

6 November 2024

Parliament Bill Committee
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Submission on the Parliament Bill

Tēnā koutou

1. I am writing on behalf of the Trust Democracy committee, which is elected to represent the members of Trust Democracy (TD). We would like to highlight three areas where further consideration is needed for the Parliament Bill and encourage the use of processes such as citizens' assemblies for future legislative work concerning our democratic and governing institutions.
2. We would like to speak to the Committee about this submission on the Parliament Bill (Bill).
3. TD was established as a non-profit incorporated society in 2019. Our purpose is to foster democratic innovation for a fair, just and inclusive society. While New Zealand's hybrid electoral-representative and participatory democracy is rated highly on international indices,¹ innovation is needed to:
 - a. counter increasing disillusionment with New Zealand's democracy and democratic processes which could lead to serious social fragmentation and disharmony;²
 - b. Have a hope of addressing structural issues such as climate change and inequality.
4. To address these challenges, the OECD and Open Government Partnership (OGP) are promoting both democratic innovation (e.g., citizens' assemblies) and strengthened open government processes for accountability, transparency and public participation.^{3,4} We would encourage the Committee to consider how the Bill can help address the issues noted in paragraph 3 by fostering and strengthening open government.

¹ For example, ranked 2nd by the Economist Intelligence Unit's Democracy Index 2023, <https://www.eiu.com/n/campaigns/democracy-index-2023/>, but only 16th by International Idea's Global State of Democracy Initiative, <https://www.idea.int/gsod/2024/countries/>

² See, for example, the 2024 Ipsos Global Advisor on Populism in New Zealand, <https://www.ipsos.com/en-nz/populism-global-advisor-survey-2024-nz-edition>.

³ See the OECD's Reinforcing Democracy Initiative, <https://www.oecd.org/en/about/programmes/reinforcing-democracy-initiative.html> and the OGP's policy areas, <https://www.opengovpartnership.org/policy-areas/>

⁴ Booth, Ecclestone, Wright (2023), Open Government: A 40-year gestation and still in labour, Public Sector, Vol 46: Issue 3, https://ipan.org.nz/Attachment?Action=Download&Attachment_id=150535

5. This submission has been informed by a TD submission to the Standing Orders Committee in 2022 and by the work of several of our members with the Public Service Commission in relation to New Zealand's Open Government Partnership National Action Plans.

Process issues and a missed opportunity for democratic innovation

6. TD notes the bi-/multi-partisan work over successive parliaments that went into the Parliament Bill.
7. On the one hand, this is to be commended. TD would like to see more use of bi-/multi-partisan approaches given wide-spread concerns about the policy swings and u-turns associated with changes of government, and low levels of trust and confidence in our Executive and Parliament to deliver in the public interest.⁵
8. On the other hand, given the potential conflict between political party interests and the public interest when it comes to developing rules for our democratic and governing institutions, TD believes that the process used to develop the Parliament Bill is also a missed opportunity for democratic innovation.
9. Many countries have been using citizens' assemblies and other mini-public and online processes to augment conventional policy and decision-making processes. Examples include the UK Climate Assembly commissioned by six Westminster select committees⁶ and the Irish Citizens Assembly, which reports directly to the Irish Parliament and is now overseen by a dedicated select committee.⁷ Development of the policies underlying this Bill was an opportunity to use such processes. The potential benefits would likely have included greater public awareness of the Bill, greater public confidence that the proposals in the Bill align with the public interest and a stronger mandate to enact more ambitious, future-focused reforms.
10. TD therefore recommends that the New Zealand Executive and Legislature join the 'deliberative wave'⁸ and start experimenting with, and building their capacities to use, deliberative processes especially when considering the rules for our democratic and governing institutions.
11. In addition to being a missed opportunity for democratic innovation, TD understands that the bi-/multi-partisan process used to develop the Bill did not provide for public input until *after* all the policy choices for design of the legislation had been made. Given how difficult it is to make substantive changes to legislation at the select committee stage, this process choice increases the chances that that people will see the Bill as a *fait accompli*, stitched up by political parties and Parliament's officials to meet their needs rather than those of the public. TD therefore believes that there should have been, at the very least, public consultation on a Green or White paper before the draft legislation was developed.

Funding parliamentary agencies

12. Current arrangements for funding parliamentary agencies are inappropriate as the Executive should not be able to control the funding of the Legislature, which is supposed to scrutinise the

⁵ 2024 Ipsos Global Advisor on Populism in New Zealand, <https://www.ipsos.com/en-nz/populism-global-advisor-survey-2024-nz-edition>.

⁶ See <https://www.climateassembly.uk>.

⁷ See "A hunger for democratic innovation: the Irish Citizens' Assembly and Polis in the words of their 'creators'" at <https://trustdemocracy.nz/2023/07/democratic-innovation-hunger/>

⁸ OECD (2020) Innovative Citizen Participation and New Democratic Institutions: catching the deliberative wave, OECD

Executive and hold it to account. TD therefore strongly supports Parliament controlling the funding of the parliamentary agencies.

13. TD understands the logic of the proposed Officers-of-Parliament model for funding parliamentary agencies but notes that this model has its limitations, which should be considered and addressed.
14. Under its OGP programme, the New Zealand Government acknowledged issues of access to information, civic participation and public accountability and included measures to 'open' its budget processes in its OGP National Action Plan 2016-18.⁹ Despite improvements in the availability of budget data and the provision of high-quality public information, the OGP's Independent Review Mechanism (IRM) found that only negligible improvements had been achieved in terms of public participation in the budget process.¹⁰
15. TD notes the common and global use of Participatory Budgeting¹¹ and suggests that such processes should be adapted to improve the Officers-of-Parliament funding model through public participation.
16. TD recommends that the Committee consider ways of improving mechanisms for public participation, including the use of mini-publics, in the Officers-of-Parliament model for funding parliamentary agencies.
17. To understand some of the limitations of the Officers-of-Parliament funding model, TD also recommends that the Committee ask the Officers of Parliament Committee how often public input has been sought on past budget proposals for the Ombudsman, the Controller and Auditor General and the Parliamentary Commissioner for the Environment. To give an example of what this may reveal, the Ombudsman has previously told Parliament he has no need of extra resources for his investigation of Official Information Act complaints, but the public might well have a different view to provide to MPs considering a budget bid, as complaint investigation times have grown to more than a year.
18. With the shift to the Officers-of-Parliament funding model, and the failure to act on multiple recommendations to add the Office of the Clerk and Parliamentary Services to the scope of the OIA (see below), we may actually witness a reduction in the amount of information available to the public about Parliament's funding.

Independent, expert analysis of submissions

19. TD has previously raised concerns about the current practice of using government department advisors to support Select Committees scrutinise government bills because of the potential conflict departmental officials have as agents of the Executive.¹²
20. This potential conflict between the Executive and Legislature is acknowledged by the proposed new funding model for parliamentary agencies and should also be dealt with by ensuring that the Legislature has independent expert support when considering government bills.

⁹ <https://ogp.org.nz/assets/Publications/New-Zealand-Action-Plan-2016-2018-updated.pdf>.

¹⁰ <https://www.opengovpartnership.org/wp-content/uploads/2019/03/New-Zealand-End-Term-Report-2016-2018.pdf>

¹¹ Wampler, Brian, Stephanie McNulty, and Michael Touchton, *Participatory Budgeting in Global Perspective* (Oxford, 2021; online edn, Oxford Academic, 22 July 2021), <https://doi.org/10.1093/oso/9780192897756.001.0001>.

¹² <https://trustdemocracy.nz/wp-content/uploads/2022/09/TD-Submission-Standing-Orders.pdf>.

21. TD recommends that the functions of the Office of the Clerk in clause 103 be amended to explicitly require the provision of such independent support of select committees, both when considering government legislation and when undertaking inquiries. This does not mean that public servants cannot help committees to understand the government's actions or intentions, but should ensure that MPs are provided with their own independent advice. Ensuring this would significantly strengthen both the capability and the reputation of select committees and the legislature as a whole.

Supporting public participation in the work of the Parliament

22. TD supports provisions relating to public education and the provision of public information about the institution of Parliament.

23. However, TD believes that the ability of the public to participate in Parliamentary processes is currently limited by issues with access to information.

24. While there have been many improvements in access to information about Parliamentary processes (e.g., through the Parliament website), these are no substitute for rights to public information. Nor do they overcome the failure to create Hansard records of oral submissions to most select committees. We recommend that the functions of the Clerk in clause 103 with regard to producing a record of proceedings be strengthened, to explicitly require Hansard to be created for all public sessions of select committees as well as of the House.

25. Over the last quarter of a century, there have been numerous reviews that have recommended that the scope of the Official Information Act 1982 (OIA) be extended to include Parliament with two New Zealand Law Commission reports providing detailed recommendations about how this should be done. Developments in international human rights law in the forty two years since the OIA was passed have made clear that the right to information is a core human right, and human rights should apply equally to all branches of the state, not just to the Executive.

26. Under its OGP programme, the New Zealand Government was supposed to review the need for a formal review of OIA in its third National Action Plan.¹³ The OGP's IRM noted that the Global Right to Information Rating in August 2019 for New Zealand was 51st out of 123 countries and states, and that "the [OIA] law's major problems include its limited scope (it does not apply to the legislature, the courts, or some bodies within the executive)".¹⁴

27. TD therefore supports calls for making, and recommends that amendments are made to the Bill to make the Office of the Clerk, the Parliamentary Service, the Office of the Speaker, and the Parliamentary Commission subject to the Official Information Act. Individual MPs and political parties would remain outside the OIA. The Law Commission has provided detailed suggestions for how to incorporate appropriate exclusions to the definition of 'official information', and the subsequent passage of the Parliamentary Privilege Act in 2014 has dealt with many of the issues raised by the Law Commission.

¹³ <https://ogp.org.nz/assets/Publications/OGP-National-Action-Plan-2018-2020.pdf>.

¹⁴ https://www.opengovpartnership.org/wp-content/uploads/2020/02/New-Zealand_Design_Report_2018-2020.pdf.