New Zealand Law Society
Te Kāhui Ture o Aotearoa

Review of Standing Orders 2026

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

25 September 2025

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to provide feedback on the *Review of Standing Orders 2026*.

1.2 This submission has been prepared with input from the Law Society's Public Law, and International Legal Issues Committees,[1] and offers feedback on:

(a) ways to enhance the House's scrutiny of primary legislation;

(b) improvements to the process for examining bilateral international treaties; and

(c) potential amendments to the Standing Orders relating to revision bills.

1.3 The Law Society **wishes to be heard** in relation to this submission.

2 Improvements to the processes for scrutinising primary legislation

2.1 The Standing Orders Committee has sought feedback on ways to enhance the House's consideration of legislation, particularly in light of the recent substantial increase in the overall number of submissions received on bills.

2.2 The Law Society has, over the years, observed increasing deficiencies in Parliament's legislative processes – of note are the following concerns, which we believe could be addressed through amendments to the Standing Orders:

(a) the increasing use of urgency in the legislative process without any compelling rationale;

(b) truncated select committee processes, which result in inadequate timeframes for making submissions, and interruptions to select committee processes through use of urgency;

(c) the use of Amendment Papers to make substantive changes to legislation after the select committee process has concluded;

(d) deficiencies in the processes for ensuring bills passed by Parliament are consistent with the New Zealand Bill of Rights Act 1990 (**Bill of Rights Act**);

(e) the absence of mechanisms which enable or require Parliament's select committees to undertake post-legislative scrutiny of legislation; and

(f) the use of artificial intelligence (**AI**) to analyse submissions made to select committees.

2.3 These deficiencies, and their potential to weaken the rule of law in New Zealand, are discussed in more detail in chapter 6 of our recently published report, *Strengthening the rule of law in Aotearoa New Zealand* (***Rule of Law* report**).[2] A copy of this chapter is appended to this submission (Appendix 1). Below, we briefly summarise the concerns

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1 More about these committees can be found on the Law Society's website: www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/law-reform-committees/.

2 New Zealand Law Society Te Kāhui Ture o Aotearoa *Strengthening the rule of law in Aotearoa New Zealand* (June 2025) at 41. A copy of the full report is available on the Law Society's website: www.lawsociety.org.nz/professional-practice/law-reform-and-advocacy/reports/.

outlined in this chapter, and discuss how they could be addressed through amendments to the Standing Orders.

Addressing the increasing and unjustified use of urgency

2.4 The use of urgency can limit Parliamentary and public scrutiny of legislation, and prevent meaningful public consultation on proposed reforms (particularly where it is used to truncate or skip the select committee process). It can also obstruct the public's understanding of why certain legislation was introduced and passed, and reduce transparency and accountability within the legislative process. This limits both democratic engagement with the issues, and the democratic legitimacy of bills passed.

2.5 The Law Society has raised concerns about the increasing use of urgency on a number of occasions, including in its submission on the *Review of Standing Orders 2023*.[3] In 2024, the Attorney-General raised similar concerns, noting that "rushing legislation and skipping steps increase the risk that we get it wrong and the legislation is ineffective or unworkable in practice".[4]

2.6 The Standing Orders Committee has also recorded its concerns about the use of urgency, noting:[5]

> The use of urgency can affect the quality of legislation and the sense of legitimacy surrounding the legislative process. Bypassing select committee consideration is particularly concerning. The select committee stage of the legislative process gives Parliament the opportunity to consider the detail of legislation and undertake public consultation. Select committees can tailor this stage to suit the scrutiny they feel is necessary. Legislation that bypasses the select committee process may not undergo detailed scrutiny or public contribution, so potential issues may not be identified or addressed.

2.7 But while there is broad agreement on these concerns, little is being done to limit the use of urgency. We have observed Parliament continuing to progress legislation under urgency, including in circumstances where there appear to be no justifiable reasons for doing so.

2.8 The *frequency* with which urgency is used also appears to be on the rise, with data on the Parliament website suggesting the current Parliament could exceed the use of urgency under each of the 49th, 50th, 51st, 52nd and 53rd Parliaments if it continues at its current pace:[6]

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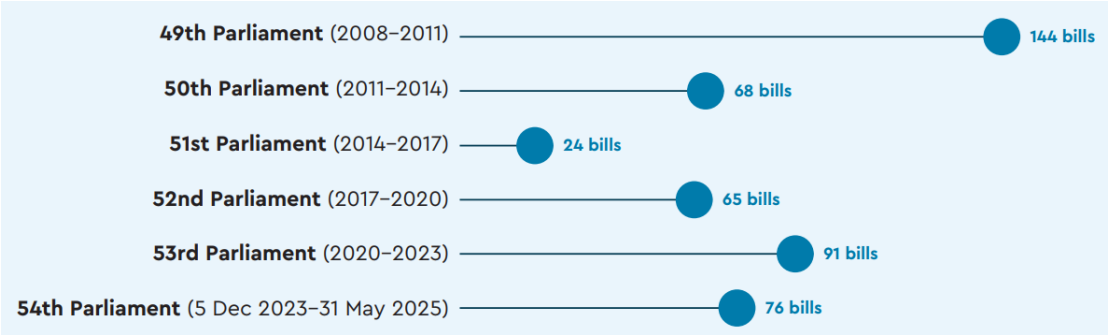
3 Law Society submission on *Review of Standing Orders 2023* (16 September 2022) at 2.

4 Letter from Hon Judith Collins KC (Attorney-General and Minister responsible for the Parliamentary Counsel Office and the Legislation Design and Advisory Committee) to Rt Hon Christopher Luxon and all Ministers regarding delivering effective legislation and regulatory schemes (25 March 2024).

5 Standing Orders Committee *Review of Standing Orders 2023: Report of the Standing Orders Committee* (August 2023) at 35.

6 *Rule of Law* report at 44. More data on the use of urgency can be found on page 43 in the appended chapter of the report.



2.9 The above graph, taken from our *Rule of Law* report, shows that, as at 31 May 2025, the current (54th) Parliament had accorded urgency to 76 bills – that figure has since increased to 89 bills.[7]

2.10 In our view, the use of urgency should be rare, and as suggested by some, justified by a genuine need for haste in relation to the particular measure.[8] It should not be used as a tool for meeting arbitrary deadlines or operational deadlines which are known in advance, or for enhancing the 'performance' of a government.

2.11 In light of the significant impacts urgency can have on the rule of law, public confidence, and the quality of legislation, it may be appropriate to establish a higher threshold for the use of urgency in order to limit its use, and enhance Parliamentary and public scrutiny of legislation.

2.12 We note SO 57(3) currently provides that there is to be no amendment or debate on a motion to accord urgency to certain business, and a Minister is only required, on moving the motion, to inform the House "with some particularity of the circumstances that warrant the claim for urgency".

2.13 There may be merit in amending the Standing Orders to increase the threshold for according urgency to the passage of legislation. Urgency should only be used in exceptional circumstances and not simply to allow Parliament to conduct its regular business using urgency to sit longer hours, or to omit or truncate the select process. A higher threshold could provide that:

(a) urgency may only be moved in exceptional circumstances;

(b) the Minister moving the motion to accord urgency to inform the House about why they consider urgency to be justified in the circumstance; and

(c) a motion to accord urgency to any stage of the passage of a bill must be debated, as well as voted on (and a question on whether such a motion be agreed to must receive a majority of votes in order to proceed).[9] A requirement for a debate

7 As at 22 September 2025.

8 Claudia Geiringer, Polly Higbee and Elizabeth McLeay *What's the Hurry? Urgency in the New Zealand Legislative Process 1987–2010* (Victoria University Press, 2011) at 139–140.

9 For example, the Standing Orders for the Australian federal Parliament and the United Kingdom Parliament require debate on urgency motions (see: Australian Senate *Standing orders and other orders of the Senate* (July 2025) (Cth), SO 75); United Kingdom House of Commons *Standing Orders: Public Business 2024* (23 May 2024) (UK), SO 24).

would provide an opportunity for the Minister to explain why urgency is justified, and for those reasons to be tested through parliamentary debate.

2.14 Alternatively, the Committee could consider specifying the circumstances where the use of urgency is appropriate (but note that such a provision would need to be drafted in a way that gives Parliament the flexibility to use urgency where justified).

2.15 If the Standing Orders Committee concludes it is not appropriate to impose a *blanket* limit on the use of urgency in the ways we have suggested above, the Committee could consider, at a minimum, introducing a higher threshold for according urgency to bills that:

(a) affect constitutional arrangements;

(b) relate to the separation of powers, or the principles of comity;

(c) impact the Crown's obligations under te Tiriti o Waitangi/the Treaty of Waitangi;

(d) impact the Crown's obligations under international law;

(e) the Attorney-General has indicated to the House, under SO 269, as being inconsistent with the Bill of Rights Act;

(f) could adversely impact or negate individuals' rights and benefits accrued under other existing laws;

(g) will have retrospective effect once enacted;

(h) seeks to prevent or limit judicial review or appeal rights; and

(i) have had substantive amendments made (for example, through an Amendment Paper) after the select committee process.

2.16 These matters could, for example, be identified in a checklist in the departmental disclosure statement relating to the bill (and we acknowledge that some matters, such as retrospectivity, are already being identified in these disclosure statements).

Truncated select committee processes

2.17 The Standing Orders Committee has observed that select committees play a "crucial role in engaging with the public on the House's behalf, and ensuring that New Zealand's interests are served by quality legislation".[10] It follows that, in order to perform this crucial role, select committees should have the ability to invite and consider submissions from the public, and give those submitters adequate time to meaningfully engage with the select committee process. Our *Rule of Law* report recommends that:[11]

> The timeframes given to select committees to report back to the House must enable the select committee to consider all of the submissions it receives in relation to a bill. Where a large volume of submissions is anticipated, the reporting timeframes should be adjusted accordingly to facilitate consideration of all submissions.

10 Standing Orders Committee *Review of Standing Orders 2017* (July 2017) at 28.
11 *Review of Standing Orders 2017* at 28.

2.18 During the 2017 *Review of Standing Orders*, the Standing Orders Committee focussed on improvements to the select committee process, and the time for making submissions on bills. In its report, the Committee endorsed the following suggestions for select committee consideration of bills before the House:

(a) Committees should generally allow a minimum of six weeks when setting a closing date for submissions.

(b) A lesser period than six weeks may be allowable in exceptional circumstances, but submitters should be given a realistic period to comment on a substantial bill or inquiry.

(c) Longer than six weeks can be decided when dealing with large or complex bills—this is up to the committee concerned.

(d) Committees examining bills must allow sufficient time for proper drafting and consideration of amendments and commentaries.

2.19 Despite these suggestions, the House continues to agree to shorter periods for select committee consideration of bills, which inevitably results in truncated timeframes for public submissions.[12] We consider that it would be appropriate to amend the Standing Orders to incorporate the timeframes endorsed by the Standing Orders Committee in 2017 at a minimum.

2.20 We also suggest specifying in the Standing Orders that, where feasible, public consultation should not occur over holiday periods such as the Christmas/New Year period,[13] and the Easter period, when members of the public, and community and legal organisations are unlikely to be available to carefully consider and offer feedback on proposed reforms.

Improvements to the processes for amending bills through Amendment Papers

2.21 Amendment Papers (referred to as Supplementary Order Papers in the Standing Orders) are being used to propose substantive policy changes to bills. Where this occurs *after* a select committee has reported back on a bill, it raises rule of law concerns because it precludes:

(a) select committees from undertaking in-depth scrutiny of the proposed amendments (including by seeking advice from officials and calling for submissions), and considering whether any further changes must be made to the bill; and

(b) the public from providing feedback on the changes in the Amendment Paper (no matter how significant),

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12 For example, a significant portion of bills which were referred to select committee in the 54th (i.e., current) Parliament received a submission period of less than six weeks – see: *www.parliament.nz/en/pb/bills-and-laws/progress-of-legislation/*.

13 As was the case, for example, with the Principles of the Treaty of Waitangi Bill 94-1 (2024), where, despite strong public opposition to the bill, consultation occurred over the 2024/25 Christmas-New Year holiday period.

2.22 As a result, it can reduce the clarity, certainty and effectiveness of the resulting legislation and undermine the rule of law.

2.23 At present, the Standing Orders provide only limited guidance on the purpose of Amendment Papers, and do not contain any safeguards to ensure Amendment Papers cannot be used to introduce and progress significant amendments without select committee and public scrutiny. They largely relate to procedural matters (for example, the process for moving Amendment Papers (SO 177), and for making references to changes in Amendment Papers during debates by a committee of the whole House (SO 315)).

2.24 We suggest amending the Standing Orders to ensure Amendment Papers cannot be used to make substantive changes to a bill without public scrutiny and consultation (although it may be appropriate to exempt private bills, local bills, Local Legislation bills, Imprest Supply bills and Appropriation bills from such a rule). For example, the Standing Orders could provide that:

(a) Amendment Papers can only be used to 'fix' issues in a bill which come to light *after* its introduction, and which must be addressed prior to enactment.

(b) If an Amendment Paper proposes substantive changes to a bill after the completion of the select committee stage, the bill and the Amendment Paper should be:

(i) referred back to the relevant select committee so the committee can invite public submissions on the contents of the Amendment Paper and report back to the House about any concerns, or other necessary amendments; and

(ii) subsequently, recommitted to a committee of the whole House for debate.

(c) If an Amendment Paper is tabled while a bill is before a select committee, but after its public consultation process has concluded, the select committee should reopen public submissions on the Amendment Paper.

2.25 We acknowledge that the changes we have suggested at (b) and (c) above could, in some circumstances, result in a large volume of Amendment Papers being referred to select committee for consideration. In such cases, it may be appropriate to restrict the referral of Amendment Papers to select committees by providing that:

(a) an Amendment Paper submitted by a member of a governing party should be subject to the processes outlined at (b) and (c) above (on the basis that they are more likely to proceed); and

(b) an Amendment Paper submitted by a member of a party that is not a governing party should be subject to the processes outlined at (b) and (c) above only if the House agrees to do so following a majority vote.

Improvements to the Bill of Rights Act vetting process

2.26 SO 269 provides a process for the Attorney-General to indicate to the House whether a bill is consistent with the Bill of Rights Act (**the vetting process**). While the vetting

process is an important mechanism for *signalling* inconsistencies to Parliament, it has been largely ineffective in limiting the introduction and passing of bills which are inconsistent with the Bill of Rights Act, or in prompting Parliament to address any inconsistencies during the legislative process. As a result, the House continues to debate and pass bills which are inconsistent with the Bill of Rights Act, despite being aware of those inconsistencies.[14]

2.27 While Parliament is free to legislate as it chooses, and recognising that there may be instances where Attorney-General does not always identify a prima facie inconsistency, the Law Society is of the view that any decision to legislate in a manner that infringes protected rights should be taken only after full consideration of the Attorney-General's advice, and as an express and deliberate decision of the House.

2.28 We therefore invite the Standing Orders Committee to consider how the vetting process could be strengthened through amendments to the Standing Orders, particularly where the Attorney-General indicates, under SO 269, that a provision in a bill is inconsistent with the Bill of Rights Act. In such circumstances, the Standing Orders could be amended, for example, to require the responsible Minister to provide to the relevant select committee considering the bill the purported justification for enacting the infringing provision(s) (unless this is clearly addressed in a Regulatory Impact Statement or in other materials supporting the bill).

2.29 The Standing Orders Committee could also consider amending SO 189 (which identifies the current subject select committees and their subject areas) to establish a new subject select committee that will be responsible for scrutinising bills at the select committee stage for consistency with the Bill of Rights Act (noting this would then remove this responsibility from the Justice Committee). The new committee's tasks could include reviewing the Attorney-General's reports and any Bill of Rights Act advice prepared by officials, and recommending amendments to bills to address concerns. The committee could also undertake or assist with post-legislative scrutiny of Acts to ensure they remain consistent with the Bill of Rights Act discussed in more detail below).

2.30 Such a committee could, for example, be modelled on the United Kingdom's Joint Committee on Human Rights in the Parliament,[15] or Australia's Parliamentary Joint Committee on Human Rights.[16]

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14 Examples are provided in the appended chapter of our *Rule of Law report*. Since the publication of that report, Parliament has also debated and referred to select committee the Electoral Amendment Bill 186-1 (2025), which is inconsistent with the Bill of Rights Act (see *Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Electoral Matters Legislation Amendment Bill* (26 June 2025)).

15 The Joint Committee on Human Rights consists of members appointed from both the House of Commons and the House of Lords, and examines matters relating to human rights within the United Kingdom. The Committee's work includes scrutinising every Government bill for its compatibility with human rights, and consideration of whether the bill presents an opportunity to enhance human rights in the United Kingdom – see: committees.parliament.uk/committee/93/human-rights-joint-committee/role/.

16 This committee assesses bills that come before either House of the Parliament for compatibility with human rights, and reports to both Houses on incompatibilities. The committee also has the power to seek a response from a Minister responsible for a bill within a specified timeframe; see: www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights.

Post-legislative scrutiny of legislation passed by Parliament

2.31 In its submission on the *Review of Standing Orders 2023*, the Law Society suggested amending the Standing Orders to provide for processes empowering Parliament to undertake post-legislative scrutiny of legislation.[17] We do not repeat those comments here, but append a copy of that submission here (see Appendix 2).

2.32 At the time, the Standing Orders Committee agreed that "legislation that is passed by the House without undergoing select committee consideration, whether as a result of urgency or another truncated process, may benefit from post-legislative scrutiny by a select committee", noting "this would give the committee an opportunity to examine the Act to see whether it requires further amendment, and to consult the public".[18] Unfortunately, the Committee was unable to agree on whether to amend the Standing Orders at the time.

2.33 The issues outlined above, and in the appended documents, make a strong case for requiring Parliament to undertake post-legislative scrutiny of legislation. While our earlier submission largely focussed on the need for post-legislative scrutiny of legislation passed under urgency, we believe such scrutiny also offers an opportunity to:

(a) identify whether other deficiencies in the legislative process (for example, bypassing the select committee process, the use of Amendment Papers to make significant changes to a bill after the select committee stage, or a failure to address inconsistencies with the Bill of Rights Act prior to enactment) may have adversely impacted the quality or effectiveness of the resulting legislation; and

(b) recommend necessary amendments to address any issues or concerns identified.

2.34 The types of legislation we have identified at [2.15] above would also benefit from such scrutiny.

2.35 We therefore invite the Standing Orders Committee to once again consider creating a framework for post-legislative scrutiny of legislation.

Limits on the use of AI to analyse submissions to select committees

2.36 In our *Rule of Law* report, we expressed the view that select committees and departments should not rely solely on artificial intelligence (or other software or algorithms) to analyse submissions they receive during a consultation process.[19] AI is a useful tool which may be used by a select committee, but must not replace the work of the committee.

2.37 The known risks of inaccuracies in work done by AI, and its inability to distinguish nuanced language in submissions, could mean submissions are mischaracterised as supporting or opposing a bill when, in fact, submitters expressed or intended the opposite. There are also concerning developments which show that, in some circumstances, submitters may be able to 'game' the system to allow some submissions

17 Law Society submission on *Review of Standing Orders 2023* (16 September 2022) at [2.6]-[2.26].
18 Standing Orders Committee *Review of Standing Orders 2023: Report of the Standing Orders Committee* (August 2023) at 35.
19 *Rule of Law* report at [6.27(i)].

to receive greater profile than others.[20] This may be, as the article cited above shows, achieved by something as simple as inserting white text into submissions which AI will take note of, but may not be picked up by select committee members or officials. The Law Society is concerned that there do not currently seem to be any checks or safeguards against such risks (even where they are not particularly sophisticated, as is the case in the cited article).

2.38 These shortcomings, unless properly understood and addressed, could produce distortions which prevent select committees from understanding the concerns raised by submitters and the level of public support for a particular bill, and safely relying on that analysis.

2.39 We acknowledge that select committees are currently grappling with large volumes of submissions, particularly on significant pieces of legislation. These numbers are an indication of high levels of public interest in the proposed legislation, and the public's desire to participate in the legislative process and influence change through the submission process – all of which must be encouraged within a healthy and functioning democracy. The use of AI to analyse submissions can have the opposite effect by giving submitters the impression that their views will not be considered by select committee members and officials, or may be mischaracterised.

2.40 If it is not feasible to set aside adequate time and resource for a select committee to consider all of the submissions it receives on a particular bill, and the committee considers that AI is *necessary* to complete this task (noting that there should be a process for this determination), the Standing Orders should be amended to provide safeguards against the risks posed by AI – these could include:

(a) A requirement for (human) staff supporting the select committee to conduct audits of analyses and assessments completed by AI.

(b) Ensuring there is transparency around the use of AI to strengthen accountability and public confidence in the legislative process. For example, this should include publishing information about which AI system was used, the parameters it was operating within, how precisely AI was instructed to analyse submissions and by whom, what prompts were offered, the results of any analyses produced using AI, and the results of the auditing undertaken by select committee staff.

(c) Requiring select committees to publish all submissions they receive on a particular bill. If a select committee deems that doing so would place an onerous administrative burden on committee resources, the committee could look to publish information about form/template submissions in some other, less resource-intensive way.

(d) Empowering the select committee to undertake post-legislative scrutiny of that legislation, and, as part of this exercise, consider submissions it previously received to understand whether amendments are needed, and whether it is

[20] Josh Taylor "Scientists reportedly hiding AI text prompts in academic papers to receive positive peer reviews" *The Guardian* (online ed, 14 July 2025).

appropriate for the legislation to remain in force in light of submissions considered by the committee.

(e) Keeping records of the learnings from (a) to (d) above so they can, over time, be used to develop a code of best practice for the use of AI for select committee consideration of submissions. This could go some way towards enabling submitters to feel that their voices have not been diminished through use of AI.

3 Improvements to the process for examining bilateral international treaties

3.1 This Review seeks feedback on improvements that can be made to the House's oversight of treaty-making and examination of international treaties.

3.2 The current processes for Parliamentary examination of international treaties is set out in the Standing Orders and the Cabinet Manual 2023.[21] These require the Government to present the following types of international treaties to the House for its consideration:[22]

(a) any treaty that is, or has been, subject to ratification, accession, acceptance, or approval (noting this category primarily captures multilateral treaties, as most bilateral treaties are not usually subject to these steps);

(b) any 'major bilateral treaty of particular significance' (as determined by the Minister of Foreign Affairs (**Minister**)).[23]

3.3 This means not all bilateral treaties are presented to the House for Parliamentary scrutiny. If a bilateral treaty is not considered to be of particular significance, the Minister will approve a parliamentary treaty examination waiver, which gives the Executive authority to become party to the agreement without the involvement of the House.

3.4 We understand that Parliamentary scrutiny of bilateral treaties is likely limited in this way in order to avoid burdening the House with the examination of less significant bilateral treaties such as Status of Forces Agreements, Double Tax Agreements, and Social Security Agreements (which are typically modelled on standard templates).

3.5 However, it may be more appropriate to amend the Standing Orders (and consequently, the Cabinet Manual) to provide that the Government will present *any* bilateral treaty to the House unless it meets specific criteria prescribed in the Standing Orders, which would exempt it from this requirement. This would offer greater certainty, transparency and consistency in the process for Parliamentary scrutiny of bilateral treaties, and better align the framework in the Standing Orders and the Cabinet Manual with what is already occurring in practice.

3.6 We note that the Minister of Foreign Affairs currently refers to criteria set out in guidance prepared by the Ministry of Foreign Affairs and Trade (**MFAT**) when determining whether a bilateral treaty is a 'major bilateral treaty of particular

21 SO 405-408; Cabinet Office *Cabinet Manual 2023* at [7.127] – [7.137].
22 SO 405(1).
23 *Cabinet Manual* at [7.128].

significance' which warrants Parliamentary scrutiny.[24] The exemption criteria for the Standing Orders could be modelled on the criteria set out in MFAT's guidance, if the Standing Orders Committee agrees it is appropriate to amend the Standing Orders as we have suggested.

4 Proposed changes to the purposes of revision bills

4.1 The Legislation Amendment Bill 152-1 that is currently before the Justice Committee seeks to broaden the purposes of revision bills and enable them to be used as a mechanism for making substantive legislative changes. The Explanatory Note of the Bill acknowledges the broad scope of these amendments, noting that their overall effect would be that "revision bills will be more like ordinary Government Bills that make substantive changes to the law".

4.2 The Law Society has raised concerns about these amendments in a submission to the Justice Committee.[25] Of particular concern is the fact that the Standing Orders currently provide for a bespoke, streamlined process for passing revision bills, which excludes:[26]

(a) first reading debates on the bill;

(b) amendment or debate on whether the bill should be considered by the nominated subject select committee, or a different committee;

(c) a second reading of the bill (except in limited circumstances);

(d) scrutiny of the bill by a committee of the whole House (except in limited circumstances); and

(e) third reading debates on the bill.

4.3 The Bill does not seek to modify these Standing Orders. Therefore, if these amendments are enacted in their current form, they would enable Parliament to make substantive legislative amendments without the scrutiny they would otherwise receive if they were included in a regular bill. Our submission to the Justice Committee noted this could:

(a) reduce transparency and accountability within the legislative process;

(b) undermine public confidence in the legislative process and resulting law changes; and

(c) contribute to the passing and enactment of poorly drafted and unworkable laws, and laws which have unintended consequences.

4.4 If these amendments are to proceed despite the concerns we have raised with the Justice Committee, we recommend they be accompanied by changes to the Standing Orders to ensure revision bills are passed following a full legislative process – i.e., with first, second and third reading debates, as well as opportunities for scrutiny by a select committee, a

24 Ministry of Foreign Affairs and Trade *International Treaty Making: Guidance for government agencies on practice and procedures for concluding international treaties and arrangements* (September 2021) at 15.

25 A copy of that submission is available on the Law Society's website: www.lawsociety.org.nz/assets/Law-Reform-Submissions/Legislation-Amendment-Bill.pdf.

26 SO 276.

committee of the whole House, and the public – rather than the existing streamlined process. We acknowledge this is likely to result in significant overlap with the existing processes for the passage of 'regular' bills, but consider this to be necessary if the purposes of revision bills are to be expanded as proposed in the Legislation Amendment Bill.

David Campbell
Vice-President

Appendices:

- Appendix 1: chapter 6 of the Law Society's *Rule of Law* report
- Appendix 2: the Law Society's submission on the *Review of Standing Orders 2023*

6 Deficient policy and legislative processes

6.1 Good policy and legislative processes should, first of all, allow ample time for law reform proposals to be designed, carefully considered (including against alternative options which may be better suited to achieving the policy objectives), debated, and modified.

6.2 Second, they should enable public debate and consultation on what is being proposed. This should include consultation with legal and subject-matter experts, as well as those who are likely to be affected by the proposal. Such consultation should occur both before making any decisions to proceed with a particular proposal, as well as after key policy decisions have been made and legislation has been drafted.

6.3 However, the Law Society continues to identify deficiencies in the processes for developing and passing legislation (including legislation that, if enacted, could result in significant constitutional changes).[149] These are discussed below.

Rushed processes and the use of urgency

"If rushed law is bad law, then a good proportion of the law made by Parliament is suspect from a process-oriented Rule of Law perspective."[150]

6.4 The rule of law requires the law to be clear and predictable. This requires, among other things, laws which are clearly drafted, remain stable over time, and have foreseeable effects and application.[151]

6.5 Rushed policy development processes can undermine these aspects of the rule of law in several ways:

149 See, for example, the Law Society's submissions on the Principles of the Treaty of Waitangi Bill 2024 (94–1) (7 January 2025) and the Term of Parliament (Enabling 4-year Term) Legislation Amendment Bill 2025 (128–1) (16 April 2025), both of which raise concerns about deficient processes for making significant constitutional changes. These submissions are available on the Law Society's website: www.lawsociety.org.nz.

150 Andrew Geddis "Electoral Finance, Lawmaking and the Politics of the Rule of Law" in Richard Ekins (ed) *Modern Challenges to the Rule of Law* (LexisNexis NZ Limited, 2011) at 213.

151 Venice Commission of the Council of Europe *The Rule of Law Checklist* (adopted by the Venice Commission at its 106th plenary session, Venice, 11–12 March 2016).

a. They can limit or prevent meaningful consultation (including with Māori, where that is required under Te Tiriti) and scrutiny of policy proposals, the identification of issues affecting the implementation of the policy, and analysis of unintended consequences.[152] All of these issues can ultimately reduce the clarity and certainty of any resulting legislation.

b. Time pressures within the policy development process make it harder to clearly identify the policy objective, gather and assess relevant evidence, and complete cost-benefit analyses and quality assurance processes.[153]

c. Rushed processes can also limit the public's understanding of why certain legislation was introduced and / or passed. They reduce transparency and accountability and inhibit open democracy (particularly where time constraints also impact the production and publication of information regarding the policy problem which needs to be addressed, and the impacts of the proposed legislation).

6.6 The use of urgency within the legislative process is also damaging:

a. Urgency can be used to shorten the time available to debate and scrutinise a bill, as well as to bypass the select committee process altogether.[154] In doing so, it can prevent or limit scrutiny of the bill by members of the public, select committees and other members of Parliament (who may have had little or no time to scrutinise the bill prior to its introduction, and are nevertheless expected to vote either in favour of, or against, the bill).

b. Like rushed policy development processes, the use of urgency can prevent or limit the identification of any drafting deficiencies, unintended effects, or other potential issues with implementing the legislation.

c. When urgency is taken, the public can be left with a sense that Parliament is not following its own rules, and that legislation is being "rammed through the House at the will of the executive".[155] This undermines public confidence in Parliament's adherence to the rule of law.

d. If urgency is taken for more than one stage at a time, the stand-down periods between the legislative stages are eliminated. Stand-down periods play an important role in the legislative process by enabling bills to proceed at a measured pace that allows members of the House and the public the opportunity for careful scrutiny.[156]

"When lawmaking becomes a rushed job, those with money, influence, or insider knowledge are poised to take advantage, while ordinary citizens are left in the dust. In sum, urgency without safeguards equals opacity, and opacity is the friend of the already powerful. It's a recipe for weaker democratic control over policy and a greater risk of special-interest riders finding their way into law."[157]

152 Claudia Geiringer, Polly Higbee and Elizabeth McLeay *What's the Hurry? Urgency in the New Zealand Legislative Process 1987–2010* (Victoria University Press, 2011) at 1 and 141.
153 Letter from Hon Judith Collins KC (Attorney-General and Minister responsible for the Parliamentary Counsel Office and the Legislation Design and Advisory Committee) to Rt Hon Christopher Luxon and all Ministers regarding delivering effective legislation and regulatory schemes (25 March 2024).
154 23 bills were passed through all stages under urgency in the 54th Parliament (as at 30 April 2025).
155 Claudia Geiringer, Polly Higbee and Elizabeth McLeay *What's the Hurry? Urgency in the New Zealand Legislative Process 1987–2010* (Victoria University Press, 2011) at 1.
156 House of Lords Select Committee on the Constitution, "Fast-track Legislation: constitutional implications and safeguards" (HL Paper 116-I, 2009) at 142.
157 Bryce Edwards "Integrity Briefing: Pay equity urgency and vested interests" *Substack* (online ed, 11 May 2025).

6.7 Notwithstanding these concerns, successive governments have continued to resort to rushed policy development and legislative processes to deliver on election promises and government priorities. For example, in recent times:

a. Time constraints have continued to impact government policy responses and, in many cases, hamper officials' ability to consult with those outside of government agencies.[158] Even where consultation occurs, they do not always allow adequate time for interested parties to provide meaningful and considered feedback.

b. An increasing number of bills have been passed under urgency, affecting not only stand-down periods as earlier discussed, but also involving the use of urgency to truncate or entirely dispense with the select committee submissions process. The 54th Parliament has:

   i. In its first 100 days, declared urgency eight times to pass 21 bills through 61 stages. Thirteen of these bills were passed entirely under urgency, without a select committee process. These statistics exceed those of the preceding five Parliaments in their first 100 days.[159]

   ii. Set a record going back as far as 1987 for passing the most number of bills through all stages under urgency (again, without a select committee process) in the first 540 days of term.[160]

   iii. As of 31 May 2025, introduced and passed 24 Bills through all stages under urgency.[161] This has included, for example, legislation disestablishing the Māori Health Authority,[162] legislation repealing the Fair Pay Agreements framework,[163] and retrospective legislation affecting existing pay equity claims.[164]

   iv. According to data on the Parliament website, the potential to exceed the use of urgency under each of the 49th, 50th, 51st, 52nd and 53rd Parliaments if it continues at its current pace.[165] To offer a broader perspective on these figures, between August 2002 and February 2009, only 221 bills were accorded urgency at some stage in the legislative process.[166]

158 Fox Meyer and Laura Walters "Official concerns about haste and dearth of evidence in Govt's first year" *Newsroom* (online ed, New Zealand, 27 November 2024).
159 Marc Daalder "Govt sets record for laws passed under urgency in first 100 days" *Newsroom* (online ed, New Zealand, 8 March 2024).
160 Marc Daalder "Govt on record-breaking urgency streak amid flurry of Budget laws" *Newsroom* (online ed, New Zealand, 29 May 2025).
161 See data published on the New Zealand Parliament website: www.parliament.nz/en/pb/bills-and-laws/progress-of-legislation.
162 Pae Ora (Disestablishment of Māori Health Authority) Amendment Bill 2024 (26–1).
163 Fair Pay Agreements Act Repeal Bill 2023 (3–1).
164 The Equal Pay Amendment Bill 2025 (147–1) was introduced on 6 May 2025, and passed its third reading on 7 May 2025. The resulting Equal Pay Amendment Act 2025 came into force on 14 May 2025, and applies retrospectively to claims which had commenced well before the Bill was introduced.
165 See www.parliament.nz/en/pb/bills-and-laws/progress-of-legislation.
166 These statistics were taken from a report produced by the House of Lords following an inquiry into Parliament and the Legislative Process. As part of this Inquiry, the House of Lords contacted other legislatures to understand their experiences of 'fast-tracked' legislation – see: House of Lords Select Committee on the Constitution "Fast-track Legislation: Constitutional Implications and Safeguards" HL Paper 116-I (7 June 2009) at 77–82.

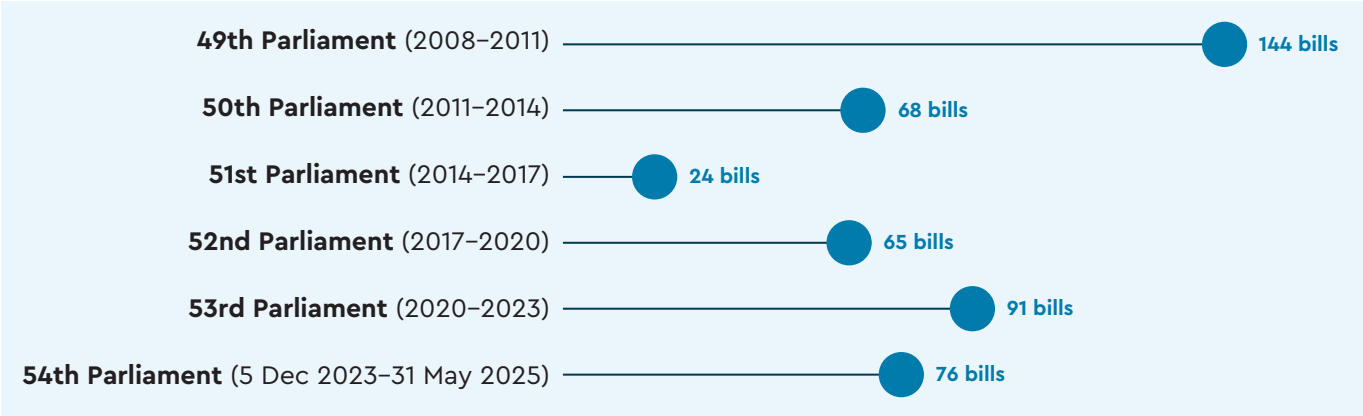

Figure 6: *Bills accorded urgency at some stage in the legislative process in the 49th, 50th, 51st, 52nd, 53rd, and 54th Parliaments*

6.8 In March 2025, the Ministry of Justice conveyed to Parliament that where governments look to progress legislation quickly, it results in trade-offs in the level of consultation and engagement the Ministry can undertake (for example, with Māori, on legislative proposals that would affect Māori if implemented).[167] However, Parliament has continued to accord urgency since those concerns were relayed (including, on multiple occasions, to the introduction and all stages of the legislative process).[168]

6.9 The Attorney-General has also raised concerns about the use of urgency. In a letter addressed to the Prime Minister and all Ministers (and copied to all Public Service Chief Executives), the Attorney-General has observed that "rushing legislation and skipping steps increase the risk that we get it wrong and the legislation is ineffective or unworkable in practice".[169] Her letter advises it is essential to follow proper processes, which work best when (among other things) select committees are used for public participation and for testing and refining the legislation.[170]

6.10 As Sir Geoffrey Palmer KC has observed:[171]

> **"The amount of urgency taken marks a departure from recent parliamentary practice and this government has set a record for the number of laws passed in the first hundred days. The number of measures enacted under urgency is excessive. One is compelled to ask what is the hurry? The answer seems to be political expediency at the expense of proper legislative process."**

167 Justice Committee *2023/24 Annual review of the Ministry of Justice* (March 2025) at 5 and 10.
168 See www.parliament.nz/en/pb/bills-and-laws/progress-of-legislation.
169 Letter from Hon Judith Collins KC (Attorney-General and Minister responsible for the Parliamentary Counsel Office and the Legislation Design and Advisory Committee) to Rt Hon Christopher Luxon and all Ministers regarding delivering effective legislation and regulatory schemes (25 March 2024).
170 Letter from Hon Judith Collins KC (Attorney-General and Minister responsible for the Parliamentary Counsel Office and the Legislation Design and Advisory Committee) to Rt Hon Christopher Luxon and all Ministers regarding delivering effective legislation and regulatory schemes (25 March 2024).
171 Sir Geoffrey Palmer KC "Lurching towards constitutional impropriety" *Newsroom* (online ed, New Zealand, 23 August 2024).

6.11 Successive governments have also, on occasion, attempted to justify the use of rushed policy and legislative processes on the basis that they had committed to making certain policy changes within certain timeframes during their election campaigns, and their policy proposals were therefore supported by a majority of voters.[172] However, for the following reasons, this argument is misconceived:

a. On election day, voters do not clearly signal their preference for any particular policy or policies but for one package of personalities and policies over another.[173]

b. Second, where a government comprises a coalition of two or more parties, it cannot be assumed that a majority of voters support or agree with a proposal (particularly if that proposal seeks to implement a minority party's campaign promise).

c. Third, following the election, the generalised pre-election policy platform is transformed by the government into detailed legislative proposals, and the "deliberative, participatory and scrutinising functions of parliamentary institutions in relation to such legislation are no less important because the underlying policy happens to have been signalled prior to the election".[174]

"The mandate you get when you assume the Government benches is the ability to promote legislation through the parliamentary process, not to subvert it."[175]

6.12 One commentator has also noted that this hurry is arbitrary. While a government may have been elected with a 'mandate' for change, it is widely understood that this does not give the incoming government "carte blanche to override democratic norms", particularly when it is rushing to accomplish certain goals by passing legislation within a self-imposed, arbitrary deadline.[176]

6.13 Aotearoa New Zealand is not alone in experiencing problems stemming from rushed lawmaking processes. In the United Kingdom, this also appears to be an issue, leading the Law Society of England and Wales and FrameWorks UK to observe that 'legislative hyperactivity' (that is, the rapid pace of legislative change) has reduced legal clarity and transparency, and weakened the rule of law and access to justice.

172 For example, the Fair Pay Agreements Act Repeal Bill 2023 (3–1) was introduced and passed through all stages under urgency in order to give effect to a commitment in the National-ACT Coalition Agreement (see *Coalition Agreement: New Zealand National Party & ACT New Zealand, 54th Parliament* at 5); the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Bill 2023 (8–1) was introduced and passed through all stages under urgency to give effect to the Government's "policy commitment" to repeal the Natural and Built Environment Act 2023 and the Spatial Planning Act 2023 (see the Explanatory Note of the Bill); similarly, the Smokefree Environments and Regulated Products Amendment Bill 2024 (22–1) was passed through all stages under urgency in order to meet a commitment in the National-NZ First Coalition Agreement (see: *Coalition Agreement: New Zealand National Party & New Zealand First, 54th Parliament* at 8). All three bills bypassed the select committee process, meaning there were no opportunities for public or select committee scrutiny of these bills.

173 Claudia Geiringer, Polly Higbee and Elizabeth McLeay *What's the Hurry? Urgency in the New Zealand Legislative Process 1987–2010* (Victoria University Press, 2011) at 146.

174 Claudia Geiringer, Polly Higbee and Elizabeth McLeay *What's the Hurry? Urgency in the New Zealand Legislative Process 1987–2010* (Victoria University Press, 2011) at 146.

175 Dean Knight, quoted in Marc Daalder "Govt smashes record for laws passed without select committee scrutiny" *Newsroom* (online ed, New Zealand, 28 January 2025).

176 Marc Daalder "Govt sets record for laws passed under urgency in first 100 days" *Newsroom* (online ed, New Zealand, March 2024).

The use of Amendment Papers as a mechanism for making significant policy changes

6.14 Amendment Papers (previously called Supplementary Order Papers) are documents used by Ministers and other members of Parliament to give notice of amendments they wish to propose to bills which have already been introduced to the House.[177] Amendment Papers are an important mechanism for correcting, improving and refining legislation before it is passed.

6.15 However, the Law Society has observed that Amendment Papers are increasingly being used to propose significant policy changes to bills.[178] This is concerning from a rule of law perspective when Amendment Papers are tabled *after* the select committee stage.[179] In such circumstances, there has been no opportunity for members of the House to raise concerns about any aspects of the Amendment Paper during the first reading debates. Unless the Amendment Paper is referred back to a select committee for consideration (as discussed at [6.30] below), this practice also precludes:

a. members of the public from making submissions to select committee on the proposed amendments; and

b. select committees from undertaking in-depth scrutiny of the proposed amendments, seeking advice from officials, calling for submissions on the Amendment Paper, and considering whether any further changes to support the amendments are needed.

6.16 Like rushed policy development and legislative processes, Amendment Papers introduced late in the legislative process have the potential to limit or prevent meaningful public consultation and scrutiny of their proposals, as well as the identification of issues relating to the proposed amendments' drafting, effectiveness or implementation, all of which can reduce the clarity and certainty of the resulting legislation and undermine the rule of law. The absence of public engagement and consultation on Amendment Papers can also reduce transparency and accountability, and erode public confidence in the legislative process.

Bill of Rights Act vetting processes

6.17 There are currently several mechanisms in place to ensure new legislation is consistent with the New Zealand Bill of Rights Act 1990 (**Bill of Rights Act**):

a. Section 7 of the Bill of Rights Act requires the Attorney-General to report to Parliament on any draft legislation that appears to be inconsistent with a protected right or freedom. These reports (**section 7 reports**) are an essential mechanism within Aotearoa New Zealand's policy development and legislative process for ensuring proposed legislation is consistent with domestic and international human rights standards.

177 "Supplementary Order Papers now called "Amendment Papers"" (12 December 2023) New Zealand Parliament (see: www.parliament.nz).
178 For example: Amendment Paper 41, which amended the Local Government (Water Services Preliminary Arrangements) Bill 2024 (52–1); and Amendment Paper 49, which amended the Education and Training Amendment Bill 2024 (66–2).
179 See, for example, Amendment Paper 51, which amended the Gangs Legislation Amendment Bill 2024 (23–2). The Amendment Paper, which introduced the new 'gang insignia prohibition order' regime was tabled after the Bill had been considered by the Justice Select Committee. Following the introduction of the Amendment Paper, the Law Society wrote to the Minister of Justice to raise concerns about the process followed, as well as the substantive content of the Amendment Paper – see: letter from David Campbell (Vice-President of the Law Society) to Hon Paul Goldsmith (Minister of Justice) regarding the Gangs Legislation Amendment Bill: Amendment Paper 51 (8 August 2024). This correspondence is available on our website: www.lawsociety.org.nz.

b. The Ministry of Justice and, in the case of bills drafted by the Ministry, the Crown Law Office, support the Attorney-General in carrying out this function by providing advice on whether bills appear to be consistent with the Bill of Rights Act. Section 7 reports and the advice provided to the Attorney-General are published on the Ministry of Justice's website.[180]

c. Section 7A of the Bill of Rights Act also requires the Attorney-General to notify Parliament of declarations made by senior courts that an enactment is inconsistent with the Act.

6.18 Despite these mechanisms to bring Bill of Rights Act issues to Parliament's attention, the Law Society has continued to observe:

a. Parliament enacting legislation despite there being a section 7 report, at times without public consultation.[181]

b. Parliament passing bills which did not receive a section 7 report, but were, in the Law Society's view, inconsistent with the Bill of Rights Act.[182]

c. Reliance on Bill of Rights Act advice which fails to correctly identify and consider the full extent to which rights which will be engaged and / or infringed by a proposed bill.[183]

6.19 The Law Society has also raised concerns with the Attorney-General about the lack of processes to ensure:[184]

a. amendments which are made to bills after the select committee stage, and give rise to Bill of Rights Act issues, are brought to Parliament's attention; and

b. members of the public are given the opportunity to submit on such amendments before they are incorporated into a bill.

6.20 These concerns were also relayed to the United Nations Human Rights Council during Aotearoa New Zealand's Fourth Universal Periodic Review.[185]

180 See www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act.
181 See, for example, the Taxation (Income Tax and Rate and other Amendments) Act 2020, which was introduced and passed within 7 days, without public consultation; the Returning Offenders (Management and Information) Amendment Act 2023, which was passed under urgency with no select committee process; and the Parole Amendment Act 2023, which was similarly passed under urgency and with no select committee process. The Gangs Act 2024 was also enacted despite there being a section 7 report, and concerns being raised during the select committee process about inconsistencies with the Bill of Rights Act.
182 See, for example, the Law Society's submissions on the Immigration (Mass Arrivals) Amendment Bill 2023 (214–1) (26 April 2023), Firearms Prohibition Orders Legislation Bill 2021 (106–1) (29 March 2022), and the Counter-Terrorism Legislation Bill 2021 (29–1) (25 June 2021); these are available on the Law Society's website: www.lawsociety.org.nz.
183 See, for example, the Law Society's submissions on the Firearms Prohibition Orders Legislation Bill 2021 (106–1) (29 March 2022), and the Corrections Amendment Bill 2023 (264–1) (10 August 2023).
184 Letter from Frazer Barton (President of the Law Society) to Hon Judith Collins KC (Attorney-General) about the Law Society's key law reform priorities (5 December 2023).
185 Law Society "Report of the New Zealand Law Society Te Kāhui Ture o Aotearoa For Aotearoa New Zealand's Universal Periodic Review 2024" (11 October 2023).

Other shortcomings within the policy and legislative process

6.21 The Law Society has also observed other shortcomings within the policy process, which appear to be driven by desires to deliver on election promises and coalition agreements within arbitrarily set timeframes:

a. Legislation continues to be passed despite there being no evidence or insufficient evidence to show the legislation will have the desired effect.[186]

b. In 2023, Cabinet agreed to suspend the requirement for officials to prepare Regulatory Impact Statements (**RISs**) for certain classes of legislation. RISs typically contain useful information about policy problems and responses, along with cost-benefit analyses of policy options.[187]

c. Significant amendments are being made to bills at the committee of the whole House stage of the legislative process (that is, after the select committee process, and after public submissions).[188]

Addressing these problems

6.22 The Law Society is well placed to identify and speak out against poor policy and legislative processes, and will continue to advocate for good legislation and improved policymaking processes. The Law Society will also continue to monitor and, where possible, raise concerns about reform proposals that do not appear to be supported by evidence, or that appear to be inconsistent with the Bill of Rights Act.

6.23 We also discuss below some other improvements that can be made to our policymaking and legislative processes.

Adhering to principles of good legislation

6.24 Claudia Geiringer, Polly Higbee and Elizabeth McLeay have identified 10 principles which are fundamental to a democratic legislative process and against which the democratic and constitutional legitimacy of urgency ought to be assessed:[189]

a. Legislatures should allow time and opportunity for informed and open policy deliberation.

b. The legislative process should allow sufficient time and opportunity for the adequate scrutiny of bills.

c. Citizens should be able to participate in the legislative process.

186 Fox Meyer and Laura Walters "Official concerns about haste and dearth of evidence in Govt's first year" *Newsroom* (online ed, New Zealand, 27 November 2024). The Law Society has also raised concerns about such proposals in submissions to select committee: see, for example, the Law Society's comments in its submission on the Gangs Legislation Amendment Bill 2024 (23–1) (5 April 2024), the Oranga Tamariki (Repeal of Section 7AA) Amendment Bill 2024 (43–1) (2 July 2024), and the Sentencing (Reinstating Three Strikes) Amendment Bill 2024 (65–1) (23 July 2024). These submissions are available on the Law Society's website: www.lawsociety.org.nz.

187 Thomas Coughlan "Government rocked by second leak in five days, ministers suspend analysis of repeal proposals" *The New Zealand Herald* (online ed, New Zealand, 8 December 2023).

188 For example, Amendment Paper 51 on the Gangs Legislation Amendment Bill 2024, which prohibits individuals from having gang insignia in their usual place of residence in certain circumstances, and gives police the power to search those residences, and Amendment Paper 216 on the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill 2023, which prohibits the courts from ordering name suppression for defendants in sexual violence cases in certain circumstances.

189 Claudia Geiringer, Polly Higbee and Elizabeth McLeay *What's the Hurry? Urgency in the New Zealand Legislative Process 1987–2010* (Victoria University Press, 2011) at 139–140.

d. Parliaments should operate in a transparent manner.

e. The House should strive to produce high quality legislation.

f. Legislation should not jeopardise fundamental constitutional rights and principles.

g. Parliaments should follow stable procedural rules.

h. Parliament should foster, not erode, respect for itself as an institution.

i. The government has a right to govern, so long as it commands a majority in the House.

j. Parliament should be able to enact legislation quickly in genuine emergency situations.

6.25 We agree the application of these principles could address some of the concerns we have discussed above. However, the identification of principles and processes alone is insufficient. In our view, bipartisan support across successive governments is needed to put these principles and processes into practice and improve policy development and legislative processes.

More meaningful consultation and engagement with stakeholders and the public

6.26 Goddard J, writing extra-judicially, has highlighted the need for public participation in the legislative process.[190] In his book, *Making Laws That Work: How Laws Fail and How We Can Do Better*, his Honour observes that the most common causes of failed laws include, among other things, failure to gather relevant information, and to ask relevant questions. In other words, there are concerning failures of analysis, rather than failures to act.[191]

"If a law is intended to protect the rights and interests of individuals, but is so slow or costly to invoke that they cannot use it to solve the problems that it purports to address, then the law is a failure from the only perspective that counts. Legal designers – and the politicians they serve – need to pay much more attention to this issue. It goes to the heart of the rule of law, and equality before the law. It is central to the integrity of the law-making process."[192]

6.27 To allow time for meaningful consultation on proposed policies and legislation, attention should be given to improving Aotearoa New Zealand's policy development and legislative processes:

a. Policy development processes should be improved (where appropriate) by building in additional time to conduct thorough cost-benefit analyses and rights assessments of law reform proposals (including in relation to legislative proposals which give effect to election campaign promises or commitments in coalition agreements). Ideally, the policy development process should allow public consultation on what is being proposed prior to drafting and introducing legislation. At the very least, it should:

   i. enable targeted engagement with experts and groups who are likely to be affected by the proposed policy;

190 David Goddard *Making Laws That Work: How Laws Fail and How We Can Do Better* (1st ed, Bloomsbury Publishing, 2022).
191 David Goddard *Making Laws That Work: How Laws Fail and How We Can Do Better* (1st ed, Bloomsbury Publishing, 2022) at 149.
192 David Goddard *Making Laws That Work: How Laws Fail and How We Can Do Better* (1st ed, Bloomsbury Publishing, 2022) at 128.

ii. give submitters adequate time to engage with the policy proposals and provide feedback;

iii. allow modifications to the law reform proposal (including significant policy changes) to address legitimate concerns raised during the consultation process; and

iv. require the publication of information about feedback received during the consultation process, as well as policy changes which respond to concerns raised by submitters.

b. In some instances, analytical work of this kind may already have been undertaken: for example, by Te Aka Matua o te Ture | Law Commission.[193] Where that is the case, government departments should refer to any reports produced by the Commission, and take into account any evidence, and legal and policy analyses contained in those reports when developing policy and legislative proposals.

c. We note there are a number of local resources which discuss the guiding principles and benefits of community engagement and offer insights into undertaking genuine and meaningful engagement.[194] We do not repeat those insights here, but urge Ministers and officials to meet the expectations outlined in such guidance documents where possible, and to attempt to engage with stakeholders and the wider public in a meaningful way.

d. Officials should ensure key documents relating to government bills (such as any RISs, Departmental Disclosure Statements (**DDSs**), rights analyses and Cabinet papers) are publicly available at the time the bill is introduced to the House.

e. Policy implementation timeframes should account for all bills being referred to a full six-month select committee process,[195] unless the circumstances justify a shorter period (for example, where legislation is needed to enable an emergency response).

f. The use of urgency should otherwise be rare, and justified by a genuine need for haste in relation to the particular measure.[196] It should not be used as a tool for meeting arbitrary deadlines or operational deadlines which are known in advance, or for enhancing the 'performance' of a government.[197] The Standing Orders Committee could look to revise the Standing Orders to expressly limit the use of urgency to these narrow circumstances.

g. Select committees should have the ability to invite and consider public submissions on bills, and, where possible, give submitters adequate time to provide feedback.

h. The timeframes given to select committees to report back to the House must enable the select committee to consider all of the submissions it receives in relation to a bill. Where a large volume of submissions is anticipated, the reporting timeframes should be adjusted accordingly to facilitate consideration of all submissions.[198]

193 Te Aka Matua o te Ture | Law Commission carries out independent reviews of specific areas of the law (which are referred to the Commission by the Minister of Justice). The Commission undertakes both targeted and public consultation to inform its reviews, and makes recommendations on whether and how to reform the law. The Commission's website contains more information about its role, as well as copies of previously published reports: www.lawcom.govt.nz.

194 For example, Department of the Prime Minister and Cabinet (**DPMC**) *Cabinet Manual 2023* (2023); DPMC *CabGuide – Writing a paper* (issued 5 June 2017, updated 2 October 2024); DPMC *Policy Methods Toolbox*; The Treasury New Zealand *Guidance Note: Effective Consultation for Impact Analysis* (December 2019); and Te Tari Taiwhenua | Department of Internal Affairs *Online Engagement Guidance* (3 September 2015).

195 Standing Orders of the House of Representatives 2023, SO 303(1).

196 Claudia Geiringer, Polly Higbee and Elizabeth McLeay *What's the Hurry? Urgency in the New Zealand Legislative Process 1987–2010* (Victoria University Press, 2011) at 139–140.

197 For example, the media has recently reported that Prime Minister Christopher Luxon "has been outspoken about the speed at which his coalition Government has moved through its policy and legislative agenda in the last year", and noted: "While there's a lot more work to do, I'm pleased with the progress we've made in just one year to deliver the outcomes Kiwis deserve." See: Fox Meyer and Laura Walters "Official concerns about haste and dearth of evidence in Govt's first year" *Newsroom* (online ed, New Zealand, 27 November 2024).

198 Noting, for example, that the media has recently reported that Justice Select Committee members would not have read "tens of thousands of submissions" on the Principles of the Treaty of Waitangi Bill 2025 (94–1) ahead of the Committee reporting back to the House – see: Laura Walters "Treaty principles report will exclude thousands of public submissions" *Newsroom* (online ed, New Zealand, 28 March 2025).

i. Select committees and departments should not rely solely on artificial intelligence (or other software or algorithms) to analyse submissions they receive during a consultation process, as this can remove the incentive for submitters to share their views and feel heard by select committees and officials.[199]

j. If significant policy amendments are proposed to a bill after the select committee stage, the bill should be referred back to the select committee so submitters can comment on the amendments.

6.28 The Law Society understands the Attorney-General has directed the Parliamentary Counsel Office to monitor potential instances of rushed lawmaking, urgency, and truncated select committee periods, and directed both the Parliamentary Counsel Office and the Legislation Design and Advisory Committee to escalate matters where they have "significant concerns that poor process will result in poor legislative outcomes for the Government".[200] However, it is currently unclear what measures will be taken to address concerns which are escalated to the Attorney-General. Further clarity on measures for dealing with policy and legislative processes which fall short of best practice could be helpful.

Consultation on Amendment Papers

6.29 Amendment Papers are not problematic in themselves and remain an important mechanism for making necessary changes to bills prior to their enactment. Amendment Papers can in fact *strengthen* the rule of law when used, for example, to improve the drafting of a clause in a bill, or to correct an oversight in order to improve the overall clarity and certainty of the legislation.

6.30 Rule of law concerns only arise where Amendment Papers are used to make significant policy changes to a bill without any opportunities for meaningful public consultation or scrutiny.[201] Where this occurs while a bill remains before a select committee, the select committee should reopen for public submissions on the Amendment Paper.[202] This would then enable the select committee to invite submissions on the contents of the Amendment Paper and report back to the House about any concerns, or other necessary amendments. If the select committee recommends any significant changes to the provisions in the Amendment Paper, the bill could then be recommitted to a committee of the whole House for debate.

199 We note the media recently reported that the Ministry for Regulation did not read the majority of the 22,821 submissions it received on a proposed Regulatory Standards Bill before taking proposals on next steps to Cabinet – see: Marc Daalder "Thousands of Regulatory Standards Bill submissions not read by ministry" *Newsroom* (online ed, New Zealand, 19 May 2025).

200 Letter from Hon Judith Collins KC (Attorney-General and Minister responsible for the Parliamentary Counsel Office and the Legislation Design and Advisory Committee) to Rt Hon Christopher Luxon and all Ministers regarding delivering effective legislation and regulatory schemes (25 March 2024).

201 Noting Parliamentary practice already dictates that amendments should not change bills in significant and unexpected ways: see David McGee *Parliamentary Practice in New Zealand* (5th ed, Clerk of the House of Representatives, Wellington, 2023) at [39.3.1].

202 This was the case with Amendment Papers 215 and 216, which sought to amend the Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill 2023 (274–1), and were published while the Bill remained before the Justice Select Committee. The Law Society was pleased to see the Select Committee reopen public submissions on the Amendment Papers, and consider those submissions in its report to the House (see Victims of Sexual Violence (Strengthening Legal Protections) Legislation Bill 2023 (274–2).

Post-legislative scrutiny

> **"One of the roles of parliament is to create laws that meet the needs of the country's citizens. … However, it is also a parliament's role to evaluate whether the laws it has passed achieve their intended outcome(s). Post-Legislative Scrutiny refers to the moment in which a parliament applies itself to this particular question: whether the laws of a country are producing expected outcomes, and if not, why not. … Despite its importance for the respect of the rule of law, it is not uncommon that the process of reviewing the implementation of legislation be overlooked."**[203]

6.31 Post-legislative scrutiny involves scrutiny of laws that have been passed by Parliament (and, in some instances, have already come into force), in order to understand whether a particular piece of legislation is meeting its stated policy objectives, whether it has had any significant unexpected side-effects, and whether its implementation has caused unfairness or disadvantage to any sector of the community. Such scrutiny could be undertaken, for example, by select committees, government departments responsible for administering legislation, or independent bodies such as Te Aka Matua o te Ture | Law Commission, and completed within a certain period after legislation is passed.

6.32 Post-legislative scrutiny can help strengthen the rule of law by:

a. enabling oversight of Executive action (and inaction), and the extent to which the Executive is managing the effective implementation of its policies and abiding by its statutory obligations;[203]

b. discouraging the arbitrary or unlawful exercise of Executive powers; and

c. assisting in identifying amendments which would improve the accessibility, clarity, and certainty of the law.

6.33 Aotearoa New Zealand's Parliamentary processes only provide for very limited post-legislative scrutiny of legislation, and in-depth reviews of legislation are typically carried out when policy reforms are being contemplated, or because of a requirement specified in legislation.[204] Post-legislative scrutiny by Parliament occurs only on an ad-hoc basis, and, if it does occur, it is often as a result of legislated review requirements or in the context of broader policy reviews.

6.34 As a result, there is little systematic monitoring of the implementation of legislation, or evaluation of whether laws have achieved their intended outcome and whether they remain fit for purpose. While the Executive has taken some steps to focus on its role of departmental stewardship and to ensure there are systems in place for departments to monitor and review their legislation,[205] there remains room for improvement.

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203 Franklin De Vrieze and Victoria Hasson *Post-Legislative Scrutiny: Comparative study of practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance* (Westminster Foundation for Democracy, 2017) at 11.

204 See, for example, s 235 of the Intelligence and Security Act 2017, and s 448B of the Oranga Tamariki Act 1989, which provide for periodic reviews of those statutes.

205 For example, public service principles now require "stewardship" by government departments, including promoting stewardship of legislation administered by agencies: see Public Service Act 2020, s 12(1)(e)(v).

6.35 This is in contrast to the approach taken by the UK Parliament, where a good portion of select committee activity involves post-legislative scrutiny supplemented by a requirement that the government publish a memorandum on the implementation of legislation 3–5 years after Royal assent.[206] One report found that 23 post-legislative scrutiny inquiries were undertaken by the UK Parliament between 2008 and 2019, showing that post-legislative scrutiny is being undertaken, and is possible, even when legislatures have capacity limitations.[207]

6.36 With Aotearoa New Zealand's unicameral system and unwritten constitutional arrangements, there are strong reasons for suggesting that, as a minimum, legislation passed under urgency should be subject to post-legislative scrutiny within a specified timeframe.

6.37 There are mechanisms or models within the current Standing Orders which could be developed further to carry out Parliamentary post-legislative scrutiny of the legislation the House has passed:

a. The Standing Orders Committee should develop a list of triggers or criteria for carrying out post-legislative scrutiny at the right time (which includes legislation that is passed under urgency).[208] On this point, it is worth noting that the Canadian Standing Committee on the Scrutiny of Regulations has established triggers for reviewing secondary legislation, and one trigger is that the regulation or statutory instrument "appears for any reason to infringe the rule of law".[209]

b. The Standing Orders Committee should also collate a list of questions to guide select committees in carrying out effective post-legislative scrutiny.[210]

c. The Standing Orders could also be amended to set out the key objectives of post-legislative scrutiny.[211]

d. The approach taken by select committees in conducting post-legislative scrutiny could then be similar to the role given to the Regulations Review Committee in examining secondary legislation against the grounds set out in the Standing Orders.[212]

e. Select committees could develop and publish a programme for post-legislative scrutiny to be undertaken during each Parliamentary session.

f. Select committees could also ask departments to identify possible pieces of legislation for post-legislative scrutiny (perhaps as part of any reviews on the activities and performance of government agencies). Select committees could then initiate post-legislative scrutiny inquiries, call for public submissions, and report to the House on their findings, with a requirement for the Executive to respond to a committee's report within a specified timeframe.

206 Franklin De Vrieze and Victoria Hasson *Post-Legislative Scrutiny: Comparative study of practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance* (Westminster Foundation for Democracy, 2017) at 7 and 17.
207 Tom Caygill *Post-Legislative Scrutiny in the UK Parliament, The Post-Legislative Scrutiny Series, 1* (Nottingham Trent University, November 2021) at 7.
208 Franklin De Vrieze *Post-Legislative Scrutiny: Guide for Parliaments* (Westminster Foundation for Democracy, 2017) at 17–18.
209 Franklin De Vrieze and Victoria Hasson *Post-Legislative Scrutiny: Comparative study of practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance* (Westminster Foundation for Democracy, 2017) at 41.
210 For further discussion about appropriate triggers, as well as questions which could be addressed during post-legislative scrutiny, see the Law Society's submission on the *Review of Standing Orders 2023* (16 September 2022).
211 See the Law Society's submission on the *Review of Standing Orders 2023* (16 September 2022) for further discussion about potential objectives.
212 SO 327(2).

6.38 We acknowledge that a systematic programme of post-legislative scrutiny would inevitably increase the workloads of select committees, and existing committees may find it difficult to prioritise post-legislative scrutiny. An alternative option would be to establish a separate specialist committee akin to the Regulations Review Committee, which would be responsible for conducting post-legislative scrutiny. A specialist post-legislative scrutiny committee could take a different focus to the scrutiny of bills and avoid post-legislative scrutiny being used to relitigate policy arguments for or against the legislation.

6.39 We note government departments also have stewardship obligations under section 12 of the Public Service Act 2020. This requires departments to exercise a proactive duty of care for any legislation they administer (for example, by proactively monitoring, reviewing and updating legislation to ensure they are being implemented as intended, and remain fit for purpose).[213] Post-legislative scrutiny could therefore be undertaken as part of this stewardship exercise. Any recommendations (from either a select committee or government department) to amend the legislation should be informed by expert and public feedback about the operation and impacts of the legislation.

Improvements to the Bill of Rights Act vetting process

6.40 Officials who prepare advice on whether a bill appears to be consistent with the Bill of Rights Act must ensure all relevant Bill of Rights Act issues engaged by a proposed bill are identified and properly considered in advice to the Attorney-General (regardless of whether any limits on rights or freedoms can be demonstrably justified in a free and democratic society).

6.41 Advice provided to the Attorney-General should also be made publicly available at the time the bill is introduced to the House so relevant rights issues can be debated and properly canvassed during the first reading debates and the select committee process.

6.42 Officials should also consider the potential Bill of Rights Act implications of law reform proposals earlier in the policy development process. Where possible, this should occur before Ministerial and Cabinet approval is sought on key policy matters. While most bills are eventually scrutinised for consistency with the Bill of Rights Act, that scrutiny too often occurs after key policy decisions have been made and Cabinet approval has been sought. Our observations at [6.18] suggest there is little appetite for changing key policy settings once a law reform proposal has passed that stage in the policy development process. Earlier identification and examination of Bill of Rights Act issues (for example, involving targeted engagement with experts) could help influence the overall design of policy before key decisions are made, and ensure reform proposals are consistent with the Bill of Rights Act.

6.43 Changes beyond operational improvements may also be needed to strengthen the overall Bill of Rights Act vetting process. For example:

a. The Standing Orders could be amended to provide for a process for Parliament to receive annual government reports on the number and the types of inconsistencies with the Bill of Rights Act, and the effect of those inconsistencies (which could then be considered as part of a post-legislative scrutiny process).[214]

213 See Te Kawa Mataaho | Public Service Commission's website for more information about this stewardship obligation: www.publicservice.govt.nz.
214 This was suggested to the Standing Orders Select Committee in the Law Society's submission on the Review of Standing Orders 2023 (16 September 2022). This suggestion was not discussed in the Standing Orders Committee's report (see: Standing Orders Committee *Review of Standing Orders 2023* (August 2023)).

b. The Standing Orders could also provide for a mechanism for reviewing declarations of inconsistency by a Parliamentary committee (such as the Justice Select Committee) once a Parliamentary term.

c. Aotearoa New Zealand could also benefit from having a bespoke Parliamentary select committee which is responsible for scrutinising bills at the select committee stage for consistency with the Bill of Rights Act. The committee's tasks could include reviewing section 7 reports, Bill of Rights Act advice prepared by officials, and annual reports proposed at (a) above, and recommending amendments to bills to address concerns. The committee could also undertake post-legislative scrutiny of legislation to ensure it is consistent with the Bill of Rights Act. Such a committee could (for example) be modelled on the Joint Committee on Human Rights in the United Kingdom Parliament.[215]

215 The Joint Committee on Human Rights consists of members appointed from both the House of Commons and the House of Lords, and examines matters relating to human rights within the United Kingdom. The Committee's work includes scrutinising every Government bill for its compatibility with human rights, and consideration of whether the bill presents an opportunity to enhance human rights in the United Kingdom – see: committees.parliament.uk/committee/93/human-rights-joint-committee/role.

Appendix 2

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Te Kāhui Ture o Aotearoa

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16 September 2022

Rt Hon Trevor Mallard
Chair, Standing Orders Committee

By email: standing.orders@parliament.govt.nz

Re: Review of Standing Orders 2023

1 Introduction

1.1 The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to make a submission to the Standing Orders Committee on the Review of Standing Orders 2023 (**Review**).

1.2 This submission has been prepared with input from the Law Society's Public and Administrative Law Committee,[1] and recommends:

(a) Having systems and processes in the Standing Orders which empower Parliament to undertake post-legislative scrutiny of legislation, and in particular, of bills that have been passed under urgency;

(b) Amending the Standing Orders to set out the key objectives of post-legislative scrutiny, and to provide for 'trigger points' for Parliament to undertake post-legislative scrutiny;

(c) Developing a set of questions to guide Parliament in carrying out effective post-legislative scrutiny;

(d) Empowering Parliament to develop and publish a programme for post-legislative scrutiny to be undertaken during each parliamentary session;

(e) Extending the current Sessional orders which provide for procedures to consider and respond to declarations of inconsistency, into the revised Standing Orders;

(f) Amending the Standing Orders to provide for additional measures to monitor inconsistencies with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;

(g) Publishing authoritative evidence of decisions to adjust the House's rules by making Sessional orders, alongside the list of current Sessional orders; and

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1 More information regarding this Committee is available on the Law Society's website: https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/public-and-administrative-law-committee/.

(h) Making various amendments to Appendix C of the Standing Orders to improve the preliminary procedures for local bills.

1.3 The Law Society wishes to be heard in relation to this submission.

2 The use of urgency and the need for post-legislative scrutiny

2.1 The New Zealand parliamentary system has many admirable features in its scrutiny of bills, including:

(a) the referral of most bills for scrutiny by subject select committees,

(b) the ability of all members of the House to promote changes at the committee of the whole House stage, and

(c) the ability of all members of the House to debate alternatives, and present opportunities to strengthen legislation when it is being made.

2.2 These measures are important for a unicameral system and provide an important avenue for public engagement in the legislative process.

2.3 However, the Law Society has recently observed an increasing number of bills being passed under urgency, and without the valuable in-depth scrutiny by the public and by select committees.[2] Data published on the Parliament website shows 24 bills were accorded urgency during the 51st Parliament. In contrast, 78 bills were accorded urgency during the 52nd Parliament. As at 8 September 2022, 28 bills have been accorded urgency during the 53rd Parliament.

2.4 While urgency is, in certain circumstances, necessary and justified, we are concerned about the increasing use of urgency and the very limited consultation timeframes for scrutinising bills and seeking public input.

2.5 We also note that bills which are passed under urgency are sometimes the subject of informal consultations with select organisations and stakeholders (including, on some occasions, the Law Society). This practice can be problematic, as informal consultations are not transparent or consistent with open democratic processes, and do not allow the public to engage directly with Parliament, see who submitted on each bill, and know what was said in relation to each bill. In addition, informal consultation processes are often undertaken on a confidential basis, and within a very short timeframe. As a result, submitters cannot engage effectively with officials or Ministers about their views, or have their written submissions published on the Parliament website.

2.6 The Law Society supports legislative procedures which promote democracy and transparency by allowing select committees, and the public, to give proper consideration to legislation passed by the House. We therefore recommend amending the Standing Orders to provide for processes which empower Parliament to undertake post-legislative scrutiny of legislation – including, in particular, bills that have been passed under urgency – as discussed below.

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[2] This data is available here: https://www.parliament.nz/en/pb/bills-and-laws/progress-of-legislation/.

The benefits of post-legislative scrutiny

2.7 In recent years, there have been a number of international studies into the benefits of post-legislative scrutiny. The UK Law Commission has given four main reasons for having more systematic post-legislative scrutiny:[3]

(a) to see whether legislation is working out in practice, as intended;

(b) to contribute to better regulation (including secondary legislation);

(c) to improve the focus on implementation and delivery of policy aims; and

(d) to identify and disseminate good practice so that lessons may be drawn from the successes and failures revealed by this scrutiny work.

2.8 In addition, such scrutiny allows for the identification of potential adverse effects of new legislation on fundamental rights. A comparative study of post-legislative scrutiny, carried out by the Westminster Foundation for Democracy, concluded that:[4]

> Legislative improvement remains, for the most part, a by-product of a parliament's legislative process. By reviewing government action or inaction, and by amending legislation of various kinds, a parliament takes measure of the extent to which the laws of a country are fit for purpose, as well as the extent to which a government is managing the effective implementation of its policies and abiding by statutory obligations. However, this link is not always formally recognised within the parliamentary system, and relevant information is not always captured, directed and responded to on that basis.
>
> The act of carrying out Post-Legislative Scrutiny is therefore justified as a stand-alone activity that enables a parliament to self-monitor and evaluate, as well as reflect on the merits of its own democratic output and internal technical ability.

The need for post-legislative scrutiny in New Zealand

2.9 New Zealand's parliamentary processes only provide for very limited post-legislative scrutiny of legislation. In-depth reviews of legislation are generally carried out by Te Aka Matua o te Ture | Law Commission, or because of a requirement specified in legislation. As a result, there is little systematic monitoring of the implementation of legislation, and evaluation as to whether laws have achieved their intended outcome, and whether they remain fit for purpose. This has led to the Productivity Commission describing New Zealand's approach to assessing the effects of legislation as being "crisis-driven", rather than being a proactive and planned assessment, with a "set and forget" approach to regulation.

2.10 Regulatory complexity, out-of-date laws and a lack of regulation review have played a part in driving a need to find legislative design solutions. In 2014, the Productivity Commission found that nearly two-thirds of public sector chief executives considered that agencies with

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[3] Law Commission (UK) *Post-Legislative Scrutiny* No. 302 (2006) at [2.24]. A copy of this report is available here: https://s3-eu-west-2.amazonaws.com/lawcom-prod-storage-11jsxou24uy7q/uploads/2015/03/lc302_Post-legislative_Scrutiny.pdf.

[4] Franklin De Vrieze and Victoria Hasson *Post-Legislative Scrutiny: Comparative study of practices of Post-Legislative Scrutiny in selected parliaments and the rationale for its place in democracy assistance* (Westminster Foundation for Democracy, 2017) at page 11. A copy of this Paper is available here: https://www.wfd.org/what-we-do/resources/comparative-study-post-legislative-scrutiny.

regulatory functions often work with legislation that is outdated or no longer fit for purpose.[5] The Executive has since taken steps to focus on the role of departmental stewardship and to ensure there are systems in place for departments to monitor and review their legislation. For example, public service principles now require "stewardship" by Government departments, including promoting stewardship of legislation administered by agencies.[6]

2.11 While these measures have, to some extent, improved post-legislative monitoring of legislation, the Law Society remains of the view that Parliament must take a more active role in evaluating whether the laws it has passed achieve their intended outcomes:[7]

(a) to ensure the requirements of democratic governance and the need to implement legislation in accordance with the principles of legality and legal certainty, are being met;

(b) to enable the adverse effects of new legislation to be apprehended easily and expeditiously;

(c) to support a consolidated system of appraisal for assessing how effective a law is at regulating and responding to problems and events; and

(d) to support improvements in legislative quality by learning from experience both in terms of what works and what does not, and in terms of the relationship between objectives and outcomes.

2.12 Under New Zealand parliamentary procedure, legislative scrutiny could be approached in a manner similar to how the House approaches financial scrutiny, by considering the whole 'financial cycle'. This 'financial cycle' comprises the Budget debate, select committee scrutiny of the Estimates and proposed spending in the Budget, with the House then debating and passing the Appropriation Bill. Select committees then conduct financial reviews which culminate in the House holding an annual review debate to provide oversight of how the budgeted appropriations have been spent.

2.13 If the current process of legislative scrutiny is compared with current financial oversight procedures, it is apparent that any review by Parliament of the legislation it has passed occurs only on an ad-hoc basis, and excludes the post-legislative scrutiny aspects of the 'cycle'. If post-legislative scrutiny occurs at all, it is as a result of legislated review requirements or in the context of broader policy reviews. The Law Society therefore suggests amending the Standing Orders to provide for more robust scrutiny processes, as discussed below.

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5 New Zealand Productivity Commission *Productivity Commission Survey: Regulator chief executives' perceptions of regulatory regimes* (March 2014) at page 6. A copy of that report is available here: https://www.productivity.govt.nz/assets/Documents/52f55192fd/Regulator-chief-executives-perceptions-of-regulatory-regimes.pdf.

6 Public Service Act 2020, s 12(1)(e)(v).

7 Above n 4, at page 11.

Options for post-legislative scrutiny by the House of Representatives

2.14 New Zealand's subject select committees have a wide mandate to initiate inquiries and briefings, and report to the House on other matters related to their subject areas.[8] In addition, the Regulations Review Committee (**RRC**) reviews secondary legislation and assesses it against criteria set out in the Standing Orders.[9] The RRC carries out a specific role of post-legislative scrutiny of legislation made by the Executive and, currently, a significant role in reviewing COVID-19 orders made under the COVID-19 Public Health Response Act 2020 (which require a positive resolution of the House in order to continue in effect).[10]

2.15 The Law Society submits there are mechanisms or models within the current Standing Orders which could be developed further to carry out parliamentary post-legislative scrutiny of the legislation the House has passed.

2.16 Select committees carry out in-depth scrutiny of bills which, in most cases, are systematically referred to each committee by the House. However, committees then have very little involvement in formal post-legislative scrutiny or in initiating their own inquiries into whether, or how, the legislation is working in practice. This is in contrast to the approach taken by the UK Parliament where a good portion of select committee activity involves post-legislative scrutiny work, supplemented by a requirement that the Government publish a memorandum on the implementation of legislation 3-5 years after Royal assent.[11] A recent report found that 23 post-legislative scrutiny inquiries were undertaken by the UK Parliament between 2008 and 2019, and concludes that post-legislative scrutiny is being undertaken, and is possible, even when legislatures have capacity limitations.[12]

2.17 With the New Zealand unicameral system and unwritten constitutional arrangements, there are strong reasons for suggesting that legislation passed under urgency should be subject to select committee scrutiny within a specified timeframe (for example, 1-2 years after commencement, which then gives select committees the opportunity to assess how the legislation has been applied in that time, and to determine whether it remains fit for purpose).

2.18 International research suggests Parliaments should develop their own 'trigger points' for carrying out post-legislative scrutiny at the right time.[13] The Law Society agrees with this assessment, and recommends that the Standing Orders Committee develop a set of trigger

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8 Standing Orders of the House of Representatives 2020, SO 190 and 191.

9 SO 326 and 327.

10 COVID-19 Public Health Response Act 2020, s 16.

11 Above n 4, at pages 7 and 17.

12 Dr Tom Caygill *Post-Legislative Scrutiny in the UK Parliament, The Post-Legislative Scrutiny Series, 1* (Nottingham Trent University, November 2021) at page 7. A copy of that report is available here: https://www.wfd.org/sites/default/files/2021-12/2021-10-18-PLS-in-the-UK-Parliament-Dr-Thomas-Caygill-FINAL.pdf.

13 Franklin De Vrieze *Post-Legislative Scrutiny: Guide for Parliaments* (Westminster Foundation for Democracy, 2017) at pages 17-18, available here: https://www.wfd.org/what-we-do/resources/guide-post-legislative-scrutiny; Tom Caygill *A Tale of Two Houses? Post-Legislative Scrutiny in the UK Parliament* (European Journal of Law Reform, 2019) at pages 92-94, available here: https://www.elevenjournals.com/tijdschrift/ejlr/2019/2/EJLR_1387-2370_2019_021_002_002.pdf.

points for select committees to carry out post-legislative scrutiny. These trigger points should be set out in the Standing Orders, and could include:[14]

(a) legislation that is passed under urgency;

(b) representations made to a parliamentary committee, or through a public petition, that a piece of legislation needs to be reviewed due to a particular policy impact;

(c) comments in a judicial decision or an inquiry that the legislation should be reviewed; and

(d) legislation which contains a sunset clause, or a clause which requires a review by Parliament.

2.19 Researchers have also identified some typical questions which could be addressed during such post-legislative evaluation and which consider, for example, whether:[15]

(a) the original objectives of the law been achieved in quality, quantity and time, when measured against the baseline of what would have happened without the intervention of that law;

(b) the law and how it has been applied is well-suited to meeting the desired objectives;

(c) there have been any significant unexpected side effects; and

(d) implementation has led to any unfairness or disadvantage to any sector of the community.

2.20 The Law Society considers it would be helpful for the Standing Orders Committee to develop a similar set of model questions to guide select committees in carrying out effective post-legislative scrutiny.

2.21 Post-legislative scrutiny also presents an opportunity for Parliament to look at potential cross-cutting impacts that Parliament has decided to treat as a priority (including impacts on human rights, gender, regulatory requirements and the environment). The Standing Orders could therefore provide for processes for select committees to identify and prioritise appropriate cross-cutting topics and then conduct reviews of relevant related-subject legislation.

2.22 We also recommend making further changes to the Standing Orders to set out the key objectives of post-legislative scrutiny, to assist the House and the public in assessing whether the policies of the legislation have been implemented, and whether the legislation is fit for purpose. The approach taken by select committees in conducting post-legislative scrutiny could then be similar to the role given to the RRC in examining secondary legislation against the grounds set out in the Standing Orders.[16]

2.23 The key objectives could potentially include understanding:

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14 See Franklin De Vrieze *Post-Legislative Scrutiny: Guide for Parliaments,* above n 13, for a full list of possible trigger points.

15 See, for example, Franklin De Vrieze *Post-Legislative Scrutiny: Guide for Parliaments,* above n 13 at page 13 (Box 1), which contains a list of typical questions addressed in ex-post facto evaluation of legislation.

16 SO 327(2).

(a) the impact (legal, political, social and economic) of the legislation;

(b) whether the primary and secondary legislation are fully implemented in the most efficient manner;

(c) whether the policy objectives of the law have been met;

(d) whether the expected effects, costs and benefits were correctly anticipated;

(e) whether the law has any unintended effects (for example, economic or social impacts);

(f) any difficulties in the implementation process;

(g) if the law is well known by the stakeholders and beneficiaries;

(h) if the law has been challenged in court;

(i) if the law has impact on inequalities; and

(j) if the law is still necessary.

2.24 Select committees could also develop and publish a programme for post-legislative scrutiny to be undertaken during each parliamentary session. Select committees could also ask departments to identify possible pieces of legislation for post-legislative scrutiny (perhaps as part of any reviews on the activities and performance of government agencies). Select committees could then initiate post-legislative scrutiny inquiries, call for public submissions, and report to the House on their findings, with a requirement for the Executive to respond to a committee's report within a specified timeframe (for example, 60 days).

2.25 We acknowledge that a systematic programme of post-legislative scrutiny would inevitably increase the workloads of select committees, and existing committees may find it difficult to prioritise post-legislative scrutiny. Therefore, an alternative option would be to establish a separate specialist committee, akin to the RRC, which would be responsible for conducting post-legislative scrutiny. A specialist post-legislative scrutiny committee could take a different focus to the scrutiny of bills and avoid post-legislative scrutiny being used to relitigate policy arguments for or against the legislation.

2.26 It could be argued post-legislative scrutiny can be carried out by the House and existing select committees without amending the Standing Orders. However, we note that to date the New Zealand Parliament has carried out little post-legislative scrutiny or systematic monitoring of the implementation and operation of legislation. Such scrutiny will not happen automatically, and is unlikely to take place in the absence of a clear framework, trigger points and objectives in the Standing Orders. Against this background, we strongly recommend amending the Standing Orders as suggested above.

3 Process for considering and responding to declarations of inconsistency

3.1 We note the recent amendments to the New Zealand Bill of Rights Act 1990 (**NZBORA**),[17] and the Sessional orders made in accordance with those amendments, and recommend

[17] The NZBORA was amended by the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Act 2022, which commenced on 30 August 2022, and requires the House to consider, and, if they think fit, respond to, declarations of inconsistency made under the NZBORA and the HRA.

extending these Sessional orders into the revised Standing Orders. However, we note the procedures set out in the Sessional orders are yet to be used and will require some assessment as to their effectiveness if they are to be incorporated into the Standing Orders.

3.2 We also note these Sessional orders are not as readily accessible on the Parliament website as the Standing Orders. The 'Sessional orders' page on the Parliament website only provides a list of current Sessional orders,[18] and does not include any authoritative evidence of decisions to adjust the House's rules.[19] We recommend publishing authoritative evidence of such decisions alongside the list of current Sessional orders (or providing links to each relevant decision) to improve accessibility.

3.3 We also recommend amending the Standing Orders to provide for the following additional measures to monitor inconsistencies with the NZBORA and the Human Rights Act 1993 (**HRA**):

(a) a process for Parliament to receive annual reports by Government on the number and the types of inconsistencies with the NZBORA or the HRA, and the effect of these inconsistencies (which could then be considered as part of a post-legislative scrutiny process); and

(b) a review of any reporting on declarations of inconsistency by a parliamentary committee (such as the Justice Select Committee) once a parliamentary term.

4 Preliminary procedures for local bills

4.1 Appendix C of the Standing Orders sets out the preliminary procedures for local bills and private bills. The Law Society recommends the following changes to Appendix C to improve the preliminary procedures for local bills:

(a) Clause 3(1)(b)(ii) requires a notice for a local bill to be published "in one or more other newspapers that have at least an equivalent circulation in that locality or region or district to the daily newspapers circulating in that region or district". Members of the profession have observed that promoters of local bills have difficulty in determining circulation rates (which may be commercially sensitive) and identifying the areas that come within the meaning of "locality". We therefore suggest amending clause 3 of Appendix C to provide that promoters (or their agents or solicitors):

(i) are only required to publish notices relating to local bills on the local authority's website for a period of at least two weeks (provided the local authority has, within the previous 12 months, engaged in the special consultative procedure provided for in the Local Government Act 2002 in respect of the subject matter of the Bill);[20] and

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18 The list of current Sessional orders can be found here: https://www.parliament.nz/en/pb/parliamentary-rules/sessional-orders/.

19 Above n 18. The Parliament website notes that the authoritative record in each case is either the *Journals of the House* or the relevant determination of the Business Committee.

20 Local Government Act 2002, s 83.

(ii) could also be required to disclose what other publication has been done, to assist the public.

(b) Clause 8 requires the copy of the bill that is open for public inspection to be certified by the promoter, or the promoter's solicitor, agent or chief executive. Clause 8(2)(b) specifically provides that each certificate must be written directly on the copy of the bill and may not be separate from it. This requirement is unnecessary and archaic, and a separate certificate should suffice. We therefore recommend amending clause 8(2)(b) accordingly.

(c) Clause 7 requires a copy of a local bill to be deposited in a public library or a service centre, and published on a website maintained by (or on behalf of) the promoter for at least 15 working days. Promoters may not be able to comply with these requirements where COVID-19 or other restrictions prevent access to public libraries and service centres, or where website/internet outages occur. The Law Society therefore proposes amending Appendix C:

(i) to give the Clerk general discretion, on request of a promoter, to waive in advance any part of Appendix C, if satisfied the waiver, together with any conditions imposed by the Clerk, will achieve a materially similar effect to Appendix C, and is appropriate in the circumstances; and

(ii) to empower the Clerk to endorse a local bill as either *"Standing Orders complied with"* (as currently required by clause 15(2)(a) of Appendix C), or as *"Standing Orders complied with, except in matters which I consider to be immaterial, having regard to the purpose of Appendix C"*.

5 Next steps

5.1 The Law Society is grateful for the opportunity to make a submission on this Review, and looks forward to appearing before the Standing Orders Committee to speak to this submission.

Nāku noa, nā

David Campbell
Vice-President