



**"STRENGTHENING PARLIAMENTARY DEMOCRACY"**



## **PARLIAMENTARY COMMITTEES**

**New Zealand's Experience**

**Respecting the Rights of the Majority**

**And**

**The Rights of the Minority**

**Hon David Butcher**

**For IPS Seminar 31 July 2005**

## 1. Early History

1. The Treaty of Waitangi (The Treaty) between representatives of the British Crown and leaders of Maori tribes of New Zealand<sup>1</sup> was the founding document of New Zealand's constitutional history. The Treaty authorised Europeans to arrive in and settle the country and established British sovereignty over the islands that constitute New Zealand today.

2. New Zealand's Parliament dates back to just 14 years after the signing of the Treaty. Parliament first met in Auckland in May 1854, and in 1865 moved to Wellington, the capital city, where it has remained. Today there are two parts to Parliament — the House of Representatives (or the lower House) and the Governor-General. Between 1854 and 1951, there was a third part, the Legislative Council (or the upper House).

3. In 1867, the government created four seats for voters of the Maori race and separate voting for Maori voters. In recent years, these seats have operated as a guarantee of representation for a minority, but at the time they were introduced Maori were a large portion of the population and the creation of the seats diluted their vote. All adult men (Maori and European) could vote in elections from 1879. In 1893, New Zealand became the first country in the world to grant women the vote. In giving the vote to all adults, New Zealand became the world's first true democracy.



Figure 1: New Zealand Parliament 1928

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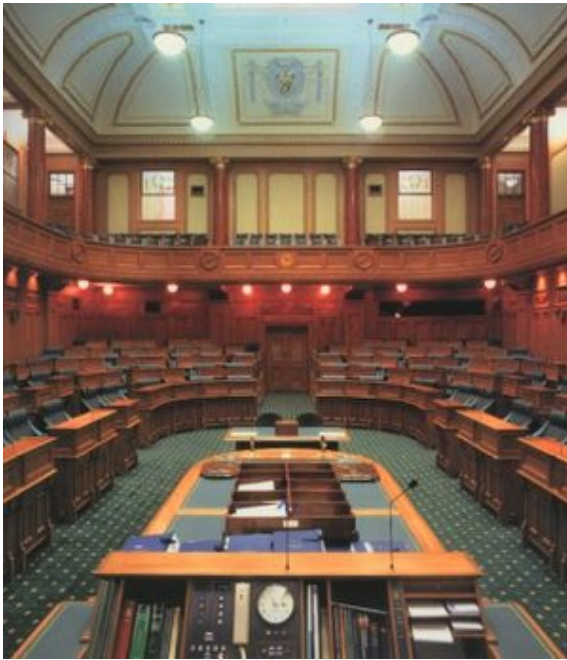
<sup>1</sup> Much of the material that follows is based on information obtainable from the New Zealand History Web site: <http://www.nzhistory.net.nz/Gallery/parlt-hist/parlt.html>, accessed 27/7/2005

## 2. New Zealand's Government

### 2.1 Parliamentary System

4. The New Zealand Parliamentary system largely follows the Westminster Parliamentary model. It is not surprising that in the 1850s, New Zealand, which was then a British colony, followed the familiar terms and traditions of the system in the United Kingdom, a country that until the early 1960s many New Zealanders still referred to as "home," even though they may have never visited it.

5. The linkages with London are most obvious in the ceremonies that Parliament uses, the ritual, symbolism and impressive dress all drawing on the rich Westminster tradition. From this come office-holders such as the Sergeant-at-Arms and Gentleman Usher of the Black Rod and symbols such as the mace. New Zealand is the only Commonwealth Parliament to hold on to the historic name 'Bellamy's' to describe Parliament's restaurant and bar<sup>2</sup>. The term 'Hansard'



**Figure 2:**  
**Debating Chamber from Speaker's Chair**

exactly follow the House of Commons in London, as do the dimensions of the debating chambers themselves. Unlike MPs in the United Kingdom, New Zealand MPs enjoy separate

for the recording of parliamentary debates<sup>3</sup> also comes from Britain, although Commonwealth Parliaments now generally used the name.

6. Like the United Kingdom and unlike most other Westminster systems New Zealand does not have a written constitution. The principal Constitutional document is the 1986 Constitution Act that clarified a number of constitutional matters scattered over numerous Acts. The only entrenched constitutional provision remains the Clauses of the Electoral Act dealing with methods and rights to voting.

7. The New Zealand Parliamentary Buildings are smaller than are those in London. However, the layout of the chamber – the Speaker at its head with the Table in

front, the government benches to the right and the Opposition to the left, and the provision of a 'bar' to exclude 'strangers'

<sup>2</sup> Named after John Bellamy, the founder of the kitchen department in the House of Commons, London, 1773.

<sup>3</sup> In 1771, Parliament ceased to punish people who published reports of its debates. William Cobbett, began publishing Parliamentary Debates as a supplement to his Political Register. Cobbett's reports were printed by Thomas Curson Hansard from 1809. In 1812, Cobbett sold The Debates to Hansard. In 1889, the House decided to subsidise publication. Hansard as a comprehensive account of every speech, began in 1909 when Parliament took over the publication.

seats and desks. As can be seen in Figure 3 three main buildings make up the Parliamentary complex<sup>4</sup>.

## **2.2 Parliamentary Innovation**

8. New Zealand has taken two major steps that the United Kingdom has not taken and few other Parliaments in the Commonwealth have ever tried.

- New Zealand has a single Parliamentary Chamber. Originally, New Zealand had a bicameral<sup>5</sup> Parliament; the House of Representatives was the lower house and the Legislative Council the Upper House. The Legislative Council was abolished in 1951 and since then Parliament has been unicameral<sup>6</sup>,



**Figure 3: Wellington Parliamentary Complex Today**

- Secondly, in the mid 1990s after a decade of rapid economic transformation, by referendum, New Zealand adopted the German style Mixed Member Proportional Representation System, with 60 constituency members and 60 elected from party lists. This move was promoted for two main reasons:
  - (1) to give parliamentary representation to a wider range of political viewpoints than was possible under the previous "first past the post, single member constituency system," and
  - (2) to give greater control over parliamentary proceedings to the political parties that campaign for the election of members.

## **2.3 House of Representatives**

9. The House of Representatives, New Zealand's Parliament, is the legislative body of the New Zealand government (the chamber itself usually is called "The House"). Technically, "Parliament" is both the monarch and the 120 member House of Representatives. In common usage, "Parliament" usually means the House of Representatives. Under the Constitution Act 1986, this usage became the legal form as well. The House of Representatives consists of 120 representatives, known as "MPs," (until 1951 they were 'Members of the House of Representatives' or MHRs).

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<sup>4</sup> The Chambers are contained in the Central Building of the Parliamentary Complex. Started in 1913, suspended in 1915 and never completed to the original design, this building contains the main public areas of the Parliament. The Executive Wing (Beehive) was built in the 1970s and the whole complex renovated and reconfigured in the 1990s.

<sup>5</sup> A "two chamber" Parliament

<sup>6</sup> A "single chamber" Parliament

## 2.4 Executive Branch of Government

10. New Zealand is a Constitutional Monarchy, and its Head of State is the Queen of the New Zealand (the same person as the Queen of the United Kingdom) who holds that position in her own right. The Governor-General, the local representative of the Queen of New Zealand, has all her powers and functions in her absence, but in practice acts only on the advice of the New Zealand government, except in the event of an election producing an inconclusive result. Deciding whom to invite to form a government in these circumstances is the principal remaining constitutional role of the Governor-General.

11. All executive actions of the New Zealand Government are taken by the Executive Council, (the Governor-General and the Cabinet), in the name of the sovereign ("the Crown"). In practice, the Executive Council simply rubber stamps decisions made by the Cabinet. The Cabinet is drawn exclusively from Parliament (constituency or list MPs) based on the party or parties that can claim a majority in the Chamber. The Prime Minister (PM) leads the government. When the Governor-General appoints the PM, from a party or coalition, which appears to have enough support in the House to govern, Parliament tests this support immediately, in a Motion of Confidence.

## 3. The Origins of Accountability

12. While Parliaments are familiar institutions in both developed and developing countries, the rationale for their existence often is misunderstood or is unknown<sup>7</sup>. The language used in Parliaments today gives us many clues as to the rationale for their existence and reminds us of lessons learned painfully in the past.



**Figure 4: Speaker's Chair from Public Gallery**

13. The Word "Parliament" itself comes from the French word "Parler" - to talk. In modern usage it carries the idea of decisions arrived by consensus. It is customary in most Parliaments to refer to draft laws as Bills. The origin of this usage is the King's bills. Literally, the King wanted money and sent his bills to the Parliament to pay them. The nobles demanded the right to assent before they paid his bills.

14. The Chairman of the Parliament, and by virtue of that role, the member who speaks

the least, has the title Mr Speaker. The origin of the name has nothing to do with speaking in the chamber. The Speaker spoke, i.e. reported decisions of the House to the king. This could be a hazardous occupation and at least two Speakers are reputed to have lost their heads to

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<sup>7</sup> Butcher, D, *Good Governance in Politics, Government and Corporate Sectors*, Global And Regional Experiences In Public Sector Reform, UNDP 1998, Page 27

the executioner. To remind us of this sacrifice, in many Parliaments today the nominee for Speaker shows mock reluctant to take the job.

15. Despite this hazardous occupation the Speaker was still regarded as the “King’s man” and could not be fully trusted (maybe under torture) to keep the confidences of fellow members. For this reason Parliament devised the institution of the Committee of the Whole House. The House reconstituted itself as a Committee and dealt with the detail of the request for money. There is no recording of Individual speeches and the proceedings of the Committee and the Speaker receives a report of the proceedings when he returns for the Third Reading. In this way while the Speaker is fully appraised of the detail of the bill, the “King’s man” cannot report the thoughts of any particular member to the sovereign. Until this day, in the U.K. and other Parliaments discuss the details of bills and any amendments in the Committee<sup>8</sup> under a different chairman.

16. The Cabinet itself, the pinnacle of the Executive in New Zealand today, has an historic origin. The King’s advisers arriving for an audience with the Sovereign would meet informally in a small ante-room like cupboard, known as the Cabinet. When in the 18<sup>th</sup> Century meetings became more formal and under the chairmanship of the First Minister, later to become the Prime Minister, the name “Cabinet” stuck.

17. The rights and privileges of Parliaments did not occur overnight. Kings only slowly came to understand the need for people’s consent to raising taxes. The people acknowledged the King’s need to rule and albeit reluctantly paid taxes in exchange for seeking the consent of the majority of subjects, the assent of the minority, while using the coercive powers of the state against the recalcitrant. Parliament was the place where these issues would be “talked” through.

### ***3.1 The Rights of the Majority***

18. There were a number of constitutional stepping stones to protecting the right of the Majority to rule. The Magna Carta (Great Charter) of 1215<sup>9</sup> established the link between money for the king and the consent of his subjects. The Charter guaranteed citizens freedom from official extortion and the King agreed to seek the consent of the nobles to taxes. In the Bill of Rights 1689,<sup>10</sup> established the link between money for the king and holding general elections. The King guaranteed frequent parliamentary elections, freedom of speech and made it illegal to raise money without Parliaments assent. Finally, the Reform Act of 1832<sup>11</sup> established the link between elections and the representation of people, rather than property.

19. Linking the provision of money for the king to elections and consent protects the rights of the majority. Parliament’s role, therefore, became important as the channel of majority rule. It was necessary to implement processes in the Parliament to protect the Minority’s Right to be heard and to have its dissent recorded.

### ***3.2 The Rights of the Minority***

20. Elections ensure that the rights of the Majority are protected, but more subtle and less clear-cut Parliamentary Processes are required to protect the rights of the Minority. Parliaments have employed numerous techniques over the years. The recognition of the constitutional role

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<sup>8</sup> “In Committee” – can mean “secret”

<sup>9</sup> See Appendix 1

<sup>10</sup> See Appendix 2

<sup>11</sup> See Appendix 3



of the Leader of the Opposition by most Parliaments gives legal support for the views of the minority. The legitimacy of the role of LOYAL Opposition is recognised. The presence of a parliamentary press gallery recognises the rights of the people to know what Parliament does in their name. Some parliaments provide financial and other public support for minority parties.

21. In Bangladesh Parliament now has PM's question time and there are opportunities for the Opposition days, private members' days etc. Through these processes the House records minority opinions. Appendix 4 shows a method used by the New Zealand Parliament to record the views of the minority in Bills. When reported back bills show the changes made by the majority and the unanimously respectively and Appendix 5 shows the way the views of the minority can be recorded constructively in the report attached by the Committee to a reported back bill.

## 4. Parliamentary Committees

### 4.1 *Origins and Development*

22. Most large bodies find it convenient to refer detailed issues to smaller groups of their members for detailed study and report back to the main group. From the early days, committees were also seen as a convenient way of handling controversial issues. In fact, committees were often a convenient way of burying them in procedures until the dissolving of Parliament for the next general election meant that the bill or report lapsed!).

23. New Zealand Parliament from its first days in 1854 has had provision for committees<sup>12</sup>. All committees are now referred to as "Select Committees"<sup>13</sup>. Under Standing Orders 184 and 185 membership of committees is proportional to party membership in the House. Particularly since the transition to MMP the Chairperson of the committee may be a government, opposition or crossbench MP, but the deputy chairperson is likely to be from the other side.



### 4.2 *First Meeting*

The Speaker determines the timing for the first meeting of a committee. He advises all members of the first meeting and its location. In practice, the government and opposition whips arranged the first meeting. They do this in consultation with the member nominated to be the chairman. Subject to this practice, the Business Committee determines the size of each other committee.

**Figure 5: Old Maori Affairs Carved Committee Room (decorated to resemble a traditional Marae (Meeting Place) with the Whare (Meeting House) to the right)**

<sup>12</sup> Figure 5 shows the interior of the historic Maori Affairs Committee Room, before renovations to the complex in 1994.

<sup>13</sup> Standing Order 184

24. Until 1972 every change in committee memberships was a matter for formal business in the house. From 1972 until 1985 the Prime Minister and the Leader of the Opposition had the power to make changes. Since then changes in the personnel on committees has become a purely administrative matter<sup>14</sup>. Administrative processes cannot change the party balance within a select committee, but can change the composition of each party's representation. The clerk of the committee is advised of changes to personnel and they are announced by the chairman at the commencement of the meeting. All changes are recorded in the Committee's minutes. Permanent changes are recorded in the Order Paper. SO.185 (1) provides that: "The overall membership of select committees must so far as reasonably practicable be proportional to party membership in the House." A resolution of the House is required to alter the Party balance on a Committee. These happen very rarely if ever.

25. The Clerk of the Committee prepares minutes of all meetings of select committees<sup>15</sup>. The minutes are evidence of the resolutions passed by the committee. Standing orders require the recording of the names of the MPs present at the meeting and the details of voting in any divisions held in the committee. In practice, there are seldom divisions as such, but the committee usually records the views of the majority and the minority.

### **4.3 Work of Committees**

26. The creation of Subject Area Select Committees has been institutionalised and under Standing Order (SO) 184.1(a). Subject Select Committees are established to cover the subject areas specified in SO 188, and under SO 184.1(b), a number of Special Select Committees are established. These are the Officers of Parliament Committee, the Privileges Committee, the Regulations Review Committee and the Standing Orders Committee. Officers of Parliament include the Auditor-General, the Parliamentary Commissioner for the Environment and the Ombudsman.

27. From the 1950s until the late 1970s the two main non-business committees were the Statutes Revision and the Public Expenditure Committees respectively. The Statutes Revision Committee originally developed a focus on improving the quality of laws passed by Parliament, while the Public Expenditures Committee had a focus on examining failures in public administration and public finance, the honesty of official dealings and other financial matters.

28. As the volume of legislative work increased, the roles of these committees have been characterised by a Steady evolution. From 1985, Standing Orders provided for all bills go to a Select Committee. This change could have overwhelmed the Statutes Revision Committee. In practice, it contained mainly lawyers, who often knew little about the specialised subjects that were the substance of the bills in front of the Committee. Accordingly, from 1985 bills went to the select committee with the relevant expertise. The revisions abolished the Statutes Revision Committee in its original form and the residual legal functions were transferred to the Justice and Law Reform Select Committee.

29. The result of these changes was described by Goff<sup>16</sup> who notes, "in their scrutiny over legislation New Zealand select committees play a more important role than in any other Westminster-style democracy. Almost all legislation is now subject to their examination. There is wide public access to make written and oral submissions on legislation. The hearing of evidence is open to the media." Under SO.189, all committees also have the power to "receive

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<sup>14</sup> Jackson, Keith, *The Dilemma of Parliament*, Allen and Unwin, Port Nicholson Press, 1987, Page 117

<sup>15</sup> McGee, D, 1994, P.233

<sup>16</sup> Goff, Hon. P, *Practice and Procedure*, Reform of Parliamentary Select Committees in Britain and New Zealand, The Parliamentarian, July 1993, Page 167



briefings on, or initiate inquiries into, matters related to their respective subject areas.." on their own initiative.

#### **4.4      *Size and Composition Of Committees***

30. These changes were widely seen as a success and gave the committees a much more forward looking focus, although as Goff has also noted, until the Chamber was increased from 97 to 120 members under MMP, there were simply insufficient MPs available to undertake the workload of both legislative revision and thorough investigation<sup>17</sup>.

31. Average size of committees in the 2002-2005 Parliament was 10 members. Total membership can vary depending upon workload, the controversial nature of the subject matter the committee deals with and its political sensitivity. If two committees resolve to investigate the same issue, the Speaker will decide which one is appropriate to carry out the investigation.

#### **4.5      *Public Participation***

32. While the activity of the chamber is exclusively the preserve of MPs, select committee work involves the participation of many ordinary citizens<sup>18</sup>. In order to maximise the participation of the general population in committee work, submissions are encouraged. Most committees advertise in nationwide newspapers that they are considering bills and solicit submissions from the public. Some people are content to make written submissions; others prefer to appear before the committee to make oral presentations. Committees are not obliged to hear all submissions but in most cases, there are a very small number of submissions and in practice, it is usual that any party wishing to make an oral submission can do so.

33. For controversial measures that attract thousands of submissions, the committee may commission consultants to summarise and analyse the submissions. For less voluminous submissions, one of the Committee Staff undertakes this task. Ministers do not normally sit on committees. The relevant ministry usually provides officials to provide advice to the committee on bills before the committee. They sit in as official advisers during the taking of evidence and listening to submissions. Sometimes they remain during deliberations. Committees can also engage independent specialist advisers. Where a draft bill is being considered draftsmen may also sit with the committee advising on technical legal matters.

34. The effective performance of New Zealand committees depends, therefore, upon the voluntary participation and willingness of people in the community to share their knowledge and expertise. Taking of evidence is open to the public, in effect the news media, allowing the general-public to participate. Anyone can make submissions, but normally national organisations and public interest bodies compile and present evidence. This enables committees to make their recommendations to the House after a full consideration of all the facts.

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<sup>17</sup> "The Finance and Expenditure Committee, unlike the Public Accounts Committees in Britain and Canada, combines the functions of inquiry, estimates and legislation. In the first two years of its existence, 90 percent of its time was taken up with taxation legislation, leaving almost no time to conduct enquiries." Goff, Hon. P, *Practice and Procedure*, Reform of Parliamentary Select Committees in Britain and New Zealand, The Parliamentarian, July 1993, Page 167

<sup>18</sup> See McGee, D G, *Parliamentary Practice in New Zealand*, 1994, P. 207

35. Experience of the last 20 or so years has been that most people and organisations are very willing to assist committees with expert advice, offered freely<sup>19</sup>. It is extremely rare for a committee to meet with non-cooperation on the part of a prospective witness. As a result, the arrangements for witnesses to attend the committees and to provide documents are informal. The House itself has the power to compel witness to attend. These powers are also available to committees. Should someone ignore the summons of a committee this would be a case of contempt of the House. There are few if any examples of these reserve powers being required.

#### **4.6 Recording**

36. Until 1914, it was common for shorthand reporters to attend meetings of select committees to take and prepare verbatim transcripts of the evidence heard<sup>20</sup>. This practice was restricted as a wartime economy measure during the First World War and since then it has happened on only a few occasions, the last one being in 1935. Committees have the power to have the evidence before them recorded and the appointment of the reporters for the purpose is a matter for the Speaker.

37. Since 1979, there have been tape recordings of proceedings on the estimates and of proceedings of the Privileges Committee and certain other enquiries. These transcripts have performed a role similar to Hansard in the House but have not been included with Committee Reports or included in the Journals of the House. The committee may specifically authorise the release of evidence tendered to a select committee and has done so on rare occasions.

#### **4.7 Reporting**

38. The main deadline committees face for reporting is that they must clear the estimates referred to them by the 30 September in the same year and by 31 March the following year on their financial reviews of government departments. The Finance and Expenditure Committee must report to the House by 31 March on the annual financial statements of the Crown for the previous financial year. Each committee with the responsibility of reporting on a State Owned Enterprise or other public organisation must report within six months of the report having been tabled. The House can always fix a report back date by which a committee must report to the House.

39. As noted in paragraph 21 above, it is now customary for committees to include the differing views of the members of the committee in their reports, sometimes at length<sup>21</sup>. The decision as to whether to do so or not is the committee's decision. Committees may submit interim reports, sometimes to flag major changes to bills before the committee so that the public may have an opportunity to make further submissions. Special reports may seek direction or guidance on procedural or other matters. Final reports will include reference to the matters contained in the interim reports. Committees usually also present activity reports, so that the House is acquainted with the activity of the committee in relation to the matters before it.

#### **4.8 Committee Support**

40. Initially, select committees were provided only with clerical and administrative staff. These were usually Post Office employees, nearing retirement. There is now a secretariat of

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<sup>19</sup> On one famous occasion future Prime Minister, David Lange, reported to his colleagues that the Law Society had just given the Statutes Revision Committee \$30,000 of free legal advice!

<sup>20</sup> McGee, D, 1994, P.233

<sup>21</sup> See Appendix 4 and Appendix 5.

three staff, two officers from the Office of the Clerk, with administrative and procedural training and research skills to service committees. In addition, advisers with a research and reporting function are available. Building up a core of younger, more highly trained staff in the Clerk's Office made this level of staffing possible. The Clerk of Committees has overall responsibility for managing the committee's workload, provides advice on Parliamentary procedure.

41. The Finance and Expenditure Committee receives substantial additional support from the CAG's office, which has a budget specifically for that purpose. The regulations review committee has competent legal advice on contract. This support is in addition to the officials from the relevant ministry that support committees during hearings on bills.

## **5. Committee Functions and Powers**

42. In addition to select committees, the New Zealand Parliament has a well developed set of Government and Opposition Caucus Committees. The New Zealand Executive has been described as "a collective; Ministers in Caucus, rather than Cabinet. Backbenchers have to be persuaded. Their influence is expressed through caucus and strengthened by a select committee system in which they (the backbenchers), not the minister, are the government's representatives. So caucus becomes like a court of appeal deciding between the minister and the governing party's representative in the committee."<sup>22</sup>

43. There are advantages as well as disadvantages for the Minister in having to negotiate with colleagues. Cabinet is still in the lead, but its power is more in reserve than exercised. By working with the Caucus and Party representatives on select committees Ministers acquire, in effect, a group of junior ministers, spreading responsibility, interest and involvement more widely<sup>23</sup>. Also working as a group they can, in effect represent a powerful group to advocate the ministers proposals, both in the Parliament and in the wider community. In addition, as Mitchell<sup>24</sup> notes:

"The chairmen and government select committee members make their views felt through the caucus committee as well as by representing the committee's view to the minister. They suggest changes and new ideas to make the bill more acceptable to the committee. They warn when the weight of representations makes parts untenable or others manageable with modifications. They become representatives of the committee in the caucus and vice versa. This makes caucus the forum for change. Sensible ministers give way in pragmatic spirit, doing deals, making concessions to ensure a better bill, or at least one, which is more saleable. As a result chairmen have emerged as a powerful group of backbenchers and potential ministers: a new training ground for power.

The committees have not been good watchdogs but have come to play a substantial and effective role in the legislative process....."

44. Wise Ministers take advantage of this resource and source of intelligence. Some will see it as an imposition and as a brake on progress. However, the process has been so effective that even tax bills that were exempted from committee hearings under standing orders, are now routinely sent to select committees. It began with the Income Tax Amendment Bill (No 2)

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<sup>22</sup> Mitchell, A, *New Zealand's Way of Committee Power*, Parliamentary Affairs, Page 94

<sup>23</sup> Mitchell, A, *New Zealand's Way of Committee Power*, Parliamentary Affairs, Page 95

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in March 1985. Finance Ministers quickly came to realise that any benefits gained from secrecy were more than offset by the better, more thorough scrutiny of tax laws that the Parliamentary Committees could offer.

45. Committees, both parliamentary and expert, played a significant role in the introduction of the Goods and Services (GST) Tax in 1986. The focus was on ensuring that the introduction of the new tax would be acceptable to the business community, who had to collect it, while taking into account the concerns of the wider community. The various steps used in this major change are illustrated in Table 1. The Select Committee first saw the bill when it had already been through an exhaustive process of white papers, opportunities for submissions and consultations and reviews by experts.

**Table 1: Introduction of the Goods and Services Tax**

<b>Approximate Date</b>	<b>Action</b>	<b>Rationale</b>
1984 November	Budget Announcement of GST to be introduced on 1 April 1986	The need for a more broadly based tax system
1984 November	Publication of a Introductory Paper	Budget paper released with the budget
1985 March	Release of "White Paper on Goods and Services Tax;" an Advisory Panel set up to review public submissions	To ensure that all submissions get an equal chance to be heard
1985 June	Opening of GST coordination office	A huge public information campaign was required to ensure that the public's genuine concerns were addressed
1985 June	Introduction of the GST postponed until 1 October 1986	The initial planning had underestimated the complexity of the tax and the consequential adjustments required
1985 July	Publication of the First Report of the Advisory Panel Report, along with Minister of Finance's responses	Decisions published with the report so that the public can understand the thinking behind the decisions
1985 August	Administrative Details of the GST were announced along with proposed reductions in other taxes, release of Second Report of the Advisory Panel	Substantial reductions were to be made in direct and sales taxes to compensate for the introduction of a VAT
1985 August	Introduction of the GST Bill into Parliament and reference to a select committee	The bill was large and merited further detailed consideration
1985 August	Call for public submissions on the bill	Standard procedure for all bills referred to committees
1985 September	Select Committee Hearings on the GST Bill Commence	More than 300 submissions received and public hearings held on submissions. Official Reports and Deliberations in Private
1985 December	Passage of the GST Legislation	The Bill as reported back from the Committee passed substantially un-amended

Approximate Date	Action	Rationale
1986 July	Budget confirms the introduction of the GST on 1 October	Policy statement to reaffirm the Government's intention to proceed with the introduction of the new GST and reductions in sales and income taxes
1986 October	Introduction of the Tax	The changeover occurred with a minimum of confusion and delay. Telephone enquiries to the Nationwide support centre were fewer than anticipated
1986 November	Public Information Office begins wind down because of a lack of work	Calls fell away to virtually nothing after two weeks and within a month the office could wind down

46. The 1986 GST was a new comprehensive tax reform measure that, unusually, was popular with both the business community and the public, while still raising significant new revenues. More than 100,000 new businesses came into the taxation system, many previously unknown to taxation authorities. As a result, the government that introduced it was re-elected in 1987 with an increased majority. The success of the new tax and the political success of the government were in no small part due to the work of the Parliamentary Committees. Subsequently, Parliament has handled several major overhauls of exceptionally complex and detailed tax laws in a similar way with similar success.

### **5.1 Nature of committee activism**

47. There are several other classic instances of committees playing a major role in shaping and changing policy. As Jackson reports<sup>25</sup>:

"An example of what can and should happen in a select committee is shown by the Synthetic Fuels Plant (Water Right) Bill 1983, the so-called Motunui Bill. A water right granted to the Synthetic Fuels Corporation for effluent disposal was found to conflict with the Te Ati Awa tribe's traditional shell fishing activities and, after a series of hearings, was condemned by the Waitangi Tribunal<sup>26</sup>. The tribunal suggested alternative arrangements, which led directly to the bill proposing a new water right. This bill duly went before the Commerce and Energy Committee, which then received submissions. Not only were these large in number but the committee also made an on-the-spot investigation, hearing the Te Ati Awa Maoris on their own tribal lands. (This latter move, 'bringing Parliament to the people', as it were, was a particularly important initiative, not merely as a gesture but also as enabling this Maori tribe to explain in its own way and in its own environment the problems involved.) As a result of these various submissions the bill itself was completely re-written by the committee which, among other things, declined to treat it as an exceptional piece of legislation and succeeded in having it placed firmly back in the context of the Water and Soil Conservation Act.

<sup>25</sup> Jackson, Keith, *The Dilemma of Parliament*, Allen and Unwin, Port Nicholson Press, 1987, Page 129

<sup>26</sup> An investigatory tribunal with the task of recommending to the government ways of redressing grievances by indigenous tribes against the Crown.

A particularly interesting aspect of the work of the select committee in this case was that virtually all the extensive changes made to the bill were in response to evidence given to the committee. The type of evidence presented in such cases varies very widely indeed, from detailed technical submissions suggesting refinements, to blatantly partisan documents, which not infrequently seek to use the select committee as a platform for a last-ditch stand against a particular change.

The Commerce and Energy Committee was clearly dedicated to the task of undertaking a professional review of legislation submitted to it, particularly in terms of granting no further powers to the public service than were strictly necessary. As a result, major changes were made to a number of bills. Since many of these originated with the public service, there was a degree of common cause between Government and Opposition members..” against the ‘bureaucracy.’

48. A similarly important example is cited by Austin Mitchell.

“The Children and Young Persons Bill spent nearly three years in committee and emerged as a very different bill, with every clause from 2 to 249 struck out and new ones put in, its title altered and, at 486 clauses, twice as long as the original and a much better measure by all accounts.”<sup>27</sup>

49. This was another measure, which both vitally concerned the indigenous Maori people of New Zealand and showed the strength of the select committee system. The committee on the Bill was headed by a new backbencher, Mrs Judy Keal. Realising that the majority of young people who came to the notice of the courts were juvenile Maori, the committee organised meetings at Maori meeting houses<sup>28</sup> throughout the country before turning the Bill on its head. The committee realised that young Maori had little connection, or respect for judicial officers, but were in awe of family members, in particularly the Kaumatua (or elders). The Bill was redrafted to make Family Group Conferences the primary decision making body for young offenders and judicial officers in the nature of advisers and councillors. This resulted in families, often grandparents taking responsibility for disciplining young people who had been involved in minor offending and a substantial drop in re-offending by both Maori and European youngsters was an immediate outcome.

50. Mitchell also notes<sup>29</sup> that the Health Research Council Amendment Bill, which started out as a three clause measure, was totally changed, in almost a year of hearings and discussion and thirty-nine amendments were carried to the highly controversial Employment Contracts Bill that deregulated labour markets in 1991. In this case the Minister’s own backbenchers persuaded him to accept innovations such as a conciliation service based on Britain’s ACAS, as well as modifications of some of the more simplistic aspects of the original bill.

51. He also notes that success is not inevitable<sup>30</sup>. When the bill to repeal the Employment Equity Act was introduced early in December 1991 to pass before Christmas, three government backbenchers at first accepted the weight of opposed representation. They went back to the

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<sup>27</sup> Mitchell, A, *New Zealand’s Way of Committee Power*, Parliamentary Affairs, Page 97

<sup>28</sup> Meeting places are marae, meeting houses are called whare. The marae is the place where important tribal meetings take place but the majority of detailed discussion takes place during all night discussion in the whare.

<sup>29</sup> Mitchell, A, *New Zealand’s Way of Committee Power*, Parliamentary Affairs, Page 97

<sup>30</sup> Mitchell, A, *New Zealand’s Way of Committee Power*, Parliamentary Affairs, Page 97



Government caucus proclaiming their intention to accept changes, but were overruled there by a determined minister and returned to the committee to vote for provisions they privately considered could not work. Similarly, 1991 Budget legislation to plug loopholes in capital taxation was deemed by government backbenchers on the Finance and Expenditure Committees to be flawed, but in caucus they were overridden by the Finance Minister and Prime Minister.

52. This polishing process became so effective that Mitchell also reports that many members feel that departments prepare bills less adequately. Departments are consulting less, leaving more to be done by the committees. In this way, a small amount of the power removed from Parliament over the years has found its way back, he says. With the introduction of MMP the power of the committees has been enhanced further. Issues now become partisan matters for inter-party debate and negotiations rather than being resolved in the committees and caucus. This has forced the government to argue its findings in public rather than in a closed forum.

53. The evolution of committee functions has been gradual. Much of the work of committees remains focused on detail. However, the next two sections will illustrate two examples, one under the old standing orders and one under the new, where committees have moved the focus of Parliament onto long-term efficiency of systems rather than ex-post investigations of misuse of government money.

## **6. Public Expenditure Committee**

54. An earlier example of effective committee work occurred during the period 1979-80 the Public Expenditure Committee refocused its activity on analysis of SYSTEMS, to ensure that public money is spent EFFICIENTLY. Previously, its work had mainly focused on ex-post investigations of embarrassing instances where public money was wasted, or accidents resulted in loss or damage. Its new focus required a completely new set of skills and the close cooperation of the Auditor-General and the Audit Office was sought and willingly provided.

55. The focus on efficiency led to an examination of public sector management, accounting systems and financial management information systems. An impetus for this approach was the 1978 Report of the Auditor General that highlighted the poor quality of Financial Management in the New Zealand Public Service.

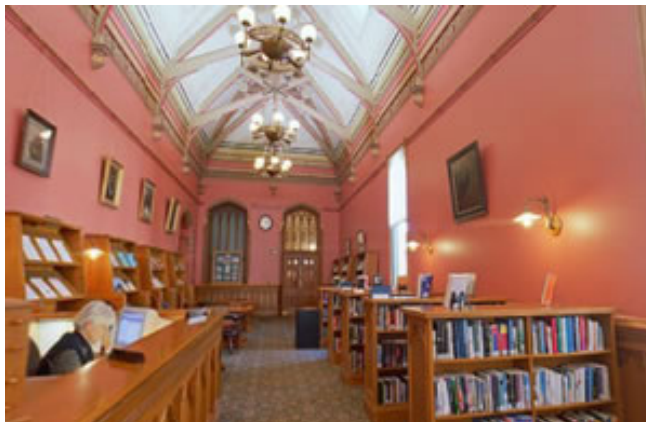
56. Until that time accounting was on a cash only basis. This meant that capital was not valued, receivables and payables were not reported and potentially a most misleading picture of an organisation's financial worth was created. This did not matter too much in a minor administrative agency with few assets but could induce major economic distortions in large trading agencies with investments in ports, airports, hydro electric dams.

57. Under the centralised government cash accounting system there was no means to match expenditure with revenue to judge the profitability of businesses. Expenditure was voted by Parliament and revenue was collected by the agency and delivered directly to the Consolidated Fund. Because ministries controlling mineral, forest and farming resources did not value their assets, these were often allocated by non-market means, usually with the objective of promoting development in remote regions. Inevitably, some large industrial clients got privileged access to state assets and prices below market value.

58. While in some cases the position of non-trading organisations was not so critical they too could do with substantial improvement. At that time, their budgets were seldom confirmed until half way through year, and they could not determine their actual performance against their

budget until half way through the following year. Ministers were responsible for public expenditure but in fact had little control on how money is spent. There were no plain language reports and no indication on how much of the budget had been committed, or spent. There was often plenty of information on the cost of inputs but no information available on the costs of the outputs the government was purchasing in order to meet particular government objectives.

59. Ministerial control was weak, but parliamentary oversight was weaker. Expenditure controls were ineffective, or absent. Voters and MPs are interested in OUTCOMES, but information systems focused on INPUTS. It is as if a customer in a car showroom is told how much metal, plastic rubber, goes into a car, the wages, training and holiday pay of the workers in the factory where it was made, but is given no information on miles per gallon, speed or handling. The controls that existed were designed to "ration resources, but did not to measure the value of what was produced.



**Figure 6: Refurbished Reading Room Library Building**

60. These shortcomings made Analysis of data by MPs almost impossible. The absence of a statement of objectives hampered analysis of efficiency. If there are no objectives for managers to work towards when they spend money, then there is no way to measure the attainment of the objectives. It was a classic illustration of the idea that if "you cannot measure it, you cannot control it."

also Ineffective. They reviewed reports, budget data and questioned officials, but the accounting system produced raw DATA, not INFORMATION. If MPs asked good questions, officials had no information with which to answer.

61. With managers and MPs powerless to analyse the effectiveness of expenditure, Select Committees were

## **6.1 PEC Review**

62. In 1979 the PEC decided to monitor the response of agencies and ministries to the 1978 CAG Report. The Committee's concern was to focus on the EFFICIENCY of expenditure not so much on the honesty of civil servants and did this by targeting the SYSTEMS not disasters after the event. By regular monitoring of ministry responses the Committee aimed to keep up the pressure for action and progress. In effect, the PEC became the Parliamentary Champion of efficiency, effective systems, transparency and continuous improvement.

## **6.2 Involving other Select Committees**

63. Traditionally the PEC was responsible for reviewing the Budget Estimates of Government Expenditure (Votes as they are called in New Zealand). Limitations of time meant that it was not possible for the PEC to review every ministry every year. Accordingly, it was agreed that the Estimates of Expenditure, plus the annual report, for each Ministry would be reviewed by the Select Committee (i.e. Standing Committee) responsible for that area three years out of four. In the 4th year each ministry estimate would come to the PEC for more comprehensive review with the PEC augmented by MPs with specialised knowledge in that area. The

committee proposed this approach and it was endorsed by both Government and Opposition party caucuses. It freed the PEC to focus on its forward looking work.

64. In addition, to monitor State Agencies, the PEC set up two Sub-Committees, one for trading departments and another for non-Trading Departments. They both focused on FINANCIAL MANAGEMENT and efficiency of use of resources. Both Sub-Committees had an OPPOSITION member as Chairperson, and a GOVERNMENT Majority.



**Figure 7: Entrance to New Maori Affairs Committee Room**

65. The result of this programme was that each agency reported on its work on reforming its financial management every six months. It was agreed that if reports were not unanimous the dissent of the minority would be recorded. In the event, all reports were unanimous.

### ***6.3 Getting Taken Seriously***

66. The Committee scored a number of significant breakthroughs in its work. The public works ministry,<sup>31</sup> after a long process of investigation and persuasion<sup>32</sup>, agreed to charge other government departments for its architectural services. Previously, architectural work was undertaken by the Works Ministry and it appeared on its budget. The Ministry commissioning the work could demand endless revisions to the original drawings which took time and diverted skilled staff from more pressing work.

67. The effect of the charging for service was to make ministries think more carefully about their actual needs and much unnecessary repeat work ended. The ministry responsible for ordering the work made the decision as to whether the original and repeat work merited the money to be spent on it. This saved money in short-term and allowed the architects to focus on their most important tasks. It also represented good management practice in that the organisation responsible for managing the money available for architectural services was made accountable for how it was spent.

68. This was not the only benefit of the committee's work. Two officials driving financial management reforms came to the committee on a bi-monthly basis to report on their work. A sharp eyed researcher collected the reports over a period of 12 months or so and reported to the committee that the officials had in fact achieved nothing. The committee took the report and submitted it to the Secretary of the Treasury. He fired both officials for incompetence, inaction and obfuscation.

69. As part of the work of the Sub-Committee on non-trading enterprises two very junior officials from the Ministry of Transport reported that only 3 were people working part time on financial management reform in their ministry and they felt frustrated and experienced a lack of

<sup>31</sup> Actually called the Ministry of Works and Development

<sup>32</sup> One member described the typical response of the Ministry, as "That is impossible, well it is not impossible, but will be very difficult to implement, well it may not be all that difficult but it will take a lot of time." This is familiar to any regular follower of the BBC Television Series, "Yes Minister."

support from the top. The Committee prepared a report based on the officials' work and submitted it to the Secretary of Transport. The Secretary took exception to the comments, reported verbatim and appeared before the committee seeking a retraction.

70. After listening to the Secretary's explanation the committee stood by its original report with the addition of the letter "s." The report then read "reform was getting no support from senior departmental official(s)." As amended the report was included in the Annual Report of the Committee. At the next meeting of the Sub-Committee the Secretary appeared with a full team of senior officials and reported that seven people were now working full-time on financial management reform.

71. Good research by the committee's own staff had provided an analysis of the paper mountain. They picked out the critical details, and provided MPs with lines of enquiry and questions to ask. This resulted in a significant change in bureaucratic thinking.

#### **6.4 *Benefits of PEC Committee Work***

72. The 1984 Election took place in the middle of a currency crisis (similar to that in India 1991). The Government changed and leading members of the PEC became senior ministers, including the Minister of Finance and Deputy Ministers of Finance. Because of their work on the committee, the new senior ministers were fully aware of the problems in the civil service. The knowledge they had gained on the committee complemented the briefings received by the incoming government from the Treasury and the Reserve Bank. These official briefings were published for the first time and immediately after the election. There was a summit conference to gather support for radical change in the state sector. Most of the recommendations were implemented.

73. Over the ensuing 15 years major improvements took place in the quantity and quality of public services and public finances, many of which had their origins in the work of the committee. Both the principle and the process of the introduction of GST, described in paragraph 46 above, had its origins in the work of the PEC. Not only was the need for an improved form of indirect taxation obvious, the need for wide consultation and the positive role that can be played by the parliamentary committees in the process was obvious. These changes doubled the country's annual growth potential from 1.5 percent a year to about 3 percent a year. The effect of this was to halve the time it will take for the national income to double.

#### **6.5 *Lesson of the Success of PEC***

74. The non-partisan forward looking approach of the committee was the basis of its success. The members of the committee from both sides respected the roles that each could play. The Committee also acknowledged the role of the other committees in reviewing the budget, thereby allowing the main committee to focus on forward looking systemic issues and not backwards at relatively minor scandals.

75. The minority was encouraged to make a positive contribution and its positive role respected by the majority. The CAG's Office played a critical role in servicing the PEC and it should also be acknowledged. It was the original work of the CAG and the professional evaluation of the state sector accounting and financial management systems gave the PEC the tool it needed to evaluate the problems.

## **7. Regulations Review Committee**

### **7.1 *What are Regulations***

76. Parliament has the ability to delegate the power to make laws. These delegated laws are called delegated legislation. Regulations are one form of delegated legislation. Regulations come about through:

- the exercise of a power to legislate granted to the Executive by Parliament via statute.

77. In this sense, Acts are 'primary legislation' and regulations are a form of 'secondary legislation'. Regulations are defined by section 2 of the Regulations (Disallowance) Act 1989:

- statutes should set out the policy and regulations provide for the implementation of that law.

78. In principle regulations should not: ...

- deal with matters of substantive policy,
- have retrospective operation,
- levy taxes, or
- amend primary legislation.

### **7.2 *Overuse of Regulation***

79. One of the clearest examples of the misuse of regulations was the Economic Stabilisation Act of 1948. This was a "wash up" Act that consolidated and tidied up a large number of left over wartime emergency regulations. The purpose of the Act was to "promote the economic stability of New Zealand" and allowed the Governor-General to:

- make regulations "as appear to him to be necessary or expedient for the general purposes of this Act..."

80. This purpose lacked any specificity. They allowed the executive to use regulations to put through controversial measures such as the 1982 wage, price and rent freeze. These had enormous an impact on individuals and companies. As a former Prime Minister, Sir Robert Muldoon<sup>33</sup> said, you can "...do anything provided you can hang your hat on economic stabilisation." As a matter of principle, Parliament should have had the opportunity to discuss with wisdom and practicality of these measures before they were brought into force.

81. The idea that the misuse of regulations could be oppressive is not a new one. In 1929 Lord Hewart of Bury<sup>34</sup> wrote, that regulations were "a system, intended to produce, and in practice producing, a despotic power which...places government departments above the sovereignty of Parliament and beyond the courts."

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<sup>33</sup> Prime Minister and Minister of Finance 1975-1984, Minister of Finance 1967-1972.

<sup>34</sup> Quoted by Victoria University Law Project, Chapter 2,

[http://www.lawschool.vuw.ac.nz/vuw/content/display\\_content.cfm?id=1483](http://www.lawschool.vuw.ac.nz/vuw/content/display_content.cfm?id=1483) (accessed 1/8/05)

### **7.3 Two Fundamental Principles**

82. To provide a Parliamentary answer to the abuse of regulations by the executive, the Regulations Review Committee was set up in 1985, it is:

- always chaired by a member of the Opposition
- engages in technical scrutiny' of regulations only.

83. The Regulations Review Committee does not examine or offer opinions on matters of policy. The secret to its success is working in a non-partisan manner. This means that the Committee tries to avoid a situation whereby Government MPs refuse to find fault with government regulations and opposition MPs continually oppose them. Members of the Committee act as Parliament's delegates to scrutinise impartially, regulations in accordance with the Standing Orders. To discharge this role successfully, Committee members must be prepared to put aside their party leanings and adopt a non-partisan style.

### **7.4 Functions of Committee SO. 377**

84. The Functions of the Committee set out in SO. 377 and are to:

- examine all regulations,
- receive draft regulations from a minister for consideration and the committee may report on the draft regulations to the Minister,
- decide if it wants to consider any regulation-making power in a Bill before another committee and report on it to the committee, and
- may consider any matter relating to regulations and report on it to the House.

85. Under SO. 378 the committee may also Draw Attention of the House to a regulation. It may report to the House that the Regulation should not be allowed because the regulation is:

- not in accord with the general objects and intentions of the statute,
- trespasses unduly on personal rights and liberties,
- makes unusual or unexpected use of the powers conferred by the statute,
- places rights and liberties of persons are dependent upon administrative decisions not subject to review,
- excludes the jurisdictions of the courts without explicit authorisation in the statute,
- contains matters more appropriate for parliamentary act,
- retrospective where this is not expressly authorised by statute,
- not made in compliance with particular notice and consultation procedures prescribed by statute, and



- for any other reason concerning its form or purport, calls for elucidation.

86. The process of determining whether a regulation is caught by SO. 378, is as follows. The committee must decide:

Does a personal right or liberty exist?

Yes

Has there been a trespass on the right or liberty?

Yes

Is that trespass undue?

Yes

Then, the Regulation may have breached SO. 378 (2) (b)

87. The committee may also consider a regulation if a complaint is made to the Committee under SO. 379. If a complaint is made regarding a regulation by any person or organisation, the complaint must be placed before the committee at its next meeting to be considered. The committee decides whether, the complaint relates to one of the grounds on which the committee may draw a regulation to the special attention of the House. The person or organisation making the complaint is given an opportunity to address the committee.

### **7.5 Range of Remedies**

88. In order that regulations are available for consideration, all regulations must be laid before the House of Representatives no later than the 16th sitting day of the House after the day on which they are made. This makes regulations available for members to consider them and means that they are available to the committee.

89. Another way of disposing of regulations that exceed their powers is by Judicial Review. In 15 cases in New Zealand between 1986 and 1999 the courts asked if particular regulations are ultra vires (beyond the powers) conferred by the statute. This is a very small number, but indicates the courts may invalidate regulations.

90. One way to overcome the problem of regulations that exceed their powers, but are nevertheless, considered essential, is to approve the regulation by a resolution of the House, rather than by passing an Act. This procedure may be initiated by the Committee and provides scrutiny, accountability, but without interfering with the passage of the government's business.

91. Under the Regulations (Disallowance) Act 1989 any member of the Regulations Review Committee may give notice of motion to disallow any regulation. Once the motion is moved, unless Parliament disposes within 21 days, disallowance is automatic,

### **7.6 Work of the Committee**

92. During 2004 a total of 476 regulations were made, compared with 398 in 2003. Between 1980 and 2004, on average around 372 regulations were made each year. At its regular Wednesday meetings the committee examines each of the regulations, as soon as possible after they have been published.

93. In the same year the committee sought particular information from government departments and ministries on a total of 65 different regulations. In most cases they were either satisfied with the replies received or the relevant agency modified the regulation concerned. 24 Draft regulations were considered. In addition, a large number of codes,

standards and fee setting orders, known collectively as deemed regulations were also scrutinised.

94. When the committee has questions or concerns about any of the regulations, they initially raise them with the responsible Ministers, departments, or other agencies. After receiving a response they decide whether to proceed to further investigation. This sometimes involved more written questions, or requires a hearing of evidence at which the committee's concerns are discussed with Ministers, or the relevant officials.

95. In general, the committee sought information on the following kinds of matters:

- fees regulations, asking the Government agencies to:
  - demonstrate that each fee category was calculated in accordance with the Audit Office Guidelines and Treasury Guidelines,
  - the constitutional principles for fee-setting outlined in the Committee's previous reports.
- explain how particular levies are calculated,
- explain the consultative process, including
  - whether it has been done (particularly if it is required by statute)
  - details of the specific process undertaken by the Government agency
  - whether participants of the process had any concerns about the process

96. The committee seeks information on the reasons why regulations are drafted the way they are, including any background, for passage of the regulations. Typically the committee is satisfied with the responses received. However, there are instances where the regulations or the responses necessitate further investigation.

### **7.7 Example 1 - Earner Premium**

97. An early example of the work of the committee was its 1992 investigation into the Accident Rehabilitation and Compensation Insurance (Earner Premiums) Regulations in relation to the prescribed rates of premiums for income earners<sup>35</sup>. Regulation 3 stated that:

"The rate of earner premium for the purposes of the Act shall be 62.22 cents per \$100.00 or part thereof of earnings paid on or after the 1st day of April 1992."

98. On 1 April 1992 the complainants were paid wages and salaries for the previous two-week period. They complained that their earner premiums had been deducted from their income despite the regulations not having come into effect at the time the income was earned. The complainants were of the opinion that the premium should only have been deducted from income earned on or after 1 April 1992 and not from income earned prior to this date.

99. The Committee agreed and found the regulation made an unusual or unexpected use of the regulation-making power in the empowering Act. The Committee stated that it should have been made clear in the regulation that income earned prior to this date was not liable to the earner premium. The recommendation to the government was agreed to and the adjustment was made.

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<sup>35</sup> [http://www.lawschool.vuw.ac.nz/vuw/content/display\\_content.cfm?school=law&id=1525](http://www.lawschool.vuw.ac.nz/vuw/content/display_content.cfm?school=law&id=1525) (accessed 30 July 2005)

## **7.8 Example 2 - Electricity Governance**

100. In 2004<sup>36</sup>, the Committee wrote to the Ministry of Economic Development seeking information on the consultation process that was required under the Electricity Act 1992, in respect of the Electricity Governance Regulations. Some parties who had made submissions to the committee were concerned with the limited consultation. They represented a significant section of the electricity industry. The Committee had significant concerns with both the regulations and the rules. The queries to the ministry related to whether particular matters in the regulations were clearly authorised under the empowering legislation, and whether they were more suitable for parliamentary enactment.

101. One of the regulations, provided that there were no remedies available other than those set out in the regulations or the rules. In effect, it prohibited access to the common-law remedy for breach of a statutory duty based on a breach of the regulations or the rules. Another regulation required participants to cooperate fully with investigations of the Electricity Governance Board into breaches of the regulations or rules. This cooperation extended to supplying information, allowing employees to be interviewed, and access to premises. The committee considered that this regulation infringed the principle that search, entry and seizure are matters for primary legislation.

102. A further regulation provided that a person is not excused from answering a question or giving any information on grounds of self-incrimination. The regulation-making powers made no specific reference to limitations on the privilege against self-incrimination. It was the committee's view that such a limitation was a matter for primary legislation. Yet another regulation set out the powers of the Rulings Panel, including the issuing of warnings or reprimands, civil pecuniary penalties, orders to pay compensation, and the making of termination and suspension orders. While the regulation-making power made reference to compensation and civil penalties, no reference was made to termination, suspension and compliance orders. The committee concluded that all of the types of penalties or actions that could be imposed for contravention of the regulations or rules should be specified in the Act.

103. The Ministry of Economic Development provided a comprehensive response to all questions, but its comments raised further issues. A former Regulations Review Committee had strongly opposed a provision in the Electricity Industry Bill, which sought to limit the application of the Regulations (Disallowance) Act 1989. That provision was deleted during the bill's passage in the House.

104. The Committee pointed out to the Ministry that Parliament has delegated, but not abrogated, its lawmaking responsibility in providing for the making of regulations. Parliament may grant regulation making powers in an Act, and then scrutinise in detail the Executive's exercise of those powers. The existence of wide regulation-making powers does not mean that Parliament has relinquished its scrutiny role.

105. At the time the committee was voicing its concerns to the ministry, the Commerce Select Committee was considering the Electricity and Gas Industries Bill. Following discussions between members of the committee, the Minister in charge of the bill, and Ministry officials, it was agreed that the relevant parts of the regulations be removed and placed in the bill. The ministry also said that it would take on board the Committee's concerns about the adequacy of the consultation process.

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<sup>36</sup> Activities of the Regulations Review Committee, House of Representatives, April 2005, P. 1.161

106. This outcome was very satisfactory for the Committee as it recognised that there were compelling and significant issues of legislative principle involved. The Committee was strongly of the view that matters contained in the particular regulations ought to be in primary legislation and had successfully persuaded officials and the Minister of the merits of adhering to these principles. Parliament used its power to persuade, encourage and influence, rather than using the executive powers of government. It is also significant that it was not necessary for the committee to use its power to disallow the regulations. The threat that the power could be used if negotiations failed was sufficient to ensure a satisfactory outcome.

## 8. Measuring Committee Activity

107. As the discussion of the PEC and the Regulations Review Committee shows, an active and effective committee system provides a more satisfying role for New Zealand's MPs. They can use it as an adult education class, treat it as training for government, or as a means of influence denied them in the confrontations in the chamber. The November 1989 report of the Business Committee showed that in the year to 31 March 1989 committees held 12 enquiries into departmental estimates or administration, reported on 544 petitions, examined 103 bills, and reported 67 back to the House<sup>37</sup>.

108. In the period under review, committees held nearly 600 meetings, double the number held in 1970. The Business Committee no longer reports in this form. However, Appendix 6 provides the fundamental statistics of committee activity for the last two Parliaments<sup>38</sup>, apart from the number of meetings held. Usually committees meet once a week, but often more frequently depending on the pressure of their work load. Standing Orders determine when committees can and cannot meet<sup>39</sup>.

109. The number of reports prepared a year varies depending on amount of business referred by the House or initiated by the committee. Can range from 1 to 200 depending on whether the committee specialises more in investigations or bills. These figures are also reported in Appendix 6. **Error! Reference source not found.**, by contrast, shows the number of sitting days of the Parliament.

110. Sitting Days are relevant to committee work, but not exactly, because committees typically sit in the Parliamentary recess. However, most parliamentary time has its origins in committees. Committees generate introduction debates, reports back from committees and debates on bills that have already been extensively modified by committees. Committees have also taken over time previously devoted to other business, such as formal debates and the budget debate<sup>40</sup>.

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<sup>37</sup> Mitchell, A, *New Zealand's Way of Committee Power*, Parliamentary Affairs, Page 98

<sup>38</sup> 1996-1999 and 1999-2002

<sup>39</sup> See SOs 190 -194

<sup>40</sup> Ministers need to be wary though. In 1979, a Minister in charge of an electoral process reform bill that a select committee had changed extensively and which now contained very few controversial clauses gained the agreement from the opposition that they would "not oppose the bill." However, he forgot a related controversial matter, arising out of a disputed election result. The opposition used every clause in the bill to argue that the reforms proposed would be insufficient to address the problems revealed by the petition. They never once voted against a provision of the bill, but did debate every clause to a closure motion and division. The bill, which the Minister expected to pass in one day, took up a whole week of Parliamentary time!

### **8.1 Nature and Number Of Inquiries Made**

111. As can be seen from paragraphs 4.1 above, investigations can be wide ranging but must be within the committee's terms of reference. Standing Order 189 sets out the relevant provisions. While not limited to, investigations are expected to focus on Government and departmental actions.

### **8.2 Government Response**

112. The 1986 revisions to Standing Orders introduced a requirement for the Government to respond to recommendations addressed to it in select committee reports. This operates in relation to both to matters referred to the committee and to self initiated enquiries. Within 90 days of the Report's tabling in the House,<sup>41</sup> the Government is required to respond. These responses are printed and compiled each session in a Parliamentary Paper. If dissatisfied with the Government response, committees usually respond by initiating a further enquiry.

### **8.3 Effectiveness of Committees**

113. Committee reports can and do result in substantial changes to Government proposed legislation, and departmental practices. They can also shape and change policy. While committees can have a significant influence on legislation, they generally focus on detailed amendments, usually carried unanimously. They can also impact on expenditure and revenue, as has been shown by the discussion on GST which boosted revenue and the Children and Young Persons Law, which reduced expenditure.

114. The presence of committees is a major force encouraging improvements in public administration. As Goff says, "Civil servants now face the prospect of being called to account for their role. Former permanent Head of the Treasury, Sir Douglas Wass, noted that "the knowledge that your department is going to be examined in detail on the background to a policy statement is a great encouragement to be rigorous..."<sup>42</sup>

115. New Zealand Parliamentary Committees are regarded as being among the most effective in the Commonwealth. The notable difference between the New Zealand Committees and those in Bangladesh is the extent to which New Zealand Committees serve as an INTERFACE between PARLIAMENT and the PEOPLE.

116. Instead of relying exclusively on the collective wisdom of MPs, Minister and Officials, a major effort is made to solicit and use the practical experience available, without cost, in the wider community. Companies, professional and business groups willingly give their advice for free as it is in their interests to see legislation before the House emerge from the parliamentary processes in the best possible form for the efficient operation of the country.

## **9. Conclusion**

117. Relative successes attained by the Committees in the New Zealand Parliament depend in large part upon Parliament itself having respect for the roles of the Majority and the Minority. The government majority is responsible for transacting the nation's business. There are deadlines to be met and there are obligations to fulfil.

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<sup>41</sup> Now, Standing Order 251

<sup>42</sup> Goff, Hon. P, *Practice and Procedure*, Reform of Parliamentary Select Committees in Britain and New Zealand, The Parliamentarian, July 1993, Page 165

118. The opposition minority stands to gain prestige if it facilitates dealing with the nations business while constantly making suggestions for change, improvement and modification. This does not prevent the Opposition putting up alternative suggestions or criticising defects in implementation. It also does not interfere with the Opposition's goal of seeking to replace the incumbent government.

119. At the same time the Majority stands to gain prestige if it is seen to encourage constructive contributions from the opposition and to be open to new ideas. Important New Zealand Parliamentary Committees have obtained additional powers and functions because they hold the government to account while facilitating the passage of its business and protecting the rights of the minority. Facilitating the government's business, while protecting the rights of the minority is a core traditional function Parliamentary assemblies.



## **Appendix 1: History of Magna Carta**

By 1199 the English king had become the most powerful monarch in Europe. The sophisticated centralised government created by the new Norman rulers, after 1066, combined with the native Anglo-Saxon systems of governance had brought this about. However, after King John took power in the early 13th century, a series of stunning failures on his part led the barons of England to revolt and place checks on the king's unlimited power.

Firstly, there was a general lack of respect for King John because of the way he took power. There were two candidates to take the place of the previous king, Richard the Lionheart, when he died in 1199. John captured his nephew Arthur of Brittany in Normandy, the other candidate, imprisoned him and he was never heard from again. Many saw it as a black mark against John that he would murder his own family to be king.

Secondly, Philip Augustus, the King of France, seized most of the English holdings in France; the English barons demanded of their king that he retake the land. He attempted to do so 8 years later, but the effort failed in 1214. A third failure of John was when he became embroiled in a dispute with the Church over the appointment of the office of Archbishop of Canterbury. The Church forced John to submit to its will in 1213.

In 1215, the barons of England banded together and took London by force on June 10, 1215. They forced King John to agree to a document known as the 'Articles of the Barons', (Magna Carta) to which he attached his Great Seal in the meadow at Runnymede on June 15, 1215. In return, the barons renewed their oaths of fealty to King John on June 19, 1215.

The most significant clause for King John at the time was clause 61, known as the "security clause," the longest portion of the entire document. This established a committee of 25 Barons who could at any time meet and over-rule the will of the King, through force by seizing his castles and possessions if needed. It made him King in name only.

King John had no intention of honouring Magna Carta. He renounced it as soon as the barons left London, plunging England into a civil war, known as the First Barons' War. John died in the middle of the civil war, of dysentery, on October 18, 1216, and it quickly changed the nature of the war. His nine year old son, King Henry III, was next in line for the throne. The child was swiftly crowned in late October 1216 and the war ended.

On November 12, 1216, Magna Carta was reissued in Henry's name by his regents with some of the clauses, including the contentious clause 61, omitted. When he turned eighteen in 1225, Henry III himself reissued Magna Carta a third time, this time in a shorter version with only 37 articles. Henry III ruled for 56 years so that by the time of Henry's death in 1272, Magna Carta had become a settled part of English legal precedent, and difficult for a future monarch to annul it as King John had attempted nearly three generations earlier.

From Wikipedia, the free encyclopedia.

## Appendix 2: Bill of Rights 1689

The Bill of Rights 1689 is an English Act of Parliament, and is one of the basic documents of English constitutional law, alongside Magna Carta, the Act of Settlement and the Parliament Acts. The Bill of Rights 1689 addresses only the rights of Parliamentarians sitting in Parliament as against the Crown. In this respect, it differs substantially in form and intent from other "bills of rights," including the first 10 amendments to the U.S. Constitution, which are also known as the "Bill of Rights".

In the Glorious Revolution, William of Orange landed with his army in England on 5 November 1688. James II, the unpopular reigning King, attempted to resist the invasion, but finally fled on 23 December 1688. Before William and Mary were affirmed as co-rulers of England and Ireland, they accepted a Declaration of Right drawn up by the Convention Parliament which was delivered to them at the Banqueting House, Whitehall, on 13 February 1689.

After they accepted the Declaration of Right, William and Mary were offered the throne, and were crowned as joint monarchs in April 1689. The Declaration of Right was later embodied in an Act of Parliament, now known as the Bill of Rights, on 16 December 1689. The basic tenets of the Bill of Rights 1689 are that Englishmen, as embodied by Parliament, possessed certain civil and political rights that could not be taken away. These included:

- freedom from royal interference with the law (the Sovereign was forbidden to establish his own courts or to act as a judge himself)
- freedom from taxation by royal prerogative, without agreement by Parliament
- freedom to petition the king
- freedom from a peace-time standing army, without agreement by Parliament
- freedom [for Protestants] to bear arms for self-defence, as allowed by law
- freedom to elect members of Parliament without interference from the Sovereign
- the freedom of speech in Parliament, in that proceedings in Parliament were not to be questioned in the courts or in any body outside Parliament itself (the basis of modern parliamentary privilege)
- freedom from cruel and unusual punishments, and excessive bail
- freedom from fines and forfeitures without trial

The Bill of Rights and Claim of Right are still law in England and Scotland respectively, and are occasionally cited in legal proceedings<sup>43</sup>. On 21 July 1995, a libel case brought by Neil Hamilton, then an MP, against The Guardian was stopped after Mr Justice May ruled that the prohibition on the courts questioning parliamentary proceedings contained in the Bill of Rights would prevent The Guardian from obtaining a fair trial. Section 13 of the Defamation Act 1996 was enacted subsequently to permit an MP to waive his Parliamentary privilege.

From Wikipedia, the free encyclopedia.

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<sup>43</sup> In 1977, the Court of Appeal held the Bill of Rights to be good law in New Zealand in the case of Fitzgerald and Muldoon.

### **Appendix 3: Reform Act of 1832**

The British Reform Act of 1832 (also referred to as the Great Reform Act) introduced the first changes to electoral franchise legislation in almost one hundred and fifty years. It met strong opposition from the Tories, who had defeated earlier bills, and it required pressure on William IV and the resignation of Earl Grey's Whig government to pass. During the third reading, the Commons carried the motion with a government majority of one vote.

The Act extended the franchise into the middle classes. Propertied male adults paying an annual rent of £10 or more (£2 in the rural counties) could vote. The Act extended votes to most male leaseholders and tenants. These changes increased the electorate from 435,000 to 652,000 (1 in 7 males) and gave greater political influence to urban centres in the north while leaving the rural areas under aristocratic control. The Act also abolished 56 rotten boroughs<sup>44</sup> and removed one MP from boroughs with fewer than 4,000 inhabitants.

However, Parliament was still under the control of the gentry and there was still great disparity between the sizes of constituencies. Despite the hopes of Lord John Russell that further reform would never be necessary, popular pressure led to greater changes.

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<sup>44</sup> Constituencies with few if any voters kept in the control of one or more families or rich persons who may sell the occupancy to the highest bidder.

## Appendix 4: Recording the Views of the Minority in Bills

Resource Management and Electricity Legislation Amendment	
<b>Key to symbols used in reprinted bill</b>	
<b>As reported from a select committee</b>	
<b>Struck out (majority)</b> Subject to this Act,	Text struck out by a majority
<b>Struck out (unanimous)</b> Subject to this Act,	Text struck out unanimously
<b>New (majority)</b> Subject to this Act,	Text inserted by a majority
<b>New (unanimous)</b> Subject to this Act,	Text inserted unanimously
<i>&lt;Subject to this Act,&gt;</i>	Words struck out by a majority
<u>&lt;Subject to this Act,&gt;</u>	Words inserted by a majority

**New (majority)**

- (b) **section 18A(2).**
- (2A) **Section 46** comes into force 36 months after the date on which this Act receives the Royal assent.

**Struck out (majority)**

- (3) **Section 82** comes into force on a date to be appointed by the Governor-General by Order in Council.

**New (majority)**

- (3) The following provisions come into force on a date to be appointed by the Governor-General by Order in Council:
- (a) **section 75A:**
  - (b) **section 82(2) to (4):**
  - (c) **sections 83A and 83B.**
- (4) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

**Part 1**

**Amendments to Resource Management Act 1991**

- 3 Resource Management Act 1991 called principal Act in this Part**  
In this Part and *<the Schedule>* *<Schedule 1>*, the Resource Management Act 1991<sup>1</sup> is called “the principal Act”.

<sup>1</sup> 1991 No 69

- 4 Purpose**  
The purpose of this Part is to amend the Resource Management Act 1991—
- (a) to improve the operation of the Act, in particular in relation to—
    - (i) the *<expression of the national interest>* *<achievement of nationally consistent standards>* through national environmental standards *<and national policy statements>*; and

## Appendix 5: Recording the Views of the Minority in Reports

ground structures such as poles or towers for high-voltage lines, which are referred to in clauses 93 and 94 of the bill as introduced, as “support structures”.

We had some concerns about the wording of the amendments to the Electricity Act, and accordingly recommend the insertion of new clauses 93 and 94 to replace clauses 93 and 94 respectively. We agree with those submitters who suggested that the words “support structures” be amended to clarify that they do not include works below ground level and works suspended in the air above roads and level crossings. To avoid doubt, we make legislative provision for electricity operators to construct and maintain high-voltage works by agreement with the relevant controlling authority, and the relevant owners. Our proposed amendments to the bill repeal sections 22(4) and 31(6) of the principal Act and insert more explicit wording in their place, for the avoidance of doubt.

### **Consequential, minor and technical amendments**

We recommend a number of consequential, minor and technical amendments to clarify and correct issues that arose during the hearings of submissions and our consideration of the bill.

### **Minority views**

#### **National Party and ACT Party**

National and ACT view the Resource Management and Electricity Legislation Amendment Bill as a lost opportunity to make a substantial reform of the Act to improve environmental and economic outcomes for New Zealand. The bill contains a mix of some useful reforms but others will only add to the costs, delays and uncertainties of the Act.

The select committee has rightly rejected many of the poorly thought out proposals in the bill. The most significant policy proposal was removing de novo hearings in the Environment Court. This would have substantially increased the costs and delays of council hearings and been counter-productive to the intent of improving the Act.

National and ACT also support the dropping of new legal phrases like “urban form” and “rohe”, which would have increased uncertainty within the Act.

National and ACT are delighted that direct referral to the Environment Court has been included in the reported-back bill, although are concerned that rushed last-minute drafting and a lack of consultation on the detail may compromise the implementation of this sound concept.

National and ACT have consistently argued for direct referral since 1998 and find it ironic that the idea has now been adopted by the Government in 2005 when it was so firmly rejected in 2000.

National and ACT oppose provisions in the bill that provide for notification decisions to be appealed to the Environment Court. The vast bulk of consents are processed on a non-notification basis. This provision will hugely increase the potential for litigation, delays and increased costs.

National and ACT believe this bill will significantly add to the compliance costs to councils and thus ratepayers and applicants. Many of the prescriptive provisions will add to the bureaucracy that frustrates councils and resource users.

National and ACT oppose the provisions that substantially increase the power of regional councils at the expense of district and city councils. Regional councils are not as politically accountable as their district or city counterparts to their communities as evidenced by lower election participation and very low councillor awareness. These provisions effectively disempower local democracy.

This bill is a tinkering when a major overhaul was required. It will not resolve the substantial concerns over the costs, delays and uncertainty of the Resource Management Act.

#### **Green Party**

The Green Party member believes that the few improvements offered by this bill, such as training and accreditation for councillors, review of notification decisions by the Environment Court, and a higher status for regional policies and plans are overwhelmed by the damaging effects of the rest of the bill.

The Green Party welcomes the large number of changes recommended by the select committee, including deleting the truncation of Environment Court processes, some curbing of the new ministerial powers, reinstating objectives in plans, removing the requirement for regional councils to promote infrastructure, providing section

### Appendix 6: Recent Sessional Statistics

	1996-1999		1999-2002	
<b>1. Sittings of House-</b> Days of meeting	221		231	
<b>2. Hours of sitting</b>	Hours / Minutes	Hours / Minutes	Hours / Minutes	Hours / Minutes
In the House-				
Normal hours	977.56		960.14	
Hours sat beyond normal sitting hours	320.00	1297.56	78.54	1038.68
In the Committee of the whole House-				
Normal hours	294.14		317.10	
Hours sat beyond normal sitting hours	225.56	475.10	113.40	430.50
Total		1773.06		1469.18
<b>3. Daily average for session</b>	8.02			6.36
<b>4. Bills-</b>	YEAR	Number	YEAR	Number
Government-				
Reinstated from previous session		33		45
Introduced during current session		191		146
Referred to select committees		152		111
Received the Royal assent-				
	1997	109	1999	1
	1998	121	2000	93
	1999	141	2001	102
			2002	25
Members'-				
Reinstated from previous session . . .		26		22
Introduced during current session		61		40
Order of the day discharged.		5		19
		26		15
Second reading negatived		33		5
Received the Royal assent . . .		4		8
Local-				
Reinstated from previous session		2		2
Introduced during current session		9		9
Introduced during adjournment		5		4
Received the Royal assent		8		8
Private-				
Reinstated from previous session		4		1
Introduced during current session		7		7
Order of the day discharged		1		0
Received the Royal assent		9		6
1334 SCHEDULE OF BUSINESS OF THE SESSION 1996-99				
<b>5. Petitions-</b>				
Reinstated from previous session		84		197
Presented and referred to select committees		2070		241
Reported back to House		1191		134



<b>6. Questions-</b> For Oral Answer For Written Answer		2625 39633		2764 49317
<b>7. Papers presented-</b> Papers presented and published Papers presented but not published		928 2671		748 2027
<b>8. Motions-</b> Number lodged / given		352		362
<b>9. General debates-</b> Number of debates		54		67
<b>10. Applications to debate matters of urgent public importance-</b> Number of applications Applications accepted		176 23		150 44
<b>11. Votes-</b> Party Votes In the House In the Committee of the whole House  Personal votes- In the House In the Committee of the whole House		410 1033  13 27		426 2070  12 42
<b>12. Closure Motions-</b> In the House- Agreed Declined Voted on  In the Committee of the Whole House- Agreed Declined Voted on		5 38 34  26 284 215		1 11 11  52 465 254
<b>13. Reports of Select Committees-</b> Presented- Business Commerce Committee -Accident Insurance Bill Committee on the Local Government Bill (No. 6) 1 Committee on the Producers Industry Restructuring Bills Education and Science Electoral Law Finance and Expenditure Foreign Affairs, Defence and Trade Government Administration Health Internal Affairs, Local Government (1999 LG and Environment)		5 83 1 1 3 100 9 64 67 95 176 82		3 92 2   95  83 69 134 66 60
Justice and Law Reform (Electoral)		101		48
Law and Order				50
Maori Affairs		17		23

MMP Review				1
Officers of Parliament		5		8
Primary Production		71		58
Privileges		6		4
Regulations Review		30		15
Social Services		72		69
Standing Orders		3		
Transport and Environment (1999 Transport and Industrial Relations)		109		69
<b>14. Reports of Statutory Committees-</b>				
Intelligence and Security		16		13

### Appendix 7: Number of Sitting Days and Length of Each Session Meetings

(This table was first compiled for 1875)

Session	Date Commenced	Last Sitting Day	Total Days Occupied	Days of Meeting	Normal Sitting Hours+		Beyond Normal sitting Hours+		Total Number of Hours Sat		Daily Average	
					H	M	H	M	H	M	H	M
1960	22 June	28 October	129	74					490	00	6	37
1961	20 June	1 December	165	91					601	31	6	36
1962	7 June	14 December	192	90					532	19	1	19
* 1963	12 February	12 February	1	1					1	19	1	19
1963	20 June	25 October	128	69					403	05	5	50
1964	10 June	4 December	178	90					583	04	6	29
1965	27 May	1 November	19	88					575	33	6	35
1966	26 May	21 October	149	78					474	49	6	05
1967	26 April	24 November	213	99					603	02	6	07
1968	26 June	19 December	178	89					536	36	6	01
1969	15 May	24 October	163	85					492	22	5	48
1970	12 March	3 December	267	110					727	37	6	37
1971	25 February	17 December	297	111					678	13	6	10
1972	7 June	20 October	135	75					419	10	5	35
1973	14 February	23 November	283	111					628	39	5	40
1974	4 February	8 November	278	118					739	09	6	14
1975	25 March	10 October	200	97					587	51	6	05
1976	22 June	14 December	172	96					606	38	6	19
* 1977	28 February	28 February	1	1						50		50
1977	19 May	16 December	224	118					719	19	5	45
1978	10 May	6 October	150	87					533	19	6	07
1979	16 May	14 December	210	113					667	53	5	57
1980	15 May	12 December	212	119					658	14	5	32
1981	28 May	23 October	149	185					459	21	5	24
1982	6 April	17 December	256	110					611	32	5	33
1983	7 April	16 December	254	99					566	57	5	43
1984	31 May	14 June	15	9					40	46	4	04
1984-85	15 August	12 December	484	157	878	58	180	29	1059	27	7	09
1986-87	26 February	21 July	510	135	854	01	265	54	1119	55	8	29
1987-89	16 September	12 December	823	184	1152	36	454	04	1606	40	8	40

1990	14 February	6 September	205	56	348	04	232	06	580	10	10	20
1990-91	28 November	17 December	21	10	47	40	18	38	66	18	6	38
1991-93	22 January	23 September	975	224	1404	20	6	611	26	2015	469	0
1993-96	21 December	27 August	981	203	1222	34	124	10	1346	44	6	38
1996-99	12 December	5 October	1018	221	1227	10	545	56	1773	06	8	02
1999-02	20 December	11 June	912	131	1277	24	192	34	1469	58	6	36

\* The sessions marked thus were special sessions, opened by Her Majesty the Queen of New Zealand in person.

+ Entries for sessions before 1984-85 are not included under this heading due to changed criteria for sitting hours following the adoption of new Standing Orders from 2 August 1985.

Rows shaded, as above, are for sessions held in election years. Note that they are sometimes quite a lot shorter than other sessions. Note also that in latter years sessions have spanned two calendar years. This initially began to make up for the snap election in 1984 and the mass of legislation that followed the change of government and economic crisis of that period. A similar pattern occurred following the early session of the new Parliament in 1990. The advantage to the incumbent government is the saving of Parliamentary time on formal business, in particular the wide ranging "Address in Reply Debate" that as late as 1993 would take up as many as 5 weeks of evening Parliamentary time, with each member allowed to speak for 30 minutes. The Opposition may extend speaking time by moving an amendment to the Address in Reply.

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