SUBMISSION BY THE HUMAN RIGHTS COMMISSION

TO THE REVIEW OF THE STANDING ORDERS

STRENGTHENING PARLIAMENTARY DEMOCRACY

To the Standing Orders Committee

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1. Introduction

1.1 The Human Rights Commission is issuing this discussion paper aimed at strengthening representative democracy and the right of citizens to participate in parliamentary processes. It notes that the United Nations in its recent Guidance Note on Democracy produced by the Secretary-General states that democracy is a dynamic social and political system whose ideal functioning is never "achieved"[1].

Democratization, furthermore, is neither linear nor irreversible and thus both state institutions and citizens must monitor and maintain oversight of this process. Accordingly, all countries, as well as the international community itself, could benefit from continued strengthening of, and support to, their democratic processes.[2]

1.2 In the past five years there has been increasing concern about fundamental human rights issues such as the lack of public participation in submission processes and diminishing collective deliberation about fundamental reforms, about rushed legislation[3], about by-passing select committees, about a perceived declining respect for submitters in select committee proceedings, and the unrealised potential of the Attorney-General's vets under section 7 of the New Zealand Bill of Rights Act (NZBoRA). Each one of these on its own is cause for concern but the aggregated effect warrants serious scrutiny so that parliamentary processes are not further weakened.

2 The role of the Human Rights Commission

2.1 The Human Rights Commission has a primary function, s5(1)(a), to advocate and promote respect for an understanding and appreciation of human rights in New Zealand society. This paper aims to stimulate a constructive and legitimate debate so that New Zealand can continue to protect and enhance civil and political rights and its unique democratic culture.

2.2 Additional statutory functions include "to be an advocate for human rights and to promote and protect, by education and publicity, respect for, and observance of, human rights"; and "to inquire generally into any matter, including any enactment or law, or any practice, or any procedure, whether governmental or non-governmental, if it appears to the Commission that the matter involves, or may involve, the infringement of human rights"[4].

2.3 The Commission has a role in monitoring the health of civil and political rights as well as economic, social and cultural rights in New Zealand through its engagement with the Human Rights Council of the United Nations, its reporting to treaty bodies such as the committee considering New Zealand's

[1] Guidance Note of the Secretary-General on Democracy (2009) p.1.par 2.
[2] Ibid.
[3] An open letter from 27 constitutional law and politics academics questioned the speed and expediency of the Canterbury Earthquake Response and Recovery Act 2010 in a single day. "Ousting legal Checks Misguided" Perspective.The Press, 29 September, 2010.
[4] Human Rights Act 1993 s5 (2) (a) and 5(2)(h).

periodic reports on its obligations under the International Covenant on Civil and Political Rights, and in the Universal Periodic Review process.

2.4 The Commission also has a responsibility to monitor domestic legislation for human rights compliance and provides specialist human rights policy advice to Parliament, government agencies and other organisations and groups. In the past 5 years the Commission has made at least 80 submissions on government bills and has appeared over 30 times before select committees in a bid to promote human rights standards so that they are incorporated in legislation. It uses a human rights approach recognised internationally as best practice in analysing policy and legislation.

2.5 Based on its day-to-day involvement with parliamentary processes, the Commission has identified a number of issues of concern with parliamentary policies and practices that include:

- the period of time for public submissions[5],
- the use of urgency and inadequate scrutiny of proposed legislation by Select Committees,
- disregard of the Attorney-General's section 7 vets for consistency with the NZBoRA,
- reliance on SOPs that the public cannot comment on,
- the absence of time and opportunity for collective deliberation which should be the hallmark of representative democracy,
- and the occasional instances of lack of respect for submitters by Members of Parliament as well as the disregard of minority opinions and inadequate access to expert advice, including legal advice, from relevant officials.

2.6 By contrast with these concerns the human rights approach identifies criteria such as:

- empowerment of individuals and groups to legitimise their voice in decision-making,
- their participation in decision-making,
- the linking of decision-making at every level to human rights norms, and
- accountability.

2.7 The Commission's experience has been reinforced by research and commentary of academics, members of the judiciary and the legal profession, business representatives, members of civil society organisations, media commentators and concerned individuals. The Commission includes in this paper suggested changes that it would like to see widely debated. A number of these have previously been suggested by other researchers and commentators and the Commission acknowledges these contributions in the paper.

[5] The Commission's 2010 Annual Report stated, "Throughout the year the Commission has raised concerns about the lack of adequate time for public consideration of significant legislation."

3 Principles and concerns

3.1 The principles of representative democracy that relate to the human rights approach on which the paper aims to stimulate public debate include:

- The right of citizens and agencies to participate meaningfully in the political process,
- The responsibility of Parliament to produce the highest quality legislation possible and its constitutional obligation to scrutinise legislation effectively,
- The transparency of a legislative process conducted in a manner permitting public, full and open policy deliberation,
- The respectful and dignified use of Parliamentary procedures and practices that enhance the reputation and integrity of Parliament[6].

4 The right of citizens to participate in the political process

4.1 The ability to participate in the political process - including in the development of legislation - is a fundamental right in liberal democracies such as New Zealand and has long been seen as integral to stable and responsive governance. Political participation is also central to international human rights norms[7] - Article 25 of the International Covenant on Civil and Political Rights, for example, states that every citizen shall have the right and the opportunity and without unreasonable restrictions to take part in the conduct of public affairs, directly or through chosen representatives.

4.2 The United Nations recently issuing a Guidance Note that suggested that the way in which a government operates and provides for people to have a say in the policy process has a direct impact on the way that its citizens perceive the degree of legitimacy of their country's democratic system[8]. In its five yearly review of New Zealand's human rights performance, one of the most pressing human rights issues the Commission identified was a lack of participation and representation that fairly reflected the diversity of New Zealand society.

4.3 Effective community engagement involving all the relevant stakeholders generates better decisions and is the key to robust legislation. On several occasions in the past five years, the Commission has expressed concern to select committees and other officers of Parliament, that the increasingly truncated period for members of the public, civil society organisations and agencies to make submissions is undermining full and effective participation in the political process and so weakening its effectiveness.

4.4 During hearings on the Local Government (Auckland) Bill in 2010 Auckland Central MP Nikki Kaye asked what the Commission considered to be an

[6] These principles have been identified in the House of Lord Select Committee on the Constitution (2009) "Fast-track legislation: Constitutional Implications and Safeguards. Vol 1:report", HL Paper 116-1 (The Stationery Office Limited, London) and further developed in Geiringer,C., Higbee,P., and McLeay,E. "The Urgency Project" (2010) Standing Orders Review 49th Parliament Submission to Standing Orders Committee.

[7] Steiner, H *Political Participation as a Human Right* (1988) Human Rights Yearbook, Vol.1

[8] *Guidance Note of the Secretary-General on Democracy* (2009) at para 7

appropriate interval of time for the public to make submissions to Select Committees. Similar issues have engaged like-minded countries for several decades. Although there is uniform agreement on the importance of ensuring that adequate time be allowed for public input, there is little consensus on what the time should be. A variety of other factors may also be relevant. For example, if the period falls over a public holiday (as was the case with the Local Government legislation) then the period should arguably be longer. The legislation may also have the potential to affect marginalised groups or people who do not normally engage with, or understand, the legislative process (again this was the case with the Local Government Bill) in which case consultation may need to be over a longer period if it is to genuinely reflect the concerns of those groups.

4.5 As long ago as 1993 a project in Alberta, Canada endorsed the need for public consultation that was "open, honest, informed and un-rushed"[9]. In 2009 the Canadian Department of Justice issued a policy statement on public participation that referred to the importance of providing time for stakeholder participation noting:

In planning public participation processes, it is important to recognise the resource constraints which affect citizen or stakeholder representatives' ability to reply to requests for input. As a consequence, participants are to be given sufficient time to adequately consider, internally consult, and respond to the consultation within time frames which strike a reasonable balance between the Department's needs or exigent circumstances to get something accomplished expeditiously and the need for participants to be involved in a meaningful way.[10]

4.6 Similar observations can be found in Australia[11], South Africa[12], Italy[13] and the United Kingdom[14]. Directives in the United Kingdom relating to time frames,

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[9] Elliot, D *Ideas for the Select Special Committee on Parliamentary Reform: Legislative Assembly of Alberta* (May,1993) at 7

[10] Department of Justice, Policy Statement and Guidelines for Public Participation (2009) at 6 available at http://www.justice.gc.ca/eng/cons/pol/html

[11] Burton, K *Community Participation in Parliamentary Committees: Opportunities and Barriers* Parliament of Australia (1999) at 15 ("a short time frame in which to report may be a deliberate tactic by which to minimise critical submissions")

[12] Hicks, J *Government mechanisms for public participation: How effective are they?* Centre for Public Participation (2003) available at http://www.cpp.org.za/main/.php?inclcude=docs/2003/govt_mech ("legislative processes not easily accessible to marginalised groups…time frames for input are tight" at 5). The case, *Doctors for Life Int'l v the Speaker of the Nat'l Assembly & Ors* 2006 (12) BCLR 1399 (CC0 (S.Afr.) is also instructive in this regard. The case involved a decision as to whether a democratic nation should have mandatory mechanisms for give and take between legislative leaders and the public. The South African Constitutional Court answered this in the affirmative, noting at one point that "when it comes to establishing legislative timetables, the temptation to cut down on public involvement must be resisted. Problems encountered in speeding up a sluggish timetable do not ordinarily constitute a basis for inferring that inroads into the appropriate degree of public involvement are reasonable. The timetable must be subordinated to the rights guaranteed in the Constitution, and not the rights to the timetable" [at para 194].

[13] See Carson L and Lewinski R, *Fostering Citizen Participation Top-Down* commenting on Tuscan Law no.69 enacted in 2007 which enshrines in statute the right of citizens to participate in the development of regional and local policies.

however, identified twelve weeks as the minimum period for consultation[15]. The Commission believes that twelve weeks should be the minimum period for consultation, and where the twelve weeks includes a significant holiday period extra time should be factored in.

5 The responsibility of Parliament to produce the highest quality legislation possible and its constitutional obligation to scrutinise legislation effectively.

5.1 Urgency and ensuring select committee scrutiny

5.2 Twenty years ago, Burrows and Joseph warned about the "unseemly haste" of governments determined to get legislation passed[16]. The situation has not improved. If anything, it has got worse. Public lawyer Mai Chen asks," Given that New Zealand's unicameral Parliament can already enact legislation faster than most Westminster democracies, is urgency being taken unnecessarily and excessively, to the detriment of quality lawmaking, without proper public input through the Select Committee process, such that reform is needed?"[17] Chen says that since 2008, the current Government has passed over 70 Bills through at least one legislative stage under urgency and while it was arguably appropriate or justified for some of the Bills for others it was not.

5.3 The Commission notes that it was unable to submit on a number of significant pieces of legislation that had fundamental human rights implications because they were passed under urgency. These included the Environment Canterbury legislation (the ECan legislation) which was introduced under urgency and forced through all three readings in one sitting[18], and the Canterbury Earthquake Response and Recovery Act 2010,[19]. In March 2011 Select Committee News noted the "select committee race track where both this week and last week the number of submitters passing through the committee rooms have been at epic levels. Bills are being dealt with at such a blistering pace that figures as diverse as the Chief Justice, Dame Sian Elias, whose concern is the Criminal Procedure (Reform and Modernisation) Bill, to TelstraClear CEO Allan Freeth, whose concern is the Telecommunications (TSO, Broadband and Other Matters) Bill, are calling foul."[20]

5.4 Select committees are regarded as an important check and balance on the Executive, particularly in a Parliament that lacks an upper house or revising

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[14] C Kelly, R Pre-legislative scrutiny (2010). See also Cabinet Office, *Code of practice on written consultation* (2000) at www.businessadviceonline.org/regulationstaxes/implementationguidelines.pdf;.

[15] *Government Response to a report on Pre-Legislative Scrutiny in the 2007-08 session*, 19 April 2009, HL 160 2008-09, Appendix 1

[16] Burrows J.F & Joseph P.A., "Parliamentary Law Making" [1990] NZLJ 306

[17] Chen,M (6 May 2011). New Zealand Parliament's love affair with fast lawmaking and urgency. NZ Lawyer pp 12.

[18] Joseph, P "Environment Canterbury Legislation" [2010] NZLJ at 193

[19] The Act was passed under extended sitting hours adopted by leave of Parliament, rather than under urgency.

[20] Select Committee News, 18 March 2011, p.1.

chamber, and have been described as both the "workhorses"[21] and the "engine room"[22] of Parliament. Changes in 1985 to the select committee system vastly extended their jurisdiction and powers. Examination of bills for consideration after the first reading - except for those to which urgency is accorded - is a primary function of select committees. Palmer and Palmer consider that "the development of the select committee role and public participation in the content of legislation has become a major and positive feature of the New Zealand legislative process"[23] and that "the vital importance of select committee scrutiny in the New Zealand Parliament lies in the ample opportunity given to members of the public to make submissions on a bill."[24]

5.5 Two pieces of recent research paint a worrying picture of the bypassing of select committees. Blogger David Farrar, using information supplied from Wellington Central MP Grant Robertson states: "National has so far passed 17 bills under urgency, bypassing select committees. This is a massive increase on past practice. Labour on average only passed 4 bills per term under urgency bypassing select committees. Such a high level of select committee circumvention undermines good parliamentary practice".[25]

5.6 A more extensive study called "The Urgency Project" examining the years from 1987 to 2010 states, "the use of no-select committee urgency, has remained high in relative terms, throughout this government's term in office. A little over two thirds into its three-year term, this Parliament already ranks the highest equal of all Parliaments during the period of the study in this use of urgency."[26] Among the main conclusions of the Urgency Project are:

- A perception by parliamentarians that there are insufficient scheduled sitting hours to get through the legislative programme
- A profound lack of understanding in the media and the general public as to what urgency is which comes partly from its hybrid role- as a way of responding to matters of genuine urgency and as a mechanism to respond to lack of time.

5.7 Both studies make recommendations. Farrar urges an increase in the number of sitting weeks and a reduction in recess time and the Urgency Project suggests a comprehensive review of parliamentary time. Both want the Speaker to have a greater role before the bypassing of a select committee stage of a Bill.

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[21] Report of the Standing Orders Committee on the Review of Standing Orders I. 18A Appendices to the Journal of the House of Representatives, Wellington, 1995, p.31.
[22] Bradford,S. (April 29, 2011) Goudie sparks revolt-MP competence does matter. http://www.pundit.co.nz/content/goudie-sparks-revolt-mp-competence-does-matter Accessed on 29/04/2011.
[23] Palmer G. and Palmer.M. (1997) *Bridled Power* Oxford University Press New Zealand p 161.
[24] Ibid at 158.
[25] Kiwiblog, Use of Urgency. http://www.kiwiblog.co.nz/2011/04/use_of_urgency.html. Accessed on 28/04/2011.
[26] Geiringer,C., Higbee,P., and McLeay, E. (2011) The Urgency Project. Submission to Standing Orders Committee, Standing Orders Review 49th Parliament. Accessed on 29 April 2011 http://www.parliament.nz/NR/rdonlyres/988AE9D2-5459-44CB-A9B2-74EFE7EA1ED8/188249/49SCSO_EVI_00DBSCH_INQ_10324_1_A177554_NewZealandC.pdf

5.8 The Commission believes that parliamentary democracy would be strengthened by more sitting hours, by streamlined scheduling of legislation and by greater discipline in limiting the legislative programme to allow for sound parliamentary practice, given the lack of public interest in an election cycle longer than three years. However Parliament rearranges its time, it needs to take into account the need for family friendly working practices to encourage diversity of representation. Change that merely affirms a stoic attachment to longer and later working hours is undesirable.

6. Section 7 of NZBoRA

6.1 Several reports to the Human Rights Committee considering New Zealand's fifth periodic report on the International Covenant on Civil and Political Rights raised concerns about the Attorney-General's responsibility under section 7 of the NZBoRA which requires a report to Parliament if proposed legislation displays any apparent inconsistencies with the NZBoRA. The New Zealand Law Society's Human Rights Committee (NZLSHRC) stated that although the Attorney-General receives advice from officials on every bill, the Attorney-General was only required to report to Parliament when aspects of a bill appear to be inconsistent with NZBoRA. It recommended amending section 7 with the aim of improving Parliament's awareness of the human rights implications of proposed legislation as happened in the United Kingdom and the Australian states of Victoria and the Australian Capital Territory. Making the Attorney-General present a report on human rights consistency for every bill introduced to Parliament (including those that appear consistent) would go some way to ensuring legislation is human rights compliant.[27]

6.2 The Human Rights Commission said Section 7 is designed to ensure that Parliament is made aware of a possible breach so it can either rectify it or enact the legislation recognising there is a breach. At present the Attorney-General only reports to Parliament if the discrimination cannot be justified as a reasonable limit on the particular right or freedom under consideration. This process would be strengthened if the Attorney-General was required to present a report that legislation is prima facie discriminatory thus allowing a more informed debate about whether a breach can, in fact, be justified.[28]

6.3 The Commission wants to see a dedicated Human Rights Select Committee established that would scrutinise selected legislation and section 7 vets, and conduct thematic inquiries and issue reports. At the same time it also suggested that treaty body recommendations and New Zealand's reports on its compliance with human rights treaty standards be tabled in Parliament, to strengthen the process for vetting legislation for compliance with NZBoRA.

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[27] New Zealand Law Society Human Rights Committee (2010) Submission to the 96th Session of the Human Rights Committee. Shadow Report to New Zealand's Fifth Periodic report under the International Covenant on Civil and Political Rights. http://www2.ohchr.org/english/bodies/hrc/docs. Accessed on 10/05/2011.

[28] New Zealand Human Rights Commission (2010) Comment of the New Zealand Human Rights Commission on New Zealand's implementation of the International Covenant on Civil and Political Rights in Connection with the Consideration of the Fifth periodic report of New Zealand (CCPR/C/NZL/5).

6.4 In its concluding observations on New Zealand's report, the Human Rights Committee reiterated its concern that NZBoRA did not reflect all rights in the International Covenant on Civil and Political Rights. It also remained concerned that NZBoRA did not take precedence over ordinary law and that laws adversely affecting the protection of human rights had been enacted by the State party, notwithstanding that they had been acknowledged by the Attorney-General as being inconsistent with NZBoRA.[29]

7. Supplementary Order Papers

7.1 Supplementary order papers are not subject to s.7 vets. This creates a mechanism for bypassing scrutiny by the Attorney-General. The possibility arises because, as the Court of Appeal noted in Boscawen v Attorney-General[30] s.7 applies only on the introduction of a Bill not to its process through the system. Although such abuse is infrequent – and there are arguably ways of addressing it [31]- it remains an outstanding concern and has been described as "disfiguring the legislative process as a whole"[32]. The possibility was criticised during the Review of Standing Orders in 1995, the Committee recommending that the practice should not continue, but it was not formally implemented[33]. As a result on some occasions, amendments that are inconsistent with the NZBoRA have been introduced. This occurred most notably in 1999 (that is, after the Select Committee's criticism) when a clause mandating a retrospective criminal penalty for home invasion was added to the Criminal Justice Act 1985 without a NZBoRA vet leading the Court of Appeal to resort to various contortions to ensure a human rights compliant interpretation[34]. If the reporting obligation applied throughout the legislative process, such situations would not arise.

8. The transparency of the legislative process which is conducted in a manner permitting public, full and open policy deliberation.

8.1 Policy deliberation

8.2 A human rights approach views participation as genuine empowerment, rather than mere consultation and provision of information. This translates into the opportunity for citizens to provide informed, timely and meaningful input to influence decisions at various levels. Transparency and consistency of processes are essential as well as access to information.

8.3 In addition to a minimum period for developing submissions referred to previously, the Commission has raised the issue more broadly of the quality of

[29] Concluding Observations of the Human Rights Committee, 98th session, New York 8-26 March 2010. CCPR/c/NZL/CO/5. Distributed 25 March 2010.
[30] [2009] 2 NZLR 229 (CA)
[31] For example, at the time of the Bill's consideration by the Committee of the Whole,
[32] Waldron J "Parliamentary recklessness; why we need to legislate more carefully" (Annual John Graham lecture 2008) at 26.
[33] Burrows JF *Statute Law in New Zealand* Lexis Nexis (2003) at 52
[34] R v Pora [2001] 2 NZLR 37 (CA) which was described by Thomas J as "a compelling example of the risk that legislation of considerable constitutional significance [being] passed without its import attracting the attention of the House" [at para 123].

participation and the need to generate broad political and public consensus around fundamental and far reaching reforms. For example, the Commission criticised the 2008 controversial electoral finance reform process because fundamental change was proposed without a broad political or public consensus. Since then the Commission has been supportive of the wider consultative approach adopted for the subsequent electoral finance reforms of 2010 and of the Police Act. Clearly the Commission supports the use of green papers, white papers and other active mechanisms to stimulate public interest in the substance of legislative change. In this context the Commission would urge that much greater use be made of green papers.

8.4 The Commission acknowledges that the issue of precisely what constitutes effective consultation and participation is an open and evolving one. Prior to the introduction of the Criminal Procedure (Reform and Modernisation) Bill there were at least 16 issues papers released by the Ministry of Justice or the Law Commission available on websites relating to aspects of this far-reaching reform. Their release made information publicly available and constituted a desirable form of transparent e-governance, in addition to formal requests by government departments and agencies for formal responses. However, it remained a relatively passive form of consultation with civil society, which has to have knowledge about the process to participate and it continues to fall short of the human rights approach which talks of empowerment of individuals and groups by enabling them to use rights as leverage for action and to legitimise their voice in decision-making. The relatively limited nature of pre-select committee mainstream news media coverage of reforms under consideration compounded the already low level of public debate about fundamental human rights issues. This was highlighted recently concerning the right to a jury trial, trial in the absence of a defendant, or how NZBoRA, with its quasi-constitutional status, should be amended.

8.5 The time frames for submissions on the background papers for the criminal procedure legislation were short and in one instance, the paper on suppressing names and evidence, was released on 22 December 2008 and submissions closed on 13 February 2009, approximately seven weeks (including the traditional Christmas and New Year holiday periods). Where civil society has an interest, it often takes time to organise community meetings, to gather evidence, build consensus, allow for considered reflection, then develop and authorise a submission. All of these elements are necessary for what New Zealand Law Society chairman Jonathan Temm described as a "mature discussion which brings together all points of view on where we should be going."[35]

9. Role of the news media

9.1 In Sir Geoffrey Palmer's analysis of New Zealand constitution and Government he states that a "key vehicle for public opinion acting as a check

[35] Debate needed on criminal justice system goals, Press release, New Zealand Law Society. http://www.scoop.co.nz/stories/PO1103/S00082/ debate-needed-on-criminal-justice-system. Accessed on 6/05/2011.

upon Government is the news media".[36] Unfortunately, as former Radio New Zealand political editor Alastair Morrison has observed, "The happenings of Parliament are barely covered at all by the Press Gallery" with Parliament's substantial business ignored and increasingly treated as a source of info-tainment.[37]As far back as 1985 concern was expressed by the Standing Orders Committee of Parliament about the reporting of select committees, and that "very few reports that attempt to inform the public about the issues that are being considered".[38] The committee concluded that, "..it has a duty to draw attention to what it sees as an inadequate performance of the functions for which Parliament makes facilities and privileges available"[39] to the Press Gallery. Mai Chen notes that both The Dominion Post and the NZ Herald criticised the use of urgency in April 2011.[40]

9.2 Today the Select Committee News partially fills a void left by the gallery representatives of the mainstream media of the workings of Parliament. This valuable news and information service has a specialist subscription audience. It is not intended to be a substitute for effective daily media coverage. Current patterns of political journalism such as newsroom investment levels, the closure of outlets like New Zealand Press Association, the lack of seniority, the Gallery "pack hunt", and preoccupations with the personality politics, are probably irreversible. Groups and individuals wanting publicity for their positions advanced to select committees will have to work harder distributing copies of news releases and submissions to electronic agencies such as Scoop and Newsroom and to all the major news desks, or simply blog and hope to be blogged about.

10. Member's behaviour

10.1 In the Commission's view, too, based on its observations of frequent select committee appearances, there is room for improvement in the conduct of the hearings. This suggests that the choice and training of Select Committee chairs and deputies requires review. Commissioners who attend committee proceedings note "a new level of discourtesy (over and above properly robust scrutiny of evidence and opinion) towards several civil society groups and towards some individuals who are speaking either for themselves or on behalf of vulnerable groups. This reaction is more likely to inhibit rather than encourage participation in a vital democratic process, at a time when communities desperately need to debate equality of outcomes as well as of opportunities and when politicians need to listen to them."[41] On occasions, but not invariably, a Chair has intervened to curtail such conduct.

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[36] Palmer,G (1987) Unbridled Power (2nd edition) Oxford University Press: Auckland, p.7.
[37] Morrison, A (1996) The Challenge of MMP. In J. McGregor (Ed) Dangerous Democracy, Dunmore Press, Palmerston North, p.43.
[38] First report of the Standing Orders Committee, July 1985. Appendix to the Journals of the House 1984-85, 1.14,p.11.
[39] Ibid.
[40] Ibid fn 17 at page 12
[41] McGregor,J. (2011) *Standing on the precipice- how to rekindle new thinking about equality, diversity and inclusion.* 4th International Equality, Diversity and Inclusion Conference, Auckland University of Technology, Auckland.

10.2 The Commission accepts that the perceptible lessening of respect is partially forced on Select Committees because they do not have enough hearing time. This results in submitters being told by committee secretaries that they only have five minutes in which to state their case after travelling expensively to Wellington, or in the case of submitters on Auckland's local government reforms being grouped at the table with disparate submitters. The time issue aside, occasionally dismissive or trivialising behaviour from MPs to submitters, undermines a rigorous and robust testing of perspectives and impacts negatively on the dignity of Parliament. In the Commission's view every individual MP has a duty to the voters of New Zealand to have regard to the effectiveness of Parliament.

11. Minority viewpoints

11.1 The transparency of minority viewpoints has recently been subject of party political concern. Minority reports within select committee reports are a way in which a committee can put out a report but include opposing views of members. However, in an unprecedented move in 2010, there were two occasions when minority reports and dissenting views were not included in the reports by the Law and Order Select Committee. Labour's minority report on the committee's interim report on the three strikes legislation was rejected and Labour's dissenting view in its 2010/11 estimates reports for Corrections and Police was similarly ignored. Labour went so far as to write to the Speaker Lockwood Smith about its concerns at the chairing of the committee by National's Sandra Goudie.[42]

11.2 The transparency of differing perspectives is a component of open policy consideration and in the Commission's view the problem of dissenting views is easily cured. Standing Order 246 on Minority Views says that "a select committee, *may*, in its report, indicate the differing views of its members".[43] The Commission believes the Standing Order should be amended to read: "A select committee, *shall*, in its report, indicate the differing views of its members."

12. Suggested Recommendations

The Commission believes that the following reforms would help New Zealand continue to strengthen and support democratic processes. It welcomes discussion and feedback on these points and others.

12.1 A minimum period of 12 weeks allowed for the public to make submissions to Select Committees.

12.2 A review of Parliamentary sitting time that takes account of scheduling, has regard for the scope of the legislative programme across the election cycle, and supports the family-friendly responsibilities of Members of Parliament.

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[42] NZPA(Friday July 2,2010) "Labour views left out of law and order reports.". http://www.nzherald.co.nz/nz/news/articles.cfm?c_ID+1&objectid=10656089 Accessed on 29/04/2011.

[43] Standing Orders of the House of Representatives, Chapter IV, page 75, SO 246.

12.3 The establishment of a dedicated Human Rights Select Committee.

12.4 The tabling in Parliament and referral to Select Committee of recommendations made by international treaty bodies and New Zealand's reports on its compliance with human rights treaty standards.

12.5 The Standing Orders of Parliament should specifically refer to the fact that no new major legislative provision is to be introduced by Supplementary Order Paper.

12.6 Continued use of innovative forms of e-governance and other approaches to ensure the business of Parliament is effectively notified and that public participation is enhanced.

12.7 Induction and professional development for Select Committee chairs and deputy chairs aimed at strengthening the effectiveness of Select Committees, the dignity of hearings and respect for submitters, and thereby the legitimacy of Parliament.

12.8 An amendment to Standing Order 246 to ensure dissenting views of members are included in reports.

The Commission is interested in feedback on any aspect of this discussion paper. Please send it to Sylvia Bell, Principal and Legal Policy Analyst at sylviab@hrc.co.nz , telephone 09 306 2650