
Democracy and deliberation

New Zealand's Parliamentary democracy relies on a robust select committee process to improve legislation. The House of Representatives recognises that it does not know everything and that submissions from the public, community groups, and affected industries can greatly improve draft legislation.

Select committee processes allow the public not only to provide written submissions explaining how legislation can be improved, but also to address legislators to help to convey the case directly.

These processes are important.

A strong case can be made for easing some of these process requirements for legislation that must be passed in a hurry, and especially during a state of civil emergency.

There is some case for hastening the process for legislation unrelated to the Covid-19 pandemic but that is otherwise pressing. But the reasoning is fraught.

For example, submissions on the Electoral (Registration of Sentenced Prisoners) Amendment Bill are due on 24 April. The matters under consideration there must be resolved well before the election, and the election date has not yet shifted.

But a process requiring submissions during a Level 4 Alert that hinders many people from making effective submissions has a cost. It makes it harder for submitters to consult with many of those who are directly affected, particularly when access to prisons is (correctly) restricted. Civil society organisations who have lost access to their premises and research materials will not be able to make their case as strongly as they otherwise might have. People who rely on computers at libraries when making submissions will be shut out.

For specific, urgent issues on the legislative agenda, it may be better to have a flawed deliberation process rather than postpone this process until after the pandemic has eased. If not progressing legislation is sufficiently costly, even a flawed process can be better.

But that can hardly be the general rule.

Current Select Committee Processes

As of 25 March, fourteen pieces of legislation were in progress with submission due dates falling within the Alert 4 period. Some of these may have aspects that warrant expeditious treatment despite the pandemic. But it seems impossible that all of them do.

Speaker of the House Hon Trevor Mallard, on 25 March¹, confirmed that Select Committees have the option to extend submission deadlines, but are not obligated to do so. Reporting dates on legislation have been pushed back to 1 May.

¹ <https://twitter.com/EricCrampton/status/1242613031139328000>

The Clerk of the Health Select Committee informs us that the Committee must report back to the House on legislation within three months from its introduction, providing a reporting date of 2 June.² Because its reporting date has not been pushed back, the Committee has not adjusted the date by which submissions are due. The fixed date by which the Committee must report back still sets the maximum period in which submissions can be entertained; the Committee needs time to deliberate over the submissions it has received.

So, while Committees may have the flexibility to adjust submission due dates, doing so comes at the expense of Committee deliberation over the submissions received. Neither option does justice to the democratic process.

Legislation	Submission Due Date
Residential Tenancies Amendment Bill	25-Mar
Financial Market Infrastructures Bill	26-Mar
International treaty examination of the Amendment to the Rome Statute (the Starvation Amendment) together with the National Interest Statement	26-Mar
Fair Trading Amendment Bill	27-Mar
Greater Christchurch Regeneration Amendment Bill	27-Mar
Smokefree Environments and Regulated Products (Vaping) Amendment Bill	1-Apr
New Zealand Public Health and Disability Amendment Bill	2-Apr
Inquiry into parliamentary scrutiny of confirmable instruments	3-Apr
Screen Industry Workers Bill	3-Apr
Local Government (Rating of Whenua Māori) Amendment Bill	17-Apr
Ahuriri Hapū Claims Settlement Bill	17-Apr
Electoral (Registration of Sentenced Prisoners) Amendment Bill	24-Apr
Organic Products Bill	29-Apr
Financial Markets (Conduct of Institutions) Amendment Bill	30-Apr

A better option: Time to Process

Legislation that is not urgently pressing during a pandemic should be put into quarantine. The House of Representatives should choose to extend reporting dates by the four weeks of the Alert 4 period (plus any extension to this period). This would enable Select Committees to extend submission deadlines by the same four-week period.

Doing so is critical to allow for appropriate democratic scrutiny of legislation that is *important* but not *urgent*. For example, there is nothing in the Organic Products Bill that cannot wait an extra month. Suspending the Screen Industry Workers Bill for a month, when no films will be under production anyway, will do no harm. Vaping has regulated itself since March 2018; it can do so for one month longer than it otherwise would have. And surely the members of the Health Select Committee have *rather more urgent matters* to be considering.

² Personal correspondence, 26 March 2020.

Maintaining existing legislative timelines for non-urgent legislation during a pandemic makes a farce of our democratic processes. Submissions made during Alert 4 lockdowns will not adequately represent the views of the community when many will be prevented from properly preparing submissions. The restrictions will especially disadvantage communities that rely on access to public facilities like libraries when making their submissions.

Committees that should be deliberating the urgent exigencies of a pandemic will not have the capacity also to provide due attention to submissions made on non-urgent legislation. If they do provide that attention, it will be at the expense of more important matters.

The democratic process matters. The House of Representatives must give itself, and the rest of us, an appropriate amount of time to process.