

16 September 2022

Standing Orders Committee
C- Standing Orders Committee Secretariat
Parliament Buildings
Private Bag 18041
Wellington 6160

Re: Review of Standing Orders 2023

Tēnā koutou

I am writing on behalf of Trust Democracy, an incorporated society that was established in 2019 to strengthen public discourse, education and research about democracy in Aotearoa New Zealand.

This submission has been prepared by seven Trust Democracy members with expertise in quantitative and qualitative analysis, records management, policy, open government and public engagement. Our collective experience spans civil society, academia, the public and parliamentary service, local and central government, and the private sector. We would like to speak to the Committee about this submission.

The focus of this submission is on select committees, as these provide important opportunities for members of the public and organisations to engage with Members of Parliament in agenda-setting and decision-making. At a time when the effectiveness and legitimacy of electoral representative democracy and its institutions are being questioned, improving engagement and using methodologies that enable the collaborative exploration of issues and perspectives, and provide opportunities for participants to identify areas of common ground are being recommended by bodies such as the OECD.¹

Many of our points and recommendations build on Section 4 of the Review of Standing Orders 2020.²

Deepening democratic engagement for inquiries

When planning to conduct inquiries, Committees should consider what has been learned by sister Parliaments in other parts of the world, such as Westminster, Edinburgh and Dublin, and move beyond methods for consulting the public (e.g., written and oral submissions, hearing and conventional surveys) and use methods that enable involvement and collaboration.³ To do this, we recommend that consideration be given to using advanced interactive digital engagement platforms such as Ethelo and Polis,⁴ which are capable of hosting safe, productive, insightful ‘discussions’ involving tens-of-thousands of people. Polis was used in the process to develop Te

¹ See, for example, <https://www.oecd.org/gov/innovative-citizen-participation-and-new-democratic-institutions-339306da-en.htm>

² https://www.parliament.nz/resource/en-NZ/SCR_99753/b30fe8b13213d753d48e0e3a0074056a7af787a5

³ See the IAP2 Spectrum at https://iap2.org.au/wp-content/uploads/2020/01/2018_IAP2_Spectrum.pdf

⁴ See <https://ethelo.com/> and <https://pol.is/home>

Mana o te Taiao – Aotearoa New Zealand Biodiversity Strategy 2020⁵ and the Ministry of Transport is planning to use it in the context of transport futures in October 2022.

We would also encourage Committees to consider following the lead of the Westminster committees that commissioned citizens assemblies as part of their inquiries into ‘wicked’ problems such as adult social care⁶ and climate change.⁷ We know from the use of citizens’ assemblies in Ireland, on topics such as abortion, same-sex marriage, biodiversity loss and electoral reform, that such processes are highly effective at generating new knowledge and practical recommendations that are widely supported by the public.⁸ Such processes can also provide the mandate and space for politicians to make decisions that were previously considered politically risky, such as was the case in Ireland on abortion and same-sex marriage.

We would recommend that:

1. The Standing Orders be reviewed, and amended, if necessary, to ensure that Committees are able to engage the public using these kinds of processes
2. A Select Committee conducts an inquiry into new forms of public engagement and how these might strengthen Select Committee inquiries during the next Parliament. This could be informed by a comprehensive literature review and engagement with local and international experts, and Parliaments in other countries.⁹ Trust Democracy would be happy to assist with such an inquiry.

More opportunities for earlier engagement

Too often, the public is only able to engage on policy issues and proposed legislation late in the process of their development when it is much more difficult to shape or modify proposals. Over time, this can have a negative effect on democratic participation.

We recommend that committees:

3. Provide more opportunities for the early involvement of the public by placing greater emphasis on their inquiry functions
4. Start to use some of the novel engagement methodologies described above
5. Consistently call for public submissions to the relevant select committee on green and white papers and exposure drafts of legislation published by the government.

Going to the people and flexible protocols for hearings

Not everyone is able to come to Parliament in person or via digital technologies to take part in Committee processes. We therefore recommend that:

6. Committees consider going out to the people by travelling around the country when planning their work.

⁵ <https://www.scoop.co.nz/stories/PO2012/S00004/doc-also-tries-to-restore-e-democracy.htm>

⁶ <https://involve.org.uk/our-work/our-projects/practice/how-can-we-find-sustainable-solution-funding-adult-social-care>

⁷ <https://www.parliament.uk/get-involved/committees/climate-assembly-uk/>

⁸ <https://www.citizensassembly.ie/en/>

⁹ We note that the Future of Local Government Review Panel has indicated that it will be recommending more use of participatory and deliberative methods for engaging the public in policy and decision making - see <https://www.futureforlocalgovernment.govt.nz/>

7. Committees consider using local meeting procedures or tikanga and be able to adopt these, where possible, as this would make engaging with a Select Committee less intimidating for local people.

Funding to support public participation in Committee processes

Preparing a high quality submission to help a Committee with its work takes time and effort. In other countries, non-profit organisations may be funded sufficiently well by donors to employ policy analysts who can write submissions. In Aotearoa, this is often not the case, meaning that the work to assist MPs with scrutinising legislation and with inquiries is often done by volunteers. Parliament could assist the work of both MPs and the government by creating an independent source of funding to provide support for non-profit groups and individuals wanting to make submissions on a bill or to an inquiry. This would mean people could afford to take time off work to do the research, analysis and writing necessary for a useful submission. An example the Committee might like to examine is the Environmental Legal Assistance Fund, administered by the Ministry for the Environment. The Ministry says *“The fund is for not-for-profit groups advocating for matters of environmental public interest”*, and that it *“enables applicants to participate more effectively and efficiently in matters or issues affecting the environment or processes regulating the environment.”*

We recommend that:

8. A contestable fund be established to support the preparation of high-quality submissions and the participation of members of the public and non-profit organisations in Committee processes. Such a fund could be modelled on the Environmental Legal Assistance Fund.¹⁰

Earliest practical public access to written submissions

To help submitters prepare high-quality submissions, they should be able to review other submissions. Currently, written submissions are not typically published until the day a Committee starts its oral hearings. This means that first-day oral submitters are unable to reflect on other people’s submissions in their presentations.

We therefore recommend that:

9. Standing Orders Rule 221 be amended so that submissions must be published as soon as they reasonably can be after they are received.

Improved access to records of hearings and committee proceedings

Given the importance of the work done by Select Committees, better records of proceedings should be available. The default position should be that video recordings are made and published if the session was open to the public. Transcriptions should also be made and published, even if this is after the release of the video recordings. We note that digital transcription technologies are improving rapidly and it seems likely that low-cost, accurate and automated transcription services will be available in the not-too-distant future.

To make video recordings of committee proceedings more accessible and useful to the public, a better hosting system is needed, such as that used by the Welsh Parliament.¹¹ Key improvements include searchable, time-stamped or tagged recordings and meeting agendas with item start-times

¹⁰ <https://environment.govt.nz/what-you-can-do/funding/environmental-legal-assistance-fund/>

¹¹ <https://senedd.wales/senedd-business/about-the-record-of-proceedings/>

and/or timetables of submitters. This would allow people to find material they are interested in. Facebook does not provide this level of functionality.

We recommend that Standing Orders Rule 235 be amended to:

10. Require that video recordings are made of committee proceedings and then made available to the public
11. Allow Committees to decide not to make a video recording of proceedings that are closed to the public
12. Require video recordings to be published as soon as possible after meetings conclude
13. Require Committees to have proceedings transcribed and published.

Independent, expert analysis of submissions

We have concerns about current practice of government department advisors in analysis and reporting on submissions on bills for Select Committees.

A key issue arises from the perception that departments are not always open to criticism and suggested changes. This would be natural, given the significant role departments have in drafting a bill's underlying policy on behalf of Ministers. Despite the requirements of departmental officials to act in good faith towards the Committee and to note all relevant matters in their reports, even if these submissions are not in agreement with Government policy,¹² we believe that there is a strong and inherent conflict between this role and the provision of impartial and expert advice to the legislature, whose function is to scrutinise proposals and test claims made for and against them by the Government and submitters.

We are also concerned about the quality of analysis of submissions, as we are aware of instances where published submission analyses/reports do not contain what submitters consider to be their key points. This could be a problem of expertise: departmental advisors may be experts in a particular field of policy but may not have expertise in, or access to specialist tools for, the qualitative analysis of submissions.

We note that committees in the Australian and Canadian parliaments receive significant research and analytical support from non-departmental advisors, including the independent parliamentary librarians.¹³

We recommend that:

14. Non-departmental, expert analysts be used to analyse and report on submissions on bills
15. These analysts be employed by the Parliamentary Service and located within the Parliamentary Library, which is renowned for its non-political, independent, high-quality research and analysis.

¹² See <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand/chapter-21-establishment-and-personnel-of-select-committees/>

¹³ See https://www.aph.gov.au/Parliamentary_Business/Committees/House/Committee_support_standards, https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/About_the_Parliamentary_Library, https://lop.parl.ca/sites/PublicWebsite/default/en_CA/About/Services?selected=Services

Earlier access to departmental reports on submissions

The current practice of Select Committees seems to be that the reports they receive from government departments (with their analysis of submissions and comments on suggested amendments) are only published after the Select Committee has reported a Bill back to the House. The problem with this procedure is that it prevents the public, especially submitters, from scrutinising the department's report in time to be able to advise the Committee of any misunderstandings or errors.

We recommend that:

16. Departmental reports (with their analysis of submissions and comments on suggested amendments) be published as soon as reasonably possible, and at least 3 weeks before the Select Committee reports back to the House.

Conduct of members.

The Standing Orders already institutionalise the right of members of the public and organisations to make submissions to the elected members of a Select Committee. To give better effect to this right, members should be obliged to listen and pay close attention to submitters, and committee chairs should demand this. We have heard various accounts of members being more engaged in communications with people outside a committee session via their smartphones than with submitters.

We recommend:

17. Banning smartphones from committee meetings and/or developing and enforcing a code of conduct for members that places clear requirements on members to be fully engaged in committee proceedings.

Chair to use discretion to give expert submitters extra time

The Chairs of Select Committees should keep in mind their ability to amend the times available to submitters. We have witnessed subject matter experts being given only five minutes to present an oral submission when organisations receive up to ten minutes. By doing this, Parliament is depriving itself of an opportunity to engage with a subject matter expert. We are not sure if these limits are derived by convention or by rules but we recommend that:

18. The Standing Orders or other rules be amended as necessary to enable Chairs to vary the time allowed for oral submissions.

We commend our Parliament for regularly reviewing its rules with the public. Trust Democracy would like to make an oral submission to the committee.

Ngā mihi, nā



Simon Wright
Chair