

Review of Standing Orders, Procedures and Practices of the House

Submission from Green Party of Aotearoa New Zealand Parliamentary Caucus

10 October 2013

Set out below are recommendations from the Green Party caucus to the Standing Orders Committee on the review of the Standing Orders, procedures, and practices of the House for the 50th Parliament.

The recommendations are drawn from reflections of the 50th Parliament, as well as restating recommendations made by the Green Party to previous Standing Orders reviews.

Recommendations:

1. Legislative Quality

During this Parliament, there has been an issue for the House in having adequate information for considering legislation. The Green Party considers this to be a significant issue and sees it as a serious undermining of the democratic process.

A clear example of this was the New Zealand Public Health and Disability Amendment Bill (No 2), which was introduced under Urgency, passed through all stages under Urgency, bypassing the select committee process, and had a heavily redacted Regulatory Impact Statement (RiS). There have also been a number of occasions when the Government has introduced a substantive Supplementary Order Paper (SOP) after select committee consideration of the bill, effectively avoiding public consideration. Some of these SOPs have been highly controversial, such as the so-called 'Anadarko amendment' to the Crown Minerals Bill. Additionally, the practice of a bill being introduced under urgency and receiving its first reading (and occasionally all remaining stages) on the same day provides insufficient time for non-Government members to scrutinise the legislation before it is read in the House. This year, for example, nine bills have been introduced under urgency and set down for first reading that same day. The amendment to Standing Orders from the last review to allow for urgency to be accorded to the first reading of a bill despite the bill not being available to be set down for first reading to enable bills to be made publically available for the urgency motion has not changed the practice it sought to amend. For this calendar year to date there have been no bills included in an urgency motion that would have otherwise been exempt had this Standing Order not been amended.

To restore public confidence in the law-making process, and to ensure robust decision-making, the Green Party has three recommendations:

- a. **Bill of Rights (BORA):** Endorse the recommendation to the Government from the previous Standing Orders review to amend the Cabinet guidelines to require Bill of Rights reporting on substantive Supplementary Order Papers.
- b. **Select committee consideration:** Encourage the practice of an SOP being sent to a select committee for consideration, if the bill has already been through the select committee process.
- c. **Introduction of bills under urgency:** Revisit the decision made at the last Standing Orders review to amend the Standing Order to allow urgency to be accorded to the first reading of a bill despite the bill not being available to be set down for first reading. While this was a positive move in theory, it has not changed the practice. We recommend a provision to require bills to be made publically available, or at least circulated to party leaders, by a specific time period before the urgency motion.

2. Strengthening of Bill of Rights (BORA) reporting - S/O 262

We recommend strengthening the Bill of Rights Act reporting requirements to ensure that Parliament is fully informed when considering bills that may place limits on fundamental rights and freedoms and that any bills where the Attorney-General indicates there could be inconsistencies with the Bill of Rights be adequately scrutinised. Specifically we:

- a. Endorse the recommendation from the previous Standing Orders review to the Government to amend the Cabinet guidelines to require Bill of Rights reporting on substantive SOPS.
- b. Recommend Standing Orders be amended to prevent any bill, which the Attorney-General identifies as being inconsistent with the Bill of Rights, from being enacted without consideration by a select committee with the opportunity for public submissions.

3. Accessibility of House procedures and services to Members

The election of Mojo Mathers as New Zealand's first deaf MP provides this Parliament with a unique perspective on the accessibility of the House procedures and services to members. Mojo's experiences in the House and select committees have raised some issues in terms of parliament's ability to ensure her participation, which the Green Party feel would be valuable for the Standing Orders committee to note and reflect on.

Specifically, procedures in the House frequently move quickly and this speed does not allow Mojo to participate on the same level as other MPs. Although the electronic note-taking service enables a basic level of participation, the service does have some limitations. It does not provide a direct transcript of what is being said in the House or in select committee as it summarises and/or leaves out sections. There is also a delay of between 5-20 seconds. This means that when the House is moving fast, such as when a vote is taken, the vote can be over before Mojo has an opportunity to vote. As a result of this time delay, solitary House Duty is not a task that Mojo can take up. When Mojo needs to stand up to speak or request a call, she experiences some delay while she folds the laptop up which sits in front of her. The bell, indicating the end of a call, is inaudible for Mojo and the light on her microphone is only visible when Mojo is standing up speaking. A combination of all of these factors means that it is not possible for Mojo to stand up immediately following another MP's call, which means that she cannot compete with other MP's on an equal basis when requesting a call during Committee of the Whole House stages. Chairs have mostly shown fair and reasonable flexibility by letting Mojo know that they are aware she is trying to take a call and informing her when she can expect to get it, but this is not ideal as relies on the good will of the Chair.

The Green Party would like to see an ongoing commitment to change the parliamentary environment to ensure it is fully inclusive, and to work with service providers to ensure the services evolve. The Green Party would also like to note the current inquiry in the accessibility of parliament, which is being undertaken by the Government Administration select committee. If this inquiry is completed while the Standing Orders review process is still underway, we recommend that this committee closely consider any recommendations that the Government Administration committee makes to the House to improve the accessibility of parliament.

4. Recognition of sign language in Standing Orders - S/O 105

Sign Language (NZSL) is an official language of New Zealand, along with English and Māori. We would like to see Standing Order 105, which currently specifies that a member may address the Speaker only in English or Māori, amended to include NZSL in recognition of its status as an official language. In addition, we would like parliament to start planning towards offering simultaneous interpretation into NZSL, particularly for Question Time. Providing for NZSL to be used in the House and for simultaneous translation in the Standing Orders would show a commitment to recognising the importance of NZSL as an official language in New Zealand.

5. Compassionate leave - S/O 140

This Parliament has adopted a sessional order amending Standing Order 140(3) to allow an MP to be absent from the parliamentary precincts on compassionate grounds, but to be regarded as present for the purposes of casting party votes.

We recommend making this a permanent leave provision in the Standing Orders, but we also recommend that 'parental leave' be specifically listed within the Standing Order to assist in encouraging other parents, and especially mothers, to stand for parliament in the future.

During this Parliament, the provisions for breastfeeding mothers were raised. We recommend that this issue be considered further, with specific thought given to compassionate leave being extended to breastfeeding mothers for the evening sessions of parliament.

6. Lobbying

In our submission to the last review, we recommended that a Register of Lobbyists be introduced. Since this time, the Lobbying Disclosure Bill was pulled from the ballot and was sent to the Government Administration select committee. In its report on the bill, the select committee has made recommendations to the House to develop guidelines for MPs on handling lobbying communications, which could include mechanisms for disclosure and reporting by MPs and lobbyists. It also made recommendations to the Government around disclosure of information.

The Green Party supports the report from the select committee and recommends that the following options be explored through this review:

- a. Requiring regulatory impact statements and explanatory notes of bills to include the names of any non-departmental organisations consulted during the development of related policy and legislation.
- b. Developing guidelines for MPs on handling lobbying communications, which could include mechanisms for disclosure and reporting by MPs and lobbyists
- c. Requiring proactive release of policy papers to make the policymaking process more transparent
- d. Introducing formal requirements of the Speaker to regularly disclose the list of those with access cards to parliament. While this has happened voluntarily for the last two years, since the introduction of the Lobbying Disclosure Bill, there is no formal requirement for this to happen.

7. Code of Conduct

Previous reviews of Standing Orders have considered the issue of a code of conduct for MPs. In 2007, the Green Party, Māori Party, United Future and ACT signed a voluntary code of conduct. The principle of the code was that the electorate expects MPs to act ethically and with integrity and committed signatories to work for the public good, show respect for parliament, not accept inducements or advance private interests, avoid conflict of interest and ensure proper use of public resources.

While the Standing Orders Committee in 2011 determined that a code of conduct was unnecessary because most of the measures commonly found in overseas codes are already covered in New Zealand through mechanisms such as the disclosure regime and the electoral financing rules, the Green Party continues to advocate for a Code of Conduct for MPs to be incorporated into the Standing Orders.

8. Personal vote on conscience issue - S/O 139

In the Green Party submission to the previous review, we raised the issue of conscience votes and suggested criteria for the Speaker to consider when determining whether a vote is a conscience issue. The proposed amendment to the Standing Order was “that a vote can be treated as a conscience issue if it has a strong element of moral or ethical contention”. We again recommend this amendment to the Standing Orders.

In addition, we also propose that, in response to a request by a member for a conscience vote, the Speaker be required to deliver to the House a formal explanation of his or her ruling on the matter, much like with an Urgent Debate request.

9. Preferential voting

During the committee of the whole House stages of the Alcohol Reform Bill, a preferential voting procedure was used on the question of the age for the sale and purchase of liquor on licensed premises. The use of preferential voting was a positive move that produced a more democratic outcome than otherwise would have occurred for such a complicated vote, as it ensured that the result reflected a majority of the House.

We propose that the Standing Orders be amended to provide more opportunity for a preferential voting procedure.

10. Election of Speaker - S/O 15-25

When the position of Speaker became vacant during the 50th Parliament, questions were asked about the suitability of the current process for electing a Speaker in an MMP environment. We propose a review of this process, drawing on examples from overseas parliaments, such as a secret ballot and fair representation across parties for the positions of Deputy and Assistant Speakers.

11. Prayer - S/O 60

In previous Standing Orders reviews, the Green Party has proposed that the Speaker convene an advisory panel of recognised authorities to advise on ways in which the prayer could be broadened, in conformity with Article 18 of the International Covenant on Civil and Political Rights, to reflect the multi-cultural society which New Zealand has become. We again recommend that a review of the prayer is undertaken. We suggest, as a first step, for the Speaker to conduct a survey of MPs as occurred in 2002.

12. Oath & Affirmation - S/O 13

We propose that there should be a review of the wording of the oath and affirmation set out under the Oaths and Declarations Act 1957. The Green Party believes that the oath needs revision to reflect the broader society that New Zealand has become.

In the 2011 report of the Standing Orders Committee on the Review of Standing Orders, the majority of the committee agreed that in the course of the 50th Parliament, the wording of the oath and affirmation should be subject to a review. However, this has not happened and we argue that this should be reviewed during the course of the next Parliament.

13. Questions for Written Answer - S/O 379

Current Standing Order 379(4) requires the reply to a question for written answer (QWA) to be lodged by the Minister no later than the sixth working day following the day on which the question is published. During this term of Parliament there have been countless examples where this deadline has simply not been met, or rather than a substantive answer, the Minister has given an interim reply that states the question will be answered as soon as possible.

An example of this, to demonstrate the extent of the problem, is of one Green MP who has asked a Minister 101 QWAs to date this calendar year. Not one of these has received a substantive answer on time. Interim answers have been given for 50 of the responses, and some substantive responses have taken more than two months to come through.

The Green Party feels this process has been abused and that Ministers are showing a disregard for their democratic obligations. To address this, we propose that tighter rules are required to ensure that Ministers respond to QWAs in a timely and substantive manner, possibly through a requirement for a written explanation to be provided to the member lodging the QWAs and the Speaker if the Minister will miss the deadline, and the reason for doing so.

14. Ministers at the Table for Committee of the Whole House - S/O 167-180

At present, Ministers have little incentive to engage in the debate during the Committee of the Whole House stage, because if they do, the debate is likely to go on for longer. Having the Minister present and participating in the debate is an important part of the scrutiny of a bill.

One possible way to incentivise Ministers to engage in the debate could be to amend the Standing Orders to prescribe a rough formula for time to be allocated to a debate, based on the complexity of each part to be debated. This would mean that Ministers could come to the House and engage with the bill, without fearing that their involvement would unnecessarily prolong the debate. Another option could be to require Ministers to take at least one call per part of each bill.

15. Tabling documents

In the Green Party submission to the previous Standing Orders review, we recommended that the definition of 'document' be updated to mean 'any written paper, CD, or DVD that is approved by the Clerk'. The Standing Orders Committee did not support this and determined that, while the Standing Orders didn't rule out the tabling of CDs, DVDs, etc., it would not generally extend to these things and that each case must be considered on its merits.

Given the changes in information and communications technology, we again propose that the definition of 'documents' be updated to explicitly allow electronic files to be tabled.

16. International Treaties - S/O 394-397

In its submission to the 1996 Standing Orders review, the Clerk of the House presented a series of recommendations on the presentation and referral of international treaties. In response, the Standing Orders Committee at the time stated that it "broadly supports the intent of the proposals". In 2003, the Green Party recommended that the Standing Orders on international treaties be strengthened in line with the Clerk's 1996 recommendations. In our 2010 submission, we again drew attention to this recommendation. The Green Party continues to support the proposals of the Clerk from 1996 and we again request that the Standing Orders on international treaties be strengthened. In particular, that it should be necessary for the House to approve any treaty before it is ratified by the government.

17. Members' Bills - S/O 276

The previous review produced an amendment to the Standing Orders to provide for members to indicate support for the introduction of a proposed Member's Bill. The Green Party supports this development, but notes that it has not been widely utilised. To better promote and strengthen this process, as well as to encourage cross-party dialogue on Members' Bills, we propose a further amendment to the Standing Orders to allow for a Member's Bill to be introduced and set down for first reading without the need for a ballot, provided that it has received sufficient support from members. This proposal was included in the Clerk's advice to the previous Standing Orders review, but not adopted.

In addition, we propose an amendment to the Standing Orders to allow for a Member's Bill to be sponsored by two or more members of Parliament (from across parties). The practice of 'joint-sponsorship' of bills occurs in some other parliaments overseas and would be another positive way to encourage cross-party dialogue. The proposed bill should only appear in the ballot once, so as not to increase the chances of it being pulled.

18. Petitions - S/O 366

In our previous submission to the Standing Orders Committee, we proposed that when a petition was referred to a select committee, the committee should hear from the petitioner unless the petition is not in order. We remain concerned that the present rules around petitions are arbitrary, by allowing select committees to accept or reject petitions without being required to present any reason to do so. This accords committees, and especially their chairs, undue power and there are widely differing responses to petitions in different select committees.

While we acknowledge the practical considerations with this proposal that were raised by the Clerk in response to this proposal (in terms of the practicalities of requiring all petitioners to be heard or placing a threshold on the number of signatures for this to occur), we remain concerned about this issue. We recommend that guidelines be included in the Standing Orders for select committees that must observe in their decision making on how to act on petitions.

19. Minority views - S/O 242

In our previous submission, we recommended that the Standing Orders be amended so that a select committee 'must' rather than 'may' indicate different views, and therefore require select committees to include minority views in their reports if requested.

We again put forward this recommendation. It can be argued that the right of dissent, in a democratic parliament, over-rides the need for committee control. Entering a minority view is scarcely undermining committee control - in fact it is expressing the committee's view. Refusing a minority view reflects excessive control. We believe the only reason that a select committee should be able to reject sections of a minority view would be when they are inaccurate or contain inflammatory content.

20. Emergency making powers

In the 2010 review, the Standing Orders Committee recommended to the House that it refer to a select committee an inquiry into Parliament's legislative response to a national emergency, particularly in terms of how it enables on-going response and recovery, but that such an inquiry be referred following a reasonable period to enable the progress of the recovery from the Canterbury earthquakes. This has not been progressed, and the Green Party recommend that this be undertaken.