabling supplementary questions to be asked to pursue points relevant to the minister's answers as well as to the original question. However, the final form of the words was not supported by the National Party members, who recorded their vote against it (Minutes 13/8/1986). The committee observed that the change might slow the progress of questions and reduce the number answered each day. It reminded members that "oral questions are intended for oral reply, and that reasonable expedition within question time is desirable" (AJHR 1986, I.18A, p.6). All parties voted in favour of the change in the House but senior opposition whip, Don McKinnon (N) observed that "Ministers will be stupid if they give an answer that opens up a wider supplementary question than the subject they previously have been able to get away with" (NZPD 475, 1986, p.5472).

Following the introduction of MMP, Speaker Hunt (L) made an important change to the operation of supplementary questions by allocating them on a strict proportional formula, which has been retained for use by Speakers ever since that time (D. McGee interview,

21/4/2022). However, the discretion to award supplementary questions remains and has been used by Speakers to assist members to probe poor answers further (Interviews L. Smith 23/5/2022 and D. Carter 14/6/2022). The power to remove supplementary questions has also been used to deal with poor behaviour in the Chamber (T. Mallard interview, 21/9/2022)

Written questions

In 1962 separate categories of written and oral questions were created. Previously all questions had been regarded as written (Martin, 2004, p.260). The new system, was based on the UK system outlined for the committee by Clerk Henry Dollimore (Memo, 1/3/1962), and was thought to give the individual member "a daily opportunity to focus the spotlight of attention on all aspects of Government administration while the right to obtain detailed information on local and other matters will be secured by the proposed provision for the seeking of written answers to certain Questions" (AJHR 1962, I.17, p.18). Written answers provided a useful new way to obtain statistical and other information (Martin, 2004, p.261). Occasionally members would suggest that some oral questions were more suited to be written questions, particularly when they sought statistical information. However, the Speaker confirmed that members were entitled to ask a question in whichever form they wished (NZPD 401, 1975, p.4715).

When the length of time for oral questions was seen as insufficient, the 1972 SOC encouraged greater use of written questions to seek information from ministers and commented that the "practice would be further encouraged by expeditious replies to such questions" (AJHR 1972, I.19, p.7). Members heeded that advice and by 1991 the committee was urging restraint around written questions (AJHR 1991, I.18B, pp.28-29). The volume of written questions had grown almost tenfold from 2,781 in the 36th Parliament (1970-1972) to 26,250 in the 43rd Parliament (1990-1993). Senior government whip, Jeff Grant (N), criticising the practice of lodging:

> 34 questions to every minister about every other thing that members could, or checking on the maintenance or the capital development to every school in New Zealand… it is a useless exercise, and it serves no purpose at all (NZPD 529, 1992, p.10951).

The cost of printing the questions on the order paper was the primary concern of the SOC. A daily limit on questions was considered, along with the amalgamation by the Clerk of similar questions. Ultimately, the committee settled on printing written questions separately from the order paper. This would allow them to be lodged on days when the House was in urgency, when a new order paper would not be produced[132], ensuring that all replies did not fall due on the same day. Also, in order to address the unexpected changes to the parliamentary calendar caused by urgency, replies were now required within five working days (AJHR 1992, I.18B, pp.27-28; NZPD 529, 1992, pp.10947 & 10959). Previously, they had been required within three sitting days or one week after the start of an adjournment (AJHR 1986, I.18A, p.5), an arrangement requested by George Gair (N) to ensure that answers were not delayed for many weeks by the more frequent adjournments introduced in 1985 (Submission, 27/5/1985).

The volume of written questions continued to cause some concern, having almost trebled in the previous decade (see Table 6.1, below). Wyatt Creech (N) requested a review of the rules for written questions (Submission, 19/9/1994) and the SOC responded by urging members to ensure their questions were worth asking before incurring the cost to the taxpayer of the provision of an answer.[133] It noted a tendency for members to split written questions that could have been asked as one and pointed out that, although oral questions could only have two parts, there was no restriction to the number of parts a written question could have, effectively encouraging a smaller number of longer questions. Written questions were now able to be lodged on any working day, not just sitting days, and answers were due five working days after the question was published (AJHR, 1995, I.18A, pp.76 & 172-173). This enabled questions to be lodged year-round, regardless of whether the House was sitting and the due date for answers would not be altered by bouts of urgency.[134] The SOC also considered allowing written questions to be lodged at 12 noon rather than 11am and requiring answers to be published daily, rather than weekly. The

[132] A new order paper is only produced each sitting day, not on each calendar day. Time spent under urgency is considered to be a continuous, single sitting day. When the House is in urgency a new order paper may not be produced for several calendar days.
[133] The cost of answering written questions has not been calculated in New Zealand. In the UK, the cost was put at £149 ($298), though it is likely to have increased (House of Commons Information Office, 2010).
[134] The only time written questions may not be lodged is on a public holiday and between Christmas Day and 15 January.

Clerk, David McGee, advised that the changes would create practical and financial difficulties (Advice, undated, tabled 18/10/1995) and the committee decided not to recommend these changes (AJHR, 1995, I.18A, p.76).

The last significant step for written questions, in the period of this study, was the development of an electronic system for lodging and answering them, launched in 2003 by the Office of the Clerk. The growth in written questions made the system necessary and the SOC considered it along with a range of other changes to parliamentary printing and publications. At the request of Clerk David McGee, it approved in principle the move from a paper-based system to an electronic one in 2001 (Minutes, 6/9/2001) and, in its report, recommended new rules to provide for electronic written questions only (AJHR, 2002, I.18A, pp.7-10). On the final sitting day for 2002, the House approved a sessional order that recognised the electronic system (NZPD 506, 1990, pp.2801-2803) and in 2003, the sessional order was made a standing order with an additional provision to enable the Speaker to allow manual lodging of questions and answers in an emergency (AJHR 2003, I.18B, p.73).

The rapid growth in the number of written questions, facilitated by the introduction of an electronic system, was accompanied by an increase in the number of complaints from members about delays in receiving answers. Of particular concern was the perceived over-use of interim replies from ministers, which met the Standing Orders requirement to respond in time but did not usually provide substantive information.[135] In 2014, the Green Party submitted to the SOC that the process of interim replies had been abused and proposed tighter rules to ensure ministers responded substantively to written questions in the allocated time (AJHR 2014, I.14A, p.31). Speaker Tapsell (L) had ruled, in 1995, that an interim reply met the existing requirements of Standing Orders, though he thought that situation was unsatisfactory (NZPD 547, 1995, p.7195). The Clerk, Mary Harris, recommended that interim replies no longer be regarded as replies for the purposes of the Standing Orders, and time taken to provide final replies, and the reasons for delay, be made public (Advice, 17/6/2014) and this approach was adopted (AJHR 2014, I.18A, pp.31-32).

[135] An interim reply or 'holding' reply generally states that the question will take some time to answer and the information sought will be provided as soon as possible.

Table 6.1: Number of written questions in each parliament

Parliament	Number of written questions	Number of MPs	Average per MP
33rd (1961-1963)	42	80	0.52
34th (1964-1966)	184	80	2.3
35th (1967-1969)	440	80	5.5
36th (1970-1972)	1,287	84	15.32
37th (1973-1975)	2,781	87	31.96
38th (1976-1978)	2,596	87	29.83
39th (1979-1981)	6,475	92	70.38
40th (1982-1984)	5,406	92	58.76
41st (1984-1987)	11,607	95	122.17
42nd (1987-1990)	22,379	97	230.71
43rd (1990-1993)	26,250	97	270.61
44th (1993-1996)	29,862	99	301.63
45th (1996-1999)	39,633	120	330.27
46th (1999-2002)	49,347	120	411.22
47th (2002-2005)	50,435	120	420.29
48th (2005-2008)	52,445	120	437.04
49th (2008-2011)	73,914	121	610.85
50th (2001-2014)	38,594	122	316.34
51st (2014-2017)	42,411	121	350.5

Source: Journal of the House of Representatives

Timing and duration of question time

The 1962 SOC report recommended additional opportunities for members to speak in the House (NZPD 330, 1962, p.25), including a formal question period, "modelled on that of the British House of Commons" (AJHR 1962, I.17, p.8). The committee first considered setting aside an hour each day (Draft report 1) but after consultation with the caucuses, reduced it to 30 minutes (Draft report 2). The time was soon found to be insufficient to deal with the daily list of oral questions. Extensions of time, moved by the Leader of the House (the Prime Minister), became commonplace. Keith Holyoake (N) fondly recalled that such extensions had become "a sort of habit" of the late Prime Minister Norman Kirk (L) and that this was

"an illustration of the way in which many changes are first brought about" (NZPD 395, 1974, p.5750). In 1974, the SOC agreed with Holyoake's recommendation to increase question time to 40 minutes, with any questions not answered by Friday to automatically become written questions available for debate each fortnight, under the procedure put in place in 1962 (NZPD 395, 1974, p.5749; AJHR 1974, I.14, p.6). This was generally seen as an improvement but some members were not convinced it would work in practice and David Thomson (N) said "if we find the mechanics of this procedure may not assist the ordinary member, I hope we can rapidly make an amendment" (NZPD 395, 1974, p.5752).

The reforms to questions made in 1985 were relatively few but the SOC spent considerable time on them (NZPD 464, 1985, p.5602) and they had important lasting effects. Oral questions were to be held at the beginning of each day, ensuring that "there be a guaranteed period of questions for oral answer each day" (AJHR 1985, I.14, p.16) "that cannot be subverted by the Government's introducing Bills or other business" (NZPD 464, 1985, p.5850). Prior to this change, bills and other business had commenced at a fixed time, regardless of whether previous business, including questions, had been completed (SO 1979, 65).

In addition to the 30-minute period for oral questions, a further 15 minutes were provided for six 'questions of the day'. These questions were to be on topical matters and could be asked without notice (Minutes 23/5/1985). They were predicted to "provide an element of enlivening interest at the beginning of the parliamentary day" (NZPD 464, 1985, p.5850). The questions of the day replaced the debating of members' notices of motion, a process that was now regarded as irrelevant and tedious by most members. The time spent on members' notices of motion had, itself, replaced a debate on written answers to questions in 1962. It is an example of the House experimenting with a variety of solutions to a perceived problem – finding a way of questioning ministers on matters of current interest or concern. Members were supportive of this approach, though Speaker Dr Gerry Wall (L) observed:

> It will not be known how the measure will work until it is put into practice. I see no great difficulty in controlling those questions in an orderly fashion from the chair. What is laid down in the Standing Orders is perfectly straightforward to administer from the chair, but I do see some great problems for the Ministers and their

> departments with those six questions, particularly in getting the quality of answer that members may expect, especially on matters of considerable immediate public interest. Only time will tell how much of a problem that will become, and I think it is good that the House has decided to try this procedure (NZPD 464, 1985, p.5870).

Two other small amendments were made to the draft Standing Orders presented to the House in 1985. George Gair (N), moved an amendment to enable written questions to be put to private members, "correcting an omission from the old Standing Orders". The Government considered the amendment to be "entirely reasonable" and supported it. (NZPD 464, 1985, p.5868). Senior opposition whip, Don McKinnon (N), sought an arrangement to enable oral questions to be lodged 30 minutes later on Tuesdays because some members would not arrive at parliament in time to lodge them by 9.30am on the first sitting day of the week. Geoffrey Palmer (L), agreed and proposed an "arrangement", which would be reflected in Hansard but not through an amended Standing Order. However, Speaker Gerry Wall (L) was "not in favour of a 'chummy' arrangement in order to get round the Standing Orders. It becomes too difficult for the table staff and for me to apply the rules even-handedly." He proposed an amendment instead, which was agreed (NZPD 464, 1985, p.5870).

Some refinements to the system for questions were made the following year, when the SOC made its second report. Oral questions were to receive a response two sitting days after being lodged with the Clerk. The result was that questions lodged on a Thursday were not due for reply until the following Wednesday, making it difficult to question ministers on urgent issues. Adjournments of the House made the delay even longer. The committee recommended a change to allow questions to be lodged on any working day and for an answer to be provided more rapidly (AJHR 1986, I.18A, p.5).

Since 1962 questions not addressed were set down for the following day, ahead of any new questions. Questions not answered by a Thursday were converted to written questions instead. In order to deal with the accumulation of questions throughout the week and to facilitate the speedier receipt of answers, the National Party proposed that any question not addressed on the day it was due to be asked would automatically become a written question (NZPD 475, 1986, p.5472). The SOC agreed and further recommended a limit of 16

oral questions each day, “analogous to the limit on questions of the day, which at 6 is a realistic number for the time allocated to this item of business”. The committee effectively established a formula of an average of two minutes and thirty seconds for an oral question (AJHR 1986, I.18A, p.5). The time available for questions was revisited in 1992. The SOC noted that questions of the day were likely to generate more supplementary questions than those lodged two days earlier. As a result, the 15-minute time limit for them was often reached before the six daily questions could be asked. They lost much of their currency by being answered in written form days later. The committee recommended 15 minutes for daily questions be considered as a guide for the Speaker but that the formal time limit be removed. The House agreed (AJHR 1992, I.18B, p.29).

In recommending a change to the six questions of the day and 16 oral questions on notice, the committee reported that it was rare that all questions were answered in the 45 minutes allowed for oral questions. Submissions proposed a reduction in the number of oral questions to allow more in-depth questioning of Ministers, particularly in a House with more than two parties. The SOC initially determined to increase oral questions to one hour, including 20 minutes of questions to the Prime Minister (Memo from the Clerk 24/2/1995, p.12). It considered a proposal to have a mix of policy questions and questions related to constituency concerns (Submission of Harry Duynhoven (L), 21/10/1994). However, it later agreed to 12 questions to ministers with no specified time limit to be known as ‘oral questions’ (Minutes, 5/7/1995). Urgent questions to ministers and questions to private members were retained in their existing form (AJHR, I.18A, p.74). The committee rejected proposals for a Prime Minister’s question time from Peter Dunne (F) (Submission 7/2/1995) and the National Council for Women (Submission 15/8/1994) and for questions without notice because it would be unreasonable to expect all ministers and their advisers to have to prepare for all possible questions each day (AJHR 1995, I.18A, pp.73-74).

Members of the public later raised concerns in submissions that when the House sat under urgency question time was not held, unless the House gave leave to do so. They proposed that the Standing Orders be amended to provide for question time to be automatically held (Submissions of Malcolm Harbrow and Graeme Edgeler, 2013). This matter had been considered by the SOC as early as 1986 but an agreed position could not be reached between parties (Minutes 23/7/1986). Clerk Mary Harris had proposed that the Business

Committee ought to be able determine that question time be held when the House was sitting under urgency (Submission, 11/2013, p.21) and the SOC agreed (AJHR 2014, I.18A, p.10). Rather than mandating the holding of question time, it would remain part of the bargaining that characterised Business Committee meetings.

Allocation of questions to parties

Although there had been a third party in the House since 1978, it had received little consideration in the rules of the House, though some practices had been adapted to accommodate it. The Social Credit Party (renamed the New Zealand Democratic Party in 1985) was the first additional party to join National and Labour in the House since the 1935 election. With only two members, it was difficult for the party to attend to matters such as reforms of Standing Orders or to persuade its larger rivals to accommodate it. The party alternated between using oral questions available for the government and for the opposition and the New Labour Party followed suit, when Jim Anderton (NL) broke away from Labour in 1989. The Speaker confirmed the practice in a ruling:

> In relation to questions, the custom has been that a third or fourth party alternates question time from question to question. Therefore, if a member asks a question one day it will be as part of the time that generally goes to the Opposition. On another day the time will come from the half that generally goes to the Government. (NZPD 497, 1989, p.10263)

Questions continued to be allocated between parties by agreement until the advent of MMP. Consistent with other rules recognising the proportional basis of the House, the SOC proposed that questions now be allocated proportional to seats in the House (Advice from the Clerk 18/9/1995). However, members of the Executive were excluded from the calculation so that parties not in government would have more opportunities to ask questions (AJHR 1995, I.18A, p.75). The exclusion of the Executive was initially opposed by the National caucus, feeling that "we are being asked to give away a lot in the Questions without sufficient in return" (Letter from Wyatt Creech (N), undated, tabled 20/9/1995). However, it was ultimately agreed by the SOC and remained the basis for the allocation of questions. The question roster is prepared by the Clerk and endorsed by the Business Committee.

Questions to members

Questions to members who were not ministers had always been permitted, though the scope of matters they could be questioned about was, necessarily, narrower. Private members were not responsible to the House for 'public affairs' or the activities of the government. They could be asked about bills, motions or other public matter connected with the business of the House for which they had responsibility. The system of asking questions on notice, which had been extended to ministers in 1962, was applied to private members in 1967 (AJHR 1967, I.14, p.6). The occasional question to members had not been problematic.

In 2011, the SOC considered whether to limit the number of questions to members who are not ministers. The proposal was in response to "an isolated incident" that saw the ACT Party attempt to lodge 700 such questions on one day, which would have substantially extended question time and delayed the House progressing to business that ACT opposed (AJHR, I.18B, p.53). The majority of the questions were not in order when scrutinised by the Clerk but 94 questions, primarily to select committee chairpersons, were accepted for lodging. The government responded to the potential delay of legislation threatened by the extended question time by withdrawing from the debating chamber all committee chairpersons belonging to parties in government. Unlike questions to ministers, questions to chairpersons may not be answered by other members on their behalf unless the chairperson is overseas. The absence of the chairpersons caused 90 of the questions to be set down for the next sitting day, too late to have their desired delaying effect. Only four questions were asked (NZPD 671, 2011, pp.17625). In ruling on points of order relating to the questions, Speaker Smith said that:

> Standing Order 370 sets no limit for questions to members. However, members in lodging so many questions run the risk of limits being placed on the number of such questions and, in so doing, adversely affecting other members with genuine issues they want to pursue… clearly I think the Standing Orders Committee, which is currently sitting, will be able to consider that issue (NZPD 671, 2011, pp.17621-17624).

The SOC did not recommend limiting the number of questions to members or the time available for them to be asked, considering that doing so:

> …would be arbitrary and could result in a tactical approach to avoiding such questions. The capacity to ask questions to members remains a useful means for members to enquire about business that is not in the charge of the Government, especially the progress of business in select committees. The lodging of many questions to members as a procedural tactic could be regarded as an abuse. It would be unfortunate if an isolated incident resulted in the scaling back of a long-standing procedure, but that is the risk that arises when members explore the limits of parliamentary tactical behaviour (AJHR 2011, I.18B, p.53).

It warned that a limit on the exercise of the procedure for questions to members "could be seriously considered if the procedure were over-used as a mechanism to delay the House's business" and the tactic has not been repeated since 2011. The committee also upheld the ruling of the Speaker that the existing 12-question limit applied only to questions to ministers (AJHR 2011, I.18B, p.53), in the face of a submission from a member of parliament suggesting that it did not (Submission of Hon Wayne Mapp, 29/3/2011).

Misrepresentation during questions

Statements of facts in questions must be authenticated before they can be accepted by the Clerk. There has never been such a rule for replies to questions (NZPD 607, 2003, p.4959), though members may not deliberately mislead the House (NZPD 433, 1980, pp.3673 & 3761). Doing so may lead to a charge of contempt of Parliament. In 2010, the Green Party raised a concern that members could be misrepresented during question time in a way that fell short of deliberately misleading the House. The Standing Orders permitted members, by leave, to make personal explanations and the House usually gave leave when a member wished to correct a misrepresentation.[136] However, the Green Party argued that there should be an automatic right of reply and that leave should be automatic in such cases (Submission, 28/10/2010, p.3). The Clerk, Mary Harris, pointed out that the proposal could

[136] A personal explanation is a procedure allowing members to speak to the House on a personal matter. It is often used to respond to reflections on their honour or to correct a previous statement.

increase the risk that the procedure for personal explanations could be used to make points of debate or to disrupt or delay proceedings, or to foreclose questioning or debate about a member's conduct. In response, the Speaker proposed a process to provide for a member misrepresented during oral questions to make a response to the House, if the matter was not subsequently corrected in the House (Advice from Clerk, 3/6/2011, p.13). The SOC agreed that "the absence of any effective check has allowed members to get away with a certain recklessness with the truth" and agreed to the proposal, which was included in Standing Orders (AJHR 2011, I.18B, pp.51-52). The process for responding to misrepresentation has been used once since its introduction (NZPD 723, 2017, p.18819). The House has, usually, given leave for members to make personal explanations to respond to misrepresentation.

Discussion

New Zealand's system of parliamentary questions has been the subject of relatively few substantive rule changes but of many Speakers' rulings. The scope of questions has broadened somewhat over the period of this study to encompass matters before select committees and hypothetical matters, as a result of member dissatisfaction with limitations on their questioning. A question can be asked about any government activity and ministers are expected to take responsibility for answering, even if they have no legal control over the activity.[137] They are the only ones who can answer to the House for the actions of the executive.

The obligation to answer a question has been determined almost entirely by the decisions of presiding officers. While the Standing Orders assume an answer will be given, Speakers judge whether this addresses the question. It is a judgement that they have had to make in virtually every question time and so it is unsurprising that a body of jurisprudence has grown around it, shaped by Speakers' views and those of other members. Ultimately, the adequacy of an answer is judged by the voting public (NZPD 603, 2002, p.1622; NZPD 694, 2013, p.14705).

[137] For example, ministers must answer to the House for actions taken by public officials exercising independent statutory powers (NZPD 509, 1990, p.2705.

While members are free to ask questions about any government activity, backbenchers from parties in government do not exercise the right. Instead, they are given 'patsy' questions by their party that are used to announce good news stories by the government, in the form of answers. Although the proportional allocation of questions excludes the executive in its calculation, ministers still face four or five friendly questions each day. This is a waste of the legislature's primary opportunity to scrutinise government activity broadly and reflects the tight party discipline in the New Zealand parliament. It would be a bold government that agreed to do away with such questions and, instead, face 12 probing questions each day. There is likely a strong element of path dependence in the current system of allocating questions. Changing the allocation of questions or rules for asking them, which have been stable since 1995, is likely to be difficult and unattractive to a party on the government benches. However, were a change to be made, any move to revert to the previous approach would look like an attempt to avoid accountability and, as a result, would encounter opposition in the House.

Written questions are an invaluable tool to opposition members, since there is no limit on their number. They must be answered within 6 days and there are few permitted reasons to refuse answers when compared with the Official Information Act 1981. The most common complaint about the handling of questions is about delays in receiving an answer. It is telling that members of parties in government do not use written questions at all. They are very much a tool of the opposition, not of all members.

Supplementary questions are available to all parties, on a proportional basis, to probe answers to primary oral questions. These are seldom spontaneous. Opposition members generally pre-prepare their supplementary questions and government backbenchers are provided with scripted questions to assist ministers in using answers to describe government achievements. Adjudication of supplementary questions has always been in the hands of the Speaker, with few formal rules about them. While the SOC has attempted to guide Speakers over the period of his study, they have recognised the difficulty in making rules about something so subjective and contestable.

Changes to the rules and practices governing questions are a mix of drift, conversion, displacement and layering, in the framework developed by Mahoney and Thelen (2010). The displacement of old rules by new ones led to questions being vetted on paper by the Clerk,

rather than on the spot by the Speaker; the proportional allocation of questions on notice and of supplementary questions; and the acceptance of questions on a wide range of matters including select committee business. Layering of new rules on top of existing ones included introducing separate categories of written and oral questions, the electronic lodging of written questions and question time during urgency. Given the difficulty in making rules about the quality of answers in a highly contested environment, it is not surprising that the impact of rules has drifted due to inaction and that old rules have been converted with new interpretations. For many years, the standing order requiring questions to be addressed drifted to a point where members grew frustrated. The requirement that a question be answered, rather than just 'addressed', was an interpretation of Standing Orders by Speaker Smith that converted the nature of oral questions and has been largely followed by his successors. The SOC has also attempted to guide Speakers on the allocation and use of supplementary questions. Speaker Hunt developed a proportional allocation system that successive Speakers have used, though they are not required by the Standing Orders to do so.

Chapter 7 – Select Committees

This chapter examines the major changes made to New Zealand select committees, particularly the way they have become so central to parliamentary business. Key to the growth in the prominence of committees has been their role in scrutinising legislation and conducting inquiries on their own motion. Changes in the consideration of secondary legislation, petitions, public finance and international treaties are also detailed in this chapter. Developments in the way that committees operate, include opening to the public and observing principles of natural justice are also examined before the chapter concludes by considering the changes in the context of Mahoney and Thelen's (2020) framework for understanding gradual institutional change.

Committees have come to play a vital role in the New Zealand parliament, as they do in many legislatures. As 'subcommittees' of the House, they enable a small group of members to focus on issues in detail and to examine, question and scrutinise in ways that would be impractical in the larger plenary. New Zealand's subject select committees enable members to develop a degree of subject specialisation. Committees also enable political accommodations to be reached and non-partisan work to be done away from the public gaze (Skene, 1990; McLeay 2005).

There are many institutional arrangements said to be conducive to the effective conduct of parliamentary committees but their structure, formal powers, resources and the balance of power with the government are the most important (McLeay, 2006). Committees should not be so large as to be unwieldy (Strom, 1995; McLeay, 2001) and they should be permanent, at least for the life of a parliament. Committees that exist at the will of the executive are likely to be assembled only when it suits the government and cannot easily function independently. Equally, committees dominated by the governing parties are less likely to be willing to scrutinise their senior (ministerial) colleagues (Marinac & Curtis, 2006). Effective select committees require human and financial resources. Having a stable and dedicated membership provides greater opportunity for members to develop subject expertise. Frequent changes of membership or substitutions undermines this (CPA, 2018; McLeay, 2006).

One of the most important contributions that committees can make is in examining legislation, with public input, and recommending amendments to it (Ganley, 2001). This step in the legislative process should be obligatory and not lightly over-ridden (McLeay, 2006; CPA, 2018; IPU, 2008). Public input through submissions not only exposes the committee to a diverse range of views it provides people with an opportunity to directly influence law-making (CPA, 2018; Ganley, 2001). Holding hearings that are open to the public and the news media provides greater transparency in the legislative process (CPA, 2018). The power to independently initiate inquiries is significant in enabling committees to examine the actions of the executive. To do it effectively, committees must have the power to require the production of persons and papers (Lambert, 2007; CPA, 2018; IPU, 2008). A committee with inquisitorial powers should also be required to observe the principles of natural justice (CPA, 2018).

There have been a very large number of changes to New Zealand's select committee procedure and practice in the 80-year time period of this study. This chapter focuses on those that give the committees their distinct nature, such as:

- their wide responsibilities including legislation, scrutiny, petitions and treaties
- The ability to initiate their own inquiries
- Automatic referral of bills to committees
- Routine involvement of the public through submissions
- Hearings being open to the public by default
- Comprehensive natural justice procedures
- The ability to report differing views of committee members

This chapter focuses primarily on the 12 'subject' select committees (such as Health and Justice). These conduct most of the legislative and scrutiny work. The chapter also covers the development of the Regulations Review Committee because of its important role in scrutinising secondary legislation. The Standing Orders Committee (SOC), which features throughout this study, is also a select committee, though not a 'subject' committee. The Business Committee, on the other hand, is a parliamentary committee but not a select committee (see Chapter 4).[138] The key developments in select committee procedure

[138] For completeness, the other specialist select committees are Privileges and Officers of Parliament. Ad hoc committees are established occasionally to deal with specific bills or inquiries.

throughout the period of this study are set out in Figure 1 below.

Figure 1: Timeline of major changes to select committee procedure

1930s	1939 Statutes Amendment Bills begin to be routinely referred to committees
1940s	1947 peace treaties with Axis powers approved by Parliament
1950s	1951 Provisions for joint committees with upper house removed 1953 bills can be referred to committees without 2nd reading debate
1960s	1962 committees start to meet regularly throughout the year 1962 Public Expenditure Committee (PEC) replaces Public Accounts Committee
1970s	1972 committees established for duration of a parliament 1972 all committees able to examine Estimates 1972 committees can open to the public on their own motion 1974 Local Bills Committee can open to the media 1979 most bills automatically referred to select committees 1979 amendments recommended unanimously automatically adopted
1980s	1985 subject select committees to consider bills, financial scrutiny, petitions 1985 committees may call for submissions on any matter before them 1985 committees able to initiative inquiries 1985 committee hearings open to the public, including media, by default 1985 Regulations Review Committee established with broad examination remit 1985 Finance and Expenditure Committee (FEC) replaces PEC 1985 opposition committee chairs 1985 committee membership set at 5 1985 minority views permitted in reports 1986 cabinet ministers may not be members of committees 1986 scrutiny of public accounts allocated to FEC 1986 government required to respond to committee recommendations
1990s	1990 private members bills automatically referred to committees 1991 financial reviews by committees triggered by presentation of annual reports 1990 committee power to recommend financial amendments widened 1995 six month deadline to report on bills 1995 commentary report on every bill, explaining amendments, required 1995 non-journalists allowed to take notes of proceedings 1995 committee seats proportional to seats in the House 1995 committee membership set at 8 1999 Business Committee sets committee size and appoints members 1995 natural justice rules introduced for committees 1999 committees perform limited scrutiny of treaties
2000s	2003 limited release of confidential committee proceedings allowed
2010s	2013 livestreaming of committees trialled 2014 all MPs can access all committee papers electronically

Early years

Select committees received little attention in early reviews of Standing Orders. However, they were relatively busy in the early part of the twentieth century. Many bills were referred to them, with relevant ministers attending to explain the provisions, members of the public giving evidence and public servants being cross-examined. By the 1950s, however, select committee business was dominated by petitions and only a small minority of bills were referred (Martin, 2011, p.260).

The abolition of the Legislative Council in 1950 represented a significant constitutional change and an alteration of the parliamentary landscape, though it was not usually characterised as such. Former Clerk of the House, Thomas Hall, lamented that:

> We are not very expert in constitution making. We recently abolished the traditional second Chamber. One would have expected a restatement of the constitutional position. It was not so however. .. I imagine more steps to clarify the position and define powers would have been taken in reconstituting a limited liability company (Hall, 1950-1954, Privilege of Parliament, p.4)

Despite the cursory attention given to re-organising New Zealand's constitutional arrangements, the abolition of the Legislative Council necessitated a review of Standing Orders (AJHR 1951, I.17, p.41). New Zealand's select committee system is often described as filling the legislative scrutiny role of an upper house but there is no evidence that such a role was envisaged for committees at the time of the abolition of the Council. Instead, the SOC reported that "all Standing Orders which have become redundant following the abolition of the Legislative Council have been deleted and that all consequential amendments have been made so as to render the procedure suitable for a single-chamber Legislature" (AJHR 1951, I.17, p.42). The report made no recommendations in respect of select committees. Provision for joint committees of the two houses was, necessarily, deleted.

The Standing Orders said little about the conduct of committee proceedings. They provided for a quorum, moving and voting on motions, recording of evidence, the confidentiality of proceedings and the power to report recommendations to the House (SO 1951, 315-348). This sparseness of rules has been maintained to this day, with committees largely left to regulate their own proceedings as a reflection of their informality, relative to the House.

Structure and function of committees

Impetus for reform of select committees began to develop in the 1960s. During the 1960 general election, the National Party proposed to improve the procedures of parliament and to establish an ombudsman (McRae, p.71). State expenditure had been growing at a time when parliamentary control of it was seen to be diminishing (von Tunzelmann, 1979, p.20). The Royal Commission on State Services had found that "the enormous growth of public business and the vastly increased pace of development have combined to deprive Parliament of the ability to exercise its traditional control of finance" (Royal Commission of Inquiry, 1962, p.64). The Auditor-General expressed concern about the parliamentary review of estimates and recommended reform (AJHR 1961 B.1 (Pt II), pp.6-8).

In establishing a SOC in 1961, the Prime Minister, Keith Holyoake (N), and other members expressed a view that more time ought to be devoted to the work of select committees. He acknowledged public criticism of the length of speeches and of debates in the House and asked the committee to consider "whether our forms and procedures could be amended to enable us to devote more time to actual committee work". The Deputy Prime Minister, Jack Marshall (N), believed the broadcast of proceedings turned the listening public against long speeches and thought that reform might enable members to "do more useful work on committees". The opposition agreed and suggested that committees be permitted to meet when the House was in recess (NZPD 326, 1961, pp.101-102).

There was little government support for major reforms through the 1970s (Interviews D. McGee, 21/4/2022; D. McKinnon, 18/5/2022). A proposal, in 1979, to create "departmental" committees like those in the United Kingdom from Richard Prebble (L) (submission 8, undated) was rejected because it would allow the government to effectively determine the select committee structure and out of concern that committees and the departments they oversaw might identify too closely (Working paper from the Clerk, 28/8/1979; Minutes 29/8/1979). The results of the 1979 review were criticised by the Labour opposition as "timid", "archaic", "inadequate" and "conservative" (NZPD 428, 1979, pp.4810 & 4819). New member Geoffrey Palmer (L) argued for a re-organisation of select committees (NZPD 428, 1979, pp.4820-4822).

The frustration among opposition members would set the stage for the most sweeping changes to the committee system. In 1984, the Labour Party's Open Government policy drew on overseas experience and promised to re-organise the select committee system "from first principles", to give committees the power to conduct their own inquiries and to allow some to be chaired by opposition members (Labour Party Open Government Policy, 1984, p.1). The sense of 'fair play' and the commitment to scrutinise the government would be enhanced by "sharing these positions of greatest influence" (Palmer, 1984).

The 1984 snap election saw the election of a reforming Labour Government, intent on achieving as much as possible in as little time as possible (Palmer, 2013, pp.653-654). It had a stated aim of re-balancing the power between the legislative and executive branches of government (Palmer, 1984). The SOC was convened on 17 August 1984 and reported to the House on 16 July 1985. Its recommendations were debated the same day. Geoffrey Palmer said that:

> The most important changes are to the select committees, which are reorganised from first principles. There will be a new organisation and new structure based on subject areas. The powers of select committees will be greatly enhanced and there will be an opportunity for effective parliamentary scrutiny of Government, not just for parliamentary scrutiny of legislation (NZPD 464, 1985, p.5599-5600)

Select committees were reformed into subject committees with responsibility for considering legislation, financial scrutiny, petitions and inquiries. The Private Bills, Local Bills and Petitions Committees were abolished and their work was shared among the new committees (AJHR 1985, I.14B, pp.32-36).

Committee subject areas have been re-arranged many times since 1985. In 1999, in response to submissions from members, the overworked Justice and Law Reform Committee was split into a Law and Order Committee and a Justice and Electoral Committee in order to "get a much more equitable workload" (NZPD 580, 1999, p.19431). In 2008, subject areas of five committees were altered to reflect restructuring in the state sector (AJHR, 2008, I.18B, p. 21).

One of the main limitations on the re-organisation of committees has been a scarcity of members to fill any additional seats as well as a preference, by members, for sticking with

the model of cross-cutting subject committees. A 2011 proposal by the Green Party (Submission 28/10/2010) to re-organise subject areas to create an Economic, Finance and Environment Committee was rejected by the majority of the SOC because "it would have implications for subject area linkages with ministerial portfolios and the balance of workloads" (AJHR 2011, I.18B, p.31). Similarly, suggestions from the Human Rights Commission, to create a human rights committee have been rejected. The subject of human rights was regarded by members as the responsibility of all select committees "that exercise general oversight of policy, legislative and administrative matters within their subject areas" and "the current size and membership of committees [did] not easily permit the establishment of a new permanent select committee" (AJHR 2014, I.18A, p.15; 2011, I.18B, p.31). Some submitters and commentators remain of the view that the scrutiny of impacts on human rights in bills is inadequate (M. Wilson interview, 16/5/2022).

Establishment of committees

Committees were established and members allocated to them on motion by the House for most of the period of this study. Substitution of members on committees was a matter of informal agreement between the party leaders, though the Standing Orders required such changes be made on a motion with notice (SO 1969, 326). The 1972 review of Standing Orders recommended amendment of the standing order to "bring it into line with current practice" so that changes would be agreed between parties and then notified to the Clerk (AJHR 1972, I.19, p.11). In fact, the House had granted the leaders of the two parties the power to do exactly that, while the SOC was still considering the matter (JHR 26/11/1971). In 1985, the automatic establishment of committees was provided for in Standing Orders, though the House still had to appoint their members.

Also in 1985, true to its earlier undertaking, the Government offered the opposition three committee chairs (NZPD 457, 1984, p.15). It declined two of them, feeling that its role as opposition might be compromised by accepting (Palmer, 2013, p.654). The refusal reflected the common view of select committees as tools of the executive. The opposition did accept the chair of the newly formed Regulations Review Committee and from this time, it became a convention that the committee be chaired by an opposition member (Palmer, 1987, p.133; AJHR 1995, I.18A, p.35).

The 1995 changes to standing orders governing select committees were comprehensive (M. Harris interview, 20/4/2022). Committee membership was to be proportional to seats in the House. This would both reflect the MMP parliament and ensure that government parties had numerical superiority on most committees, as had been the case in pre-MMP parliaments. The new Business Committee would deal with permanent substitutions, though committees would be initially established by motion in the House. The proportional allocation of committee chairs was also discussed but the status quo of committees electing their own chairs was retained. In practice, this meant that parties in government would continue to chair most committees, since their members would usually be in a majority (AJHR 1995, I.18A, pp.31-45).

The 1996 election resulted in protracted coalition negotiations between New Zealand First and National and between New Zealand First and Labour. The appointment of select committees, on a motion in the House, was a casualty of the long coalition-forming period and they were not appointed until five months after the election. The appointment debate had been a drawn-out affair, with the coalition government intent on chairing all select committees and each motion establishing a committee was vigorously debated and often concluded only through the carrying of a closure motion (NZPD 558, 1996, pp.514-29).

In the review that followed, the next SOC concluded that the setting-up of committees by motion was “a largely pointless exercise because the permanent membership can be changed completely by the Business Committee” (AJHR 1999, I.18B, p.15). The Standing Orders would specify the names and subject areas of each committee but the Business Committee would allocate membership. Despite this change, the House had to appoint chairpersons to three select committees in 2000 when, because of deadlocks between government and opposition members, they were unable to elect their own (NZPD 581, 1999, pp.585-620, 631-632). The Clerk, David McGee, raised with the SOC whether the Business Committee should play a role in appointing chairs, given these difficulties (Submission 5/2003), but the suggestion was not adopted. Select committees continue to elect their own chairs today, though always in conformity with deals between parties.

Size of committees

The size of committees has varied considerably, though it used to be standardised. In 1972 consideration was given to amalgamating committees or reducing their membership. No practical changes could be agreed by the SOC, so it recommended fixing the size of each committee in Standing Orders. The smallest had five members and the largest had 11 (AJHR 1972, I.19, pp.11-12). The 1985 reforms set the size at five members, subject to variation by the House (AJHR I.14, p.32). It did so to reduce competition for members' time and ensure more regular attendance. The leader of the Democrats, Gary Knapp (D), supported the change because "a limited number of members are available for committees... two or three members on each committee tend to carry the load and very often others are just filling in spaces" (NZPD 464, 1985, p.5917).

Some members raised concerns at the size and jurisdiction of the proposed committees in 1985. Doug Kidd (N) thought that the merger of the foreign affairs and defence subjects into one committee would lead the defence element to "get the thin end of what has in the past been a very narrow stick" (NZPD 464, 1985, p.5918). Winston Peters (N) raised the membership of the Māori Affairs Committee, noting that there were four Māori seats but only three places on the committee available to the government. Geoffrey Palmer (L) responded that two of the members of Māori seats were disqualified from committee membership because they were ministers, though prior to 1985 ministers had sat on committees. Palmer (L) indicated that he would keep the size of committees under review (NZPD 464, 1985 pp.5919-5921). The SOC endorsed the size of committees the following year, pointing to the advantages of members serving on only one committee thereby enabling them to specialise in a subject area and removing the need for frequent replacements by not requiring members to simultaneously attend two meetings (AJHR 1986, I.18A, p.13).

In 1995 the membership was set at 8 members per committee, unless the House determined otherwise, in anticipation of the increase in the size of the House (SO 1996, 189(3)). Once the Business Committee was given responsibility for the appointment of members to committees in 2003, it was also given control over their size (AJHR 2003, I.18B, p.26). Committee size has varied since that time, between 5 and 13 members. The desire of successive governments to maintain a majority on committees dealing with the most

contentious subject areas and the need to accommodate all parties on those committees has tended to mean committees such as Finance and Expenditure, Health and Social Services have been large.

Time to meet and priority of select committee work

The lack of time for select committees to meet and do detailed work was first considered in the 1962 review of Standing Orders. The House sat almost continuously for about five months each year, making it difficult for select committee work to be a regular part of the parliamentary cycle. The government was sometimes tardy in moving a motion to establish committees each session.[139] The SOC considered the size, role and function of committees in advice provided by the Clerk, Henry Dollimore, at the request of the Speaker (memo 1/3/1962). It considered that committees would be able to work more efficiently if "some modification to the practice of the Australian Federal Parliament were adopted and the House were to adjourn for one week at intervals throughout the session" (AJHR 1962, I.17, p.6). It did not recommend a change to Standing Orders but, rather, commended the idea to the Prime Minister so that he would move adjournments throughout each session. The House responded by enabling committees to meet for two mornings each week while the House was in session and for them to meet during the recess. As a result, committees met throughout much of the year and received more bills to consider (Martin, 2004, p.260). The SOC also recommended that committees be established as soon as conveniently practicable after the commencement of each session, that members should sit on only one committee and, to facilitate this, that the number of committees and the number of members on each committee be reduced (AJHR, 1962, I.17, p.17).

In 1972 the House agreed to select committees being established for the duration of a Parliament rather than for each session, in line with the more continuous nature of their work and the pattern of regular meetings throughout the year. Membership was to be fixed for each committee, rather than varying each time a committee was established. The SOC did not think that a reduction in the number of committees was feasible but reported that a

[139] A 'session' was an annual sitting of Parliament and it was 'prorogued' (temporarily concluded) until summoned again by the Governor-General, on advice from the Prime Minister, the following year. New Zealand moved to holding a single three-year session, without prorogation, in 1993.

reduction in the size of existing committees would result in a more effective functioning of the committee system (AJHR 1972, I.19, p.12).

The changes to select committee practices and the growing prominence of committees was not met with universal approval. In 1998, three former Speakers published a report at the invitation of the Association of Former Members of Parliament, which was concerned "about the extremely low public perceptions of the performance and relevance of the House of Representatives" (Harrison, Gray and Tapsell, 1998, p.1). The report disagreed with the ability of select committees to meet during sitting hours of the House, which "overlooks the supremacy of the House within our parliamentary system" and recommended that Thursday morning sittings be abandoned to allow time for committee work (Harrison, Gray and Tapsell, 1998, p.22). It is notable that the former Speakers suggested that the House gave way to select committees, recognising the fact the committee work was indispensable and now deeply ingrained in the lifecycle of parliamentary business.

Committees were meeting regularly during periods when the House was adjourned because of their growing workloads (AJHR 1990, A.8, p.2). The sitting hours of the House were duly changed so that it would sit on Tuesday evening and no longer on Thursday morning, in competition with committees. This change was made as a sessional order resulting from an interim report of the SOC, rather than waiting for the regular triennial review. It had been initially discussed at the Business Committee but no agreement could be reached and it agreed to leave the matter to the SOC (Minutes of the Business Committee, 20/3/1997; 8/7/1997). While the changed hours were not unanimously supported, they were the best available solution to an unsatisfactory situation (AJHR 1998, I.18A, p.3). The change was not always observed. In 2003, Ken Shirley (A) expressed the view that it was too easy for Ministers to move instructions exempting select committees from the meeting time restrictions, through motions moved without notice after the first readings of bills. He suggested that any instruction to allow a select committee to meet at extraordinary times should require a debatable notice of motion (AJHR 2003, I.18B, p.30). The suggestion was not supported by other parties at the time, though instructions to committees were made

debateable in 2011 as a way of discouraging governments from limiting select committee scrutiny (AJHR, I.18B, pp.40-41).[140]

Referral of bills to select committees

The referral of bills to select committees began as an irregular process. Precursor events eventually led to codifying of standing orders on the matter. The first such precursor in the period of this study came in 1939 when a Statutes Amendment Bill[141] was referred to a select committee, at the request of members (NZPD 256, 1939, p.130). The Clerk, Henry Dollimore, observed many years later (1968) that the practice continued with these bills ever since. In 1953 the House amended Standing Order 219 to enable a bill to be referred to a select committee without being debated at its second reading (NZPD 234, 1932, p.226). This reversed an amendment made during the 1951 review, which required that the House agree unanimously to have a second reading with no debate before referring a bill to a committee. This was a much lower hurdle to clear, since it required only a majority in the House rather than unanimous agreement. It saved House time and reflected the fact that the report of the committee would itself be debated in the House. It was an important pre-cursor to the automatic referral of bills to select committees, since it recognised the value of detailed consideration of legislation off the floor of the House.

Through the 1970s select committees came to be viewed, increasingly, as a regular part of the legislative process (NZPD 378, 1972, p.48). Procedures were streamlined to make it simpler to refer bills to select committees after their first reading. In 1972, the SOC recommended that the committee of the whole House stage of a bill could be "safely streamlined" into a single debate, rather than conducting separate debate on each clause, if a bill had been reported by a select committee without major amendment (AJHR, 1972, I.19, pp.9-10). This was a significant recognition of the contribution by committees to the legislative process.

Against this backdrop of growing significance of select committees, particularly in terms of scrutiny of legislation, the 1979 review of Standing Orders introduced one of the most

[140] The House may 'instruct' committees to operate in specified ways, to report by a certain date and/or meet at times that are normally prohibited.
[141] Since 1936 Statutes Amendment Bills have been used to make minor, unrelated amendments to a variety of Acts.

important developments in the New Zealand committee system: automatic referral of bills to a select committee. The report on the review recommended that "consideration of Bills by select committees should now be recognised as a normal stage in the passage of Government legislation, in the same way it is in respect of local and private bills" (AJHR 1979, I.14, p.7). The committee noted that 26 of the 71 bills introduced in the previous session had been referred to committees. Submissions from the International Commission of Jurists (10/4/1979) New Zealand Federation of University Women (1/1979) and Richard Prebble (L) (20/2/79) advocated for the automatic referral of bills to select committees. In considering automatic referral, the committee was wary of shifting the balance between the House and select committees too much and seeing the focus of party divisions shift from the House to the "relatively bipartisan atmosphere in which committees carry out their tasks at present" (AJHR 1979, I.14, p.7). Excluded from the automatic referral were "money" bills, which dealt substantially with financial or budgetary matters, and bills passed under urgency.

An important consequential change was also made. Local bills were already referred automatically to the Local Bills Committee and bills relating to Crown land referred to the Lands Committee (Dollimore, 1968). Any amendments recommended by either committee were deemed to be adopted when the bill had its second reading, in accordance with rulings made by Speaker Statham (I) in 1929 and 1933 (NZPD 233, p.1177 & 237, p.904), though the Standing Orders were silent on the matter. For all other bills, select committee amendments were debated and adopted by the committee of the whole House. The Speaker's ruling was adopted as a standing order that would apply to all government bills that were reported by a select committee (AJHR, 1979, I.14, p. 8). This seemingly minor change enhanced the status of select committees and underscored the value of their scrutiny of legislation by giving their recommendations automatic effect. The automatic referral of bills and adoption of committee amendments were significant changes and remain foundations of the legislative system.

The greater focus on legislative work by committees had an immediate impact and, within a year, it was reported that submissions were routinely called for by committees as soon as bills were referred to them (AJHR 1986, I.18A, p.12). In the two years following, the volume of submissions received increased by 73 per cent and the time spent hearing submissions by

committees increased by 169 per cent (AJHR 1989, I.14B, p.12). The number of submissions has grown steadily over the years since then and some bills attract many thousands[142]. Some interview subjects thought that the legislative process has been overwhelmed with numerous public submissions (K. Keith interview, 18/8/2022), which limited the time available to hear from expert witnesses.

By 1990, almost every government bill and every private and local bill was automatically referred to a select committee. The only category of bills not to be treated this way were private members' bills[143], which were only referred on a motion of the member in charge. The SOC considered it would be consistent for private members' bills to be treated similarly to other bills (AJHR 1990, I.18B, pp.13-14).

Long-held concerns that members' bills were unreasonably held up in committees led, in 1995, to select committees being given six months to report on bills. After that time, the bill would be discharged from the committee and returned to the House (AJHR 1995, I.18A, p. 38). Recognising that this might place undue pressure on committees at times, they were also given the power to divide bills and retain parts for further scrutiny. The practice of reporting to get the authority of the House to divide bills had grown in recent years (AJHR 1995, I.18A, p.38). The change did not entirely address members' concerns. Select committees could seek extensions to the reporting deadlines. Members had the choice of consenting or seeing their bill reported to the House incompletely considered.[144] In 2008, Gordon Copeland (I) complained to the SOC that his bill had been overlooked by a committee which gave preference to other members' bills (AJHR, 2008, I.18B, p.27).

Power of inquiry

Although the automatic referral of bills to committees was a major step, there was little appetite for further reform in 1979. Giving committees the power to initiate inquiries was not supported, though the Public Expenditure Committee and Statutes Revision Committee

[142] The Marriage (Definition of Marriage) Amendment Bill received 21,000 submissions in 2013. The End of Life Choice Bill received 39,000 in 2019. The Abortion Legislation Bill received 25,000 in 2020. The Conversion Practices Prohibition Legislation Bill received 107,000 in 2021.

[143] Private members' bills were renamed 'members' bills' in 1995, to avoid confusion with private bills. The term is still erroneously used today.

[144] The House could grant an extension to the reporting deadline for a bill but would be unlikely to do so if the member in charge of the bill did not agree. The Business Committee can now grant extensions as well.

were able to do so. The majority on the SOC preferred to maintain committees as "creatures of the House", only able to consider matters referred to them by the House (AJHR 1979, I.14, p.12). However, the fact that some committees were able to initiate inquiries would establish an important precedent for reforms in 1985 (AJHR 1985, I.14, p.30).

In 1985, 13 subject select committees were established, with broad terms of reference. For the first time, they had the power to conduct inquiries on their own initiative and to call for evidence on any matter before them. The opposition generally supported the changes to committees. Ian Mclean(N) expressed support for the greater powers of committees and their freedom to inquire into matters of policy, administration and expenditure. The Public Expenditure Committee had been able to do so since 1962 and served as an example of what other committees could achieve (NZPD 464, 1985, pp.5604 & 5919). The opposition sought and received an assurance that the Government would not use its majority on committees to stifle inquiries (NZPD 464, 1985, p.5920).

A 1989 review of the inquiry function of committees by the Business Committee found that the time demands of other, non-discretionary work such as legislation, had been an impediment to the conduct of inquiries (AJHR 1989, I.14B). In 1995, the SOC reconsidered whether it was practicable for select committees to combine legislative and scrutiny roles, taking into account the growth in the legislative workload and in public input into legislation. The committee contemplated separating the functions of committees to facilitate ministerial participation in legislative scrutiny, considering that governments "had come to rely on the select committee system to provide for the public discussion and refinement of legislation" (AJHR 1995, I.18A, pp.31-32). Against that, it weighed the subject knowledge that members could accumulate through doing a wider range of work and the value of members having a variety of experience. On balance, it considered that the current system should remain.

There has been a decline in the initiation of inquiries by subject committees since around 2000. A lack of time for self-initiated work may be one reason but the domination of committees by members of government parties is likely to be the chief cause of the limited use of inquiry powers (P. Dunne interview, 5/9/2022). Committees can meet as frequently as they wish, though usually not while the House is sitting, so a committee that wishes to use its inquiry powers could make time to do so. It has been the norm, in the period of this

study, for committees to have a government majority and for most to have a chairperson from a party in government. In a small legislature with a relatively large executive there are good prospects for promotion to the ministry and chairpersonship is often seen as a steppingstone to the ministry. Party discipline in New Zealand is strong. As a result of these two factors, there are disincentives for chairpersons to subject their senior colleagues to scrutiny which may embarrass the government. Dominance of select committees by government parties was regarded as stifling scrutiny of the Executive by interview subjects (Interviews L. Smith, 23/5/2022; T. Mallard, 21/9/2022 D. Carter, 16/6/2022). This pointed to a lack of 'maturity' of scrutiny work relative to legislative work, according to one interviewee (C. Hipkins interview, 3/8/2022).

Scrutiny of regulations

The 1985 creation of the Regulations Review Committee was welcomed across the House and was accompanied by amendments to the Regulations Act 1936. It had been recommended to the House by the Statutes Revision Committee, which it replaced (AJHR 1985, I.5A). The committee would examine regulations[145], which were automatically referred to it once they were officially notified. It could consider any regulation-making power in legislation and could receive complaints about regulations (Carter, 2010). Palmer (L) described the move as providing "protections against what has become known as government by regulation, of which there has been too much in New Zealand". The first chairperson of the committee, Doug Kidd (N), saw that it was "appropriate that parliament in this day and age – and it fits in with a whole trend – should seek to exercise some supervision over the powers of delegates" (NZPD 464, 1985, pp.5967-5968). Much of the work that paved the way for the committee was done by its predecessor, the Statutes Revision Committee, which had not had sufficient time to focus on delegated legislation (AJHR 1985, I.5A, p.3). The new committee could report problems with regulations to the House or even move to have them disallowed (Palmer, 2013, p.683).

Doug Kidd (N) viewed the changes made in 1985 as the culmination of a period of change through the 1970s and early 1980s. Members had been agitating, within their own

[145] Regulations are also called 'delegated legislation' or 'secondary legislation' and are laws made by the Executive under the authority delegated to it by an existing statute.

caucuses, for a greater role for select committees. These new shoots of parliamentary independence "put on a growth spurt" after the change of government (Kidd, 2001, p.15). Don McKinnon (N) went further, stating that even the Leader of the House, Geoffrey Palmer (L), would regard some of the reforms as "revolutionary, if not evolutionary" (NZPD 464, 1985, p.5598)

Petitioning Parliament

Petitions had been a mainstay of committee work until the 1960s but they were not always dealt with satisfactorily and some languished with committees for years. The 1962 review of Standing Orders recommended, successfully, that petitions not dealt with in a session were to lapse rather than be retained, unresolved and unreported (AJHR 1962, I.17, pp.16-18).

The creation of an Ombudsman in 1962 reduced the petition workload for committees. The Speech from the Throne had signalled the Government's intention to create an authority "responsible only to Parliament, to which the citizen aggrieved by administrative action can bring his complaint" (NZPD 326, 1961, p.12). The expected reduction in committee workload led to the amalgamation of the two petitions committees (memo from the Clerk 1/3/1962).[146] Once this new avenue for grievances was operating the Standing Orders were amended in 1967 to provide that the House would not consider petitions "within the competency of the Ombudsman" (SO 1969, 394).

The results of the establishment of the Ombudsman were immediately observable. Petitions had represented 45 per cent of committee report outputs in the period 1952 to 1961. This decreased to 30 percent between 1962 and 1978 (Halligan, 1980, p.210). The nature of petitions changed too, with far more of them focussing on concerns about public policy than on resolving individual grievances (Hill, 1974). The latter were matters more often directed to the Ombudsman.

In 1985, in keeping with the wide mandate of the new committees to deal with all business within their subject areas, the Petitions Committee was abolished and all petitions were to be referred to the subject committees (minutes, 30/4/1985). A large increase in the number

[146] Until 1962 one committee dealt with petitions from people with surnames that began with the letters A-L and another dealt with petitions from people with surnames that began with the letters M-Z. This had been the most equitable way to divide the work.

of petitions with one or two signatures, presented as a means of protest against legislation before the House, resulted in two changes to Standing Orders.[147] The first, in 1990, was to prohibit the presentation of petitions during the same session of parliament on matters already finally decided by the House (AJHR 1990, I.18B. pp.20-21). The second, in 1992, was to change the way that petitions were presented so that House time was no longer occupied by members reading each of them out. Instead, petitions were to be presented to the Clerk (AJHR 1993, I.18B, p.33). The number of petitions diminished by one-third in the following parliament (JHR 1996, p.1334).

Subsequent SOCs frequently commented adversely on the lack of attention given to petitions. Legislative work took priority given its importance to the government and the fact that bills, unlike petitions, had a deadline for reporting to the House. This dissatisfaction culminated in the 2020 re-establishment of a Petitions Committee to "give petitions all the attention they deserve" (AJHR 2020, I.18A, p.48).

The scrutiny of public finance

The role of select committees in scrutinising public finance grew commensurate with their greater role in the legislative process. In 1962 the total number of committees was reduced and new committees were established. The most significant was the Public Expenditure Committee, which replaced the ineffectual Public Accounts Committee (Martin, 2004, p.261; McRae, 1992, p.81; Wood, 1983, p.341). The SOC, acknowledging criticism of current arrangements, reported that:

> For many years competent observers have expressed the view that the means employed by the New Zealand Parliament for the control of public expenditure are defective and, in particular, that the present Public Accounts Committee with its restricted order of reference is not an effective instrument for the exercise of that control (AJHR 1962, I.17, p.20).

The Auditor-General had expressed similar concerns in his 1961 annual report, pointing to the fact that the Public Accounts Committee had scant time to conduct its reviews and reported to the government, rather than the House. He recommended the adoption of a

[147] Petitions opposing the Radiocommunications Bill and the Contraception, Sterilisation and Abortion Amendment Bill numbered more than 1500; approximately half of all petitions presented in the parliament.

model like that of the British House of Commons, which took evidence from officials, the Treasury and other experts, met during recesses and reported to the House (AJHR 1961 B.1 (Pt II), pp.6-8). The assessment was an accurate one. The Public Accounts Committee could not initiate its own investigations and it reported only twice between 1950 and 1962 (von Tunzelman, 1979, p.23). It operated as an estimates committee, despite its name, examining proposed government spending plans. In other parliaments, public accounts committees reviewed the expenditure and performance of the government. The Auditor-General had advocated changes of this sort with the SOC (memo 3/5/1962) and the Speaker also raised the matter (memo from the Clerk 1/3/1962). A hybrid committee was agreed to. The new Public Expenditure Committee would consider the main and supplementary estimates during each session and examine the audited accounts of the government in the recess (AJHR 1962, I.17, pp.20-22)

The House did not entirely adopt the recommendations of the SOC. It increased the membership of the Public Expenditure Committee from 10 to 12. Its subject area "to examine the public accounts and the accounts of corporations and other undertakings wholly or substantially owned by the Crown" was broadened for it to consider matters raised not only by the Auditor-General but "elsewhere". The committee was required to report to the House but could also report to the government. It differed from the British committee on which it was modelled by having a government chair and a government majority. Despite the Leader of the Opposition, Walter Nash (L), arguing that an opposition chair "would lift this Parliament and the supervision of government expenditure to higher levels than we have at any time thought of" the government opposed the move, noting that the United Kingdom had separate estimates and public accounts committees, unlike New Zealand (NZPD 330, 1962, pp.87-88). The government's view was endorsed in a second report of the SOC (AJHR 1962, I.17A). In general, both sides of the House welcomed the new committee, which took an independent and active approach to its work. The committee sometimes disagreed with the Auditor-General, criticised the government, and had its reports debated in the House. Its operation was significant in redressing the balance of power between the executive and legislature (Advice from the Clerk 3/3/1967; Martin, 2004, p.262).

In 1972 the examination of estimates of expenditure was given to all committees, instead of being the exclusive domain of the Public Expenditure Committee, an extension of Speaker Algie's (N) 1962 proposal to have multiple estimates committees (Memo from the Speaker 1/3/1962). In making the recommendation, the SOC explained that it was to alleviate the "very heavy pressure in examining the Estimates" (AJHR 1972, I.19, p.11). Advice from the Clerk, Henry Dollimore, to the committee showed that the Public Expenditure Committee had met more often than any committee except the Local Bills Committee. In debating the recommendation, Jonathan Hunt (L) described the change as "probably the most significant step forward in the revision of Standing Orders" (NZPD 378, 1972, p.45). As debate on the recommendation progressed, it became clear that members did not share a common view about the extent to which other committees would consider estimates. Thomas Gill (N) and George Gair (N) argued that the provision was a permissive one and that estimates could be referred to other committees. Leader of the Opposition Norman Kirk (L) argued that the referral of estimates to a range of committees was a practice to be adopted and wondered if "government members were not fully informed of this at their caucus" (NZPD 379, 1972, p.50). Prime Minister Holyoake (N) took the middle ground, indicating that the Leader of the House[148] would have to judge each year which estimates should be allocated elsewhere but that he expected some allocation to other committees would occur at each round of estimates (NZPD 378, 1972, p.60). While this arrangement left control of the examination of the spending plans of the executive in the hands of the executive, it established a pattern of allocation of estimates to all subject committees that has endured.

In 1985 scrutiny of public accounts and consideration of matters raised by the Controller and Auditor-General were allocated to the Finance and Expenditure Committee, which succeeded the Public Expenditure Committee. This work was initially omitted from the 1985 reforms but was added in 1986 following a submission from the Auditor-General (Minutes, 24/9/1986; AJHR 1986, I.18A, p.11).

In 1990, the range of "money bills" not referred to committees was narrowed, after the matter was raised by the Primary Production Committee. The SOC concluded that the definition of "money bills" had "outlived its usefulness" and considered it sufficient that

[148] The role of Leader of the House was performed by the Prime Minister until 1979, when it became the responsibility of another senior minister.

only imprest supply bills and appropriation bills not be referred (AJHR 1990, I.18B, p.11). In keeping with this greater focus on financial scrutiny by select committees, they were given the power to consider provisions fixing rates of taxation, levies and charges. While a committee could not recommend amendments to such provisions because of "a cardinal principle that the Crown proposes taxation or supply and expenditure; Parliament consents", it could inform the House of its views on such matters (AJHR 1990, I.18B, p.12).

The House's financial procedures were substantially overhauled in 1991, following the passage of the Public Finance Act 1989. The Government Administration Committee[149] had inquired into departmental reporting to parliament and recommended changes to the appropriation and review processes to fit better with the change from an April-to-March financial year to a July-to-June financial year (AJHR 1989, I.6A and I.6B). The changes recommended for trial by the SOC were informed by this work (letter from Government Administration Committee 14/9/1989; Minutes 7/3/90 & 20/6/1990). Estimates scrutiny by committees would be limited to spending plans and not matters of current performance and ministers were discouraged from attending estimates hearings which were seen as "primarily an opportunity for [a] committee to call officials before it to answer how spending bids are to be used to provide the outputs being purchased" (AJHR 1991, I.18A, p.7). The presentation of annual reports would trigger the financial review process to review departmental performance. The Finance and Expenditure Committee had the central role of allocating appropriations and financial reviews to committees. The report of the SOC contained substantial sessional orders to temporarily alter the relevant Standing Orders, on a trial basis (AJHR 1991, I.18A). These trial procedures were adopted as Standing Orders in 1993 (AJHR 1993, A.8, p.2).

The inconsistent position regarding control of government finances was addressed in 1995. Private members were not permitted to move any proposal that involved any expenditure of taxpayer funds, though select committee amendments to bills that had a financial implication were permitted. Conversely, taxation legislation could only be amended with the consent of the Minister of Finance (Advice from the Clerk, undated, tabled 19/7/1995). Members could propose reductions in taxation but not increases. Committees could

[149] Despite its name, the committee was a parliamentary select committee.

indicate their views on charges and levies in their reports but not recommend changes. The introduction of a Crown financial veto power in 1995 (AJHR 1995, I.18A, pp.61-64) left the financial initiative and control over finances with the Crown. But amendments that proposed public spending were no longer out of order and were able to be proposed and debated (Advice from the Clerk and Treasury, 25/7/1995). This change necessitated an amendment to the Constitution Act 1986 and a sessional order was agreed to bridge the gap between the financial veto and the Act until such an amendment was made (AJHR 1995, I.18A, pp.64-65).

Further financial reforms in the state sector during the 47th Parliament were also reflected in changes to select committee practices. The Public Sector (State Sector Management) Bill, introduced in 2003, provided for certain reports to be referred from the Minister of Finance to a select committee. The Clerk, David McGee, argued for changes to parliamentary procedure to reflect these changes rather than legislating for it:

> It is inappropriate for Parliament to write into legislation a direct relationship between a Minster and a subordinate body (a committee) of the House. I say this as a matter of principle, not because any consultation that takes place will not be carried out in practice through a select committee. It clearly will be, but that should be through the House's own rules, its Standing Orders, rather than by legislation (which is justiciable and subject to review by a court) (Submission of the Clerk, 4/2004, p.10).

As a result, the Finance and Expenditure Committee reported that "the referral of reports to committees is an internal parliamentary process and should be governed by the internal rules of Parliament as contained in Standing Orders" (Public Sector (State Sector Management) Bill, 99-2, p.5).

The bill also obliged the Minister of Finance to consult with select committees on any regulations or instructions about reporting standards and before issuing instructions to Crown entities. Also following evidence from the Clerk, the Finance and Expenditure Committee reported that "the appropriate consultation process should not be dictated by legislation, but instead should be determined by the House and contained in Standing Orders" (Public Sector (State Sector Management) Bill, 99-2, pp.7-8). With the offending

provisions having been removed from the bill, the SOC recommended provisions to replace them be made in Standing Orders (AJHR 2005, I.18C, pp.4-12).

A submission to the 2008 review of Standing Orders from Michael Cullen (L), as Minister of Finance and Leader of the House, proposed that there should be parliamentary scrutiny of reports under the Public Finance Act 1989 on non-departmental appropriations.[150] The SOC agreed and recommended reports be examined at the same time as annual financial reviews of departments (usually between November and March) and then form part of the financial review debate in the House (AJHR 2008, I.18B, pp.35-37).

Parliamentary consideration of international treaties

Since signing the Treaty of Versailles in 1919, New Zealand had entered into international treaties in its own right. In the Commonwealth, since the Privy Council's 1937 decision on the Canadian *Labour Conventions* case, the generally accepted position had been that the power to make treaties belongs to the executive.[151] International treaties had not been subject to parliamentary control in New Zealand although, on occasion, peace treaties had been submitted to parliament before ratification, including the Treaty of Versailles and treaties made with Axis states after the Second World War (NZPD 184, 1919, pp.29-30, 35-77; NZPD 279, 1947, pp.686 & 710). In the case of the 1947 treaties, the Prime Minister and Leader of the Legislative Council thought that parliamentary approval was desirable but not essential (NZPD 279, 1947, p.710). In other cases, such as the peace treaty with Japan and the ANZUS pact no prior approval was sought from parliament (Keith, 1964, p.280). However, the situation settled into one where the executive brought important treaties to the legislature for debate when it thought it appropriate to do so. In 1964 legal scholar Kenneth Keith went as far as to describe it as a constitutional convention (Keith, 1964, p.293; K. Keith interview 18/8/2022). Even so, it was for the government to determine what was sufficiently important to warrant parliamentary attention.

In 1996 Clerk, David McGee, made a submission to the SOC arguing that the increasing influence that treaties had on legislation and the greater willingness of the courts to use treaties as sources of law made it imperative that the House consider its role in their

[150] Authority for entities that are not departments to spend public money.
[151] *Attorney-General for Canada v Attorney General for Ontario* (1937) A.C. 326, 347-348.

approval. He recommended that draft treaties stand referred to the Foreign Affairs and Defence Committee (FADC) (McGee, 1996a). The SOC broadly supported the intent of the proposals but did not have sufficient time to consider them further during its review (AJHR 1996, I.18B, p.3).

Former Minister of Foreign Affairs, Mike Moore (L), then took up the idea and successfully proposed a FADC inquiry into it. The committee invited submissions and discussed a role for parliament in the treaty process with the Minister of Foreign Affairs. It reported in 1997, recommending a 12-month trial of parliamentary consideration of treaties. Treaties subject to ratification, acceptance or approval were to be tabled in the House, accompanied by a national interest analysis; and then to be referred to the FADC, which could retain the treaty or allocate it to another committee. The government agreed not to accede to any treaty until either the committee reported or 15 sitting days expired, whichever was earlier (AJHR 1997, I.4A). At the conclusion of the trial, the FADC recommended that, with some refinements, the new provisions about treaties be adopted as a permanent part of Standing Orders (AJHR 1999, I.4E, p.7).

Submissions from Mike Moore (L) (18/11/1997) and Jim Anderton (A) (12/8/1997) to the SOC supported parliamentary scrutiny of treaties. The committee endorsed the recommendations of the FADC (AJHR 1999, I.18B, p.31) and they were adopted with no debate in the House. Since that time, the government assurance that it would not take treaty action, except in an emergency, until the House has had a reasonable opportunity to consider the treaty has become a convention recognised by the government's internal processes and by the practices of the House (Wilson, 2023, p.633).

International treaties were revisited in 2003. The Foreign Affairs, Defence and Trade Committee (FADTC)[152] had evaluated the process for the examination of international treaties in its consideration of Keith Locke's International Treaties Bill (AJHR 2002, Vol X, pp.146-153), which provided for parliamentary scrutiny of all international treaties. The SOC received submissions proposing similar changes but Clerk David McGee's suggestion that all treaties be presented to the House for consideration (Submission 5/2003) was not accepted by the government. Neither was the submission of the Local Government and Environment

[152] The committee had trade added to its subject area and name in 1995.

Committee that treaties be considered before ratification (Submission, 21/11/2001). However, the government agreed with the SOC to publish a list of treaties it was negotiating so that the FADTC could be briefed on them. The Social Services and Primary Production Committees submitted that committees were not aware of the international treaties relevant to their subject areas that came before the FADTC for consideration or referral to other committees (Submissions, 8/11/2001 & 22/11/2001). The SOC observed that when treaty examinations were first introduced, "they were referred more frequently to other select committees, which did not show a great deal of interest and tended to produce pro forma reports", perhaps from a lack of familiarity with them. The committee considered that now:

> It is likely that would prioritise a major treaty and give it considerable scrutiny, particularly if the committee were equipped with independent expert assistance. The importance of international treaties is such that they should be considered as part of the mainstream business of select committees (AJHR 2003, I.18B, pp. 76-78).

The Standing Orders were amended to make it clear that the FADTC could only retain treaties related to its own subject area and was required to refer others to the relevant committee.

A proposal for a treaties committee from Matt Robson (PC) was rejected "as the current size and number of committees leave little spare capacity for members to be freed up to serve on a new permanent committee" (AJHR 2003, I.18B, p.26). The parliament would remain true to the generalist subject committee model adopted in 1985 against other proposals to create specialist committees. Proposals for enhanced committee scrutiny of treaties and independent analysis of treaty contents to support parliamentary scrutiny (Submission of Jane Kelsey, 30/11/2000) were also not acted on in the period of this study.

Opening committees to the public

While the House has always been an open forum, select committee proceedings had initially been held behind closed doors. The 1967 SOC considered the operation of the committee system and sought information from other legislatures of the Westminster tradition (NZPD 350, 1967, p.68). The committee noted the interest of some members in the creation of "specialist" committees in the United Kingdom to scrutinise nationalised industries and

recommended that further consideration be given to providing for parliamentary scrutiny of Marketing Boards and the Wool Commission (Advice from the Clerk, 26/2/1968). The report also noted that the specialist committees held hearings that were open to the public and took evidence from Ministers and officials (AJHR, 1968, I.14, p.12). Members expanded their views on committee conduct in the debate on the report. Mick Connelly (L) observed that:

> We are living in times of great change and rapid communication which ultimately call for changes in the procedures of the New Zealand Parliament. The United Kingdom's new committee system was justified on the ground of the need for greater accountability by the Executive and greater accountability by public authorities… Whereas in the past select committees in the House of Commons took evidence in private, the new-style select committees tend to take evidence in public (NZPD 355, 1968, p.117).

Connelly drew a comparison with American Congressional committees which were given "great publicity" and frequently televised. He suggested that, when a second television channel was introduced, some proceedings should be televised (NZPD 355, 1968, p.118).[153] Norman Kirk (L), did not go as far but advocated opening committees to the news media "in order that this important part of Parliament's work can also be part of the pattern of informing the public as to what is going on". He feared that, without better informing the public about parliament it would lose authority and then "the very basis on which democracy is built" (NZPD 355, 1968, p.112). Matiu Rata (L), argued that the current situation should be reversed so that committees would hold public hearings, unless the Prime Minister moved a motion in the House to close them. He too thought such a move "would go a long way towards enhancing the reputation of Parliament" and supported seeking submissions from the general public not just those invited by the clerk of the committee (NZPD 355, 1962, pp.122).

Not all members favoured a more open committee system and Sir Leslie Munro (N) was "not particularly desirous of seeing committees sit in public as they do in the United States constantly, where you get a good deal of unruliness, certainly of exhibitionism". Munro

[153] Connolly was somewhat ahead of his time, since the second channel was not launched until 1975. Committee proceedings were first webcast in 2013 and broadcast in 2020.

referred to the contentious consideration of the News Media Ownership Bill by the Statutes Revision Committee, which had been open to the public and saw political disputes, uncharacteristic of the committee, aired in public (NZPD 345, 1965, pp.3608-3611). Dan Riddiford (L) joined the cross-party chorus of members who thought that members were "capable of carrying out fuller committee work than they now do" and expressed his support for the recent meetings of committees during recess (NZPD 355, 1962, pp.119). While Jonathan Hunt (L) lamented that "so much work by the [Standing Orders] committee has resulted in so little" (NZPD 355, 1962, pp. 120), the cross-party support for an enhanced role for committees was an important pre-cursor to change.

The growing support among members for open committee proceedings resulted in select committees being given the authority to open their proceedings to the public, on their own motion, in 1972, though the public were not permitted to record or divulge the evidence they heard. Curiously, committees still had to seek the permission of the House to admit the news media (SO 1973, 336 and 337). They did so by making a special report to the House (JHR 12/9/1956). This limitation was supported by members who recalled joint hearings of the Statutes Revision and Social Services Committees on the Narcotics Amendment Bill in 1970 that were open to the media and were "far from Parliament at its best" (NZPD 378, 1972, p.48). The SOC's report provided no explanation for this liberalisation of access to committees, simply describing the new rules, but it is consistent with the tenor of the debate in 1968. Leader of the Opposition Norman Kirk was said to favour open committees (K. Keith interview 18/8/2022). SOC members Jonathan Hunt (L) and Martyn Finlay (L) had advocated for all committees to be open to the public and the media, as a general rule. This would have made the status of proceedings clearer, they argued, and was what happened at Westminster. They could not achieve majority support for this proposal (NZPD 378, 1972, p.48).

The opposition to more open committee proceedings dissolved incrementally. In 1974, the Local Bills Committee was given the power to determine whether to admit news media because it could have bills referred to it by the Clerk when the House was not in session. It could not seek the permission of the House to open at such times (AJHR 1974, I.14, p.8). Other committees would need to wait 11 years for similar authority. By 1979 the opening of committees to the public, by default, was Labour Party policy (NZPD 428, 1979, p.4812).

The 1985 reforms of select committees under the Fourth Labour Government saw them open to the public for hearings of evidence, by default. Some members expressed concern at the effect that open hearings of evidence would have on the financial scrutiny work of committees. Ian McLean (N) reminded the House of a recent estimates examination where the commissioner of the Government Life Insurance Office had said "Can I be frank with you? My outfit is on the verge of collapse, it is nearly broke; morale is bad and it is on the verge of collapse". He wondered whether such frankness would continue in an open hearing and feared "something would be lost" (NZPD 464, 1985, p.5957).[154] Geoffrey Palmer (L) responded that evidence could be heard in private but that "the presumption of the new Standing Orders is openness". Robert Muldoon (N) suggested that witnesses should be informed of the right to request evidence to be given confidentially. He did not speak against the reforms and, indeed, was lauded for his contribution to the work of the SOC (NZPD 464, 1985, pp.5600 & 5959). Muldoon had a good knowledge of the Standing Orders and was the last Prime Minister to be deeply involved in the business of the House (D. McKinnon interview, 18/5/2022; Martin, 2004, p.286).

The 1995 review of Standing Orders, in preparation for MMP, made only a small modification to the openness of select committees. Until that time only members of the parliamentary press gallery were permitted to take notes in committee meetings, without the permission of the committee. This rule was a hangover from 1972 when committees had first been given the power to open their meetings to the public and it was a source of frustration to the public, members' staff and non-gallery journalists. Submissions from the New Zealand Manufacturers' Federation (undated, submission 9) and the Labour Party Research Unit (undated, tabled 7/9/1994) successfully requested the abolition of the rule. The presumption was now that notes could be taken unless a committee decided otherwise (AJHR I.18A, p.38).

The next significant measures for making parliamentary proceedings more accessible to the public were considered by the SOC in 2012. It considered a petition seeking captioning of House proceedings[155] and requests from members to webcast select committee

[154] McLean retracted the statement two days later, saying that the Government Life Insurance Office was "one of the strongest financial institutions in New Zealand" (NZ Herald, 27/7/1985, p.5).
[155] Petition 2011/4 of Merrin McLeod requesting that the House take immediate steps to provide live closed captioning of Parliament.

proceedings (NZPD 700, 2014, p.19755). Members of the public had, on a few occasions, received committee permission to livestream their own submissions.[156] The Clerk, Mary Harris, agreed to investigate captioning and pilot livestreaming (AJHR 2012, Vol 11). A limited, but successful, trial of livestreaming was carried out from 2013 using two specially equipped committee rooms (Advice of the Clerk, 29/5/2014, pp.23-26). The SOC reported that webcasting of public proceedings did not appear to have had a chilling effect on the public and it enabled the public and public servants to keep abreast of developments in committees. It noted that the cost of webcasting all committees would be beyond the current funding of the Office of the Clerk and recommended that the government considered fully funding the webcasting of all committee hearings (AJHR 2014, I.18A, p.17). To date, no such funding has been allocated by Cabinet but the Office of the Clerk uses social media platforms to livestream select committee hearings and makes them available on-demand.[157]

Confidentiality of proceedings

While committee hearings had, over time, opened to the public and news media, all other proceedings remained confidential until the committee reported to the House. Only secret evidence continued to be confidential indefinitely. Some members' research staff had asked for authority to view confidential proceedings to enable them to better assist members (Submission of Labour Research Unit, undated tabled 7/9/1994). The SOC declined to change the rules but endorsed the existing practice of such staff obtaining proceedings from their members (AJHR 1995, I.18A, p.39).

The Privileges Committee had considered three cases of confidential proceedings being leaked and asked the SOC, in 2003, to review the rules over confidentiality. The Foreign Affairs, Defence and Trade Committee made the same request. The Press Gallery proposed that the committee consider whether media organisations should be punished for using confidential proceedings or whether the source of the information should be the only one penalised (AJHR 2003, I.18B, p. 43). The Clerk, David McGee, also drew the committee's

[156] One such occasion as during the hearing of evidence on the Māori Affairs Committee's inquiry into the tobacco industry (2010, I.10A)

[157] Committee proceedings were broadcast during COVID-19 lockdowns in 2020 and 2021 but are not routinely televised because of the expense involved.

attention to a lack of flexibility in the existing provisions and recommended changes (Submission, 5/2003). The SOC considered that the confidentiality of proceedings was consistent with a committee's duty to report first to the House and that confidentiality encouraged dialogue between members, encouraged free and frank advice and limited lobbying outside of normal processes (AJHR 2003, I.18B, pp.43-48). The SOC recommended some loosening of the rules to permit members to disclose proceedings to their caucus and to the Clerk, reflecting long-standing practice. Committees were empowered to release their proceedings in order to assist their own consideration, such as seeking independent advice. Matter of process finally decided by a committee, such as a decision not to undertake an inquiry or a decision to appoint advisers, were also able to be released. Matters of parliamentary privilege that arose from committee proceedings were to be referred to the committee for comment before the Speaker made a decision on them, as a way to deal with minor or technical infringements less formally (AJHR 2003, I.18B, pp.43-48).

Since 2010, select committees had used an electronic system for the receipt and distribution of the numerous papers they considered. The 'eCommittee' system made it possible for the public to make submissions online and facilitated the more rapid distribution of papers to members than the previous system of hand delivery. Access to papers was limited to members of the committee. The ACT Party, wishing to keep abreast of issues in committees on which it did not have members, asked that the Standing Orders be amended to allow the committee staff to supply papers to parties not on a committee (Submission, 10/10/2013). Clerk Mary Harris had suggested that members should be given wide access to all committee papers to enable them to "inform themselves broadly about matters that will come before the House" (Submission, 11/2013, pp.29-30; Advice 29/5/2014, p.22). The SOC agreed and recommended accordingly, with the warning that "unauthorised disclosure [of proceedings] to any person could result in a charge of contempt" (AJHR 2014, I.18A, p.16).

Select committee reporting

Select committees had always been expected to report the results of their consideration to the House, which had delegated the work to them. Until 1985, committees were only permitted to express a single view, regardless of the dissent of a minority of members (SO 1979, 374). Labour Party policy in 1981 had been to permit minority reports to the House.

The policy was removed from its 1984 election manifesto because it was considered unworkable to have multiple reports on the same matter presented to the House (Labour Party Open Government Policy, 1984). The SOC in 1985 accepted the advice of the Clerk, David McGee, that differing views ought to be permitted to be expressed in the report of a committee (NZPD 464, 1985, pp.5964-5965). The Democrats, wishing to express a view in reports that might differ from the larger National minority, moved an amendment to provide for separate minority reports but it was defeated (NZPD 464, 1985, p.5965).

The SOC considered submissions from the Green Party (Submission 28/10/2010) and the Human Rights Commission (Submission 11/5/2011) proposing that select committees be required to include minority views in their reports. The committee rejected the idea, commenting that:

> A requirement to include differing views would deprive select committees of the right to control the form and content of their reports, and could result in fragmentation of reports. The ideal is for a committee's report to reflect the views of members in such a way that differing views do not have to be appended separately. (AJHR 2011, I.18B, p. 32).

Instead, it emphasised the "strong presumption" that the views of minorities will be reflected in reports, in order to strengthen this convention. The committee considered the matter again in 2014, at the urging of the Green Party (Submission 10/10/2013, p.7) but accepted Clerk Mary Harris' advice that a "prescriptive approach to this matter might be counterproductive, reducing negotiation and discussion amongst members about the issues" (Advice, 29/5/2014 p.27).[158]

In recognition of the growing importance of committee work, the House agreed that the government should be required to respond to select committee recommendations made to it, in order to "underline the accountability aspect of select committee investigations". The Speaker would draw attention to a government failure to respond and select committees were encouraged to report their dissatisfaction with any response (AJHR 1986, I.19A, p.10). There was some earlier precedent for such responses because the government had

[158] In 2020, the SOC had a change of heart, believing that "the right of the minority… to have its voice heard should now be recognised" and required committees include the differing views of members (AJHR, I.18A, p.27).

previously responded to reports of the Public Expenditure Committee and was already required by Standing Orders to report annually to the House on its actions taken in respect of reports on petitions.

Prior to the move to MMP, bills had been reported back to the House with recommended amendments but without a report to explain them. The only explanation was given in the debate on the report. The Clerk, David McGee, suggested that committees might routinely produce commentaries explaining their recommended amendments to bills (Advice, undated, tabled 13/9/1995) and to show those amendments that were agreed unanimously and, therefore, would be adopted automatically at the second reading (AJHR 1995, I.18A, p.44).

Select committee procedure was also adjusted to better align it with that of the committee of the whole House, in relation to reporting.[159] Speakers had ruled, for many years, that once a committee had deliberated on a matter it was no longer before the committee (NZPD 77, 1892, pp.586-587). While chairpersons had been required to present a report to the House as soon as possible after deliberation (NZPD 243, 1935, p.422) only the House could compel them to do so. The Clerk, David McGee, was concerned that a committee might adopt a report but not then agree to the separate motion to present it (Submission 5/2003). As a result, the SOC recommended that reporting be made automatic once deliberations had concluded (AJHR 2003, I.18B, pp.48-49). Further alignment of select committees and committee of the whole House was carried out in 2011, when they were given the same powers as the committee of the whole House to amended omnibus bills,[160] on the recommendation of the Clerk, Mary Harris (Submission 10/5/2011). In addition to aligning the two forms of committee procedurally, the change reflected the SOC's view that detailed work on bills was best done by select committees, away from the floor of the House (AJHR 2011, I.18B, p.43).

Reports of select committees were a focus of the 2011 review of Standing Orders. They were seldom debated in the House and the SOC wished to encourage more frequent debate

[159] Select committees follow the procedure of the committee of the whole House, unless otherwise provided for in Standing Orders.
[160] Omnibus bills amend more than one Act; either to implement a single broad policy or to make similar amendments across the Acts.

of committee business. In 2010, on a rare occasion when select committee reports were reached for debate, 12 of them were discharged from the Order Paper[161] because the chairpersons of the committees did not move the relevant motion and no other members were permitted to do so (NZPD 662, 2010, p.10384). The SOC agreed with Clerk Mary Harris that the existing standing order "effectively provides a means for the chairperson of a select committee to prevent another member of the committee from moving a motion in respect of a report. This cannot be justified" (Submission, 10/2010, p.11) and recommended that the rules be amended to allow any member to move a motion in respect of a select committee, with the chairperson receiving preference (AJHR 2011, I.18B, pp.32-33).

The Business Committee had, on occasion, arranged House business to give time to debate select committee reports (minutes of the Business Committee 18/2/1999). An amendment was made to enable reports selected by the Business Committee for debate to remain on the Order Paper, rather than being removed after 15 sitting days. The SOC encouraged committees to write to the Business Committee seeking debates on their reports (AJHR 2011, I.18B, p.23). This occurred infrequently in the period of this study.[162]

Natural justice procedures

The adoption of natural justice procedures was the final major change made to the committee system in preparation for the first MMP parliament. The State Services Commissioner had advocated for such procedures in 1984, following a Public Expenditure Committee inquiry into the 1984 currency devaluation. The inquiry had questioned individual public servants in the absence of their departmental heads and without counsel present about policy matters that were properly the responsibility of ministers (Submission 14/12/1984). The Clerk of the House, David McGee, had felt that parliament needed to develop its own natural justice provisions because it could no longer "just rely on 19th and 18th century ideas of parliament excluding the judiciary from looking at its procedures". He preferred to have the House define and administer its own procedures than for the courts to become involved in cases of procedural unfairness (Interview, 21/4/2022).

[161] A matter discharged from the Order Paper is regarded as having been finally dealt with and it cannot be revived for debate later.
[162] Since 2020 the Standing Orders have set aside a minimum of seven hours each year for special debates, generally on select committee reports.

The consideration of the Taxation Reform (Companies and Other Matters) Bill by the Finance and Expenditure Committee in 1994 triggered the adoption of natural justice provisions. The committee studied the anti-avoidance measures in the bill alongside case studies of tax avoidance or evasion, in particular the 'winebox' of documents tabled in the House by Winston Peters (NZF) in March of that year. The documents were said to contain material highly damaging to individuals, including evidence of tax evasion through sham tax arrangements in the Cook Islands (Joseph, 1994). The committee felt obliged to consider the adoption of procedures to ensure fairness for witnesses and for other persons who might be the subject of allegations and made an interim report to the House, setting out recommended natural justice procedures. In preparing the report, it sought advice from the Clerk and the Solicitor-General (AJHR 1994, I.3C).

The SOC considered the report and sought advice from Clerk David McGee and legal academic Professor Philip Joseph. It accepted that the Bill of Rights Act 1990, which affirmed fundamental rights and freedoms, applied to the legislature and recommended the adoption of a set of natural justice procedures, modelled on those recommended by the Finance and Expenditure Committee. A Parliamentary Privilege Bill introduced by David Caygill also set out natural justice rules for select committees. While the bill was not reported for five years, primarily over concerns about legislating for House procedure, it provided an incentive for the House to adopt its own rules (AJHR 1999, I.18C). Submissions to the SOC from the National Council of Women (15/8/1994), Douglas Graham (N) (1/9/1994) and the New Zealand Law Society (18/8/1994) advocated for natural justice provisions to apply in select committees and the House.

The natural justice rules adopted in 1995 required that witnesses would have a right to counsel, would be informed of allegations against them and given the opportunity to respond to damaging allegations. People likely to be adversely affected by a committee's findings were to be given an opportunity to make submissions on those findings. In addition, committees were prohibited from inquiring into criminal matters without the express permission of the House (AJHR 1995, I.18A, p.44; Wilson, 1998; McGee, 1996). The threshold for responding to allegations was adjusted in 1996 on the submission of Alec Neill (N), the chairperson of the Justice and Law Reform Committee (AJHR 1996, I.18B, pp.9-10). The application of natural justice provisions was extended to apply to private and secret

evidence in 1999 (AJHR I.18B, pp.20-21) after it was raised by the Social Services Committee (Submission, 10/2/1998). In response to concerns raised by the Law Society, natural justice provisions were also applied to advice given to a committee, not just evidence (AJHR 2003, I.18B, pp.40-42).

Against a backdrop of an expanded role for committees and their growing prominence, their powers were wound back in one area; they lost the ability to issue summonses. The Justice and Law Reform Committee had exercised its power to 'send for persons, papers and records' on 12 June 1996 when it issued a summons for members of a gang to appear before it to give evidence on a petition.[163] That was the first time in living memory that power had been used by a committee other than the Privileges Committee. The gang members ignored the summons and the committee chose not to escalate the matter (*The Dominion*, 8/6/1996, *The Press* 31/5/1996, AJHR 1996, I.7C, pp.38-39). The SOC considered that the power to order someone to attend on a committee or to produce documents was an "extremely serious infringement of that person's civil liberties" and expressed concern that the improper use of the power could be challenged as an unreasonable search or seizure contrary to the New Zealand Bill of Rights Act 1990. The committee accepted Clerk David McGee's advice (22/7/1999) that the power should be delegated only to the Speaker who could act as a gatekeeper for future requests by committees to compel attendance or the production of documents. Only the Privileges Committee, with its inquisitorial function, retained the power (AJHR 1999, I.18B, pp.15-17). Since that time, just two committees have sought summonses, in 2000 and in 2020 (AJHR 2000, I.7A, p.58-61; Wilson, 2021, p.189).

Discussion

Changes in the functions of select committees and their place in New Zealand's parliamentary system have been significant. Their evolution since 1979 has been remarkable, as the parliament has devolved more work away from the plenary to its committees. In the period of this study, committees have moved away from focussing on petitions, from dealing with only a small number of bills and House-referred inquiries to being an integral part of consideration of almost every piece of parliamentary business. The multi-purpose subject select committees introduced in 1985 have a broad mandate to deal

[163] I drafted the summons and arranged with Police for its service.

with petitions, financial scrutiny, appropriations, and self-initiated inquiries within their subject area. Almost every bill is referred to a committee. Only 11 of the 323 bills passed in the 50th parliament (2011-2014) were not referred to a select committee; approximately 3.4 per cent (JHR, 2014, p. 941). The Regulations Review Committee conducts extensive scrutiny of secondary legislation, and the Finance and Expenditure Committee plays an important role in coordinating the financial scrutiny work of select committees. While the changes are significant and the work of committees is well-regarded, there remains a sense, among those who were interviewed for this study and those who write on the subject, that select committees are not delivering to their full potential.

Select committees in New Zealand have most of the required structural features considered necessary for them to be effective. It is in the execution of their role that shortcomings of committees have been identified. Committees are not so large as to be unwieldy and membership is relatively stable. Since 1985 subject select committees have been automatically established at the start of a parliament and, since 1995, membership across committees as a whole has been proportional to membership in the House. The Business Committee determines membership though, in practice, it is negotiated between parties. Similarly, committees elect their own chairpersons but this always conforms with agreements reached between parties. Interview subjects favoured smaller committees to enable members to serve only on one committee and dedicate more attention to it.

Committees carry out detailed examinations of the great majority of bills that come before the House. Bills automatically stand referred to committees, unless passed under urgency. There are procedural penalties for shortening select committee consideration. Some interview subjects thought that the legislative process was now overwhelmed with thousands of public submissions and limited time to hear them and that scrutiny of human rights issues in bills is inadequate.

Select committees spend approximately 70 per cent of their time considering legislation and most of the rest of their time is spent on financial scrutiny or petitions. A revival of committee inquiries was called for by several interview subjects. They were of the view that government party dominance of committee membership and chairpersonships stifles independent inquiry that may be critical of the government (Interviews P. Dunne 5/9/2022; L. Smith, 23/5/2022; T. Mallard, 21/9/2022 D. Carter, 16/6/2022). Work on international

treaties was also identified as an area where further improvement could be made (K. Graham interview, 15/6/2022).

Hearings are, by default, open to the public and the news media have routine access to hearings. While committees may hear evidence in private or secret, it is rare to do so and requires the unanimous consent of the committee. Livestreaming of committees is now done by default.

Natural justice procedures have applied to select committee proceedings since 1996 and have been subject to some modifications since that time. Committee staff check all submissions for natural justice issues to draw to the attention of committees before submissions are accepted and published. Committees appear to engage effectively in natural justice matters, though most engagement with the public is not adversarial.

The select committees have the rules and framework required to function effectively and they are relatively well resourced with permanent secretariats and access to independent specialist advice. They generally carry out effective examination of policy matters in legislation and, increasingly, give attention to matters of legislative quality. Committees dominated by government parties remain unlikely to do effective scrutiny work on behalf of the House. The general-purpose subject select committees have many advantages but they are structured in favour of improving government legislation more than scrutinising government activity.

The changes in select committee rules and practice traced in this chapter would be categorised as displacement or layering, within Mahoney and Thelen's (2010) framework. The displacement of old rules by new ones saw bills automatically referred to committees, the creation of subject committees, a greater role for committees in scrutinising government finances and the opening of committees to the public. However, the layering of new rules on top of older ones was responsible for 75 per cent of changes to select committees. These included the ability to self-initiate inquiries, the requirement for committees to produce reports on bills, the inclusion of minority views in reports, the introduction of natural justice rules and scrutiny of international treaties.

Chapter 8 – Analysing Change in the New Zealand Parliament, 1935-2015

This chapter assesses the process of rulemaking and review in the New Zealand parliament between 1935 and 2015. It considers the way institutional changes are made through the lens of the model for understanding gradual institutional change developed by James Mahoney and Kathleen Thelen (2010). It draws some conclusions about the factors primarily influencing change in the Parliament, drawing on Norton's (2000) three factors for change in legislatures and making reference to theories of change. Finally, it gives an overview of major findings from the study.

The process of rulemaking and review

The New Zealand Parliament's rules and practices are subject to the decisions of collective institutional veto players – members of parliament (Tsebelis, 2002). Self-interest is likely a determining factor in the process of institutional change that is the subject of this study (Longley & Olsen, 1991; Benoit, 2004), but change nevertheless requires some degree of consensus. Individual members cannot change the Standing Orders. While, in theory, a government with a simple majority could do so; in practice, they do not. A government that made unilateral procedural reforms, against a backdrop of decades of consensual decision-making, would likely face public accusations of unfairness and consequences at the ballot box. Moreover, such action could change the culture that has developed in the review of Standing Orders and might potentially lead to other parties seeking revenge when they were next in government.

While the triennial review of Standing Orders receives and considers public submissions, these have generally played a small part in the reform of parliamentary procedure in New Zealand. The notable exception is the introduction of extended sittings in 2011, which were influenced by a submission from a group of academics who had studied the use of urgency in depth. That circumstance reflects a confluence of thought about the overuse of urgency and the need for additional sitting hours that was shared by the submitters, committee members, ministers and agencies that support Parliament. While many interview participants made reference to the importance of staying relevant to the public as a source of democratic legitimacy, the modification of sitting hours was the only other change covered in this study that interviewees attributed directly to public input. It is likely that

changes to rules and practices are made with the public in mind, even if their input usually plays a small role in shaping particular changes. Anticipated consequences play a role in influencing elite behaviour and, hence, in shaping New Zealand's democratic institutions. It may also reduce the chance of changes having unintended consequences.

Discussion of the New Zealand parliament will often mention, approvingly, the open nature of its select committees and the ability of the public to involve themselves in committee proceedings. It is true that select committees sometimes receive thousands of public submissions on bills.[164] Those that receive extensive public feedback are usually contentious matters of public policy about which the public will have a view, which are expressed without necessarily having a detailed knowledge of the subject matter, such as same-sex marriage, abortion, euthanasia and conversion therapy.[165] The same cannot be said for Parliament's rules and practices. Nor is this true for less contentious bills, which typically receive between 10 and 200 submissions, while minor or technical bills usually receive fewer. While there exist countless opinions about parliament and politicians, few people are inclined to propose specific changes. The greatest number of submissions ever received by the Standing Orders Committee (SOC) is 70, in 2003, and most came from parliamentary 'insiders'. No submissions at all were received before 1961 and it was not until 1984 that the committee started to routinely call for submissions on every review.

Forms of institutional change in parliament

The process of change in the New Zealand parliament has usually been one of gradual and incremental change, in keeping with New Zealand's general approach to constitutional reform, which has been described as one of "pragmatic evolution" by members of parliament (AJHR 2005, I.24A). Most changes have addressed a specific problem or opportunity, without much consideration of wider issues. Insofar as the New Zealand House of Representatives is concerned, there have been two notable exceptions to this approach. The changes made in 1985 and 1986 were generated exogenously by the Labour Party and were radical and far-reaching. The changes made in 1995 and 1996 were exogenously-

[164] The Marriage (Definition of Marriage) Amendment Bill received 21,000 submissions in 2013. The End of Life Choice Bill received 39,000 in 2019. The Abortion Legislation Bill received 25,000 in 2020. The Conversion Practices Prohibition Legislation Bill received 107,000 in 2021.

[165] Less contentious bills receive between 10 and 200 submissions, while minor or technical bills usually receive fewer.

driven by the necessity to respond to a new electoral system and the likelihood of a dramatically-changed parliament. The reforms made in these two periods saw rapid changes to existing rules and practices and many of the most important changes remain in place today. Even in these periods of major change, we can identify pre-cursors through tracing the origins of ideas for change. For example, the role of select committees had been expanded through the 1960s and 1970s to give them a greater role in scrutinising public finances and legislation. These powers and others were developed much further in the following decades. Previous attempts to manage House business through a whips' committee were short-lived but laid groundwork for the Business Committee. Long-held dissatisfaction with the laborious process of voting by division meant that party voting was a welcome innovation, though it departed from the enduring proposal for electronic voting.

The nature of change in the House of Representatives

When considering changes in parliamentary procedure in terms of the model of institutional change developed by Mahoney and Thelen (2010) it is clear that most changes have taken the form of displacement of existing rules and replacement by new ones or the layering of new rules on top of existing ones. Very few changes have been the result of 'drift', where rules remain the same but their impact changes due to external shifts, or because of 'conversion', where existing rules receive new interpretations. Although this study has not taken a quantitative approach to understanding institutional change, some numbers may be useful in describing this finding. This study has identified and described 118 cases of change in the Standing Orders, categorised as set out in the table below. Changes were recorded as such when a standing order was amended or its application explicitly altered.

Table 8.1 Types of gradual change, 1935-2015

Type of change	Number of changes	Percentage of total
Displacement	41	34.7%
Layering	68	57.6%
Drift	3	2.5%
Conversion	6	5.3%

While layering and displacement were by far the most common ways of making change, the areas of drift and conversion are worth consideration as exceptions. The first example of drift was public involvement in reviewing the standing orders. Public submissions appear to have begun with unsolicited evidence sent to the committee in 1961. It was not until 1984 that advertisements for public submissions were first placed in newspapers, establishing an ongoing practice for the review of Standing Orders.

The second example is petitioning which, for many years, received relatively little attention from the House and the processes governing it stagnated. The petitioning public's lodging of numerous petitions on the same subject with one or two signatures led to the Standing Orders being amended to prevent such tactics and to ensure petitions received more timely attention. Years of drift were brought to an end by petitioners changing their approach. Ultimately this resulted in displacement of the old rules by new ones. A further change, beyond the time period of this study was the introduction of e-petitions in 2018. This, in turn led to the reestablishment of a dedicated Petitions Committee to ensure that that growing number of petitions received proper parliamentary attention.

The final example of drift was in relation to parliamentary questions, where the rules changed little over the years, despite them being a core function of the House. The high level of contention over oral questions required successive Speakers to rule frequently and made them the subject of more Speaker's rulings than any other proceeding of the House (see Chapter 6). Rulings changed over the years, in keeping with the mood of the House and the inclinations of the Speakers. By 2008 it was deemed acceptable to respond to a question by merely 'addressing' it. Speaker Smith's response to the drift in responding to questions, in insisting that they be answered not just addressed, was a good example of conversion of existing rules through a new interpretation (interview 23/5/2022).[166] Since his time as Speaker, his successors have largely followed the same approach and the relevant Standing Orders have not changed. Drift has sometimes occurred in areas where it was difficult to agree on change or to articulate in words the change that was wanted. Instead, the SOC

[166] The relevant standing order (SO 2020, 396(1)) says that "an answer that seeks to address the question must be given".

made statements as guidance to the Speaker and left it to them to apply in challenging circumstances such as question time.

Conversion occurred in relation to supplementary questions. While the Standing Orders simply say that supplementary questions may be asked, at the discretion of the Speaker (SO 2020, 397), successive SOCs sought to guide the Speaker in the application of the rule (AJHR 1967, I.14, p.5). Speaker Hunt was the first to make a specific, proportional allocation of supplementary questions to each party. In effect, he gave a tangible form to his use of the discretion vested in his role and, since his retirement in 2005, successive Speakers have followed suit.

The tolerance for the reading of speeches in the House has also waxed and waned, despite the rules seldom changing (see Chapter 5). Speakers were often explicit about their degree of willingness to enforce the rule. In 1990 the SOC recognised that the House and its Speakers had tolerated the reading of speeches and in 1995 the prohibition was removed, only to be re-stated as a convention in 2011. Its enforcement remains a matter solely for the Speaker.

Similarly, the tabling of documents by leave of the House grew in popularity but was, for many years, only a convention. Growing concerns over the misuse of the process finally brought the matter into the Standing Orders in 2008. Speakers Smith (N) and Carter (N) made a range of rulings to introduce some discipline to the process and prevent its frivolous use, by reference to the SOC report (AJHR 2008, I.18B, p.41).

The final example of conversion of the Standing Orders, in this study, occurred in 2013 when Speaker Carter permitted the United Future Party to be recognised on a temporary basis while its lapsed registration was addressed. The Standing Orders did not anticipate such a situation and the Speaker's ruling filled that gap. The next review of Standing Orders amended them to reflect that ruling.

The nature of changes in each of the five areas of parliamentary procedure considered by this study are generally balanced between displacement and layering. The exceptions are management of House business and, particularly, select committees, where layering of change was the preferred approach, as seen in the table below.

Table 8.2: Changes to subject areas, by nature of change

Area of change	Displacement	Layering	Drift	Conversion
Review of rules (3)	1	1	1	
House business (4)	7	12		2
Debate & voting (5)	13	13		2
Questions (6)	10	13	1	2
Select committees (7)	10	30	1	
Total	**41**	**68**	**3**	**6**

Note: Thesis chapter where specific area covered shown in brackets.

Layering was the preferred method of reform of select committee procedure before and after the change to MMP, with layered changes occurring in similar numbers in each period. New Zealand's select committee system is seen as one of the most effective aspects of its parliament (Interviews C Hipkins, 3/8/2022; D. Carter, 14/6/2022; D. McGee, 21/4/2022; M. Harris, 20/4/2022). The most important changes by way of displacement were the automatic referral of bills to committees (1979) and the introduction of generalist subject committees to do all regular committee work (1985). Since it was unlikely that consensus could have been achieved for fundamental change to select committees for fear of undoing their successful operation, most of the other changes to the nature of committee work were made by way of layering upon existing rules. There have been no changes to select committee procedure by way of conversion identified in this study. Committees are relatively lightly governed by rules and have considerable discretion in the way they operate. There is little need to convert rules when they are already flexible and permissive. In addition, conversion has been the result of Speakers interpreting rules differently. Speakers seldom make rulings on select committee procedure. They only do so by invitation (Vol.424, 1979, pp.1832-1833). Rulings by select committee chairpersons are not seen as having precedential value and are not recorded for future reference.

Changes to rules governing the management of House business have also been disproportionately by way of layering. The Business Committee was a creature of MMP, seen as necessary to manage business in a multi-party parliament (see Chapter 4). It is widely seen as a successful model, reflected in the numerous additional functions assigned to it since 1995. All of the functions have been layered upon the foundation of a cross-party,

consensus-based committee that offers advantages to government and non-government parties alike.

Discretion to interpret rules

The institutional changes in the House of Representatives that are the focus of this study are overwhelmingly in the nature of displacement or layering; with layering being the more common of the two. Both of these types of changes are most common in institutions, such as the New Zealand parliament, where there are low levels of discretion able to be exercised in the interpretation and enforcement of rules (Mahoney & Thelen, 2009). A Speaker's rule-making power is considerable but more limited than formal rule changes. They cannot overrule existing Standing Orders, though they may interpret certain rules differently. The small number of instances of conversion of Standing Orders identified in this study are examples of a Speaker's interpretation changing the application of existing rules. The Speaker's authority is subject to the approval of the House. A Speaker is elected and may be removed by the House, which may also censure or express a lack of confidence in the holder of that office. Their rulings are subject to review and revision by the House, though this seldom happens in practice (NZPD 368, 1970, p.3302).

If the New Zealand parliamentary system provides low levels of discretion in interpreting its rules, it may be because so many rules exist. New Zealand has many more Standing Orders than the lower houses of the United Kingdom, Australia or Canada, as shown in the following table.

Table 8.3: Number of standing orders in NZ, UK, Australia and Canada lower houses

Parliament	Number of standing orders	Notes
United Kingdom House of Commons	163	Distinct set of 249 standing orders on private bills.
Australia House of Representatives	270	No additional standing orders on private bills.
Canada House of Commons	159	Includes 18 standing orders on private bills.
New Zealand House of Representatives	412	Appends 21 standing orders on private bills.

The figures in this table do not take into account the length or complexity of individual

standing orders, or different drafting styles, but they are a general indicator that New Zealand commits more rules to paper than comparable jurisdictions. Keith Holyoake (N), when Prime Minister, typified this approach in preferring an obligation on a minister to answer a question being written into the Standing Orders, rather than relied upon as a constitutional convention (NZPD 330, pp.42-43). The preference for codifying parliamentary procedure, rather than relying on convention, may be motivated by the same factors that drive what Geoffrey Palmer (2014) describes as being "addicted to passing legislation". The plethora of standing orders is not a recent phenomenon in New Zealand. At the start of the period of this study (1935) there were 453 standing orders and at the end (2015) there were 412. The preference for written rules appears to be a tradition of the New Zealand House, institutionalised over many years.

Path dependence plays a role in the continued preference for codifying parliamentary rules. Once a standing order exists, it would be difficult to replace it with a convention without seeming to downgrade its importance. The only such example is the expectation that speeches are not read. Once it was a rule but a lack of enthusiasm for its enforcement by Speakers led to it being dropped. The resulting perceived diminishment of speeches led to its revival as an expectation, rather than a rule.

When combined with the regular review of the rules, the preference for written rules makes change by drift or conversion less likely. Drift occurs where institutional rules are neglected and they fall into patterns of use that differ from the original purpose. That is not likely where there are many rules and they are regularly updated. Conversion occurs where the possibility of interpreting rules differently is high. Again, that is improbable where there are a large number of rules and they are frequently altered in accordance with the preferences and beliefs of the institutional actors.

The interpretation and application of rules is what gives them meaning. In New Zealand two officers of the House play the major role; the Speaker and the Clerk (Palmer, 2006). The Clerk does not make rules but is involved in developing them, drafts them and advises on their application. The Clerk selects Speakers' rulings and SOC report extracts to serve as precedents and deletes ones that are no longer of use. In New Zealand and in many other parliaments, the Clerk is also the author of the authoritative text on parliamentary

procedure.[167] As an officer of the House, the Clerk independently exercises powers conferred by statute or under Standing Orders, based on their interpretation of the rules of the institution. While the Clerk advises, only the Speaker has the power to issue rulings that alter the application of Standing Orders (Wilson, 2007). The reality is more nuanced. The House has, over the years of this study, delegated more tasks to the Clerk and many of these involve receiving and assessing matters related to parliamentary proceedings (McGee, 1997). Questions, motions, petitions, bills and amendments to bills are all received by the Clerk and assessed for compliance with the rules and practices of the House. They are returned for amendment to members and ministers where necessary and it is very rare for the Speaker to become involved.

Veto possibilities

Layering is more prevalent where the possibilities of vetoing changes are high while displacement is more common where weak veto possibilities exist (Mahoney & Thelen, 2010), but other factors lessen the likelihood of veto powers over changes in Standing Orders being exercised in New Zealand, helping to explain why both forms of change have been prevalent. The SOC aims to agree a package of changes that has broad support. That does not mean every party will favour every change but that they agree to the package of changes as a whole, likely seeing pros and cons in the totality. While it is clear that objection by one of the two large parties, or by an informal 'coalition' of smaller parties, would make any kind of consensus impossible, the change process is seldom a zero-sum game. Changes are negotiated and agreed, modified or discarded. There is give-and-take and, crucially, none of the decision-makers know who will form the next government.[168] The timing of the review of Standing Orders before an election and the vagaries of proportional representation ensure that parties are likely to want to make rule changes that are fair to all, regardless of electoral results. The addition of more parties to the Standing Orders review process has meant there are more veto players in operation, increasing the chance that a proposed change will not find favour with one of them.

[167] In New Zealand this text is Wilson (2023).

[168] It is uncommon for a government to last a single term in office. Only the second (1957-1960) and third (1972-1975) Labour Governments have done so, in the period of this study.

Similarly, the temporary changes made by way of sessional orders are invariably discussed at the Business Committee. Unlike the SOC, it is obliged to make decisions by near-unanimity and Speakers are required to satisfy themselves that a determination of the committee is fair to all parties and does not discriminate against minority parties (SO 2020, 78). The Business Committee has always had numerous veto players, since it has only existed in its current form under MMP.

When changes to parliamentary procedure are considered over the 80-year period of this study, it is possible to see patterns in the nature of those changes, using Mahoney and Thelen's (2010) model. A shift in the means of making change preferred by parliamentary actors is apparent in the table below.

Table 8.4 Types of gradual change, before and after MMP

Type of change	Pre-MMP (1935-1995)	MMP (1995-2015)
Displacement	26 (45.6%)	15 (24.5%)
Layering	28 (49.1%)	40 (65.5%)
Drift	2 (3.5%)	1 (1.6%)
Conversion	1 (1.75%)	5 (8.2%)
Total	**57**	**61**

Displacement of rules was more common before the introduction of MMP. Displacement occurs most commonly where the ability to interpret existing rules is low and possibilities of vetoing changes are low. The prevalence of displacement in the period 1935 to 1995 reflects the single-party dominance of parliament. While the SOC worked by a tradition of consensus throughout the period of this study, until 1996 it was against a backdrop of the single party in government having the acknowledged right and ability to make any changes it wished. The sweeping reforms of 1985 and 1986 were largely supported by the opposition, even though they would have not proposed such changes themselves (D. McKinnon interview, 18/5/2023).

Layering is also common where discretion to interpret rules is low. But it also requires veto possibilities to be high. Changes to rules by layering were prevalent before the change of electoral systems but layering has become predominant in the post-MMP period. An

increase in veto players usually increases policy stability and makes it more difficult to alter the status quo (Tsebelis, 2000). The increase in the number of parties in parliament equates with an increase in the number of veto players. The National and Labour parties effectively each have a veto over changes to parliamentary rules because each represents a substantial bloc of members. The same is true on the Business Committee where near-unanimity is not possible without the agreement of both major parties. However, at least one more veto power exists in the shape of the smaller parties. It is unlikely that the SOC would reach consensus against the objections of multiple smaller parties. It is difficult to know whether smaller parties have operated together to prevent changes to Standing Orders since the reports of the SOC do not usually record who opposed an idea. Indeed, the relative informality of the committee means ideas may be discussed and discarded without necessarily recording who opposed them. Smaller parties have different considerations in mind when making parliamentary rules. The need to retain some distinction from larger coalition partners is well-known and smaller parties will not lead governments without a major change in the political landscape.

Vetoes certainly occur. Electronic voting was rejected almost continuously between 1951 and 1995. Proposals to hold a personal vote on the third reading of bills failed and so did suggestions that parties outside government should face oral questions. Increasing the role of parliament in the scrutiny of treaties has also been resisted. Efforts to end 'patsy' questions have not been successful. They remain a tool used almost entirely by large parties who possess a correspondingly large share of oral questions. The introduction of a register of members' pecuniary interests was delayed by opposition from some parties. While reports of the SOC sometimes explain proposals that were rejected, they do not cover all such suggestions.

Conversion of rules was also more prevalent in the post-MMP period. Conversion is more common where discretion to interpret existing rules is high and veto possibilities are low. The small number of changes by conversion should be treated cautiously, since they represent only 5.3 per cent of all changes studied. It is notable that five of the six changes made by way of conversion were made by the Speaker; the only member with the formal power to interpret the rules. The sixth (re-stating the expectation that speeches not be read) was proposed by the Clerk but applied to the Speaker. Interpretations of rules by the

Speaker are not subject to the same veto power as changes to Standing Orders because they are made unilaterally and can only be challenged through a motion set down on the order paper for debate. That is unlikely to occur since the Speaker, as a nominee of the government, always has the support of a large party and, initially, of a majority of members. The changes made by way of conversion post-MMP were all matters not covered by existing rules and so very much within the purview of the Speaker. Only one, the requirement to answer questions rather than simply address them, could have been an inconvenience to the government. Motions to challenge Speaker's rulings are virtually unheard of while motions to express a lack of confidence in a Speaker are rare and never supported by the government majority.[169]

MMP and patterns of rule-making

There are patterns in the subject areas of rule changes over the period of this study, with some notable differences before and after the introduction of MMP, as shown in the table below.

Table 8.5: Changes by subject area, pre-MMP and post-MMP

Area of change	Pre-MMP (1935-1995)	MMP (1995-2015)
Review of rules (3)	2	1
House business (4)	8	13
Debate & voting (5)	10	18
Questions (6)	15	10
Select committees (7)	23	18
Total	**58**	**60**

Note: Thesis chapter where specific area covered shown in brackets.

Changes to rules regarding select committees and questions were more common in the pre-MMP period, while changes to debate and voting and to management of House business were more prevalent after the change of electoral system. Eleven of the 23 changes to select committee rules cluster around a major period of select committee reform between 1979 and 1985. The reform of the select committee system at that time is noted to be far-reaching and enduring. Although there have been important changes to the operation of

[169] See, for example, NZPD 620, 2004, p.15736.

select committees since MMP, their essential form and function was set in 1985. Select committees operate less formally than does parliament during debates or question time and they are governed by relatively few rules, which set a framework for operation rather than detailed procedures.[170]

There is no similar pattern for the changes to standing orders governing questions, which are distributed evenly throughout the pre-MMP period. Many of the most important rules about questions were established shortly before the period covered by this study, particularly by Speaker Statham in the early 1930s. However, two key changes occurred after the introduction of MMP. One was the proportional allocation of questions, which was a direct response to the multi-party MMP parliament, and the other was Speaker Smith's insistence on questions being answered, rather than merely addressed.

Most of the changes to procedures relating to debate between 1935 and 1995 were experiments with different types of private members debates, before settling on the weekly, one-hour general debate. Electronic voting was frequently discussed in the period but never implemented. Most of the changes from 1995 onwards were about managing debating and voting in a multi-party environment.

Nature of change agents

The main promoters of change in the New Zealand parliament in the period of this study were members of parliament (as individuals and in parties) and the Clerk of the House.

Table 8.6 Promoters of changes to Standing Orders, 1935-2015

Type of change	MP	Clerk	Parliament 'insider'	Public	Academic
Displacement	22	14	1	1	1
Layering	34	27	4	2	2
Drift	1			2	
Conversion	5	1			
TOTAL	**62**	**42**	**5**	**5**	**3**

[170] Approximately 17% of standing orders governed select committees (SO 2014).

In this thesis, it was possible to identify the promoter of change in all but 12 instances.[171] Members were responsible for successfully proposing 62 changes and the Clerk was responsible for successfully proposing 42. The remaining changes were promoted by the public, academics or other parliamentary insiders such as the press gallery and officers of parliament. Members and the Clerk promoted more changes by way of layering than displacement (61 versus 36 changes). This suggests that they were not discouraged by the possibility of veto. Members have personal and political motivations for proposing change and the Clerk has a professional duty to do so. Both operate in a system where the regular consideration of ideas for reform is the norm and so the chance of veto does not interfere with proposing change. It is difficult to quantify the success rate of proposals for change, since not all vetoed ideas were recorded by the SOC.

In Mahoney and Thelen's (2010) nomenclature the major promoters of change would be characterised as, on the one hand, 'insurrectionists' who are likely to prefer displacement of existing rules and, on the other, 'subversives' who are associated with layering by promoting new rules on the edges of existing ones. These rather unflattering titles suggest motives that are not supported by the general culture of working towards improving parliament through consensus decision-making. Instead, the major influencers may be better described by Mahoney and Thelen's (2010) term 'mutualistic symbionts' who tend to support the institution and the rules on which it rests. A comparison of the subject areas of changes promoted by members and the Clerk shows some differences between them.

Table 8.7: Changes by subject area and change agent

Area of change	**MP**	**Clerk**
Review of rules (3)	1	0
House business (4)	12	10
Debate & voting (5)	18	11
Questions (6)	14	5
Select committees (7)	17	16
TOTAL	**62**	**42**

Note: Thesis chapter where specific area covered shown in brackets.

[171] Where a change was promoted jointly, it was counted for each promoter.

Most changes to the rules governing debate, voting and questions originated with members. These are core parliamentary duties of elected members, are performed in public and are broadcast. They are seen as key to the political fortunes of members and their parties. The management of House business and select committees operate much more 'behind the scenes' and members may be more open to changes proposed by unelected officials aimed at improving their function. Select committees and the Business Committee have been the focus of many of the proposals in the Clerk's submissions to the SOC, reflecting areas where they have thought improvements could be made.

Theorising change in parliamentary institutions

There are many ways of considering institutional change in parliaments and two were raised early in this thesis: Norton's factors for change; and grand theories of change. It is now possible to revisit them in light of the findings of this study.

In applying Norton's (2000) three factors required to bring about change in a legislature to the New Zealand context, there are some interesting findings (see Chapter 2). The first factor is a window of opportunity. The second is the political will to consider change to place those proposals before the House. Finally, the proposals must normally have the support of the Leader of the House (Norton, 2000). By establishing a recurring window of opportunity and a time when reform will be considered through a regular triennial review, change has been institutionalised in the New Zealand parliament. Changes that are agreed will be put before the House, having already been settled through negotiations in the SOC, which include the Leader of the House.

All that remains of Norton's factors is that a set of proposals for change need to exist. By means of a regular review open to public participation, this is all but guaranteed. Public submissions are a small part of the review but, as was seen in the introduction of extended sittings, an important one (see Chapter 4). Members and their parties routinely develop proposals for reform and, because of the existence of a regular review, unexpected problems in parliamentary procedure tend to be left to be addressed by the next SOC review. Since the 1960s the Clerk has developed proposals for change, independent of other actors. This is now seen as a core part of that role.

Of course, not all proposals for change will be adopted but they will be considered. Some that are unsuccessful are adopted later, when their value can be better appreciated or circumstances warrant it. Examples include the House sitting throughout the year and the use of te reo Māori in debate. Institutionalising the regular review of rules and practices in a dynamic organisation virtually ensures that incremental change will happen. There will always be new endogenous ideas and exogenous developments that need to be addressed and the House has a recognised and enduring means of doing this, one that guards against the executive imposing parliamentary rules to its advantage. Parliamentary actors are explicit about the need for ongoing change to keep the parliament relevant to the public (See Appendix C).

The review of parliamentary rules in the period of this study has relied heavily on the belief of parliamentary actors that such reviews are necessary. For the first 68 years of that period, reviews of Standing Orders occurred only because members resolved to hold them. Sometimes the review was intended to address perennial problems such as a lack of plenary time or to respond to particular events such as the abolition of the upper house. On other occasions the members simply seem to have felt that a review was due. It was not until 1985 that a triennial review was put in place and not until 2003 that the SOC became a standing committee. The entire review and reform process rests heavily on the beliefs of parliamentary actors and the traditions of their institution since the core elements of the process - regular review, consensus decision making and making proposals for change – are not mandated by rules, though they are clearly institutionalised.

Earlier in this thesis, the idea of democratic systems converging towards ideal types, was discussed (see Chapter 2). The move to MMP elections represented a significant departure from the Westminster model, where authority is centralised without inclusionary institutions. The legislatures with which New Zealand usually compares itself and with which it frequently exchanges ideas have remained relatively majoritarian and executive-dominated. New Zealand, by virtue of its change of electoral system, has shifted towards a more consensus-based model, similar to Germany, Sweden and Norway, which were among the countries studied by the SOC in the preparation for the first MMP parliament.

There has been no evidence, in this study, of the New Zealand parliament consciously looking to European counterparts for ideas for change except in the period immediately preceding the introduction of MMP. Since that time there has been little mention of any overseas influences in reports of the SOC or interviews with parliamentary actors. If policy transfer occurs it is not acknowledged or evident. New Zealand's democracy is a long-lasting one by world standards, operating a parliamentary model that is a hybrid of Westminster traditions and some European modes of operation, as well as demonstrating local idiosyncrasies. The rules are reviewed regularly with the aim of improving them. A degree of self-assurance and self-reliance is likely to arise in these circumstances. It may be that New Zealand has become a lender of ideas more than a borrower or that there is some 'soft transfer' of knowledge between elected members, staff or institutions. Another possibility is that the exchange of knowledge has moved into other areas of parliamentary work such as building public engagement and the use of technology. The diffusion of knowledge in these areas would not be captured by this thesis, given its procedural focus.

If there is some convergence between the New Zealand parliament and European democracies with similar electoral systems and proportional approaches to parliamentary rules it is not because of an expressed desire to do so. Similarly, the apparent divergence from New Zealand's traditional Westminster-model counterparts has not been articulated as an explicit goal. More likely, the need to adjust parliamentary procedure to adapt to the multi-party MMP environment led to significant change resembling the European legislatures from which it was adapted. New Zealand parliamentarians' preferences for ongoing, incremental change to discrete areas of procedure as opposed to infrequent, radical and wide-ranging reform has meant that endogenously-generated ideas for reform will focus on improving the existing settings rather than creating new ones.

The strengthening of select committees and greater devolution of parliamentary work to them; use of party voting; delegation of House administration almost entirely to the Business Committee and the approach to rule-making are characteristics of a more inclusive and consensus-based parliament. While many of New Zealand's forms of parliamentary business are recognisably Westminster-derived, the way they are organised has more in common with those European legislatures to which it looked when preparing for an MMP

parliament. There is no evidence of a desire to return to a more executive-dominated legislature. The entwining of the electoral system, parliamentary rules and traditions of gradual, ongoing reform have likely created a degree of path dependence, in beliefs and structures, that would make such a return nearly impossible.

Reflections on the interpretive approach

This study has taken an interpretive approach through studying the beliefs, traditions and cultural practices of parliamentary actors and the influence they have had on the rules and practices of the parliament. In studying the statements of key actors about changes to parliamentary rules and practices, we are able to better understand the views and motivations of those who are responsible for them. However, tracing the origins of ideas and the influences on them is also necessary because it gives a more accurate picture than simply relying on the words and memories of actors. The beliefs of individual parliamentary actors have had an important influence on the rules and practices of the New Zealand parliament and so have its traditions. Interpretive approaches avoid accepting uncritically the idea that institutions fix the behaviour of individuals by instead focusing on the beliefs of actors and the aggregate results of those beliefs, expressed through changes to rules and practice (Bevir, 2004). The prevalence of layering new rules upon old ones over any other form of change may reflect the intersection of individual beliefs and existing traditions. It is easier and more attractive to decision-makers to build on existing systems than to tear them down and start afresh. A growth in the number of veto players as a result of MMP reinforces the incremental, layered approach to reform.

When I commenced this study, I had thought to make some reflections on legislatures as institutions, using New Zealand as a case study. The interpretive approach I have taken does not support the making of broad generalisations about legislatures in general because of its belief-based, context-centred methodology. However, it is certainly possible to make comparisons in the way that parliamentary actors respond to similar ‘dilemmas’ in their institutions (Boswell, Corbett and Rhodes, 2019). The New Zealand experience tells us something of the way that parliaments respond to challenges and how those responses are shaped by the beliefs and traditions of parliamentary actors. One such matter is the effect on parliamentary rules and practices of changing electoral systems or making other

alterations that introduce more veto players into an institution. In New Zealand's case, it has increased the prevalence of layering changes onto existing rules in response to a growth in the veto power, through the introduction of more veto players.

Conclusions can also be drawn about a major change to the management of parliamentary business through the creation of a House business committee. In New Zealand the Business Committee has been adopted enthusiastically and evolved to become a forum for ironing out disputes and testing new procedures as well as its core role of managing the business of the House. Parties can engage informally to resolve matters to their mutual advantage, in a union between adversarial Westminster traditions and consensus-based decision-making. Small parties have access to information and play a part in decision-making that would otherwise be denied to them. Members see the value in the Business Committee and it lends itself to having further duties layered upon it; a phenomenon that occurs at every review of Standing Orders.

The final area in which future research may allow comparisons to be made is the way that parliaments treat parts of their institution which are held in high regard. In the New Zealand context, the select committee system is one such part. A period of displacement of the status quo in the mid-1980s, with some crucial pre-cursors in the 1960s and 1970s, resulted in radical change and a more effective committee system. Since that time, parliamentary actors have preferred layered change to committee rules, reflecting caution about displacing an effective system and a desire to allow committees to continue to operate with comparative informality. Members have a shared belief in the efficacy of the committee system and are likely to veto radical reform of it.

It is easy to overstate the scale and nature of change in an institution. While reforms of select committees, House management, voting and the way rules are reviewed are significant, the New Zealand parliament is still clearly recognisable as being in the Westminster tradition. It still retains most of the features said to belong to the Westminster model, departing only where unicameralism, proportional representation and possible minority government makes it necessary (see Appendix A). New Zealand carries out some of its parliamentary business differently but it does it within a recognisable Westminster framework. Of course, some features, such as the fusion of the legislature and executive, are common to parliamentary systems, not just Westminster-derived legislatures. The New

Zealand parliament has a general preference for consensus-based incremental change, shaped by the beliefs and practices of the political elite, derived from the history and traditions of their institution. It would be surprising if an entirely new institution would emerge from such a setting.

Of course, an interpretive approach is not the only way to study a political institution. Structures have influence on decision makers. The Westminster model not only imparts traditions to members and officers of the House, it also brings with it structures that shape beliefs and actions. The fusion of the legislature and the executive in New Zealand continues to exert an influence on the nature of changes to is operations, for example. Equally, there may be structural influences in the future direction of the parliament. Elements of proportionality, plenary management, voting and committee structure copied from European legislatures also likely exert an influence on the beliefs of decision makers. They may also establish a bedrock on which future changes will be built, given the preference for layered change in post-MMP New Zealand parliaments. Exogenous ideas at odds with beliefs of parliamentary actors have also played a key role in shaping the institution. The change of electoral systems was not supported by the two major parties but it necessitated a re-writing of the Standing Orders based on new ways of working that were borrowed from European legislatures and merged with Westminster traditions.

Chapter 9 Conclusions

How has parliamentary procedure in New Zealand changed and what has caused those changes? A 1980 PhD thesis on continuity and change in the New Zealand parliament (Halligan, 1980, p.279) concluded that reforms had been incremental to that time and that parties had not conceived of reform with "inter-linked changes to parliament and its relationships to government and the political system". Those wide-ranging changes have occurred twice since that time, through the reforms conceived by the fourth Labour government and the response to the introduction of MMP in the 44th Parliament (1993-1996), during the fourth National government.

The model of parliament transplanted to Aotearoa in the 19th century has been re-defined and overhauled, through some sweeping changes but also by incremental reform. It has blended Westminster tradition and European operating models but with a distinctly local flavour. Parliamentary actors are of the view that change in parliament will be continuous. They are mostly content with it being incremental and they are sensitive to the needs of the institution and to public opinion. Keeping parliament relevant by adapting the way it works has been a theme of its reforms of Standing Orders since the 1960s.

In implementing change, the House has shifted the centre of some of its work from the plenary to committees. This has been a result of finding ways to save House time through dispersing detailed work away from the parliamentary chamber, accompanied by a recognition that such work is better done by small groups with direct access to expert advice and public opinion. Substantive work on legislation, and on scrutinising government performance, is mostly done in select committees. While question time is the premier parliamentary event that receives full attendance from members and the most media and public attention, the work of committees has grown in importance and scope. Almost all decisions about management of the House are made outside plenary sessions in the Business Committee.

In New Zealand, accepted practice receives far less focus, among political actors, than the rules (Standing Orders) and precedents relating to their use (Speakers' Rulings). This is a long-standing preference, likely reflective of the utility of developing rules in a colonial legislature lacking its own history of precedents. Yet New Zealand is far more rule-focussed

than the Canadian or Australian lower houses and is older than either of them. The reasons for these different preferences for rules in other parliaments are for a another, future study.

The preference for written rules expresses itself in reform usually being through displacement of old rules or the layering on of new ones. Both occur where discretion about interpreting the rules is limited. New Zealand Speakers cannot unilaterally change rules or interpret them contrary to their tenor. They have more discretion in unique situations not provided for in existing rules. The veto possibilities on rule changes are exercised collectively by parties and act as a brake on frequent, radical change though also as a filter on attractive but untested ideas. As a result, unforeseen consequences of rule changes are rare.

An institutionalised process for reviewing and reforming Standing Orders that is regular and consensus-based provides for rule stability and acts as a pressure valve to deter premature rule changes by majority. The Business Committee can deal with lower-level procedural irritants and must do so on a basis of unanimity or near-unanimity. It is enjoined to be fair to small parties. The ability to act rapidly, with the agreement of most members, to make temporary rule changes and to trial permanent rule changes means that the parliament is well-placed to deal with emergencies. The COVID-19 pandemic saw rapid adjustments, led by the Business Committee, put in place within days. The SOC was then able to review those emergency measures and adopt some of them as permanent rules (Wilson, 2022).

Incremental, layered reforms of parliamentary procedure may appear to limit change to tinkering around the edges of issues. The findings from this study do not support such a conclusion. Change has been significant over the period of this study, particularly from 1979 to 2014. In that time:

- Standing Orders reviews have shifted from being irregular and initiated by the government to a standing fixture of each three-year parliament;
- management of House business has shifted from informal chats between whips or protracted debates in the House to regular, multi-party, discussions with unanimity-based decision-making;
- debates have moved from being unbounded to tightly time-constrained and voting has moved from long ‘divisions’ to rapid party votes;

- questions have evolved from all being written and occasionally debated to dedicated oral questions being the feature of the parliamentary day and tens of thousands of separate written questions; and
- select committees have grown dramatically in function, stature and workload.

A regular cycle of review mitigates the conservatism that arises from the need for broad-based agreement and facilitates frequent, incremental change that, over time, amounts to major reform.

Research on public views of parliament (Kantar Public, 2022)[172] found that 10 per cent of subjects felt they had a very good understanding of the institution and how it works. A further 31 per cent felt that they had a good knowledge. While the results suggest that a substantial number of people may have the knowledge to engage in discussions about Parliament's rules and practices, it remains difficult to do so without lived experience of working with them. In 2023 there were 420 standing orders and their application was guided and modified by 230 pages of Speakers' rulings. Changes to Standing Orders have been described as constitutional changes that consist largely of "unheralded, apparently technical reforms that simply slip quietly through" (Palmer, 2007, p.594).

All select committees are required to consider and deliberate on matters in private, though they hear submissions in public. With parliamentary procedure, there is a stronger case for issues of reform to be discussed and settled by those who operate under those rules than there is for reforms related to matters of public policy. The process of making and applying standing orders has been criticised for its opaqueness and for being 'capricious and arbitrary' (Rodriguez Ferrere, 2014), but it is not unusual for work that affects how parliament operates to be done behind closed doors. It is possible that the making of parliamentary procedure, largely in private, and Parliament's exclusive control of its own proceedings reduces public trust and confidence. But that is not a universally accepted view. In response to criticism that parliament's supremacy departed from fundamental democratic norms, one member said "I accept that this can be a messy process, and that often it is difficult for the outside observer to discern within it the forging of a consensus based on fundamental norms" (Cullen, 2004).

[172] The survey had 1200 respondents and had a margin of error, at the 95% confidence level, of +/- 3.1%.

The lack of public trust in institutions is a common theme in news reporting and popular protest. Philosopher Onora O'Neill (2002) argues that there is little evidence that people trust less. Rather, people say they trust less while still demanding the services they claim not to trust. This is true for New Zealand, where trust in politicians and parliament is low but engagement with parliament through submissions and petitions is growing (Kantar Public, 2022). Of course, rules and institutional norms are only part of the picture. The reported behaviour of elected members is the strongest driver of public trust in parliament (Kantar Public, 2022) and trust is a basis for democracy (O'Neill, 2002). O'Neill (2002) argues that, to increase trust, we need to avoid deception rather than secrecy. By this metric, the way parliament makes its rules could fare quite well. Although many rules are made in secret, they are reported on and explained by the rule-makers. In published form, they are freely accessible by the public and they are generally applied in settings that are broadcast widely.

It is difficult to see how the review and reform of Standing Orders would be improved by being more open. The deliberations of the committee, more than most other committees, rely on negotiation, frank discussion and realpolitik in pursuit of consensus by those familiar with working within the framework under discussion. Members themselves have stated that further opening of proceedings could diminish the prospect of constructive dialogue or simply force it out of the committee room (AJHR 2003, I.18B, p.44).

The New Zealand parliament possesses most of the normative features required to be effective in the five cases that have been the subject of this study. Actors generally view the institution as effective but always able to be improved. They wish to keep it relevant but not to radically overhaul it. Their preference for written rules limits discretion to interpret those rules and the multi-party environment has led to stronger veto powers. All of these factors mean that layering of new rules upon old ones is likely to continue to be the dominant form of change. A perusal of proposals for reform in reviews of Standing Orders since 2015 shows that they mostly suggest additions to existing rules and functions or improvements of them. Submissions suggested further roles for the Business Committee, stronger limits on urgency, improved debate, growth of te reo Māori in parliament, enhancements to oral questions and improved scrutiny by select committees of treaties, legislation and the executive. Such changes are largely calls to 'do better' and could be layered on to existing rules. In light of

the traditions of the institution and the beliefs of its actors, ongoing, incremental, layered reform is the likely shape of future change.

Bibliography

Primary sources

Burke, K. (1990). Interview with Kerry Burke, Speaker [Speech audio recording]. Retrieved on 20/10/2022 from https://ngataonga.org.nz/collections/catalogue/catalogue-item?record_id=243355

Business Committee (1987). *Guidelines for Chairman of Select Committees*. Wellington, Government Printer.

Cullen, M. (2004). Address to Public Law Conference: "Parliament: Supremacy over Fundamental Norms?" Legislative Council Chamber, Parliament Buildings, Wellington. Retrieved on 16/7/2022 from https://www.beehive.govt.nz/speech/parliament-supremacy-over-fundamental-norms

Department of the House of Representatives (2017). *Guide to Procedures* (6th edition), Canberra: Department of the House of Representatives, Australia.

Hall, T.D.H. (1950-1954). Drafts on constitutional and parliamentary topics. Unpublished manuscript. National Archives. MS-Papers-9472-04.

Hall, T.D.H. (1950). *Manuscript on Parliamentary Procedure*. Unpublished manuscript. J.C. Beaglehole Room, Victoria University of Wellington. MSS H179 M.

Hall, T.D.H. (1952). T.D.H. Hall reminisces [Speech audio recording]. Retrieved on 20/10/2022 from https://nzhistory.govt.nz/media/sound/te-reo-in-the-house

House of Commons, UK (2018). Standing Orders. London: House of Commons.

House of Commons Information Office, UK (2010). Parliamentary Questions. London: House of Commons.

House of Lords and House of Commons Joint Committee on Conventions (2006), *Conventions of the UK Parliament, Report of Session 2005–06, Volume I*. London: The Stationery Office Limited.

House of Representatives. Appendices to the Journals of the House of Representatives. Wellington.

House of Representatives. Journals of the House of Representatives. Wellington.

House of Representatives. New Zealand Parliamentary Debates. Wellington.

House of Representatives. Standing Orders of the House of Representatives. Wellington.

Joint Committee on Conventions (2006). Conventions of the UK Parliament. First Report of Session 2005-06 HL 265-I HC 1212-I. London: The Stationery Office Limited.

Law Commission (1997). The Treaty Making Process Reform and the Role of Parliament. Wellington: Law Commission.

Law Commission (2010) *Review of the Civil List Act 1979*. Wellington: Law Commission.

One News. (2017, 7 November). 'Yesterday was a day of incompetence by the Government' – Simon Bridges' dramatic move in Parliament just 'vigorous testing'. Retrieved on 16/1/2023 from https://www.1news.co.nz/2017/11/07/yesterday-was-a-day-of-incompetence-by-the-government-simon-bridges-dramatic-move-in-parliament-just-vigorous-testing/

Royal Commission of Inquiry (1962). *The state services in New Zealand: report of the Royal Commission of inquiry*. Wellington: Government Printer.

Standing Committee on Procedure, Australia (2016). *Maintenance of the standing orders*. Retrieved on 24/12/2019 from https://www.aph.gov.au/Parliamentary_Business/Committees/House/Procedure/Maintenance_of_Standing_and_Sessional_Orders/Report.

Surtees, C. (2019). Submission on the inquiry into the practices and procedures relating to Question Time. Australian House of Representatives. Retrieved on 13/11/2019 from file:///C:/Users/ocwilsda/Downloads/Sub%20036%20-%20Claressa%20Surtees.pdf.

Unpublished records of the Business Committee AGBX16127, WS190.

Unpublished records of the Standings Orders Committee AGBX16127, WS 189-194.

Interviews conducted for this thesis

Sir David Carter, 14/6/2022.

Hon Peter Dunne, 5/9/2022.

Dr Kennedy Graham, 15/6/2022.

Mary Harris QSO, 20/4/2022.

Hon Chris Hipkins, 3/8/2022.

Sir Kenneth Keith ONZ, 18/8/2022.

Rt Hon Trevor Mallard, 21/9/2022.

David McGee CNZM, 21/4/2022.

Sir Don McKinnon ONZ, 18/5/2022.

Sir Geoffrey Palmer, 18/8/2022.

Sir Lockwood Smith, 23/5/2022.

Metiria Turei, 18/8/2022.

Hon Margaret Wilson, 16/5/2022.

Secondary sources

Ahu, T. (2012). Te Reo Māori as a language of New Zealand law: The attainment of civic status. (LLM thesis Victoria University of Wellington).

Algie, Hon R.M. (1963). The Speaker. *Political Science 15*: 2, 14-17.

Armingeon, K. (2002). The effects of negotiation democracy: A comparative analysis. *European Journal of Political Research*, *41*, 81-105.

Armingeon, K. (2004). Institutional Change in OECD Democracies, 1970-2000. *Comparative European Politics, 2*, 212-238.

Armitage, F. (2010). The Speaker, Parliamentary Ceremonies and Power. *The Journal of Legislative Studies* 16:3, 325-337.

Bacharach, P. and Baratz, M. (1963). Decisions and Nondecisions: An Analytical Framework. *American Political Science Review*, 57: 632-642

Bagnall, D. (2016). Reviewing the Standing Orders: How to make dreams come true. *Australasian Parliamentary Review*, 31 (1): 8-25.

Barakso, M. Sabetm D. and Schaffner, B. (2013) *Understanding Political Science Research Methods: The Challenge of Inference*. New York: Routledge.

Barker, F. (2010). Political Culture: Patterns and Issues. In Miller, R. (ed.) *New Zealand Government and Politics*, 5th edition. Melbourne: Oxford University Press.

Barker, F. and Levine, S. (2000). The Individual Parliamentary Member and Institutional Change The Changing Role of the New Zealand Member of Parliament. In Longley, L. and Hazan, R. (eds.) *The Uneasy Relationships Between Parliamentary Members and* Leaders, London: Frank Cass and Company.

Barry, N., Miragliotta, N. and Nwokora, Z. (2018). The Dynamics of Constitutional Conventions in Westminster Democracies. *Parliamentary Affairs 72*, 664-683.

Basset, M. (1995). *Coates of Kaipara*. Auckland: Auckland University Press.

Béland, D. (2007). Idea and Institutional Change in Social Security: Conversion, Layering and Policy Drift. *Social Science Quarterly, 88*(1), 20-38.

Belich, J. (2001). *Paradise Reforged*. Auckland: Allen Lane: Penguin Press.

Bennett, A. and Checkel, J. (2015) Process Tracing: from philosophical roots to best practices. Bennett, A. and Checkel, J. (Eds.) *Process Tracing From Metaphor to Analytic Tool*. Cambridge: Cambridge University Press

Benoit, K. (2004). Models of electoral system change. *Electoral Studies*, *23*, 363-389.

Benton, M. and Russell, M. (2012). Assessing the Impact of Parliamentary Oversight Committees: The Select Committees in the British House of Commons. *Parliamentary Affairs* (2013) 66, 772-797.

Berry, J. (2003) Validity and Reliability Issues in Elite Interviewing. *PS: Political Science & Politics* 35:4, 679-682.

Bevir, M., Rhodes, R., and Weller, P. (2003). Traditions of Governance: Interpreting the Changing Role of the Public Sector in Comparative and Historical Perspective. *Public Administration 81*, 1-17.

Bevir, M. (2004). Interpreting British Governance. *British Journal of Politics and International Relations, 6 British Journal of Politics and International Relations 6*, 130-136.

Bosc, M. and Gagnon, A. (2017). *House of Commons Procedure and Practice* (3rd edition). Montreal: McGraw-Hill.

Boston, J., Bagnall, D. and Barry, A. (2019). *Foresight, insight and oversight: Enhancing long-term governance through better parliamentary scrutiny*. Wellington: Victoria University of Wellington.

Boston, J. Levine, S., McLeay, E. and Roberts, N. (1996). *New Zealand Under MMP: A New Politics?* Auckland: Auckland University Press.

Boswell, J., Corbett, J., Rhodes, R. (2019). *The Art and Craft of Comparison*. Cambridge: Cambridge University Press.

Bowden, J. and MacDonald, N. (2012). Writing the Unwritten: The Officialization of Constitutional Convention in Canada, the United Kingdom, New Zealand, and Australia. *Journal of Parliamentary and Political Law 6*: 2, 365 – 400.

Carter, R. (2010). *Regulations and Other Subordinate Legislative Instruments: Drafting, Publication, Interpretation and Disallowance*. Occasional Paper No 20. Wellington: New Zealand Centre for Public Law.

Constitutional Advisory Panel (2013). *New Zealand's Constitution A Report on a Conversation*. Wellington: New Zealand Government.

Copeland, G. and Patterson, S. (1997). Changing an Institutionalized System in Copeland, G. and Patterson, S. (eds.). *Parliaments in the Modern World Changing Institutions*. Ann Arbour, USA: University of Michigan Press.

Crewe, E. (2005). *Lords of Parliament*. Manchester: Manchester University Press.

Cullen, M. (2005). Opening Remarks in M. Clark (Ed.) *For the Record. Lange and the Fourth Labour Government*. Wellington: Dunmore Publishing Ltd.

Cullen, M. (2021). *Labour Saving – A Memoir*. Auckland: Allen & Unwin.

Curtis, J. and Marinac, C. (2006). The Scrutiny of Government Agencies by Parliamentary Joint Committees. *Australasian Parliamentary Review* 21:1, 118-134.

Dalziel, R. (1992) The Politics of Settlement in Rice, G. (ed) *The Oxford History of New Zealand* (2nd edition), Auckland: Oxford University Press.

Daniell, S. (1983). Reform of the New Zealand Political System: How likely is it? A Survey of the Attitudes of Members of the New Zealand Parliament to Reform Proposals. *Political Science 35*:2, 151-189.

Dexter, L. (1970). *Elite and Specialized Interviewing*. Evanston: Northwestern University Press.

Dimitrakopoulos, D. (2001). Incrementalism and Path Dependence: European Integration and Institutional Change in National Parliaments. *Journal of Common Market Studies, 39*(3), 405-422.

Dinton, Lord Wilson of (2004). The Robustness of Conventions in a Time of Modernisation and Change. *Public Law*, 407-420.

Dolowitz, D. and March, D. (2000) Learning from Abroad: The Role of Policy Transfer in Contemporary Policy-Making. *Governance 13*:1, 5-24.

Dollimore, H. (1968) New Zealand 'Washing up' Bills. *The Table, Vol XXXVII*, 26-29.

Dollimore, H. (1973). *The Parliament of New Zealand and Parliament House*. Wellington: Government Printer.

Donahoe, A. (2002). The Value of Parliament. *Australasian Parliamentary Review* Vol 17(1), 109-118.

Eckstein, H. (1979). On the "Science" of the State. *Daedalus*, 108(4), 1-20. Retrieved 24/2/2020 from www.jstor.org/stable/20024631

Elder, D., (Ed.) (2018). *House of Representatives Practice* (7th edition), Canberra: Department of the House of Representatives.

Elster, J. (1995). Forces and Mechanisms in the Constitution-Making Process. *Duke Law Journal*, *45*, 364 - 396.

Fisher, D. (2012). Fairness and freedom: *A history of two open societies: New Zealand and the United States*. New York: Oxford University Press.

Fitzgerald, P. (1966). *Salmond on Jurisprudence*. 12th edition. London: Sweet & Maxwell.

Flavell, T. (2010). MMP: Perspectives from a Māori member in a Māori seat in the Māori Party. In Bargh, M. (Ed). *Māori and Parliament*. Wellington: Huia Publications.

Fujii, L.A, (2017). *Interviewing in Social Science Research A Relational Approach*. New York: Routledge.

Gaines, B., Goodwin, M., Sin, G. (2019). The study of legislative committees. *The Journal of Legislative Studies*, 25:3, 331-339.

Gaines, B., Goodwin, M., Bates, S., Sin, G. (2019). Conclusion: Prospects for analyzing committees in comparative perspective. *The Journal of Legislative Studies*, 25:3, 434-441.

Ganley, M, (2001). Select Committees and their Role in Keeping Parliament Relevant Do New Zealand select committees make a difference? Australasian Parliamentary Review, Vol. 16(2), 140–50.

Ganley, M. (2002). Making Unicameral Parliaments Work: The New Zealand Exception? Unpublished LLB (Hons) research paper. Victoria University of Wellington.

Geddis, A. and Morris, C. (2004) All is Changed, Changed Utterly'? - The Causes and Consequences of New Zealand's Adoption of MMP. *Federal Law Review 32*, 1-28.

Geddis, A. (2016). Parliamentary government in New Zealand: Lines of continuity and moments of change. *International Journal of Constitutional Law 14*:1, 99-118.

Geiringer, C., Higbee, P. and McLeay, E. (2011) *What's the hurry? Urgency in the New Zealand Legislative Process 1987–2010*. Wellington: Victoria University Press.

Gerring, J. (2004). What Is a Case study and What Is It Good For? *American Political Science Review*, *98* (2), 341-354.

Gerring, J., and Thacker, S. (2008). *A Centripetal Theory of Democratic Governance*. Cambridge: Cambridge University Press.

Gerring J. (2011). *Social Science Methodology A Unified Framework*. Cambridge: Cambridge University Press.

Gerring, J., Thacker, S., and Moreno, C. (2005). Centripetal Democratic Governance: A Theory and Global Inquiry. *American Political Science Review*, *99*(4), 567-581.

Gerring, J. Boyd, P. Barndt, W. and Morena, C. (2005a). Democracy and Economic Growth: A Historical Perspective. *World Politics, 57*(3), 323-364.

Greener, I. and Powell, M. (2021). Beveridge, Bevan and institutional change in the UK welfare state. *Social Policy and Administration 86*:2, pp.271-283.

Groth, A. (1970). Structural Functionalism and Political Development: Three Problems. *The Western Political Quarterly, 23*(3), 485-499.

Gustafson, B. (2000). *His Way: A Life of Robert Muldoon.* Auckland: Auckland University Press.

Hacker, J., Pierson, P., & Thelen, K. (2015). Drift and conversion: Hidden faces of institutional change. In J. Mahoney & K. Thelen (Eds.), *Advances in Comparative-Historical Analysis (Strategies for Social Inquiry*). Cambridge: Cambridge University Press.

Hall, T.D.H. (1941). Public Administration and Parliamentary Procedure in New Zealand. *The Table Vol X*, 123-144.

Halligan, J. (1980). Continuity and change and the New Zealand Parliament. Unpublished PhD thesis. Victoria University of Wellington.

Halligan, J., Miller, M. and Power, J. (2007). *Parliament in the Twenty-first Century: Institutional Reform and Emerging Roles*, Carlton, Australia: Melbourne University Press.

Harland, F. Constitutional Convention and Cabinet Manuals. *Canadian Parliamentary Review* 34: 4, 25-32.

Harris, M. and Wilson, D. (2017). *McGee Parliamentary Practice in New Zealand* (4th edition). Auckland: Oratia Books.

Harrison, R., Gray, R. & Tapsell, P. (1998), 'Restoring Public Confidence in Parliament'. A report to the Association of Former Members of Parliament. Retrieved on 6/2/2021 from http://www.mdl.co.nz/site/mckinley/files/Former%20Speakers%20Report.pdf.

Harrison, R. (1964). Organisation and procedure in the New Zealand parliament. Unpublished Doctoral thesis. Ohio State University.

Hawke, G.R. (1979). Acquisitiveness and Equality in New Zealand's Economic Development. *The Economic History Review 32*: 3, 376-390.

Hay, C. (2004). Theory, stylized heuristic or self-fulfilling prophecy? The status of rational choice theory in public administration, *Public Administration*, *82*:4, 39-62.

Henderson, J. (1980). Muldoon and Rowling: A Preliminary Analysis of Contrasting Personalities. *Political Science, 32*:1, 26-46

Hill, J. (2010) Reflections on Reforming Question Period. *Canadian Parliamentary Review 33* (4), 4-6.

Hill, L. (1974). Parliamentary Petitions, The Ombudsman and Political Change in New Zealand. *Political Studies 22:*3, 337-346.

Hindmoor, A., Larkin, P. and Kennon, A. (2009), 'Assessing the Influence of Select Committees: The Education and Skills Committee, 1997-2005', *Journal of Legislative Studies* 15:1.

Hoare, P. (2014). The Passage Through the New Zealand House of Representatives of the Local Government (Auckland Reorganisation) Bill. Retrieved on 6/6/2021 from https://www.aspg.org.au/wp-content/uploads/2017/09/Peter-Hoare-short-paper.pdf.

Höhmann, D. and Sieberer, U. (2020). Parliamentary questions as a control mechanism in coalition governments. *West European Politics 43*:1, 225-249.

Hough, R. (2012). Do Legislative Petitions Systems Enhance the Relationship between Parliament and Citizen? *The Journal of Legislative Studies* 18:3-4, 479-495.

Huntington, S. (1965). Political Development and Political Decay. *World Politics 17*, 3, 386-430.

Jackson, K. (1991). The Abolition of the New Zealand Upper House of Parliament In Longley, L. and Olson, D. (Eds) *Two Into One. The Politics and Processes of National Legislative Cameral Change*. Boulder: Westview Press.

Jackson, K. (1993) Problems of democracy in a majoritarian system, *The Round Table 82*:328, 401-417.

Jackson, K. and Tan, A. (2000). The New Zealand Parliament: Changes in executive-legislative relations. In Francis, M. and Tully, J. (eds). *In the Public Interest Essays in Honour of Professor Keith Jackson*. Christchurch: Canterbury University Press.

Jacobs, A. (2015). Process tracing the effects of ideas. Bennett, A. and Checkel, J. (Eds.) *Process Tracing From Metaphor to Analytic Tool*. Cambridge: Cambridge University Press.

James, C. (2020). Social Laboratory: Reality or Myth? In Berman, E. and Karacaoglu, G. (Eds) *Public Policy and Governance Frontiers in New Zealand (Public Policy and Governance, Vol. 32)*. Bingley: Emerald Publishing Limited.

John, P. Bevan. S., and Jennings, W. (2011). The policy-opinion link and institutional change: the legislative agenda of the UK and Scottish Parliaments. *Journal of European Public Policy, 18*(7), 1052-1068.

Joseph, P. (1994). Sampling the "Wine Box" The media, parliamentary papers and contempt of Court. *New Zealand Law Journal,* August.

Joseph, P. (2014). *Constitutional and Administrative Law in New Zealand*, 4th edition. Wellington: Brookers Ltd.

Judge, D. (2003). Legislative Institutionalization: A Bent Analytical Arrow? *Government and Opposition 36*:4, pp. 497-516.

Kaiser, A. (1997). Types of Democracy from Classical to New Institutionalism. *Journal of Theoretical Politics 9*(4), 419-444.

Kaiser, A. (2008). Parliamentary Opposition in Westminster Democracies: Britain, Canada, Australia and New Zealand. *The Journal of Legislative Studies*, 14:1-2, 20-45.

Kaiser, A., Lehnert, M., Miller, B., Sieberer, U. (2002). The Democratic Quality of Institutional Regimes. A Conceptual Framework, *Political Studies 50* (2), 313-33.

Kantar Public (2022). Survey of the New Zealand Public. Unpublished research for the Office of the Clerk of the House of Representatives. Wellington.

Keith, K. (1964). New Zealand treaty Practice: The Executive and the Legislature. *New Zealand Universities Law Review Vol 1*, 272-299.

Kelso, A. (2003). Where were the massed ranks of parliamentary reformers? – 'attitudinal' and 'contextual' approaches to parliamentary reform. *The Journal of Legislative Studies*, 9:1, 57-76.

Kelson, R. (1955). Voting in the New Zealand House of Representatives, 1947-54. *Political Science 7*:2, 101-117.

Kennon, A. (2011). House of Commons Backbench Business Committee. *The Table*, Vol 79.

Kidd, D. (2001). *Executive v legislature – the struggle continues*. Wellington: New Zealand Centre for Public Law.

Kidd, D. (2010). Parliament is Moving on. In Bargh, M. (Ed). *Māori and Parliament*. Wellington: Huia Publications.

King, G., Keohane, R. and Verba, S. (1994). *Designing Social Inquiry: Scientific Inference in Qualitative Research*. Princeton, USA: Princeton University Press.

King, M. (2003). *The Penguin History of New Zealand*. Auckland: Penguin Books.

Knauf, J. (2005). From the Scrum to the Chamber: Social Capital, Public Confidence, and the Parliamentarian's Dilemma. *Political Science 57*: 1, 21-37

Koning, E. (2016). The three institutionalisms and institutional dynamics: understanding endogenous and exogenous change. *Journal of Public Policy 36*: 4, 639-664.

Koskimaa, V. and Raunio, T. (2020). Encouraging a longer time horizon: the Committee for the Future in the Finnish Eduskunta. *The Journal of Legislative Studies 26*:2, 159-179.

Ladley, A. (2006). Prime Ministers' Parliamentary Questions in New Zealand: Patterns of Questioning in Pre-Campaign Periods, *Political Science 58*:1, 55-79.

Ladley, A. And Chisholm, E. (2008). Who Cut the Apron Strings and When? Adopting the Statute of Westminster in New Zealand in 1947. In *Political Science*, Vol 60: 2, 15-40.

Larkin, P. (2008), The Committees of the House of Representatives in Comparative Perspective. Retrieved on 14/9/2019 from https://www.aph.gov.au/~/media/02%20Parliamentary%20Business/24%20Committees/243%20Reps%20Committees/20thAnniversary/PDF/larkin_bg.pdf?la=en.

Lamare, J. (1998). Representational roles and proportional representation in New Zealand. *The Journal of Legislative Studies 4*:3, 17-32.

Laurie, N. (2001). The Grand Inquest of the Nation. A notion of the past? *Parliamentary Review*, Volume 16(2), pp. 173–85.

Leech, B. (2003). Asking Questions: Techniques for Semistructured Interviews. *PS: Political Science & Politics 35*: 4, pp.665-668.

Lee, C. (2021). Archibald Milman and the Evolution of the Closure – Part 2: 1882-1885. *The Table 89*, 5-55.

Levine, S. (1977) New Zealand Politics: Annual Review. *The Australian Quarterly 49*:1, 99-117.

Levine, S. (2012). Political Values. Retrieved on 10/2/2022 from https://teara.govt.nz/en/political-values.

Lindell, G. (1995). Parliamentary inquiries and government witnesses. *Melbourne University Law Review 20*, pp. 383-422.

Lijphart, A. (1984). *Democracies*. New Haven, USA: Yale University Press.

Lijphart, A. (2002). Negotiation democracy versus consensus democracy: Parallel conclusions and recommendations. *European Journal of Political Research*, *41*, 107-113.

Lipson, L. (1948). *The Politics of Equality.* Chicago: University of Chicago Press.

Littlejohn, C.P. (1969). Parliamentary Privilege in New Zealand. LLM thesis, Victoria University of Wellington.

Longley, L. and Olson, D. (1991) The Politics and Processes of National Cameral Legislative Change. In Longley, L. and Olson, D. (Eds) *Two Into One. The Politics and Processes of National Legislative Cameral Change*. Boulder, USA: Westview Press.

Lowi, T. (1963). Toward Functionalism in Political Science: The Case of Innovation in Party Systems. The American Political Science Review, 57(3), 570-583.

McClintock, B. (1998) Whatever Happened to New Zealand? The Great Capitalist Restoration Reconsidered. *Journal of Economic Issues 32*:2, 497-503.

McGee, D. (1985). *Parliamentary Practice in New Zealand*. Government Printer: Wellington.

McGee, D. (1995). The Legislative Process and the Courts. In Philip Joseph (ed). *Essays on the Constitution*. Wellington: Brookers

McGee, D. (1996). Parliament and the Law, *Canterbury Law Review 6*(2), 195-201.

McGee, D. (1996a). 'Treaties and the House of Representatives'. Paper prepared for the Standing Orders Committee by the Clerk of the House of Representatives.

McGee, D. (1997). Parliament and Caucus. *New Zealand Law Journal,* April.

McGee, D. (2002). *The Overseers — Public Accounts Committees and Public Spending*. London: Commonwealth Parliamentary Association.

McGee, D. (2009). Constitutional Conventions. In Francis, M. and Tully, J. (eds). *In the Public Interest Essays in Honour of Professor Keith Jackson*. Christchurch: Canterbury University Press.

McGowan, A. (2008). Accountability or Inability. To What Extent does House of Representatives Question Time Deliver Executive Accountability Comparative to other

Parliamentary Chambers? Is there Need for Reform? *Australasian Parliamentary Review 23*:1, 66-87.

McKinnon, M. (2013). Petitioning Parliament. *The Table 81*, 68 - 72.

McLeay, E. (1995). *The Cabinet and Political Power in New Zealand*. Auckland: Oxford University Press.

McLeay, E. (2001). Parliamentary Committees in New Zealand: A House Continuously Reforming Itself? *Australasian Parliamentary Review, 16:*1, 121-140.

McLeay, E. (2005). Mapping and Assessing Accountability: Institutional Rules and Political Dynamics in the New Zealand Parliament. Paper Presented at the Annual Conference of the Australasian Study of Parliament Group, 6-8 October, Sydney.

McLeay, E. (2006). Scrutiny and Capacity: An Evaluation of the Parliamentary Committees in the New Zealand Parliament. *Australasian Parliamentary Review* 21:1, 158-177.

McLeay, E. (2006a). Climbing on. Rules, values and women's representation in the New Zealand parliament. In Sawer, M., Tremblay, M. and Trimble, L. (Eds.), *Representing Women in Parliament: A Comparative Study*. London: Routledge.

McLeay, E. (2006b). Democratic Experiments in New Zealand. *Papers on Parliament No. 44*, Canberra: Department of the Senate.

McLeay, E. (2018). In Search of Consensus: New Zealand's Electoral Act 1956 and its Constitutional Legacy. Wellington: Victoria University Press.

Macpherson, K. (2008). Parliamentary Scrutiny of Executive Government. *Australasian Parliamentary Review 23*:1, 9-24.

McRae, T. (1994). A parliament in crisis: the decline of democracy in New Zealand. Unpublished MA thesis. Victoria University of Wellington.

Madden, H.F. (1980). 'Not for export': The Westminster model of government and British colonial practice. *The Journal of Imperial and Commonwealth History*, 8(1).

Mahoney, J. and Thelen, K. (2010). A Theory of Gradual Institutional Change. In Mahoney, J. and Thelen, K. (Eds.), *Explaining Institutional Change: Ambiguity, Agency, and Power.* Cambridge: Cambridge University Press.

Mahuta, N. (2010). What has MMP changed? In Bargh, M. (Ed). *Māori and Parliament*. Wellington: Huia Publications.

Mallard, T. (2019) Fit-for-purpose parliament; reviewing and enhancing parliamentary effectiveness. *The Parliamentarian*, *100*(3), 214-221.

March, J. and Olsen, J. (1984). The New institutionalism: Organizational Factors in Political Life. *The American Political Science Review*, *78*(3), 734-749.

March, J. and Olsen, J. (2006). Elaborating the "New Institutionalism" in Rhodes, R., Binder, S and Rockman, B. (eds) *The Oxford Handbook of Political Institutions*. Oxford: Oxford University Press.

Marshall, G. (1984). *Constitutional Conventions: The Rules and Forms of Political Accountability.* Oxford: Clarendon Press.

Martin, J. (2004). The House - New Zealand's House of Representatives 1854-2004. Palmerston North: The Dunmore Press.

Martin, J. (2011). From legislative machine to representative forum? Procedural change in the New Zealand parliament in the twentieth century. *Australasian Parliamentary Review*, 26:2.

Martin, S. (2011). Parliamentary Questions, the Behaviour of Legislators, and the Function of Legislators: An Introduction. *The Journal of Legislative Studies 17*:3, 259-270.

May, T. (1972).Parliamentary Discipline in New Zealand, 1955-63. In Cleveland, L. and Robinson, A.D. (eds) *Readings in New Zealand Government*. Wellington: A.H. Reed.

Mitchell, A. (1966). *Government by Party*. Christchurch: Whitcombe and Tombs.

Monk, D. (2008). Beauty is in the eye of the beholder: A framework for testing the effectiveness of parliamentary committees. Retrieved on 14/9/2019 from https://www.aph.gov.au/~/media/02%20Parliamentary%20Business/24%20Committees/243%20Reps%20Committees/20thAnniversary/PDF/monk_bg1.pdf?la=en.

Natzler, D., Bagnall, D., Brochu, J. and Fowler, P. (2017) Controversy at the Antipodes (and Elsewhere). In Evans, P. (ed.) *Essays on the History of Parliamentary Procedure*, Oxford: Hart.

Natzler, Sir D. and Hutton, M. (2019). *Erskine May Parliamentary Practice* (22nd edition), London: LexisNexis.

New Zealand History (2021). 'History of the Māori language' Retrieved on 18/5/2021 from https://nzhistory.govt.nz/culture/maori-language-week/history-of-the-maori-language#:~:text=M%C4%81ori%20was%20made%20an%20official,has%20only%20just%20been%20arrested.

Norton P. (1990). Parliaments: A framework for analysis. *West European Politics* 13:3, 1-9.

Norton, P. (2000). Reforming parliament in the United Kingdom: The report of the commission to strengthen parliament. *The Journal of Legislative Studies 6*(3), 1-14.

Norton, P. (2001). The Constraining Hand of Parliamentary Procedure. *The Journal of Legislative Studies 7*(3), 13-33.

Norton, P. (2016). Legislative Scrutiny in the House of Lords. In Horne, A. and Le Sueur, A. (eds.) *Parliament Legislation and Accountability*. Oxford: Hart.

Norton, P. (2019). Departmental Select Committees: The Reform of the Century? *Parliamentary Affairs 72*, 727-741.

O'Neal, B. (1994). Senate Committees: Role and Effectiveness. Retrieved on 14/10/2022 from https://publications.gc.ca/collections/Collection-R/LoPBdP/BP/bp361-e.htm#4.%20Effectiveness2

O'Neill, O. (2002). A Question of Trust. The Reith Lectures. Retrieved on 16/7/2022 from https://www.immagic.com/eLibrary/ARCHIVES/GENERAL/BBC_UK/B020000O.pdf

Otjes, S. and Louwerse, T. (2018). Parliamentary questions as strategic party tools. *West European Politics 41*:2, 496-516.

Palmer, G. (1984). A Recipe to Change New Zealand's System of Government. *New Zealand Law Journal 31*, 31-34.

Palmer, G. (1984). The Separation of Powers in 1984. *New Zealand Law Journal*, June, 178-180.

Palmer, G. (1992). New Zealand's constitution in crisis: reforming our political system. Dunedin: McIndoe.

Palmer, G. (2006). The Cabinet, the Prime Minister and the Constitution. *New Zealand Journal of Public and International Law, 4(*1), 1-36.

Palmer G. (2013). *Reform: A Memoir*. Wellington: Victoria University Press.

Palmer, G. (2021). Rethinking Public Law in a Time of Democratic Decline. *Victoria University of Wellington Law Review 52*:2, 413-462.

Palmer, M. (2006). What is New Zealand's constitution and who interprets it. Constitutional realism and the importance of public office-holders. *Public Law Review 17*:2, 133-162.

Palmer, M. (2007). New Zealand Constitutional Culture. *New Zealand Universities Law Review 22*, 565-597.

Palonen, K. (2016). *The Politics of Parliamentary Procedure*. Toronto: Barbara Budrich Publishers.

Palonen, K. (2019). *Parliamentary Thinking Procedure, Rhetoric and Time.* New York: Palgrave Macmillan.

Patterson, S. and Copeland, G. (1997) Parliaments in the Twenty-first Century in Copeland, G. and Patterson, S. (eds.). *Parliaments in the Modern World Changing Institutions*. Ann Arbor, USA University of Michigan Press.

Pierson, P. (2000). The Limits of Design: Explaining Institutional Origins and Change', *Governance*, *13*, 475-99.

Pierson, P. (2000a). Increasing Returns, Path Dependence, and the Study of Politics', *American Political Science Review 94*, 475-99

Plümper, T., Schneider, C. J. (2009). The analysis of policy convergence, or: How to chase a black cat in a dark room. *Journal of European Public Policy, 16*, 990-1011.

Pouliot, V. (2015) Practice tracing. Bennett, A. and Checkel, J. (Eds.) *Process Tracing From Metaphor to Analytic Tool*. Cambridge: Cambridge University Press

Quentin-Baxter, A. and McLean, J. (2017). *This Realm of New Zealand*. Auckland: Auckland University Press.

Rasiah, P. (2006). Does Question Time fulfil its role of ensuring accountability? *Democratic Audit of Australia*. Retrieved on 3/11/2019 from https://apo.org.au/sites/default/files/resource-files/2006/04/apo-nid3966-1077431.pdf.

Rasiah, P. (2010) Can the Opposition Effectively Ensure Government Accountability in Question Time? An empirical study. *Australasian Parliamentary Review*, 25(1), 166–76.

Rhodes, R. and Weller, P. (2005). Westminster transplanted and Westminster implanted: Exploring political change. Patapan, H., Wanna, J. and Weller, P. (eds) *Westminster Legacies.*

Democracy and Responsible Government in Asia and the Pacific. Sydney: University of New South Wales Press.

Rhodes, R. (2006). Old Institutionalisms, in Rhodes, R., Binder, S. and Rockamn, B. (eds) *The Oxford Handbook of Political Institutions*. Oxford: Oxford University Press.

Rhodes, R., Wanna, J. and Weller, P. (2009). *Comparing Westminster*. Oxford: Oxford University Press.

Roberts, N. (1976). The New Zealand General Election of 1975. *The Australian Quarterly 48*: 1, 97-114.

Robinson, A.D. (1978) Parliament in New Zealand. In Marshall, J. (ed). *The Reform of Parliament*. Wellington: Government Printing Office.

Rodrigues, M (2008). Parliamentary inquiries as a form of policy evaluation. Retrieved on 14/9/2019 from https://www.aph.gov.au/~/media/02%20Parliamentary%20Business/24%20Committees/243%20Reps%20Committees/20thAnniversary/PDF/rodrigues_bg.pdf?la=en.

Rodriguez Ferrere, M. (2014). Standing Orders in the New Zealand House of Representatives. In *Parliaments, Estates and Representation*, 32:2, 228-243.

Rogers, R. and Walters, R. (2015). *How Parliament Works* (7th ed.). London: Routledge.

Roycroft, P. (2017). Question Time or Show Time? Analysing the Value of Question Time as a Parliamentary Accountability Mechanism. Unpublished LLB(Hons) dissertation. Victoria University of Wellington.

Russell, M. and Paun, A. (2006). *Managing Parliament Better? A Business Committee for the House of Commons*. London: The Constitution Unit.

Russell, M. and Paun, A. (2007). *The House Rules? International lessons for enhancing the autonomy of the House of Commons.* London: The Constitution Unit.

Russell, M. and Benton, M. (2011) *Selective Influence: The Policy Impact of House of Commons Select Committees*. The Constitution Unit: London. Retrieved on 15/9/2019 from https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/153.pdf .

Ryan, F. (2009). Can Question Period be Reformed? *Canadian Parliamentary Review 32*(3), 18-22.

Salmond, R. (2004). Grabbing Governments By The Throat: Question Time And Leadership In New Zealand's Parliamentary Opposition. *Political Science 56*:2, 75-90.

Salmond, R. (2014). Parliamentary Question Times: How Legislative Accountability Mechanisms Affect Mass Political Engagement. *The Journal of Legislative Studies 20*:3, 321-341.

Salt, A. (1996). The Legislative Process. *New Zealand Law Journal,* November.

Sanches de Dios, M. and Wiberg, M. (2011). Questioning in European Parliaments. *The Journal of Legislative Studies 17*:3, 354-367.

Sauermann, J. and Kaiser, A. (2010). Taking Others into Account: Self-Interest and Fairness in Majoirty Decision Making. *American Journal of Political Science 54*(3), 667-685.

Serra-Silva, S. (2022). Beyond national boundaries in the study of digital public engagement: Interparliamentary institutions and cooperation in the Austrian and Portuguese national parliaments. *Policy & Internet 15*, 36-54.

Sheingate, A. (2009). Creativity and Constraint in the US House of Representatives. In Mahoney, J. and Thelen, K. (Eds.), *Explaining Institutional Change: Ambiguity, Agency, and Power.* Cambridge: Cambridge University Press.

Shepsle, K. (2006). Rational Choice Institutionalism, in Rhodes, R., Binder, S. and Rockman, B. (eds) *The Oxford Handbook of Political Institutions*. Oxford: Oxford University Press.

Shpaizman, I. (2017). Identifying Relevant Cases of Conversion and Drift Using the Comparative Agendas Project. *Policy Studies Journal 45* (3), 490-509.

Sibley, C., Hoverd, W. and Liu, J. (2011). Pluralistic and Monmocultural Facets of New Zealand National Character and Identity. *New Zealand Journal of Psychology 40*:3, 19-29.

Sieberer, U., Dutkowski, J., Meißner, P., Müller, W. (2020). 'Going institutional' to overcome obstruction. Explaining the Suppression of Minority Rights in Western European Parliaments, 1945-2010, *European Journal of Political Research 59* (4), 886-909.

Sieberer, U., Meißner, P., Keh, J., Müller, W. (2016). Mapping and Explaining Parliamentary Rule Changes in Europe: A Research Program. *Legislative Studies Quarterly 41* (1), 61-88.

Sieberer, U., Müller, W., Heller, M. (2011). Reforming the Rules of the Parliamentary Game: Measuring and Explaining Changes in Parliamentary Rules in Austria, Germany, and Switzerland, 1945-2010, *West European Politics 34* (5), 948-975.

Skene, G., (1987), 'Parliamentary Reform', in Boston, J. and Holland, M. (eds), *The Fourth Labour Government: Radical Politics in New Zealand*. Auckland: Oxford University Press.

Skene, G. (1990). *New Zealand Parliamentary Committees: An Analysis*. Wellington: Institute of Policy Studies.

Skene, G. (1992). The Legislative Process in New Zealand. Paper presented at the NZPSA Conference, Auckland.

Smith, L. (2011). The Speakership: A New Zealand Perspective. *Canadian Parliamentary Review 34*: 4, 17-21.

Spindler, R. (2009). Members' Bills in the New Zealand Parliament. *Political Science 61*: 1, 51-79.

Stephens, J. (1969). The Logic of Functional and Systems Analyses in Political Science. *Midwest Journal of Political Science, 13*(3), 367-394.

Stephens, M. (2010). 'Tame Kākā' Still? Māori Members and the Use of Māori Language in the New Zealand house of Representatives. *Law Text Culture 14*:1. 220-246.

Stone, D., de Oliveira, O., Pal, L. (2020). Transnational policy transfer: the circulation of ideas, power and development models. *Policy and Society 39*:1, 1-18.

Stone, D. (2004). Transfer agents and global networks in the 'transnationalization' of policy. *Journal of European Public Policy 11*:3, 545-566.

Strom, K. (2005). Parliamentary Committees in European Democracies. Longley, L. and Davidson, R. (eds), T*he New Roles of Parliamentary Committees*. London: Frank Cass.

Thelen, K. (2000). Timing and Temporality in the Analysis of Institutional Evolution and Change. *Studies in American Political Development, 14* (Spring), 101-108.

Thelen, K. (2009). Institutional Change in Advanced Political Economies. *British Journal of Industrial Relations 47* (3), 471-498.

Tsebelis, G. (2000). Veto Players and Institutional Analysis. *Governance 13*:4, 441-474.

Tsebelis, G. (2002). *Veto Players*. Princeton: Princeton University Press.

van der Heijden, J. (2010). A short history of studying incremental institutional change: Does *Explaining Institutional Change* provide any new explanations? *Regulation & Governance, 4*, 230-243.

van Santen, R., Helfer, L., van Aelst, P. (2015). When politics becomes news: An analysis of parliamentary questions and press coverage in three West European countries. *Acta Politica 50*:1, 45-63.

Vatter, A., Flinders, M., and Bernauer, J. (2014). A Global Trend Toward Democratic Convergence? A Lijphartian Analysis of Advanced Democracies. *Comparative Political Studies, 47*(6), 903-929.

von Tunzelmann, A. (1979) The Public Expenditure Committee and Parliamentary Control of Public Expenditure. *VUW Law Review 2*, 19-42.

Waitangi Tribunal (1987). *Orakei report: report of the Waitangi Tribunal on the Orakei claim (Wai-9)*. Wellington: Waitangi Tribunal.

Waldron, J. (2008). *Parliamentary Recklessness: Why we need to legislate more carefully*. Auckland: Maxim Institute.

Wanna, J. (2005). New Zealand's Westminster Trajectory: Archetypal; Transplant to Maverick Outlier, in Patapan, H., Wanna, J. and Weller, P. (eds) *Westminster Legacies. Democracy and Responsible Government in Asia and the Pacific*. University of New South Wales Press: Sydney.

Wilson, D. (1998). The development of natural justice procedures in the New Zealand House of Representatives. *Legislative Studies*, *13*(1), 95-104.

Wilson, D. (2018). Party Voting in the New Zealand House of Representatives. *The Table*, *86*, 40-48.

Wilson, D. (2021). How the New Zealand Parliament responded*. Parliaments and the Pandemic*. London: Study of Parliament Group.

Wilson, D. (2023). *McGee Parliamentary Practice in New Zealand* (5th edition). Wellington: Clerk of the House of Representatives.

Wilson, D. (2023a). The adoption of the closure in the New Zealand House of Representatives*. The Table 91*,

Wilson, M. (2007). Reflections on the roles of the Speaker in New Zealand. *New Zealand Universities Law Review 22*, 545-564.

Wood, G.A. (1983) New Zealand's single chamber Parliament: An argument for an impotent upper house? *Parliamentary Affairs 36*:3, 334-347.

Appendix A: New Zealand compared with the 'Westminster model'

Westminster model	New Zealand
The constitutional framework	
A unitary state	Yes
No separation of powers and, therefore, no judicial review of constitution	No codified constitution and no judicial review of legislature decisions.
A bicameral parliament	No, since 1950
The doctrine of parliamentary sovereignty	Yes
Flexible constitutional conventions	Yes
The parties	
A two-party system based on single member constituencies	Mixed model. MMP means some single member constituencies and some members elected from party lists. A multi-party system
Majority party-government control of parliament	Coalition of parties controlling parliament is the norm
Institutionalised opposition	Yes
Accountability through elections	Yes
The executive	
The Head of state and head of government are two separate roles	Yes
Majority party control of the executive also described as a fusion of the legislature and the executive with ministers drawn from the parliament	Minority, coalition control of the executive with ministers drawn from the parliament
Concentration of executive power in the prime minister and cabinet	Yes
Individual ministerial and collective cabinet responsibility to parliament	Yes but 'agree to disagree' on certain issues now part of NZ conventions
Partnership between ministers and neutral officials in which minister have the last word	Yes

Adapted from Rhodes and Weller (2005)

Appendix B: Mentions of “fairness” or “unfairness” in debates on Standing Orders

Year	NZPD Volume	Page references
1929	221	882, 884, 885, 886, 889, 893, 895, 907
1951	294	12, 15, 16, 24, 25
1962	330	48, 76, 79
1967	350	66, 67, 70
1968	355	110
1972	378	48, 49, 54, 55
1979	428	4817
1986	475	5479
1992	529	10953, 10962
1995	552	10792, 10806, 10809, 10846, 10854, 10826, 10842
2005	627	22355
2011	676	21764

Appendix C: Responses to interview question "Do you think change will be an ongoing process or will the parliament reach a point of stability where the status quo will prevail?"

Comment	Interview subject
That's still the Geoffrey Palmer legacy for some of us in that these issues are still the subject of, you know, research and discussions. There is a certain, you know, progressive thought about what's next. The job is never finished. Yeah. And I think that the development of a more democratic House is business that you can never say is finished.	T. Mallard
Oh, I think it always will be, yeah. For a number of reasons. I think changing social attitudes and customs. I think improvements in technology	P. Dunne
So, I think those, those three were probably the big drivers of really focussing on institutional change. Yes. And then those things embedded into the Green culture around what should happen. And they get repeated and repeated and campaigned on.	M. Turei
Happiness with the status quo can be a dangerous thing. The world is constantly changing.	M. Harris
And there was always a constituency, it was just doing it and part of it was time as well.	M. Wilson
I think it's inevitable that whatever activity you're involved in in life, that better ways of going about it will emerge and people will become concerned about deficiencies in the way we do things. And so, I think reform will be an ongoing thing.	L. Smith
But do think that there's scope for improvement. And I would be reasonably confident, optimistic that in New Zealand's case, we certainly have the ability to improve. And maybe… you just have to be reasonably patient that things do improve or change for the better over time.	K. Graham
I mean, you can't just go around doing these occasional little bits of change. We do not insulate our system against the future. We have got short term thinking is everything you have to win the next election. You don't think about the long-term consequences and it's appalling.	G. Palmer
I'm absolutely convinced it will be an ongoing process. I mean accommodating the technology to the parliament. Members are going to expect that themselves. And so, you're going to have to keep on changing rules to reflect that.	D. McGee
Never [stop changing]. Otherwise, the world stopped changing	D. Carter
[I] think it'll have to keep evolving, because if it doesn't, it'll lose legitimacy. And, you know, parliament becomes an archaic institution that's not relevant, then the democracy will be in peril. So, I think it will have to continue to evolve and adapt and change. I think some of the incorporation of technology that we've done this year is vital to keeping parliament relevant and to keep it moving with societal norms and expectations.	C. Hipkins

Appendix D Examples of classification of changes using Mahoney and Thelen's model

Change	Evidence	Analysis	Type of change
Automatic referral of bills to select committees (1979).	"all government bills should automatically stand referred to select committees after their first reading instead of being referred on an ad hoc basis" (AJHR 1979, I.14, p.7). SO 1979, 221	The recommendation replaces the rule about ad hoc referral of bills to all bills standing referred. The standing order displaces the former ad hoc arrangement.	Displacement Existing rule replaced by new one.
Business Committee to extend reporting dates for any committee business (2003).	"Leave of the House is needed for extensions of all Members' private or local bills… We propose that the Business Committee's power to extend the reporting time on a bill be enhanced to deal with these cases too" (AJHR 2003, I.18B, p.61)	An existing power was added to ("enhanced").	Layering New rule introduced beside or on top of existing one.
Speaker requires questions be answered not just addressed (2009).	"And I felt that had happened with the Speaker's rulings around answering questions that, you know, the precedential creep had got to the point where Speakers believed that a minister could almost say anything in addressing the question. And I refused to accept that because the standing order actually says an answer shall be given, you know… So, I threw away some pages of speaker's rulings" (interview 23/5/2022). SO 2008, 377 Content of replies.	The standing order has not changed but the Speaker has interpreted it in a new way, requiring questions to be answered, not just addressed.	Conversion Rule formally remains the same but interpreted in new way.
Public submissions on Standing Orders review (1961).	The Standing Orders Committee "received certain submissions from the School of Political Science and Public Administration at Victoria University… and certain other individuals including, in particular, the Controller and Auditor General… Your committee is of the opinion that the reforms suggested by Dr Robinson are outside its order of reference…" (AJHR 1962, I.17, pp.5-6). SO 1951, 335-339 and SO 2015, 215-231 permit, but do not require, the calling for submissions.	The committee report records submissions were received and suggests that they were unexpected and unsolicited. No public call for submissions was published. The standing orders were silent on whether submissions should be called.	Drift Rule remains the same but its effect altered by shifts in the external environment

Introduction of proxy voting instead of pairs (1995).	SO 1992, 141 provides for pairing. SO 1995, 159 provides for proxy voting. Pairing deleted from Standing Orders.	The standing order providing for pairing is deleted in 1995 and replaced by a new standing order providing for proxy voting.	Displacement Existing rule replaced by new one.
Modernising sub judice rules in debate (2011).	"We recommend that Standing order 111 be recast" (AJHR 2011, I.18B, p.25). SO 2011, 112(2) and (3) adds additional rules to SO 2008, 111.	The 2008 standing order is extended by the addition of new paragraphs. The existing rule is retained but modified by the new paragraphs.	Layering New rule introduced beside or on top of existing one
Speaker's tolerance for reading speeches (1982).	"I do not believe that members do themselves any good by reading their speeches but neither do I believe that I should intervene to stop them from doing so, because so often it is difficult to tell whether a member is reading his speech word for word, or following notes fairly closely. I will not intervene in that way". (Speaker Harrison, NZPD 445, 1982, pp.2362-2363). SO 1979, 160 "A member shall not read his speech, but may refresh his memory by reference to notes".	The standing order required that members not read their speeches and did not change until 1995. The Speaker told that House that he would not intervene to stop members reading their speeches. The rule did not change but the Speaker interpreted it in a new way.	Conversion Rule formally remains the same but interpreted in new way.
Petitioning Parliament used as a protest tactic (1978).	Large increase in the number of petitions presented on the same topic with a single signature. JHR 1978. SO 1975, 398-399	The standing orders did not change, but the public desire to use petitions as a tool of protest led to lodging numerous petitions on the same subject, rather than consolidating all signatures onto a single petition. The public approach to petitions changed, when the rules remained the same, leading to petitions	Drift Rule remains the same but its effect altered by shifts in the external environment

Appendix E - People interviewed for this thesis

Sir David Carter Speaker 2013-2017 Minister 1998-1999 & 2008-2013 Committee chair 2002-2008 Whip 1996-98	**Dr David McGee CNZM** Clerk 1985-2007 Deputy Clerk 1984
Hon Peter Dunne Minister 1998-2017 (various times) Committee chair 1999-2008 (various times) Party leader 2002-17	**Sir Don McKinnon ONZ** Deputy Prime Minister 1990-1996 Minister 1990-1999 Leader of the House 1993-1996 Whip 1980-1984
Dr Kennedy Graham Whip 2009-2011	**Sir Geoffrey Palmer** Prime Minister 1989-1990 Leader of the House 1984-1987 Legal academic
Mary Harris QSO Clerk of the House 2007-2015 Deputy Clerk of the House 2002-2007	**Dr Rt Hon Sir Lockwood Smith** Speaker 2008-2013 Minister 1990-1996
Rt Hon Chris Hipkins Prime Minster 2023 Leader of the House 2017-2023 Whip 2011-2017	**Metiria Turei** Party leader 2008-2017
Sir Kenneth Keith ONZ Judge and legal academic	**Hon Margaret Wilson** Speaker 2005-2008 Minister 1999-2005
Sir Trevor Mallard Speaker 2017-2022 Minister 1999-2008 Whip 1987-1990	