

THE LEGISLATIVE PROCESS

The law is the framework within which citizens consent to be governed. Democratic theory is that having elected their lawmakers (legislators), citizens recognise the legitimacy of the laws made on their behalf by the lawmakers and consent to abide by those laws.

Parliament legislates by examining bills (proposed laws), making amendments, and agreeing their final form. The bills then become Acts of Parliament. Several steps are built into this process to ensure bills can be rigorously tested. Set out below is a description of the types of bills considered in Parliament and the stages through which they pass to be enacted.



House of Representatives in session

GOVERNMENT BILLS

Once the Government takes office it establishes a legislative programme that will enable it to implement its policy platform. This involves the preparation of Government bills. The Government often engages in consultation with interested parties before a bill is prepared and introduced into the House. Most Acts of Parliament start their lives as Government bills.

MEMBERS' BILLS

Bills that affect public policy but are not part of the Government's legislative programme can be

introduced by members other than Ministers. However, the House has limited time to consider such bills. To keep the number of Members' bills within the ability of the House to consider them, there is a ballot for their introduction. No more than six can be before the House for first reading at one time. Each time a place becomes available, a ballot is held. There may be some 40 draft bills in any such ballot. Each member can have no more than one bill in each ballot.

Every second Wednesday of the House's sitting programme is set aside for members' business so that Members' bills can be debated and passed into law if they have the support of the House.

The political reality is that most Members' bills do not get passed, but a few succeed. Another possibility is that the introduction of a Member's bill, if there is widespread support for the proposal, may result in the Government introducing its own legislation to achieve broadly similar aims. Alternatively the Government may agree to support a Member's bill and make services available to improve the quality of drafting. Either way, Members' bills can have an impact on the Government's legislative priorities.

LOCAL BILLS

Local bills are promoted by local authorities and deal with matters confined to a particular locality to allow a function not authorised in the general law to be undertaken. For example, a local bill would be required if a city council needed to make alternative use of some land given to it 100 years ago for a specific purpose that is no longer appropriate. The local member of Parliament is likely to be the member in charge of a local bill. The promoter of a local bill is required to pay a small fee in recognition of the costs associated with processing the bill.

PRIVATE BILLS

Private bills are infrequent. They provide for a particular interest or benefit in the form of an exemption from the general law for an individual or

group of people. For example, a private bill would be needed to enable a marriage between two people who are too closely related to be married according to the general law. This has occurred where, for instance, a person wishes to marry an adopted brother or sister. Most private bills today relate to corporate activities. The promoter of a private bill asks a member of Parliament to take charge of the bill as it progresses through the House. A small fee is payable for a private bill.

HOW A BILL BECOMES LAW

A bill passes through several stages before it can become an Act of Parliament. These are explained and summarised in a flow chart below. In the case of Government bills, the Government decides how to prioritise them and regularly revises its priorities. All other bills follow a formula prescribed in the Standing Orders (procedural rules) of the House of Representatives. This ensures they cannot be unreasonably prevented from making progress if they have the support of a majority of other members once they are before the House.

ACCESS TO BILLS AND ACTS OF PARLIAMENT

Bills and Acts (also known as statutes) are available from most major public libraries and at:
www.legislation.govt.nz.

They can also be purchased from Bennetts Government Bookshops, or from:
Legislation Direct, (04) 568 0005, PO Box 12357, Wellington 6144.

Introduction

A bill has no formal existence until it is introduced into the House. There is no debate at this stage but the bill is now publicly available. The bill must have an explanatory note that sets out the policy it seeks to achieve. Once introduced, it is a formal legislative proposal that may or may not progress, depending on its level of support in the House.

First reading

The next stage is the first reading. The term 'reading' dates back to the days in Britain when bills were literally read out to the House. It has never been the practice in New Zealand. Only the title is read aloud.

The first reading cannot occur for at least one to three sitting days after introduction. This ensures members have had time to consider the bill's implications. It also leaves time for the Attorney-General to examine the bill for apparent inconsistencies with the New Zealand Bill of Rights Act 1990 so that the House can

be informed of this before the next stage. This is a requirement under section 7 of that Act.

The first reading is the first opportunity for the House to debate the bill and consider if it merits further consideration. The member in charge of the bill leads off the debate, which is limited to two hours for Government bills and just over an hour for other bills. At the end of the debate the House decides if the bill should be 'read a first time'. If it is defeated in this vote, that is the end of the bill. If the first reading is agreed, the bill is referred to a select committee.

Select committee

Once a bill has been referred to a select committee, the committee has six months to report to the House, unless the House specifies a different date. Reporting dates may be extended if it turns out more time is needed for the committee to consider the bill.

A committee normally calls for public submissions, hears evidence on those submissions, and recommends amendments to the House. The committee's report consists of the bill reprinted with the recommended amendments shown and a 'commentary', which is the committee's narrative explanation of its recommendations and the issues it considered.

Once the committee has presented its report, the bill is available for second reading any time from the third sitting day after presentation (see *Parliament Brief*, 'Select Committees').

Second reading

This is the main debate on the principles of the bill. If it passes a second reading, this can be viewed as a commitment to the final passage of the bill, subject to any further amendments. This stage is a debate of up to two hours led off by the member in charge of the bill. At the end of the debate any select committee amendments that did not have the unanimous support of the committee are the subject of a single decision on whether they should be adopted. All unanimous committee amendments are considered subsumed into the bill if the second reading is agreed. The bill can also be defeated at this stage.

Committee of the whole House

The House forms itself into a committee, to which all members belong, for the bill's next stage. The Speaker does not preside over the committee. The committee has the delegated authority from the House to consider the bill in detail and make further amendments members may propose in writing. Sometimes members, particularly Ministers in charge of a bill, release their amendments in advance in the form of a 'supplementary order paper'. If these have significant policy implications, they can be considered

by a select committee to ensure the changes have adequate scrutiny. Otherwise the use of this mechanism to introduce major policy changes may be viewed as a device to avoid such scrutiny.

There is no specific time limit on this stage and members have opportunities for five-minute speeches on each provision. On large bills of a controversial nature, this process can take place over several days.

At this stage some bills, for instance, a Statutes Amendment Bill, can be divided into several smaller bills with new names, depending on the principal Acts they amend.

Once the final form of the bill has been agreed, it returns to the House and is reprinted to show any new amendments that were made.

Third reading

This is the final stage in the House. It is the last opportunity to debate and decide whether the bill should be passed in the form in which it has emerged from the committee of the whole House. It is a debate more for summing up than on the provisions in detail. The debate can last up to two hours.

Once a bill's third reading has been agreed, it has been 'passed' by the House but it has one further step before it becomes law.

Royal assent

The last step illustrates the difference between the House of Representatives and Parliament (see *Parliament Brief*, 'What is Parliament?'). This is that the Sovereign (The Queen, represented in New Zealand by the Governor-General) forms part of Parliament but is completely separate from the House. It is the Sovereign's role to sign a bill into law by giving it the 'Royal assent'. Assent is given on the advice of the Prime Minister or the most senior Minister available.

DELEGATED LEGISLATION

The terms 'delegated legislation', 'subordinate legislation', and 'regulations' are used synonymously to refer to legal instruments, often technical in nature, made under powers delegated by Parliament when passing legislation. An example would be a regulation to set fees for a cost-recoverable service provided by a public organisation. While Parliament is not involved in making these legal instruments, specific procedures have been put in place in Standing Orders to ensure they are all subject to the scrutiny of Parliament. If necessary, they can be disallowed as a result. A select committee, the Regulations Review Committee, carries out the detailed scrutiny and considers

complaints about regulations on grounds set out in the Standing Orders.

Another function of the Regulations Review Committee is to examine all bills for regulation-making powers that appear to delegate too much power to the Government. In such cases that committee reports to the committee considering the bill, highlighting the issue. By convention (accepted practice), the Regulations Review Committee is chaired by an Opposition member to ensure this process is seen to work beyond the interest of the Government.

Each year a Subordinate Legislation (Confirmation and Validation) Bill is passed to confirm certain regulations that would otherwise expire.

FURTHER READING

All *Parliament Briefs* are available free of charge at: <http://www.parliament.nz/en-NZ/AboutParl/HowPWorks/FactSheets>.

McGee, David, *Parliamentary Practice in New Zealand*, 3rd edition, Dunmore Publishing, Wellington, 2005.

Standing Orders of the House of Representatives, 2008.

(The Standing Orders of the House of Representatives are available at:

<http://www.parliament.nz/en-NZ/PB/Rules/StOrders/>).

HOW PARLIAMENT MAKES A LAW

** At any of these stages, a vote in the House can result in the bill being defeated.*

