

# Parliamentary Practice in New Zealand



# McGee

# Parliamentary

# Practice in

# New Zealand

Fourth edition

## Editors

Mary Harris

Former Clerk of the House of Representatives

David Wilson

Clerk of the House of Representatives

## Assistant Editors

David Bagnall

Principal Clerk (Procedure)

Pavan Sharma

Manager (Parliamentary Law and Practice)

Published by Oratia Books, Oratia Media Ltd,  
783 West Coast Road, Oratia, Auckland 0604, New Zealand  
([www.oratia.co.nz](http://www.oratia.co.nz)).

Copyright © 2017 Clerk of the House of Representatives  
The copyright holder asserts its moral rights in the work.

This book is copyright. Except for the purposes of fair reviewing, no part of this publication may be reproduced or transmitted in any form or by any means, whether electronic, digital or mechanical, including photocopying, recording, any digital or computerised format, or any information storage and retrieval system, including by any means via the Internet, without permission in writing from the publisher. Infringers of copyright render themselves liable to prosecution.

ISBN 978-0-947506-24-7  
Ebook ISBN 978-0-947506-27-8

First published 1985 by the Government Printer, Wellington  
Second edition 1994 by GP Publications, Wellington  
Third edition 2005 by Dunmore Publishing, Wellington

Cover image by Gabor Hellyer

Printed in China

# Contents

<i>Preface</i>	xxxiii
<b>CHAPTER 1 THE PARLIAMENT OF NEW ZEALAND</b>	
The Sovereign and the Governor-General	1
The House of Representatives	2
Functions of the Parliament and the House of Representatives	2
A legislature	3
The provider of a government	3
To scrutinise and control the Government	4
To represent government and the people	4
The Development of the House of Representatives	5
<b>CHAPTER 2 THE BASIS OF PARLIAMENTARY PROCEDURE</b>	
Statute	8
Duty to obey the law	9
Manner and form	9
Legislative fairness	11
Standing Orders	12
Nature of Standing Orders	12
Objects of Standing Orders	12
Standing Orders Committee and review of Standing Orders	13
Amendment of Standing Orders	14
Suspension of Standing Orders	15
Leave of the House	15
Sessional Orders and Orders of Continuing Effect	16
Rulings of the Speaker	17
Points of Order	17
Practice	18
<b>CHAPTER 3 ELECTORAL</b>	
The Electoral System	19
The MMP system	19
Electoral Commission	20
Review of the electoral system	21
Composition of the House	22
General electoral districts	23
Māori electoral districts	23
Party lists	23
Redistribution of Seats	24
Representation Commission	24
Boundaries	24
Electors	25
Registration	25
Maori option	26
Electoral rolls	26

<b>Registration of Political Parties</b>	27
<b>Qualifications for Members</b>	28
<b>Calling an Election</b>	29
<b>The Election</b>	30
Candidates	30
Campaign	31
Election broadcasting	32
Pre-election economic and fiscal update	35
Election expenses	35
Administration of the election	36
Uncontested elections	36
Voting	36
Special and advance voting	37
Turnout	38
Counting of votes	38
Declaration of result and recounts	39
Return of the writ for constituency members	39
Party list returns	39
Storage of ballot papers	40
<b>Disputed Elections</b>	40
Constituency seats	41
Party list seats	42
<b>Vacancies</b>	42
<b>Filling vacancies</b>	46
Determining that a vacancy exists	46
Electoral district vacancies	47
Party list vacancies	47
Vacancies not filled in certain circumstances	48
<b>CHAPTER 4 MEMBERS' CONDITIONS OF SERVICE</b>	
<b>Designation of Members</b>	49
<b>Role of Members</b>	49
Legislators	50
Leaders and members of political parties	50
Scrutineers of Government	50
Representatives	50
<b>Statutory Functions and Disqualifications</b>	51
<b>Duties of Members</b>	52
Conduct of members	52
Conduct of Ministers	54
<b>Attendance and Absence of Members</b>	54
Attendance	54
Permission to be absent	55
Penalties for failure to attend	55
<b>Pecuniary Interests</b>	56
Registration of pecuniary and other specified interests	57
Declaration of financial interests	62
<b>Personal Interests</b>	64
<b>Ministers' Interests</b>	64
<b>Members' Remuneration</b>	65
Remuneration Authority determinations	68

Salaries and allowances	69
Period for which salaries and allowances are payable	70
Payment of salaries and allowances	71
Taxation	71
Superannuation	71
<b>Members' Services</b>	<b>72</b>
Remuneration Authority's determination of services	73
Speaker's directions	73
Minister's determination of services	75
Providing members' services into the future	75
<b>CHAPTER 5 SPEAKER OF THE HOUSE OF REPRESENTATIVES</b>	
<b>The Speaker</b>	<b>77</b>
Duties of the Speaker	77
Speaker's position	78
Administrative responsibilities	80
Term of office	81
<b>Deputy Speaker</b>	<b>81</b>
<b>Assistant Speakers</b>	<b>82</b>
<b>Temporary Speakers</b>	<b>82</b>
<b>Position of Members Deputising for Speaker</b>	<b>83</b>
<b>CHAPTER 6 ADMINISTRATION OF THE HOUSE</b>	
<b>Clerk of the House of Representatives</b>	<b>84</b>
Office of the Clerk	84
Journals	85
Records	86
<b>Serjeant-at-Arms and the Mace</b>	<b>87</b>
<b>Reporting of Debates</b>	<b>88</b>
<i>Hansard</i>	88
Form of the report	89
Parliamentary Press Gallery	90
<b>Broadcasting of Proceedings</b>	<b>90</b>
Radio	90
Television	91
Online coverage	93
Stills photography	93
<b>Parliamentary Service</b>	<b>93</b>
Parliamentary Service Commission	95
Appropriations Review Committee	96
Parliamentary Corporation	96
Parliamentary Library	96
Bellamy's	97
<b>Kaumātua o Te Whare Pāremata</b>	<b>97</b>
<b>CHAPTER 7 OFFICERS OF PARLIAMENT AND OTHER OFFICERS AND BODIES ASSOCIATED WITH PARLIAMENT</b>	
<b>Officers of Parliament</b>	<b>99</b>
Definition of Officer of Parliament	99
Proposals to create Officers of Parliament	100
<b>Officers of Parliament Committee</b>	<b>101</b>

<b>Procedures for the Appointment of Officers of Parliament</b>	101
<b>Conditions Applying to Officers of Parliament</b>	103
Term of office	103
Oaths	103
Remuneration and funding	103
Cessation and suspension from office	104
<b>Controller and Auditor-General</b>	104
Organisation of the office	104
Annual work plan	104
Work of the office	105
<b>Ombudsmen</b>	105
<b>Parliamentary Commissioner for the Environment</b>	107
<b>Other Officers and Bodies Associated with Parliament</b>	108
Abortion Supervisory Committee	108
Association of Former Members of Parliament	109
Cawthron Institute Trust Board	109
Intelligence and Security Committee	109
Judicial Conduct Commissioner	110
Legislation Design and Advisory Committee	111
Māori Purposes Fund Board	111
New Zealand Business and Parliament Trust	111
New Zealand Lottery Grants Board	111
Ngarimu VC and 28th (Maori) Battalion Memorial Scholarship Fund Board	112
Parliamentary Counsel Office	112
Independent Police Conduct Authority	112
Radio New Zealand Limited	113
Reserve Bank of New Zealand	113
State Services Commissioner	113
University and tertiary institutions	113
<b>CHAPTER 8 PARTIES AND GOVERNMENT</b>	
<b>Parties</b>	114
Recognition	114
Leader of the Opposition	117
Party leaders	118
Whips	118
Caucus	119
Parliamentary party membership	120
<b>Government</b>	122
Ministers of the Crown	123
Parliamentary Under-Secretaries	124
Appointment of Ministers	124
Resignation of Ministers	125
Caretaker conventions	125
Leader of the House	126
Attorney-General	127
<b>Confidence Votes</b>	127
Definition of a confidence vote	128
Votes of confidence arising independently of the will of the Government	129

Votes of confidence arising by declaration of the Government	130
Conscience Issues	131
<b>CHAPTER 9 COMMUNICATIONS WITH THE CROWN</b>	
Direct Interaction	134
Messages	135
Obtaining messages	135
Announcement to the House	135
Addresses	136
Address in Reply	136
Commending appropriations for Offices of Parliament	136
Royal occasions	137
Parliamentary occasions	137
Removal of office-holders	137
Returns	137
Procedure for adopting an address	137
Preparation of an address	138
Presentation or transmission of an address	138
Reply to an address	139
<b>CHAPTER 10 SUMMONING, PROROGUING AND DISSOLVING PARLIAMENT</b>	
Proclamations	141
Summoning of Parliament following a General Election	141
Appointment of place of meeting	142
Date of first meeting	142
Postponement of first meeting	142
Time of day for first meeting	143
Proclamations appointing sittings in emergency	143
Prorogation	143
Sessions and Recesses	144
Dissolution	144
Term of Parliament	145
Expiration	145
Effect of Prorogation, Dissolution and Expiration on Business before the House	146
<b>CHAPTER 11 THE CHAMBER, BUILDINGS AND GROUNDS</b>	
Meeting Place for Parliament	147
Parliamentary Precincts	148
The Chamber	149
Seating in the Chamber	150
Conduct in the Chamber	150
Dress codes	151
Maintenance of order	152
Lobbies	155
Press Gallery	155
Public Galleries	155
Admission to the galleries	156
Conduct in the galleries	156
State occasions	156

Celebrations in the galleries	156
<b>The Parliament Buildings</b>	157
<b>The Parliament Grounds</b>	158
<b>CHAPTER 12 THE OPENING OF PARLIAMENT</b>	
<b>First Meeting of a New Parliament</b>	161
Commission Opening	161
<b>Swearing in of Members</b>	162
Subsequent swearing in of members	163
Failure to take the oath	164
Consequences of taking the oath	165
No new oath or affirmation following the demise of the Crown	165
<b>Election of Speaker</b>	165
Nominating a member	166
Uncontested elections	166
Two members nominated	166
More than two members nominated	166
Adjournment of the House following the Speaker's election	167
Confirmation	167
Claiming the House's privileges	168
Term of office	168
Vacancy in the office of Speaker	168
<b>State Opening of Parliament</b>	169
Members assemble	169
Message from the Governor-General	169
Speech from the Throne	170
Speech reported to the House	171
Business transacted on returning from hearing the Speech from the Throne	171
Adjournment of the House	171
<b>Address in Reply</b>	171
Moving for an Address in Reply	172
Address in Reply debate	172
Maiden speeches	173
Amendments	173
Adoption of Address in Reply	173
<b>CHAPTER 13 SITTINGS OF THE HOUSE</b>	
<b>Nature of Sittings</b>	175
<b>The Sitting Day</b>	176
<b>The Working Day</b>	176
<b>Sitting Hours</b>	177
<b>Extended Sitting Hours</b>	178
Extended sitting hours by determination of the Business Committee	178
Extended sitting hours by motion without notice	179
Effect of extended sitting	179
<b>Urgency</b>	180
Signals about possible urgency	181
Moving an urgency motion	181
Circumstances warranting urgency	181
Effect of urgency	182

Extraordinary urgency	183
Termination of urgency	183
<b>Suspension of a Sitting</b>	184
Deferral of interruption for suspension of sitting	184
Suspension of normal sittings	185
Suspension of sittings during extended sitting hours	185
Suspension of sittings under urgency	185
Speaker suspending sitting	186
<b>Adjournment of the House</b>	186
Adjournment at scheduled times	186
Deferral of scheduled adjournment when vote in progress	187
Adjournment at other times without question put	187
Adjournment motions	187
Motions regulating the period of adjournment	188
Adjournment by leave	189
<b>Early Recall of the House during an Adjournment</b>	189
<b>The Sitting Programme</b>	189
Business Committee recommendation	190
Adoption of the sitting programme	190
Variation of the programme	191
<b>CHAPTER 14 BUSINESS OF THE HOUSE</b>	
<b>Prayers</b>	192
<b>Before General Business</b>	193
<b>Order Paper</b>	193
Supplementary Order Paper	194
<b>General Business</b>	194
<b>Orders of the Day</b>	195
Arrangement of orders of the day	196
Setting business down as an order of the day	197
Reaching orders of the day	197
Postponement of orders of the day	197
Discharge of orders of the day	198
Automatic discharge	198
Discharge by the member	198
Discharge on motion	199
Accelerating consideration of orders of the day	199
Reviving orders of the day	200
<b>Reinstatement of Business</b>	200
<b>Business Committee</b>	201
Background	201
Establishment	201
Membership and participation	202
Basis of decision-making	202
Powers and functions	203
<b>Order of Business on Particular Days</b>	205
Tuesdays and Thursdays	205
Wednesdays	205
Other days	205

**CHAPTER 15 MOTIONS AND AMENDMENTS**

House's Usual Method for Considering Business	206
<b>Motions</b>	206
<b>Notice of Motion</b>	207
Giving notice of motion	207
Form and content of notices	207
Publication of notices	208
Government notices of motion	208
Members' notices of motion	209
Withdrawal of notices	209
Giving notice about motions relating to stages of legislation	209
Motions not requiring notice	209
<b>Motions with Special Requirements</b>	210
Motions to suspend Standing Orders	211
Motions for statutory procedures	211
<b>Moving of Motions</b>	212
Moving on behalf of another member	212
Failure to move motion	213
Seconding motions	213
<b>Question Proposed</b>	213
Withdrawal of motion	213
<b>Amendments to Motions</b>	214
Amendments to amendments	214
<b>Form of Amendments</b>	214
<b>Moving of Amendments</b>	214
<b>Admissibility of Amendments</b>	215
General compliance	215
Relevancy	215
Direct negatives	216
Amendments to statutory motions	216
Restriction on second and subsequent amendments	216
Admissibility of amendments to amendments	216
<b>Question Proposed on Amendment</b>	217
<b>Withdrawal of Amendment</b>	217
<b>Putting of the Question on an Amendment</b>	217

**CHAPTER 16 DEBATE**

<b>Debate Arises after Question Proposed</b>	218
<b>Deciding Who Speaks</b>	218
Obtaining the call	219
Allocation of calls	219
Factors guiding the Speaker	219
Party arrangements	220
Speeches in reply	221
Speaking in the committee of the whole House	221
<b>Time Limits of Speeches</b>	222
Individual speeches	222
Splitting calls	222
Debating amendments	222
Time taken for points of order	223
Expiry of time for speech	223

<b>Manner of Speaking</b>	224
Physical arrangements for speaking	224
Forms of address	224
<b>Languages</b>	224
Official languages	224
English and Te Reo Māori	225
Interpretation	225
New Zealand Sign Language	226
Other languages	226
<b>Contents of Speeches</b>	226
Relevance	227
Tedious repetition	227
Anticipating discussion	227
Quotations	228
References to the Sovereign or the Governor-General	228
References to proceedings of a committee	228
<b>Unparliamentary Language</b>	229
Offensive or disorderly words	229
Personal reflections	229
Accusations of lying	230
References to the absence of a member	230
Reference to parties	231
References to persons outside the House	231
Withdrawal of unparliamentary language	232
<b>Matters Concerning the Administration of Justice</b>	232
Offensive references to judges	232
Sub judice rule	233
Scope of the sub judice rule	233
Application of the sub judice rule	234
Matters suppressed by court order	236
Other references to judges	236
<b>Interjections</b>	236
Yielding	237
Inclusion of interjections in <i>Hansard</i>	237
Provoking interjections	237
<b>Visual Aids</b>	238
<b>Interruption of Debate</b>	239
<b>Adjournment of Debate</b>	239
Motions for adjournment of debate	240
Resumption of adjourned or interrupted debate	240
<b>Ending Debate</b>	240
<b>Restrictions on the Length of Debate</b>	241
Time limits on the whole debate	241
Restrictions on the number of speakers	241
<b>Closure</b>	242
Moving the closure	242
Restrictions on who may accept closure motions	243
Limited-time debates	243
Acceptance of closure motion	243
Putting the closure motion	244
Putting the question following agreement to the closure	244

Amendments	245
<b>Lapse of Debate</b>	245
<b>CHAPTER 17 VOTING</b>	
Majority Required	246
Putting the Question	247
Voice Vote	247
Deciding the result on voices	247
Call for a further vote	248
Party Votes	248
Procedure for conducting vote	248
Party vote totals	249
Casting of proxies on party votes	250
Split-party votes	251
Members voting contrary to their party	251
Personal votes	252
Conscience issues	252
Personal vote following party vote	253
Procedure for personal votes	253
Tellers	254
Time for ringing the bells	254
Locking the doors	254
Obligation to vote	254
Vote follows voice	255
Voting	255
Order during a vote	256
Conclusion of the vote	256
Voting on Multiple Options	256
Errors	256
Records of Votes	257
General Points about Proxies	258
Conferring proxies	258
Withdrawal or amendment of proxy	258
Disputes over proxies	259
Resolution of a Question	259
Rescission of Resolution	259
<b>CHAPTER 18 STATEMENTS</b>	
Informing the House	260
Procedure	260
Types of Statement	260
Prime Minister's Statement	261
Presentation of the statement	262
Debate	262
Ministerial Statements	263
Minister's right to make statement	263
Circumstances giving rise to a ministerial statement	263
Making the statement	264
Misrepresentations in Debate	264
Time for correcting a misrepresentation	265
Misrepresented interjections	265

How a point is corrected	265
<b>Personal Explanations</b>	265
Time for making a personal explanation	266
Explanation must be personal to the member	266
Effect of explanation	267
<b>Misrepresentations During Oral Questions</b>	268
Procedure for application	268
Response	268
<b>Maiden Statements</b>	268
<b>Valedictory Statements</b>	269
<b>CHAPTER 19 COMMITTEES OF THE WHOLE HOUSE</b>	
<b>Committees Consisting of All Members</b>	270
<b>The House in Committee</b>	271
General rules for proceedings	271
Call in committee	272
<b>Chairpersons</b>	272
Other Chairpersons	273
Temporary Chairpersons	273
Acting Chairperson	273
Participation in debate	273
<b>Maintenance of Order</b>	274
<b>Business Considered in Committee</b>	274
<b>Arrangements for Consideration in Committee</b>	274
<b>Instructions</b>	275
Instructions with or without notice	276
Moving an instruction	276
Debate on instruction	276
Variation of an instruction	276
Repetition of an instruction	277
<b>Reports</b>	277
Motions to report	277
Obligation to report	277
Manner of reporting	278
<b>CHAPTER 20 SELECT COMMITTEES</b>	
<b>Functions of Committees</b>	280
Legislation	280
Petitions	280
Estimates and annual review	281
International treaty examinations	281
Reports of Officers of Parliament	281
Matters referred to a committee	281
Inquiries initiated by the committee	282
Special functions	283
<b>Scope of Committee Activity</b>	283
Instructions	283
Terms of reference adopted by committees	284
<b>Types of Select Committees</b>	284
Subject select committees established by the Standing Orders	284
Other committees established under the Standing Orders	285

Other committees established	286
<b>Joint Committees</b>	286
<b>CHAPTER 21 ESTABLISHMENT AND PERSONNEL OF SELECT COMMITTEES</b>	
Establishment of Committees	287
Debate	287
Amendment	287
Life of Committees	288
Size of Committees	288
Membership of Committees	288
Overall proportionality	288
Initial appointment of members	289
Non-voting members	290
Vacancies in membership	290
Replacing members	290
Additional members	292
Participation by other members	292
Disqualification of members	292
Financial interests	294
Presiding Officers	294
Chairperson	294
Deputy chairperson	297
Other chairpersons	298
Staff of Committees	298
Advisers	299
Officers of Parliament	299
Legislative drafters	300
Departmental officials	300
Other advisers	301
<b>CHAPTER 22 SELECT COMMITTEE PROCEEDINGS</b>	
Meetings of Committees	303
First meeting	303
Place of meeting	303
Calling of meeting	304
Notice of meeting	304
Meeting times	305
Varying restrictions on meeting times	307
Cancellation of meeting	308
Suspension of meeting	308
Adjournment of meeting	309
Joint meetings	310
Subcommittees	310
Quorum and Attendance	311
General Procedures of Select Committees	312
Ruling on matters of procedure	313
Matters subject to judicial decision	314
Committee's Agenda	314
Items of business	315
Manner of Taking Decisions	316

<b>Maintenance of Order</b>	316
Suspension of meeting on account of disorder	317
Order at meetings outside the parliamentary precincts	317
<b>Broadcasting of Proceedings</b>	318
<b>Minutes</b>	318
<b>Calling for Evidence</b>	319
Calling for submissions	319
Extent of advertising	320
Closing date for submissions	320
<b>Access to Evidence and Proceedings</b>	321
Public evidence	321
Private evidence	321
Secret evidence	322
Proceedings other than evidence	324
Chairperson's statement	326
<b>Written evidence</b>	327
Return of written submissions	327
<b>Oral Evidence</b>	328
Videoconference and teleconference	329
Particular categories of witness	329
Preliminary matters	331
Representation	332
Order of hearing witnesses	333
Conduct of examination	333
Relevancy	333
Other objections to answer	333
Conclusion of examination	336
Interpretation and translation	336
<b>Responding to Allegations</b>	337
Serious damage to reputation	337
Information on allegations	338
Response	338
<b>Expenses</b>	339
<b>Recordings and Transcripts of Proceedings</b>	339
<b>CHAPTER 23 SELECT COMMITTEE REPORTING</b>	
<b>Types of Report</b>	341
Interim reports	341
Special reports	341
Final reports	342
Activities reports	343
<b>Time Limits for Reporting</b>	343
Time for report fixed	343
Failure to report within time fixed	344
Extensions to reporting time	344
<b>Adoption of Report</b>	345
Consideration	345
Draft report	345
Adverse findings	346
Deliberation	347
Minority or differing views	348

Adoption of report	349
Languages	350
Confidentiality of report	350
Effect of adoption of report	350
<b>Presentation of Report</b>	351
<b>Publication of Report</b>	351
<b>Custody of Select Committee Documents</b>	352
<b>Responses to Recommendations</b>	353
<b>Consideration of Select Committee Reports</b>	354
<b>CHAPTER 24 CLASSIFICATION AND FORM OF LEGISLATION</b>	
<b>Bills</b>	356
<b>Classification of Bills</b>	357
Government bills	358
Members' bills	358
Local bills	359
Private bills	361
<b>Determining a Bill's Classification</b>	364
<b>Adoption of Member's Bill by the Government</b>	364
<b>Form of Bills</b>	364
Preamble	365
Enacting words	366
Preliminary clauses—Title	366
Preliminary clauses—Commencement	366
Preliminary clauses—Principal Act clause	367
Temporary laws	367
Clauses	367
Parts and other divisions	368
Schedules	368
Explanatory note	369
<b>Omnibus Bills</b>	370
Bills to relate to a single subject area	370
Types of omnibus bills that are permitted	371
Amendments of an omnibus nature	372
<b>Particular Types of Bills</b>	372
Appropriation bills	372
Confirmation and validation bills	373
Customs Acts Amendment bills	373
Finance bills	373
Imprest Supply bills	373
International treaty bills	374
Local Legislation bills	374
Māori Purposes bills	375
Reserves and Other Lands Disposal bills	375
Revision bills	375
Settlement bills	376
Statutes Amendment bills	376
Taxation bills	377
<b>CHAPTER 25 PREPARATION OF LEGISLATION</b>	
<b>Government's Legislative Programme</b>	378

<b>Pre-Legislative Scrutiny by the House</b>	379
<b>New Zealand Bill of Rights</b>	379
Reporting on inconsistencies	380
<b>Drafting</b>	381
Parliamentary Counsel Office	381
Other drafters	382
Drafting practice	383
<b>Printing and Publishing</b>	383
<b>Member in Charge of the Bill</b>	384
Government bills	384
Members' bills	384
Local bills	384
Private bills	385
<b>Promoter</b>	385
<b>Same Bills Proposed</b>	386
<b>Preliminary Procedures for Private and Local Bills</b>	386
Preamble for private bills	386
Form of notices	387
Advertising	387
Delivery of notices to persons with a direct interest	387
Delivery of notices to specified parties	388
Notices served on members	389
How notice is given	389
Deposit and inspection	389
Bills dealing with land	390
Fees	390
Declaration for local or private bill	391
Examination by the Clerk	391
Effect of certification by the Clerk	391
<b>Inclusion of Clauses in a Local Legislation Bill</b>	392
<b>Revision Bills</b>	393
Programme	393
Preparation	393
Certification	393
<b>CHAPTER 26 THE LEGISLATIVE PROCESS</b>	
<b>Introduction</b>	394
<b>Stages in the Passing of Bills</b>	395
<b>Introduction of Bills to the House</b>	395
Government bills	395
Members' bills	396
Private bills and local bills	398
<b>Circulation of Bills</b>	398
<b>Setting a Bill Down for First Reading</b>	398
<b>Withdrawal of a Bill</b>	399
<b>Report under the New Zealand Bill of Rights Act</b>	399
<b>Departmental Disclosure Statements</b>	400
<b>Amendments to New Zealand Superannuation</b>	401
<b>Cognate Bills</b>	401
<b>First Reading</b>	402
Nature of debate	402

Speech of member in charge	402
Amendments to motion for first reading	403
Length and conclusion of debate	403
First reading without debate	404
<b>Referral of Bills to the Waitangi Tribunal</b>	404
<b>Referral of Bills to Select Committees</b>	405
Almost all bills referred	405
Choice of committee to nominate	405
Determination of committee to consider bill	406
Special powers or instructions	406
Transfer of bill to another committee	407
<b>Consideration of Bills by Select Committees</b>	407
<b>Process Followed by Committees</b>	408
Briefings	408
Advertising	409
Period for submissions	409
Hearing submissions	410
Opinions from other committees	411
Advisers and drafting	412
Legislative quality	412
Bill of Rights Act	413
Amendments	414
Private bills and local bills	415
Local Legislation bills	416
Statutes Amendment bills	416
Dividing a bill	416
<b>Reporting on Bills</b>	417
Time for report	417
Extension of time	418
Form of report	418
Reports on private bills	419
Suitability of using Local Legislation bills	420
Reports on associated topics	420
<b>Presentation of Reports</b>	420
<b>Reprinting of Bills</b>	421
<b>Setting Bill Down for Second Reading</b>	421
<b>Second Reading</b>	422
Amendments on Second Reading	423
Amendments to defer second reading	423
Adverse or reasoned amendments	423
Public affairs amendments	424
Financial Veto of Select Committee Amendments	424
Adoption of Select Committee Amendments	424
<b>Setting Bill Down for Committee Stage</b>	425
<b>Committee Stage—Consideration by Committee of the Whole House</b>	425
Nature and purpose of committee stage	425
Notice of committee stage	426
Making arrangements	426
Dispensing with committee stage	427
Going into committee	428
<b>Instructions</b>	428

Restrictions on instructions	429
Moving of instructions	429
<b>Procedure in Committee</b>	430
Speaking in committee	430
Delegation of functions	430
Order of considering bill	430
Debate	431
Preamble	431
Part by part consideration	432
Consideration clause by clause	432
Schedules	432
Preliminary clauses	432
Postponement of provision	433
Transfer of a provision	433
Division of a provision	434
<b>Amendments</b>	434
Form of amendments	434
Manner of lodging	434
Time for lodging	435
Scheduling of amendments—grouping and selection	435
Proposing and debating amendments	436
<b>Admissible Amendments</b>	436
<b>Inadmissible Amendments</b>	436
Amendments outside the scope of the bill	436
Amendments to omnibus bills	437
Amendments of an omnibus nature	438
Amendments the same in substance as a previous amendment	438
Amendments inconsistent with the bill or a previous decision of the committee	439
Amendments that are frivolous, vague or lacking form	439
Amendments to delete part	440
Insertion of a preamble	441
Amendment of a purpose clause	441
Amendments to deeds of settlement or agreements	441
Amendments to bills implementing treaties	441
Select committee amendments subject to financial veto	442
Amendments having an impact on fiscal aggregates	442
Amendments subject to financial veto	442
Addition of provision fixing annual tax rates	442
Addition of new clauses to Local Legislation bills	442
Amendments outside the scope of local bill or private bill notices	443
Amendments that should be included in a local or private bill	443
<b>Putting the Question</b>	443
Conclusion of the debate	443
Manner and order of putting amendments	444
<b>Resolving the Question</b>	444
Clauses of a Statutes Amendment Bill	445
Reserved provisions	445
Proposals for entrenchment	446
<b>Dividing a Bill</b>	446
<b>Interruption of Committee Stage</b>	447

<b>Conclusion of Committee Stage</b>	448
<b>Report of the Committee</b>	448
Making the report	448
Adoption of report	448
<b>Recommittal</b>	449
Moving for recommittal	449
Effect of recommittal	449
<b>Setting Bill Down for Third Reading</b>	450
Referral to a select committee	450
<b>Bills Requiring Crown Consent</b>	451
<b>Financial Veto of Bills Awaiting Third Reading</b>	451
<b>Third Reading</b>	451
Amendments	452
Cognate bills	452
Third reading without debate	452
<b>Passing of the Bill</b>	452
 <b>CHAPTER 27 ENACTMENT AND PUBLICATION OF ACTS</b>	
<b>Royal Assent</b>	453
Preparation of bill	453
Amendments and corrections	453
Authentication of prints	453
Presentation of bill	454
Giving of the Royal assent	454
Refusal of the Royal assent	455
Errors in Acts	455
<b>Promulgation of Acts</b>	456
<b>Publication of Acts</b>	456
Reprints of Acts	457
 <b>CHAPTER 28 DELEGATED LEGISLATION</b>	
<b>Meaning of Delegated Legislation</b>	459
<b>Parliamentary Review of Delegated Legislation</b>	460
<b>Regulations Review Committee</b>	461
<b>Judicial Review of Delegated Legislation</b>	462
<b>Human Rights Review of Delegated Legislation</b>	462
<b>Primary Legislation Authorising the Making of Delegated Legislation</b>	462
Principles	462
Power of the Regulations Review Committee to report on legislative proposals	463
Regulation-making provisions	464
Delegated legislation changing primary legislation	465
Other matters	466
<b>Preparation of Delegated Legislation</b>	467
Drafting	467
Consideration of draft delegated legislation	467
Referral of draft regulation to the Regulations Review Committee	467
<b>Publication of Delegated Legislation</b>	469
Legislative instruments	469
Disallowable instruments that are not legislative instruments	469
<b>Presentation of Delegated Legislation to the House</b>	470

<b>Parliamentary Involvement in Making Delegated Legislation</b>	471
Consultation with the House	471
Validation of delegated legislation by statute	471
Confirmation of delegated legislation by statute	472
Delegated legislation made by the House	473
Amendment of disallowable instruments by the House	473
Approval of delegated legislation by affirmative resolution of the House	474
Disallowance of disallowable instruments by the House	476
Automatic disallowance of regulations	477
<b>Complaints Received by the Regulations Review Committee</b>	479
Examination of Delegated Legislation	479
Grounds for Report to the House	480
Other Matter Relating to Delegated Legislation	489
Reports	490
Government Response	490
 <b>CHAPTER 29 INQUIRIES</b>	
<b>Power to Inquire</b>	491
The nature of parliamentary inquiries	492
<b>Form of Inquiry</b>	492
House	492
Committees of the whole House	492
Select committees	493
<b>Powers in Carrying Out Inquiries</b>	494
Power to obtain evidence	494
Power to punish	498
Oaths	498
<b>Protections for Witnesses</b>	499
Evidence protected	499
Interfering with witnesses	500
Natural justice	501
<b>Limitations on the Power to Inquire or Obtain Evidence</b>	501
Statutory prohibition or inhibition	502
Charges against members	504
Self-incrimination	504
Intelligence and security agencies	505
Official information requests	505
Other suggested legal inhibitions	506
<b>Particular Types of Inquiry</b>	508
Removal of office-holders	508
Membership of the House	509
Statutory inquiries	509
 <b>CHAPTER 30 PUBLIC FINANCE</b>	
<b>The Public Finance Principles</b>	511
<b>Borrowing</b>	512
<b>Financial Year</b>	513
<b>Crown Bank Accounts</b>	513
<b>Financial Responsibility of the Crown</b>	514
<b>Government's Financial Veto</b>	515
Application of financial veto	516

The Government's fiscal aggregates	516
The decision to invoke financial veto	517
Exercise of the financial veto	518
Delivery of the certificate	519
Effect of a financial veto certificate	519
<b>Finance and Expenditure Committee</b>	520
<b>Financial Scrutiny Evolves</b>	522
<b>CHAPTER 31 APPROPRIATIONS AND AUTHORISATIONS</b>	
Legal Authority and Financial Authority	523
Effect of an Appropriation	524
Payment of Public Money	525
Duration of Appropriations	526
Permanent	526
Annual	527
Multi-year	527
Interim Authorisations	528
<b>Types of Appropriation</b>	529
Appropriations for output expenses	530
Appropriations for benefits or related expenses	531
Appropriations for borrowing expenses	531
Appropriations for other expenses	531
Appropriations for capital expenditure and capital injection authorisations	532
Appropriations for expenses and capital expenditure to be incurred by an intelligence and security department	532
Multi-category appropriations	532
Aggregations of Appropriations	533
Transferring Appropriations	533
Lending	533
Emergency Expenses and Capital Expenditure and Capital Injections	534
Approval of Excess Expenses and Capital Expenditure	534
Unappropriated or Unauthorised Expenses and Capital Expenditure	535
<b>CHAPTER 32 REVENUE</b>	
Sources of Revenue	536
Taxation	537
Income tax	537
Goods and services tax	538
Customs and excise duties	538
Levies	540
Other Revenue Sources	541
Accounting For and Reporting Revenue	542
<b>CHAPTER 33 THE PROCESS OF SUPPLY</b>	
Outline of the Supply Process	544
Before the financial year commences	544
During the financial year	545
After the financial year ends	545

<b>Budget Preparations</b>	545
Strategic phase	546
Strategic intentions	547
Preparation of the Estimates	547
Format of the Estimates	548
Funding for Offices of Parliament	548
Budget secrecy	549
<b>First Imprest Supply Bill</b>	550
Introduction and passing	550
<b>The Budget</b>	551
The main Appropriation Bill	552
Budget papers	552
Budget statement	553
The Budget debate	553
<b>The Main Estimates</b>	554
Examination of the main Estimates	555
Intelligence and security departments	559
The Estimates debate	559
<b>Passing of the Main Appropriation Bill</b>	563
<b>Second and Subsequent Imprest Supply Bills</b>	564
<b>Supplementary Appropriations</b>	565
Supplementary Estimates	565
Introduction of Appropriation Bill	565
Examination of Supplementary Estimates	566
Further Supplementary Estimates	566
Supplementary Estimates debate	566
Passing of Appropriation Bill	567
<b>Confirmation or Validation of Expenses, Capital Expenditure and Capital Injections</b>	567
 <b>CHAPTER 34 REPORTING AND AUDIT</b>	
<b>Types of Reporting Entity</b>	569
Government	569
Departments	570
Offices of Parliament	571
Crown entities	571
State enterprises	573
Other organisations and companies	576
<b>Reporting Standards</b>	577
Financial reporting	577
Non-financial reporting	577
<b>Financial Statements of the Government</b>	579
<b>Departmental Reporting</b>	580
Departmental strategic intentions	580
Financial reporting	581
Operational reporting	581
<b>Non-Departmental Reporting</b>	582
Crown entities	582
State enterprises	583
Other organisations and companies	584
<b>Audit</b>	584

Audits of financial statements and performance information	585
Performance audits and inquiries	586
Parliamentary and ministerial reporting	586
<b>Publication of Reports</b>	<b>587</b>
<b>CHAPTER 35 FINANCIAL SCRUTINY</b>	
<b>Monitoring and Control of Public Entities</b>	<b>589</b>
Departments	589
Non-departmental performance	589
<b>Parliamentary Accountability</b>	<b>590</b>
<b>Government's Financial Statements</b>	<b>591</b>
<b>Annual Review</b>	<b>591</b>
Allocation of reviews	592
Preliminary information gathering	592
Examination	593
<b>Reports on Annual Reviews</b>	<b>594</b>
Time for report	594
Nature of the report	595
<b>Appropriation (Confirmation and Validation) Bill</b>	<b>596</b>
Introduction, first reading and second reading	596
Annual review debate	596
Passing of the bill	597
<b>Debate on Crown Entities, Public Organisations, and State Enterprises</b>	<b>597</b>
<b>Organising the Annual Review Debates</b>	<b>598</b>
<b>CHAPTER 36 PETITIONS</b>	
<b>Petitioning Parliament</b>	<b>600</b>
<b>Promotion and Circulation of Petition</b>	<b>601</b>
<b>Form of Petition</b>	<b>602</b>
Request for action	603
Signatures	603
Language of petitions	604
<b>Contents of Petition</b>	<b>604</b>
<b>Certain Petitions Not Accepted</b>	<b>604</b>
House's jurisdiction	604
Petitioners with legal remedies	605
Petitions on matters within the Ombudsman's jurisdiction	606
Petitions on a matter already dealt with	606
Petitions relating to judges	607
<b>Presentation of Petitions</b>	<b>607</b>
Members' responsibilities	607
Scrutiny of petitions	607
Method of presentation	608
Acceptance of petitions	608
Announcement of presentation	608
<b>Referral to a Select Committee</b>	<b>608</b>
<b>Consideration by Select Committee</b>	<b>609</b>
Form of committee's consideration	609
Procedure before the committee	611
<b>Report</b>	<b>611</b>

Lapse of Petitions	612
Responses to Recommendations	612
Records of Petitions	613
<b>CHAPTER 37 PAPERS</b>	
Requirements to Present Papers	614
Statute	614
Command	615
Orders for returns	615
Other orders requiring presentation	616
Voluntarily Presenting Papers	616
Method of Presentation	617
General	617
Speaker	617
Prime Minister's statement	618
Budget papers and Estimates	618
Deemed presentation	618
Official document quoted by a Minister	618
Record of Presentation	619
Publication of Papers	619
Parliamentary papers	620
Classification of parliamentary papers	620
Errors in parliamentary papers	621
Non-parliamentary papers	621
Preparation and printing	621
Legal Status of Papers Presented to the House	622
Parliamentary papers and other authorised communications	622
Non-parliamentary papers	624
Purpose of Presenting Papers	625
<b>CHAPTER 38 RESPONSES TO ADVERSE REFERENCES</b>	
Adverse References	627
The Occasion of the Reference	627
Applicant	627
Application to the Speaker	628
Conferral by the Speaker	628
Speaker's Determination	629
Form of the Response	630
Presentation to the House	631
<b>CHAPTER 39 QUESTIONS</b>	
Types of Questions	633
Notice of Questions	633
Notice of oral questions	633
Notice of urgent questions	633
Notice of written questions	634
Signing notices of questions	634
Party co-ordination	634
Time for Lodging Notices of Questions	635
Oral questions	635
Urgent questions	635

Written questions	635
<b>Processing of Notices</b>	636
Checking	636
Publication	636
<b>Allocation of Questions</b>	636
<b>Transfer of Question from Oral to Written</b>	637
<b>Content of Questions</b>	637
Conciseness	638
Statements of facts and names of persons	638
Authentication	639
Expressions	639
Unparliamentary language	640
Seeking an opinion	640
Repeating a question	640
Select committee and court proceedings	641
<b>Urgent Questions</b>	641
<b>Amendment of Questions</b>	642
<b>Questions to Ministers</b>	642
Ministerial responsibility	643
Personal or party capacity	645
Associate Ministers	646
Parliamentary Under-Secretaries	647
Transfer of questions between Ministers	647
Transfer of questions involving the Prime Minister	648
<b>Questions to Other Members</b>	649
Questions to select committee chairpersons	650
Questions to the Speaker	651
<b>Preparation of Replies</b>	651
<b>Question Time</b>	652
<b>Asking Oral Questions</b>	652
Withdrawal of questions	653
Postponement of questions	653
Asking urgent questions	653
Asking questions to other members	654
<b>Replies to Oral Questions</b>	654
Obligation to reply	654
Form of reply	656
Adequacy of reply	657
Follow-up replies	658
<b>Supplementary Questions</b>	658
<b>Misrepresentation during Question Time</b>	659
<b>Replies to Written Questions</b>	659
Co-ordinated replies	660
Holding replies	660
Contents of replies	661
Publication of replies	661
Amended replies	661
<b>CHAPTER 40 REFERENDUMS</b>	
<b>Electoral Referendums</b>	662
Binding referendums	662

Non-binding referendums	663
<b>Citizens Initiated Referendums</b>	664
Scope of referendum	664
Proposals for petitions	665
Advertising of proposal	665
Withdrawal or cancellation of a proposal or petition	665
Determination of question	666
Form for signatures	667
Collecting signatures	667
Expenditure in relation to a petition	668
Scrutiny of petition	668
Resubmission of petition	669
Presentation of successful petition to the House	670
Holding of the referendum	670
<b>CHAPTER 41 GENERAL, URGENT AND SPECIAL DEBATES</b>	
<b>General Debates</b>	672
Form of the debate	673
No debate held in certain weeks	673
<b>Debates on Matters of Urgent Public Importance</b>	673
Applications for the debate	674
Two or more applications received on the same day	674
Late applications	675
Applications that cannot be accepted	675
Rules for acceptance of an application	676
Ruling by Speaker	679
Debate	680
<b>Special Debates</b>	680
<b>CHAPTER 42 INTERNATIONAL RELATIONS</b>	
<b>Proceedings in the House</b>	682
<b>Foreign Affairs, Defence and Trade Committee</b>	682
<b>Treaties</b>	684
Taking treaty action	685
Presentation of treaties to the House	685
National interest analyses	687
Select committee examination	689
Report and consideration	690
<b>Legislating for Treaty Obligations</b>	691
Allowing time for treaty examination	691
Form of legislation	691
Regulations overriding statutes	692
<b>Convention of Prior Parliamentary Examination of Treaties</b>	693
<b>Inter-Parliamentary Relations</b>	694
Inter-Parliamentary Relations Strategy	694
Inter-parliamentary relations programme	695
Participation in inter-parliamentary organisations	695
Commonwealth Parliamentary Association	695
Inter-Parliamentary Union	696
Asia Pacific Parliamentary Forum	696
Speaker-led diplomacy	696

Bilateral exchanges of members and committees	697
Parliamentary strengthening activities in the Pacific Region	698
<b>CHAPTER 43 EMERGENCY POWERS</b>	
Role of the House	699
Sitting of the House and Meeting Place	700
House adjourned, prorogued or dissolved	700
Forms of Parliamentary Control	701
Planning for emergencies	701
The right to be informed	702
Authority to continue or revoke an emergency	703
Power to make delegated legislation	704
Emergency Expenditure	705
<b>CHAPTER 44 PARLIAMENTARY PRIVILEGE</b>	
The Nature and Purpose of Parliamentary Privilege	706
Necessity	707
Establishment of Parliamentary Privilege in New Zealand	709
Statutory basis for privilege	710
Classification of Parliamentary Privileges	711
Creation of New Privileges	712
Abrogation of Parliamentary Privilege	713
Waiver of Parliamentary Privilege	715
Role of the Courts	717
Parliamentary intervention in legal proceedings	719
<b>CHAPTER 45 TYPES OF PRIVILEGE</b>	
Freedom of Speech	722
Exemption from Liability for Parliamentary Actions	723
General	723
House's disciplinary control and electors' democratic control	724
Criminal acts committed within Parliament	725
Freedom of debate	725
Proceedings in Parliament	726
Application of article 9	732
Questioning or impeaching parliamentary proceedings	733
Impeaching freedom of speech—direct attack	734
Questioning proceedings—indirect attack	735
Using parliamentary proceedings to support legal proceedings	736
Court or place out of Parliament	740
The House's Exclusive Right to Control its Own Proceedings	742
Exclusive cognisance	742
No examination of internal workings	743
Exclusive control and the New Zealand Bill of Rights Act 1990	745
Evidence of Debates and Proceedings in Parliament	746
Authority to refer to debates and proceedings	746
Evidence by members	747
Evidence by parliamentary officials	748
Control over the Parliamentary Precincts	748
The Speaker as occupier	748
Exercise of enforcement and information-gathering powers	748

Control of parliamentary information	749
<b>Power to Control Access to its Sittings</b>	750
Proceedings in the House	750
Select committee proceedings	751
Official Information	751
<b>Power to Hold Inquiries</b>	751
<b>Power to Obtain Evidence</b>	751
<b>Power to Administer Oaths</b>	752
<b>Power to Delegate</b>	752
<b>Power to Punish for Contempt</b>	752
<b>Power to Exercise Discipline over Members</b>	752
<b>Power to Fine</b>	753
<b>Power to Arrest</b>	753
<b>Power to Control Reports of its Proceedings</b>	753
<b>Disqualification of Members from Jury Service</b>	753
<b>Exemption from Liability for Parliamentary Publications</b>	753
<b>Freedom from Arrest</b>	754
Criminal matters	755
Contempt of court	756
<b>Exemption from Attendance as a Witness in Legal Proceedings</b>	757
Certificates of exemption from attendance	757
<b>Right to Have Civil Proceedings Adjourned</b>	759
<b>Service of Legal Process</b>	759
<b>Power to Determine the Qualifications of Members to Sit and     Vote in the House</b>	759
<b>Freedom of Access to the Governor-General and Favourable     Construction of the House's Proceedings</b>	761
 <b>CHAPTER 46 CONTEMPT</b>	
<b>Application of the Power to Punish for Contempt</b>	762
Definition of contempt	763
Exercise of the power	764
<b>Examples of Contempt</b>	765
Breach of privilege	766
Attendance of members	766
Pecuniary contempts	766
Records and reports	769
Disobedience to the rules or orders of the House	770
Interference or obstruction	773
Misconduct	775
Punishing parliamentary contributions	777
Reflections	780
Other contempts	782
<b>Legal Significance of Contempt</b>	783
 <b>CHAPTER 47 PROCEEDINGS IN MATTERS OF PRIVILEGE</b>	
<b>Raising Matters of Privilege</b>	785
<b>Matters Raised with the Speaker</b>	785
Must be raised at the earliest opportunity	785
Informing other members	786
Reference to matters of privilege	786

Speaker's role	787
Consideration by the Speaker	787
Determination by the Speaker	788
When the Speaker determines that no question of privilege is involved	789
When the Speaker determines that a question of privilege is involved	789
<b>Matters of Privilege Raised by Notice of Motion</b>	790
<b>Matters of Privilege Raised without Notice</b>	790
<b>Matters of Privilege Raised by Means of Petitions</b>	790
<b>Privileges Committee</b>	791
Powers	791
Scope of inquiry	792
Findings	792
Report	793
Consideration of report	793
<b>Outcome of Question of Privilege</b>	793
<b>Punishments</b>	794
Imprisonment	795
Fine	796
Censure	797
Prosecution at law	798
Impeachment	798
Suspension from the House	799
Expulsion	799
Exclusion from the precincts	800
Exclusion from the Parliamentary Press Gallery	800
Apology	801
<i>Table of Statutes and Instruments</i>	803
<i>Table of Cases</i>	818
<i>Index</i>	827

# Preface

The fourth edition of *Parliamentary Practice in New Zealand* is the first to be written by a group of people, rather than an individual. It incorporates 10 years of developments in New Zealand parliamentary practice, and the second decade under the mixed member proportional (MMP) electoral system. As MMP parliaments have become more established, so practice has evolved to reflect a proportional multi-party parliament.

This edition reflects important recent developments in New Zealand parliamentary practice. One of the most significant developments has been the passage of the Parliamentary Privilege Act 2014, which set out in one statute the basis for, and extent of, parliamentary privilege. While the House will always decide how to exercise privilege and the courts will determine its applicability, the Act brings clarity to an area that had grown increasingly subject to widely different interpretations. The chapters on privilege in this book reflect the provisions of the Act, which has yet to be tested in court.

As experience of MMP parliaments has grown, so the role of the Business Committee has evolved significantly. The changes to its powers and the way it works are at the heart of a well-functioning multi-party House of Representatives. The Business Committee is able to take a flexible approach to arranging House business and has become a proving ground for new procedures, such as recent changes to financial scrutiny arrangements. Following a change to Standing Orders, the committee has made much use of extended sittings to provide more hours for legislative work. This has seen a corresponding reduction in the use of urgency.

In the preface to the first edition of this book, published in 1985, the author, David McGee, stated two objectives. The first was to throw some light on the obscure subject of parliamentary practice, about which little had been written. The second was to record a part of New Zealand's constitutional law and practice. His purpose was to document the procedure of the House of Representatives, not to fix it unalterably for the future, but to establish what it was as a basis for which proposals for change can be considered. Those objectives remain central to me in the publication of the fourth edition and are reflected in the approach taken to producing it. A collaboratively written fourth edition is possible only because David McGee gave copyright of the book to the Clerk of the House of Representatives on his retirement. I also acknowledge the mammoth task he undertook in first writing the book.

Mary Harris was the driving force behind this edition and much of the work on it was done during her time as Clerk of the House. However, she made an even greater contribution to the book after her retirement, by significantly editing the draft chapters. The book benefitted enormously from her wisdom and insight, acquired through many years of service to Parliament and the central role she played in establishing the proper statutory basis for parliamentary privilege and the House's operation in the 21st century.

The role of the Clerk of the House has changed over time. There is a much greater need to balance procedural expertise with organisational leadership. It is not possible for the Clerk to continue as the sole editor or author of a book of this size and complexity. I am particularly grateful to Mary for offering to work on the book and to the Assistant Editors Pavan Sharma and David Bagnall for managing the writing, editing and publishing of the fourth edition.

I greatly appreciate Professor Philip Joseph's work on the chapters on

parliamentary privilege and his expert critique of other parts of the book. Parliamentary Counsel Ross Carter also critiqued the privilege chapters. Their contributions have greatly enhanced the coverage of one of the areas of significant change for the House in recent times.

Peter Lorimer, Principal Advisor at The Treasury, carried out expert peer review of the chapters on public finance, as he did for previous editions. Colleen Pilgrim and Gareth Ellis from the Office of the Auditor-General reviewed and commented on the chapters on Officers of Parliament as well as the reporting and audit chapters, and Kristina Temel from the Electoral Commission reviewed the electoral chapter.

The following current and former staff of the Office of the Clerk wrote parts of the new edition: Rafael Gonzalez-Montero, Tim Workman, Suze Jones, David Bagnall, Pavan Sharma, Gabor Hellyer, David Fraser, Charlotte Dawber-Ashley, Lesley Ferguson, James Picker, Matthew Louwrens, Kelly Harris, Fiona McLean, Elizabeth Grant, Daniel Tasker, Fay Paterson, Debra Angus, Peter Hoare, Meipara Poata, David Williams and Tracey Rayner. Their contributions were vital to the publication of the fourth edition.

My thanks to Andie Lindsay, Janet Hughes, Jenny Heine, Waiana Mulligan, Morgan Watkins, Georgia Lockie, Mary Drakeford and Joanne Emery for their work in researching, co-ordinating, editing and formatting this book.

Editing a book of this size and scope is a significant undertaking. A cut-off date for new content must always be set and, inevitably, events overtake the published word. I intend to take an iterative approach to the production of the next edition, where there will be ongoing updates to content in the wake of any significant changes in practice. That way, major developments can be documented at the time they occur, and the book can continue to be a reliable and authoritative source on parliamentary practice. Communications technology is likely to play a much greater role in keeping future editions current. It is my hope that the revision of the book can, in future, be an ongoing task rather than a major event in its own right.

My thanks to all of those who contributed to the fourth edition of *Parliamentary Practice in New Zealand*.

David Wilson  
Clerk of the House of Representatives  
March 2017

## CHAPTER 1

# The Parliament of New Zealand

The Parliament of New Zealand met for the first time on 24 May 1854 in Auckland. At that time the Parliament was officially styled “The General Assembly of New Zealand”. It consisted of three bodies: the Governor, a Legislative Council and a House of Representatives. Only the House of Representatives, the elected component, has retained its unbroken membership of the Parliament under its original title, though it is now a much larger body, with 120 members, as compared with 37 in 1854. (The 51st Parliament—2014–2017—had 121 members as a result of an electoral “overhang” of one member.)

The Parliament of New Zealand today consists of the Sovereign in right of New Zealand and the House of Representatives.<sup>1</sup> The Sovereign was not originally mentioned as part of the General Assembly. Legislation was therefore passed in 1953, on the occasion of the Queen’s first visit to New Zealand, to remove any doubt about the Sovereign’s power to give the Royal assent to bills.<sup>2</sup> The Sovereign’s powers as part of Parliament are exercised by Her Majesty’s representative, the Governor-General, who assumed this title in 1917. The Legislative Council, which was an appointive rather than elective body, was abolished on 1 January 1951,<sup>3</sup> leaving Parliament a single-chamber or unicameral legislature ever since.

## THE SOVEREIGN AND THE GOVERNOR-GENERAL

The Sovereign has performed a number of acts as a constituent part of Parliament. These have included: giving the Royal assent to bills that have passed through the House; summoning and proroguing Parliament; delivering the Speech from the Throne at the opening of a session of Parliament; and sending messages to the House of Representatives.

The Governor-General, as the Sovereign’s representative resident at the seat of government in New Zealand, naturally plays a more frequent part in the work of Parliament. The Governor-General is the representative of the Sovereign in the Sovereign’s executive capacity as Head of State. But the Governor-General also represents the Sovereign in respect of the Sovereign’s legislative duties as a member of the Parliament of New Zealand. In this capacity the Governor-General summons, prorogues and dissolves Parliament, and gives the Royal assent to bills. If the office is vacant or the Governor-General is for any reason unable to perform

---

<sup>1</sup> Constitution Act 1986, s 14(1).

<sup>2</sup> Royal Powers Act 1953.

<sup>3</sup> Legislative Council Abolition Act 1950.

## 2 Parliamentary Practice in New Zealand

the duties of the office, the Chief Justice performs them as Administrator of the Government.<sup>4</sup> (In the absence of the Chief Justice, the most senior Supreme Court judge available may act as Administrator. Their seniority is determined by their length of service as judges of the Supreme Court.)<sup>5</sup>

## THE HOUSE OF REPRESENTATIVES

The House of Representatives is the popularly elected component of the Parliament, its members being elected for a three-year term. It is this body that is inevitably identified with the term “parliament”, though it is in fact only a part of the Parliament.

This book is concerned with how that body is formed, what conditions apply to its membership, what rules it adopts for its procedures, what types of business it transacts and what is its legal relationship with persons and bodies outside Parliament.

## FUNCTIONS OF THE PARLIAMENT AND THE HOUSE OF REPRESENTATIVES

The functions of the Parliament and of the House are not identical. Each constituent part of the legislature has a different role from the other. The Parliament of New Zealand has only one function, and that is to make laws. Whenever “Parliament” acts, its act has the force of law—as an Act of Parliament. There are communications between the Governor-General and the House of Representatives on other matters than laws, but the two constituents act together as Parliament only to make laws.

Originally this law-making function was confined to making laws for the “peace, order and good government of New Zealand”<sup>6</sup> (a common phrase at the time in legislative devolutions to colonial legislatures of the power to make laws). Following questions being raised as to Parliament’s power to make laws having extra-territorial effect,<sup>7</sup> that is, *outside* New Zealand, Parliament itself extended this law-making provision in 1973 to the making of laws “having effect in, or in respect of New Zealand or any part thereof and laws having effect outside New Zealand”.<sup>8</sup> The present legislative description of its law-making power speaks only of Parliament having “full power” to make law.<sup>9</sup>

The Governor-General, as the Sovereign’s representative, has a much wider role than simply that of a constituent part of Parliament. The Sovereign personifies the State and is head of the executive government—for example, appointing Ministers and formally performing many executive acts. But the House of Representatives, apart from its role in the Parliament that makes laws, also performs other functions that are important in themselves though they do not lead to an action of the Parliament as such. Indeed, only about half of the working time of the House is spent on its legislative function. However, the House differs from the Sovereign in that the House of Representatives performs all of its functions under the aegis of the Parliament of New Zealand. The House of Representatives has no role outside the life of a Parliament and cannot function once that Parliament has been dissolved or has expired.

---

<sup>4</sup> See generally, *Letters Patent Constituting the Office of Governor-General of New Zealand* (issued 28 October 1983 and amended in 1987 and 2006).

<sup>5</sup> Supreme Court Act 2003, s 18.

<sup>6</sup> New Zealand Constitution Act 1852 (UK), s 53.

<sup>7</sup> *R v Fineberg* [1968] NZLR 119 (SC).

<sup>8</sup> New Zealand Constitution Amendment Act 1973, s 2.

<sup>9</sup> Constitution Act 1986, s 15(1). See Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) especially chs 6, 14 and 15, for a discussion of legislative power.

Commentators on the House of Representatives will differ in their classification and description of its functions. The House's role is not defined anywhere; it has been carved out by the members of the House, partly reflecting the legal environment from which the House draws its power (including its "privileges"), partly expectations (including those of the early parliamentarians) of what members of Parliament ought to do, partly the initiative of members themselves in assuming functions that were open to them, and partly by legislative conferment on an ad hoc basis (removal of judges, appointment of certain office holders, etc). Nor does the House necessarily have an exclusive purchase on any of the functions it performs. It shares its legislative role and the finding of a government, for instance, with the Crown, and the Government may also be scrutinised by means other than parliamentary activity. With these qualifications, four major functions performed by the House are outlined below.

## A legislature

The House of Representatives plays a part—manifestly the largest and most important part—in the making of laws by Parliament. An Act of Parliament, a statement of law in its highest form, is a law agreed to by both the House of Representatives and the Sovereign or the Governor-General. The most visible part of the process by which a proposed law becomes an Act of Parliament is its processing by the House. Only when it is agreed to by the House can it be submitted to the Governor-General for concurrence. When this is forthcoming and both parts of Parliament are of one mind on the matter, the proposed law is converted into law as an Act of Parliament.

The imprimatur of Parliament on a document, converting it from a piece of paper with no effect into a statement of rules of binding effect that will be enforced by the full might of the State, is fundamentally important in providing a means by which binding rules (laws) can be recognised. Contributing to such documents is a primary function of the House and its committees.

## The provider of a government

Neither Parliament nor the House governs the country in the sense of having direct control of the civil and military apparatus of State and making day-to-day decisions on the management and deployment of these resources. This is the job of the executive (the "Government"), which carries out the government of the country by appointment of the Governor-General.

When the House first met in 1854, executive authority within the colony was exercised much more personally by the Governor than it is today. The Governor's advisers, those who carried out his wishes or "ministered" to him, were not members of Parliament but people who owed their positions to their standing and personal relationships with the Governor.

For the first two years of Parliament's existence Ministers were chosen by the Governor not because they commanded the support of a majority of members of the House but for more personal reasons. This severely limited the House's control and influence over the Government, for the ultimate means of such control—withdrawal of its support for the Government leading to the Government's dismissal—could not be brought to bear when other factors determined the composition of the Government. Most of the early parliamentarians endeavoured to achieve for New Zealand a "responsible" form of government—that is, one in which Ministers were answerable to, and subject to the full control of, the House for their official actions—in addition to the "representative" form of government already conferred on the colony.

In 1856 the Governor, having consulted the Imperial Government, accepted that he should in future choose Ministers from among members of Parliament who could rely on the support of a majority of members of the House. Responsible

## 4 Parliamentary Practice in New Zealand

government had been achieved.<sup>10</sup> It is on this principle that Ministers are appointed by the Governor-General today.

In effect, the House is an electoral college, which translates the will of the people, as expressed at a general election, into a Government (a “Ministry”) composed of a Prime Minister and Ministers. The member of the House who commands majority support from the other members is asked by the Governor-General to form a Government by taking office as Prime Minister and recommending to the Governor-General the appointment of other members as Ministers of the Crown. There is no legal or political necessity for this action to be ratified or confirmed by the House when it meets, although the justification for the choice of the Government is constantly tested throughout the life of the Parliament.

The House thus provides and sustains the Government from among its own members, and the Government, although appointed by the Crown, remains in office only as long as it can maintain a majority in the House; that is, as long as it retains the confidence of the House. Where no party has an overall majority in the House, a coalition Government or a minority Government may be formed, and sustained in office on the basis of agreements with other parties or members. But, whatever the precise arrangements, the political situation as represented by the members elected to serve in the House is what determines who is to govern, not the whim or pleasure of the Crown. This is a fundamental convention of the constitution.

### To scrutinise and control the Government

Though the Government is appointed from among members of the House depending upon the result of a general election, the House is not just an electoral college that disperses once its function of providing a Government has been fulfilled. The continuing support of the House is necessary to the continuance in office of the Government, and to maintain that support the Government must answer to the House for its stewardship of the executive functions of State. One of the principal means by which the House exacts explanations from the Government of official action it has taken is the annual process of granting financial authority or supply to the Government. As a quid pro quo for the authority they consider necessary to carry on governing the country, Ministers must defend their policies and explain the administration of their portfolios to the House. Similarly, when Ministers ask the House to pass legislation, the House may hold them to account for their actions in the procedure for passing that legislation. Many of the procedures of the House are designed specifically to enable the House to play its part in the scrutiny and control of the Government. Such procedures include questions addressed to Ministers, general and urgent debates, and select committees of members investigating matters of governmental responsibility and regulations made by the Government under powers delegated by Parliament. Everything the House does offers it the opportunity to probe and criticise the actions of the Government.

### To represent government and the people

The final function of the House of Representatives reverts partly to the idea embodied in the title of the original New Zealand Constitution Act—the idea of the representation of the views of the populace. The ideas of the Greek city state, in which all the citizens met in conclave to express their opinions on affairs of State and listen to the opinions of others, are quite alien to those ideas derived from British constitutional practice, on which the New Zealand Constitution Act was framed. They are also impracticable given the size and complexity of the modern State. New Zealand’s constitutional theory proceeds on the basis that there is within the State a source of authority, the Crown, which carries on the government,

---

<sup>10</sup> See Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at ch 5, for the steps leading to responsible government.

but calls its subjects into its presence in Parliament for the purposes of consultation and ratification. As all the subjects cannot attend in person, they attend through representatives (elected on a national or a local basis), and it is the task of these representatives to report what the inhabitants of the State feel and think about particular matters. It is also the task of the representatives to bind the persons they represent to the decisions of the Parliament to which they have been sent. As every person is symbolically present in Parliament through a representative, every person has a share in, and responsibility for, the actions of that Parliament, and is morally as well as legally obliged to obey its lawful dictates.

The House of Representatives, as the elective element of the Parliament of New Zealand, fulfils this representative function. It permits members to report and give voice to national, provincial, local and individual views on matters of State. It also imposes on every inhabitant some responsibility for the ultimate decisions on the law and policy according to which New Zealand is governed. It represents the governed to the Government and the Government to the governed.

## THE DEVELOPMENT OF THE HOUSE OF REPRESENTATIVES

This book is concerned with the law applying to, and the procedures employed in, the House of Representatives. It is not a history of Parliament, and minimal background to the evolution of the present rules is given only to make them intelligible. Nevertheless, it may be useful to outline in general terms the principal phases the House (mostly reflecting political and social changes) has passed through in its history.

**1854–1856:** The first two years of parliamentary democracy were something of a false start for the House. Though it was a representative institution on the franchise then applying, it found that it could not control the Government, since the Government was not politically responsible to it but to the Governor. The steps by which responsible government was conceded to the colony have been mentioned above. In 1856 the House started afresh, with a ministry appointed from among its members and holding office only as long as the ministry retained the confidence of the House.

**1856–1890:** This was a period of consolidation of parliamentary government in the colony. The House continued to function through a long and difficult series of wars, and moved its meeting place permanently from Auckland to Wellington. Māori representation was firmly established in the House from 1867, and the House asserted its political pre-eminence over the Legislative Council. The council started its long and ultimately terminal decline in this period. Elections became important means of changing the Government towards the end of the period.<sup>11</sup> Nevertheless, the House was not yet a “modern” legislature, largely because no comprehensive party system had developed. Such “parties” as there were, were parliamentary-based alliances or factions that, while relatively cohesive in parliamentary terms, had little extra-parliamentary organisation. The history of this pre-party period was therefore something of a calendar of “ins and outs”, with much depending upon the actions of forceful parliamentary personalities.

**1890–1935:** In this period a much more recognisably modern Parliament took shape. This resulted mainly from stronger party organisations being formed to fight elections and return members on a party ticket, and was reflected in the House’s procedural organisation taking on a firmer, more disciplined aspect. Under the influence of the stronger party approach to politics, the House adopted

---

<sup>11</sup> John E Martin *The House—New Zealand’s House of Representatives 1854–2004* (Dunmore Press Ltd, Palmerston North, 2004) at 82.

## 6 Parliamentary Practice in New Zealand

stricter debating and timetabling rules. This period also saw the advent of women's suffrage in 1893 and, much later, in 1933, the first woman elected to the House.

The House was a more party-politically combative institution during this era, but it passed through periods of considerable instability reflective of outside social trends—the strong temperance movement, conflicting interests between rural and urban dwellers, and a surge of immigration after the First World War. Though party government was established, it was not yet stable.

**1935–1996:** This period represents perhaps the high point of two-party control of the House. With the election of a Labour Government in 1935, the country entered an extended phase in which the same party held power for a considerable period, followed by an even longer period in which the other major party, National, held power. These two parties obtained a virtual monopoly of seats in the House during this era, and the House attuned its rules both explicitly and implicitly to reflect this. Not even the abolition of the Legislative Council in 1950 caused any significant interruption to a remarkably stable period for the Parliament, of low-key adjustments in its rules.

**1996 onwards:** Towards the end of the two-party phase of the House's history several significant developments began, many of them associated with economic and governmental reforms introduced in New Zealand after 1984.

In 1985 the sitting pattern of the House, which had remained unchanged virtually from the beginning, was altered, and the full-time, year-round nature of parliamentary work was recognised. Select committees were conceded powers to conduct inquiries on their own initiative rather than having to have matters referred to them by the House. This is now taken for granted, but it was a major change in parliamentary culture in 1985. The long-standing arrangements for parliamentary administration, which had not been the subject of serious examination for a century, were completely overhauled, and a new body (the Parliamentary Service) created to give members some executive responsibility for their own services for the first time.

In 1993, the country voted at a referendum for a change to the electoral system, ushering in a proportional representation system and multi-party representation in the House from the 1996 general election onwards. In anticipation of this new political environment, extensive changes to the House's procedures were adopted in 1995.<sup>12</sup> These procedures have continued to be adapted in the light of the practical experience of operating in a multi-party, rather than a two-party, House of Representatives.

The year 2004 saw the 150th anniversary of the first meeting of the House. It was marked by a special sitting on Monday 24 May 2004.<sup>13</sup> It also saw the completion of a project embarked upon at the time of the House's centenary, to write the history of the New Zealand Parliament. This work had commenced with the appointment of a parliamentary historian (Dr AH McLintock) and had seen the publication of two works: the first on the establishment of representative government in New Zealand<sup>14</sup> and the second on the 19th-century Legislative Council.<sup>15</sup> In 2004 a comprehensive history of the House of Representatives for the first 150 years of its existence was completed by Dr John Martin and published as the centrepiece of celebrations marking the House's anniversary.<sup>16</sup>

<sup>12</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A.

<sup>13</sup> (24 May 2004) 617 NZPD 13179–13213.

<sup>14</sup> AH McLintock *Crown Colony Government in New Zealand* (Government Printer, Wellington, 1958).

<sup>15</sup> AH McLintock and GA Wood *The Upper House in Colonial New Zealand* (Government Printer, Wellington, 1987).

<sup>16</sup> John E Martin *The House—New Zealand's House of Representatives 1854–2004* (Dunmore Press Ltd, Palmerston North, 2004).

The Electoral Referendum Act 2010<sup>17</sup> required an indicative referendum on the electoral system to be held in conjunction with the 2011 general election. The referendum asked voters to indicate their preferred system of voting for members of the House. The result was support for retaining the mixed member proportional system (MMP), and, as required under the Act, an inquiry was initiated by the Electoral Commission to determine through public consultation whether changes to MMP were necessary or desirable and to make recommendations to the Minister of Justice. The Commission presented its report to the House on 5 November 2012,<sup>18</sup> making a number of recommendations for enhancing the operation of the MMP system, which required legislative change. The Minister of Justice in the 50th Parliament indicated in answers to oral questions that she did not believe that the consensus necessary for such change existed amongst the parties in the House.<sup>19</sup>

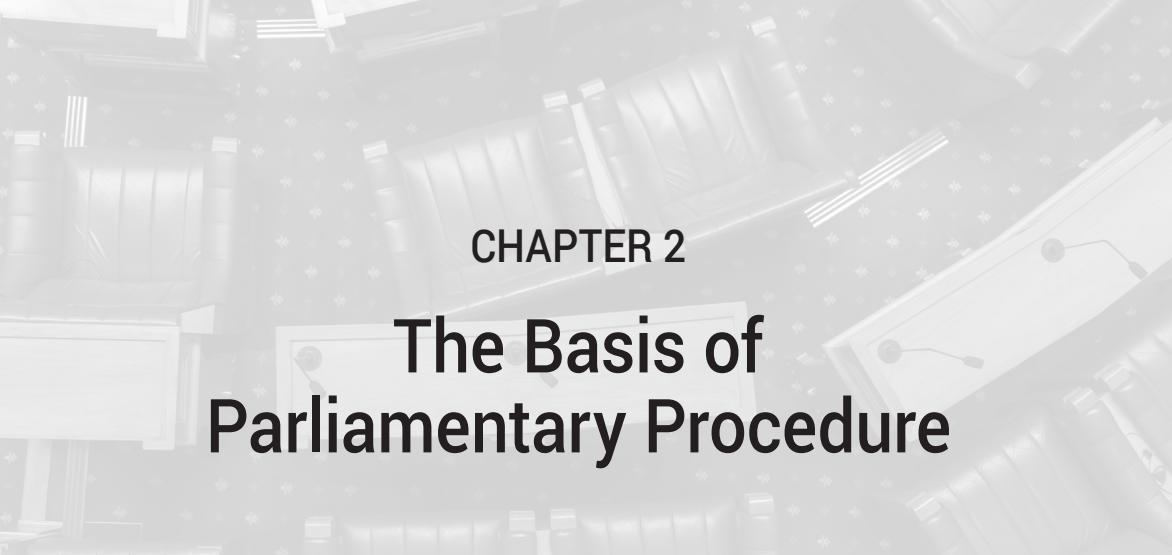
The changes contemplated by the Electoral Commission were not of a magnitude to have significant implications for House procedure. The Standing Orders continue to be based on those that have operated since 1996, with adaptations made as a result of reviews conducted by the Standing Orders Committee during each subsequent Parliament. While the Standing Orders changed in response to the introduction of a new electoral system, the parliamentary culture responded more slowly. The 49th and 50th Parliaments have, however, seen more movement to erode some vestiges of the first-past-the-post culture. There has been a growing transparency about the parliamentary timetable, and more recognition that much of the legislation the House passes is supported by most, if not all, parties. This has allowed members to work on a cross-party basis to focus parliamentary time on the issues that are important to them, and deal with proposals that have wide support more efficiently and quickly.

---

<sup>17</sup> Electoral Referendum Act 2010, ss 74–78.

<sup>18</sup> *Report of the Electoral Commission on the review of the MMP voting system* (29 October 2012) NZPP E.9.

<sup>19</sup> (14 May 2013) 690 NZPD 9852–9853.



## CHAPTER 2

# The Basis of Parliamentary Procedure

Like many legislatures around the world, the House regulates its own proceedings without intervention by any other authority. The exclusive right to control its own operation is one of the House's privileges.<sup>1</sup> Together with the associated privilege of free speech, it is fundamental to parliamentary independence and the continuous balancing of New Zealand's constitutional arrangements. The House exists within a constitutional framework where the legislature's autonomous law-making capability and scrutiny powers sit alongside the principle of judicial independence. The two institutions involved (the legislature and the judiciary) are at pains to avoid intrusion into each other's sphere, and maintain a relationship of mutual respect so as not to upset the balance. This respectful relationship avoids conflict between the institutions and promotes due regard for existing conventions, while allowing continuing constitutional evolution.

The House generally avoids setting out the detail of its procedures in legislation. On the other hand, the courts exercise restraint from venturing into the House's internal workings, even in respect of powers or duties conferred or imposed by a statute.<sup>2</sup> The House's freedom from outside interference requires that it respect and observe the law.<sup>3</sup>

This chapter surveys the statutory context in which the House operates and the sources of the rules governing the way the House goes about its work, and explains how these rules are changed and adapted to changing circumstances.

## STATUTE

The authority for the existence of Parliament and the House of Representatives, the determination of who is to be a member of Parliament, and many other fundamental parliamentary rules are derived from statutes, principally the Constitution Act 1986 and the Electoral Act 1993.<sup>4</sup> The Bill of Rights 1688 and the Parliamentary Privilege Act 2014 provide the statutory basis for the privileges enjoyed by the House.<sup>5</sup> These statutes affect the House's legal relationship with the judiciary and with persons outside the House. In addition, statute law has erected a framework on which a great deal of the financial business of the House

---

<sup>1</sup> The House's exclusive jurisdiction is examined more closely in Chapter 45, pp 742–745.

<sup>2</sup> See, for example: *Bradlaugh v Gossett* (1884) 12 QBD 271.

<sup>3</sup> Privileges Committee *Question of privilege concerning the defamation action Attorney-General and Gow v Leigh* (11 June 2013) [2011–2014] AJHR I.17A at 13.

<sup>4</sup> See Chapters 1 and 3.

<sup>5</sup> Parliamentary Privilege Act 2014, s 8.

depends.<sup>6</sup> There are also many statutes directing Ministers, and in some instances the Speaker, to present reports and papers from public agencies or statutory bodies to the House.<sup>7</sup> Numerous Acts delegate Parliament's power to make laws to other authorities. In many cases, these Acts state that the resulting delegated legislation is in the category of "disallowable instruments", which the House may disallow or amend; and an even broader category of delegated legislation is required by law to be published and presented to the House.<sup>8</sup> Other statutes also give legal effect to certain decisions by the House, such as resolutions to make, recommend or endorse appointments to or removal from public office.

## Duty to obey the law

The House is under the law, like every other person and body in New Zealand, and has a duty to observe any legal provision applying directly to it.<sup>9</sup> Speakers have emphasised that the House is bound by the law even though some aspects of the general law may not be judicially enforceable because of the privileges that the House enjoys in carrying out parliamentary business.<sup>10</sup> The inability to seek judicial enforcement in the parliamentary context does not imply a legal vacuum in which the law has no application.

The Speaker will always exercise any discretions vested in the Chair so as to promote compliance with the general law. Where a statute applies to the House, the statute prevails over all other forms of procedure.<sup>11</sup> The Speaker has a special duty to ensure that the House observes such statutory requirements,<sup>12</sup> for example, when a motion is moved for a resolution that would have legal effect under an Act.<sup>13</sup> The Speaker—when acting in his or her capacity as the presiding officer—does not judge the extent to which participants in a statutory process comply with the law outside the House's proceedings. The Speaker determines whether a motion is in order, but the House cannot correct by resolution a failure to comply with the law.<sup>14</sup>

## Manner and form

To make valid law, Parliament and the House must comply with any statutory condition of law-making that is addressed to them.<sup>15</sup> Such statutory conditions are known as "manner and form" provisions. A manner and form provision is one where Parliament has statutorily bound itself, or the House, as to the procedure to be employed in enacting law. The term "manner and form" is derived from the statute that formerly defined the scope of the legislative power possessed by colonial legislatures.<sup>16</sup> However, a manner and form provision can apply to a legislature with unrestricted legislative powers, such as the Parliament of New Zealand, as well as to legislatures without power to legislate on some subjects.

Manner and form provisions are rare. They relate only to the procedure to be employed in enacting law (the legislative process), not to the substance of the policy that Parliament wishes to put into effect.<sup>17</sup> The High Court has jurisdiction to make a declaration on the validity of a statute in terms of the procedure followed for its enactment, but not in relation to its content.<sup>18</sup> Manner and form strictures

<sup>6</sup> See Chapter 30.

<sup>7</sup> See Chapter 37.

<sup>8</sup> Legislation Act 2012, s 41. See Chapter 28 for a detailed treatment of delegated legislation.

<sup>9</sup> *Shaw v Commissioner of Inland Revenue* [1999] 3 NZLR 154 (CA) at [13].

<sup>10</sup> (1989) 497 NZPD 10262–10263 Burke.

<sup>11</sup> (2002) 599 NZPD 15690 Hunt.

<sup>12</sup> (1909) 148 NZPD 1452 Guinness.

<sup>13</sup> See Chapter 15: Motions and amendments.

<sup>14</sup> (24 February 2015) 703 NZPD 1838 Carter.

<sup>15</sup> *Shaw v Commissioner of Inland Revenue* [1999] 3 NZLR 154 (CA).

<sup>16</sup> Colonial Laws Validity Act 1865 (UK), s 5.

<sup>17</sup> *Westco Lagan Ltd v Attorney-General* [2001] 1 NZLR 40 (HC) at [91].

<sup>18</sup> Declaratory Judgments Act 1908, s 3; *Shaw v Commissioner of Inland Revenue* [1999] 3 NZLR 154 at [13].

are binding to the extent that they serve a “necessary constitutional purpose”; it is unlikely that the courts would enforce manner and form provisions purporting to entrench substantive public policy settings.<sup>19</sup>

The reserved provisions of the electoral statute are clear examples of manner and form provisions. Their repeal or amendment can only be effected if the proposal for repeal or amendment is agreed to by 75 per cent of the members of the House or at a poll of electors.<sup>20</sup> An attempt to enact a provision that is inconsistent with a reserved provision, while not directly amending or repealing it, would potentially trigger the same manner and form requirements.<sup>21</sup> The reserved provisions are not doubly entrenched—that is, the provision that entrenches them is not itself entrenched. In theory, a Government could seek to amend or repeal the reserved provisions after first using an ordinary majority to remove their entrenchment. This is no unintended loophole; when the entrenching procedures were introduced in 1956,<sup>22</sup> it was believed that a Parliament could not bind its successor, and that entrenchment signalled the moral force of broadly accepted democratic rules.<sup>23</sup> An attempt to exploit single entrenchment to circumvent the protection of the reserved provisions would be constitutionally improper and arguably a breach of constitutional convention.<sup>24</sup>

The granting of the Royal assent has been said to be another example of a manner and form provision,<sup>25</sup> but this misconstrues the nature of the Royal assent. Statute provides that a bill passed by the House of Representatives does not become law until it receives the Royal assent.<sup>26</sup> This is a declaratory rather than manner and form provision. The granting of the assent is an integral element of the parliamentary law-making process and a necessary condition of all statutes. Manner and form provisions, in contrast, are ad hoc and specific to particular enactments. While all bills must receive the Royal assent to become Acts, the law is permissive regarding its timing. The Royal assent may be given after the dissolution or expiration of Parliament without affecting the validity of the Acts concerned.<sup>27</sup>

The Speaker is responsible for overseeing compliance with manner and form requirements applicable to bills before the House. In practical terms, this responsibility would most likely be discharged by the Chairperson in a committee of the whole House considering whether a provision has received sufficient support to be carried in accordance with the legal requirements. Judicial scrutiny of manner-and-form compliance is appropriate only after the completion of the parliamentary process, that is, after a bill has received the Royal assent, to ascertain whether the process for enactment was valid.<sup>28</sup>

<sup>19</sup> Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [16.8.4] and [16.8.11].

<sup>20</sup> Electoral Act 1993, s 268.

<sup>21</sup> *Taylor v Attorney-General* [2014] NZHC 2225 at [77]. See pp 445–446.

<sup>22</sup> Electoral Act 1956, s 189 (now repealed).

<sup>23</sup> (26 October 1956) 310 NZPD 2839–2852.

<sup>24</sup> Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [16.7.2].

<sup>25</sup> *Westco Lagan Ltd v Attorney-General* [2001] 1 NZLR 40 (HC) at [91].

<sup>26</sup> Constitution Act 1986, s 16.

<sup>27</sup> *Simpson v Attorney-General* [1955] NZLR 271 (SC and CA) per Stanton and Hutchison JJ at 276, 281–284, McGregor J dissenting at 285–286.

<sup>28</sup> *Te Runanga o Wharekauri Rekohu Inc v Attorney-General* [1993] 2 NZLR 301 (CA) at 308; *Thomas v Bolger (No 2)* [2002] NZAR 948 (HC) at 951–952. A High Court decision has opined that the court may, on finding that a mandatory manner and form provision has not been complied with during the passage of a bill, intervene to prevent the bill’s presentation for Royal assent (*Westco Lagan Ltd v Attorney-General* [2001] 1 NZLR 40 (HC) at [93]). The Privileges Committee disagreed with this view, noting that the Clerk carries out this function by order of the House (SO 315), and contending that the transmission of a bill from the House to the Governor-General (that is, between the two constituent parts of the Parliament of New Zealand) is a proceeding in Parliament and protected by parliamentary privilege (Privileges Committee *Question of privilege referred on 25 July 2000 relating to Westco Lagan Ltd v Attorney-General and the Clerk of the House of Representatives* (27 March 2001) [1999–2002] AJHR I.17A at 4).

Procedural requirements imposed by the House under its own Standing Orders are not manner and form provisions, as they are internal to the House and have no legal effect for the courts to enforce.<sup>29</sup>

The Attorney-General's obligation to report to the House on legislation that may be inconsistent with the fundamental rights and freedoms confirmed by the New Zealand Bill of Rights Act 1990 is not a manner and form provision. It is a legislative alert, designed to help members to debate the Bill of Rights implications of legislation on a more informed basis. Any duty relating to its discharge lies with the Attorney-General, not with the House, although it is a House procedure covered by parliamentary privilege.<sup>30</sup> Under the principle of comity, which regulates the parliamentary-judicial relationship, the courts will not entertain a challenge to the exercise of the Attorney-General's reporting role.<sup>31</sup> The judgment of whether or not there is an inconsistency, and whether or not there is justification for the enactment of legislation, remains with Parliament.<sup>32</sup>

Manner and form provisions relate exclusively to the legislature. Any statutory restriction or requirement applying to the Government or a public body is not a manner and form provision.<sup>33</sup>

## **Legislative fairness**

The New Zealand Bill of Rights Act 1990 applies to acts performed by the legislative branch of government.<sup>34</sup> It has been accepted that the House is therefore under a legal obligation to observe the principles of natural justice in transacting its business.<sup>35</sup> The House has adopted Standing Orders designed to give expression to these obligations in a parliamentary context. (See Chapters 22 and 23 for natural justice before select committees and Chapter 38 for responses in the House.)

The House's adoption of the natural justice protections was designed to allow people to respond in the parliamentary environment where their reputations or personal interests were engaged. The obligation was to afford the basic protections to people who were directly, personally affected: for example, persons called to account before a select committee of the House. The legislative decisions of the House are of a different nature and do not engage the protections of natural justice. Decisions on legislation made by the House are not subject to review or control by the courts (except where compliance with a manner and form provision is at issue and the question is whether a valid law has been created at all). The House exercises its legislative decision-making powers on political and policy grounds. For these decisions, it and its members are responsible to the electorate, not to the courts.<sup>36</sup> As a general proposition, the rules of procedural fairness do not apply to bodies exercising purely legislative functions.<sup>37</sup> Furthermore, judicial review could not be entertained even for actions taken by the House that are subject to the protections of natural justice. Even if personal interests were directly affected, the internal proceedings of the House are protected from outside scrutiny under parliamentary privilege, which is itself part of the general law.<sup>38</sup>

<sup>29</sup> Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [13.6.1].

<sup>30</sup> *Mangawaro Enterprises Ltd v Attorney-General* [1994] 2 NZLR 451 (HC).

<sup>31</sup> *Boscawen v Attorney-General* [2009] NZCA 12 at [32].

<sup>32</sup> *Mangawaro Enterprises Ltd v Attorney-General* [1994] 2 NZLR 451 (HC); Standing Orders Committee Review of Standing Orders (21 July 2014) [2011–2014] AJHR I.18A at 19–20.

<sup>33</sup> *West Lakes Ltd v State of South Australia* (1980) 25 SASR 389 (SC); *Reference re Canada Assistance Plan* (1991) 83 DLR (4th) 297 (SCC).

<sup>34</sup> New Zealand Bill of Rights Act 1990, s 3(a).

<sup>35</sup> Standing Orders Committee Review of Standing Orders (13 December 1995) [1993–1996] AJHR I.18A at 79–80; Philip A Joseph “Report to the Standing Orders Committee on Natural Justice” at [3.1]–[3.15].

<sup>36</sup> *Wells v Newfoundland* [1999] 3 SCR 199 at [59].

<sup>37</sup> *Reference re Canada Assistance Plan* (1991) 83 DLR (4th) 297 (SCC) at 319–320.

<sup>38</sup> Parliamentary Privilege Act 2014, s 8(2). See Chapters 44 and 45.

## STANDING ORDERS

### Nature of Standing Orders

The Standing Orders are the primary rules of the House, providing for the conduct of its proceedings and for the exercise of its powers.<sup>39</sup> They are adopted solely by the House,<sup>40</sup> and are not intended to diminish or restrict the rights, privileges, immunities and powers otherwise enjoyed by the House.<sup>41</sup> These rights, privileges, immunities and powers are secured principally by statute.

In essence, the Standing Orders regulate and moderate the exercise of legislative power and capacity, and they are appropriately regarded as constitutional rules.<sup>42</sup>

Standing Orders are, as the term implies, permanent rules that remain in force until suspended, amended or revoked by a positive decision of the House.<sup>43</sup> They apply to the House from one Parliament to the next, and are not required to be specifically readopted at the commencement of each new Parliament. The Speaker (or the Deputy Speaker or other member presiding) is responsible for ruling on any dispute about the interpretation or application of the Standing Orders.<sup>44</sup>

There are more than 400 Standing Orders, each of which may be divided into paragraphs and subparagraphs. While they set out in considerable detail many and various procedures to be followed, the Standing Orders do not purport to be exhaustive. When a point of procedure needs to be established, the first resort is to the Standing Orders of the House.

### Objects of Standing Orders

The Standing Orders bring order and structure to the work transacted by the House and its committees. They balance the legitimate roles and expectations of Government and non-Government parties in the House's legislative, scrutiny and representative functions.

A prime object of the Standing Orders is to support and give effect to statutory requirements applying to the House. Thus the detailed mechanical provisions for electing a Speaker help to fulfil the House's duty to elect a Speaker at its first meeting after a general election.<sup>45</sup> The extensive Standing Orders on financial procedure facilitate the financial business that statute requires the House to address;<sup>46</sup> and the Standing Orders give parliamentary expression to the House's statutory obligation to accord the protections of natural justice to anyone affected by its proceedings.<sup>47</sup> A large number of the House's Standing Orders give effect to statutory obligations, although this might not always be readily apparent. Even in the absence of such obligations, the House would require many of these procedural rules in order to transact its core business.

The Standing Orders enshrine in the House's procedures the principle of proportionality underpinning the mixed member proportional voting system. The Business Committee allocates questions in question time, speaking rights in debate, and committee memberships in proportion to the total party votes a party receives at a general election. The greater a party's party vote relative to the

<sup>39</sup> SO 1.

<sup>40</sup> Until 1865, the Standing Orders were subject to the Governor's approval (New Zealand Constitution Act 1852 (UK), s 52). The first Standing Orders came into effect on 16 June 1854 after being adopted by the House and confirmed by the acting Governor ((1854–1855) NZPD 94). Until that time proceedings had been regulated at the sole discretion of the Speaker. For the development of New Zealand's early Standing Orders and procedures, see John E Martin "From talking shop to party government: procedural change in the New Zealand Parliament, 1854–1894" (2011) 26(1) *Australasian Parliamentary Review* 64.

<sup>41</sup> SO 1.

<sup>42</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 4.

<sup>43</sup> SOs 4 and 6.

<sup>44</sup> SO 2.

<sup>45</sup> Constitution Act 1986, s 12.

<sup>46</sup> Public Finance Act 1989.

<sup>47</sup> New Zealand Bill of Rights Act 1990, s 27(1).

national party vote, the greater its rights of representation in the House. The seating arrangements in the Chamber also reflect the party complexion of the House.

An important function of the Standing Orders is to ration a scarce parliamentary commodity—time—among members and parties, or between competing items of business. The Standing Orders prescribe the House’s sitting times, and time limits for debates and speeches. The House also has many rules as to what types of business have priority on what days and for what part of the day. These rules discriminate in favour of Government business in a legislative sense, but balance this by providing for regular accountability or scrutiny (questions, general debates, and so on). The Standing Orders require the House to follow robust procedures before arriving at decisions, and are designed to promote outcomes that serve the national interest. The need for bills to go through a succession of prescribed stages improves decision-making on the architecture and details of the legislation. The need for select committee consideration, in particular, acts as a brake to allow time for sober reflection and informed public input into bills. The Standing Orders promote the principle that good process leads to better outcomes: the rules governing such processes include the general procedural requirements for notices of motion to be given and for relevancy in debate, and the restriction on irrelevant amendments.

The Standing Orders furnish the default settings for the usual conduct of the business of the House, but also permit members to adjust these settings by agreement. Such accommodations allow members to focus on matters of immediate political concern, while enabling the appropriate progression of legislation and the holding of the Government to account. The central hub for such negotiations is the Business Committee, which has been accorded a growing array of powers to determine arrangements for sittings and the consideration of business. The House has authorised the Business Committee to make cross-party agreements that have effect despite Standing Orders to the contrary, as long as the arrangements are not discriminatory or oppressive to minority parties.<sup>48</sup> This flexibility for the House to adapt to different political circumstances and demands is not restricted to the Business Committee; there is scope in all parliamentary activities to find pragmatic solutions. The balance of interests encapsulated in the Standing Orders provides the starting point for these negotiations.

The objectives of the Standing Orders thus are to implement statutory drivers, ration scarce time, reach political accommodations and promote good process. None of these objectives predominates over the others. They interact, so that, for example, decisions on good processes both temper and are tempered by political realities and the scarcity of House time. Even where there are rules to facilitate statutory compliance by the House, the House makes choices about how it complies with the statute in accordance with the above objectives.

## **Standing Orders Committee and review of Standing Orders**

For Parliament to remain relevant, the House must regularly review and improve its procedures.<sup>49</sup> This self-review exercise is primarily carried out on the House’s behalf by the Standing Orders Committee. The function of this committee is to conduct a regular review of and report on the Standing Orders, procedures and practices of the House, and to make recommendations for the amendment, revocation or addition of Standing Orders or the alteration of procedures or practices. The committee also considers and reports on any matter referred to it by the House or under the Standing Orders (for example, on petitions allocated to it by the Clerk).<sup>50</sup>

The Standing Orders Committee is established automatically under the Standing Orders at the commencement of each term of Parliament,<sup>51</sup> although the

---

<sup>48</sup> SOs 78(3) and 80(2).

<sup>49</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 4.

<sup>50</sup> SO 7.

<sup>51</sup> SO 184(1)(b).

committee is sometimes not convened until well after the term has commenced. The first committee appointed by the House in 1854 was a committee to draft the Standing Orders,<sup>52</sup> and subsequently committees were established to review the Standing Orders when the need arose. This has been done in each Parliament since 1984, and the committee was made permanent in 2003.<sup>53</sup> The committee usually includes representation from each party, and is almost invariably chaired by the Speaker. Its practice is to appoint the member of the committee with the longest service in the House (apart from the Speaker) as its deputy chairperson.<sup>54</sup>

The review of Standing Orders by the Standing Orders Committee is a wide-ranging examination of how the House and its committees operate. The review usually takes place in the second half of a parliamentary term, with a view to the committee's recommended changes to procedure taking effect following the dissolution of Parliament.<sup>55</sup> The committee tends to advertise for public submissions on the review, and generally this is an opportunity for members and the public to have a say on virtually any aspect of parliamentary practice.

The committee recognises that the Standing Orders are effectively constitutional rules, and endeavours to reach a consensus on its proposals, rather than make recommendations supported by a bare majority of its members.<sup>56</sup> This does not mean that all sides of the House will be satisfied with each of the measures it proposes. Rather the committee works to produce an overall package of proposals that the overwhelming majority of the House can endorse. Achieving a broad accord necessarily involves a process of give and take in the committee's deliberations.<sup>57</sup> However, the principle of consensus on which it operates is not the same as the rule of unanimity or near-unanimity that binds the Business Committee. There is no presumption that every party in the House will agree on every recommendation for a change in Standing Orders. Often parties are obliged to accept what they regard as "least-bad" solutions.<sup>58</sup>

## **Amendment of Standing Orders**

The Standing Orders can be amended or revoked only on notice being given of a motion to effect such change.<sup>59</sup> In fact, the House does not normally amend its Standing Orders without first having the proposal examined by the Standing Orders Committee.

Following a report by the Standing Orders Committee, the usual practice is for the House to pass a resolution adopting the recommendations set out in the report, with effect from the day after Parliament is dissolved or expires. The previous practice for a committee of the whole House to examine amendments to the Standing Orders might be followed in the case of a major revision.<sup>60</sup> In this case, the chairperson of the Standing Orders Committee (the Speaker) takes charge of the item of business in committee, as a Minister does a bill, and the House formally adopts the amended Standing Orders once they are reported from the committee.<sup>61</sup>

52 (1854–1855) NZPD 6–7.

53 Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 29–30.

54 Standing Orders Committee *Review of the operation of the Standing Orders* (2 September 1999) [1996–1999] AJHR I.18B at 18.

55 Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 5.

56 Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 4.

57 Standing Orders Committee *Review of the operation of the Standing Orders* (30 June 1992) [1991–1993] AJHR I.18B at [9]; Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 5.

58 Members of Parliament (Pecuniary Interests) Bill (81–2) (commentary, 23 June 2005) at 4 ([2002–2005] AJHR I.22D at 868).

59 SO 6.

60 This is what occurred when the Standing Orders were adopted in 1995.

61 (1995) 552 NZPD 10786–10860.

The Standing Orders were completely rewritten in 1995 in anticipation of proportional representation under the new mixed member proportional voting system. The revised Standing Orders came into effect at the start of 1996. Amendments were adopted later in 1996, and then in 1999, 2003, 2005, 2008, 2011 and 2014.<sup>62</sup> After the adoption of any amendments, the Standing Orders are reprinted and renumbered to incorporate the latest changes.<sup>63</sup>

## Suspension of Standing Orders

A Standing Order may be formally set aside by a motion to suspend it. Suspension of the Standing Orders is infrequent. It may be a precursor to an amendment of the Standing Orders, where particular provisions are suspended by sessional orders for the purpose of trialling new or adjusted procedures.<sup>64</sup> In this case, the suspension is likely to have been canvassed with the Business Committee or the Standing Orders Committee, and not to be controversial.

Alternatively, a member may move for the suspension of Standing Orders to facilitate a particular event or item of business. This procedure is to be adopted only in exceptional circumstances, as resorting frequently to the exercise of a majority in the House for the suspension of the Standing Orders would threaten the careful balance of interests that they represent. Particular requirements are set out for the valid use of this procedure, in recognition of its extraordinary nature.<sup>65</sup>

## LEAVE OF THE HOUSE

Although suspensions of the Standing Orders are comparatively rare, the House from time to time finds it desirable to depart from the strict rules laid down in the Standing Orders. The House frequently dispenses with the need to comply fully with the Standing Orders by granting “leave” for a matter to be dealt with in an informal way.

“Leave” means permission granted by the House (or a committee) to do something where no member present dissents.<sup>66</sup> The House need not feel bound by its own rules if all its members concur in an action. While it binds itself with Standing Orders, the House is ultimately master of its own procedures. If there is unanimous concurrence on a particular means of proceeding, the Standing Orders may be set aside without a motion to suspend them. But leave is not a means of imposing obligations on another member to do something, such as to table a document. If a member wishes to do something of this kind, the member can seek leave for himself or herself, and should not have to react to leave sought by another member.<sup>67</sup>

There is no debate when the leave of the House is sought, for there is no motion before the House, although an explanation or elucidation of what is proposed may be permitted on a point of order. If any member objects when the Speaker asks whether leave is granted, leave is refused—each member of the House has a veto on the House proceeding informally. The Speaker decides in a general sense if there is an objection; no member is specifically identified as objecting to leave.<sup>68</sup>

<sup>62</sup> No amendments to the Standing Orders were made in the 46th Parliament; a review initiated in 2001 was incomplete when the general election was called significantly early in the following year (*Standing Orders Committee Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 5).

<sup>63</sup> Until 1974 the Standing Orders relating to private business were published in a separate volume from those relating to public business, but in that year both types of Standing Orders were incorporated into one volume.

<sup>64</sup> (30 April 2003) 608 NZPD 5164 (Standing Order suspended to trial new approach to giving call in debate); *Standing Orders Committee Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 22.

<sup>65</sup> For details of these requirements, see p 211.

<sup>66</sup> SO 3(1).

<sup>67</sup> (1990) 506 NZPD 1291 Burke; (1999) 580 NZPD 19163 Braybrooke (Deputy Speaker).

<sup>68</sup> (1995) 546 NZPD 6174–6175, 6177 Tapsell.

The Standing Orders themselves require leave to be granted before certain things can be done. A member needs leave to make a personal explanation<sup>69</sup> and leave must be granted before a motion that has been proposed by the Chair can be withdrawn.<sup>70</sup> A member who wishes to table a document in the House must first obtain leave for this purpose.<sup>71</sup> In these and other instances the concept of leave has been incorporated into the Standing Orders, and leave must be obtained to satisfy those Standing Orders. Usually, however, leave involves setting aside the Standing Orders and is an alternative to a formal motion to suspend them in cases where there is no objection to something being done.

The practice of obtaining leave is a very important one, for it is used regularly to ease and expedite the business of the House. The seeking of leave generally occurs after discussions in the Business Committee if the procedure to be followed is not within the competence of the Business Committee itself to arrange. When a course of action cannot wait for discussion at the next Business Committee meeting, a member might seek leave after discussing the proposal with the whips.

## **SESSIONAL ORDERS AND ORDERS OF CONTINUING EFFECT**

While the Standing Orders are permanent orders of the House, the House sometimes makes other orders regarding its procedures on a temporary or limited basis. The suspension of a Standing Order, in particular, can be accompanied by an order of the House directing that a different procedure be followed on a particular matter, but without giving the new procedure the permanence that its adoption as a Standing Order would imply. Thus the House can experiment and trial new procedures before deciding whether to adopt them for the long term. The House followed this course with its financial procedures, which were trialled for one year before being incorporated in the Standing Orders. Additional changes were made to the interim procedures as a result of the trial.<sup>72</sup>

In general, orders of the House affecting its procedures are regarded as limited in their effects to the parliamentary session in which they are made. They are therefore known as “sessional orders”, and cease to have effect on the dissolution or expiration of Parliament.

Some orders of the House have a shorter or longer life than a session. For example, an order of the House may give committees a longer time to report on particular Estimates or annual reviews than is permitted under the Standing Orders. Such an order is spent when the business to which it relates has been dealt with.<sup>73</sup> On the other hand, some orders, although not made into Standing Orders, may come to be regarded as having virtually permanent operation. One such order was passed in 1962 adopting a form of words for the prayer with which the House begins each sitting.<sup>74</sup> This form of prayer is still used, although it may not be strictly binding on the Speaker.<sup>75</sup>

Sessional orders and other orders of continuing effect are collated by the Clerk of the House and published on the Parliament website. For this purpose, the Clerk includes Business Committee determinations that have continuing effect on aspects of procedure. Publication of sessional orders in this form facilitates access, but does not itself provide authoritative evidence of a decision. The authoritative record is the *Journals of the House* or the published determinations of the Business Committee, as applicable in the particular case.

---

<sup>69</sup> SO 358.

<sup>70</sup> SO 103(2).

<sup>71</sup> SO 377.

<sup>72</sup> (1991) 518 NZPD 4309–4314.

<sup>73</sup> See, for example: (2002) 602 NZPD 308; (2002) 604 NZPD 1796.

<sup>74</sup> (21 June 1962) [1962] JHR 39–40.

<sup>75</sup> (1962) 330 NZPD 337–338.

## RULINGS OF THE SPEAKER

The Standing Orders provide that, where they do not cover a situation or matter, the Speaker is to decide, guided by previous Speakers' rulings and by the established practices of the House.<sup>76</sup> This rule replaced a previous injunction to Speakers to be guided by the procedures of the United Kingdom House of Commons, so far as they could be applied to the House. The procedures of the House in 1854 were modelled closely on those of the House of Commons, and its procedures as they have developed since have been heavily influenced by developments in the Commons. This reflects not just the injunction in the Standing Orders, but also a natural tendency to draw on the experience of the larger and longer-established body.

The Speaker is constantly called upon to make rulings on the interpretation of Standing Orders or on problems that are not covered by the Standing Orders at all. From time to time, collections of the more significant Speakers' rulings (and those of the Speakers' deputies and of Chairpersons in the committee of the whole House) are published by the Clerk of the House as guidance for the future. Although there is no strict doctrine of binding precedent, Speakers naturally tend to follow the decisions of their predecessors unless the relevant Standing Orders have since changed, or the earlier rulings were plainly in error.

Speakers also seek guidance from reports of Standing Orders Committees (even though not translated into Standing Orders) where they relate to matters within the Speaker's jurisdiction. Standing Orders Committees comprise senior members of the House whose recommendations carry great weight. In some cases, these recommendations are directed at the way the Speaker or Chairpersons should exercise the discretions vested in them. The presiding officers invariably adopt these recommendations and apply them when presiding,<sup>77</sup> although strictly speaking they are not bound to.

## POINTS OF ORDER

Speakers' rulings are usually made following the raising of a point of order. The point of order procedure is the method of raising matters of order—that is, matters on which the Speaker can rule in accordance with the Standing Orders, previous Speakers' rulings or the practice of the House. It is also the means for drawing the Speaker's attention to a procedural step a member intends to take: for example, to move an instruction to the committee of the whole House or to move the recommittal of a bill.<sup>78</sup> But it is not a method of raising substantive issues that can and should be dealt with in the course of debate. The Speaker will censor attempts to raise such matters in the guise of a point of order.

A member may raise a point of order at any time, but should do so when the matter of order arises. If a member does not challenge a matter at once, the opportunity to raise a point of order lapses, even if the member was not present at the time the matter arose.<sup>79</sup> Speakers do not encourage the raking over of procedural disputes on matters the House has already passed over.<sup>80</sup>

If more than one member seeks to raise or speak to a point of order at the same time, the Speaker will exercise judgement as to which member can proceed first—the factors considered when giving the call in debate are not necessarily applicable.<sup>81</sup> The Speaker can recognise a member's intervention as a point of order

<sup>76</sup> SO 2.

<sup>77</sup> See, for example: (1990) 507 NZPD 1896–1897 Burke.

<sup>78</sup> (1985) 462 NZPD 4652–4653 Wall.

<sup>79</sup> (17 September 2003) 611 NZPD 8817 Hunt.

<sup>80</sup> (1894) 85 NZPD 470 O'Rorke.

<sup>81</sup> Standing Orders Committee *Review of Standing Orders* (August 2008) [2005–2008] AJHR I.18B at 13.

even if the member does not describe it as such when bidding for the Speaker's attention, especially if there is no other basis on which the member could seek the call at that time.<sup>82</sup>

Until the Speaker disposes of a point of order, it takes precedence over the business then before the House.<sup>83</sup> A second point of order cannot be raised while the Speaker is already dealing with a point of order. It is for the Speaker to determine how much discussion is permitted on a point of order. Indeed, the Speaker is not obliged to hear any argument at all on the point.<sup>84</sup> The member raising the point must put it succinctly and relevantly, and other members whom the Speaker allows to contribute to the discussion must be equally concise.<sup>85</sup> Points of order must be raised objectively and without making accusations against other members, and the robustness of language that may be used in debate does not apply in this context.<sup>86</sup> It is not in order to interject while a point of order is being heard; a point of order must be heard in silence by the House.<sup>87</sup>

Once the Speaker has ruled on a point of order, the matter is settled and any attempt by a member to question the ruling is highly disorderly.<sup>88</sup> Nor may a member comment in any way at all on a point of order that has been decided.<sup>89</sup>

## PRACTICE

This is, as its name implies, all the lore of parliamentary procedure that is sanctified by being the way things are consistently done, rather than by being expressly laid down in the Standing Orders or by a ruling of the Speaker. For example, the practice of circulating two versions (provisional and final) of the Order Paper is just that, a practice, as the Standing Orders require only one version. Practice must be consistent with the Standing Orders or any other applicable order of the House. If challenged, it may be expressly blessed by the Speaker, and therefore mature into one of the "higher" forms of parliamentary procedure; or it may be disavowed by the Speaker as wrong and therefore cease to be followed.<sup>90</sup>

The Standing Orders Committee is an important source of practice. Its recommendations contribute to rulings of the Speaker, and its recommendations about how procedures are to be applied are accepted as representing the correct way to proceed. Where a statute provides for parliamentary business, the Standing Orders Committee may recommend a procedure for transacting that business. These procedures then become part of the House's procedures, even though they may not (or may not yet) have been incorporated into the Standing Orders. Other committees dealing with particular business may also establish practices for the way the business is to be transacted.<sup>91</sup>

This makes it important to record the practices that contribute to the operation of the House. These practices supplement the Standing Orders, sessional orders, Speakers' rulings and the express rules introduced by statutes which, together with practice, form the basis of parliamentary procedure.

---

<sup>82</sup> (16 October 2012) 684 NZPD 5795 Carter.

<sup>83</sup> SO 88(1).

<sup>84</sup> SO 88(2).

<sup>85</sup> SO 88(3).

<sup>86</sup> (30 August 2012) 683 NZPD 4987 Smith.

<sup>87</sup> SO 88(3).

<sup>88</sup> (1985) 465 NZPD 6737 Wall.

<sup>89</sup> (1905) 133 NZPD 222 Guinness.

<sup>90</sup> (1992) 525 NZPD 8938 Gray; (8 October 2003) 612 NZPD 9024–9029.

<sup>91</sup> See, for example: Officers of Parliament Committee *Procedures for the appointment of an Officer of Parliament* (6 December 2002) [2002–2005] AJHR I.15A; Finance and Expenditure Committee *Special report on Auditor-General annual plan for 2003/04* (11 December 2002) [2002–2005] AJHR I.22A.

# CHAPTER 3

## Electoral

### THE ELECTORAL SYSTEM

The first elections for members of Parliament took place over eight months in 1853, in time for Parliament to assemble for its first meeting in Auckland in the following year. The New Zealand Constitution Act 1852 (UK) did not prescribe in detail how the electoral system was to operate, leaving much of this to be determined by the Governor. This is in marked contrast to the present-day electoral legislation, the Electoral Act 1993, which sets out highly detailed and prescriptive electoral rules, and is supplemented by only a small body of regulations made by the Governor-General.

New Zealand has employed three types of voting system in its history: simple first-past-the-post (FPP); a form of preferential voting system known as the second ballot; and the proportional representation system known as mixed member proportional (MMP). From the 1853 to the 1905 elections FPP was used. The candidate or candidates polling the highest number of votes in each constituency were automatically elected. Most constituencies were single-member electoral districts, each electing one member, but the larger cities formed multi-member electoral districts from which the two or three highest polling candidates were elected to Parliament. Multi-member constituencies were abolished at the time of the 1905 election.<sup>1</sup>

For the 1908 and 1911 elections New Zealand employed the second ballot voting system.<sup>2</sup> Under this system the election was held as for FPP, but only a candidate winning at least half the total valid votes cast in the electoral district was successful. Where no one won half of the votes a run-off election (the second ballot) was held one week later (two weeks in some rural constituencies) between the two top-polling candidates. The elections from 1914 to 1993 were again conducted under FPP, with single-member electoral districts. At the 1996 election a new system of voting, MMP, was introduced. This is the present system employed.<sup>3</sup>

#### The MMP system

The MMP system combines members of Parliament elected from single-member electoral districts with members elected from nationally drawn-up party lists. It is designed to produce a legislature whose overall party composition is approximately

1 City Single Electorates Act 1903.

2 Second Ballot Act 1908.

3 See generally, Neill Atkinson *Adventures in Democracy—A History of the Vote in New Zealand* (University of Otago Press, Dunedin, 2003).

proportional to the nationwide support for the political parties contesting the election.

MMP was recommended for parliamentary elections by a royal commission that reported in 1986.<sup>4</sup> An indicative referendum was held in September 1992 at which voters were asked whether they wished to retain FPP or to change to another (unspecified) system. At that same referendum, voters were asked which one of four alternative forms of voting they would prefer to be adopted if there was a change in the system, regardless of whether they had expressed a wish to see a change in the voting system. A large majority of those who voted favoured a change in the voting system, and the most clearly favoured option was MMP.

A further referendum was held in November 1993, simultaneously with the general election of that year. This was a straight run-off between FPP and MMP. A majority of those voting (53.9 per cent) favoured MMP.<sup>5</sup> Under the legislation governing the holding of the referendum,<sup>6</sup> this result was binding in that the vote for MMP automatically repealed the previous electoral law and a new electoral law was brought into effect, subject to a transitional period extending up to the next election, due in 1996. This process of holding a binding referendum on a proposed alternative system fully prescribed in legislation was designed to satisfy the requirement of the law that certain important ingredients of the electoral system, known as “reserved provisions”, could be amended or repealed only by a majority of the valid votes cast at a poll of all electors.<sup>7</sup> In order to prevent the representation of a plethora of minor parties in the House, a threshold of five per cent is set as the minimum proportion of the total votes that a party must ordinarily win nationally in order to be entitled to seats in the House. But the system, whilst ensuring party proportionality, also incorporates an element of constituency representation by requiring that over half the members of Parliament be elected directly in single-member electoral districts, on an FPP basis. Thus, each voter has two votes: one for a constituency member and the other for a political party. Once the constituency members are decided, the membership of the House is topped up with candidates drawn from the party lists to produce overall proportionality.

## **Electoral Commission**

The 1993 legislation created an Electoral Commission to oversee the registration of political parties and carry out other duties in regard to the electoral system.<sup>8</sup> Amendments to the Electoral Act in 2010 and 2011 consolidated the functions of the commission and those of the Chief Electoral Officer and the Electoral Enrolment Centre into a newly established Electoral Commission.<sup>9</sup> Its functions include:

- registration of political parties and logos<sup>10</sup>
- registration of electors and compilation of the electoral rolls<sup>11</sup>
- conducting parliamentary elections and referenda<sup>12</sup>
- allocating funding and time to political parties for election broadcasting<sup>13</sup>
- administration of the rules for election advertising, expenditure and donations<sup>14</sup>

<sup>4</sup> Royal Commission on the Electoral System *Towards a better democracy* (December 1986) [1985–1986] AJHR H.3.

<sup>5</sup> See Keith Jackson and Alan McRobie *New Zealand Adopts Proportional Representation—Accident? Design? Evolution?* (Ashgate Publishing Ltd, Aldershot (UK), 1998) for a detailed description of how MMP came to be adopted.

<sup>6</sup> Electoral Referendum Act 1993.

<sup>7</sup> Electoral Act 1993, s 268.

<sup>8</sup> Electoral Act 1993, s 4B.

<sup>9</sup> Electoral (Administration) Amendment Act 2010 and Electoral (Administration) Amendment Act 2011.

<sup>10</sup> Electoral Act 1993, pt 4.

<sup>11</sup> Electoral Act 1993, pt 5.

<sup>12</sup> Electoral Act 1993, pt 6; Citizens Initiated Referenda Act 1993.

<sup>13</sup> Broadcasting Act 1989, pt 6.

<sup>14</sup> Electoral Act 1993, pts 6A and 6AA.

- conducting the five-yearly Māori electoral option, and servicing the work of the Representation Commission<sup>15</sup>
- promoting public awareness of electoral matters by conducting education and information programmes<sup>16</sup>
- reporting to the Minister of Justice and the House on electoral matters referred to it by the Minister or the House<sup>17</sup>
- providing information to help parties, candidates and others meet their statutory obligations in respect of electoral matters administered by the commission.<sup>18</sup>

The Electoral Commission has three members appointed by the Governor-General on the recommendation of the House. One member is appointed as the chairperson, another as deputy chairperson, and the third as Chief Electoral Officer and chief executive of the commission.<sup>19</sup>

The Electoral Commission must act independently in performing its statutory functions and duties and exercising its statutory powers.<sup>20</sup> For governance, reporting and accountability purposes the commission is classified as an independent Crown entity (that is, one that is generally independent of Government policy).<sup>21</sup>

## **Review of the electoral system**

The electoral system and how it operates are subject to review by both the Electoral Commission and the House. The Electoral Act requires the commission, within six months of the return of the writ after a general election, to report to the Minister of Justice on the administration of the election, and the Minister is required to table the report in the House. The commission reports on the services provided to electors to facilitate voting, enrolment and voting statistics, any substantive issues arising during the course of the election, any administrative or legislative changes that are desirable, any matter the Minister asks the commission to address, and any other matter the commission considers relevant.<sup>22</sup>

In 2010, an ad hoc select committee, the Electoral Legislation Committee, was established to consider three bills dealing with electoral finance, advance voting, and a referendum on the voting system to be held at the same time as the 2011 general election. A non-binding referendum was held in 2011. It asked voters two questions: whether the MMP voting system should be retained, and which of four alternative systems the voter would choose if New Zealand were to change to another voting system.<sup>23</sup> A majority (56.17 per cent) voted to keep the MMP system.<sup>24</sup>

The legislation also provided for the Electoral Commission to undertake a review of the MMP system if 50 per cent or more of the votes cast were in favour of its retention.<sup>25</sup> The Electoral Commission completed its review in 2012. The final recommendations were as follows.<sup>26</sup>

15 Electoral Act 1993, pts 3 and 5.

16 Electoral Act 1993, s 5.

17 Electoral Act 1993, s 5.

18 Electoral Act 1993, s 5.

19 Electoral Act 1993, s 4D. If a vacancy occurs during a period when the House is not sitting, the Governor-General may fill the vacancy, but the appointment lapses if not endorsed by the House within 24 sitting days (s 4H(2) and (3)).

20 Electoral Act 1993, s 7.

21 Electoral Act 1993, s 4B; Crown Entities Act 2004, sch 1.

22 Electoral Act 1993, s 8(1).

23 Electoral Referendum Act 2010, s 8(1) and sch 1.

24 Electoral Commission “Overall results—2011 Referendum on the Voting System” (10 December 2011) <[www.electionresults.govt.nz](http://www.electionresults.govt.nz)>.

25 Electoral Referendum Act 2010, ss 74–78.

26 Electoral Commission *Report of the Electoral Commission on the review of the MMP voting system* (29 October 2012) [2011–2014] AJHR E.9 at 5.

- The one electorate seat threshold should be abolished (along with the provision for overhang seats [see Composition of the House, following]).
- The party vote threshold should be lowered from five per cent to four per cent (with the commission required to review how the four per cent threshold was working after three general elections).
- Consideration should be given to fixing the ratio of electorate seats to list seats at 60:40 to help maintain the diversity of representation and its proportionality.
- Political parties should continue to have responsibility for selecting and ranking candidates on their party lists, but should be required to make a statutory declaration that they have done so in accordance with their party rules.
- Candidates should continue to be able to both stand for an electorate seat and be on a party list.
- List members should be able to continue to contest by-elections.

The Minister of Justice subsequently announced that there would be no changes to the MMP voting system before the 2014 election because consensus on them had not been reached amongst the political parties in Parliament.<sup>27</sup>

Since 1981 a select committee has had electoral matters within its terms of reference. Until 1999 an ad hoc Electoral Law Committee was established in each Parliament. Since 1999 electoral matters have been linked with justice issues in the terms of reference of one of the subject select committees—the Justice and Electoral Committee.<sup>28</sup> This committee considers any electoral legislation referred to it, and in the course of its Estimates and annual review work may also receive information on the administrative support available for the electoral system.

The Justice and Electoral Committee has developed a practice of initiating an inquiry after every general election into the conduct of the election and issues that have arisen in this regard. The committee seeks advice or submissions from officials as the starting point for its inquiry, and calls for submissions from the public. The Electoral Commission works closely with the committee as it carries out these reviews. The committee's report or reports may lead directly to the preparation of amending legislation to remedy any defects that have been found in the electoral process.

## COMPOSITION OF THE HOUSE

The House of Representatives consisted of 37 members when it was elected for the first time in 1853. This figure was determined by Governor George Grey under powers delegated to the Governor. Parliament very soon took into its own hands the determination of the total membership of the House, and it has gone up and down (usually up) over the succeeding years. The current electoral legislation does not prescribe a total number of members. Rather, it prescribes a formula, based on there being 120 members normally, by which the precise total membership of the House is established. While 120 members is the norm, this number can be exceeded or reduced in certain circumstances. The House consists of members elected to represent general electoral districts, members elected to represent Māori electoral districts and members elected from lists submitted by political parties. On the basis of the 2013 census and the Māori electoral option exercised at that time, the membership of the House for the 2014 and 2017 elections was calculated

---

<sup>27</sup> Hon Judith Collins, Minister of Justice “MMP changes impossible without agreement” (media release, 15 May 2013).

<sup>28</sup> Standing Orders Committee *Review of the operation of the Standing Orders* (2 September 1999) [1996–1999] AJHR I.18B at 15; SO 188.

to comprise 64 members for general electoral districts, seven members for Māori electoral districts and 49 party list members.

## General electoral districts

There are 16 general electoral districts in the South Island.<sup>29</sup> The general electoral population of the South Island (the total number of people ordinarily resident there at the time of the last census, less the Māori electoral population) is divided by 16 to obtain a figure known as the quota for the South Island.<sup>30</sup> The function of the quota is to provide a degree of numerical equality in the electoral population of each electoral district. The general electoral population of the North Island (the total number of persons ordinarily resident there at the time of the last census, less the Māori electoral population) is divided by the quota to calculate the number of general electoral districts in the North Island.<sup>31</sup> Thus the two islands each have numbers of general electoral districts that are equivalent to their general electoral populations. While there will always be 16 general electoral districts in the South Island, the number of such districts in the North Island will go up or down depending upon relative population movements between the islands and the number of Māori electoral districts that are created.

## Māori electoral districts

Four Māori electoral districts were created in 1867 to provide Māori with parliamentary representation.<sup>32</sup> The number of Māori electoral districts remained at four until the 1996 election. There is now no prescribed number of Māori electoral districts. Their total number is calculated from the Māori electoral population. This is the number of people who have registered to vote in Māori electoral districts, plus a figure to represent an appropriate proportion of the estimated number of people of Maori descent who have not registered as electors at all or who are under 18 years of age.<sup>33</sup> The Māori electoral population is divided by the South Island's quota, and the resulting figure gives the total number (for both the North and the South islands) of Māori electoral districts.<sup>34</sup> The number of Māori electoral districts will therefore largely be determined by the number of Māori who choose to enrol to vote in a Māori electoral district. At the 1996 election there were five Māori electoral districts. This increased to six districts at the 1999 election, and to seven at the 2002 election since which it has not changed.

## Party lists

The members elected from party lists are additional to the members elected from general and Māori electoral districts. Party list seats are awarded according to a formula designed to ensure that each party's total number of members is approximately proportionate to its share of the party vote at the election.

Generally these members will take the total number of members up to 120. However, this figure can be exceeded in the case of an “overhang”, where a party's constituency candidates win more seats than its national party vote entitles it to.<sup>35</sup> It may also not be reached, if a party's share of the vote entitles it to more party list seats than it has nominated candidates for.<sup>36</sup>

---

29 Electoral Act 1993, s 35(3)(a).

30 Electoral Act 1993, s 35(3)(b).

31 Electoral Act 1993, s 35(3)(c).

32 Maori Representation Act 1867.

33 Electoral Act 1993, s 3(1).

34 Electoral Act 1993, s 45(3)(a).

35 Electoral Act 1993, s 192(5).

36 Electoral Act 1993, s 193(4).

## REDISTRIBUTION OF SEATS

### Representation Commission

The job of dividing New Zealand into the ascertained number of electoral districts falls to a statutory body, called the Representation Commission, which meets every five years following each national census.<sup>37</sup>

The Representation Commission was established in 1887.<sup>38</sup> The creation of an independent commission to draw up electoral boundaries (this was previously done by Parliament itself) is recognised as a significant landmark in New Zealand's electoral history. It became a model for similar commissions in the United Kingdom and Australia.<sup>39</sup>

For the purposes of determining the boundaries of general electoral districts, the Representation Commission consists of seven members. Four members belong by virtue of their offices: the Surveyor-General, the Government Statistician, the Chief Electoral Officer, and the Chairperson of the Local Government Commission (who does not have a vote). Two further members are appointed by the Governor-General on the nomination of the House, one to represent the Government and one to represent the Opposition. The final member is appointed by the Governor-General as chairperson on the nomination of the members of the Representation Commission or of a majority of them.<sup>40</sup> None of the Representation Commission's nominated members can be a member of Parliament.

When the commission is determining Māori electoral districts, its membership is supplemented by three additional members. One of these is the chief executive of Te Puni Kōkiri (the Ministry of Māori Development). The other two, who must both be Māori, are appointed by the Governor-General on the nomination of the House, one to represent the Government and one to represent the Opposition.<sup>41</sup>

Any political party to which a member of Parliament belongs, any independent member of Parliament and any party whose candidates obtained at least five per cent of the votes cast at the last general election may make submissions to the commission.<sup>42</sup> Any party that obtains five per cent of the votes will, by definition, have members of Parliament belonging to it.

The commission deliberates in private. It is accepted, however, that the commissioners nominated to represent Government and Opposition parties have a particular need to consult and take advice from those that they represent.

Administrative services to the Representation Commission are provided by the Electoral Commission, while technical advice is provided by Land Information New Zealand and Statistics New Zealand.

### Boundaries

In principle, the Representation Commission tries to draw electoral boundaries so that each district contains an equal number of electors. This will never be entirely practicable, so the commission is allowed to deviate from mathematical equality by drawing electoral boundaries for general electoral districts that contain up to five per cent more or less of the general electoral population than the quota for the districts within each island,<sup>43</sup> and to allow a similar percentage deviation relative to the Māori electoral population for any Māori electoral district.<sup>44</sup>

<sup>37</sup> The Canterbury earthquakes of 2011 resulted in the scheduled census being postponed until 2013. The Representation Commission therefore met in 2006 and then 2013.

<sup>38</sup> Representation Act 1887.

<sup>39</sup> Neill Atkinson *Adventures in Democracy—A History of the Vote in New Zealand* (University of Otago Press, Dunedin, 2003) at 76.

<sup>40</sup> Electoral Act 1993, ss 28(1), (2), (5).

<sup>41</sup> Electoral Act 1993, ss 28(3), (4).

<sup>42</sup> Electoral Act 1993, s 34.

<sup>43</sup> Electoral Act 1993, s 36.

<sup>44</sup> Electoral Act 1993, s 45(7).

When drawing new boundaries, the commission is obliged to give due consideration to existing boundaries, community of interest, communications facilities, topographical features, and any projected variation in the electoral population of the districts during their life. In the case of Māori electoral districts, this includes community of interest among Māori people generally and the members of Māori tribes.<sup>45</sup>

The commission publishes the details of its provisional proposals in the *New Zealand Gazette*, and people have at least one month from their publication to lodge objections to them. Objections received by the commission are also published, and the public is given at least two weeks to lodge counter-objections. The commission is obliged to consider these objections and counter-objections before coming to a final decision on boundaries.<sup>46</sup> But it may change its provisional proposals without regard to whether they have been the subject of objections.<sup>47</sup> Within six months of its being convened, the commission must deliver its final report to the Governor-General and publish it in the *Gazette*. No appeals or objections are possible after that point. The redrawn boundaries then become the electoral districts for subsequent general elections until they are superseded by a new determination by the commission in five years' time.<sup>48</sup> Thus, depending upon the timing of the census and of subsequent elections, one or two general elections will be fought on the basis of boundaries determined by each Representation Commission's report.

Any by-election occurring between the publication of the new boundaries and the next general election is fought using the old boundaries.

## ELECTORS Registration

The first step towards securing the right to vote at an election is to register as an elector. It is compulsory to register in an electoral district within one month of becoming qualified to vote.<sup>49</sup> Everyone of or over the age of 18 years who is a New Zealand citizen or permanent resident of New Zealand and has resided continuously at some time for at least one year in New Zealand is qualified to register as an elector. (A permanent resident is a person who is lawfully resident in New Zealand and who is not subject to any immigration restriction.<sup>50</sup>)

The electoral district in which a person qualifies to register is the district in which they last resided continuously for at least one month or, if they have never resided continuously for a month in any electoral district, the district in which he or she now resides or last resided.<sup>51</sup> A person may be registered in only one electoral district at a time. However, a person's registration in a new district in which they have recently become qualified to vote is not invalidated merely because they remain registered in the old district (but the previous registration must have been cancelled by the time of the next election to entitle the person to vote).<sup>52</sup> New Zealand citizens who have not been in New Zealand for three years and permanent residents who have not been in New Zealand for 12 months lose their qualification to register as electors. Exempt from this disqualification are people (and their accompanying partners and children) who are absent on a diplomatic mission, serving in the armed forces or working as an employee of New Zealand Trade and Enterprise. Also disqualified as electors are special categories of people detained

<sup>45</sup> Electoral Act 1993, ss 35(3)(f) and 45(6).

<sup>46</sup> Electoral Act 1993, ss 38 and 45(8).

<sup>47</sup> *Timmins v Governor-General* [1984] 2 NZLR 298 (HC).

<sup>48</sup> Electoral Act 1993, s 40.

<sup>49</sup> Electoral Act 1993, s 82.

<sup>50</sup> Electoral Act 1993, s 73.

<sup>51</sup> Electoral Act 1993, s 74(1).

<sup>52</sup> Electoral Act 1993, s 75.

in a hospital because of mental disorder or intellectual disability, persons detained in prison under a sentence imposed after the commencement of the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010, and those who have been convicted of a corrupt electoral practice within the last three years.<sup>53</sup>

Registration is effected by making an application to a registrar of electors.<sup>54</sup> The registrar then adds the elector to the electoral roll for the appropriate electoral district. Electors who have registered by writ day for an election are included on the printed electoral roll produced for polling day. Electors who register after writ day do not appear on the roll, but may cast a special declaration vote. No registration is permitted on polling day itself.

## Māori option

A Māori, or a descendant of a Māori, may register as an elector of either a Māori electoral district or a general electoral district. A Māori may exercise the option of enrolling in either type of district when first qualifying and registering as a voter, and may opt to be transferred to the other type of electoral district during the Māori electoral option conducted after each five-yearly census.<sup>55</sup> No transfer between roll types may be made at any other time.<sup>56</sup> Between February and April 1994 there was a special opportunity to exercise the option to move between the rolls for the purposes of drawing boundaries for the new MMP system.<sup>57</sup> This special option was offered because the Government was held to have had a duty to publicise the option in a way that was reasonable considering the position of Māori in society and the unsatisfactory number of Māori enrolled to vote.<sup>58</sup>

## Electoral rolls

At the 2014 general election it was estimated that 92.6 per cent of the eligible voting population had actually enrolled.<sup>59</sup> New Zealand's enrolment rate is just below the average (93 per cent) for developed (OECD) countries.<sup>60</sup> However, the enrolment rate for people under 30 is much lower at 79 per cent. Indeed, nearly two-thirds (63.2 per cent) of all non-enrolled people are under the age of 30.<sup>61</sup>

Lists of people registered as electors are printed periodically on electoral rolls under the direction of the registrar of electors for each electoral district. The "electoral roll" for any district is technically a compilation of completed forms of application for registration held by the registrar of electors.<sup>62</sup>

Persons who can show that publication of their names and addresses could be harmful to their safety or the safety of their families may apply to the Electoral Commission for registration on an unpublished roll.<sup>63</sup> In 2014 there were 16,878 people on the unpublished electoral roll.<sup>64</sup>

Any elector may object to the name of any person being on a district's electoral roll on the grounds that that person is not qualified to be registered as an elector of that district.<sup>65</sup>

<sup>53</sup> Electoral Act 1993, s 80.

<sup>54</sup> Electoral Act 1993, s 83.

<sup>55</sup> Electoral Act 1993, ss 76–78.

<sup>56</sup> Electoral Act 1993, s 79.

<sup>57</sup> Electoral Act 1993, s 269(2).

<sup>58</sup> *Taiaroa v Minister of Justice* [1995] 1 NZLR 411 (CA).

<sup>59</sup> Electoral Commission "Statistics" 2014 General Election results and reporting <[www.elections.org.nz](http://www.elections.org.nz)>.

<sup>60</sup> International Institute for Democracy and Electoral Assistance (International IDEA), Voter turnout database: <[www.idea.int/vt/viewdata.cfm](http://www.idea.int/vt/viewdata.cfm)>.

<sup>61</sup> Electoral Commission "Statistics" 2014 General Election results and reporting <[www.elections.org.nz](http://www.elections.org.nz)>.

<sup>62</sup> Electoral Act 1993, s 3(1).

<sup>63</sup> Electoral Act 1993, s 115.

<sup>64</sup> Electoral Commission "Statistics" 2014 General Election results and reporting <[www.elections.org.nz](http://www.elections.org.nz)>.

<sup>65</sup> Electoral Act 1993, s 95.

## REGISTRATION OF POLITICAL PARTIES

In order to obtain party list seats, a political party must first be registered with the Electoral Commission on the Register of Political Parties.

Applications for registration of a party, which carry a \$500 fee, may be made by the secretary of the party or by any member of Parliament who is a current financial member of the party.<sup>66</sup> A party may be registered with any component parties,<sup>67</sup> that is, parties that are themselves members of the registered party, or have combined their memberships with another party for the purposes of registering with the commission. The commission may also register party logos for registered political parties.<sup>68</sup>

To be a registered party the party must have and maintain a current financial membership of at least 500.<sup>69</sup> However, the commission does not disclose any membership list made available to it. Membership of a political party is a matter for an individual to make known if he or she wishes to do so.<sup>70</sup> There can be no registration of a political party during an election campaign (that is, after the issue of the writ),<sup>71</sup> although this restriction does not apply for a by-election. For both general and by-elections, no action can be taken on an application to register a party logo from the date of the issue of the writ until the latest day for the writ's return.<sup>72</sup> At the time of the 2014 election there were 19 parties registered with the Electoral Commission.

The commission has power to deny registration to a political party proposing to use an indecent or offensive name, a name that refers to a title or honour, a name that is too long, or one that is likely to cause confusion.<sup>73</sup> Subject to compliance with the formal requirement to provide the secretary's name and address, the commission advises its consent to registration in the *New Zealand Gazette* and approves an abbreviation for the name of the party, if one is sought.<sup>74</sup> The commission may cancel registration on the application of the secretary or of a member of Parliament belonging to the party where such an application is made on behalf of the party. It must cancel registration if the party's financial membership falls below 500.<sup>75</sup> There are procedural, legal and funding implications for its parliamentary party should a political party have its registration cancelled while it has serving members of Parliament (see pp 114–117 for further discussion).

Changes to the rules on the disclosure of donations to political parties and candidates took effect on 1 January 2011. Every registered party must make an annual return by 30 April of donations that it has received of money or goods and services in the previous 12 months for the year ending 31 December. The return must include details of every donation or contribution over \$15,000, the identity of the person who made the donation or contribution, every anonymous donation over \$1,500, every contribution or donation from an overseas person over \$1,500, and all payments received from the Electoral Commission of donations protected from disclosure. The return must also disclose the number and amount of other party donations that fall within specified monetary bands.<sup>76</sup> At the same time, parties are required to lodge an annual return of any loans exceeding \$15,000 with an unpaid balance exceeding \$15,000, whether entered into during the calendar

<sup>66</sup> Electoral Act 1993, ss 63 and 63A.

<sup>67</sup> Electoral Act 1993, s 67(1)(a)(iii).

<sup>68</sup> Electoral Act 1993, s 71C.

<sup>69</sup> Electoral Act 1993, ss 66(1)(b) and 70(2).

<sup>70</sup> Office of the Ombudsman *Eleventh compendium of case notes of the Ombudsman* (April 1998) at 75–77 (Case No W33807).

<sup>71</sup> Electoral Act 1993, s 64.

<sup>72</sup> Electoral Act 1993, s 71E.

<sup>73</sup> Electoral Act 1993, s 65.

<sup>74</sup> Electoral Act 1993, s 67.

<sup>75</sup> Electoral Act 1993, s 70.

<sup>76</sup> Electoral Act 1993, s 210.

year or previously. They also have to disclose the number and total amount of any loans entered into during the year between \$1,500 and \$15,000, and disclose within 10 working days any loans exceeding \$30,000.<sup>77</sup> The return of donations and loans must be accompanied by an auditor's report. A separate return must be filed within 10 working days on donations or loans exceeding \$30,000, or if the same donor or lender has donated or lent sums in the preceding 12 months that in total exceed \$30,000.<sup>78</sup>

Where a party believes that it has nothing to disclose in respect of the year in question it must submit a "nil" return, which is effectively advice to the commission that it received no donations.<sup>79</sup> The commission is charged with ensuring that parties submit returns of donations and loans, and with making the information available for public inspection.<sup>80</sup>

## QUALIFICATIONS FOR MEMBERS

In principle, every person who is a registered elector and who is a New Zealand citizen is qualified to be a candidate and to be elected as a member of Parliament.<sup>81</sup> The fact that a person must be a registered elector to be a member of Parliament effectively imports the qualifications for registering as an elector (such as age and residence) and the disqualifications from registering (such as falling within a very narrow range of kinds of mental health patients specified in the Electoral Act,<sup>82</sup> imprisonment, and conviction for a corrupt practice) into the membership qualifications.

If a person is not qualified to be registered as an elector, but has nevertheless been registered, the person is not qualified to be a candidate or to be elected as a member of Parliament.<sup>83</sup> The election of such a person could therefore be challenged by way of an election petition. However, an election petition must be presented within 28 days of the declaration of the result of the election.<sup>84</sup> There is no way of challenging the validity of an election other than by means of an election petition.<sup>85</sup> If the fact that a person was invalidly registered as an elector is discovered after the time for presenting an election petition has passed, it cannot be challenged by election petition. As no vacancy automatically arises by virtue of the fact that a sitting member is discovered to have been invalidly registered, it is likely that in such circumstances the person declared elected would remain as a member.

The qualifications for candidature and membership of the House are linked in the legislation. Nevertheless, it is conceivable that a person who was invalidly registered at the time he or she was nominated as a candidate would qualify to be registered before the result of the election was declared. It would seem that in these circumstances the election of such a person would be void (unless, possibly, he or she re-registered before the election) since the defect in their registration at the outset would prevent their being a valid candidate for election.<sup>86</sup>

A number of legislative provisions relate to membership of Parliament. They operate to disqualify people who hold or have held certain offices from being members of Parliament. They operate whether the offices concerned are held at the time of election or are acquired subsequently.

<sup>77</sup> Electoral Act 1993, ss 214C and 214F.

<sup>78</sup> Electoral Act 1993, s 210C.

<sup>79</sup> Electoral Act 1993, s 210B.

<sup>80</sup> Electoral Act 1993, ss 210D, 210F and 214J.

<sup>81</sup> Electoral Act 1993, ss 47(1), (3).

<sup>82</sup> Electoral Act 1993, s 80(1)(c).

<sup>83</sup> Electoral Act 1993, s 47(2).

<sup>84</sup> Electoral Act 1993, s 231.

<sup>85</sup> Electoral Act 1993, s 229(1).

<sup>86</sup> Compare, for example: *Sykes v Cleary* (1992) 176 CLR 77.

The following people are disqualified from being or becoming members of the House:

- members of the Representation Commission (while they hold office, and for up to two years after ceasing to be members)<sup>87</sup>
- the Controller and Auditor-General<sup>88</sup>
- the Clerk of the House of Representatives and the Deputy Clerk<sup>89</sup>
- an Ombudsman<sup>90</sup>
- the Parliamentary Commissioner for the Environment.<sup>91</sup>

To be qualified for election, a candidate must be living. This is not as obvious as it may sound. In some jurisdictions a deceased candidate may be elected, in which case a vacancy immediately arises and is filled in the manner prescribed.<sup>92</sup> In New Zealand, if a candidate for an electoral district dies after the close of nominations and before the polls have closed, the constituency election for that electoral district is aborted.<sup>93</sup> If a candidate who would have been successful dies after the close of the polls but before the declaration of the result, the candidate is not formally returned as a member and the writ is endorsed with this fact.<sup>94</sup> In all such cases a fresh election is held as if it were a by-election.<sup>95</sup> In the case of a party list candidate dying after the submission of the list, the poll proceeds but the deceased candidate's name is entirely disregarded.<sup>96</sup>

## CALLING AN ELECTION

The term of Parliament is three years, computed from the day fixed for the return of the writ for the previous election. At the end of this period, unless it has already been dissolved, Parliament expires.<sup>97</sup> In fact, in every election year except 1943, Parliament has always been dissolved before it was due to expire. This is effected by the Governor-General issuing a proclamation on the advice of the Prime Minister (see p 144). Dissolution (or the expiration of Parliament) sets in motion a train of events leading to a general election. The Governor-General, within seven days, issues a writ to the Electoral Commission to make all necessary arrangements for the conduct of the general election.<sup>98</sup> The writ appoints a day by which candidates are to be nominated, a day for the poll to be held if there is more than one candidate in an electoral district and the latest day for the return of the writ. Nomination day must be no fewer than 20 and not more than 27 days before polling day. The same day (which must be a Saturday) must be appointed for the poll to be held in every electoral district.<sup>99</sup> This was not always the case. Until 1881 European electorates (as they were then known) could hold polls on different days, and until 1951 polls took place in the Māori electorates on a different day from those in the European electorates. The latest day for the return of the writ is the same for each electoral district—the 50th day after the writ is issued.<sup>100</sup>

<sup>87</sup> Electoral Act 1993, s 44.

<sup>88</sup> Public Audit Act 2001, s 8.

<sup>89</sup> Clerk of the House of Representatives Act 1988, s 9.

<sup>90</sup> Ombudsmen Act 1975, s 4.

<sup>91</sup> Environment Act 1986, s 5.

<sup>92</sup> See, for example: *The Economist* (11 November 2000) (a candidate killed in a plane crash three weeks before the election won a United States Senate seat).

<sup>93</sup> Electoral Act 1993, ss 153A and 153B.

<sup>94</sup> Electoral Act 1993, s 153C.

<sup>95</sup> Electoral Act 1993, s 153E.

<sup>96</sup> Electoral Act 1993, s 153.

<sup>97</sup> Constitution Act 1986, s 17(1).

<sup>98</sup> Electoral Act 1993, s 125. This Act was amended in 2002 to provide that a single writ is issued for each general election; prior to that a separate writ was issued for each electoral district.

<sup>99</sup> Electoral Act 1993, s 139(1)–(2).

<sup>100</sup> Electoral Act 1993, s 139(4).

It is for the Prime Minister to decide how long before the dissolution of Parliament an announcement is made that a general election is to be held on a particular day. In 1984 the announcement was made only a matter of hours before dissolution, with the election following one month later. In 1931 an election to be held on 2 December was only announced on 11 November, resulting in the shortest campaign on record.<sup>101</sup> The Electoral Commission usually requests a minimum of eight weeks' notice to organise an election. In 2014 the date of the election was announced six months beforehand. During the pre-election period, Governments have tended to restrict certain activities and advertising in recognition of the potential for a change of Government, and to avoid the possible perception of public funds being used for party political purposes. Such restraints have tended to be applied from three months before an election date or three months from the announcement of an election (if the gap between the announcement and the polling date is less than three months).<sup>102</sup>

In one particular set of circumstances the Prime Minister is obliged to signal in advance that an election is to be held: where it is desired not to hold a by-election to fill a vacancy that has arisen more than six months before Parliament is due to expire, but within six months of the date when it is intended that an election actually be held. The House can, by a resolution carried by 75 per cent of all its members, dispense with such a by-election; but it must be informed beforehand by the Prime Minister that the general election is indeed to be held within the next six months.<sup>103</sup> A by-election that would otherwise have been held has been cancelled upon such advice from the Prime Minister.<sup>104</sup> The Prime Minister is not obliged to disclose the exact date of the election in order to invoke the cancellation procedure (though he or she may do so), only the fact of the election's imminence.

## THE ELECTION Candidates

### *Constituency nominations*

Any person who is registered as an elector and is a New Zealand citizen is qualified to be a candidate for an electoral district or on a party list.<sup>105</sup> Any agreement not to stand for election to Parliament is unenforceable as contrary to public policy.<sup>106</sup> Persons employed in the State services (which includes the education service and the police) who become candidates for election must be placed on leave of absence from nomination day for the election until the first working day after polling day.<sup>107</sup> If elected, a State servant is deemed to have vacated office as a State servant.<sup>108</sup> Candidates do not need to be qualified to vote in the electoral district for which they are standing for election, but a person cannot be a candidate for more than one district at the same general election.<sup>109</sup>

A person must consent to be nominated as a candidate. Any two electors registered in an electoral district can nominate a candidate for election for that district.<sup>110</sup> A deposit of \$300 must be lodged with the Returning Officer for each candidate. This is refunded if the candidate polls five per cent or more of the total number of votes received by constituency candidates in the district.<sup>111</sup>

<sup>101</sup> Michael Bassett *Three Party Politics in New Zealand 1911–1931* (Historical Publications, Auckland, 1982) at 60.

<sup>102</sup> Cabinet Office *Cabinet Manual 2008* at [6.9] and Appendix B, para 2.

<sup>103</sup> Electoral Act 1993, s 131(b).

<sup>104</sup> (1996) 555 NZPD 12541–12562.

<sup>105</sup> Electoral Act 1993, s 47.

<sup>106</sup> *Peters v Collinge* [1993] 2 NZLR 554 (HC).

<sup>107</sup> Electoral Act 1993, s 52.

<sup>108</sup> Electoral Act 1993, s 53(2).

<sup>109</sup> Electoral Act 1993, s 59.

<sup>110</sup> Electoral Act 1993, s 143.

<sup>111</sup> Electoral Act 1993, s 144.

As an alternative to nominating candidates constituency by constituency, a registered party may lodge a single bulk nomination schedule with the Electoral Commission by midday the day before the last day for nomination of constituency candidates. If a party uses this method of nominating candidates, no person may be nominated as a candidate for that party on an individual basis. A bulk nomination is lodged by the secretary of the party. It must be accompanied by a declaration by the secretary that each person nominated is qualified to be a candidate, and by a deposit of \$300 for each candidate nominated.<sup>112</sup> Most major parties use the bulk nomination system.

### **Party list nominations**

In respect of candidates for election from party lists, the secretary of a registered party forwards a list of candidates to the Electoral Commission by noon on the last day for the nomination of constituency candidates. Each candidate must consent to the inclusion of his or her name on the list. The list must set out the candidates in the party's order of preference for election.<sup>113</sup> A deposit of \$1,000 (inclusive of goods and services tax) must be lodged along with the list. This deposit is refunded if the party receives at least 0.5 per cent of the total number of party votes cast at the election or wins a constituency seat. However, the deposit is not refunded until the required returns of election expenses for the party have been made to the Electoral Commission.<sup>114</sup>

Registered parties are obliged to adopt internal procedures for selecting parliamentary candidates that ensure that provision is made for participation in the selection process by the parties' current financial members, or delegates elected or otherwise chosen by current financial members.<sup>115</sup> Precisely what such procedures should entail is not defined in the legislation. It has been held that the requirement for registered parties to follow democratic procedures in their selection of candidates applies both to the rules of the party concerned and to the selection processes undertaken by the party.<sup>116</sup> However, the obligation to provide for participation in the selection of candidates is flexible in scope and the extent to which current financial members participate in the process is a matter for the individual political party to determine.<sup>117</sup> The candidates thus selected do not themselves have to be current financial members or even members of the parties in whose interest they are nominated.

The Electoral Commission has no role in enforcing the requirement for parties to have democratic candidate selection procedures. The only form of redress for party members dissatisfied with their party's selection procedures would appear to be to bring court proceedings for compliance.<sup>118</sup> Nor is a party's candidate selection procedure a criterion for registration on the Register of Political Parties.<sup>119</sup> Each party has developed its own practices for drawing up its party list of candidates—some giving more emphasis to central control, others to regional participation in the decision-making, and each with its own methods of achieving balance in the final party list.

### **Campaign**

How parties and candidates conduct their electoral campaigns, within the constraints of election expenditure limits and the law against corrupt practices

<sup>112</sup> Electoral Act 1993, ss 146A–146L.

<sup>113</sup> Electoral Act 1993, s 127.

<sup>114</sup> Electoral Act 1993, s 127A.

<sup>115</sup> Electoral Act 1993, s 71.

<sup>116</sup> *Takerei v Winiata* HC Hamilton CIV-2010-419-001071, 2 March 2011 at [161].

<sup>117</sup> *Payne v Adams* [2009] 3 NZLR 834 (HC) at [98].

<sup>118</sup> See *Payne v Adams* [2009] 3 NZLR 834 (HC) and *Takerei v Winiata* HC Hamilton CIV-2010-419-001071, 2 March 2011.

<sup>119</sup> Electoral Amendment Bill (222–2) (commentary, 6 May 1999) at iii ([1996–1999] AJHR I.24 at 111).

(such as bribing, threatening or intimidating voters) and illegal practices (such as requirements for advertisements promoting candidates to make it clear that they are officially authorised), is largely over to them. School premises may be used free of any rental charge for the purposes of candidates' meetings,<sup>120</sup> and meetings at other venues within each electoral district will be held by candidates. If advertisements promoting a party or a candidate are displayed in a public place or on private land, on any road or visible from any road, their shape, colour, design and layout must conform with prescribed conditions. These restrictions do not apply to newspaper and periodical advertising or to handbills and small posters.<sup>121</sup> Any person convicted of breaching the rules for campaigning at an election by interfering with or influencing voters on election day is liable to a fine of up to \$20,000.<sup>122</sup> Complaints about breaches of campaign rules are made to the Electoral Commission, and offences may be referred to the police.<sup>123</sup> No campaigning is permitted on polling day itself.

Most parties will publish election manifestos setting out their policy intentions should they become the Government, or describing how they will act if their members are elected to Parliament. Promises made in election manifestos are not regarded as legally binding,<sup>124</sup> but if an election promise was shown to be sufficiently seriously misleading it could conceivably constitute electoral fraud and therefore give grounds for challenging the election result.<sup>125</sup> However, this must be regarded as an extreme possibility.

## **Election broadcasting**

Since the 1990 general election a statutory regime has governed parliamentary election broadcasting.<sup>126</sup> This regime does not apply to paid broadcasting promoting the election of an individual constituency candidate in a particular electoral district. In any other circumstances, it is unlawful to broadcast an election programme, either during the election campaign or outside the period of the campaign, except as approved under the legislation.<sup>127</sup> Anyone breaching the rule for election broadcasting may be fined up to \$100,000. Election programmes can be broadcast on behalf of candidates and parties only between writ day and the close of the day before election day. It is also unlawful to broadcast election programmes on television between 6 am and noon on a Sunday or ANZAC Day, or to broadcast such programmes at all on television or radio on Christmas Day, Good Friday or Easter Sunday.<sup>128</sup>

The allocation of money to political parties for election broadcasting has been carried out by the Electoral Commission since 1996. The task was formerly discharged by the Broadcasting Standards Authority.

## **Political parties**

To qualify for an allocation of broadcasting money for an election programme, a party must have been registered on the Register of Political Parties at the dissolution or expiration of Parliament, and must have advised the commission (by a date specified by the commission and notified in the *Gazette*) that it considers itself

120 Electoral Act 1993, s 154.

121 Electoral (Advertisements of a Specified Kind) Regulations 2005.

122 Electoral Act 1993, s 197.

123 Electoral Act 1993, pts 6AA, 6A and 7.

124 See JL Caldwell "Election manifesto promises: the law and politics" [1989] *New Zealand Law Journal* 108.

125 *Friesen v Hammell* (2000) 190 DLR (4th) 210 (BCSC).

126 The Broadcasting (Election Programmes and Election Advertising) Amendment Bill was introduced by the Government in October 2016, and was expected to be passed by the House before the 2017 general election. The bill is intended to modernise the electoral broadcasting regime.

127 Broadcasting Act 1989, s 70.

128 Broadcasting Act 1989, s 79A.

qualified for such an allocation.<sup>129</sup> The commission must take into account in allocating money the votes the party received at the previous election; votes won at intervening by-elections; the number of members of Parliament belonging to the party; relationships with other parties; other indications of public support, such as opinion polls; and, finally, the need to provide a fair opportunity for each party to convey its policies to the public by television broadcasting.<sup>130</sup> Having considered these criteria, the commission has taken the approach of dividing the eligible parties into a number of categories, and treating each party within each category equally for the purposes of allocating broadcasting money.<sup>131</sup>

### *Allocation of money to parties for election broadcasting*

In each year in which an election is due, the commission is notified by political parties as to whether they consider that they will be entitled to an allocation of money to produce an election programme.<sup>132</sup> The Minister of Justice is obliged to notify the commission how much money Parliament has appropriated for the cost of such production. If no appropriation is made, an amount equal to that appropriated for the previous election is deemed to have been appropriated.<sup>133</sup> The same amount of money has been made available for general elections since 2005.<sup>134</sup> The commission allocates the available money among the political parties who apply to it for an allocation. In doing so the commission must consult the political parties that have notified it that they believe they will qualify for an allocation of money.<sup>135</sup> Consultation with the parties must include the opportunity to meet with and be heard by the commission.<sup>136</sup>

The commission may vary its allocation of money if a party ceases to be registered, fails to file a party list, or fails to comply with any conditions imposed by the commission for the expenditure of the allocation.<sup>137</sup> The commission may also stagger its decision-making on election broadcasting, reflecting the uncertainty of the date of the dissolution of Parliament. For example, in 1999 the commission made an initial allocation of 90 per cent of the money at its disposal before the date of the election became known. The unallocated 10 per cent was used to allow for adjustments regarding parties registering after the initial decisions were taken but in time to qualify for some allocation of broadcasting resources.<sup>138</sup> Special provisions apply to expedite decision-making procedures if an early election is called.<sup>139</sup>

There is no appeal against the commission's allocation of broadcasting money. While it is conceivable that a court might be persuaded to intervene if the commission was clearly misinterpreting its legal powers, the commission has a wide area of discretion as to how it makes its allocations, and the short time within which it must work makes it undesirable in the public interest for its task to be unduly inhibited.<sup>140</sup>

<sup>129</sup> Broadcasting Act 1989, s 75(1).

<sup>130</sup> Broadcasting Act 1989, s 75(2).

<sup>131</sup> *Electoral Commission Decision of the Electoral Commission on the allocation of time and money to eligible political parties for the broadcasting of election programmes for the 2011 general election* (31 May 2011) at 7–8.

<sup>132</sup> Broadcasting Act 1989, s 70A.

<sup>133</sup> Broadcasting Act 1989, s 74.

<sup>134</sup> *Electoral Commission Decision of the Electoral Commission on the allocation of time and money to eligible political parties for the broadcasting of election programmes for the 2014 general election* (6 June 2014) at 3.

<sup>135</sup> Broadcasting Act 1989, ss 75A and 76.

<sup>136</sup> Broadcasting Act 1989, s 76(2).

<sup>137</sup> Broadcasting Act 1989, s 76A.

<sup>138</sup> *Justice and Electoral Committee Inquiry into the 1999 general election* (18 December 2001) [1999–2002] AJHR I.7C at [9.2.2].

<sup>139</sup> Broadcasting Act 1989, ss 76C and 76D.

<sup>140</sup> *Alton v Broadcasting Standards Authority* [1990] NZAR 571 (HC) (interim injunction refused).

Political parties to which money is made available for the making of an election programme may spend that money only on the production costs of the programme or on purchasing broadcasting time for it.<sup>141</sup> Parties cannot use their own money to buy broadcasting time, but they can use their own money for production costs.<sup>142</sup> A broadcaster may not discriminate between political parties in respect of the terms offered for broadcasting an election programme.<sup>143</sup> It is possible that a broadcaster unjustifiably refusing access to a party for an election programme (for example, on discriminatory, arbitrary or unreasonable grounds) would be subject to judicial intervention.<sup>144</sup> A radio station has banned all election advertising rather than accept a particular advertisement that it did not agree with on political grounds.<sup>145</sup> Specific standards apply to all election programmes broadcast in New Zealand.<sup>146</sup>

Accounts for costs incurred in producing an election programme are submitted to the Electoral Commission for payment.<sup>147</sup> Broadcasters must provide the commission with a return showing all election programmes broadcast during the three-month period preceding polling day. These returns are available for inspection.<sup>148</sup>

### ***Public information campaigns***

The election broadcasting restrictions do not prevent non-partisan public information broadcasting about the election. This can take the form of advertisements placed by the Electoral Commission, or community service broadcasting.<sup>149</sup> The commission runs nationwide information campaigns designed to raise voters' general awareness of the imminence of the election and how votes are cast. It also sponsors advertising to encourage registration, and local advertisements advising the location of polling places. Where such advertising is carried out within a statutory framework (as it is by the Electoral Commission), the advertising is not subject to effective control by other bodies performing private regulatory functions.<sup>150</sup>

### ***News and current affairs programmes***

News and current affairs broadcasting on the election is unaffected by the election broadcasting regime.<sup>151</sup> It is, of course, subject to the general broadcasting standards applying to all programmes. However, it has been held that in carrying out election coverage, television companies (even private ones) are performing public functions and that programming decisions are susceptible to judicial review for unreasonableness.<sup>152</sup>

### ***By-elections***

By-elections are not subject to the provisions for allocation of money to produce election programmes.<sup>153</sup> However, the limited restrictions on the times and days on which election programmes may be broadcast on television and radio apply also in respect of by-elections,<sup>154</sup> as does the general requirement that broadcasters offer identical terms to each party or candidate for election programmes.<sup>155</sup>

141 Broadcasting Act 1989, s 74B(1).

142 Broadcasting Act 1989, s 70(2A).

143 Broadcasting Act 1989, s 79B.

144 See, for example, *R v British Broadcasting Corporation, ex parte ProLife Alliance* [2003] UKHL 23 (broadcaster's decision to exclude offensive material upheld in that case).

145 "Iwi radio station bans all election ads" *The Dominion Post* (3 September 2005).

146 Broadcasting Standards Authority *Election programmes code of broadcasting practice* (May 2011) at 6.

147 Broadcasting Act 1989, ss 74B(2), (2A), (3) and (4).

148 Broadcasting Act 1989, ss 79C and 79D.

149 Broadcasting Act 1989, ss 70(2)(d), (e).

150 *Electoral Commission v Cameron* [1997] 2 NZLR 421 (CA) (Advertising Standards Authority could not control how Electoral Commission carried out its public information campaign).

151 Broadcasting Act 1989, s 70(3).

152 *Dunne v CanWest TVWorks Ltd* [2005] NZAR 577 (HC).

153 Broadcasting Act 1989, s 69A.

154 Broadcasting Act 1989, s 79A.

155 Broadcasting Act 1989, s 79B.

## Pre-election economic and fiscal update

Between 20 and 30 working days before each general election (10 working days if there is an early or snap election), the Minister of Finance is obliged to publish a report containing an economic and fiscal update prepared by the Treasury. The update must include forecasts of movements in key economic data for New Zealand and projections of the Crown's financial position, for the financial year in which the report is prepared and the two following years.<sup>156</sup>

## Election expenses

The Electoral Act sets out a regulated period for election expenditure.<sup>157</sup> It begins approximately three months before the date of the general election, depending on the circumstances under which the timing of the polling day is announced. The regulated period for a general election or a by-election always ends with the close of the day before polling day.

During the regulated period, candidates, political parties and registered third parties may spend a certain amount on election advertising. Such advertising is not limited to traditional forms of advertising such as newspapers, posters, billboards, leaflets and radio and television advertising. Any advertisement in any medium that may reasonably be regarded as encouraging or persuading voters to vote, or not to vote, for a candidate or party is considered to be an election advertisement.<sup>158</sup> Every election advertisement must carry a statement from its promoter.<sup>159</sup>

Candidates, parties and registered promoters may spend a maximum amount on election advertising. These amounts are prescribed in legislation, and revised annually in line with the Consumer Price Index.<sup>160</sup> There is provision for apportioning expenditure for candidate advertisements published both before and during the regulated period, expenditure where a single advertisement comprises two or more candidate advertisements, and where an advertisement promotes both a candidate and a party.<sup>161</sup> What constitutes election advertising expenses is a potentially contentious matter, which has been considered by the courts.<sup>162</sup> The Electoral Act's definition of advertising expenses addresses the range of circumstances under which costs have to be accounted for.<sup>163</sup> For example, such expenses include the reasonable market value of any material used for an advertisement that has been provided free or below market value, but exclude the costs of any labour provided free of charge.

Candidates must file returns of election expenses within 70 working days of polling day.<sup>164</sup> Each party secretary must forward an audited return of the party's election expenses to the Electoral Commission within 90 working days of polling day.<sup>165</sup> The Electoral Commission may prescribe the precise form in which such a declaration is to be made, which may include the categorisation of election expenses by particular activities.<sup>166</sup>

Failure by a candidate, party secretary or third party to comply with the requirements to file expense returns is an offence, and such persons are liable on

<sup>156</sup> Public Finance Act 1989, s 26T.

<sup>157</sup> Electoral Act 1993, s 3B.

<sup>158</sup> Electoral Act 1993, s 3A(1).

<sup>159</sup> Electoral Act 1993, s 204F.

<sup>160</sup> Electoral Act 1993, ss 205C, 206C and 206V. At 1 July 2015, the maximum amount including GST for total party expenditure at a general election was \$1,109,000 plus \$26,100 for each party's electorate candidates contesting the election, and \$313,000 for total registered promoter expenditure.

<sup>161</sup> Electoral Act 1993, ss 205D, 205E and 205EA.

<sup>162</sup> See *Peters v Clarkson* [2007] NZAR 610 (HC).

<sup>163</sup> Electoral Act 1993, s 3E.

<sup>164</sup> Electoral Act 1993, s 205K.

<sup>165</sup> Electoral Act 1993, ss 206I and 206J.

<sup>166</sup> *Electoral Commission v Tate* [1999] 3 NZLR 174 (CA).

conviction to a fine of up to \$40,000. Filing a false return, or failing to file a return within 15 working days after the date it is due, may be a corrupt practice offence.<sup>167</sup>

## **Administration of the election**

The Electoral Commission is responsible for the conduct of elections and by-elections. It delegates its functions and powers to electoral officials to ensure the election is administered appropriately. The commission must designate a Returning Officer for each electoral district.<sup>168</sup> Each Returning Officer, under the direction of the commission, makes the detailed arrangements for the conduct of the poll and the counting of votes in their particular district. In practice, all returning officers follow detailed national standards and processes prescribed by the commission. State-sector agencies are under an obligation to provide the commission with assistance in the conduct of elections,<sup>169</sup> and State servants and others are recruited to perform duties as election officials. The commission establishes polling places (such as at schools and church halls) for voting in each electoral district. At least 12 polling places must be set up within each electoral district with access that is suitable for people with disabilities. Subject to this requirement, polling places may be established for a district even though they are actually located outside of it.<sup>170</sup>

The commission has contingency plans for managing polling in the event of an emergency preceding or on polling day. If the area affected is local only, the commission may revoke and amend particular polling places, while continuing the conduct of the election in the rest of the electorate and country. If an emergency event has a wider effect, the commission can adjourn polling in particular places but continue with the conduct of the election elsewhere. It will then publish preliminary polling results before the adjourned poll takes place.<sup>171</sup>

## **Uncontested elections**

If there is only one candidate nominated for an electoral district or if all the other candidates withdraw leaving only one for the district, that candidate is declared elected and no poll is held for that seat. A party-vote poll will still be held.<sup>172</sup>

A member has not been returned in this way since 1943, when two members who were overseas on military service were elected unopposed.<sup>173</sup>

## **Voting**

There will almost always be more than one candidate for election as the constituency member for the district, and, in any case, a party list vote must be held in every electoral district. A poll will therefore be held. People who are lawfully registered as electors in a district are entitled to vote at any election held in that district.

The ballot paper for a general election has two parts to it and each elector has two votes. On the left-hand side of the ballot paper a voter casts a party vote for the party of their choice. On the right-hand side the voter casts a vote for a candidate for the electoral district. Candidates are arranged on the ballot paper in alphabetical order. Their party affiliations are printed underneath the candidates' names. Where a registered party has a constituency candidate, its party name appears on the party vote side of the ballot paper opposite that candidate's name. Where a candidate for the electoral district (for example, an independent) does not have a corresponding party standing for the party vote, the space on the party

<sup>167</sup> Electoral Act 1993, ss 205N, 206N and 206ZE.

<sup>168</sup> Electoral Act 1993, ss 20A and 20B.

<sup>169</sup> Electoral Act 1993, s 20D.

<sup>170</sup> Electoral Act 1993, s 155.

<sup>171</sup> Electoral Commission *Plans for managing adjournment of polling in an emergency* (14 July 2014).

<sup>172</sup> Electoral Act 1993, s 148.

<sup>173</sup> Neill Atkinson *Adventures in Democracy—A History of the Vote in New Zealand* (University of Otago Press, Dunedin, 2003) at 155.

vote side of the ballot paper is left blank. Parties without individual constituency candidates are arranged alphabetically on the party vote side of the ballot paper, below the parties with candidates.<sup>174</sup>

Voting is carried out in secret at a polling place on a Saturday between 9 am and 7 pm.<sup>175</sup> The voter votes by ticking the circle to the right of the name of the party or candidate (as the case may be) for whom he or she wishes to vote.<sup>176</sup>

## Special and advance voting

New Zealand first made provision for absentee or “special” voting in 1890, for seamen. A general right to cast an absentee vote was introduced in 1905 and voting by post was first permitted in 1928.<sup>177</sup>

Regulations allow people who will be absent from New Zealand or their own electoral district on polling day, or will otherwise be unable (for example, because of illness or infirmity) to vote at a polling place within the district, to vote by special vote.<sup>178</sup> A special vote may be cast within a specified period before polling day, for example, if the elector is intending to go overseas shortly before the election. To cast a special vote, the elector must make a written application to an official authorised to issue special ballot papers.<sup>179</sup> Effectively, electors may vote at any polling place in New Zealand, though they are encouraged to vote at a polling place in their own electoral district.

Since 2011, voters have been able to vote in advance in their electorates without having to make a written application to do so. As a result the volume of advance voting has become much larger. There were 717,579 advance votes cast in the 2014 general election, compared with 334,558 in the 2011 general election and 270,427 in 2008.<sup>180</sup>

There is currently no provision for online voting in New Zealand. Special ballot papers may be issued by electronic means to voters outside New Zealand, but the ballot paper must be completed by conventional means and returned by faxing, posting, or couriering the paper to the commission, or posting, couriering, or hand-delivering the paper to the nearest diplomatic post. Special votes may be returned to the commission electronically if it makes a system for secure transmission of papers available.<sup>181</sup> In 2014, voters could return their papers by scanning and uploading them to the commission’s website.

Completed special ballot papers are sealed and deposited in a ballot box. A high proportion of special votes have been disallowed in the past mainly because the electors were not enrolled. For example, 20 per cent of candidate and eight per cent of party special votes cast at the 2011 general election were disallowed.<sup>182</sup> Special votes have also been disallowed because the voters voted for a constituency candidate standing in an electoral district in which the voters were not enrolled. Since the 2002 election a voter who votes for a candidate in an electoral district in which the voter is not enrolled has the party vote counted rather than the entire vote disallowed.<sup>183</sup>

<sup>174</sup> Electoral Act 1993, s 150 and sch 2, form 11.

<sup>175</sup> Electoral Act 1993, s 161.

<sup>176</sup> Electoral Act 1993, s 168.

<sup>177</sup> Neill Atkinson *Adventures in Democracy—A History of the Vote in New Zealand* (University of Otago Press, Dunedin, 2003) at 82–83, 135.

<sup>178</sup> Electoral Act 1993, s 172.

<sup>179</sup> Electoral Regulations 1996, reg 20.

<sup>180</sup> Electoral Commission “Advance voting statistics—2014 general election” 2014 General Election results and reporting <[www.elections.org.nz](http://www.elections.org.nz)>.

<sup>181</sup> Electoral Regulations 1996, reg 45A, 47, 47A, and 47B.

<sup>182</sup> Electoral Commission *Report of the Electoral Commission on the 2011 general election and referendum* (April 2012) [2011–2014] AJHR E.9 at 32.

<sup>183</sup> Electoral Act 1993, s 178(5A).

## Turnout

Turnout at New Zealand elections has traditionally been high. A survey of elections held between 1945 and 1997 found that New Zealand and Iceland had, at 89 per cent, the highest average turnout among countries where voting is not compulsory. While some countries with compulsory voting scored higher (Australia's average for the survey period, for example, was 94 per cent), others with compulsory voting had lower turnouts than New Zealand.<sup>184</sup> However, there is evidence of a decline in New Zealand in recent years. Average registered voter turnout was estimated at 77.9 per cent in the four elections from 2002 to 2011, and was 74 per cent in 2011,<sup>185</sup> which, while reasonably steady, reflects probably the lowest turnout since 1902. (Turnout at the 1978 election was officially recorded as 69.15 per cent but there was considerable duplication of electoral rolls. A more realistic estimate for turnout at that election is 79.86 per cent.<sup>186</sup>) The overall turnout figure can also disguise considerable differences between the turnout of voters enrolled on the general roll and those on the Māori roll. Turnout of voters on the Māori roll was only 58 per cent in 2011.<sup>187</sup>

## Counting of votes

The Returning Officer may, if authorised by the commission, conduct a preliminary count of votes received before polling day (advance ordinary votes), beginning after 2 pm on polling day.<sup>188</sup> The votes must be counted in a restricted area from which those who enter (officials and scrutineers) may not leave without the Returning Officer's permission until the close of the poll, and no information about the results of the count may be communicated to any non-authorised person.<sup>189</sup>

After the polls have closed, the manager of each polling place conducts a count of the votes cast for each candidate and for political party lists.<sup>190</sup> The aggregate totals from these preliminary counts are communicated to the Returning Officer for the electoral district, and entered into a national results system controlled by the commission. The results are fed to the media and posted on a website. Together with any advance vote totals, these figures form the basis of provisional election results released during the course of the evening of polling day. All ballot papers are then sent to the Returning Officer.

Over the next few days the Returning Officer for each district scrutinises the rolls for irregularities (such as a voter being issued with more than one ballot paper).<sup>191</sup> The Returning Officer then makes an official count of the votes from the various polling places in the district and counts any special votes remaining uncounted for the district, disallowing all ballot papers that do not carry an official mark or do not clearly indicate the constituency candidate or the party for which the voter desired to vote.<sup>192</sup>

Scrutineers appointed by candidates or, where a party does not have an electorate candidate, the parties themselves, may witness the counting (and any recounting) of the votes.<sup>193</sup>

<sup>184</sup> Louis Lavioie "Voter Turnout at Federal General Elections in Canada" (1998) 21(4) *Canadian Parliamentary Review* 23 at 26.

<sup>185</sup> Electoral Commission *Report of the Electoral Commission on the 2011 general election and referendum* (April 2012) [2011–2014] AJHRE.9 at 50.

<sup>186</sup> JO Wilson *New Zealand Parliamentary Record 1840–1984* (Government Printer, Wellington, 1985) at 287.

<sup>187</sup> Electoral Commission *Report of the Electoral Commission on the 2011 general election and referendum* (April 2012) [2011–2014] AJHRE.9 at 50.

<sup>188</sup> Electoral Act 1993, s 174C.

<sup>189</sup> Electoral Act 1993, ss 174D and 174E.

<sup>190</sup> Electoral Act 1993, s 174.

<sup>191</sup> Electoral Act 1993, ss 175 and 176.

<sup>192</sup> Electoral Act 1993, s 178.

<sup>193</sup> Electoral Act 1993, ss 160, 174F, 175, 176 and 178.

## Declaration of result and recounts

When the official count is completed the result is reported to the Electoral Commission.<sup>194</sup> As soon as practicable after receiving this information the commission must declare the results of the voting by notice in the *New Zealand Gazette*.<sup>195</sup> The results are also released to the media and published on a website.

Any constituency candidate may apply within three working days of the public declaration of the result to a District Court judge for a recount of the votes cast for constituency candidates in that district.<sup>196</sup> If as a result of conducting the recount the judge finds that the original result was incorrect, the judge orders the commission to publish an amended declaration of the result.<sup>197</sup> Similarly, the secretary of any registered party may require a judicial recount of the party votes recorded on ballot papers in the electoral district, and the judge may also order that the declared result of the party vote be amended.<sup>198</sup> Alternatively, the secretary of a party can seek from the Chief District Court Judge a national recount of party votes recorded in every electoral district. In this case a deposit of \$90,000 (including goods and services tax) must be paid. A national recount is carried out by District Court judges in each electoral district under the Chief District Court Judge's direction. The deposit can, at the discretion of the Chief District Court Judge, be used to defray the costs of the recount.<sup>199</sup>

## Return of the writ for constituency members

The Electoral Commission, after declaring the result, and if satisfied that no application is to be made for a judicial recount, or after any recount has taken place, endorses on the writ the full name of every constituency candidate declared to be elected and the date of the endorsement, and delivers the writ to the Clerk of the House. The date endorsed on the writ is the date of the return of the writ, which should be (but is not always) within the time originally specified in the writ for its return.<sup>200</sup> The returned writ is, in effect, a certificate of election, proving the right to membership of the House of the person named on it. It has been called the best available evidence that a person is a member of Parliament.<sup>201</sup> The elected candidate comes into office as a member of Parliament on the day after the date of the return of the writ.<sup>202</sup>

On being informed of an error on a returned writ, the House has ordered an official (formerly the Clerk of the Writs) to attend the House in person with the original writ to amend it or correct it.<sup>203</sup> An Electoral Commissioner now has power to correct an error in the name of a member as recorded on the writ.<sup>204</sup> A returned writ may also need to be amended if the result in an electoral district is overturned following an election petition to the High Court.

## Party list returns

The results of the party voting on the ballot papers as declared by the Electoral Commission are aggregated into national totals.

Where a party does not receive more than five per cent of the total votes cast and no constituency candidate belonging to that party is elected for an electoral district, the votes cast for the party are entirely disregarded. If a constituency

<sup>194</sup> Electoral Act 1993, s 179(1).

<sup>195</sup> Electoral Act 1993, s 179(2).

<sup>196</sup> Electoral Act 1993, s 180(1).

<sup>197</sup> Electoral Act 1993, s 180(10).

<sup>198</sup> Electoral Act 1993, s 180(2), (10).

<sup>199</sup> Electoral Act 1993, s 181.

<sup>200</sup> Electoral Act 1993, s 185.

<sup>201</sup> *Forbes v Samuel* [1913] 3 KB 706 at 719, 720 and 725.

<sup>202</sup> Electoral Act 1993, s 54(1)(a).

<sup>203</sup> (19 May 1882) [1882] JHR 4 (Moeraki election return); (1997) 559 NZPD 1117–1118 (Ilam election return). Both returns referred to the member by the wrong given name.

<sup>204</sup> Electoral Act 1993, s 186.

candidate belonging to a party that gains less than five per cent of the party vote is returned for an electoral district, then the candidate's party also shares in the allocation of party seats, notwithstanding its failure to achieve the threshold. The commission calculates the number of party list seats in the new Parliament to which every party achieving the five per cent threshold of votes or electing a constituency member is entitled.<sup>205</sup>

The mathematical methodology used to allocate party list seats is known as the Sainte-Laguë formula after the political scientist who devised it. The application of this formula results in a near-proportional allocation of seats among the various parties entitled to party list seats. If a party has won more constituency seats than it is entitled to on the basis of its share of the party vote, it keeps the constituency seats it has won and the size of the House is increased accordingly until the next election. This occurrence is referred to as an "overhang". The first overhang occurred at the 2005 general election when a party won four constituency seats but its share of the party vote would have entitled it to only three seats. The party seats to which each party is entitled are allocated by the Electoral Commission to the candidates on each list in the party's order of preference. The same person may be a candidate in a constituency and also be included on a party list. Indeed this is common. A person who has already been elected for an electoral district is thus disregarded by the commission in allocating party list seats, and the next candidate on the list is selected. If a party has not nominated enough candidates on its party list to take up all the seats to which it is entitled, those seats are not filled and the size of the House is reduced accordingly.

When the process of allocating party list seats is complete, the Electoral Commission declares the candidates to whom party list seats are allocated to have been elected, and forwards to the Clerk of the House a return listing their full names.<sup>206</sup> These members come into office as members of Parliament on the day after this return is made.<sup>207</sup> The commission may correct any error in the name of a member on the list of members elected.<sup>208</sup>

### **Storage of ballot papers**

Unused ballot papers are destroyed by the returning officers. The ballot papers that were used at an election are packaged and forwarded by the returning officers to the Clerk of the House, who must retain the packages unopened for six months before they can be destroyed. (The legislation that requires the preservation of public records does not apply to such papers.<sup>209</sup>) A court of competent jurisdiction or the House itself may order any of the packages so delivered to the Clerk to be opened.<sup>210</sup> A "court of competent jurisdiction" is any court with jurisdiction over any matter in which the question of voting at an election is relevant.<sup>211</sup> Thus, the High Court on the trial of an election petition can order the opening of the packages, and the District Court has done so in the case of a prosecution for double voting.

## **DISPUTED ELECTIONS**

Originally, the House was declared to be judge without appeal of the validity of election of each of its members.<sup>212</sup> Until 1880 anyone questioning the validity of an election did so by means of a petition to the House, which the House appointed a

<sup>205</sup> Electoral Act 1993, ss 191 and 192.

<sup>206</sup> Electoral Act 1993, s 193.

<sup>207</sup> Electoral Act 1993, s 54(2)(a).

<sup>208</sup> Electoral Act 1993, s 193A.

<sup>209</sup> Public Records Act 2005, s 6(a).

<sup>210</sup> Electoral Act 1993, ss 187 and 189.

<sup>211</sup> DL Mathieson "Interpreting the proposed Bill of Rights (I)" [1986] *New Zealand Law Journal* 130.

<sup>212</sup> New Zealand Constitution Act 1852 (UK), s 45.

committee to try. In that year the House handed the trial of election petitions over to the courts.

## Constituency seats

Election petitions complaining of the election or return of a member for an electoral district may be brought by defeated candidates or by electors of the district.<sup>213</sup> They may also be brought by anyone “claiming to have had a right to be elected or returned at the election”,<sup>214</sup> which appears to mean anyone at all on the electoral roll whether or not they offered themselves as candidates in that electoral district. Legal aid is not available for those involved in bringing an election petition.<sup>215</sup> An election petition must be presented to the High Court within 28 days of the public notification of the official results.<sup>216</sup> This requirement for a petition to be filed within a fixed, relatively short time of the result being announced is mandatory. In Australia it has been held to be an essential condition or jurisdictional requirement of any challenge to the election result. The time bar is designed to reflect the public interest in resolving questions about disputed elections expeditiously and with finality.<sup>217</sup>

The trial of an election petition takes place before three judges of the High Court named by the Chief Justice<sup>218</sup> under rules made for the purpose.<sup>219</sup> The trial is held in open court, and the court has jurisdiction to inquire into and adjudicate on any matter relating to the petition that it sees fit. It may direct a recount or scrutiny of some or all of the votes cast at the election; and, where another candidate claims to have been elected, may receive evidence rebutting such a claim as if an election petition had been presented against that person’s election.<sup>220</sup> The onus of proof is on the petitioner in any election petition to establish any element of unlawfulness or impropriety.<sup>221</sup>

The decision of the High Court as to who was duly elected or whether the election was void is final and conclusive without any right of appeal.<sup>222</sup> The High Court (by majority if need be) certifies to the Speaker its determination as to whether the member whose election is at issue was duly elected, whether one of the other candidates was duly elected or whether the election in that district was void.<sup>223</sup> The court must also report on any allegations of corrupt or illegal practices made in the petition, and may also make a special report to the Speaker on any matters arising in the course of the trial that it considers should be submitted to the House.<sup>224</sup> The court must also order the Electoral Commission to undertake a reallocation of list seats in the event of a successful election petition.<sup>225</sup>

The Speaker presents the certificate and any accompanying report to the House. The House then orders them to be entered in its journals, and gives any necessary directions for confirming or altering the return or for otherwise carrying out the determination.<sup>226</sup> If the original writ is required to be amended because the court certifies that a candidate other than the one originally returned was properly elected, the House may order the Electoral Commission to attend with the writ and to amend it accordingly.<sup>227</sup> Where the court confirms the validity of the election of

<sup>213</sup> Electoral Act 1993, s 230(1)(a), (c).

<sup>214</sup> Electoral Act 1993, s 230(1)(b).

<sup>215</sup> Legal Services Act 2011, s 7(5)(b).

<sup>216</sup> Electoral Act 1993, s 231.

<sup>217</sup> *Rudolph v Lightfoot* (1999) 197 CLR 500 at 507, 508.

<sup>218</sup> Electoral Act 1993, s 235(1).

<sup>219</sup> Electoral Act 1993, s 234.

<sup>220</sup> Electoral Act 1993, s 236.

<sup>221</sup> *Payne v Adams* [2009] 3 NZLR 834 (HC).

<sup>222</sup> Electoral Act 1993, s 242.

<sup>223</sup> Electoral Act 1993, s 243.

<sup>224</sup> Electoral Act 1993, ss 244 and 245.

<sup>225</sup> Electoral Act 1993, s 243A.

<sup>226</sup> Electoral Act 1993, s 246(2).

<sup>227</sup> (24 May 1979) [1979] JHR 44–45 (Hunua election return); (12 July 1988) [1987–1990] 1 JHR 693 (Wairarapa election return).

a sitting member, the court's certificate is merely entered in the journals without any other direction from the House.<sup>228</sup> No notice is required of a motion to enter the court's certificate in the journals.<sup>229</sup>

## **Party list seats**

An election petition seeking a review of the procedures and methods used to allocate seats to political parties may be presented by the secretary of a party listed on the ballot paper. Such a petition must be presented to the Court of Appeal within 28 days of the declaration of the election of party list members.<sup>230</sup> The Court of Appeal then tries the petition. Any trial of an election petition relating to party list seats is concerned only with how the seats were allocated. No challenge to the fact that the vote of an elector was allowed or disallowed is permitted, nor may any allegation be made of corrupt or illegal practices at the election.<sup>231</sup>

The Court of Appeal determines whether the procedures used to allocate seats were correctly applied and consequently whether a valid return of members for party list seats has been made.<sup>232</sup> The court may make orders invalidating any candidate's return, declaring another candidate to have been elected or requiring the Electoral Commission to repeat the allocation procedures for party list seats.<sup>233</sup>

## **VACANCIES**

In addition to provisions disqualifying a person who is otherwise qualified from becoming a member of Parliament in the first place, a number of provisions operate to disqualify a person who is already a member of Parliament from continuing to be a member and thus causing a supervening vacancy in the member's seat.

The following events cause the seat of a member of Parliament to become vacant.

### ***Failing to attend the House*<sup>234</sup>**

A member who fails, without the House's permission, to attend the House for one whole session of Parliament vacates his or her seat. Two members have lost their seats for failing to attend throughout a session.<sup>235</sup> The fact that a member who is in lawful detention stands in danger of losing his or her seat for not attending the House is not a ground for relief against the consequences of the decision to detain.<sup>236</sup> But disqualification on this ground is less likely to arise now given the longer parliamentary sessions (up to three years compared with up to one year formerly) throughout which a member would have to be absent to attract it, and the House's more liberal rules on granting permission for members' absences. (See p 55.)

### ***Taking an oath or making a declaration or acknowledgement of allegiance to a foreign State, foreign Head of State or foreign power, or becoming entitled to the rights, privileges or immunities of, a subject or citizen of a foreign State or power*<sup>237</sup>**

These disqualifications are directly linked with the Oath of Allegiance that members must take before sitting or voting in the House. A violation of the allegiance proclaimed in the oath leads to the member's disqualification. It makes no difference whether New Zealand has friendly relations with the foreign State or power concerned, nor whether New Zealand may share a Sovereign with the other

<sup>228</sup> (21 April 1982) [1982] JHR 39–40 (Taupo election return).

<sup>229</sup> (1894) 83 NZPD 18–19.

<sup>230</sup> Electoral Act 1993, ss 258 and 259.

<sup>231</sup> Electoral Act 1993, s 260.

<sup>232</sup> Electoral Act 1993, s 262(a), (b).

<sup>233</sup> Electoral Act 1993, s 262(c).

<sup>234</sup> Electoral Act 1993, s 55(1)(a).

<sup>235</sup> Thomas Fraser (Hampden) in 1862 and Patrick Charles Webb (Grey) in 1918.

<sup>236</sup> Kunjan Nadar v State of Travancore-Cochin [1955] AIR (Travancore-Cochin) 154.

<sup>237</sup> Electoral Act 1993, ss 55(1)(b), (c).

country involved.<sup>238</sup> (It may be doubted whether New Zealand does any longer share a Sovereign with those countries, such as the United Kingdom, Australia and Canada, where the person of the Sovereign is the same. In New Zealand law the Sovereign is now Sovereign in right of New Zealand, a separate sovereignty from that of Her Majesty's other realms.) However, the self-governing States with special constitutional relationships with New Zealand—Cook Islands, Niue and Tokelau—are unlikely to be considered foreign States or powers to which the provision applies.

Dual nationality at the time of a member's election is not a disqualification, but voluntarily acquiring a foreign citizenship or the status attaching to a foreign citizenship subsequently may result in disqualification.<sup>239</sup> Acquisition of a foreign citizenship or of the rights attaching to a foreign citizenship solely as a result of marriage does not disqualify the member.<sup>240</sup> Nor does a member who acquires another citizenship as a consequence of the member's birth in another country or because of another country's rules on acquisition of citizenship by descent thereby vacate his or her seat.<sup>241</sup> To incur disqualification a member must have taken some positive action to acquire the foreign citizenship concerned. A member who renews a passport or travel document issued to the member before his or her election does not thereby lose his or her seat,<sup>242</sup> though if the process of renewal involves taking an oath or making a declaration of allegiance to that foreign State, the member may incur a disqualification.

Becoming an honorary consul for a foreign State is not incompatible with membership of the House. A number of members have acted as honorary consuls for foreign States.<sup>243</sup> One member continued to act as an honorary consul after becoming a Minister.<sup>244</sup>

### *Ceasing to be a New Zealand citizen<sup>245</sup>*

This disqualification is the counterpart to the requirement that a person cannot be elected to Parliament unless he or she is a New Zealand citizen.<sup>246</sup> A member who subsequently loses his or her New Zealand citizenship also ceases to be a member of Parliament. New Zealand citizenship can be lost by voluntary renunciation.<sup>247</sup> A person can also be deprived of New Zealand citizenship where he or she acquires another citizenship and acts in a manner contrary to the interests of New Zealand or where the person originally acquired New Zealand citizenship fraudulently.<sup>248</sup> The mere fact that a person acquires a foreign citizenship does not affect that person's New Zealand citizenship, though a member voluntarily acquiring another citizenship would incur disqualification in any case.

### *Accepting nomination as, agreeing to be a candidate for election as, or agreeing to appointment as a member of Parliament of any other country or a governing body of any association of States exercising governing powers<sup>249</sup>*

Agreeing to become a candidate for election to a foreign legislature (whether at a national, state, territory or municipal level) automatically vacates a member's seat.

<sup>238</sup> See, for example: *Re Wood* (1988) 167 CLR 145.

<sup>239</sup> See (6 August 2003) 610 NZPD 7719–7818 (Electoral (Vacancies) Amendment Bill).

<sup>240</sup> Electoral Act 1993, s 55(2).

<sup>241</sup> Electoral Act 1993, s 55AA(a).

<sup>242</sup> Electoral Act 1993, s 55AA(b).

<sup>243</sup> See, for example: (1950) 289 NZPD 518 (Panama); Audrey Young "MP will be Monaco's man in NZ" *The New Zealand Herald* (5 February 2003).

<sup>244</sup> Sir Clifton Webb, first appointed as consul for Panama in 1944, continued in that role after becoming a Minister in 1949. See: Sheila M Belshaw *A Man of Integrity—A Biography of Sir Clifton Webb* (Dunmore Press, Palmerston North, 1979) at 77–78.

<sup>245</sup> Electoral Act 1993, s 55(1)(ca).

<sup>246</sup> Electoral Act 1993, s 47(3).

<sup>247</sup> Citizenship Act 1977, s 15.

<sup>248</sup> Citizenship Act 1977, ss 16 and 17.

<sup>249</sup> Electoral Act 1993, s 55(1)(cb).

So too does agreeing to become a member of a governing body of an association of countries, states, territories or municipalities of which New Zealand is not a member which exercises governing powers. The legislation itself gives the European Union as an instance of such an association. Thus a member of Parliament agreeing to be a candidate for election to the European Parliament or to be appointed to the European Commission would thereby vacate his or her seat.

***Conviction of an offence punishable by imprisonment for a term of two years or more<sup>250</sup>***

This disqualification applies regardless of the term of imprisonment to which the member is actually sentenced. If the offence of which the member is convicted carries a possible sentence of two years or more of imprisonment, the seat becomes vacant. A person who was discharged without conviction (which is deemed to be an acquittal)<sup>251</sup> would not be disqualified. In the United Kingdom a successful appeal against conviction was held to remove any incapacity to sit created by the conviction, and, as the vacancy caused by the original conviction had not yet been filled, the court, in an endeavour to remove all penalties flowing from the conviction, restored the member to office.<sup>252</sup> In New Zealand, conviction creates an immediate vacancy rather than a continuing incapacity to sit (though serving a resulting term of imprisonment may create an incapacity to sit). Nevertheless, a successful appeal against conviction would seem to remove the justification for disqualification in the first place; and the same principles for avoiding the loss of a member's seat, if this was still possible, might apply in New Zealand. A finding of contempt of court is not conviction of an offence, and a member found in contempt does not vacate his or her seat.<sup>253</sup>

The registrar of a court in which a member is convicted is obliged to advise the Speaker of the conviction within 48 hours.<sup>254</sup>

***Conviction of a corrupt electoral practice or being reported by the High Court in its report on the trial of an election petition to have been guilty of a corrupt practice<sup>255</sup>***

The same principles for avoiding disqualification in the case of a successful appeal of a conviction of a corrupt electoral practice as were discussed above in regard to conviction for an offence would seem to apply, if this is still possible.

***Becoming a public servant<sup>256</sup>***

A member becoming a public servant thereby vacates his or her seat. If a member continues to sit knowing that his or her seat has become vacant on this ground, he or she is liable to a fine of \$400 for each day he or she sits, in addition to the loss of the seat.<sup>257</sup>

***Resigning the seat by signing a written notice addressed and delivered to the Speaker<sup>258</sup>***

In the early days of parliamentary government in New Zealand, resignation was very common. (There were 46 resignations in the fourth Parliament between 1866 and 1870, out of a House of 70, including those of one member who resigned on two occasions in the course of the Parliament. One member resigned parliamentary

<sup>250</sup> Electoral Act 1993, s 55(1)(d).

<sup>251</sup> Sentencing Act 2002, s 106.

<sup>252</sup> *Attorney-General v Jones* [2000] QB 66.

<sup>253</sup> (6 April 2004) 616 NZPD 12365; Clerk of the House of Representatives, Hon Nicholas Smith MP—finding of contempt (6 April 2004).

<sup>254</sup> Electoral Act 1993, s 57.

<sup>255</sup> Electoral Act 1993, s 55(1)(d).

<sup>256</sup> Electoral Act 1993, s 55(1)(e).

<sup>257</sup> Electoral Act 1993, s 48.

<sup>258</sup> Electoral Act 1993, s 55(1)(f).

seats on five occasions in the course of his career.<sup>259</sup>) Resignation subsequently became less common, but has been increasing in frequency, especially among party list members since the introduction of the MMP electoral system.

Members may, if they wish, pledge to resign in certain circumstances, such as a majority of electors calling on them to do so,<sup>260</sup> or their leaving their party. But such pledges are not legally enforceable.<sup>261</sup> It is regarded as a contempt of the House for anyone to offer a financial inducement to a member to resign<sup>262</sup> or to attempt to procure a member to resign by threats or other improper means. But merely calling on a member to resign for a supposed breach of an election promise or for other reasons is an accepted part of political debate, and is not expected to issue in any action.

A member's reasons for resigning are no concern of the Speaker. Nor is the Speaker concerned with the circumstances that caused a member to resign, although if improper conduct was involved, the House may wish to inquire whether a contempt has been committed. The Speaker cannot refuse to receive a written resignation on the ground that the member has been subject to undue influence,<sup>263</sup> though the Speaker may privately counsel the member before the resignation is tendered.

A resignation must be unequivocal. It is direct advice to the Speaker that the member is resigning his or her seat. Resignation cannot be construed from a series of documents. It must itself be contained in a single notice.<sup>264</sup> Once a member has given the Speaker written notice of resignation, the notice takes effect according to its tenor. It cannot be withdrawn after it has taken effect. Unless the notice is postdated, resignation is effective immediately on its receipt by the Speaker. At that point the member's seat becomes vacant. But members often give written notice of resignation to take effect on a future day. A postdated resignation can be withdrawn before it takes effect, whether the Speaker has already informed the House of its receipt or not. No formal steps to fill a vacancy caused by resignation are taken until the notice takes effect.

### ***Member's election being declared void on an election petition<sup>265</sup>***

(See pp 41–42.)

### ***Death<sup>266</sup>***

The registrar by whom a member's death is registered is obliged to notify the Speaker of the registration within 12 hours.<sup>267</sup>

### ***Becoming mentally disordered<sup>268</sup>***

A member who is made the subject of a compulsory treatment order or is detained in a hospital under an in-patient order is subject to disqualification on the grounds of mental disorder.<sup>269</sup> The Speaker must be advised as soon as possible of either of these circumstances occurring.<sup>270</sup> A medical examination after at least six months' detention must be made before the Speaker may declare the seat vacant for reasons of mental disorder.<sup>271</sup>

<sup>259</sup> Thomas Dick (City of Dunedin three times, Port Chalmers twice).

<sup>260</sup> Sir Llewellyn Woodward *The Age of Reform, 1815–1870* (Clarendon Press, Oxford, 1938) at 95–96.

<sup>261</sup> Privileges Committee, report relating to the status of Manu Kopu as a member of Parliament (September 1997) [1996–1999] AJHR I.15B.

<sup>262</sup> (1998) 574 NZPD 14721 Kidd.

<sup>263</sup> *Vikram Singh v Shri Ram Ballabhji Kasat* [1995] AIR (Madhya Pradesh) 140.

<sup>264</sup> Privileges Committee, report relating to the status of Manu Kopu as a member of Parliament (September 1997) [1996–1999] AJHR I.15B.

<sup>265</sup> Electoral Act 1993, s 55(1)(g).

<sup>266</sup> Electoral Act 1993, s 55(1)(h).

<sup>267</sup> Electoral Act 1993, s 58.

<sup>268</sup> Electoral Act 1993, s 55(1)(i).

<sup>269</sup> Electoral Act 1993, s 56; Mental Health (Compulsory Assessment and Treatment) Act 1992, pt 2.

<sup>270</sup> Electoral Act 1993, s 56(1), (2).

<sup>271</sup> Electoral Act 1993, s 56(4).

Any one of these listed events causes the member concerned to lose the seat. But any such events must occur after the member's election to be relevant. They do not in themselves disqualify a person from seeking and securing election to the House in the first place (though some of them, such as New Zealand citizenship, are common to the rules qualifying a person for election to the House). In exceptional circumstances, Parliament has removed by legislation a disqualification that has been incurred so as to permit a member to remain in Parliament.<sup>272</sup>

All members vacate office at the close of polling day for the next election,<sup>273</sup> and these vacancies are filled at the ensuing general election.

## FILLING VACANCIES

### Determining that a vacancy exists

The responsibility for setting in train the machinery for filling a vacancy in the membership of the House rests with the Speaker. The Speaker is enjoined to act, without delay, to fill a vacancy (whether for an electoral district or arising from a party list) once satisfied that a seat has become vacant.<sup>274</sup> In most cases the Speaker makes the judgement that a vacancy exists unprompted on receiving the relevant information or formal advice. However, both the House and the courts may have a role in establishing or helping to establish for the Speaker whether a vacancy in fact exists.

As far as the House is concerned the Speaker has indicated that before taking the drastic step of declaring the seat of a sitting member to be vacant, the Speaker will give the member concerned leeway to argue to the contrary.<sup>275</sup> In a doubtful case this may involve the Speaker referring the matter to the Privileges Committee for consideration.<sup>276</sup> The Speaker's decision on whether a vacancy exists would then be informed by the report of the Privileges Committee and the House's consideration of it. The Speaker has delayed taking a decision in such circumstances to permit the committee to report and the House to debate the report.<sup>277</sup> Ultimately, however, the statutory duty of determining whether a vacancy exists is the Speaker's, not the House's.<sup>278</sup>

It is conceivable that, in a certain case, a court of competent jurisdiction could declare that a member's seat had become vacant. This would arise most obviously with regard to petitions, where the High Court (for constituency members) and the Court of Appeal (for party list members) may declare a member's election void, thus establishing a vacancy. Indeed, if the attack is on the validity of the member's election in the first place, this is the only means of establishing that there is a vacancy. A court has also considered the question of a vacancy arising subsequent to a member's election on specific statutory referral by Parliament. The Court of Appeal was asked to certify if a particular member's seat had become vacant due to bankruptcy.<sup>279</sup> But it is also conceivable that the question of whether a member was disqualified could arise for resolution incidentally by a court (for example, on a prosecution for sitting as a member after becoming a public servant, if there was a dispute as to whether the member had in fact become a public servant) or directly if a declaration as to the member's status was sought;<sup>280</sup> though the court might consider in the latter case that this was a matter for the Speaker or the House to determine, at least initially, rather than the court to rule on.

<sup>272</sup> Finance Act 1941, s 37; Electoral (Vacancies) Amendment Act 2003, ss 4 and 5.

<sup>273</sup> Electoral Act 1993, s 54(1)(b), (2)(b).

<sup>274</sup> Electoral Act 1993, ss 129(1) and 134(1).

<sup>275</sup> (6 August 2003) 610 NZPD 7636, 7749 Hunt.

<sup>276</sup> Ibid, at 7636.

<sup>277</sup> Ibid, at 7749.

<sup>278</sup> Electoral Act 1993, ss 129(1) and 134(1).

<sup>279</sup> Awarua Seat Inquiry Act 1897.

<sup>280</sup> See, for example: *Re Wood* (1988) 167 CLR 145; *Sue v Hill* (1999) 199 CLR 462 at 568 per Kirby J dissenting.

The House itself claims the power of determining the qualifications of its members to sit and vote in the House, and a related question may be considered by the House as a question of privilege. (See pp 759–760.) The House's determination of the right of a person to sit and vote in the House may lead the Speaker to initiate the provisions for the filling of a vacancy, or to confirm that there is no vacancy to fill.<sup>281</sup> No question as to the validity of the House's procedures arises from the fact that a member continues to sit and participate in its proceedings after incurring a disqualification.<sup>282</sup>

## **Electoral district vacancies**

A vacancy arising among the members representing electoral districts is filled by a by-election.

The Speaker must publish a notice of the vacancy in the *New Zealand Gazette*.<sup>283</sup> The Speaker also advises the House of the vacancy, though if the House is not sitting when the vacancy arises, this advice may not be communicated until after the publication of the notice or indeed until after the vacancy has been filled. The Governor-General is obliged within 21 days of the publication of a vacancy notice to issue a writ to the Electoral Commission directing it to make all necessary arrangements for the conduct of a by-election to fill the vacancy.<sup>284</sup> This direction appoints a date (which must be a Saturday) for polling.<sup>285</sup> The Governor-General may by Order in Council postpone the issue of a writ for a by-election for up to 42 days after the publication of the vacancy.<sup>286</sup> A by-election has also been postponed for a few weeks by specific legislation.<sup>287</sup> The rules for conducting a by-election and returning the writ are similar to those for conducting a general election. The main difference is that there is no party vote.

Since 1994 (to late 2016) there have been only 11 by-elections, four of them occurring during a single parliamentary term, the 49th Parliament (2008–2011).

## **Party list vacancies**

In the case of a vacancy arising among members elected from a party list, the vacancy is filled from the party list.

The Speaker publishes a notice of the vacancy in the *New Zealand Gazette*.<sup>288</sup> The Speaker also advises the House of the vacancy, in the same way as for a vacancy among constituency members. As soon as practicable after the publication of the notice the Governor-General must direct the Electoral Commission to proceed to fill the vacancy.<sup>289</sup> The commission then asks the secretary of the party concerned if the next-ranked unelected candidate on the list of the party to which the member vacating the seat belonged as at nomination day for the preceding election (whether or not the vacating member still belonged to the party when the vacancy occurred) remains a member of the party. If the candidate does, the commission then asks him or her if he or she is still willing to be a member of Parliament. If that person is no longer willing to be a member or is no longer alive, then the next candidate on the list is approached and so on, until a candidate from the party's list is found who is still a member of the party and is willing to take up the vacant seat. If there is no such candidate willing to do so, the seat remains vacant until the next general election.<sup>290</sup> The Electoral Commission declares the new member elected

<sup>281</sup> See, for example: Privileges Committee, report relating to the status of Manu Kopu as a member of Parliament (September 1997) [1996–1999] AJHR I.15B.

<sup>282</sup> *Vardon v O'Loglin* (1907) 5 CLR 201; *Re Wood* (1988) 167 CLR 145.

<sup>283</sup> Electoral Act 1993, s 129(1).

<sup>284</sup> Electoral Act 1993, s 129(2).

<sup>285</sup> Electoral Act 1993, sch 2, form 6.

<sup>286</sup> Electoral Act 1993, s 129(3).

<sup>287</sup> Patea By-election Act 1954.

<sup>288</sup> Electoral Act 1993, s 134(1).

<sup>289</sup> Electoral Act 1993, s 134(2).

<sup>290</sup> Electoral Act 1993, s 137.

by publishing a notice in the *New Zealand Gazette* and files a return with the Clerk of the House or indicates that the vacancy cannot be filled, as the case may be.<sup>291</sup>

### **Vacancies not filled in certain circumstances**

Where a vacancy occurs in the period between a dissolution of Parliament and the close of the subsequent polling day, it is not filled.<sup>292</sup>

The House also has power to dispense with the holding of a by-election or the filling of a party list vacancy in two sets of circumstances. These are if Parliament is due to expire within six months of the vacancy arising, or if the Prime Minister informs the House in writing that a general election is to be held within six months of the occurrence of the vacancy. In either case the House can, by a resolution passed by a majority of 75 per cent of all members, direct that no steps be taken to fill the vacancy.<sup>293</sup>

Where the procedure for filling a vacancy caused by the conviction of a member for a crime or corrupt practice had been put in train it could be cancelled by order of a court where that conviction is overturned on appeal.<sup>294</sup> (See p 44.) Otherwise, the standard procedures for filling a vacancy in the membership of the House can be set aside only by special legislation. This occurred in 1943 and 1987, when all by-elections were dispensed with for the remainder of those Parliaments.<sup>295</sup>

---

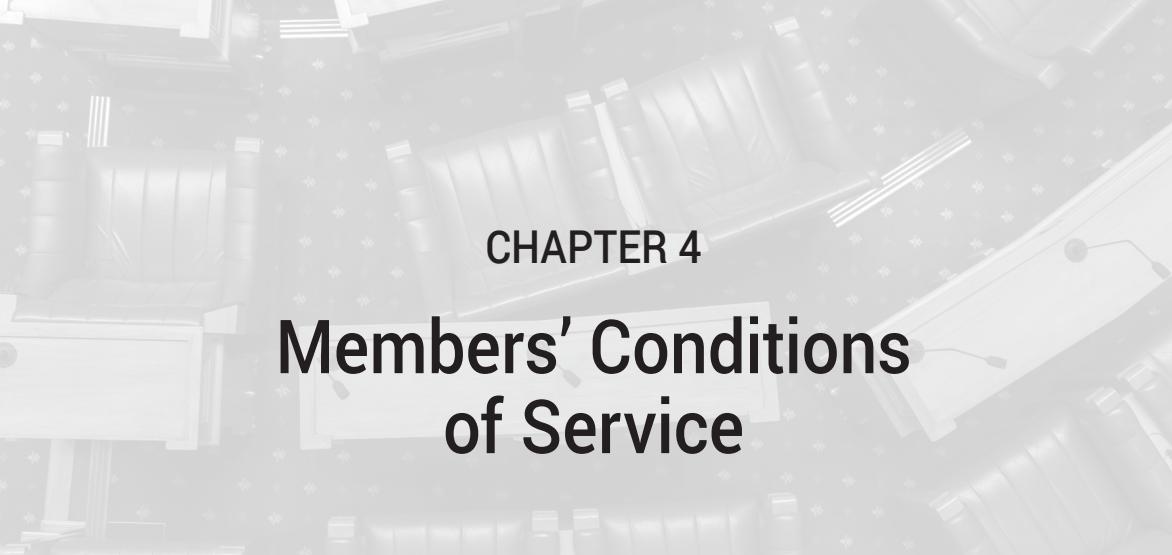
291 Electoral Act 1993, s 138.

292 Electoral Act 1993, ss 129(4) and 134(3).

293 Electoral Act 1993, ss 131 and 136; (1996) 555 NZPD 12542–12562.

294 *Attorney-General v Jones* [2000] QB 66.

295 By-elections Postponement Act 1943, s 2(1); Electoral Amendment Act (No 2) 1987, s 2.



# CHAPTER 4

# Members' Conditions of Service

## DESIGNATION OF MEMBERS

A member of the House of Representatives is known as a “member of Parliament”, abbreviated to “MP”.<sup>1</sup> Members have been designated in this way since 1907, when their previous abbreviated designation “MHR” was altered along with other official titles as a result of New Zealand’s acquisition of Dominion status.<sup>2</sup>

## ROLE OF MEMBERS

A member of Parliament holds a statutory office. Members are not employees in an employment relationship (except for certain tax purposes), nor are they subject to any contractual obligations regarding their duties.<sup>3</sup>

There is no prescription of the role of a member of Parliament. The office to which members are elected has considerable guaranteed legal freedom, so that members have the capacity to carry out the duties of the office as they see fit, and indeed can largely define the duties of the office. Their position as members stems entirely from their election to the House of Representatives. It is in the House that members take the oath of allegiance, and they may not sit and vote in the House until they have done so.<sup>4</sup> Members are expected to attend the House, and can suffer a financial penalty if they are persistently absent from its proceedings without permission or are suspended from its service.<sup>5</sup> The parliamentary aspects of the office include the ability to participate in parliamentary proceedings conducted outside the House itself, for example by serving on committees, presenting petitions, asking written questions and lodging notices of bills for introduction and motions for debate.

The functions of the House (as set out in Chapter 1) indicate the multiple aspects of the role of members: as legislators, as leaders and members of political parties, as scrutineers of the Government’s actions, and as representatives.<sup>6</sup>

---

1 Electoral Act 1993, s 27; Constitution Act 1986, s 10(4).

2 Parliamentary and Executive Titles Act 1907, s 4; JO Wilson *New Zealand Parliamentary Record 1840–1984* (Government Printer, Wellington, 1985) at 176.

3 (1968) 359 NZPD 3777; *State Chamber of Commerce and Industry v Commonwealth of Australia* (1987) 163 CLR 329.

4 Constitution Act 1986, s 11. See pp 164–165.

5 Members of Parliament (Remuneration and Services) Act 2013, ss 13–14; SOs 37–39.

6 Useful descriptions of the role of members have been set out in a review of the electoral system (Royal Commission on the Electoral System *Towards a better democracy* (11 December 1986) [1985–1986] AJHR H.3 at ch 4); in a discussion of a framework for reviewing parliamentary appropriations (Review Committee on the First Triennial Review of the Parliamentary Appropriations Resourcing Parliament (16 October 2002) NZPP A.2(a) at [2.2]); and in a recommendation for a regime for members’ remuneration and services (Controller and Auditor-General *Parliamentary salaries, allowances and other entitlements* (24 July 2001) at 16–18).

## **Legislators**

The role of legislator is a prominent one for Ministers, in sponsoring legislation to enact and implement the Government's policies, and for other members, in examining bills and promoting Members', private and local bills. Participation by members in the legislative process involves receiving and considering advice and public input, and deciding their position on the principles, objects and details of bills and amendments. While they are expected to contend over the policy implications of many bills before the House, when they are operating as legislators all members are enjoined to act in the public interest to ensure the quality of legislation and thus improve the statute book.

## **Leaders and members of political parties**

Only members of Parliament are eligible to be Ministers, who collectively form the Government and lead the administration of the country. (See Chapter 8.) In the capacity of Ministers, they advise the Crown, make policy decisions, and exercise legal powers and functions. Ministers also protect the Crown's interest in the agencies for which they are responsible, seek appropriations for the services these agencies provide, and oversee the performance of their functions.<sup>7</sup>

Those members who are not Ministers form the "pool of talent" from which Ministers may be drawn;<sup>8</sup> whether they are back-bench members from Government or support parties, or Opposition party members presenting themselves as an alternative Government. Members can provide leadership by developing party policy and by articulating and contesting ideas for the country's strategic direction.

## **Scrutineers of Government**

Members have many opportunities to scrutinise the Government's spending plans, performance and policies, and this is an essential aspect of New Zealand's system of responsible government. This scrutiny focuses particularly on holding Ministers to account, although members may also on occasion question the performance of departments and agencies directly. Ministers must keep themselves informed of the activities of the departments and officials for which they are individually responsible in the context of their ministerial responsibility to the House.<sup>9</sup>

## **Representatives**

Members represent the citizenry, as regards business transacted in Parliament and in more general dealings with organs of central, and even local, government. This applies both to the members elected to represent electoral districts and the party list members.

In debate and in public life, members give voice to diverse perspectives on society. The MMP electoral system was expected to supply a more representative House,<sup>10</sup> and has done so, with more parties in Parliament, more ethnic diversity and improved gender balance. This diversity emerges from the collective body of members, and it is for each member in his or her party context to determine which particular community interests to convey.

From time to time, members represent the Parliament on overseas delegations and at international forums. (See Chapter 42.) In doing so, members often seek to express broad national values and perspectives in preference to the party-political positions they would maintain in a domestic context.

<sup>7</sup> Controller and Auditor-General *Parliamentary salaries, allowances and other entitlements* (24 July 2001) at 18.

<sup>8</sup> Royal Commission on the Electoral System *Towards a better democracy* (11 December 1986) [1985–1986] AJHR H.3 at [4.13]–[4.14].

<sup>9</sup> Phillip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [9.5.1(8)].

<sup>10</sup> Royal Commission on the Electoral System *Towards a better democracy* (11 December 1986) [1985–1986] AJHR H.3 at [4.3(b)].

All members to a greater or lesser extent make themselves available to help individual constituents with resolving problems, perhaps by making representations to a Minister or a department, or sometimes by giving direct advice on potential solutions. The role of members in assisting individual constituents is recognised in their exemption from legislated obligations applicable to some professional advisers.<sup>11</sup> Electorate members have an obvious geographic focus for this work on the electoral districts they represent. But most party list members also take a similar constituency approach to their work; their parties allocate responsibility for representing the party in a particular area or amongst a community of interest that is not geographically defined.<sup>12</sup> Both electorate and list members assume roles as advocates for particular community or interest groups, often with a nationwide profile.

Members are generally elected in a party's interest. They have strong obligations of loyalty to the parties that nominated them and supported them in securing election. These obligations involve attending meetings of caucus and serving on caucus committees, and participating generally in local and national party activities. Members of Parliament usually co-ordinate their political activities with those of their parties, and generally act in concert with them regarding matters of party political significance. Ultimately, if there are any differences, these are matters for the party and the individual members to resolve between themselves.

Participation in political activities while holding office, even ministerial office, is inherent in the role of members.<sup>13</sup> A distinction is made between members' exercise of parliamentary functions and their electioneering activities,<sup>14</sup> but in the narrow statutory context of separating funding for legitimate parliamentary publicity from electoral finance.<sup>15</sup> Members are not expected to act impartially or to separate themselves from their party-political beliefs and agendas, except in certain circumstances (for example, when a presiding officer makes rulings on procedural matters).

Members must balance these political perspectives with wider interests concomitant with public office. They include the observance of the law, constitutional conventions and ethical standards, the protection of human rights and fundamental freedoms, the reasonable exercise of statutory powers (especially by Ministers) and, generally, the responsible stewardship of the nation.

## STATUTORY FUNCTIONS AND DISQUALIFICATIONS

Occasionally, statute may impose a particular role, duty or even disqualification on a member of Parliament ex officio. For example, the Speaker has a number of statutory duties arising from the holding of that parliamentary office, most notably as chairperson of the Parliamentary Service Commission and as responsible Minister for a number of offices of State. (See Chapters 4 and 5.) An oath or declaration may be made before a member of Parliament.<sup>16</sup> Members elected for the Māori electoral districts automatically become members of the Māori Purposes Fund Board<sup>17</sup> and of the Ngārimu VC and 28th (Māori) Battalion Memorial Scholarship Fund Board.<sup>18</sup> The member representing Nelson is a member of the

<sup>11</sup> Financial Advisers Act 2008, s 14(1)(c); Immigration Advisers Licensing Act 2007, s 11(b).

<sup>12</sup> Geoffrey Palmer and Matthew Palmer *Bridled Power* (4th ed, Oxford University Press, Melbourne, 2004) at 141–143. Surveys indicate that both electorate and list members regard constituency work as important, but electorate members generally place more emphasis on it, while list members tend to operate more broadly. Raymond Miller *Party Politics in New Zealand* (Oxford University Press, Melbourne, 2005) at 207, drawing on data from the New Zealand Election Study.

<sup>13</sup> See, generally, *Vidadala Harinadhbabu v NT Ramarao* [1990] AIR (Andra Pradesh) 20.

<sup>14</sup> Parliamentary Service Act 2000, s 3B.

<sup>15</sup> Parliamentary Service Amendment Bill (186–1) (explanatory note, 29 July 2010) at 1.

<sup>16</sup> Oaths and Declarations Act 1957, ss 6(3) and 9(1)(g).

<sup>17</sup> Maori Purposes Fund Act 1934–35, s 7(2)(c).

<sup>18</sup> Ngarimu VC and 28th (Maori) Battalion Memorial Scholarship Fund Act 1945, s 4(2).

Cawthon Institute Trust Board,<sup>19</sup> and the members who serve on the statutory Intelligence and Security Committee and the Parliamentary Service Commission do so in their capacity as members of Parliament.<sup>20</sup>

Members have a statutory right to enter a prison and examine it and the condition of its prisoners. They may inform the manager of the prison of any matter that they observe, and such information is to be recorded.<sup>21</sup> Prisoners are entitled to have access to a member of Parliament.<sup>22</sup> Telephone calls between a prisoner and a member may not be monitored by the prison authorities,<sup>23</sup> nor may mail between a prisoner and a member be opened, read or withheld by a corrections officer.<sup>24</sup> Communications between members and persons subject to compulsory care under the intellectual disability legislation must similarly not be withheld.<sup>25</sup>

A member of Parliament may not be appointed as an Officer of Parliament,<sup>26</sup> nor as the Governor, Deputy Governor or a board member of the Reserve Bank of New Zealand.<sup>27</sup> No member of Parliament may be appointed as a member of a statutory entity, or of a Crown entity company or subsidiary.<sup>28</sup> A member of Parliament may be elected to office in a statutory entity whose members are elected to it, but is not entitled to any extra remuneration for such service.<sup>29</sup> However, members may serve on the boards of some other kinds of entity.<sup>30</sup> Members may belong, for example, to school boards of trustees. A person is not prevented from holding office as a member of Parliament at the same time as being a mayor or an elected member of a local authority;<sup>31</sup> in each case it is for the member to decide whether it is in the public interest to retain both offices.

These few examples of statutory provisions affecting a member's role do not amount to a comprehensive description of the role of a member of Parliament. As far as statute and parliamentary rules are concerned, no such description exists.

## DUTIES OF MEMBERS

### Conduct of members

The fundamental obligation of a member of Parliament has been said to be “the duty to serve” and, in serving, to act with fidelity and a single-minded regard for the welfare of the community.<sup>32</sup> In the Westminster tradition, the moral and ethical behaviour of members has been governed by informal conventions based on the concept of honour. The underlying assumption has been that members behave honourably in the public interest, and that any who are perceived not to have conformed to expected standards of behaviour may be subject to public opprobrium and, ultimately, electoral retribution. More recently, developments in ethical standards in the United Kingdom, and particularly at Parliament, have been codified in a set of principles of public life. The principles are articulated

<sup>19</sup> Thomas Cawthon Trust Act 1924, s 3(1)(a)(iii).

<sup>20</sup> Intelligence and Security Committee Act 1996, s 7(4); Parliamentary Service Act 2000, s 15(6).

<sup>21</sup> Corrections Act 2004, s 161.

<sup>22</sup> Corrections Act 2004, s 69(1)(e).

<sup>23</sup> Corrections Act 2004, s 114.

<sup>24</sup> Corrections Act 2004, s 109.

<sup>25</sup> Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, s 58.

<sup>26</sup> Ombudsmen Act 1975, s 4; Public Audit Act 2001, s 8; Environment Act 1986, s 5.

<sup>27</sup> Reserve Bank of New Zealand Act 1989, ss 46(1)(a) and 58(a).

<sup>28</sup> Crown Entities Act 2004, ss 30(2)(f), 89(3) and 97(j).

<sup>29</sup> Crown Entities Act 2004, ss 30(3) and 47(2)(b).

<sup>30</sup> For example, the New Zealand Lottery Grants Board includes the Prime Minister and another Minister, and the Leader of the Opposition, and may include other members of Parliament as alternate members (Gambling Act 2003, s 272(2) and sch 5, cl 3(1)).

<sup>31</sup> However, a member of Parliament may not be a member of the board promoting issues of significance for mana whenua groups and mataawaka of Tāmaki Makaurau (Local Government (Auckland Council) Act 2009, sch 2, cl 5(2)(g)).

<sup>32</sup> *R v Boston* (1923) 33 CLR 386 at 400 per Isaacs and Rich JJ.

under headings of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.<sup>33</sup>

As the holders of a high public office, members have inescapable duties of conduct. Indeed, the absolute probity of members is essential to the proper operation of our democracy.<sup>34</sup> It is fundamental that members must not accept private rewards for the performance of their official functions.<sup>35</sup> At the commencement of every sitting day the Speaker reads a prayer affirming that members lay aside all private and personal interests when participating in parliamentary proceedings. (See pp 192–193.)

Insofar as these duties apply to the transaction of parliamentary business (in the House or at select committees) they are matters for the House itself, rather than a court, to supervise.<sup>36</sup> But in their dealings outside the House with constituents, Government officials, or lobbyists, members may still act in the capacity of members of Parliament.<sup>37</sup> If in these interactions their actions should bring their personal interests into conflict with their public duties, the law may provide a counter to such an impropriety.<sup>38</sup>

From time to time there have been suggestions that the House should adopt a statement setting out a code of conduct or ethical principles it expects its members to follow.<sup>39</sup> A number of Commonwealth legislatures have done this.<sup>40</sup> Except in the case of financial interests, however, the House has not adopted detailed ethical guidelines for its members, taking the view that advice about appropriate behaviour is primarily a matter for induction training and internal party discipline.<sup>41</sup> Indeed, behaviour is discussed during induction training for new members, particularly in relation to parliamentary privilege. While members may affirm particular standards of behaviour,<sup>42</sup> that is their personal choice.<sup>43</sup>

Although there is no single code for members, there are some specific rules applying to them under the law and the Standing Orders of the House. Thus, a member who accepts or solicits a bribe commits a crime,<sup>44</sup> and a contempt is committed if a bribe is intended to influence a member's conduct in respect of parliamentary proceedings.<sup>45</sup> Further specific ethical standards for members are signalled in the examples of contempts set out in the Standing Orders. (See Chapter 46.)

<sup>33</sup> House of Commons (UK) Committee on Standards in Public Life *Standards in public life* [1995] Cm 2850 I at 14.

<sup>34</sup> *Field v R* [2010] NZCA 556 at [31]–[32].

<sup>35</sup> *Field v R* [2011] NZSC 129 at [62].

<sup>36</sup> *Wilkinson v Osborne* (1915) 21 CLR 89 at 94; *R v Boston* (1923) 33 CLR 386 at 403.

<sup>37</sup> *R v Boston* (1923) 33 CLR 386 at 403.

<sup>38</sup> For example by holding a contract for a member's benefit to be void: *Wilkinson v Osborne* (1915) 21 CLR 89; *Horne v Barber* (1920) 27 CLR 494.

<sup>39</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 23. The Government Administration Committee requested authority to inquire into this matter (special report (21 October 1997) [1996–1999] AJHR I.5B).

<sup>40</sup> For example, in the United Kingdom, see the code of conduct approved by the House of Commons on 12 March 2012 and 17 March 2015, together with the guide to the rules on the conduct of members (14 April 2015) (HC 1076); in Canada, see the *Conflict of interest code for members of the House of Commons* (an appendix to the Standing Orders of the House of Commons). The Australian state Parliaments except for South Australia have all adopted codes of conduct in some form. A formal code of conduct has been proposed but not yet adopted in the Commonwealth Parliament of Australia.

<sup>41</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 23.

<sup>42</sup> (12 June 2007) 639 NZPD 9723.

<sup>43</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 12.

<sup>44</sup> Crimes Act 1961, s 103(1).

<sup>45</sup> SO 410(j).

## Conduct of Ministers

Ministers act in that role in a capacity that is distinct from their role as members and from their private interests.<sup>46</sup> There are more developed conduct guidelines to which Ministers are expected to conform. Upon appointment, Ministers take an oath or make an affirmation as members of the Executive Council, promising to give their counsel and advice for the good management of the affairs of New Zealand.<sup>47</sup> The *Cabinet Manual* sets out guidelines on the public duties of Ministers.<sup>48</sup> Apart from being under an obligation to declare any personal interests in matters under consideration by Cabinet, Ministers are restricted in the extent to which they may receive fees or gifts, and are prohibited from engaging in activities that may be construed as endorsing a commercial product.<sup>49</sup> As the occasion requires, ministerial guidelines may be issued by the Cabinet or the Prime Minister to deal with particular circumstances (such as the conduct to be observed by Ministers involved in mayoral election campaigns<sup>50</sup>). These ministerial codes of conduct are political guidelines adopted by Governments to guide their own conduct. They have no statutory origin and are not regarded as legally enforceable, although the court recognises them as an expression of the duties of Ministers.<sup>51</sup> Their significance arises from the status of the *Cabinet Manual* as a constitutional source, and Ministers adhere to these directives out of a sense of commitment to public office and their political responsibility to Parliament and public opinion. The Prime Minister has ultimate responsibility for overseeing ministerial conduct and advising the Governor-General accordingly on the appointment, resignation and dismissal of Ministers.<sup>52</sup>

## ATTENDANCE AND ABSENCE OF MEMBERS

### Attendance

Members are obliged to attend the House,<sup>53</sup> and their attendance is recorded by the Clerk.<sup>54</sup> Members are recorded as present if they attend the House, select committee meetings or other official business approved by the Business Committee, or if they participate in the official inter-parliamentary relations programme.<sup>55</sup> This recognises the various ways in which members contribute to the functions of the House.<sup>56</sup>

All members have a responsibility to ensure that enough of them are in attendance to progress the House's business,<sup>57</sup> but there is no explicit quorum. The House's previous requirement for a quorum (15 members in a House of 99 members) was abolished in 1996.<sup>58</sup> The House had not actually been counted out for want of a quorum since 1905.<sup>59</sup> A strict quorum requirement is observed for select committee meetings, however. (See p 311.)

While there is no quorum for the House, a Minister must be present during all sitting hours. If none is present, the sitting is interrupted and the bell is rung.

<sup>46</sup> Cabinet Office *Cabinet Manual* 2008 at [2.52]–[2.53]. See also Privileges Committee *Question of privilege regarding use of intrusive powers within the parliamentary precinct* (11 July 2014) [2011–2014] AJHR I.17C at 8.

<sup>47</sup> Oaths and Declarations Act 1957, s 19.

<sup>48</sup> Cabinet Office *Cabinet Manual* 2008 at [2.50]–[2.117].

<sup>49</sup> *Ibid.* at [2.78]–[2.94].

<sup>50</sup> (1995) 550 NZPD 9204.

<sup>51</sup> *Field v R* [2010] NZCA 556 at [23], and [25]–[27].

<sup>52</sup> Cabinet Office *Cabinet Manual* 2008 at [2.15]–[2.19].

<sup>53</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] I.18B at 19.

<sup>54</sup> SO 37(1).

<sup>55</sup> SO 37(1).

<sup>56</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 20; Standing Orders Committee *Members' attendance, absence and suspension* (18 November 2013) [2011–2014] AJHR I.22B at 3.

<sup>57</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 23–24.

<sup>58</sup> *Ibid.*

<sup>59</sup> (13 July 1905) [1905] JHR 51.

If no Minister appears within five minutes of the bell being rung, the House automatically adjourns until the next sitting day.<sup>60</sup> A sitting has been adjourned because of the absence of a Minister from the House.<sup>61</sup>

Some procedures in the House require a minimum degree of participation. A motion to suspend the Standing Orders can be moved without notice only if at least 60 members are present at the time.<sup>62</sup> In the case of a personal vote, no decision can be reached unless at least 20 members participate in it.<sup>63</sup>

## Permission to be absent

The granting of permission to be absent from the House has only recently been formally recognised in the rules of the House.<sup>64</sup> However, party whips have long exercised discretion to grant leave to members who are unable to attend sittings of the House, primarily to ensure that proxy votes are cast correctly.<sup>65</sup> Such permission may be granted by party leaders or whips for any reason and at their full discretion.<sup>66</sup>

The Speaker may grant permission to be absent on account of a member's illness or family matter of a personal nature, or to enable a member to attend to public business.<sup>67</sup> Requests for such permission for members of parties with more than one member may be made to the Speaker only by party leaders or whips.<sup>68</sup> This provision reflects an earlier decision of the House to recognise compassionate leave,<sup>69</sup> and has been used to enable members to be absent for a short period following the birth of their children. The Speaker's formal involvement in administering permission for any member to be absent is a recent development; previously this function extended only to considering applications by Independent members or members of parties consisting of a single member for their proxy votes to be counted when they were outside the parliamentary precincts.<sup>70</sup>

If a member is granted permission to be absent by the Speaker, the member's proxy vote is not counted when the limit on proxy votes is applied.<sup>71</sup> In the case of Independent members or parties of up to five members, such permission allows proxy votes to be cast on their behalf even though they are not present within the parliamentary precincts.<sup>72</sup>

Members with permission to be absent are not regarded as "on leave" in an employment sense.<sup>73</sup> If any member were to require permission of the House to be absent so as to avoid a statutory penalty,<sup>74</sup> this permission would need to be given by motion on notice.

## Penalties for failure to attend

Failure to attend can lead to penalties. A member who has been absent from the House for more than three sitting days during a calendar year is penalised by an amount equal to 0.2 per cent of the member's gross yearly salary for the fourth

<sup>60</sup> SO 40.

<sup>61</sup> (6 April 2005) [2002–2005] 3 JHR 1950; (6 April 2005) 624 NZPD 19676–19677.

<sup>62</sup> SO 4(2).

<sup>63</sup> SO 151.

<sup>64</sup> (10 December 2013) [2011–2014] 2 JHR 746, with effect from 1 January 2014; SO 38.

<sup>65</sup> Before the introduction of proxy voting in 1996, this leave provided the basis for agreements to pair votes. Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 29.

<sup>66</sup> SO 38(2).

<sup>67</sup> SO 38(1).

<sup>68</sup> SO 38(1).

<sup>69</sup> (26 September 2013) [2011–2014] 2 JHR 663; Standing Orders Committee *Members' attendance, absence and suspension* (18 November 2013) [2011–2014] AJHR I.22B at 4–5.

<sup>70</sup> SO [2011] 152(4)(d).

<sup>71</sup> SO 155(3).

<sup>72</sup> SO 155(4)(b).

<sup>73</sup> Standing Orders Committee *Members' attendance, absence and suspension* (18 November 2013) [2011–2014] AJHR I.22B at 4.

<sup>74</sup> Such as Electoral Act 1993, s 55(1)(a); see below.

and each subsequent sitting day of the absence.<sup>75</sup> The same deduction applies for each day a member is suspended from the service of the House.<sup>76</sup> A deduction is incurred only after the Speaker certifies that the member is suspended and that a deduction may be made.<sup>77</sup> Once such a certificate is given, the deduction must be made from the member's salary as soon as practicable.<sup>78</sup>

This statutory procedure to penalise non-attendance takes account of the House's own rules for determining when a member should be treated as absent. The Standing Orders require a member's absence on a sitting day to be recorded in the *Journals* if the member is not recorded as being present and did not have permission to be absent on that day.<sup>79</sup> Members who do not attend but have permission to be absent are thus regarded as "absent in accordance with the rules of the House" and not penalised financially.<sup>80</sup> This recognises that, on the whole, members' absences are on account of their attending to Government or other representative duties, or because of illness or other personal matters.<sup>81</sup> The recording of such absences in the *Journals* provides the evidential basis for the Speaker to certify that a member has been absent on a sitting day for a fourth or subsequent occasion in a calendar year.<sup>82</sup>

A member who persistently is absent may be ordered by the House to attend.<sup>83</sup> Failure to obey such an order would be a contempt.<sup>84</sup> A member who failed to attend the House throughout an entire session without being granted permission by the House to be absent would lose his or her seat, which would thereupon become vacant.<sup>85</sup> This scenario is unlikely now that each term of Parliament tends to have only one session, but in earlier years, when a Parliament had several shorter sessions, two members forfeited their seats under this provision.<sup>86</sup>

## PECUNIARY INTERESTS

It is central to the democratic idea that the purpose of elected public office is to serve the public, not to enrich the office-holder or his or her personal connections. It is important for members to ensure that they do not use their position to influence the legislative process for their own advantage or that of someone with whom they are connected.<sup>87</sup> The Standing Orders provide some guidance about behaviour that is regarded as unacceptable in this respect. The House may treat the receipt or solicitation of a bribe to influence a member's conduct as a contempt.<sup>88</sup> A member accepting fees for professional services he or she has rendered in respect of parliamentary proceedings may also have committed a contempt.<sup>89</sup> Thus a

<sup>75</sup> Members of Parliament (Remuneration and Services) Act 2013, s 13(2).

<sup>76</sup> Members of Parliament (Remuneration and Services) Act 2013, s 14.

<sup>77</sup> Members of Parliament (Remuneration and Services) Act 2013, s 13(3).

<sup>78</sup> Members of Parliament (Remuneration and Services) Act 2013, s 13(4).

<sup>79</sup> SO 39.

<sup>80</sup> Members of Parliament (Remuneration and Services) Act 2013, s 13(5).

<sup>81</sup> Standing Orders Committee *Members' attendance, absence and suspension* (18 November 2013) [2011–2014] AJHR I.22B at 4.

<sup>82</sup> Ibid, at 5.

<sup>83</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 81.

<sup>84</sup> Ibid; SO 410(s).

<sup>85</sup> Electoral Act 1993, s 55(1)(a). A member is exempt if appointed by the Governor-General to head a diplomatic mission or post.

<sup>86</sup> One member (Thomas Fraser) lost his seat after failing to attend throughout the 1862 session.

Another (Patrick Charles Webb) was court-martialled and imprisoned during the First World War for refusing to obey a superior officer, and was thereby prevented from attending the House during one of the two sessions of Parliament held in 1918 (see (26 April 1918) 57 *New Zealand Gazette* 1231 at 1252). A motion to grant the second member leave of absence while he was in prison was defeated: see (15 April 1918) [1918 Sess 1] JHR 24; (1918) 182 NZPD 269–270.

<sup>87</sup> Standing Orders Committee *Review of Standing Orders* (27 August 2008) [2005–2008] AJHR I.18B at 12.

<sup>88</sup> SO 410(j).

<sup>89</sup> SO 410(k).

member who received payment for work he had done drafting two local bills was held to have committed a contempt, even though he had done the work before taking his seat in Parliament.<sup>90</sup> Members must be careful to keep their official and business dealings quite separate so that no misunderstanding may result.<sup>91</sup> While members may solicit funds for policies or programmes in return for their votes (disparagingly referred to as “pork-barrel politics”), they may not seek a benefit for themselves or for other persons to whom they are related in return for their votes.<sup>92</sup>

Other sanctions may also apply. It is a crime for a member of Parliament to accept, obtain, agree to, or attempt to accept a bribe in his or her capacity as a member of Parliament. A member convicted of such an offence is liable to imprisonment for a term of up to seven years.<sup>93</sup> In New Zealand, one person has been convicted and imprisoned for the crime of bribery as a member of Parliament.<sup>94</sup> This offence applies to bribes relating to business to be transacted in Parliament, but also extends to other activities engaged in by members in the capacity of a member (such as constituency duties and ex officio statutory duties). Nor is the offence confined to actions that may be taken exclusively by members of Parliament. It can be committed by a member accepting or soliciting payment for an action that would be lawful if carried out by someone other than a member of Parliament.<sup>95</sup>

Under both the law and the rules of Parliament, therefore, members of Parliament are required to conform to a higher ethical standard than others in matters pecuniary.

## Registration of pecuniary and other specified interests

Many legislatures (either by statute or under their own rules) require members to make periodic returns of pecuniary interests for publication in a register. In 2005 the House adopted Standing Orders (instead of proposals for legislation)<sup>96</sup> requiring members to make annual returns of their pecuniary interests for publication in a register.<sup>97</sup> Following a review of these Standing Orders in 2010, the register was renamed the *Register of Pecuniary and Other Specified Interests of Members of Parliament*, to make it explicit that members are required to declare some interests (for example, trusteeship of a trust of which a member is not a beneficiary) that may not be of pecuniary or financial benefit to them, but that this constraint is limited to certain specified interests.<sup>98</sup>

The purpose of the register is to facilitate the transaction of business by the House by promoting the highest standards of behaviour and conduct by members, and thus strengthening public trust and confidence in parliamentary processes and decision-making.<sup>99</sup> This purpose is achieved by members following a number of principles expressed as follows by the Privileges Committee:<sup>100</sup>

- The onus is on members to make an honest attempt to recognise and declare all relevant interests.
- The House’s decision to administer its own regime for declaring interests places a strong moral imperative on members to comply with the requirements in the spirit of the House’s own rules.

<sup>90</sup> (5 October 1877) [1877] JHR 202.

<sup>91</sup> (1991) 519 NZPD 4541 Gray.

<sup>92</sup> (19 February 2003) 606 NZPD 3551 Hunt.

<sup>93</sup> Crimes Act 1961, s 103(1).

<sup>94</sup> *R v Field* HC Auckland CRI-2007-092-18132, 6 October 2009.

<sup>95</sup> See: *Attorney-General of Ceylon v De Livera* [1963] AC 103 (PC).

<sup>96</sup> Members of Parliament (Pecuniary Interests) Bill (81–2) (commentary, 23 June 2005) ([2002–2005] AJHRI.22D at 865).

<sup>97</sup> SO 163.

<sup>98</sup> Standing Orders Committee Review of Standing Orders (27 August 2008) [2005–2008] AJHRI.18B at 8.

<sup>99</sup> SOs, App B cl 1(3).

<sup>100</sup> Privileges Committee Question of privilege relating to compliance with a member’s obligations under the Standing Orders dealing with pecuniary interests (22 September 2008) [2005–2008] AJHRI.17D at 15 and 20.

- All distinct interests must be declared, regardless of whether they are channelled through a trust or third party or covered by some other kind of arrangement.
- The approach in declaring interests should be, “If in doubt, declare it”.

### ***Contents of returns of interests***

The interests that must be disclosed fall into two broad categories: “assets and liabilities”, which are matters that exist at the date on which the return must be made; and “activities”, which means events that have occurred over the 12-month period preceding that date. There is no requirement to disclose the actual value, amount, or extent of any asset, payment, interest, gift, contribution or debt in question.<sup>101</sup>

The interests in the nature of assets and liabilities that must be disclosed are as follows:<sup>102</sup>

- names and business activities of companies of which the member is a director or holds or controls more than five per cent of the voting rights; names and business activities of companies or business entities (entities operating for profit) in which the member has a pecuniary interest, but not including interests arising indirectly because a member has an interest in a company or entity that in turn has an interest in another company or entity<sup>103</sup>
- the name of any employer of the member (this does not include being a member or a Minister); a description of the main business activities of the employer must also be given
- each trust of which the member is aware, or ought reasonably be aware, that he or she is a beneficiary or trustee
- the name and main activities of any organisation of whose governing body the member is a member or of any trust of which the member is a trustee if the organisation or trust receives or has applied to receive Government funding (unless the organisation or trust is itself a Government department, a Crown entity or a State enterprise)
- the location and description of real property in which the member has a legal interest (other than an interest as a trustee), and of real property owned by a trust of which the member knows (or ought reasonably to know) he or she is a beneficiary
- each registered superannuation scheme in which the member has a pecuniary interest
- each debtor who owes the member more than \$50,000
- each creditor to whom the member owes more than \$50,000.

In the case of debts outstanding, a description of each debt must be given. The member must also declare if the interest rate payable on the debt is less than the normal market interest rate at the time the debt was incurred or its terms amended, if the debt is owed to a person other than a registered bank or building society.<sup>104</sup>

A member does not have to disclose information relating to a relationship property settlement (whether the member is a debtor or creditor regarding the settlement) or to any debtor of the member who is the member’s spouse or partner, parent, child, step-child, foster-child or grandchild.<sup>105</sup> Nor is a member required to disclose short-term (under 90 days) debts for goods or services.<sup>106</sup>

Interests in the nature of activities in which the member has been engaged in the relevant preceding period are as follows:<sup>107</sup>

---

101 SOs, App B cl 10.

102 SOs, App B cl 5(1).

103 SOs, App B cl 5(2).

104 SOs, App B cl 5(4).

105 SOs, App B cl 6.

106 SOs, App B cl 7.

107 SOs, App B cl 8(1).

- countries travelled to: the name, purpose of travel and details of who contributed to the travel or accommodation costs incurred must be given; however, the travel does not need to be disclosed where these costs were paid in full by the member himself or herself, or by the member's spouse or partner, any parent, child, step-child, foster-child or grandchild of the member, or by the Crown; nor does travel paid by any other government, parliament, or international parliamentary organisation where the primary purpose of the travel was in connection with the official inter-parliamentary relations programme funded by the Office of the Clerk<sup>108</sup>
- gifts with an estimated market value of more than \$500 and the names of the donors of those gifts (if known or reasonably ascertainable by the member) must be declared, and gifts (and the name of the donor) which individually are valued at less than \$500 but which, cumulatively, exceed \$500 and are donated by the same person in the period covered by a return; gifts include hospitality and donations in cash or kind, but not donations for election expenses or gifts from family members
- debts of more than \$500 owing by the member that were discharged or paid (in whole or in part) by some other person
- descriptions of each other payment received by the member for activities in which the member was involved (other than the salary or allowances of a member of Parliament); members do not need to declare funding entitlements for parliamentary purposes (for example, contributions to legal fees by the Parliamentary Service, under the terms of a Speaker's Direction under the Parliamentary Service Act 2000, when members are involved in court cases in their capacity as members of Parliament).

The period covered by these “activities” is generally the 12 months preceding the date on which the return must be made.<sup>109</sup> However, information given on any previous return need not be given again, and only activities undertaken since a previous return must be disclosed.<sup>110</sup> In the case of members on first being elected to Parliament at a general election, and that of members elected at a by-election or otherwise returned to fill a vacancy arising on a party list, the “activities” return is confined to the period commencing with their election or return to Parliament.<sup>111</sup>

Where a member is re-elected at a general election, the period of the return extends back to the preceding 1 February to retain the continuity of returns from that member.<sup>112</sup>

### ***Timing and manner of making returns***

There are two types of returns of interests that members must make—initial returns and annual returns.

An *initial* return must be made by all members as at the date 90 days after the date on which they take the oath or make the affirmation required upon taking their seats in Parliament.<sup>113</sup> Members have 30 days from that date to submit their returns.<sup>114</sup> However, no initial return is required if the general election or by-election at which the member is elected is held after 1 July, or if the member is declared elected to fill a list vacancy after 1 July in any year.<sup>115</sup> In such cases the first or next return that the member makes will be the annual return due in the following year.

<sup>108</sup> SOs, App B cl 8(2).

<sup>109</sup> SOs, App B cl 9(1).

<sup>110</sup> SOs, App B cl 9(2)(a) and (e).

<sup>111</sup> SOs, App B cl 9(2)(b) and (d).

<sup>112</sup> SOs, App B cl 9(2)(c).

<sup>113</sup> SOs, App B cl 3(1).

<sup>114</sup> SOs, App B cl 3(3).

<sup>115</sup> SOs, App B cl 3(2).

An annual return of pecuniary interests as at 31 January each year must be made by every member by the last day of February of that year.<sup>116</sup> If the due date for an initial return or an annual return is not a working day, then the return must be submitted by the next working day.<sup>117</sup>

In all cases returns are made either on forms specially prescribed by the House or, in the absence of such prescription, in a form approved by the Registrar.<sup>118</sup> The obligation to make a return by the due date falls on the member himself or herself. The Registrar is not required to notify a member of his or her failure to transmit a return by the due date, or to obtain a return from the member.<sup>119</sup> The Registrar's approach to late returns has been to note in the summary booklet of returns that a member's return has not been received by the due date, and to publish information on the member's return separately on the Parliament website, when it is finally received.<sup>120</sup>

A return of pecuniary and other specified interests is similar in nature to a statutory declaration, in that it is a personal statement that cannot be delegated or signed electronically. The Registrar will accept only hard-copy returns.<sup>121</sup> The timing and effect of the February 2011 earthquakes in Canterbury meant that some members were unable to provide returns in hard copy by the due date that year. The Registrar therefore decided to accept electronic or faxed returns from members, provided that they were followed by the original, identical return as soon as possible. This decision was in response to the unique difficulties caused by the earthquakes and did not represent any general change to the practices of receiving returns from members by the due date.<sup>122</sup>

### **Register of pecuniary and other specified interests**

A register called the *Register of Pecuniary and Other Specified Interests of Members of Parliament* consists of all returns transmitted by members.<sup>123</sup> The Registrar is the Deputy Clerk or a person appointed by the Clerk of the House with the agreement of the Speaker.<sup>124</sup> Three Registrars have been appointed covering the period since the establishment of the register. The Registrar is required to compile and maintain the register and to provide advice and guidance to members regarding their obligations to make returns of pecuniary interests.<sup>125</sup> Every year the Registrar issues explanatory notes for members on their obligations under the Standing Orders.

### **Publication of register**

Members have 30 days from the date as at which an initial return must be made and one month from the date (31 January) as at which an annual return must be made to make their returns to the Registrar.<sup>126</sup> The Registrar then has 90 days from each of those dates to put the returns into a summary form that represents a fair and accurate description of the information that has been transmitted. These summaries are published on a website and in booklet form.<sup>127</sup>

The Registrar must promptly provide a copy of the booklet to the Speaker, who presents it to the House.<sup>128</sup> It is then published as a parliamentary paper.

<sup>116</sup> SOs, App B cl 4(2).

<sup>117</sup> SO 3(3).

<sup>118</sup> SOs, App B cl 11.

<sup>119</sup> SOs, App B cl 22(2).

<sup>120</sup> Standing Orders Committee *Review of Standing Orders relating to pecuniary interests* (13 December 2010) [2008–2011] AJHR I.18A at 13.

<sup>121</sup> Ibid.

<sup>122</sup> *Register of Pecuniary and Other Specified Interests of Members of Parliament: Summary of annual returns as at 31 January 2011* (17 May 2011) [2008–2011] AJHR J.7 at 7–8.

<sup>123</sup> SOs, App B cl 12.

<sup>124</sup> SOs, App B cl 13.

<sup>125</sup> SOs, App B cl 14.

<sup>126</sup> SOs, App B cls 3(3) and 4(2).

<sup>127</sup> SOs, App B cl 18(1) and (2).

<sup>128</sup> SOs, App B cls 18(3) and 19.

The Registrar is responsible for maintaining the information on the website and making it available for inspection at Parliament Buildings during working hours. Copies of the summaries may be made.<sup>129</sup>

### ***Information about the register***

The Registrar must supply the Auditor-General with a copy of every return within 21 days of the date by which all returns are due, and may also provide any other information relating to a return.<sup>130</sup> The Auditor-General reviews all returns and, as soon as is reasonably practicable, advises the Registrar of any matters arising from the review.<sup>131</sup> Apart from making information available to the Auditor-General for review, the Registrar must keep confidential all other returns and information relating to individual members.<sup>132</sup> At the dissolution or expiration of Parliament, the information that has been held by the Registrar or by the Auditor-General for three complete terms of Parliament must be destroyed.<sup>133</sup> When the register was first established in 2005, returns and information were destroyed at the end of each Parliament. Since 2011 records have been retained for a longer period. This change was made in response to concern about loss of organisational knowledge on the administration of the register, and the resultant risk of inconsistent advice being given to members.<sup>134</sup>

### ***Compliance with obligations***

When a member becomes aware of having made any error or omission in any previous return, he or she must advise the Registrar of this as soon as practicable, and the Registrar may publish amendments on the parliamentary website to correct it.<sup>135</sup> If a member raises such a matter with the Speaker as a matter of privilege, the Speaker may forward it to the Registrar without considering it further.<sup>136</sup>

It is a contempt of the House for any member knowingly to fail to make a return of pecuniary and other specified interests by the due date or knowingly to provide false or misleading information in such a return.<sup>137</sup> The Privileges Committee has on one occasion considered a question of privilege regarding a member's compliance with obligations under the Standing Orders to declare interests. The committee recommended that the House censure the member concerned for knowingly providing false or misleading information in a return, and order the member to file a number of amended returns.<sup>138</sup> The Registrar may inquire into a member's compliance with his or her obligation to make a return.<sup>139</sup> A member who has reasonable grounds to believe that another member has failed to comply with his or her obligations may request in writing that the Registrar conduct an inquiry into the matter. To deter vexatious requests, the House may treat as a contempt any request for an inquiry without any reasonable grounds.<sup>140</sup>

On receiving the request, the Registrar conducts a preliminary investigation to determine whether a full inquiry is warranted.<sup>141</sup> If the Registrar decides that it is warranted, he or she must invite the member who is the subject of the

<sup>129</sup> SOs, App B cl 18(4) and (6).

<sup>130</sup> SOs, App B cl 15(1).

<sup>131</sup> SOs, App B cl 15(2).

<sup>132</sup> SOs, App B cl 21(1).

<sup>133</sup> SOs, App B cl 21(2).

<sup>134</sup> Standing Orders Committee *Review of Standing Orders* (27 August 2008) [2005–2008] AJHR I.18B at 18.

<sup>135</sup> SOs, App B cl 20.

<sup>136</sup> SO 402(3).

<sup>137</sup> SO 410(g)–(h).

<sup>138</sup> Privileges Committee *Question of privilege relating to compliance with a member's obligations under the Standing Orders dealing with pecuniary interests* (22 September 2008) [2005–2008] AJHR I.17D at 5.

<sup>139</sup> SOs, App B cl 16.

<sup>140</sup> SO 410(i); Standing Orders Committee *Review of Standing Orders relating to pecuniary interests* (13 December 2010) [2008–2011] AJHR I.18A at 17.

<sup>141</sup> SOs, App B cl 16(4).

inquiry to respond to the matter within 10 working days (or within another agreed timeframe). The Registrar may seek further information from the member who made the request, and seek assistance from the Auditor-General or any other person.<sup>142</sup>

There are four options available to the Registrar on completion of the inquiry. He or she may determine that no further action is required; advise the member who is the subject of the inquiry to submit an amendment to a return or returns to remedy the breach; determine that the matter under inquiry involves a question of privilege and report this to the House; or report to the House on any other matter that may warrant its further attention.<sup>143</sup> In the 50th Parliament the Registrar received and considered three requests for inquiries. None proceeded to a full inquiry. Two requests resulted in members filing amendments to returns. The Registrar reported to the House on the other request for an inquiry, principally to remind members of the importance of maintaining confidentiality about such a request before the Registrar determines whether an inquiry is warranted. Maintaining this confidentiality ensures the integrity of the inquiry process and preserves natural justice for the member who is the subject of the request.<sup>144</sup>

## **Declaration of financial interests**

Members who have a financial interest in business before the House are not thereby disqualified from participating in a debate on the matter, serving on a committee inquiring into it, or voting on it. It is for members to judge whether they should participate in any of these ways when they possess a financial interest in the outcome of parliamentary proceedings.<sup>145</sup>

However, a member is required to declare to the House or to a committee a financial interest that he or she has in the outcome of parliamentary business before participating in consideration of it.<sup>146</sup> Failure to do so will constitute a contempt of the House<sup>147</sup> and can be dealt with as a matter of privilege. But the validity of the business transacted by the House or committee (for example, a question asked by the member) is not affected by the member's failure to declare a financial interest.<sup>148</sup> If a member does propose to refrain from participating in a particular item of business by not speaking and voting on it (recording a formal abstention is participating in its consideration), there is no obligation to disclose an interest. There is no obligation to disclose a financial interest where that interest is contained in the *Register of Pecuniary and Other Specified Interests of Members of Parliament*.<sup>149</sup> That register constitutes a standing declaration of financial interests.

### **Definition of financial interest**

A financial interest that must be declared is defined as a direct financial benefit that might accrue to a member personally, or to any trust, company or other business entity in which the member holds an appreciable interest, as a result of the outcome of the House's consideration of a particular item of business.<sup>150</sup> A financial interest includes an interest that is held by the member's spouse or partner or by any child of the member who is wholly or mainly dependent on the member for support.<sup>151</sup>

<sup>142</sup> SOs, App B cl 16(7).

<sup>143</sup> SOs, App B cl 16(8).

<sup>144</sup> Registrar of Pecuniary and Other Specified Interests of Members of Parliament *Request of Denise Roche MP for inquiry into the Hon Peter Dunne MP's compliance with the requirements of Appendix B of the Standing Orders* (6 May 2014) [2011–2014] AJHR J.7A at 5.

<sup>145</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 82.

<sup>146</sup> SO 165(1).

<sup>147</sup> SO 410(f).

<sup>148</sup> (31 March 2005) 624 NZPD 19532 Wilson.

<sup>149</sup> SO 165(2).

<sup>150</sup> SO 164(1).

<sup>151</sup> SO 164(2)(a).

An obligation to declare an interest only arises where a benefit may accrue as the result of the outcome of the House's consideration of the business. A benefit could therefore generally accrue only from the House transacting business that has a legal effect. Passing legislation is the obvious example of this situation and a declaration must always be made of a benefit that would accrue to a member from legislation before the House. There are other situations in which the House participates in taking actions with legal consequences—such as disallowing regulations or recommending appointments—and any financial benefit resulting from these activities must also be declared. But in respect of most other business transacted by the House it is unlikely that any financial benefit could accrue as a result of the outcome of the House's consideration of the matter. Declaration of any interest that a member has in the subject is, in these circumstances, optional.

To constitute an "interest" at all, the interest must be a direct one. Thus a member who was a director of a company that provided mortgage broking services for a company that owned land affected by a proposal before the House was ruled to have had too indirect an interest to be affected.<sup>152</sup> The interest of members as policyholders in a large life insurance office has also been held to be too remote to be affected by this rule.<sup>153</sup>

The Speaker has ruled that the fact that an amendment might open up a business opportunity for a number of companies in which members have interests does not constitute a direct financial benefit to them. Such a business opportunity might or might not eventuate from the amendment becoming law. Entirely speculative interests cannot be direct financial benefits.<sup>154</sup>

Furthermore, a financial interest does not include an interest held by a member (or the member's spouse, partner or dependent child) as one of a class of persons who belong to a profession, vocation or other calling, or who hold public offices or an interest held in common with the public.<sup>155</sup> Interests held in common with the public or vocational groups do not require to be declared.<sup>156</sup> So members did not have a financial interest in this sense in a payment of members bill<sup>157</sup> or in a bill dealing with members' superannuation entitlements,<sup>158</sup> and Ministers did not have a financial interest in a Ministers' salaries and allowances bill.<sup>159</sup> Members who were farmers did not have financial interests in a bill providing payment for and the marketing of dairy produce<sup>160</sup> and a member who was a director or shareholder in a company operating within a particular industry did not have a financial interest in general legislation dealing with that industry. It is only if the member's company is singled out for special treatment in legislation that a financial interest could arise.<sup>161</sup> Private legislation is thus more likely to raise questions of financial interest than general legislation.

### **Declaring an interest**

There is no particular means prescribed by which a financial interest must be declared. It can be done while speaking in debate,<sup>162</sup> by personal explanation<sup>163</sup> or on a point of order. In a select committee it could be done orally to the committee or in writing to the chairperson. In the case of the latter the chairperson is

<sup>152</sup> (1977) 411 NZPD 1133–1134 Jack.

<sup>153</sup> (1990) 506 NZPD 1358–1359 Burke (Tower Corporation Bill).

<sup>154</sup> (1998) 574 NZPD 14221–14222 Kidd (Accident Insurance Bill).

<sup>155</sup> SO 164(2)(b).

<sup>156</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 82–83.

<sup>157</sup> (1892) 78 NZPD 624 Steward (Payment of Members Bill).

<sup>158</sup> (1992) 526 NZPD 9413 Munro (Acting Deputy Speaker) (State Sector Superannuation Bill).

<sup>159</sup> (1900) 112 NZPD 386 Guinness (Deputy Speaker) (Ministers' Salaries and Allowances Bill).

<sup>160</sup> (1956) 310 NZPD 2508–2509 Oram (Dairy Products Marketing Commission Amendment Bill).

<sup>161</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 82–83.

<sup>162</sup> For example: (1995) 549 NZPD 8322 (Waikato-Tainui Raupatu Claims Settlement Bill).

<sup>163</sup> For example: (1997) 565 NZPD 5845.

responsible for bringing it to the attention of the committee. A chairperson who declares an interest in a matter before the committee can remain in the chair for the committee's consideration of this item of business.<sup>164</sup>

The obligation to declare an interest lies with the member who holds it; other members cannot impose an obligation on the member to take any action by alleging that a financial interest is held.<sup>165</sup> If a member holds a financial interest and fails to declare it, the issue becomes a matter of privilege. In this regard, if there is a dispute as to whether there is a financial interest the Speaker decides the matter and the Speaker's decision is final.<sup>166</sup> In any subsequent consideration of the matter by the Privileges Committee, for example, the committee would be bound by the Speaker's finding on whether a financial interest existed.

Where the issue of whether members hold a financial interest arises at a select committee, the matter can be referred directly to the Speaker for decision by the committee itself or by any member. A committee has cautioned witnesses not to abuse their privileges as witnesses by making unsubstantiated allegations that members hold financial interests in the business before the committee.<sup>167</sup>

## PERSONAL INTERESTS

Apart from pecuniary interests, the House has no formal rules requiring members to declare interests of a personal and non-pecuniary or non-financial nature that may be relevant to their participation in business before the House. However, it is likely to be in members' own political interests to make clear any personal interests that they have on matters under consideration by the House or a select committee (such as a relationship with someone else who may be affected by the outcome of the business under consideration), and to consider abstaining from participating in consideration of the matter if to do so may suggest impropriety on their part. (See Chapter 21 for members stepping aside from serving on select committees.)

## MINISTERS' INTERESTS

Guidelines on Ministers' interests were first drawn up by a parliamentary select committee in 1956 following concern that a Minister may have allowed his official and business interests to be compromised.<sup>168</sup> These guidelines (known as the Harker rules, after the chairperson of the select committee that prepared them) were replaced in 1990 by new guidelines on Ministers' interests announced by the Prime Minister. Since 2005, Ministers, like all members of Parliament, have been required to make annual returns for the *Register of Pecuniary and Other Specified Interests*, and they are as equally subject to the House's rules on declaring financial interests as other members. In addition, specific guidelines on the conduct, public duty, and personal interests of Ministers are set out in the *Cabinet Manual*. The guidelines are not parliamentary rules or conventions and the Speaker has no role to play in interpreting them.<sup>169</sup> Questions about their operation may be addressed to the Prime Minister, as long as such questions are not an attempt to pry into a member's private affairs and do not impute misconduct on the part of a Minister.<sup>170</sup>

<sup>164</sup> Commerce Committee 2011/12 financial review of Solid Energy New Zealand Limited (19 April 2013) [2011–2014] AJHR I.21B at 2.

<sup>165</sup> (1998) 574 NZPD 14221.

<sup>166</sup> SO 166.

<sup>167</sup> Maori Reserved Land Amendment Bill (218–2) (commentary, 24 November 1997) at iii ([1996–1999] AJHR I.22 at 382).

<sup>168</sup> Ministers' Private Interests Committee, report (25 October 1956) [1956] AJHR I.17.

<sup>169</sup> (1991) 514 NZPD 1509 Gray.

<sup>170</sup> Ibid.

The Cabinet Office, on behalf of the Prime Minister, supports Ministers in identifying and managing conflicts of interest that may arise in relation to their portfolios or other ministerial responsibilities.<sup>171</sup> Ministers are expected to identify and review possible conflicts proactively, and address actual conflicts promptly.<sup>172</sup> Ministers can manage conflicts of interest by taking one or more of the following measures.<sup>173</sup>

- Declaring the interest to Cabinet colleagues: the declaration is recorded and the Minister should then withdraw from discussion of the matter or seek the agreement of colleagues to continue to participate.
- Not receiving papers: the Minister's interest may mean it is not appropriate for him or her to receive official papers or reports about an issue and the Minister should instruct the Cabinet Office accordingly.
- Transferring responsibility to another Minister: with the agreement of the Prime Minister, a Minister with a conflict of interest concerning a particular issue within his or her portfolio may transfer responsibility for that issue to another Minister.
- Transferring responsibility to the department: if a conflict arises in the Minister's portfolio concerning a minor issue, it may be managed by passing the issue on to the relevant Government department.
- Divesting oneself of the interest: where a conflict of interest is significant and pervasive, the Minister may need to divest himself or herself of the interest.
- Establishing a blind trust: Ministers with complicated or extensive shareholdings may place their investments into a blind trust as a precaution against unintended conflicts of interest.
- Resigning from an organisation: where a conflict of interest arises from association with a non-governmental organisation, the Minister may need to resign from that organisation.

Ministers are expected to act lawfully and to behave in a way that upholds, and is seen to uphold, the highest ethical standards. Ultimately, Ministers are accountable to the Prime Minister for their behaviour.<sup>174</sup>

## MEMBERS' REMUNERATION

The arrangements for determining the remuneration of members of Parliament have gone through a number of phases. For 30 years members voted expenses for themselves when passing the Government's annual estimates of expenditure. In 1884 provision was made in permanent legislation for the payment of an expense allowance to members. In 1892 this was converted into a salary (payable in monthly instalments) and a travelling allowance. Parliamentary salaries and allowances were fixed at intervals by further legislation until 1950. In that year, a new scheme for determining parliamentary remuneration was introduced under which a royal commission was to be set up after each general election to recommend changes to members' salaries and allowances. The commission's recommendations were implemented by statute or by Order in Council as the case required. These arrangements were suspended in 1974 and abolished in 1977.

From 1979, the Civil List Act provided a statutory framework for the remuneration of members. Salaries and allowances were set by a statutory commission, known initially as the Higher Salaries Commission and renamed the Remuneration Authority in 2003. The Act was amended in 2003 to include

---

<sup>171</sup> Cabinet Office *Cabinet Manual* 2008 at [2.58].

<sup>172</sup> Ibid, at [2.59].

<sup>173</sup> Ibid, at [2.70].

<sup>174</sup> Ibid, at [2.53].

a statutory scheme for the provision of the travel, accommodation, attendance and communications services that members required to carry out their role. The remuneration of members and the provision of services to them has its genesis in the House's privilege of exclusive control of its operation as part of enabling the transaction of parliamentary business and protecting the House's independence. However, the scope of the support system for members is now firmly based in statute law and covers their full role, being wider than that part of their role which is the subject of parliamentary privilege.

The framework for the provision of members' services, and the proper use of the relevant funding, had come under scrutiny in New Zealand in 2006 when the Auditor-General used the power under section 20 of the Public Audit Act 2001 to report on the misapplication of public funding for election advertising,<sup>175</sup> and directed the Speaker under section 65Z of the Public Finance Act 1989 to report to the House in relation to what the Auditor-General had determined were expenditures outside the scope of Vote Parliamentary Service. The report "precipitated bitter exchanges between the political leaders",<sup>176</sup> and the Speaker disagreed with the reasons given for the decision while accepting the Auditor-General's determination.<sup>177</sup> The subsequent Appropriation (Parliamentary Expenditure Validation) Act 2006, which was necessary to validate spending outside the scope of the appropriated funding, provided the first statutory definition of "funding entitlements for parliamentary purposes", and a similar definition was inserted into the Parliamentary Service Act 2000 in 2011.<sup>178</sup>

In response the Speaker instigated a review of the Parliamentary Service administration of members' entitlements and established an external, independent Assurance Committee to advise her and the General Manager on the management of the Service.<sup>179</sup> The Speaker also made the first detailed determination specifying services under the amended Civil List Act in 2007.<sup>180</sup> This set out the principles to be applied by members and parties in the use of publicly funded resources along with the first definition of parliamentary business.<sup>181</sup>

The fact that the scheme was a detailed statutory one rather than being completely self-regulated, as was the case in the UK,<sup>182</sup> largely protected the New Zealand Parliament from a members' expenses scandal such as that experienced in the UK in 2009. However, ongoing media pressure following the revelations of the expenses scandal led to further examination of the Civil List Act scheme. A 2010 Law Commission review identified three important principles: Clarity as to who can claim what from whom; Transparency of how much is paid and for what; and Independence—the levels of payment should be set by a process

<sup>175</sup> See Controller and Auditor-General *Advertising expenditure incurred by the Parliamentary Service in the three months before the 2005 General Election* (12 October 2006) [2005–2008] AJHR B.29 [06c]; and Controller and Auditor-General *Government and Parliamentary Publicity and Advertising* (21 June 2005).

<sup>176</sup> Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [12.6.2].

<sup>177</sup> Report of the Minister Responsible for Vote Parliamentary Service pursuant to a direction of the Controller and Auditor-General issued under section 65Z of the Public Finance Act 1989 (12 October 2006) [2005–2008] A.15 at 5.

<sup>178</sup> See Parliamentary Service Act 2000, ss 3B–3E. The definition of "funding entitlements for parliamentary purposes" in the Appropriation (Parliamentary Expenditure Validation) Act 2006 was said to be an interim measure that was to expire on the close of 31 December 2007, but it was extended by the Appropriation (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2007 until the close of 1 July 2009.

<sup>179</sup> Parliamentary Service, annual report (17 October 2007) NZPP A.13 at 5.

<sup>180</sup> Parliamentary Travel, Accommodation, Attendance, and Communications Services Determination 2007.

<sup>181</sup> Office of the Speaker *Directions and specifications for services and funding entitlements for the House of Representatives, its members, and former members* (25 October 2007).

<sup>182</sup> See: Robert Winnett and Gordon Rayner *No Expenses Spared* (Bantam, London, 2009); "MPs' expenses: full list of MPs investigated by The Telegraph" *The Daily Telegraph* (UK) (online ed, 8 May 2009) <[www.telegraph.co.uk](http://www.telegraph.co.uk)>.

independent of those who receive the money.<sup>183</sup> The Law Commission took the view that these principles were not present to a sufficient degree within the existing system. It concluded that the resulting criticism has a corroding effect on public confidence in the integrity of New Zealand's system of democracy. The commission recommended determination of remuneration and all services by an independent authority—an enhanced Remuneration Authority—and applying the Official Information Act to Parliament, but acknowledged that in so doing Parliament cannot be treated like any other department.<sup>184</sup>

The Law Commission did not view the impact on the House's privileges, in particular the exclusive control of its operations, as being significant, given the much narrower the range of activities that are encompassed by proceedings in Parliament. Nor did it express a view on how to reconcile the administration of such a scheme. The Parliamentary Service, unlike the Independent Parliamentary Standards Authority (IPSA) in the UK, would be expected to administer services, the setting of which were outside its control, but yet must be managed within the Service's vote.

In 2013 the Civil List Act was repealed and replaced by the Members of Parliament (Remuneration and Services) Act 2013. This new Act, along with the Parliamentary Service Act 2000, now set out the system for the determination and administration of members' salaries and allowances, the determination of members' travel, accommodation and communication services, member and party support services, and travel services for Ministers. In 2009 a voluntary system of disclosure of members' and Ministers' travel and accommodation expenditure had been introduced.<sup>185</sup> The new Act now includes a statutory regime.

The new Act acknowledges that its primary purpose is to ensure the operation of the House is properly supported so as to maintain confidence in the integrity of Parliament.<sup>186</sup> It retains the essence of the Civil List Act regime. However, in moving the determination of members' accommodation services to the Remuneration Authority, it introduces a hybrid element with implications for the House's privilege of exclusive control of its operations. No longer are all members' services determined by the Speaker.

The system is two tiered, with three different regulators. The Act provides for each regulator to make periodic detailed determinations or directions, and the determinations are non-disallowable legislative instruments. Salaries and allowances are determined independently by the Remuneration Authority, which in so doing must take account of any private benefit arising from members' other entitlements.<sup>187</sup> Members' accommodation services are also determined by the Remuneration Authority. The travel expenses of Ministers as they carry out the Government's business are determined by the Minister responsible for Ministerial Services. Members' travel and communications services and administrative support services are determined by the Speaker, except travel services for members' families which are determined by the Remuneration Authority. The Parliamentary Service is the administrator for all members' remuneration and services and the Speaker's directions are also directions to the Service in terms of the nature of administrative and support services it provides to the House.<sup>188</sup> The Speaker's directions define parliamentary business to give a clear picture of the tasks and functions that might be reasonably included in members and parties carrying out their respective activities for parliamentary purposes.<sup>189</sup>

<sup>183</sup> Law Commission *Review of the Civil List Act 1979: Members of Parliament and Ministers* (NZLC R119, 2010) at iv.

<sup>184</sup> Ibid.

<sup>185</sup> Hon John Key, Prime Minister and the Speaker of the House of Representatives, Hon Dr Lockwood Smith "Joint statement on expenses" (media release, 30 July 2009).

<sup>186</sup> Members of Parliament (Remuneration and Services) Act 2013, s 3.

<sup>187</sup> Members of Parliament (Remuneration and Services) Act 2013, s 16(1)(c).

<sup>188</sup> Parliamentary Service Act 2000, s 8(3).

<sup>189</sup> Directions by the Speaker of the House of Representatives 2014, cl 5.

The funding required to pay members' salaries and allowances is not required to be appropriated annually by Parliament, but is a permanent charge on the expenditure of the Government.<sup>190</sup> The authority has power to recommend different salaries and allowances for different office-holders, for the different electorates represented by members or according to any other considerations that the authority may determine.<sup>191</sup>

Member and party support services are funded through annual appropriations in Vote Parliamentary Service, making their overall quantum annually reviewable by the Minister of Finance in preparing the Budget and subject to parliamentary approval as part of the passing of the main Appropriation bill each year.

## **Remuneration Authority determinations**

The Remuneration Authority is a statutory commission that was first established in 1974 to determine the remuneration of a number of groups and individual office-holders. As well as determining the salaries, allowances<sup>192</sup> and superannuation rights of members of Parliament, it carries out similar remuneration functions in respect of the judiciary and certain other statutory officers, including mayors and other elected members of local authorities. The authority has three members, each of whom is appointed by the Governor-General by Order in Council for a term not exceeding three years.<sup>193</sup>

The authority must review and issue a fresh determination for members' salaries at intervals of not more than 12 months and, for members' allowances, at least once every three years.<sup>194</sup> Any person is entitled to make written submissions to the authority. The authority is obliged to facilitate the making of written and oral submissions by representatives of the persons to be covered by a determination it is proposing to make.<sup>195</sup> When a determination is pending, the authority informs all members of their right to make individual submissions to it. The authority sometimes consults with members through the Parliamentary Service Commission, which is a statutory body primarily required to provide advice to the Speaker.<sup>196</sup> The authority is also obliged, before making a determination relating to members' salaries and allowances, to consult with the following about the matters specified:<sup>197</sup>

- the Speaker and the Minister responsible for Ministerial Services, about the services for which they have jurisdiction
- the Commissioner of Inland Revenue, about the tax consequences of the authority's proposed determination.

The consultation is to assess the value of personal benefits that members or their families might gain from entitlements to services under the various directions and determinations. The authority must take into account changes in that value when fixing annual salaries, and explain in its determination how it has taken the value into account when setting salaries.<sup>198</sup>

Determinations of the authority are made known by a copy being delivered to the Speaker, the Prime Minister and the Leader of the Opposition, and by publication in the *New Zealand Gazette*.<sup>199</sup> The General Manager of the Parliamentary Service must ensure that the determination is available on the Parliament website as soon

<sup>190</sup> Members of Parliament (Remuneration and Services) Act 2013, s 8(4).

<sup>191</sup> Members of Parliament (Remuneration and Services) Act 2013, s 8(2).

<sup>192</sup> Members of Parliament (Remuneration and Services) Act 2013, ss 8, 9 and 16; Remuneration Authority Act 1977, s 12.

<sup>193</sup> Remuneration Authority Act 1977, ss 4–6.

<sup>194</sup> Remuneration Authority Act 1977, s 19(5).

<sup>195</sup> Remuneration Authority Act 1977, s 21.

<sup>196</sup> Parliamentary Service Act 2000, ss 13 and 14.

<sup>197</sup> Remuneration Authority Act 1977, s 17A.

<sup>198</sup> Members of Parliament (Remuneration and Services) Act 2013, s 16(2).

<sup>199</sup> Remuneration Authority Act 1977, s 16(1).

as practicable after he or she receives it from the authority.<sup>200</sup> A determination is a legislative instrument for the purposes of the Legislation Act 2012, and is published by the Parliamentary Counsel Office in the series of legislative instruments, but is not required to be presented to the House of Representatives under that Act and is not a disallowable instrument.<sup>201</sup> A determination has effect in its own right.<sup>202</sup> It is unlawful for any person to act contrary to a determination or to fail to observe the criteria or limits specified in it.<sup>203</sup>

Concern that the authority did not have a legislative mandate to oversee the administration of its determinations, or to issue formal guidance as to how they are to be applied,<sup>204</sup> has led to power being conferred on the authority to determine issues about how any provision of a determination is to be interpreted or applied, or is to operate.<sup>205</sup> But it is the Parliamentary Service as the paying authority that in effect administers the determinations and retains the expertise on the way in which they are applied operationally.

## Salaries and allowances

The role of a member of Parliament is a full-time one and salaries of members have been fixed on this basis for many years. In making its determinations, the authority consistently pointed out that it is not its role to pass judgement on the performance of any member. Its task is to determine a rate for the role, no matter who holds it and irrespective of their performance in it.<sup>206</sup> It is for the electors to judge the performance of members of Parliament.

In 2003 the salaries of members were realigned on a total package basis, including in them the remuneration element of certain allowances formerly paid to members and deducting from them the value of other benefits paid to members (such as non-official air travel). This was regarded as producing an appropriate level of salary as the basis for future determinations.<sup>207</sup> The Members of Parliament (Remuneration and Services) Act 2013 continues to implement the policy that the value of personal benefits from members' services and entitlements should be taken into account when determining members' salaries and allowances.<sup>208</sup> The authority also determines a tax-free allowance to cover out-of-pocket expenses incurred in the pursuit of parliamentary and ministerial business. In its determination it set out a list of what these expenses might be.<sup>209</sup>

In making its determinations, the Remuneration Authority was required to achieve and maintain fair relativity with levels of remuneration received elsewhere, be fair to both members and the taxpayer, and take account of the need to attract and retain competent persons.<sup>210</sup> It was also required to take account of prevailing economic conditions.<sup>211</sup> But in 2015 following concerns about the disproportionate level of the authority's first determination, the criteria for determining members' salaries were replaced by a linkage to the quarterly employment survey for the public sector.<sup>212</sup> At the time concerns were expressed about the ongoing intervention in

<sup>200</sup> Members of Parliament (Remuneration and Services) Act 2013, s 9(2).

<sup>201</sup> Remuneration Authority Act 1977, s 16(2).

<sup>202</sup> Remuneration Authority Act 1977, s 14(1).

<sup>203</sup> Remuneration Authority Act 1977, s 14(2).

<sup>204</sup> Controller and Auditor-General *Members of Parliament: accommodation allowances for living in Wellington* (interim report, 21 March 2001) at [404] and [605].

<sup>205</sup> Remuneration Authority Act 1977, s 12(1)(bb); Members of Parliament (Remuneration and Services) Act 2013, ss 21 and 41.

<sup>206</sup> See, for example: Parliamentary Salaries and Allowances Determination 1999, Explanatory memorandum.

<sup>207</sup> Parliamentary Salaries and Allowances Determination 2003, Explanatory memorandum.

<sup>208</sup> Members of Parliament (Remuneration and Services) Act 2013, s 16(2).

<sup>209</sup> Parliamentary Salaries and Allowances Determination (No 2) 2015, Explanatory memorandum at [5].

<sup>210</sup> Remuneration Authority Act 1977, s 18.

<sup>211</sup> Remuneration Authority Act 1977, s 18A.

<sup>212</sup> (17 March 2015) 704 NZPD 2274–2339; Remuneration Authority (Members of Parliament Remuneration) Amendment Act 2015.

the setting of salaries for members and the need for review leading to a permanent solution for independent determination.<sup>213</sup>

The authority fixes a basic tax-free expense allowance and allowances for specified office-holders.<sup>214</sup> These allowances are to reflect genuine expenses of members. They are not designed as remuneration. The services provided to members by the Parliamentary Service are taken into account by the authority in fixing members' allowances.

Separate basic expense allowances have been determined for the Prime Minister, the Speaker and for members generally. The basic expense allowance is intended to cover out-of-pocket expenses incurred in the pursuit of parliamentary business, such as: entertainment, memberships and sponsorships, koha, donations and raffle tickets, gifts and prizes, flowers, passport photos, briefcases and luggage, and meals.<sup>215</sup>

### **Period for which salaries and allowances are payable**

The payment of an ordinary member's salary and allowance commences on the day after polling day at the election at which the member was elected (even though that person does not in law become a member of Parliament until after the writ is returned or the Electoral Commission makes a return of party list members<sup>216</sup>) and ends on the polling day for the next general election unless the member's seat becomes vacant in the meantime.<sup>217</sup> The salary and allowance of a member who is returned at an uncontested by-election or fills a vacancy in the seat of a member elected from a party list is payable starting on the day that the Electoral Commission declares the member to be elected.<sup>218</sup> The payment of a Minister's salary commences on the day of appointment as Minister. Members cease to draw an ordinary member's salary when they are appointed as Ministers.

The payment of salary and allowances to the Speaker and salary to the Deputy Speaker begins on the day of their respective appointments to office and continues beyond the dissolution of Parliament until the first meeting of the next Parliament.<sup>219</sup> This is because both the Speaker and Deputy Speaker continue to have statutory functions and duties throughout this period.

A member who retires at a general election or is a defeated candidate at a general election receives a salary at the ordinary member's rate, payable for three months after polling day. In the case of a Minister or a Parliamentary Under-Secretary who retires or is a defeated candidate at a general election, ministerial salary continues to be paid until he or she formally resigns, which may be up to a month after the election. On this resignation taking effect, the former Minister or Under-Secretary is paid the salary payable to an ordinary member for the remainder of the three months from the election.<sup>220</sup>

Similar provisions apply to a former Speaker or former Deputy Speaker who is an unsuccessful candidate or does not stand at the election. Their salaries and allowances as Speaker and Deputy Speaker continue until the new Parliament

<sup>213</sup> See, for example: (17 March 2015) 704 NZPD 2279–2281.

<sup>214</sup> An "allowance", in relation to a member, is defined as a basic expense allowance and an office-holder allowance (Remuneration Authority Act 1977, s 2).

<sup>215</sup> Parliamentary Salaries and Allowances Determinations of 2013 and 2015, Explanatory memoranda. The aspects of the 2015 determination relating to members' allowances were untouched by the Remuneration Authority (Members of Parliament Remuneration) Amendment Act 2015.

<sup>216</sup> Electoral Act 1993, s 54.

<sup>217</sup> Members of Parliament (Remuneration and Services) Act 2013, s 10(1).

<sup>218</sup> Members of Parliament (Remuneration and Services) Act 2013, s 10(2)–(3).

<sup>219</sup> Parliamentary Service Act 2000, s 3, definitions of "Speaker" and "Deputy Speaker". The Constitution Act 1986, however, refers only to the period that the Speaker is in office after Parliament's dissolution or expiry until the close of polling day at the next general election (s 13). The Civil List Act 1979 previously deemed the Speaker to hold office until the opening of Parliament (s 17), but has been repealed.

<sup>220</sup> Members of Parliament (Remuneration and Services) Act 2013, s 11.

meets. When Parliament meets, they revert to the ordinary salary of a member for the remainder of the three-month period running from the election.<sup>221</sup>

If a member's election is overturned following an election petition, the salary and allowance payable to a member are still payable for the period from polling day to the overturning of the election, since the ousted member was the member for that period. But where another person is declared elected in place of the originally returned member following an election petition, salary and allowance backdated to polling day are to be paid to the newly installed member, although that person was not, in law, the member for that period.<sup>222</sup>

## **Payment of salaries and allowances**

Members' salaries and allowances are payable, without specific annual appropriation, under permanent legislative authority.<sup>223</sup> As the payment of salary and allowances is made to a member under an Act of Parliament, the payment is mandatory and does not depend for its authority on any contract of service. It appears, therefore, that the payment cannot be waived,<sup>224</sup> except for periods when the person receives a salary as head of mission or head of post.<sup>225</sup> However, deductions may be made from payments in the case of a member's unauthorised absence or suspension from the House.<sup>226</sup>

## **Taxation**

While members are in law neither employees nor self-employed, for tax purposes they are treated as employees and income tax is deducted from their salaries at source.<sup>227</sup> They cannot claim tax deductions for expenses as if they were self-employed.<sup>228</sup> Expenses paid to members for travel, accommodation and communications services are exempt income if they are paid under any of the determinations or directions made under the Members of Parliament (Remuneration and Services) Act 2013,<sup>229</sup> but fringe benefit tax is payable on any element of personal benefit involved in incurring such expenses.<sup>230</sup>

## **Superannuation**

The superannuation rights of members differ depending upon whether or not they were members of Parliament on 30 June 1992, when the Government Superannuation Fund was closed off to new members. Every person who was a member of Parliament on that date may continue to contribute to the parliamentary superannuation scheme established as part of the Government Superannuation Fund, for as long as they remain a member of Parliament. Once they cease to be a member by not being re-elected at a general election or by vacating their seat by resignation or otherwise, they also cease to be eligible to continue to contribute to the scheme and even if they subsequently return to Parliament they cannot rejoin it.<sup>231</sup> The parliamentary superannuation scheme will therefore gradually be wound down, like the other schemes operated within the Government Superannuation Fund.

<sup>221</sup> Members of Parliament (Remuneration and Services) Act 2013, s 11.

<sup>222</sup> Members of Parliament (Remuneration and Services) Act 2013, s 12.

<sup>223</sup> Members of Parliament (Remuneration and Services) Act 2013, s 8(4).

<sup>224</sup> (1968) 359 NZPD 3777.

<sup>225</sup> Members of Parliament (Remuneration and Services) Act 2013, s 15.

<sup>226</sup> Members of Parliament (Remuneration and Services) Act 2013, ss 13–14.

<sup>227</sup> Salary and allowances of a member of Parliament under the Remuneration Authority's determination are included in "salary or wages", and the PAYE rules apply to them (Income Tax Act 2007, ss RD 3(1) and RD 5(5)(a)).

<sup>228</sup> Remuneration Authority (Members of Parliament) Amendment Bill (229–2) (commentary, 2 December 2002) at 6 ([2002–2005] AJHR I.22A at 432).

<sup>229</sup> Income Tax Act 2007, s CW 31.

<sup>230</sup> Income Tax Act 2007, s CX 12.

<sup>231</sup> Government Superannuation Fund Act 1956, s 82A(2).

The Remuneration Authority is empowered to consider and make determinations on the superannuation rights of members of Parliament who contribute to the Government Superannuation Fund.<sup>232</sup> The authority is required to consult the Government Superannuation Fund Authority before making a determination on parliamentary superannuation.<sup>233</sup> Any determination by the authority on parliamentary superannuation is made in the same form as its determinations on salaries and allowances. A determination may contain provisions that modify, or are to apply instead of, the provisions of the Government Superannuation Fund Act 1956.<sup>234</sup>

There is no specific superannuation scheme for members of Parliament first elected to the House, or re-elected after a period of absence, after 30 June 1992. Nor is there any compulsion for such members to contribute to any superannuation scheme. However, provision has been made for a public subsidy to be paid to any KiwiSaver or other complying superannuation fund registered under section 35 of the Superannuation Schemes Act 1989 that a member chooses to join. The Remuneration Authority has the function of determining the maximum amount that may be paid by way of subsidy to such a scheme for each member and the contribution the member must make to the scheme to become entitled to the subsidy. For this purpose the authority may express the subsidy as a monetary amount or as a percentage of an ordinary member's salary. The maximum amount that the authority fixes must be the same for all members.<sup>235</sup>

Under the authority's current determination, a member may receive a superannuation subsidy of 2.5 times the amount of the member's contribution to a registered superannuation scheme, up to a maximum amount equal to 16 per cent of an ordinary member's salary up to 31 October 2003 and 20 per cent thereafter.<sup>236</sup> The maximum subsidy would therefore be payable (from 1 November 2003) if a member contributed eight per cent of his or her salary to a registered scheme. If a member contributes at a lower rate than eight per cent of salary, the subsidy payable is reduced proportionately. To be paid the subsidy, the member must make a contribution in the actual year to which a subsidy relates and cannot make lump sum payments for past years to claim the related subsidies.<sup>237</sup> The Crown's liability to any superannuation scheme to which a member elects to contribute is limited to the payment of the subsidy as determined by the authority.<sup>238</sup> This subsidy is paid out of public money under permanent legislative authority without the need for annual appropriation.<sup>239</sup>

A member must provide the name of any registered superannuation scheme, including the parliamentary superannuation scheme, in which he or she has a pecuniary interest, when declaring interests for publication in the *Register of Pecuniary and Other Specified Interests of Members of Parliament*.<sup>240</sup>

## MEMBERS' SERVICES

The directions and determinations for members' services are to be made once in each parliamentary session.<sup>241</sup> There are limited powers to amend the Remuneration Authority's determination, with some further amendment powers available for the Speaker's directions and the Minister's determination.<sup>242</sup>

<sup>232</sup> Remuneration Authority Act 1977, s 12(1)(b).

<sup>233</sup> Remuneration Authority Act 1977, s 17(2).

<sup>234</sup> Remuneration Authority Act 1977, s 17(1).

<sup>235</sup> Remuneration Authority Act 1977, s 12(1)(ba) and (2A).

<sup>236</sup> Parliamentary Superannuation Determination 2003, cl 5.

<sup>237</sup> Remuneration Authority Act 1977, s 12(2AB).

<sup>238</sup> Remuneration Authority Act 1977, s 12(2B).

<sup>239</sup> Remuneration Authority Act 1977, s 17(6).

<sup>240</sup> See: "Pecuniary interests", p 56.

<sup>241</sup> Members of Parliament (Remuneration and Services) Act 2013, s 32.

<sup>242</sup> Members of Parliament (Remuneration and Services) Act 2013, s 32(4)–(6).

Once it is made or they are issued, a copy of the determination or directions must be made publicly available on the Parliament website as soon as practicable.<sup>243</sup> The Remuneration Authority's determinations are also published on the New Zealand Legislation website, because they are legislative instruments for the purposes of the Legislation Act 2012.<sup>244</sup>

If issues arise as to the interpretation, application or operation of any provision of a determination or directions, they are to be resolved, if possible, under procedures prescribed by the person or body that made the determination or issued the directions. If this is unsuccessful, the person or body must finally determine the issue.<sup>245</sup>

Any element of personal benefit or potential personal benefit to members, Ministers or their families resulting from the directions and determinations must be the subject of consultation with the Commissioner of Inland Revenue about the entitlement's taxation consequences. The value of the personal benefit or potential benefit must be assessed.<sup>246</sup>

The assessed value must be taken into account by the Remuneration Authority when determining members' and Ministers' salaries and allowances. The authority's salaries and allowances determination must include a statement of how the authority has taken the value into account in determining the salaries and allowances.<sup>247</sup>

## **Remuneration Authority's determination of services**

The Remuneration Authority's determination regarding members' services covers accommodation services within New Zealand for members, qualifying electoral candidates,<sup>248</sup> and Ministers, and their family members, and travel services within New Zealand for their families.<sup>249</sup>

Before making this determination,<sup>250</sup> the authority must seek advice from the Speaker about accommodation services for members and qualifying electoral candidates, and entitlements to travel services within New Zealand for members' families, and the Minister Responsible for Ministerial Services for corresponding entitlements for Ministers.

The authority must then prepare a draft determination, give members and Ministers a reasonable opportunity to consider and be heard on it, and consult the Commissioner of Inland Revenue about the taxation consequences of the proposed determination. The authority may obtain information and advice to help it make its determination.<sup>251</sup>

## **Speaker's directions**

The Speaker issues directions setting out members' travel, administrative, support and communications services, and corresponding services for qualifying electoral candidates.<sup>252</sup> These services are provided to support members in discharging

<sup>243</sup> Members of Parliament (Remuneration and Services) Act 2013, ss 20(2), 25 and 29.

<sup>244</sup> Members of Parliament (Remuneration and Services) Act 2013, s 17(3).

<sup>245</sup> Members of Parliament (Remuneration and Services) Act 2013, ss 21, 26 and 30.

<sup>246</sup> Members of Parliament (Remuneration and Services) Act 2013, s 16(2)(b).

<sup>247</sup> Members of Parliament (Remuneration and Services) Act 2013, s 16(2)(c).

<sup>248</sup> Qualifying electoral candidates are specified in sch 1 of the Members of Parliament (Remuneration and Services) Act 2013. The term refers to the status of candidates who seem to have been successful at an election, for the period between the close of polling day and when a person is declared elected.

<sup>249</sup> Members of Parliament (Remuneration and Services) Act 2013, s 17. The first determination made by the authority under the Act also provided for travel services for former Prime Ministers and their spouses or partners, under s 44: see the Members of Parliament (Accommodation Services for Members and Travel Services for Family Members and Former Prime Ministers) Determination 2014.

<sup>250</sup> Members of Parliament (Remuneration and Services) Act 2013, s 18.

<sup>251</sup> Members of Parliament (Remuneration and Services) Act 2013, s 19.

<sup>252</sup> Members of Parliament (Remuneration and Services) Act 2013, s 23(1)(a)–(c). The first directions issued under s 23 of the Act were the Directions by the Speaker of the House of Representatives 2014. They came into force on 21 September 2014.

their responsibilities, through funding entitlements for parliamentary purposes.<sup>253</sup> Members' domestic travel services under the directions include travel at any time on scheduled services. If travelling on parliamentary business, members may travel by taxi or rental car, or receive a mileage reimbursement for private car travel.

The directions also cover international travel and international accommodation services for members travelling for parliamentary purposes. Approval criteria are set out in the directions. These costs are to be met from the party and member support funding appropriated for the member's party, as a charge against the leadership funding allocation. In addition, the costs of international travel and international accommodation services can be met from the same source for a party leader's spouse or partner accompanying the leader when he or she is travelling internationally for parliamentary purposes.<sup>254</sup> However, no other accommodation services may be provided under the directions.<sup>255</sup>

The directions also set out the allocation of appropriations for party and member support funding, and how party and member support funding may be used and is to be administered.<sup>256</sup>

The uses of party and member support funding include the following:<sup>257</sup>

- discharging their responsibilities as legislators and elected representatives
- developing, researching, critiquing and communicating policy
- communicating with constituents and other communities of interest
- meeting the operational needs of each party in fulfilling its parliamentary responsibilities
- meeting the costs of ICT equipment for members' direct use, and for use by their support staff in their offices in and out of Parliament.

The Speaker also issues policies, procedures and guidelines, to provide further detail on how the funding may be used.

The allocations for individual members provide for support staff, general purposes and non-staff needs (such as operating out-of-Parliament offices) and for ICT equipment. Party and leadership allocations are used to fund party leaders' and whips' offices. There is some provision for moving funds between allocation purposes and funding years. All ICT funding for the session is available to a member at the beginning of his or her term of office in that session. Most funding allocations are larger for large constituencies and for Ministers. The directions also refer to an Additional Support for Members appropriation by which the Speaker may authorise support additional to that in the directions for members with physical or sensory impairments beyond their control.

The Sixth Triennial Appropriations Review Committee (ARC)<sup>258</sup> recommended in its report that a transition be made to fixed electoral offices (designated offices that are funded, leased and fitted-out by Parliamentary Service), for reasons including security, health and safety, cost-effectiveness, and members' ease of access early in each parliamentary term.<sup>259</sup> The ARC also recommended that the model for non-staff funding and other support for members and parties be reviewed, as inflationary pressures can affect the ability of members to carry out their functions effectively.<sup>260</sup>

<sup>253</sup> The meaning of "funding entitlements for parliamentary purposes" is set out in s 3B of the Parliamentary Service Act 2000.

<sup>254</sup> Members of Parliament (Remuneration and Services) Act 2013, s 23(3)–(4).

<sup>255</sup> Members of Parliament (Remuneration and Services) Act 2013, s 23(2): other accommodation services are provided under the Remuneration Authority's determination.

<sup>256</sup> Members of Parliament (Remuneration and Services) Act 2013, s 23(1)(d)–(e).

<sup>257</sup> See: Directions by the Speaker of the House of Representatives 2014, cls 34 and 35.

<sup>258</sup> See: Parliamentary Service Act 2000, ss 20–22.

<sup>259</sup> Report of the Sixth Triennial Appropriations Review Committee *Parliamentary appropriations* (19 November 2015) NZPP A.14 at 45–46.

<sup>260</sup> Ibid, at 40.

Before issuing the directions, the Speaker must take into account the advice of the Parliamentary Service Commission, consult the Minister Responsible for Ministerial Services and the Remuneration Authority and, with regard to the taxation consequences of the proposed directions, the Commissioner of Inland Revenue.<sup>261</sup>

## **Minister's determination of services**

The Minister Responsible for Ministerial Services determines Ministers' entitlements to travel services within New Zealand that are additional or alternative to those set out in the Speaker's directions.<sup>262</sup>

Before making the determination, the Minister must consult the Speaker, the Remuneration Authority, and, with regard to the taxation consequences of the proposed directions, the Commissioner of Inland Revenue.<sup>263</sup>

The first determination made under the Members of Parliament (Remuneration and Services) Act 2013 provides for more extensive use of chauffeur-driven cars, taxis, self-drive cars and rental cars<sup>264</sup> than the Speaker's directions. When travelling on ministerial business, a non-Wellington meal expense payment is available, and the costs of other travel-related expenses.<sup>265</sup>

Ministers are required to manage potential conflicts of interest,<sup>266</sup> and to note the principles that apply in the use of publicly funded resources.<sup>267</sup>

## **Providing members' services into the future**

The parliamentary determinations and detailed directions issued now provide considerable clarity about what may be claimed and from whom. The independence of the process of setting entitlements, however, has to be balanced against the need to protect parliamentary independence. In 2003 a clear distinction was made. Where personal benefit was involved, an independent determiner was provided (the Remuneration Authority); but where the operation of the House and its committees was in question, the Speaker should be the determiner, on the basis of the House's exclusive right to control its own operation. Most important here were the travel and accommodation services that enable members to attend the House and committees in Wellington, and committees to travel to conduct their business.

The 2013 Act's hybrid arrangements for the determination of accommodation services, whilst governed by the common principles set out in the Act,<sup>268</sup> unsettled the principled approach adopted in 2003. The fact that the Act will be reviewed<sup>269</sup> offers an opportunity to reconsider. Party and member support services and communications services, while required to be related to a parliamentary purpose, cover a wider range of activities than the transaction of the House's business, which is regarded as proceedings in Parliament. Independence of process may well be justified in determining the quantum of these services, particularly party support. At present its funding is based on a formula determined largely by party membership in the House. If Opposition parties are to be properly supported so they can demonstrate themselves to be credible alternatives to the Government, some reconsideration may be required in the light of the resources already available to the Government.

---

<sup>261</sup> Members of Parliament (Remuneration and Services) Act 2013, s 24.

<sup>262</sup> Members of Parliament (Remuneration and Services) Act 2013, s 27.

<sup>263</sup> Members of Parliament (Remuneration and Services) Act 2013, s 28.

<sup>264</sup> Ministers' Travel Services within New Zealand Determination 2014, cls 2.1–2.4.

<sup>265</sup> Ministers' Travel Services within New Zealand Determination 2014, cls 3.3 and 3.4.

<sup>266</sup> Ministers' Travel Services within New Zealand Determination 2014, cl 1.7.

<sup>267</sup> Ministers' Travel Services within New Zealand Determination 2014, cl 3.2.

<sup>268</sup> Members of Parliament (Remuneration and Services) Act 2013, s 16.

<sup>269</sup> Members of Parliament (Remuneration and Services) Act 2013, s 17.

While the Act establishes procedures to resolve disputes,<sup>270</sup> the requirement for an independent determiner who is not also the administrator of the services raises accountability issues. To whom is the determiner accountable? In a climate where the administrator has no control over the setting of the services, how can he or she be held to be accountable? Services determined by the Speaker are subject to Treasury scrutiny in the Budget process, parliamentary scrutiny during the House's consideration of the annual appropriation bills, and three-yearly review by an Appropriations Review Committee.<sup>271</sup> The Remuneration Authority determinations are appropriated by permanent legislative authority and the subject of considerably less scrutiny.

Legislating to overturn unpopular determinations is not the answer in the long term. It undermines independence, and where it concerns members' salaries can result in pressure on other services and allowances. Accountability issues have arisen in the UK House of Commons, where a 2011 review by the Committee on Members' Expenses received evidence from the National Audit Office that a majority of members were subsidising the work of Parliament as a result of not claiming expenses to which they were entitled, and that the Independent Parliamentary Standards Authority did not give sufficient regard to the impact of the scheme on members' ability to perform their role.<sup>272</sup>

Finally, transparency in the use of public funds is critical. The 2013 Act has a very limited disclosure regime for travel and accommodation services.<sup>273</sup> Wider disclosure is needed. But the suggested application of the Official Information Act to this area has been rejected. Freedom of information principles are accepted,<sup>274</sup> but they must be applied in a way that protects members' privacy, and the privacy of their constituents and their parties. The Law Commission has pointed out that Parliament and parliamentary parties are not simply government agencies.<sup>275</sup> The information protocol adopted by members recognises the need for administrative openness, as do the Speaker's directions.<sup>276</sup> Guidance for requests for information about parliamentary administration have been developed for the parliamentary agencies.

---

<sup>270</sup> Members of Parliament (Remuneration and Services) Act 2013, ss 21, 26 and 30.

<sup>271</sup> Parliamentary Service Act 2000, s 20.

<sup>272</sup> House of Commons (UK) Committee on Members' Expenses *The operation of the Parliamentary Standards Act 2009: first report of session 2010–12 (Volume I)* [2011] HC 1484—I at [1] and [118].

<sup>273</sup> Members of Parliament (Remuneration and Services) Act 2013, s 37.

<sup>274</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 65.

<sup>275</sup> Law Commission *Review of the Civil List Act 1979: members of Parliament and Ministers* (NZLC R119, 2010) at ch 3.

<sup>276</sup> Privileges Committee *Question of privilege regarding use of intrusive powers within the parliamentary precinct* (11 July 2014) [2011–2014] AJHR I.17C at App C, "Protocol for the release of information from the parliamentary information, communication and security systems" (guiding principle 5).

## CHAPTER 5

# Speaker of the House of Representatives

### THE SPEAKER

The Speaker of the House of Representatives is the highest office to which a member may be elected by the House. Since a revision of the Order of Precedence in New Zealand in 1974, the Speaker is third in precedence, after only the Governor-General and the Prime Minister<sup>1</sup> (who is appointed to office by the Crown not by the House). On being confirmed in office, the person who is Speaker assumes the title “Right Honourable”<sup>2</sup> (Rt Hon) ex officio. Throughout this book there are a great many references to the specific powers and duties of the Speaker. The purpose of this chapter is to deal with the Speaker’s role from a general point of view.

### Duties of the Speaker

The first task of the members of a newly elected Parliament, when they assemble for the first time following the general election, is to elect one of their number to preside over them.<sup>3</sup> The person so elected represents and embodies the House in its relations with the Crown. Indeed, this is the reason for the title of “Speaker”: the need for the amorphous mass of commoners who came to Parliament to have one person who could report their opinions to the King and the Lords—who could speak for them. The Speaker was the House’s orator. In New Zealand, the Speaker still performs this formal representative function by laying claim before the Governor-General to the House’s privileges on behalf of the House, and by leading the members of the House into the Governor-General’s presence at the commencement of each Parliament to hear the Governor-General deliver the Speech from the Throne, giving reasons for the summoning of Parliament. The Speaker also presents addresses that are adopted by the House to the Crown, and reads messages from the Crown to the House.

The Speaker is chairperson of the Parliamentary Service Commission and has principal political responsibility for the services and facilities provided to members of Parliament. (See Chapter 4.) Many of the House’s contacts with overseas parliaments are carried on by or in the name of the Speaker, who is president, ex officio, of the New Zealand branch of the Commonwealth Parliamentary Association and the New Zealand group of the Inter-Parliamentary Union. The Speaker announces the presence of parliamentary delegations or other distinguished visitors to the House. The Speaker also makes other formal

1 (10 January 1974) *New Zealand Gazette* 5.

2 (3 August 2010) 665 NZPD 12879.

3 Constitution Act 1986, s 12.

communications to the House, for example, presenting reports to Parliament made by the Officers of Parliament, and announcing and presenting qualifying citizens initiated referendum petitions.<sup>4</sup> The Speaker determines which portions of the proceedings of the House are to be reported in *Hansard* and in what form and under what conditions the report is made.<sup>5</sup> The Speaker is occasionally called upon to execute orders of the House.<sup>6</sup> The Speaker also has a number of statutory duties to perform in the case of vacancies in the membership of the House,<sup>7</sup> the granting of exemptions to members of Parliament from attending court proceedings,<sup>8</sup> and the granting of certificates regarding the staying of court proceedings relating to parliamentary proceedings communicated under the authority of the House.<sup>9</sup> The courts are enjoined to take judicial notice of the Speaker's signature on any document issued under the Speaker's statutory or Standing Orders powers.<sup>10</sup>

However, the chief duty of the Speaker is to chair the House, presiding over its deliberations, keeping order and determining points of procedure.

### **Speaker's position**

The Speaker in New Zealand does not sever all links with a political party, as does the Speaker of the House of Commons. Nor is the Speaker guaranteed any continuity of office for more than one Parliament. There is no tradition of re-electing the member who served as Speaker in the preceding Parliament even if the Government changes following a general election as there is, for instance, in the United Kingdom. With two exceptions, during the 20th century all Speakers came from the governing, or a governing, party.<sup>11</sup> The member who is elected Speaker does not thereby become a non-party member of Parliament. However, the Speaker does not play a politically partisan role, and exercises restraint in the speeches or comments he or she makes outside the House.<sup>12</sup> The Speaker must be prepared to assert an independence from the Government to ensure that the rights of all sides of the House are protected in the course of the parliamentary process.<sup>13</sup>

Whether the Speaker attends weekly party caucus meetings held while the House is sitting is a matter for the Speaker to decide. Practice has differed between Speakers of different parties and between Speakers of the same party. Speakers from the National Party have generally not attended caucus.<sup>14</sup> On the other hand, Labour Speakers until recent years did attend caucus,<sup>15</sup> although since 1984 most of them have not done so during sitting weeks.

The Speaker's vote is included in any party vote cast, and the Speaker votes in a personal vote, though without going into the lobbies personally—the Speaker's vote is communicated to the teller from the Speaker's Chair. As its presiding officer, the Speaker never participates in debate in the House. When the Speaker has charge of a local or private bill, another member moves the stages of the bill

<sup>4</sup> Citizens Initiated Referenda Act 1993, s 21; see, for example: Petition 2011/77 of Roy Reid (19 September 2013).

<sup>5</sup> SO 9; Clerk of the House of Representatives Act 1988, s 3(e); see, for example: (2002) 602 NZPD 54 Hunt.

<sup>6</sup> (23 June 1981) [1981] JHR 40 (House's views on the 1981 Springbok tour to be communicated to the New Zealand Rugby Football Union).

<sup>7</sup> Electoral Act 1993, ss 129 and 134.

<sup>8</sup> Parliamentary Privilege Act 2014, ss 26 and 27.

<sup>9</sup> Parliamentary Privilege Act 2014, s 17.

<sup>10</sup> Parliamentary Privilege Act 2014, s 31.

<sup>11</sup> Speaker Statham from 1923 to 1935 was, at the time of his first election, an independent, "though with some pro-government leanings" (see KJ Scott *The New Zealand Constitution* (Oxford University Press, Oxford, 1962) at 59–60); Speaker Tapsell from 1993 to 1996 was a member of the Opposition Labour Party.

<sup>12</sup> (1982) 448 NZPD 4918 Harrison.

<sup>13</sup> See, for example: (1995) 548 NZPD 7863–7864 Tapsell.

<sup>14</sup> Warren Freer *A Lifetime in Politics—The Memoirs of Warren Freer* (Victoria University Press, Wellington, 2004) at 144.

<sup>15</sup> John E Martin *The House—New Zealand's House of Representatives 1854–2004* (Dunmore, Palmerston North, 2004) at 276.

on the Speaker's behalf.<sup>16</sup> The Speaker may speak and vote in a committee of the whole House. Nowadays the right to speak in committee is usually exercised only when answering questions on the Estimates or on the performance of an office for which the Speaker is responsible, or when changes to the Standing Orders are under consideration. The Speaker may, and indeed often does, serve on select committees, such as the Officers of Parliament Committee and the Standing Orders Committee, but it would not be in keeping with the position for the Speaker to serve on a committee considering a party-politically contentious matter. Where the Speaker chairs a committee, written questions relating to matters for which the Speaker has responsibility in that capacity may be lodged.<sup>17</sup>

The Speaker's exalted position and the consequent constraints it imposes require members to treat the Speaker or any other temporary occupant of the Speaker's Chair with respect and deference. Members are obliged to acknowledge the Chair when entering or leaving the Chamber.<sup>18</sup> The office of Speaker cannot be introduced into debate by members quoting the Speaker's views or otherwise referring to the Speaker in the course of a speech or a question.<sup>19</sup> Nor can the Speaker be attacked, except by a motion of censure of which notice has been given.<sup>20</sup> Any statement in the House reflecting on the Speaker directly or indirectly is out of order; a suggestion of partiality on the part of the Speaker or any other occupant of the Chair may constitute a contempt of the House.<sup>21</sup> Accusations against the Speaker that reflect on the Speaker in that capacity or in respect of an office held by the Speaker *ex officio* (such as chairperson of the Parliamentary Service Commission) may also constitute a contempt.<sup>22</sup>

The procession between the Speaker's office and the Chamber at the commencement and conclusion of each sitting is a regular feature of each parliamentary day, with the Speaker preceded by the Speaker's assistant and the Serjeant-at-Arms carrying the Mace. The Speaker's route to and from the Chamber is blocked off by Chamber staff to allow unimpeded passage for the procession.<sup>23</sup> Since 2008, the Speaker has entered the Chamber for the commencement of each sitting from the Visitors' Lobby and proceeded through the Chamber, taking the Government side of the Table to the Chair.

On entering the Chamber at 2.00 pm, the Speaker is announced by the Serjeant-at-Arms as "Mr Speaker" or "Madam Speaker", members all stand in their places, and before reading the Prayer, the Speaker acknowledges the Prime Minister and the Leader of the Opposition. The Speaker enters at other times and leaves the Chamber via the Speaker's door to the left of the Chair. Members stand when the Speaker is about to leave the Chamber at the conclusion of a sitting and remain standing until the Speaker has left the Chamber.<sup>24</sup>

The Speaker may wear a full judge's wig, gown and tabs on formal occasions. This is a matter for the incumbent's individual discretion. However, in more recent times, Speakers have chosen their own attire, for example by wearing academic dress and a korowai (cloak) made of albatross feathers.<sup>25</sup> At the regular sittings of the House, the Speaker is less formally attired, wearing ordinary business dress.

<sup>16</sup> (1990) 510 NZPD 3514–3515 Burke.

<sup>17</sup> (2001) 592 NZPD 9701 Hunt.

<sup>18</sup> SO 85.

<sup>19</sup> (1931) 227 NZPD 595 Statham; (21 February 2013) 687 NZPD 9082 Carter.

<sup>20</sup> (1970) 368 NZPD 3202 Jack; (1 August 2006) 633 NZPD 4531; (17 October 2012) 684 NZPD 5879.

<sup>21</sup> Privileges Committee, report relating to a statement made by a member concerning the Speaker (30 November 1982) [1982] AJHR I.6 at 11–12.

<sup>22</sup> Privileges Committee *Question of privilege referred on 24 February 1998 relating to a reflection on the Speaker* (6 May 1998) [1996–1999] AJHR I.15C.

<sup>23</sup> (1982) 449 NZPD 5215 Harrison.

<sup>24</sup> SO 87.

<sup>25</sup> (9 December 2008) 651 NZPD 7 (Smith); (12 February 2013) 687 NZPD 7689 (Carter).

## Administrative responsibilities

As well as presiding over the House and chairing some select committees, the Speaker has a number of administrative responsibilities. The control and administration of the parliamentary precincts is vested in the Speaker on behalf of the House, whether Parliament is in session or not.<sup>26</sup> The Speaker may issue trespass notices relating to the parliamentary precincts and delegate the power to do so to others.<sup>27</sup> The Speaker has entered into protocols regulating the exercise of police and security service powers in the Parliament Buildings and grounds.<sup>28</sup> These protocols are considered by the Privileges Committee before being finally endorsed by the Speaker.<sup>29</sup>

The Speaker is deemed to be the “responsible Minister” for a number of offices of State. These are the office of the Auditor-General; the Office of the Clerk of the House of Representatives; the Office of the Ombudsmen; the office of the Parliamentary Commissioner for the Environment; and the Parliamentary Service.<sup>30</sup> During the House’s consideration in committee of the Estimates for or the performance of these offices, the Speaker occupies the Minister’s seat at the Table on the right of the Chairperson, and answers questions raised by members. The Speaker also attends the Estimates hearings on the votes for these offices if requested by the select committee concerned. The Speaker’s role in respect of each of these offices varies, with more involvement in the administration of the Parliamentary Service, by way of determining the services to be provided,<sup>31</sup> than in that of the others, which have functions determined by statute and act independently.

The Speaker chairs, ex officio, the Parliamentary Service Commission,<sup>32</sup> a statutory committee of members that advises the Speaker on the nature of the services to be provided to members of Parliament. The commission meets periodically. The Speaker determines the services to be provided by the Parliamentary Services<sup>33</sup> and the travel, accommodation and communication services to be made available to members.<sup>34</sup> The administrative head of the Parliamentary Service, the General Manager, is directly responsible to the Speaker in carrying out his or her responsibilities.<sup>35</sup> The Clerk of the House, as the principal officer of the Office of the Clerk, is directly responsible to the Speaker for its management.<sup>36</sup>

The Controller and Auditor-General, the Chief Ombudsman and the Parliamentary Commissioner for the Environment also have a direct relationship with the Speaker concerning the management of their offices (known as Offices of Parliament). However, in the case of the Offices of Parliament and the Office of the Clerk, the Speaker does not control the discharge of the substantive duties of the chief officers of those agencies. The Speaker’s role is confined to the administration

<sup>26</sup> Parliamentary Service Act 2000, s 26(1).

<sup>27</sup> Parliamentary Service Act 2000, s 26(2).

<sup>28</sup> “Policing functions within the parliamentary precincts—An agreement between the Speaker of the House of Representatives of New Zealand and the Commissioner of the New Zealand Police” (December 2007); “Execution of search warrants on premises occupied or used by Members of Parliament—An agreement between the Speaker of the House of Representatives of New Zealand and the Commissioner of the New Zealand Police” (October 2006); “Memorandum of understanding between New Zealand Security Intelligence Service (the Service) and Minister in charge of the New Zealand Security Intelligence Service (Minister) and the Speaker of the House of Representatives of New Zealand (Speaker)” (18 September 2012).

<sup>29</sup> Privileges Committee *Question of privilege concerning the agreements for policing, execution of search warrants, and collection and retention of information by the NZSIS* (11 July 2014) [2011–2014] AJHR 1.17D.

<sup>30</sup> Public Finance Act 1989, s 2(1).

<sup>31</sup> Parliamentary Service Act 2000, s 8.

<sup>32</sup> Parliamentary Service Act 2000, s 16(1).

<sup>33</sup> Parliamentary Service Act 2000, s 8.

<sup>34</sup> Parliamentary Service Act 2000, s 8; Members of Parliament (Remuneration and Services) Act 2013, ss 17 and 23.

<sup>35</sup> Parliamentary Service Act 2000, s 11.

<sup>36</sup> Clerk of the House of Representatives Act 1988, s 16.

and expenditure of the offices concerned, not their professional and statutory duties, for which they are responsible to the House as a whole.

In respect of the Speaker's administrative responsibilities, the Speaker may be asked written questions.<sup>37</sup> But a point of order cannot be raised relating to the Speaker's administrative duties. A point of order must relate to a matter of order in the House and not, for example, to the administration of the building<sup>38</sup> or correspondence with the Speaker as chairperson of the Parliamentary Service Commission.<sup>39</sup>

## Term of office

The Speaker assumes office on being confirmed by the Governor-General following the House's choice of Speaker being reported to His or Her Excellency.<sup>40</sup> (See Chapter 12 for the election of a Speaker.) The Speaker remains in office until the close of polling day at the next general election unless, by death or resignation, the office is vacated sooner.<sup>41</sup> The Speaker continues to hold office as chairperson of the Parliamentary Service Commission and continues to exercise the duties as the responsible Minister of the Office of the Clerk, the Parliamentary Service and the Offices of Parliament until the new Parliament first meets.<sup>42</sup> The salary and allowances of the Speaker also continue to be paid until this time.<sup>43</sup>

## DEPUTY SPEAKER

The Speaker's principal deputy is the Deputy Speaker. The first appointment of a Deputy Speaker by the House was made on 10 November 1992.<sup>44</sup> Until then, at the commencement of each Parliament, the House had appointed a Chairman of Committees whose chief duty was to chair the committee of the whole House. When, at the Speaker's request or in the Speaker's absence, the Chairman of Committees assumed the Speaker's Chair, the Chairman was known as the Deputy Speaker, but only while he or she was actually chairing the House.

In 1992 this position was effectively reversed. The House now, by resolution, appoints a member to be Deputy Speaker.<sup>45</sup> The Deputy Speaker is a full deputy of the Speaker for all the purposes of the Standing Orders, whether actually presiding over the House or not. Thus the Speaker's Standing Orders' powers can be exercised by the Deputy Speaker during an adjournment of the House or a recess of Parliament.<sup>46</sup> The Deputy Speaker may also act for the Speaker in respect of the filling of any electoral vacancies.<sup>47</sup> When the House goes into committee, the Deputy Speaker takes the Chair as Chairperson.

The appointment of the Deputy Speaker is usually made on the day of the State Opening of Parliament, after the House has returned to its Chamber following the delivery of the Speech from the Throne.<sup>48</sup> For this purpose a notice of motion must be given on the previous sitting day and appear on the Order Paper. A party leader or a whip may not be appointed as Deputy Speaker.<sup>49</sup> The appointment of a Deputy Speaker may be for a fixed period and a Deputy Speaker may be removed from office by resolution of the House. Otherwise the appointment continues until

<sup>37</sup> SO 379(2).

<sup>38</sup> (1990) 510 NZPD 3858–3859 Burke.

<sup>39</sup> (1992) 532 NZPD 13236 Gray.

<sup>40</sup> Constitution Act 1986, s 12.

<sup>41</sup> Constitution Act 1986, s 13.

<sup>42</sup> Parliamentary Service Act 2000, s 18(3); Public Finance Act 1989, s 2(1).

<sup>43</sup> Members of Parliament (Remuneration and Services) Act 2013, s 11(3); Parliamentary Service Act 2000, s 3.

<sup>44</sup> (1992) 531 NZPD 12103–12105.

<sup>45</sup> SO 26.

<sup>46</sup> SO 27.

<sup>47</sup> Electoral Act 1993, s 3(1).

<sup>48</sup> SO 14(1)(e).

<sup>49</sup> SO 30.

the dissolution or expiration of Parliament.<sup>50</sup> The Deputy Speaker's salary and allowances continue to be payable until the first meeting of the new Parliament.<sup>51</sup> A vacancy in the office of Deputy Speaker is filled in the same way as the initial appointment was made, by resolution on notice.<sup>52</sup>

Whenever the Speaker is absent at the commencement of a sitting, the Deputy Speaker takes the Chair without the need for any formal communication to the House.<sup>53</sup> Similarly, during a sitting the Speaker and the Deputy Speaker share the task of presiding over the House. The Speaker has deliberately vacated the Chair to allow the Deputy Speaker to rule on a matter in which the Speaker or the Speaker's electorate had an interest.<sup>54</sup> In the absence of the Speaker, the Deputy Speaker chairs the Parliamentary Service Commission.<sup>55</sup> If the office of Speaker becomes vacant, the Deputy Speaker may exercise the statutory powers of the Speaker regarding the parliamentary precincts, the Parliamentary Service and the Office of the Clerk.<sup>56</sup>

## ASSISTANT SPEAKERS

Up to two members may be appointed by resolution of the House as Assistant Speakers.<sup>57</sup> These appointments may be made on the day of the State Opening of Parliament after that of the Deputy Speaker.<sup>58</sup> A party leader or a whip may not be an Assistant Speaker.<sup>59</sup> Often one of the Assistant Speakers is a member of an Opposition party.

Assistant Speakers are deputies of the Speaker only in respect of the sittings of the House while they are actually presiding.<sup>60</sup> They cannot exercise the Speaker's statutory powers or any powers outside the House, though they may represent the Speaker on formal occasions, for example by receiving foreign dignitaries. Assistant Speakers hold office for the period named in the resolution appointing them or until the dissolution or expiration of Parliament, unless they are removed from office sooner by resolution of the House.<sup>61</sup> In the case of a vacancy (that is, when there are fewer than two Assistant Speakers at any one time), the House may appoint a new Assistant Speaker by resolution.<sup>62</sup> A special salary has been provided for Assistant Speakers since 1996.<sup>63</sup> This ceases on the dissolution or expiration of Parliament.

If the Speaker and the Deputy Speaker are absent at the commencement of a sitting, an Assistant Speaker may take the Chair.<sup>64</sup> During the course of a sitting, the Speaker, the Deputy Speaker and the Assistant Speakers share the task of presiding over the House between them.

## TEMPORARY SPEAKERS

Any presiding officer may during a sitting ask another member to preside over the House as temporary Speaker. This is done without any formal communication to the House, and the temporary Speaker merely replaces the Speaker or other

<sup>50</sup> SO 29.

<sup>51</sup> Parliamentary Service Act 2000, s 3.

<sup>52</sup> SO 31.

<sup>53</sup> SO 32.

<sup>54</sup> (1976) 404 NZPD 1552; (1993) 535 NZPD 15315.

<sup>55</sup> Parliamentary Service Act 2000, s 16(2).

<sup>56</sup> Parliamentary Service Act 2000, s 33.

<sup>57</sup> SO 28(1).

<sup>58</sup> SO 14(1)(e).

<sup>59</sup> SO 30.

<sup>60</sup> SO 28(2).

<sup>61</sup> SO 29.

<sup>62</sup> SO 31.

<sup>63</sup> See now, Parliamentary Salaries Determination 2015.

<sup>64</sup> SO 32.

presiding officer in the Chair.<sup>65</sup> A temporary Speaker performs the duties and exercises the authority of the Speaker over the House while presiding,<sup>66</sup> except that a temporary Speaker cannot accept a closure motion.<sup>67</sup> A temporary Speaker cannot assume the Chair at the commencement of a sitting or on the House resuming sitting following a report from the committee of the whole House.<sup>68</sup>

## POSITION OF MEMBERS DEPUTISING FOR SPEAKER

While presiding over the House, the Deputy Speaker, an Assistant Speaker or a temporary Speaker is the Speaker, and there can be no challenge to the validity or effectiveness of a decision taken by the House in the Speaker's absence. Likewise, a decision of a member deputising for the Speaker cannot be appealed to the Speaker.<sup>69</sup> When ruling on a matter arising in the House, a ruling by a Deputy Speaker, an Assistant Speaker or a temporary Speaker is equivalent to that of the Speaker.<sup>70</sup>

The Deputy Speaker and the Assistant Speakers participate in debates in the House, though less frequently than other members. Which debates to take part in is a matter for their judgement.<sup>71</sup> But it is the practice for a presiding officer not to speak in a debate over which he or she has been officiating.<sup>72</sup> It would be improper for a member when speaking in a debate to refer to his or her status as a presiding officer.<sup>73</sup> It would also be improper for other members to do so by way of debate.

---

<sup>65</sup> SO 33(1).

<sup>66</sup> SO 33(2).

<sup>67</sup> SO 136(4).

<sup>68</sup> (1994) 542 NZPD 3696–3697.

<sup>69</sup> (1925) 208 NZPD 468–469 Statham; (1928) 218 NZPD 577 Statham.

<sup>70</sup> (1980) 429 NZPD 379–380 Harrison.

<sup>71</sup> (1974) 395 NZPD 5580 Whitehead; (1992) 531 NZPD 12131 Gray; (2001) 591 NZPD 8396 Braybrooke (Deputy Speaker).

<sup>72</sup> (2001) 591 NZPD 8397 Braybrooke (Deputy Speaker).

<sup>73</sup> *Ibid.* at 8398.

## CHAPTER 6

# Administration of the House

### CLERK OF THE HOUSE OF REPRESENTATIVES

The principal permanent officer of the House is the Clerk of the House of Representatives. The Clerk is appointed by warrant by the Governor-General, on the recommendation of the Speaker after consultation with the Prime Minister, the Leader of the Opposition and such other members, usually the other party leaders, as the Speaker considers desirable.<sup>1</sup> A Deputy Clerk is appointed in the same way.

The Clerk's core functions are set out in statute.<sup>2</sup> They include noting all proceedings of the House and its committees; carrying out duties conferred on the Clerk by law and by the Standing Orders and practices of the House; and acting as the principal officer (chief executive) of the Office of the Clerk.

When Parliament first meets after a general election, the Clerk administers the oath or affirmation to members and presides over the House for the election of a Speaker. Statutes impose a number of other specific duties and functions on the Clerk. The Clerk has custody of all ballot papers used in general elections and by-elections, and is responsible, along with the Chief Electoral Officer, for destroying them after they have been held for six months.<sup>3</sup> The Clerk is also responsible for certifying that certain procedures in the promotion of a citizens initiated referendum have been followed. (See Chapter 40.) The Clerk may delegate any statutory or Standing Orders functions or powers to the Deputy Clerk or another officer of the House.<sup>4</sup> (The Clerk's functions of determining the precise form of an indicative referendum petition and certifying whether the petition has been signed by a sufficient number of eligible electors may be delegated only to the Deputy Clerk.<sup>5</sup>) The Deputy Clerk or a person appointed by the Speaker to act as Clerk may also perform the Clerk's Standing Orders functions.<sup>6</sup>

### Office of the Clerk

The office of State supporting the Clerk of the House in the discharge of the Clerk's functions is known as the Office of the Clerk of the House of Representatives. The Clerk is responsible to the Speaker, on behalf of the House, for the efficient, effective and economical management of the Office.<sup>7</sup> Although not a

<sup>1</sup> Clerk of the House of Representatives Act 1988, s 7.

<sup>2</sup> Clerk of the House of Representatives Act 1988, s 3.

<sup>3</sup> Electoral Act 1993, s 189.

<sup>4</sup> Clerk of the House of Representatives Act 1988, s 12; SO 3(1).

<sup>5</sup> Citizens Initiated Referenda Act 1993, s 23(1).

<sup>6</sup> SO 3(1).

<sup>7</sup> Clerk of the House of Representatives Act 1988, s 16.

Government department, and therefore not part of the public service, the Office of the Clerk administers a vote containing appropriations for outputs associated with its activities. The Speaker is the responsible Minister for the vote, which is administered in the same way as one administered by a Government department.<sup>8</sup>

Staff are appointed to the Office of the Clerk by the Clerk of the House and are employed under employment agreements negotiated with the Clerk. The Office is organised into three main divisions.

- House Services, which provides procedural and operational advice for presiding officers and members, and services the sittings of the House, including the vetting of oral and written questions, petitions and motions. It records the decisions of the House in the *Journals* and produces the official report of parliamentary debates (*Hansard*). The certification and presentation of bills for the Royal assent (through the Table Office) and the distribution of parliamentary papers, Order Papers and bills (through the Bills Office) are also the responsibility of House Services. It also provides Te Reo Māori translation and interpretation services for the House and its committees, specialist legal services including a members' legislative drafting service, and parliamentary policy advice as part of the Clerk's advocacy for Parliament; and it administers the *Register of Pecuniary and Other Specified Interests*.
- Select Committees and Parliamentary Engagement, which provides procedural and operational advice for committee chairpersons and members, services the meetings of select committees, records the decisions of select committees in their minutes, informs select committee scrutiny and brokers specialist subject advice, and drafts select committee reports. It provides advice on inter-parliamentary relations and manages the inter-parliamentary relations programme and engagement with inter-parliamentary organisations. It is also responsible for communications, including maintaining the Parliament website, and co-ordinating the Office's contributions to parliamentary education programmes.
- Organisational Performance, which is responsible for co-ordinating parliamentary records retention, and provides records management, human resources, planning, finance, risk management and other services for the Office.

## **Journals**

The Clerk is responsible for noting all the proceedings of the House by recording every motion considered by the House and the decision reached on it. The Clerk also records any other items of business transacted by the House, such as the presentation of a petition or the answering of questions, recording not what was said by individual members in speeches but what the House as a whole has decided. A similar note of the proceedings is maintained when the House goes into a committee of the whole House. The rough notes of proceedings made in the House are elaborated later and constitute the *Journals of the House*, which are published by the Clerk.<sup>9</sup> The *Journals of the House* is the official record of the proceedings of the House. It provides at least presumptive evidence of the business transacted by the House.<sup>10</sup>

The journal for each sitting week is first published early in the following week on the Parliament website. This version does not include proceedings of the committee of the whole House. The complete journal, including such proceedings, is published later, both in print and on the Parliament website. At the end of each session the *Journals* are assembled into sessional volumes.

---

<sup>8</sup> Public Finance Act 1989, s 2(1).

<sup>9</sup> SO 8.

<sup>10</sup> Legislation Act 2012, s 19; *Baburao alias PB Samant v Union of India* [1988] AIR (SC) 440.

Schedules are also compiled and bound with the journal, showing in a tabular form details of legislation dealt with by the House, papers and petitions presented to it, and select committees appointed. An appendix to the journal published from 1858 to 1999 contains select committee reports and other reports published by order of the House (Appendix to the Journals of the House of Representatives). (From 1854 to 1856 the *Journals* and reports presented to the House were bound in one publication known as the *Votes and Proceedings*.) Since 1999, reports published by order of the House are published in an annual series, Parliamentary Papers. An appendix to the journal continues to be published but is confined to specifically parliamentary material such as select committee reports, Government responses to them, and reports on the inter-parliamentary relations programme. (See Chapter 37.)

## Records

The Clerk has custody of the *Journals* and of all petitions and papers presented to the House and other records belonging to the House. These documents must not be taken from the House without the House's or the Speaker's permission.<sup>11</sup> The documents in the Clerk's custody include all evidence presented to select committees, which must be handed over to the Clerk when the committee's report is presented unless the House instructs a committee to retain confidential evidence in its own possession.<sup>12</sup> The House's papers and records as held by the Clerk can be seen by any member. Subject to any order of the House, they are also regarded as public documents and will be made available to other persons unless this would be contrary to the law. This would be the case, for instance, if a document were subject to a court order protecting its confidentiality or if it contained obviously defamatory material not protected by an order of the House. In these circumstances the Clerk would not disseminate the document beyond members.<sup>13</sup> Occasionally the House directs the Clerk not to disclose certain material in the Clerk's custody to any person,<sup>14</sup> and secret evidence in any event remains confidential unless the House authorises its release.<sup>15</sup> The Clerk also protects the material from damage or destruction and endeavours to maintain the privacy of personal information held. The Clerk must retain the originals of all papers and records for at least three years before they may be disposed of.

The Chief Archivist may accept parliamentary records for deposit in Archives New Zealand.<sup>16</sup> Accordingly, before disposing of such documents, the Clerk must consult the Chief Archivist.<sup>17</sup> Conditions for the deposit of parliamentary records may be agreed between the Clerk and the Chief Archivist.<sup>18</sup> An archiving policy is agreed periodically with Archives New Zealand for the transfer to the archives of parliamentary materials after periods that vary depending upon the class of documents involved, and for the destruction of materials that are available in other forms. Parliamentary records (or any other records) do not become subject to the Official Information Act merely because they have been deposited with Archives New Zealand.<sup>19</sup>

---

<sup>11</sup> SO 10.

<sup>12</sup> (1894) 86 NZPD 909 O'Rorke.

<sup>13</sup> (1994) 539 NZPD 470 Tapsell.

<sup>14</sup> See, for example: (1996) 557 NZPD 14312 (Education and Science Committee proceedings on its inquiry into the sale of Tamaki Girls College).

<sup>15</sup> SO 219(3).

<sup>16</sup> Public Records Act 2005, s 42(1)(a).

<sup>17</sup> SO 11.

<sup>18</sup> Public Records Act 2005, s 42(2).

<sup>19</sup> Public Records Act 2005, ss 42(4) and 58.

## SERJEANT-AT-ARMS AND THE MACE

The Serjeant-at-Arms is an officer of the House who is responsible for maintaining order in and around the Chamber. The Serjeant-at-Arms may require strangers who interrupt proceedings or otherwise misconduct themselves in the galleries to leave.<sup>20</sup> The Serjeant-at-Arms can also participate in select committees, at the request of the chairperson of the committee, to remove strangers or non-members of the committee whose conduct is disorderly. The Serjeant-at-Arms enforces orders of the House for the removal of members from the Chamber when they have been ordered to withdraw or suspended from the service of the House, returns members who have been directed to return and apologise, collects fines and secures a written apology in connection with matters of privilege. At the direction of the House, the Serjeant-at-Arms can bring a person before the bar of the House to be questioned.

Originally, the Serjeant-at-Arms was a Royal officer with the power to arrest without warrant. The House of Commons in the 15th century induced the Crown to appoint such an officer to enable the House to order the arrest of persons who offended against its privileges. The symbol of the Serjeant's authority to arrest was the Mace he carried. In time the Mace came to be regarded as the formal symbol of the authority of the House.<sup>21</sup> Until 1985, the New Zealand Government appointed the Serjeant-at-Arms on the recommendation of the Speaker.<sup>22</sup> However, while the Standing Orders have since 1992 allowed for the appointment to be made by the Crown,<sup>23</sup> in fact this has not occurred, and Serjeants-at-Arms have been appointed under the Speaker's authority. The role thus has evolved to the point where, in the New Zealand context, the Serjeant-at-Arms can be best viewed as a parliamentary officer, rather than a Royal officer.

The Serjeant-at-Arms is now a staff member of the Office of the Clerk who has been directed by the Speaker to perform the functions and exercise the powers of Serjeant-at-Arms. In making this direction, the Speaker delegates the authority needed to perform those functions and exercise those powers, including the ability to delegate in turn. The Speaker can also direct and authorise other persons to perform the duties of Serjeant-at-Arms on an acting basis.<sup>24</sup> In practice, the Serjeant-at-Arms further delegates these functions and powers to the Deputy Serjeant-at-Arms and other Chamber officers to provide assistance during sittings, and the Speaker has authorised security officers employed by the Parliamentary Service to maintain order in the galleries.

The Serjeant-at-Arms precedes the Speaker in the Speaker's formal procession, carrying the Mace on the shoulder to and from the House at the beginning and end of each sitting, and also when the Speaker visits Government House to seek confirmation of election as Speaker (in which case the Mace is held in the crook of the Serjeant's arm until the Governor-General's confirmation is forthcoming) or to present any address from the House. During a sitting with the Speaker or one of the Speaker's deputies in the Chair, the Mace remains on the Table of the House. When the Speaker leaves the Chair for the House to go into a committee of the whole House, the Mace is placed under the Table.<sup>25</sup>

While the Mace has become a symbol of the House in New Zealand and in the United Kingdom, it is no more than that. The House had no Mace at all for the first 12 years of its existence, and although the absence of a Mace is not usual, it does

<sup>20</sup> SO 43.

<sup>21</sup> House of Commons (UK) *Report of select committee on parliamentary privilege* [1967] HC 34.

<sup>22</sup> Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [12.8.1].

<sup>23</sup> SO [1992] 3.

<sup>24</sup> SO 3(1) Serjeant-at-Arms.

<sup>25</sup> SO 171.

not prejudice the continued sitting of the House or affect the validity of anything done at such a sitting.<sup>26</sup>

The first Mace was presented to the House by its first Speaker, Sir Charles Clifford, in 1866, and was destroyed in the Parliament House fire of 1907. A temporary wooden mace was then used until, on 7 October 1909, the present Mace was donated to the House by the Prime Minister, Sir Joseph Ward, and his Cabinet. This mace was ordered from England at the Ministers' own expense. The Mace, which is a replica of the one used in the House of Commons, is made of silver gilded with 18 carat gold. It is 1.498 metres long and weighs 8.164 kilograms.<sup>27</sup>

## REPORTING OF DEBATES

### *Hansard*

When the House first met in 1854 there were no arrangements for the official reporting of debates. Debates were, however, reported in the colony's newspapers in much greater detail than they are today, and to help the press some members took notes of speeches delivered by their friends, which were later revised and submitted for publication.<sup>28</sup> Nevertheless, there were numerous complaints from members of inaccurate reporting of speeches, and several times over the next 12 years the House expressed its view that full and accurate reports of its debates should be published under its authority. These demands became more insistent when Parliament moved from Auckland to Wellington, for members were extremely dubious of the capability of the Wellington press to report proceedings adequately. At the start of the 1867 session, the Government (on its own initiative) appointed an editor and a reporting staff to take down and report the speeches made in both the House and the Legislative Council.<sup>29</sup> The control of this staff and the arrangements for the publication of the debates were at first placed in the hands of a select committee composed of members of both Houses.

The expression "Hansard" derives from the name of the family responsible for arranging the private and official reporting of the British Parliament throughout most of the 19th century. The term was already widely used at the time official reports began in New Zealand, and is now used as shorthand for the official report of parliamentary debates.

In 1885 the pre-*Hansard* parliamentary debates from 1854 to 1866 were published in an official series. All living members who could be traced were asked to supply any reports of speeches in their possession. Newspaper reports of speeches were consulted, as was the official record of proceedings made by the Clerk in the *Votes and Proceedings* and the *Journals*. Even so, many of the speeches made in the two Houses during this period were wholly lost or were recorded only in a much abbreviated form.<sup>30</sup>

The making of an official report is authorised of such portions of the proceedings of the House and its committees as the House or Speaker determines.<sup>31</sup> The Clerk of the House is responsible for the making of the official report,<sup>32</sup> and the staff engaged on this work are employed in the Office of the Clerk. Since 1996 all proceedings in committees of the whole House have been reported (previously only some 10 per cent of proceedings were reported). Select committee proceedings are not reported comprehensively, although a recording of evidence is often taken and

26 (1898) 103 NZPD 257.

27 Alan Sutherland "Symbol of Authority. The Mace in New Zealand" (1947) 4(1) *Numismatic Journal*.

28 (1854–1855) NZPD 184.

29 (1867) 1 NZPD 17.

30 (1854–1855) NZPD, preface.

31 SO 9(1).

32 Clerk of the House of Representatives Act 1988, s 3(e).

such recordings may be transcribed and published.<sup>33</sup> Secret sessions and sittings or parts of sittings from which strangers have been excluded are not reported.<sup>34</sup>

## Form of the report

The form of the *Hansard* report is determined from time to time by the House or the Speaker.<sup>35</sup> *Hansard* is a report of speeches made in the House, not necessarily of all the business transacted there. A full record of the business transacted by the House, but without any of the reasons expressed in speeches, is made by the Clerk for inclusion in the House's *Journals*. If an item of business does not elicit any debate or discussion, it may not be noted in *Hansard* at all, as happens, for example, with the presentation of petitions and papers.

Speeches are transcribed directly from digital recordings of the debate, with staff seated at a desk in the middle of the Chamber to monitor the debate by recording the sequence of speakers and any interjections. The *Hansard* report records in direct speech all speeches made in the House, edited to omit repetitions and redundancies. Members are tied to what they have said in the House and may make only minor or grammatical alterations to the draft report. The meaning or substance of what was said cannot be altered in any way, though occasionally there may be controversy as to whether this has happened.<sup>36</sup> The Clerk may bring to the Speaker's attention any attempt by a member to make extensive corrections to the transcript.<sup>37</sup>

Interjections are reported only if the member speaking replies to them or remarks on them in the course of his or her speech.<sup>38</sup> If an interjection cannot be heard on the recording, or cannot be picked up by the *Hansard* staff in the Chamber, the comment “[*Interruption*]” is inserted to give context to the member's response.

Maps, documents, photographs, pictures or cartoons cannot be inserted in *Hansard* except by resolution of the House.<sup>39</sup> *Hansard* does not record which member objected if a request for leave is refused.<sup>40</sup> The Standing Orders formerly required the recording of replies to written questions in *Hansard*. For this purpose a separate *Hansard* publication (known as the *Hansard Supplement*) was published from 1989 to 2002. Written questions and replies are now published only on the Parliament website.

Occasionally the House has (on notice having been given) ordered proceedings not to be reported in *Hansard*, for example when the debate on the second reading of a bill (which had taken place the previous day and had been recorded by the *Hansard* reporters) was ordered not to be published.<sup>41</sup> In respect of speeches or parts of speeches given in Te Reo Māori, an official English translation is published alongside the Te Reo Māori text.<sup>42</sup> Like all speeches published in *Hansard*, the translated speech is subject to the approval of the member who gave the speech.<sup>43</sup> (See pp 224–226 for the translation of speeches.)

*Hansard* is published by order of the House.<sup>44</sup> Members are sent a link to the Draft Transcript within two and a half hours of delivering their speech, which

<sup>33</sup> SO 231(1).

<sup>34</sup> SO 42(c).

<sup>35</sup> SO 9(2).

<sup>36</sup> See Peter Clarke *The Keynesian Revolution in the Making 1924–1936* (Clarendon Press, Oxford, 1988) at 67 (text of Budget speech apparently altered for inclusion in *Hansard*).

<sup>37</sup> (1960) 323 NZPD 1180 Macfarlane.

<sup>38</sup> (1910) 153 NZPD 362 Guinness.

<sup>39</sup> (1898) 103 NZPD 526 Guinness (Deputy Speaker); (1905) 133 NZPD 108 Guinness.

<sup>40</sup> (1995) 546 NZPD 6177 Tapsell.

<sup>41</sup> (1 June 1888) [1888] JHR 67–68 (Contagious Diseases Bill).

<sup>42</sup> Ibid.

<sup>43</sup> (1997) 562 NZPD 3193 Kidd.

<sup>44</sup> SO 9(3).

is simultaneously published on the Parliament website.<sup>45</sup> Members may then submit corrections. The *Hansard* transcript for an entire sitting day (the Daily) is published when all of the debates for the day have been edited and proofread. An uncorrected transcript of each day's oral questions is available on the Parliament website approximately two hours after the end of question time.<sup>46</sup> All text is subject to correction until it is published in the bound volume.

The bound volume (*New Zealand Parliamentary Debates*), published under the authority of the House, is the official report of its proceedings. It comprises the debate for approximately four sitting weeks. The volumes are numbered consecutively, beginning with number one in 1867, and are usually cited by the year, volume and page number. The official series of debates compiled for the years 1854–1866 contain one or more sessions to each volume. There is no copyright in *Hansard*.<sup>47</sup>

## **Parliamentary Press Gallery**

The gallery immediately above and behind the Speaker's Chair is reserved for the use of accredited members of the Parliamentary Press Gallery. These members are representatives of news agencies, radio stations and television channels supplying parliamentary news from within the Parliament Buildings. Membership of the Parliamentary Press Gallery is granted by the Speaker on application by the chairperson of the Press Gallery (who is elected by the other members).

As well as admittance to the press gallery in the Chamber itself, Press Gallery members may be provided with office accommodation and other facilities in Parliament House subject to rules made by the Speaker. Members of the Press Gallery are permitted to dine at Bellamy's and to use the Parliamentary Library.

Press Gallery members may make a record of the proceedings in the House and at select committees, subject to control by the House, the Speaker or the committee concerned. The Press Gallery is subject to the general control of the Speaker, who from time to time makes rules for its members.<sup>48</sup>

## **BROADCASTING OF PROCEEDINGS**

### **Radio**

The House of Representatives was the first legislative chamber in the Commonwealth to have its debates broadcast. The first proceeding to be broadcast was the election of the Speaker on 25 March 1936.<sup>49</sup> Continuous sound broadcasts of the proceedings are made by Radio New Zealand Limited on its AM network as a condition of holding the licence for the network.<sup>50</sup> The AM network has transmitters in Auckland, Waikato, the Bay of Plenty, Napier, Wellington, Christchurch, Dunedin and Southland.<sup>51</sup> The coverage is available to approximately 82 per cent of the population.<sup>52</sup>

The conditions under which the broadcast is made are agreed between Radio New Zealand Limited and the Clerk of the House. The Office of the Clerk contracts Radio New Zealand Limited to provide the service.

The Standing Orders provide for the House's proceedings to be broadcast on radio during all hours of sitting.<sup>53</sup> The sitting continues regardless of any

<sup>45</sup> Standing Orders Committee Review of Standing Orders (27 September 2011) [2008–2011] AJHR I.18A at 10.

<sup>46</sup> (2002) 602 NZPD 54 Hunt.

<sup>47</sup> Copyright Act 1994, s 27(1); Copyright Act Commencement Order 2000.

<sup>48</sup> Speaker of the House of Representatives "Rules of the Parliamentary Press Gallery" (11 May 2011).

<sup>49</sup> *New Zealand Listener* (28 March 1981).

<sup>50</sup> Radiocommunications Act 1989, s 177(2)(a).

<sup>51</sup> <[www.radionz.co.nz](http://www.radionz.co.nz)>.

<sup>52</sup> <[www.radionz.co.nz](http://www.radionz.co.nz)>.

<sup>53</sup> SO 46(1).

interruption to the broadcast.<sup>54</sup> Broadcasting is discontinued during any period for which strangers have been ordered to withdraw from the Chamber.<sup>55</sup>

Microphones are provided at each desk in the Chamber and at the Table. The Speaker's and the Chairpersons' microphones are continuously "live", but subject to a mute button controlled by the presiding officer. The control of the other microphones is in the hands of a technician in a booth at the far end of the Chamber. A member's microphone is activated when that member is called to speak.

The live radio broadcast, as an extension of the debates in the House, is absolutely protected against legal liability.<sup>56</sup> The restriction on any unauthorised publication of a report or account of an inquiry before the Inspector-General of Intelligence and Security does not apply in respect of the broadcasting of parliamentary proceedings.<sup>57</sup>

In 1982 Radio New Zealand Limited, with the Speaker's concurrence, began to preserve material from the parliamentary broadcast in its sound archive. Since 1994, daily and weekly programmes summarising the work of the House have been broadcast using funding provided by the Office of the Clerk.<sup>58</sup>

## Television

The proceedings at the opening of Parliament were first televised in 1962.<sup>59</sup> In 1986 the House admitted television cameras for a week as a trial, with live coverage of proceedings up to the end of question time, the remainder of the sitting being recorded and used for news programmes. Subsequently, special occasions such as the Budget were televised. In 1989 the Standing Orders Committee recommended that the proceedings of the House be made available for television coverage. This recommendation has been reflected in the Standing Orders.<sup>60</sup>

In 2000 a satellite broadcaster began to transmit the House's proceedings live on a news channel each sitting day until the end of question time, with repeat broadcasts in the evening.<sup>61</sup>

Until 2007, television companies shot their own footage, usually from the galleries. In July 2007 Parliament Television (PTV) was established to provide official television coverage, with live televising of all sittings of the House. It can now be watched via satellite and terrestrial platforms, and the Parliament website.

PTV is managed and funded by the Office of the Clerk. Eight cameras are fixed to the walls of the Chamber and controlled remotely from a production gallery elsewhere in the parliamentary complex. All House proceedings are broadcast live, with repeat showings at 6 pm and 10 pm of the start of the day and question time (provided that the House is not sitting at those times). On Thursdays, the complete day's proceedings are re-shown from 6 pm, provided that the House is not sitting in the evening. At other times, the channel broadcasts information, for example giving the deadlines for submissions to select committees.

The Standing Orders set out the rules with which the provider of official television coverage of the House must comply.<sup>62</sup> Coverage is normally required to be medium-range, using head and shoulders shots of the member called to speak. However, wide angle and reaction shots may be used to reflect the business being transacted. Officials should be shown only when they are participating in proceedings. Coverage of interruptions from the gallery and close-ups are not permitted.

<sup>54</sup> (1985) 466 NZPD 7110–7111.

<sup>55</sup> SO 42(d).

<sup>56</sup> Parliamentary Privilege Act 2014, s 5(1).

<sup>57</sup> Inspector-General of Intelligence and Security Act 1996, s 29(6).

<sup>58</sup> "Covering the House" *New Zealand Listener* (26 March 1994).

<sup>59</sup> John E Martin *The House—New Zealand's House of Representatives 1854–2004* (Dunmore Press Ltd, Palmerston North, 2004) at 268.

<sup>60</sup> SO 46(1).

<sup>61</sup> (2000) 587 NZPD 5408 Hunt.

<sup>62</sup> SOs, App D.

PTV's coverage is available to other broadcasters, though news organisations represented in the Press Gallery may film from the galleries to produce supplementary material. The Serjeant-at-Arms is informed beforehand so that any necessary administrative arrangements can be made, but formal permission is not necessary. Space has been made available in the galleries to facilitate such filming. The rules for filming that apply to the provider of official television coverage also apply to other filming from the gallery. All coverage must also conform with general broadcasting standards.

The Serjeant-at-Arms will intervene if it becomes apparent that filming is being done outside the rules. Broadcasters who offend against the rules may have the privilege of filming in the Chamber withdrawn. A television company was banned by the Speaker from filming in the Chamber for three days for showing a member who did not have the call.<sup>63</sup> On another occasion, when a complaint was made to the Speaker that a television news item had juxtaposed two statements by members made on different days so as to suggest that they were a direct exchange on the same day, the Speaker received a letter from the television company acknowledging its mistake and apologising for the error.<sup>64</sup>

A live broadcast of the House is absolutely protected against legal liability.<sup>65</sup> This protection extends to replays on PTV, which are regarded as the publication of an official report of proceedings in Parliament. A report by another broadcaster of proceedings in Parliament that uses PTV, or other material, if not made under the House's or a committee's authority, is protected by qualified immunity.<sup>66</sup> The restriction on any unauthorised publication of a report or account of an inquiry before the Inspector-General of Intelligence and Security does not apply in respect of the televising of Parliament.<sup>67</sup>

There is no official television coverage of select committee proceedings. News organisations may film public proceedings of select committees with the approval of the committee concerned. Committees commonly give general permission for such filming to take place, but may consider the issue meeting by meeting.<sup>68</sup>

Anyone filming in select committee meetings must do so in accordance with the *Protocol for interviewing members, filming, and photographing in Parliament Buildings*, May 2011. The protocol sets out conditions for filming and photographing within the parliamentary complex elsewhere than in the Chamber. The fundamental principle is that members must have free access to all places where they may wish to participate in parliamentary proceedings. This includes the Chamber and select committee meeting rooms, but also anywhere to which access is necessary for other proceedings, such as the lodging of oral questions or of members' bills for the ballot. Any obstruction of such access may be treated as a contempt. Members must also have unimpeded access to their offices and other parts of the complex.

The protocol allows members of the Press Gallery and their associates to film and photograph in permitted areas without seeking permission from the Speaker, though in some areas additional permission is required, for example from the Parliamentary Librarian for the Parliamentary Library. Filming and photography by people who are not members of the Press Gallery always requires the specific permission of the Speaker. The *Protocol* provides guidelines on media access to the House and select committees, on interviewing, filming or photography in foyers, corridors and access ways, and on access to members' offices and other locations.

<sup>63</sup> Hon Margaret Wilson, Speaker "TV3 banned from filming in Chamber for three days" (media release, 28 August 2006).

<sup>64</sup> (2000) 586 NZPD 4969–4970 Hunt.

<sup>65</sup> Parliamentary Privilege Act 2014, s 5(1).

<sup>66</sup> Parliamentary Privilege Act 2014, s 19.

<sup>67</sup> Inspector-General of Intelligence and Security Act 1996, s 29(6).

<sup>68</sup> Speaker of the House of Representatives "Protocol for interviewing members, filming, and photographing in Parliament Buildings" (11 May 2011).

In 2010 two television companies had their passes to the basement car park in Parliament House temporarily withdrawn after camera crews pursued a member through areas in which filming was not permitted.<sup>69</sup>

## Online coverage

The internet has become a key source of information about the House. PTV is streamed on the Parliament website. Since 2009 an archive of PTV coverage has been available online. Every speech made in the House is added to the archive a short time after it is delivered. Radio New Zealand streams live audio coverage of sittings. Podcasts summarising daily and weekly proceedings are also available.

A trial of live video webcasting of public hearings of evidence from select committees began in 2013. The Standing Orders Committee recommended to the Government that financial provision be considered for implementing webcasting of hearings of evidence from any select committee room in the parliamentary precincts. Any select committee may choose not to have its proceedings webcast. On a few occasions during the trial committees chose not to webcast proceedings because a sensitive topic was being discussed.<sup>70</sup>

## Stills photography

Photographs of the House at work exist from the 19th century, but they remained relatively rare, except on Budget day, until comparatively recently.

In 2000 the conditions on stills photography were aligned with those on televising the House. The same rules and conditions apply to both.<sup>71</sup>

The ease with which photographs can be taken and shared on social media has led to some members taking photographs in the Chamber and posting them on the internet, sometimes with additional comments, while the House is sitting. In 2015 the issue was part of a Privileges Committee's consideration of the use of social media to report on parliamentary proceedings and to reflect on members, including the Speaker. The committee took the view that the Speaker should authorise filming and photography on the floor of the House during the House's proceedings. It recommended that the Speaker produce guidelines for members and the media.<sup>72</sup>

## PARLIAMENTARY SERVICE

From 1854 onwards administrative services related to the meetings of Parliament were devolved to the Clerk of the House. There was a gradual accretion of providers of such services in the 19th century (messengers, library, Hansard reporters, caterers) and into the 20th century (executive secretaries, research units, security staff, out-of-Parliament secretaries and so on).

As early as 1868 it was suggested that the Speaker, perhaps as head of a commission of members, should be responsible for the legislative estimates.<sup>73</sup> Accordingly, the estimates for the House and the Legislative Council were, up to 1891, placed under the control of the respective presiding officers. In that year the House indicated that in future the estimates of expenditure for the legislature should be the responsibility of the Government,<sup>74</sup> and subsequently a Minister took charge of the legislative estimates, the first to do so being the Minister of Justice. In 1912,

<sup>69</sup> "TV networks punished for Chris Carter coverage" *The New Zealand Herald* (online ed, 17 June 2010).

<sup>70</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 16–17.

<sup>71</sup> (2000) 586 NZPD 4970 Hunt.

<sup>72</sup> Privileges Committee *Question of privilege regarding use of social media to report on parliamentary proceedings* (15 September 2015) AJHR I.17A at 14–15.

<sup>73</sup> Correspondence as to arrangements for the meeting of the legislature (9 July 1868) [1868] AJHR D.2.

<sup>74</sup> (1891) 74 NZPD 723–730.

following a general reorganisation of the public service, a Minister was specifically designated to be responsible for drawing up and presenting to Parliament estimates of expenditure for the legislative service, though the two Speakers retained control of the staff employed in their respective departments. With the growth in size and diversity of legislative staff, the Speaker's administrative control diminished and the Minister in charge of the department (which was known as the Legislative Department) came to exercise a control over staff that was similar in most respects to staff control in Government departments. This arrangement was maintained after the Legislative Council was abolished, and lasted until 1985.

On 1 October 1985 a new parliamentary agency, the Parliamentary Service, was created. The Parliamentary Service is principally responsible for providing administrative and support services to the House and to the members of the House and for administering the payment of funding entitlements provided for parliamentary purposes.<sup>75</sup> As well as providing services to members of Parliament, the Parliamentary Service provides services to the other offices and departments of State that occupy accommodation in the parliamentary complex—the Office of the Clerk, the Parliamentary Counsel Office, the Department of the Prime Minister and Cabinet, and the Department of Internal Affairs (Ministerial support). The administrative and support services provided to the House and to members of Parliament and the funding entitlements for parliamentary purposes are subject to a triennial review by a committee appointed by the Speaker.<sup>76</sup>

The General Manager of the Parliamentary Service is the administrative head (chief executive) of the service.<sup>77</sup> The General Manager is responsible to the Speaker for carrying out the duties and functions of the service, for tendering advice to the Speaker and the Parliamentary Service Commission, for the general conduct of the service and for its efficient, effective and economical management.<sup>78</sup> The General Manager is also ex officio a member of the Parliamentary Corporation.<sup>79</sup> The General Manager is appointed for a term of five years by the Governor-General on the recommendation of a committee chaired by the Speaker and consisting of members of Parliament and the State Services Commissioner.<sup>80</sup>

The Parliamentary Service is not a department of the public service and is not part of the executive government at all.<sup>81</sup> It nevertheless administers a vote containing appropriations for outputs, as if it were a Government department. The responsible Minister for the vote is the Speaker.<sup>82</sup> The core staff employed by the Parliamentary Service are engaged in providing building maintenance, research and information services, security, reception, travel services, information communications and technology services, and general administration. However, the majority of staff, while they are employees of the Parliamentary Service, work directly for members or parties on fixed-term contracts. Core staff are generally employed on a permanent basis.<sup>83</sup> Many of the personnel provisions that apply to

<sup>75</sup> Parliamentary Service Act 2000, s 7.

<sup>76</sup> Parliamentary Service Act 2000, s 20(1); Review Committee on the First Triennial Review of Parliamentary Appropriations Resourcing Parliament (16 October 2002) NZPP A.2(a); Committee on the Second Triennial Review Resourcing Parliament—Parliamentary Appropriations Review (10 November 2004) NZPP A.14; Report of the Third Triennial Appropriations Review Committee Parliamentary Appropriations (4 April 2007) A.14; Report of the Fourth Triennial Appropriations Review Committee Parliamentary Appropriations (1 July 2010) A.14; Report of the Fifth Triennial Appropriations Review Committee Parliamentary Appropriations (30 January 2013) A.14; Report of the Sixth Triennial Appropriations Review Committee Parliamentary Appropriations (6 November 2015) A.14.

<sup>77</sup> Parliamentary Service Act 2000, s 10.

<sup>78</sup> Parliamentary Service Act 2000, s 11.

<sup>79</sup> Parliamentary Service Act 2000, s 29(1)(b).

<sup>80</sup> Parliamentary Service Act 2000, sch 1, cls 1 and 4.

<sup>81</sup> Parliamentary Service Act 2000, s 6(2).

<sup>82</sup> Public Finance Act 1989, s 2(1).

<sup>83</sup> Government Administration Committee, report on 2004/05 Estimates—Vote Parliamentary Service (16 July 2004) [2002–2005] AJHR, I.19C at 181.

staff employed in departments of the public service apply to employment in the Parliamentary Service.<sup>84</sup>

## Parliamentary Service Commission

The Parliamentary Service Commission is the body representing members that is responsible for advising the Speaker as to what services are to be provided to the House and its members. The commission has three principal functions:

- advising the Speaker on proposed Speaker's Directions, issued under section 23 of the Members of Parliament (Remuneration and Services) Act 2013
- nominating up to three people as members of the Review Committee that reviews the Parliamentary Service's appropriations at least once during each term of Parliament<sup>85</sup>
- appointing two of its members (other than the Speaker) as members of the Parliamentary Corporation.<sup>86</sup>

The commission has no role in relation to House or select committee business or other parliamentary proceedings, nor any matter for which the Clerk of the House is responsible.<sup>87</sup>

Although the commission does not possess executive powers itself (they reside with the Speaker), it is the principal means of consultation on the administrative and support services for Parliament. It provides a link between the Speaker's statutory responsibilities and the interests of members in resource allocation.<sup>88</sup> No major change in these areas is made without thorough discussion at the Parliamentary Service Commission or before it has indicated its general agreement to the course proposed. Any advice from the commission must be taken into account by the Speaker before issuing directions for members' travel, communications services, or party and member support services.<sup>89</sup>

The Speaker chairs the commission *ex officio*,<sup>90</sup> it consists of a number of other members of Parliament. The Leader of the House and the Leader of the Opposition (or members nominated by them) are automatically members of it. Other members are appointed to the commission by resolution of the House.<sup>91</sup> Each recognised party is entitled to one member on the commission. Parties with 30 or more members that are not already represented on the commission through the Speaker, the Leader of the House or the Leader of the Opposition (which will usually be the case) are entitled to an additional member.<sup>92</sup> Apart from the Leader of the House, no Minister or parliamentary Under-Secretary can be a member of the commission.<sup>93</sup> Although it is not a select committee, service on the commission is regarded as service in the capacity of a member of Parliament.<sup>94</sup>

The Speaker, as chairperson of the Parliamentary Service Commission and political head of the Parliamentary Service, is inevitably more involved in the work of the Parliamentary Service than other members of the commission. The commission operates in a non-partisan way, endeavouring to ensure that services of the highest standard are delivered to members and as efficiently as possible.<sup>95</sup> Its

<sup>84</sup> Parliamentary Service Act 2000, sch 1, cl 7.

<sup>85</sup> Parliamentary Service Act 2000, s 20(1).

<sup>86</sup> Parliamentary Service Act 2000, s 29(1).

<sup>87</sup> Parliamentary Service Act 2000, s 14(4).

<sup>88</sup> Parliamentary Service Bill (324–2) (commentary, 29 May 2000) at 2 ([1999–2002] AJHR I.22A at 493).

<sup>89</sup> Parliamentary Service Act 2000, s 8(4); Members of Parliament (Remuneration and Services) Act 2013, s 24.

<sup>90</sup> Parliamentary Service Act 2000, s 16.

<sup>91</sup> Parliamentary Service Act 2000, s 15(1)(d).

<sup>92</sup> Parliamentary Service Act 2000, s 15(1), (2).

<sup>93</sup> Parliamentary Service Act 2000, s 15(3).

<sup>94</sup> Parliamentary Service Act 2000, s 15(6); Privileges Committee *Question of privilege referred on 24 February 1998 relating to a reflection on the Speaker* (6 May 1998) [1996–1999] AJHR I.15C at 8–9.

<sup>95</sup> Reply to question 46 (1990) (45 NZPD Supp 1497).

minutes or other papers are not normally released.<sup>96</sup> Written questions can be asked of the Speaker in respect of the Speaker's responsibilities for the Parliamentary Service and as chairperson of the Parliamentary Service Commission, but points of order relating to this role are not permitted.<sup>97</sup>

The commission establishes committees as it sees fit.<sup>98</sup> It regularly establishes a committee to advise on the rules regarding the use of members' catering facilities and the level of service to be provided. It has also established informal subcommittees to facilitate consultation on the development of new services, such as ICT services.

## **Appropriations Review Committee**

The Parliamentary Service Act 2000 requires the Speaker to establish a committee to review the adequacy, effectiveness and efficiency of the appropriations for the administrative and support services provided to the House of Representatives and to members of Parliament, and the funding entitlements for parliamentary purposes. The committee must undertake one review during each Parliament.

The committee reports to the Speaker. The Speaker must present the report to the House of Representatives no later than six sitting days after receiving it from the committee.<sup>99</sup> The committee's report is a key input in the Parliamentary Service's strategic planning for its delivery of services to the House and its members.

The committee can consist of up to three persons.<sup>100</sup> Before appointing its members, the Speaker must consult with the Parliamentary Service Commission and take into account any recommendations it makes.<sup>101</sup>

No person appointed to the review committee may be a member of Parliament or an officer or employee of the Parliamentary Service.<sup>102</sup>

## **Parliamentary Corporation**

The Parliamentary Corporation was created in 2000, to facilitate transactions relevant to the duties of the Parliamentary Service and, in particular, to acquire, hold and dispose of interests in land and other assets.<sup>103</sup> The Parliamentary Corporation has wide powers to engage in transactions in respect of land and buildings.<sup>104</sup> The Bowen House lease is vested in the Parliamentary Corporation<sup>105</sup> and it must hold an interest in any land or premises before that land or premises can be added to the parliamentary precincts.<sup>106</sup> (See Chapter 11.) The corporation consists of the Speaker (as chairperson), the General Manager, and two members of the Parliamentary Service Commission appointed by the commission.<sup>107</sup>

## **Parliamentary Library**

Soon after the first meeting of Parliament in 1854 members turned their attention to setting up a library, known then as the General Assembly Library. At first, library facilities were shared with the Auckland Provincial Council, which already had a collection of books, but in 1856 Parliament voted money for the purchase of further books and for a building in which to house them. The first librarian (who was also Clerk of the House) was appointed in 1858, but this post was not made a separate full-time position until 1866.

<sup>96</sup> (1999) 577 NZPD 17010 Kidd.

<sup>97</sup> (1992) 532 NZPD 13236 Gray.

<sup>98</sup> Parliamentary Service Act 2000, sch 2, cl 8.

<sup>99</sup> Parliamentary Service Act 2000, s 22.

<sup>100</sup> Parliamentary Service Act 2000, s 20(1).

<sup>101</sup> Parliamentary Service Act 2000, ss 14(1) and 20(3).

<sup>102</sup> Parliamentary Service Act 2000, s 20(2).

<sup>103</sup> Parliamentary Service Act 2000, ss 27 and 28.

<sup>104</sup> Parliamentary Service Act 2000, s 30.

<sup>105</sup> Parliamentary Service Act 2000, s 24(1).

<sup>106</sup> Parliamentary Service Act 2000, s 25(3).

<sup>107</sup> Parliamentary Service Act 2000, s 29.

For many years the General Assembly Library was the legal depository for all books published in New Zealand, a function performed by the National Library since 1985. However, there is still a statutory obligation for local authorities to send copies of their annual and long-term plans and their annual reports to the Parliamentary Library.<sup>108</sup> In 2008 the House marked the library's 150th anniversary,<sup>109</sup> and a book was published on its history.<sup>110</sup>

From 1966 to 1985, the General Assembly Library was part of the National Library of New Zealand. On 1 October 1985 it became part of the Parliamentary Service.<sup>111</sup> It was renamed the Parliamentary Library on 1 January 1987 to reflect the abolition of the term General Assembly.<sup>112</sup>

The Parliamentary Library provides library, information, research and reference services for members of Parliament, officers of the House, Officers of Parliament, staff of the Parliamentary Service and other staff employed in Parliament Buildings.<sup>113</sup> The Parliamentary Library also has a role managing corporate information. The library provides an information service about the New Zealand Parliament for the public.

The head of the library is the Parliamentary Librarian, who is directly responsible to the General Manager of the Parliamentary Service.<sup>114</sup>

Copyright is not infringed when Parliamentary Library staff make copies of documents MPs require for performing their duties as members.<sup>115</sup>

## Bellamy's

The parliamentary catering service is known as Bellamy's. The original Bellamy was John Bellamy, a deputy housekeeper at the House of Commons who made the first catering arrangements for members within the Houses of Parliament in 1773. These services were continued after Bellamy's death by his son.<sup>116</sup> John Bellamy's family ceased to have any connection with the House of Commons shortly before the New Zealand Parliament was founded, but the family name was used in referring to the catering arrangements established for members of Parliament in New Zealand. The name "Catering Department" was officially adopted in place of "Bellamy's" in 1945, but in 1951 the House reverted to the original and more popular name. At first, arrangements were made by outside caterers under contract for the session, but by 1880 a manager was appointed who combined catering duties with the position of custodian of the building, and meals and refreshments began to be provided in-house.

Meals are still provided in-house, but by a private catering firm under contract with the Parliamentary Service. Bellamy's provides breakfasts, lunches and dinners, and operates a bar. It also caters for State and parliamentary luncheons and dinners and numerous other functions.

## KAUMĀTUA O TE WHARE PĀREMATA

On 4 July 2000, the Speaker announced the appointment of the first Kaumātua o Te Whare Pāremata and adviser to the Speaker on the application of tikanga Māori to the proceedings of the House.<sup>117</sup>

<sup>108</sup> Local Government Act 2002, ss 93(10)(b)(iii), 95(7)(b)(iii) and 98(6)(c).

<sup>109</sup> (10 September 2008) 650 NZPD 18681 Wilson.

<sup>110</sup> John E Martin *Parliament's Library—150 Years* (Steele Roberts/Dunmore Publishing, Wellington, 2008).

<sup>111</sup> Parliamentary Service Act 2000, sch 1, cl 11.

<sup>112</sup> Constitution Act 1986, s 25.

<sup>113</sup> Parliamentary Service Act 2000, sch 1, cl 12.

<sup>114</sup> Parliamentary Service Act 2000, sch 1, cl 13.

<sup>115</sup> Copyright Act 1994, s 58.

<sup>116</sup> Norman Wilding and Philip Laundy *An Encyclopaedia of Parliament* (4th ed, Cassell, London, 1972) at 39.

<sup>117</sup> (2000) 585 NZPD 3349 Hunt.

The formal relationship between the Speaker and the Kaumātua was captured in a memorandum of understanding reflecting Te Āti Awa's kaitiakitanga role over the land at Te Upoko o Te Ika a Māui on which the parliamentary precincts stand. The precincts are controlled by the Speaker, under authority derived from the House and the Sovereign, and symbolically from the mana whenua. There have been two Kaumātua o Te Whare Pāremata appointed since 2000. Te Āti Awa was consulted on the appointments.

The operational aspects of the Kaumātua's role have now largely been subsumed in permanent Kaiwhakarite and Kaiwhakahaere roles established in the Parliamentary Service and Office of the Clerk. The Kaiwhakarite provides services and advice on the Māori component of ceremonies, such as at the opening of Parliament and other important formal occasions and events taking place within the precincts of Parliament. Te Kaiwhakahaere, who leads the Te Reo Māori interpretation and translation services for the House and its committees, also provides advice to the Speaker concerning Te Reo Māori. Te Kaiwhakahaere is an employee of the Office of the Clerk.

## CHAPTER 7

# Officers of Parliament and Other Officers and Bodies Associated with Parliament

## OFFICERS OF PARLIAMENT

The holders of a few public roles are placed in the category of “Officer of Parliament” by the statutes under which their positions are established. These offices are, in very general terms, associated with the oversight of executive authority. They perform functions the House might itself perform. While some other office-holders, such as the Clerk of the House and the General Manager of the Parliamentary Service, are closely involved with the House’s activities they are not regarded as “Officers of Parliament” in the formal sense.

The first Officer of Parliament to be expressly created as such by statute was the Ombudsman (then known as a commissioner for investigations) when this position was established in 1962.<sup>1</sup> A second Officer of Parliament, the Wanganui Computer Centre Privacy Commissioner, was created in 1976. This office was abolished on 30 June 1993. A third Officer of Parliament, the Parliamentary Commissioner for the Environment, was created on 1 January 1987. An older position than any of these, that of the Controller and Auditor-General, formally became an Officer of Parliament position on 1 July 2001.

### Definition of Officer of Parliament

There is no statutory definition of or criteria for an Officer of Parliament. The status of Officer of Parliament is attached on an individual basis to particular positions. Nor is it specified what being an Officer of Parliament entails in respect of powers, duties and functions. Some common rules have been developed for the officers’ relations with the House and for their funding arrangements but, in the main, the powers, duties and functions of the officers are to be inferred from a consideration of the individual statutory provisions applying to each.

Nevertheless, some attempt has been made to specify when it is appropriate to confer on an official the status of “Officer of Parliament”, because it is recognised that this should be done only after due deliberation and when it is appropriate to the nature of the official’s duties. If a position is to be established as an Officer of Parliament, it should be subject to the conditions applying to an arm of the legislative branch of the State, such as being outside the public service and not being subject to control of its actions by the executive.

In its report on an inquiry carried out in 1989, the Finance and Expenditure Committee set out five criteria to consider when the creation of an Officer

---

<sup>1</sup> Parliamentary Commissioner (Ombudsman) Act 1962, s 2(1).

of Parliament is under investigation. The committee made the following recommendations.<sup>2</sup>

- An Officer of Parliament must only be created to provide a check on the arbitrary use of power by the executive.
- An Officer of Parliament must only discharge functions that the House itself, if it so wished, might carry out.
- An Officer of Parliament should be created only rarely.
- The House should, from time to time, review the appropriateness of each Officer of Parliament's status as an Officer of Parliament.
- Each Officer of Parliament should be created in separate legislation principally devoted to that position.

These recommendations were endorsed by the Government of the day<sup>3</sup> and have formed the basis ever since for considering whether it is appropriate to make a particular position an Officer of Parliament position.

In an elaboration of these criteria, a committee considering a proposal for the creation of an Officer of Parliament said that it was not an appropriate model for an official with an advocacy role, because an Officer of Parliament must be seen to act impartially so as to retain the integrity and confidence of the whole House. The ability of an Officer of Parliament to take a position on a matter of public controversy is thus necessarily inhibited. It also considered it inappropriate for an Officer of Parliament to exercise executive responsibility, and so become involved in the development of policies and services provided by the Government,<sup>4</sup> or for Officer of Parliament status to be accorded where the official's functions were confined to providing informational and related educational activities.<sup>5</sup>

## **Proposals to create Officers of Parliament**

Central to the recommendations made by the Finance and Expenditure Committee in 1989 was a recommendation that Cabinet adopt an instruction requiring consultation with the select committee on Officers of Parliament (now the Officers of Parliament Committee) before approving the drafting of legislation that included the creation of an Officer of Parliament. The Officers of Parliament Committee's terms of reference specifically include power to consider any proposals referred to it by a Minister for the creation of an Officer of Parliament.<sup>6</sup> That committee protested when a proposal to create an Officer of Parliament reached legislative form in a bill without having been referred to it first.<sup>7</sup> Such proposals may be made directly to committees that are considering bills without having been considered first by the Officers of Parliament Committee.<sup>8</sup> It has been accepted that the House as a whole should come to a view on the creation of Officers of Parliament and that it is desirable for it to achieve consensus on this. Proposals made directly to a committee need to be assessed in this light. A proposal to create an Officer of Parliament has been withdrawn by the Government when there was no consensus.<sup>9</sup>

<sup>2</sup> Finance and Expenditure Committee *Inquiry into Officers of Parliament* (21 March 1989) [1987–1990] AJHR I.4B.

<sup>3</sup> Government response to the report of the Finance and Expenditure Committee on the inquiry into Officers of Parliament (11 July 1989) [1987–1990] AJHR I.20 at 113.

<sup>4</sup> Social Services Committee *Interim report on the Parliamentary Commissioner for Children Bill* (25 May 2000) [1999–2002] AJHR I.22A at 893.

<sup>5</sup> New Zealand Superannuation Amendment Bill (119–2) (commentary, 26 October 2004) at 2–3 ([2002–2005] AJHR I.22C at 1276–1277).

<sup>6</sup> SO 395(1)(c).

<sup>7</sup> Officers of Parliament Committee *1994/95 Financial review: Parliamentary Commissioner for the Environment* (20 February 1996) [1993–1996] AJHR I.23C at 127.

<sup>8</sup> New Zealand Superannuation Amendment Bill (119–2) (commentary, 26 October 2004) at 2–3 ([2002–2005] AJHR I.22C at 1276–1277).

<sup>9</sup> (1996) 553 NZPD 11674–11675 (Environment Amendment Bill).

## OFFICERS OF PARLIAMENT COMMITTEE

A very important step to ensure a common parliamentary approach to the position of Officer of Parliament was the creation of a select committee with a specific responsibility for the oversight of Officers of Parliament. This committee was created in 1989 as a direct result of the inquiry carried out by the Finance and Expenditure Committee.<sup>10</sup> At first the committee was appointed on an ad hoc basis to examine the Estimates of Appropriations for Officers of Parliament on referral from the Finance and Expenditure Committee. Since 1992 it has been one of the permanent select committees established at the commencement of each Parliament.<sup>11</sup>

The Speaker chairs the Officers of Parliament Committee ex officio.<sup>12</sup> Its size is determined by the Business Committee. All parties will be offered representation on it, although they may not be able to accept the offer. As well as appointing Officers of Parliament, the committee's duties involve considering the funding of the Offices of Parliament and providing a central focus for the parliamentary relationship with officers. This does not mean that Officers of Parliament are not involved with other select committees. The Auditor-General's staff provide services to all of the subject select committees when they are carrying out their Estimates and annual review and inquiry functions, and the Auditor-General's reports may be directly relevant to topics being considered by other committees. The Parliamentary Commissioner for the Environment's staff assist select committees on legislation and inquiries with environmental implications, and the nature of this officer's duties entails frequent interaction with the Local Government and Environment Committee.

The Officers of Parliament Committee has an explicit focus on the annual budget-setting for Offices of Parliament. (See pp 548–549.) However, the Estimates and annual reviews of Offices of Parliament are allocated to subject select committees.<sup>13</sup> In addition to its work on appointments and on pre-budget approval of funding for Offices of Parliament, it is also the committee's duty to recommend to the House the appointment of auditors for each Office of Parliament,<sup>14</sup> and to consider any proposals for the creation of a new Officer of Parliament referred to it by a Minister.<sup>15</sup> It may develop or review a code of practice applicable to any, or all, Officers of Parliament.<sup>16</sup> The committee has developed and reported to the House on codes of practice governing the provision of assistance to select committees by Officers of Parliament and their interaction with the House generally.<sup>17</sup>

## PROCEDURES FOR THE APPOINTMENT OF OFFICERS OF PARLIAMENT

Officers of Parliament are appointed by the Governor-General on the recommendation of the House. Over time a convention had developed of inter-party consultation before a notice of motion endorsing the appointment of a person as an Officer of Parliament is put to the House.<sup>18</sup>

<sup>10</sup> (5 September 1989) [1987–1990] 2 JHR 1678.

<sup>11</sup> SO 184(1)(b).

<sup>12</sup> SO 201(3).

<sup>13</sup> Standing Orders Committee Review of Standing Orders (13 December 1995) [1993–1996] AJHR I.18A at 41–42.

<sup>14</sup> SO 395(1)(b); Officers of Parliament Committee Appointment of auditors to audit Offices of Parliament (19 November 2007) [2005–2008] AJHR I.15E at 3.

<sup>15</sup> SO 395(1)(c).

<sup>16</sup> SO 395(2).

<sup>17</sup> Officers of Parliament Committee Code of practice for the provision of assistance by the Parliamentary Commissioner for the Environment to the House, select committees, and members of Parliament (17 June 2016) [2014–2017] AJHRL.15D; Officers of Parliament Committee Code of practice for the provision of assistance by the Auditor-General to the House, select committees, and members of Parliament (17 June 2016) [2014–2017] AJHR I.15C.

<sup>18</sup> Standing Orders Committee Review of Standing Orders (13 December 1995) [1993–1996] AJHR I.18A at 85.

Concern that the convention was not working as effectively as intended and that there was still too much departmental influence over the appointments led the Standing Orders Committee, in 1995 and 1996, to formalise the procedures under which consultations for appointments take place.<sup>19</sup> The procedures were further revised in 2002.<sup>20</sup>

The Officers of Parliament Committee is specifically charged with recommending to the House the appointment of persons as Officers of Parliament.<sup>21</sup> The procedures followed vest the function of co-ordinating consultations for appointments (and reappointments) firmly in the Speaker, working through the Officers of Parliament Committee. For this purpose, where a new position is established, and six months before the end of the term of office of an incumbent, the Speaker initiates consultations through the committee with representatives of all of the parties represented in the House. Where a party is not represented on the committee, the Speaker ensures that it is advised of the consultation and can have a representative attend meetings of the committee at which the appointment is discussed.

Members serving on the Officers of Parliament Committee are responsible for representing the views of their party colleagues on appointments. However, any member of Parliament has the right to speak directly to the Speaker and the committee about an appointment. The relevant Minister is specifically advised of the consultation to be undertaken and invited to participate in it. For example, the Minister of Justice was consulted on an Ombudsman appointment.<sup>22</sup>

Any member can suggest a name for appointment, but the committee will follow a rigorous selection process regardless of whether such a suggestion is made. A job description and person specification is prepared with assistance from the State Services Commission or a specialist adviser to the committee. The position is advertised, and the recruitment adviser will also initiate a job search, as directed by the committee. The adviser helps the committee to assess applications and draw up a short list of candidates.<sup>23</sup> Candidates are interviewed by a subcommittee chaired by the Speaker, which reports to the full committee for final endorsement of the recommendation. The cost of this process is charged to the Office of Parliament concerned. Members are pledged to consider candidates for appointment in the light of the qualifications and qualities required by the relevant legislation, and to use their best endeavours to find a person whose appointment can be supported by all parties.<sup>24</sup> No public comment on proposed appointees is made while consultations are taking place.

No proposal will be put to the House without the unanimous agreement of the committee unless the Speaker considers that total agreement is impossible, that it is unreasonable to prolong the consultations, and that the public interest requires that an appointment be made forthwith. Even then the Speaker will consent to this only if, after extensive consultation, the Government and other major parties agree about the appointment but the opposition of a party or parties representing a small minority of members of Parliament prevents unanimous agreement.<sup>25</sup>

---

<sup>19</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 85–86; Standing Orders Committee *Review of the operation of the Standing Orders* (21 August 1996) [1993–1996] AJHR I.18B at 5, 36–37.

<sup>20</sup> Officers of Parliament Committee *Procedures for the appointment of an Officer of Parliament* (6 December 2002) [2002–2005] AJHR I.15A.

<sup>21</sup> SO 395(1)(d).

<sup>22</sup> Officers of Parliament Committee *Inquiry into the appointment of an Ombudsman* (6 December 2012) [2011–2014] AJHR I.22A at 748.

<sup>23</sup> Ibid.

<sup>24</sup> Officers of Parliament Committee *Procedures for the appointment of an Officer of Parliament* (6 December 2002) [2002–2005] AJHR I.15A.

<sup>25</sup> Ibid.

A temporary appointment may be made on the Government's initiative while consultations are proceeding if the Speaker, in consultation with the committee, agrees that it is reasonable in the particular case.

When agreement has been reached on an appointment, the recommendation is put to the House by means of a Government notice of motion in the name of the Leader of the House.

## CONDITIONS APPLYING TO OFFICERS OF PARLIAMENT

### Term of office

Officers of Parliament are appointed for fixed terms of office. That of the Auditor-General is for a term of up to seven years.<sup>26</sup> For the Ombudsmen, the Parliamentary Commissioner for the Environment and the Deputy Auditor-General, the appointment is for up to five years.<sup>27</sup> However, all Officers of Parliament continue to hold office at the end of their terms until a successor has been appointed. The Auditor-General may not be reappointed to the position.<sup>28</sup> There is no prohibition on the reappointment of other Officers of Parliament.

### Oaths

Before entering upon the duties of the office, all Officers of Parliament must take an oath of office, in the form prescribed for each, before the Speaker or the Clerk of the House.<sup>29</sup>

### Remuneration and funding

The salaries and allowances of Officers of Parliament are determined by the Remuneration Authority and appropriated under permanent legislative authority. Their salaries may not be reduced during the term of their appointment.<sup>30</sup>

The funding for the operation of the Offices of Parliament is subject to special pre-Budget approval by the House on the recommendation of the Officers of Parliament Committee. (See pp 548–549.) The Speaker is the “responsible Minister” for each Office of Parliament in respect of the offices’ funding.<sup>31</sup> However, the Speaker has no role in an officer’s operational decisions; in this respect the officers are statutorily independent.

The auditors of Offices of Parliament are appointed by resolution of the House.<sup>32</sup> The Officers of Parliament Committee is charged with recommending auditors for the Offices of Parliament.<sup>33</sup> The House has appointed the Auditor-General as the auditor of the Ombudsmen and the Parliamentary Commissioner for the Environment and an independent auditor for the Auditor-General.<sup>34</sup> The latter appointment is reviewed every three years.<sup>35</sup> Before the Minister of Finance may issue any instructions to Offices of Parliament and before any regulations may be made concerning the information they must publish regarding their activities or the non-financial reporting standards they must comply with, the Minister must first provide the Speaker with a draft of such instructions or regulations.<sup>36</sup> The Speaker presents the draft to the House<sup>37</sup> and it is referred to the Officers of

<sup>26</sup> Public Audit Act 2001, sch 3, cl 1(1).

<sup>27</sup> Ombudsmen Act 1975, s 5; Environment Act 1986, s 6; Public Audit Act 2001, sch 3, cl 2(1).

<sup>28</sup> Public Audit Act 2001, sch 3, cl 1(4).

<sup>29</sup> Ombudsmen Act 1975, s 10; Environment Act 1986, s 10; Public Audit Act 2001, sch 3, cl 3.

<sup>30</sup> Ombudsmen Act 1975, s 9; Environment Act 1986, s 9(1); Public Audit Act 2001, sch 3, cl 5.

<sup>31</sup> Public Finance Act 1989, s 2(1).

<sup>32</sup> Ombudsmen Act 1975, s 31A; Environment Act 1986, s 26(1); Public Audit Act 2001, s 38(1).

<sup>33</sup> SO 395(1)(b).

<sup>34</sup> (17 June 2010) 664 NZPD 11829.

<sup>35</sup> (11 December 2012) 686 NZPD 7408.

<sup>36</sup> Public Finance Act 1989, s 82(1)–(2).

<sup>37</sup> Public Finance Act 1989, s 82(3).

Parliament Committee for consideration.<sup>38</sup> The instructions cannot be given or regulations made until they have been approved by resolution of the House.<sup>39</sup>

## Cessation and suspension from office

An Officer of Parliament may resign from office by informing the Speaker in writing.<sup>40</sup> The Speaker informs the House of any such resignation.<sup>41</sup>

An Officer of Parliament may be suspended or removed from office only by the Governor-General on an address from the House on the grounds of disability affecting performance of the officer's duties, bankruptcy, neglect of duty or misconduct.<sup>42</sup> An officer may be suspended by the Governor-General while Parliament is not in session, but such a suspension obtains only for a limited period after the next session commences, during which time the House may consider the matter.

## CONTROLLER AND AUDITOR-GENERAL

The Controller and Auditor-General is the State's auditor. The position was first established in New Zealand in 1878, absorbing functions from a number of audit officers. It became a full Officer of Parliament position in 2001, and the first Auditor-General was appointed on the recommendation of the House early in 2002.<sup>43</sup>

### Organisation of the office

The Auditor-General is a corporation sole with perpetual succession.<sup>44</sup> The Deputy Controller and Auditor-General is also appointed as an Officer of Parliament,<sup>45</sup> and may exercise all of the functions, duties and powers of the Auditor-General.<sup>46</sup>

The Auditor-General employs the staff and engages private-sector auditing firms to assist the Auditor-General in carrying out the duties of the office. Staff are employed outside the public service. The office is organised into three internal business units. The office of the Auditor-General is responsible for strategic audit planning, setting auditing standards, allocating audits, overseeing auditors' performance, carrying out performance audits and special studies and inquiries, and parliamentary reporting and advice. The second unit, Audit New Zealand, is responsible for carrying out annual financial report audits and providing assurance services to public entities.<sup>47</sup> Most audits are allocated directly to an auditor, but from time to time an auditor is appointed by competitive tender to carry out an audit.<sup>48</sup> There is also a corporate services business unit.

### Annual work plan

The Auditor-General is required to submit a draft annual plan to the Speaker of the House at least 60 days before the beginning of each financial year. This draft plan sets out the Auditor-General's proposed work programme for the year.<sup>49</sup> Consideration of the draft plan by select committees is organised by the Finance and Expenditure Committee. The committee circulates it to other committees

<sup>38</sup> Standing Orders Committee *Review of Standing Orders* (23 June 2005) [2002–2005] AJHR I.18C at 10–11.

<sup>39</sup> Public Finance Act 1989, s 82(5).

<sup>40</sup> Ombudsmen Act 1975, s 5; Environment Act 1986, s 6(3); Public Audit Act 2001, sch 3, cl 1(3).

<sup>41</sup> (1992) 525 NZPD 8401; (1994) 543 NZPD 4111.

<sup>42</sup> Ombudsmen Act 1975, s 6; Environment Act 1986, s 7(1); Public Audit Act 2001, sch 3, cl 4.

<sup>43</sup> (2002) 598 NZPD 14655–14661.

<sup>44</sup> Public Audit Act 2001, s 10(1).

<sup>45</sup> Public Audit Act 2001, s 11; (2002) 601 NZPD 16899.

<sup>46</sup> Public Audit Act 2001, s 12(1).

<sup>47</sup> Controller and Auditor-General, annual report (14 October 2015) NZPP B.28 at 6.

<sup>48</sup> Controller and Auditor-General, annual report (17 October 2012) NZPP B.28 at 25.

<sup>49</sup> Public Audit Act 2001, s 36(1).

and co-ordinates their responses, which are forwarded to the Auditor-General by the date requested in the draft plan. The committee may also discuss the draft plan with the Auditor-General.

The Auditor-General must take account of any comments from the committees or the Speaker, before presenting a completed annual plan to the House. The plan must specify any changes requested by the Speaker or the committees that are not reflected in the final work programme.<sup>50</sup>

## Work of the office

The Auditor-General is the auditor of every public entity.<sup>51</sup> This means auditing the Crown, public service departments, Crown entities, State enterprises, local authorities and a number of other public bodies.<sup>52</sup> The House has appointed the Auditor-General as auditor of the other Officers of Parliament.<sup>53</sup> In total the office conducts about 3,700 audits of annual financial reports (about 3,000 of these are of school boards and other small entities).<sup>54</sup>

Staff of the office of the Auditor-General work closely with select committees, especially in their Estimates and annual review work. Staff have sometimes been seconded to select committees to provide technical support on committee inquiries. The Auditor-General's office also carries out its own inquiries and may report on them directly to committees. A protocol has been adopted for the provision of assistance to select committees by the Auditor-General. It sets out how decisions on the nature and level of such assistance are to be taken.<sup>55</sup>

The Auditor-General must present an annual report to the House<sup>56</sup> and must report to it at least once every calendar year on matters arising out of the performance and exercise of the Auditor-General's functions, duties and powers.<sup>57</sup> The Auditor-General also has a general power to report to a Minister, a select committee, a public entity or any other person on a matter arising out of the discharge of the Auditor-General's duties if he or she considers it desirable to do so.<sup>58</sup> Each year the House receives reports from the Auditor-General on particular audits and inquiries into central government or local authority activities.

Reports of the Auditor-General stand referred to the Finance and Expenditure Committee, which may consider a report itself or refer it to another select committee for consideration.<sup>59</sup> This procedure allows parliamentary consideration of recommendations of the Auditor-General and a Government response to any recommendations a committee may make to the House.<sup>60</sup>

## OMBUDSMEN

The position of Ombudsman was created in 1962 to investigate complaints relating to administrative decisions or recommendations made by Government departments or other governmental bodies. The scope of the Ombudsman's remit was extended to include education and hospital boards in 1968 and local authorities in 1975. In 1982 extensive functions under the Official Information Act 1982 were added to the office's other tasks and these were extended into the local government

<sup>50</sup> Public Audit Act 2001, s 36(3)–(4).

<sup>51</sup> Public Audit Act 2001, s 14(1).

<sup>52</sup> Public Audit Act 2001, s 5 and schs 1–2.

<sup>53</sup> (2001) 596 NZPD 12580–12581.

<sup>54</sup> Controller and Auditor-General *Statement of intent 2013–2016* (16 May 2013) NZPP B.28SOI [2013] at 25–26.

<sup>55</sup> Officers of Parliament Committee *Code of practice for the provision of assistance by the Auditor-General to the House, select committees, and members of Parliament* (17 June 2016) [2014–2017] AJHR I.15C.

<sup>56</sup> Public Audit Act 2001, s 37.

<sup>57</sup> Public Audit Act 2001, s 20.

<sup>58</sup> Public Audit Act 2001, s 21.

<sup>59</sup> SO 396.

<sup>60</sup> SO 252.

area in 1987 and to school boards of trustees in 1994.<sup>61</sup> From 2001 the Ombudsman was required to provide employees with information and guidance on making protected disclosures.<sup>62</sup> The Crown Entities Act 2004<sup>63</sup> brought all Crown entities within the Ombudsman's jurisdiction under the Ombudsman Act 1975 and the Official Information Act 1982. The Ombudsman was designated a National Preventive Mechanism in 2007, under the Crimes of Torture Act 1989.<sup>64</sup> The Ombudsman is responsible for visiting prisons, immigration detention facilities, health and disability places of detention, child care and protection residences, and youth justice residences in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. In October 2010 the Ombudsman, along with the Human Rights Commission, and New Zealand Convention Coalition, took on responsibilities under the United Nations Convention on the Rights of Persons with Disabilities.

The term "ombudsman" has been applied to positions relating to industry complaints procedures in banking and insurance.<sup>65</sup> There is now a statutory prohibition on the use of the term without the permission of the Chief Ombudsman.<sup>66</sup> The Chief Ombudsman has devised criteria for considering applications for the use of the name, in order to avoid confusion between the parliamentary, recom-mendatory nature of an Ombudsman's work and the adjudicative nature of industry procedures for consumer complaints resolution. Given the international and constitutional connotations of the title, permission to use it will rarely be given.<sup>67</sup>

There may be one or more Ombudsmen appointed as Officers of Parliament, one of whom is to be appointed Chief Ombudsman.<sup>68</sup> A second Ombudsman was appointed for the first time in October 1975 and a third in 2001. Since 2001 the number has varied between two and three. Temporary Ombudsmen may also be appointed from time to time. Holding or continuing to hold office as a District Court judge has been declared to be compatible with being an Ombudsman and an Ombudsman has been permitted to continue to hold office as a District Court judge during his term of office.<sup>69</sup> All Ombudsmen have equal authority in carrying out their work; the Chief Ombudsman's lead role is in respect of the administration of the Office of the Ombudsmen. A proposal for the appointment of "Deputy Ombudsmen", which would have compromised this statutory equality, was rejected.<sup>70</sup>

The House may, if it thinks fit, make general rules for the guidance of the Ombudsmen in the exercise of their statutory functions. Such rules are printed and published as if they were statutory regulations.<sup>71</sup> Rules have been made authorising the Ombudsmen to publish reports relating to their functions or to a particular case or cases.<sup>72</sup>

Any committee of the House may refer a petition that it has before it to an Ombudsman for a report;<sup>73</sup> however, this has been done only rarely. An

<sup>61</sup> See Bryan Gilling *The Ombudsman in New Zealand* (Dunmore, Palmerston North, 1998) at 51–52 and 87–108.

<sup>62</sup> Protected Disclosures Act 2000, s 15.

<sup>63</sup> Crown Entities Act 2004, s 4.

<sup>64</sup> Crimes of Torture Act 1989, s 16.

<sup>65</sup> See, for example: "Ombudsman appointment made" *The Dominion* (19 October 1994) at 23.

<sup>66</sup> Ombudsman Act 1975, s 28A(1).

<sup>67</sup> The Ombudsmen, annual report (19 September 2001) NZPP A.3 at 27–32; Chief Ombudsman, report on leaving office (22 July 2003) NZPP A.3A at [6.4]–[6.5].

<sup>68</sup> Ombudsman Act 1975, s 3. See also: Officers of Parliament Committee *Interim report on inquiry into the appointment of an Ombudsman and Chief Ombudsman* (12 March 2015) [2014–2017] AJHR at 2.

<sup>69</sup> (15 December 1994) 135 New Zealand Gazette 4421 at 4421–4422.

<sup>70</sup> Officers of Parliament Committee *Inquiry into legislative provision for the appointment of Deputy Ombudsmen* (23 May 2002) [1999–2002] AJHR I.15B.

<sup>71</sup> Ombudsman Act 1975, s 15.

<sup>72</sup> Ombudsman Rules 1989.

<sup>73</sup> Ombudsman Act 1975, s 13(4).

Ombudsman may report to the House at any time, but the Ombudsmen must report to the House on their work at least once a year.<sup>74</sup>

The Ombudsman is an investigatory official. The office does not make final binding adjudications, only recommendations, and it has no power to enforce its findings. This is seen as its strength. It seeks to persuade the parties in a dispute to follow a reasonable course of action and to resolve disputes without declaring a winner and a loser.<sup>75</sup> In most cases, the prestige of the office is enough to lead any public agency to comply with any such recommendation addressed to it. In an exceptional case, the House criticised a body that rejected the Ombudsman's recommendations and called upon it to comply.<sup>76</sup> However, even then the body concerned was not under a legal obligation to comply.

Like other Offices of Parliament, the Office of the Ombudsmen must submit information to the House each year on its operating intentions.<sup>77</sup> The Officers of Parliament Committee conveys its views on the office's draft plan directly to the office so that the plan can be finalised.<sup>78</sup>

## PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT

The Parliamentary Commissioner for the Environment is an Officer of Parliament appointed by the Governor-General on the recommendation of the House.<sup>79</sup>

The parliamentary commissioner has a wide-ranging role of inquiring into the actions of public authorities insofar as they might have an environmental impact, and auditing the procedures that such authorities prescribe to minimise any adverse environmental effects from their activities.<sup>80</sup> The commissioner may review and comment on Government reports on the state of the environment produced by the Ministry for the Environment and Statistics New Zealand.<sup>81</sup> The views of the commissioner must be sought by the Local Government Commission on any reorganisation scheme it is considering.<sup>82</sup> The commissioner may appoint staff to assist in the exercise of the powers and functions of the office. These staff are employed under terms and conditions approved by the Speaker.<sup>83</sup> The House or any select committee may request the commissioner to report on any petition, bill or other matter before it that may have a significant effect on the environment.<sup>84</sup> Under this provision, the commissioner has conducted an inquiry into planning for flood mitigation and reported the results to the House for the use of a committee in an inquiry it was conducting.<sup>85</sup> The House may also direct the commissioner to inquire into any matter with environmental consequences and to report on it to the House.<sup>86</sup> The commissioner and the commissioner's staff often assist select committees in their financial and inquiry work by acting as advisers.<sup>87</sup> A code of practice regulates the assistance that the commissioner may provide.<sup>88</sup>

<sup>74</sup> Ombudsmen Act 1975, s 29.

<sup>75</sup> Chief Ombudsman, report on leaving office (22 July 2003) NZPP A.3A at [6.6].

<sup>76</sup> (25 August 2004) 619 NZPD 15085–15091.

<sup>77</sup> Public Finance Act 1989, s 45G(1).

<sup>78</sup> Standing Orders Committee *Review of Standing Orders* (23 June 2005) [2002–2005] AJHR I.18C at 9.

<sup>79</sup> Environment Act 1986, s 4.

<sup>80</sup> Environment Act 1986, s 16.

<sup>81</sup> Environmental Reporting Act 2015, s 18; Officers of Parliament Committee, report on alterations to 2013/14 appropriations and 2014/15 draft budgets for Officers of Parliament (19 March 2014) [2011–2014] AJHR I.15C at 15–16; Parliamentary Commissioner for the Environment, annual report (3 November 2015) NZPP C.12 at 3.

<sup>82</sup> Local Government Act 2002, sch 3, cl 20(1)(c)(iv).

<sup>83</sup> Environment Act 1986, s 11.

<sup>84</sup> Environment Act 1986, s 16(1)(d).

<sup>85</sup> Planning and Development Committee *Inquiry into planning for flood mitigation* (27 July 1989) [1987–1990] AJHR I.11A.

<sup>86</sup> Environment Act 1986, s 16(1)(e).

<sup>87</sup> Parliamentary Commissioner for the Environment, annual report (15 October 2002) NZPPC.12 at 20–22.

<sup>88</sup> Officers of Parliament Committee *Code of practice for the provision of assistance by the Parliamentary Commissioner for the Environment to the House, select committees, and members of Parliament* (17 June 2016) [2014–2017] AJHR I.15D.

The commissioner must submit information to the House on the office's future operating intentions,<sup>89</sup> and take account of the views of the Officers of Parliament Committee in finalising this plan.<sup>90</sup>

The workload of the office is determined by:<sup>91</sup>

- the number of issues identified by the commissioner, the commissioner's staff, members of Parliament, and other individuals and groups as significant in their effects on the environment
- requests from the House and select committees
- environmental impact reporting required for Ministers and Government agencies.

The commissioner will become concerned with an issue only if no other Government agency is already dealing with it or is capable of handling it.<sup>92</sup>

## **OTHER OFFICERS AND BODIES ASSOCIATED WITH PARLIAMENT**

The House is involved in the appointment or removal of a number of other officers, apart from the Officers of Parliament. They include the Representation Commission and the Electoral Commission, the Clerk of the House of Representatives and the Parliamentary Service Commission, and judges of the High Court, the Employment Court and the Environment Court, who can be removed from office only following an address from the House. (See respectively, Chapters 3, 6 and 29.) There are also detailed parliamentary accountability requirements relating to Crown entities and State enterprises. (See Chapter 34.) Miscellaneous other officers and bodies with which the House has an association are dealt with below.

### **Abortion Supervisory Committee**

This committee was established to keep under review the law on abortion and to perform administrative and licensing tasks under the relevant legislation.<sup>93</sup> The committee consists of three members (two of whom must be registered medical practitioners) appointed by the Governor-General on the recommendation of the House.<sup>94</sup>

Members of the Abortion Supervisory Committee hold office for three years but remain in office until their successors are appointed. They may be removed from office by the Governor-General only following an address from the House.<sup>95</sup> Vacancies in the membership of the committee arising from the death, resignation or removal of members are filled by the appointment of a successor by the Governor-General on the House's recommendation.<sup>96</sup> In that case, the person appointed to the vacancy holds office only for the unexpired portion of the term of his or her predecessor, not for a three-year term in his or her own right.<sup>97</sup> Although it is not a Crown entity, the House has resolved that the committee should be subject to the House's annual review procedures.<sup>98</sup>

---

89 Public Finance Act 1989, s 45G(1).

90 Standing Orders Committee *Review of Standing Orders* (23 June 2005) [2002–2005] AJHR I.18C at 9.

91 Planning and Development Committee, 1988/89 Estimates, Vote Parliamentary Commissioner for the Environment (23 August 1988) [1987–1990] AJHR I.19A at 246–248.

92 Officers of Parliament Committee, 1989/90 Estimates, Vote Parliamentary Commissioner for the Environment (10 October 1989) [1987–1990] AJHR I.19B at [7.2.5].

93 Contraception, Sterilisation, and Abortion Act 1977, ss 10 and 14.

94 Contraception, Sterilisation, and Abortion Act 1977, s 10.

95 Contraception, Sterilisation, and Abortion Act 1977, s 11.

96 Contraception, Sterilisation, and Abortion Act 1977, s 12.

97 Contraception, Sterilisation, and Abortion Act 1977, s 11(4).

98 (1999) 581 NZPD 37; (2002) 602 NZPD 237.

## Association of Former Members of Parliament

In 1989, following the establishment of similar groups in the United States, Canada and Australia, a number of former members of Parliament established a group known as the Association of Former Members of the Parliament of New Zealand. The association is an unincorporated body with its own constitution. Membership is open to all former members of Parliament. The association charges its members an annual subscription and appoints a management committee from among its membership.

The objects of the association are:

- to encourage the continuance of associations and friendships formed while members of Parliament
- to represent former members
- to provide advice and assistance in appropriate cases to former members
- to arrange functions and meetings to the benefit of parliamentary institutions.

The association holds an annual general meeting in Parliament House and its annual report is presented to the House by the Speaker.

## Cawthron Institute Trust Board

The Cawthron Institute is an industrial and technical school, institute and museum set up under the will of Thomas Cawthron (1833–1915, a Nelson businessman and philanthropist) and a private Act of Parliament.<sup>99</sup> The member of Parliament for the electoral district of Nelson is an ex officio member of the institute's trust board.<sup>100</sup>

## Intelligence and Security Committee

The Intelligence and Security Committee is a statutory committee established in 1996 to exercise oversight and review of the intelligence and security departments—the New Zealand Security Intelligence Service and the Government Communications Security Bureau.<sup>101</sup>

The committee consists of the Prime Minister, the Leader of the Opposition, two members of Parliament nominated by the Prime Minister after consultation with the leader of each party in any Government coalition and one member nominated by the Leader of the Opposition, with the Prime Minister's agreement, after consultation with the leader of each party not in Government. The names of the nominated members must be submitted to the House for its endorsement. The committee cannot transact business until these members have been endorsed by the House.<sup>102</sup> As membership is dependent on nomination by the Prime Minister or the Leader of the Opposition as the case may be, it is not competent for the House to substitute its own nominees for appointment, although it may reject a nominee and vote on such nominations separately.<sup>103</sup> If it becomes apparent to the Speaker that the statutory requirement for consultation has not been carried out, the Speaker will rule any notice of motion seeking the House's endorsement out of order. It is, therefore, incumbent on the Minister lodging such a notice to satisfy the Speaker that the consultation has been carried out. Consultation in this context means more than merely informing other leaders of a decision that has already been reached; it means giving the person being consulted a real opportunity to be heard. However, ultimately the matter is decided politically on the floor of the House.<sup>104</sup>

<sup>99</sup> Thomas Cawthron Trust Act 1924.

<sup>100</sup> Thomas Cawthron Trust Act 1924, s 3(1)(a)(iii).

<sup>101</sup> Intelligence and Security Committee Act 1996, ss 5 and 6.

<sup>102</sup> Intelligence and Security Committee Act 1996, ss 7 and 8.

<sup>103</sup> (1997) 560 NZPD 2023–2024 Kidd.

<sup>104</sup> Ibid.

The Prime Minister is the chairperson of the Intelligence and Security Committee except when the committee is conducting its annual reviews of the intelligence agencies or considering any matter relating to their performance. The Prime Minister also does not act as chairperson if he or she is the responsible Minister under the legislation governing an intelligence security agency being examined by the committee.<sup>105</sup> If the Prime Minister is chairing a meeting of the Intelligence and Security Committee when these matters come up, another member of the committee, nominated by the Prime Minister, acts as the chairperson. If absent from a meeting of the committee, the Prime Minister can appoint either the Deputy Prime Minister or the Attorney-General as an alternative chairperson.<sup>106</sup>

The committee can consider bills, petitions and other matters referred to it by the House.<sup>107</sup> The House has resolved that the committee consider the Estimates and Supplementary Estimates for and conduct an annual review of each intelligence and security department. Bills are referred to the committee from time to time and the Clerk is obliged to refer any petition relating to such an agency to the committee. The House usually orders that no select committee can examine an intelligence and security department.<sup>108</sup>

The proceedings of the committee are, subject to the legislation, to be conducted in accordance with the Standing Orders. The committee presents an annual report to the House on its activities and makes the report available to the public on the Parliament website.<sup>109</sup> Unless the committee unanimously resolves to the contrary, all proceedings are held in private, except when the committee is conducting an annual review of the performance of an intelligence and security agency.<sup>110</sup> The committee is advised by the Department of the Prime Minister and Cabinet,<sup>111</sup> and the Office of the Clerk provides a clerk of committee to advise on committee procedure in relation to Standing Orders. Proceedings of the committee are privileged in the same way as if they were proceedings in Parliament.<sup>112</sup> The committee is obliged to have regard to security considerations in any report it makes to the House.<sup>113</sup>

The committee is consulted on appointments to the roles of Inspector-General and Deputy Inspector-General of Intelligence and Security.<sup>114</sup>

## Judicial Conduct Commissioner

Provision for the appointment of a Judicial Conduct Commissioner was made in 2004. The commissioner's functions are to receive complaints about judges, conduct preliminary examinations of them and, in appropriate cases, recommend that a Judicial Conduct Panel be appointed to inquire into the conduct of a judge.<sup>115</sup> The commissioner is appointed by the Governor-General on the recommendation of the House. Before the House's recommendation is made, the Attorney-General must consult the Chief Justice about the appointment and advise the House that this has been done.<sup>116</sup> The commissioner holds office for the period (between two and five years) specified in the appointment.<sup>117</sup> The commissioner may only be

<sup>105</sup> Intelligence and Security Committee Act 1996, s 7A(1).

<sup>106</sup> Intelligence and Security Committee Act 1996, s 7A(3).

<sup>107</sup> Intelligence and Security Committee Act 1996, s 6(1)(b).

<sup>108</sup> See, for example: (18 February 2015) 703 NZPD 1707–1708; (2002) 604 NZPD 1897–1909.

<sup>109</sup> Intelligence and Security Committee Act 1996, s 6(1)(e). See, for example: *Intelligence and Security Committee Activities of the Intelligence and Security Committee in 2014* (11 July 2014) G.24.

<sup>110</sup> Intelligence and Security Committee Act 1996, s 12.

<sup>111</sup> Intelligence and Security Committee Act 1996, s 13(7).

<sup>112</sup> Intelligence and Security Committee Act 1996, s 16.

<sup>113</sup> Intelligence and Security Committee Act 1996, s 18.

<sup>114</sup> Inspector-General of Intelligence and Security Act 1996, s 5(2).

<sup>115</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 8.

<sup>116</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 7; (3 May 2005) 625 NZPD 20186–20188.

<sup>117</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, sch 2, cl 1(1).

removed from office within this period by the Governor-General, acting on an address from the House for incapacity or misconduct.<sup>118</sup>

## **Legislation Design and Advisory Committee**

The Legislation Design and Advisory Committee (LDAC) is a group of senior Government officials whose mandate is to promote high-quality legislation through advice to Government departments in the early stages of policy and legislative development, the issuing of guidelines for legislative drafting, and the scrutiny of Government bills that are being considered by the House.<sup>119</sup> In 2015 LDAC replaced the previous Legislation Advisory Committee, whose guidelines have been endorsed by the Government as representing the drafting standards that legislation should generally follow.<sup>120</sup> (See Chapter 25 for further discussion of drafting practice.) The Parliamentary Counsel Office provides secretariat services to LDAC.

## **Māori Purposes Fund Board**

The Māori Purposes Fund Board administers the Māori Purposes Fund, which is responsible for promoting the health, education and economic welfare of Māori and for other matters related to Māori arts, language, customs and traditions.<sup>121</sup> Each member of Parliament representing a Māori electoral district is ex officio a member of the Board.<sup>122</sup>

## **New Zealand Business and Parliament Trust**

The New Zealand Business and Parliament Trust was formed in 1991 as an educational charity. The Speaker is its president. It endeavours to bridge a perceived gap of understanding between MPs and business people. The intended purposes are to enable MPs to widen their commercial experience and increase their knowledge of business, and to improve business managers' understanding of the way government is exercised through Parliament.<sup>123</sup> The setting up of the trust was inspired by the success of a similar organisation in the United Kingdom, the Industry and Parliament Trust. There were 76 corporate members of the trust at the end of 2015.<sup>124</sup> The trust organises day-long study programmes held in Parliament House, at which business people are introduced to the work of the House and of members of Parliament. To reciprocate this arrangement, a business study programme aims to give MPs an overview of key business functions and to help them understand the contribution of business to the economy. Each study attachment involves placing an MP with a "host" company. The MP is attached to one of the trust's corporate members for a few days for a first-time attachment, and shorter times for subsequent attachments.

## **New Zealand Lottery Grants Board**

The New Zealand Lottery Grants Board is responsible for determining the proportions in which the profits of New Zealand lotteries are to be allocated for distribution.<sup>125</sup> The Prime Minister and the Leader of the Opposition are ex officio members of the board, along with the Minister of Internal Affairs, who presides.<sup>126</sup> The Prime Minister and the Leader of the Opposition may nominate

<sup>118</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, sch 2, cl 3.

<sup>119</sup> Legislation Design and Advisory Committee "The role of the LDAC" <[www.ldac.org.nz](http://www.ldac.org.nz)>.

<sup>120</sup> Cabinet Office *Cabinet Manual* 2008 at [7.37], [7.49], [7.60] and [7.84].

<sup>121</sup> Maori Purposes Fund Act 1934–35, ss 4 and 7(1).

<sup>122</sup> Maori Purposes Fund Act 1934–35, s 7(2)(c).

<sup>123</sup> New Zealand Business and Parliament Trust 2014 Review (2015) at i.

<sup>124</sup> New Zealand Business and Parliament Trust "Corporate Membership" <[www.nzbpt.org.nz](http://www.nzbpt.org.nz)>.

<sup>125</sup> Gambling Act 2003, s 274.

<sup>126</sup> Gambling Act 2003, s 272(2).

other members of Parliament to attend a meeting of the board in their stead. Such nominated members are regarded as full members of the board.<sup>127</sup>

### **Ngarimu VC and 28th (Maori) Battalion Memorial Scholarship Fund Board**

The Ngarimu VC and 28th (Maori) Battalion Memorial Scholarship Fund Board administers a scholarship fund established in 1945. The fund provides educational assistance for Māori and for the study and promotion of the Māori language and Māori history, tradition and culture.<sup>128</sup> Each member of Parliament representing a Māori electoral district is ex officio a member of the board.<sup>129</sup>

### **Parliamentary Counsel Office**

The House's closest external working relationship is that with the Parliamentary Counsel Office, which is principally responsible for the drafting of Government legislation and for drafting amendments to legislation that is passing through the House. (See Chapter 25.)

The Parliamentary Counsel Office was founded as the Law Drafting Office in 1920 and given its present name in 1973. Its ministerial head is the Attorney-General (or, if there is no Attorney-General, the Prime Minister) and its chief executive is the Chief Parliamentary Counsel.<sup>130</sup> As well as drafting bills and amendments, the office supervises the publishing of electronic and printed copies of Acts and legislative instruments, ensuring the availability of official electronic versions of legislation.<sup>131</sup>

### **Independent Police Conduct Authority**

The Independent Police Conduct Authority was created in 2007 to replace the Police Complaints Authority. The Independent Police Conduct Authority investigates complaints of alleged misconduct or neglect of duty by any member of the police; any police practice, policy or procedure affecting a complainant; and incidents in which a member of the police causes or appears to have caused death or serious bodily harm while acting in the execution of his or her duty. The Authority may carry out its own investigation, or refer the matter to the police for investigation under the Authority's oversight.<sup>132</sup>

The Independent Police Conduct Authority consists of up to five members, appointed by the Governor-General on the recommendation of the House for a term of between two and five years.<sup>133</sup> One member must be appointed as chairperson of the Authority by the Governor-General on the recommendation of the House; he or she must be a judge or a retired judge.<sup>134</sup> It is the House's practice in recommending a person for appointment to specify in the resolution the term of the recommended appointment.

If a vacancy occurs in the office while Parliament is not in session or one exists at the close of a session and the House has not recommended a successor, the vacancy may be filled during the recess by an appointment made by the Governor-General in Council. Such an appointment lapses unless the House expressly confirms it before the end of the 24th sitting day following the appointment.<sup>135</sup>

---

127 Gambling Act 2003, sch 5, cl 3.

128 Ngarimu VC and 28th (Maori) Battalion Memorial Scholarship Fund Act 1945, s 7(1).

129 Ngarimu VC and 28th (Maori) Battalion Memorial Scholarship Fund Act 1945, s 4(2)(c).

130 Legislation Act 2012, s 66(1).

131 Legislation Act 2012, ss 9 and 59.

132 Independent Police Conduct Authority Act 1988, s 12.

133 Independent Police Conduct Authority Act 1988, s 5.

134 Independent Police Conduct Authority Act 1988, s 5A.

135 Independent Police Conduct Authority Act 1988, s 7.

A member of the Independent Police Conduct Authority may be removed or suspended from office by the Governor-General, on an address from the House, on the grounds of disability, bankruptcy, neglect of duty or misconduct.<sup>136</sup>

## **Radio New Zealand Limited**

Radio New Zealand Limited was established as a Crown entity on 1 December 1995 to hold the public radio assets of Radio New Zealand.<sup>137</sup> Radio New Zealand Limited has a statutory charter setting out its principles and obligations.<sup>138</sup> The House is obliged to review the charter at five-yearly intervals.<sup>139</sup> The Commerce Committee carried out reviews for the House in 2001 and 2006 as part of its general inquiry function.<sup>140</sup> In the absence of statutory guidance as to the object of the review, it adopted its own terms of reference to guide it in carrying out the first review.<sup>141</sup>

Radio New Zealand Limited holds the licence to use the frequencies on which parliamentary debates are broadcast. (See Chapter 6.)

## **Reserve Bank of New Zealand**

The Reserve Bank of New Zealand is responsible for formulating and implementing monetary policy and registering and regulating banks.<sup>142</sup> Any funding agreement between the Minister of Finance and the Governor of the bank regarding the income of the bank that is to be applied in meeting its expenditure must be ratified by resolution of the House in order to be effective.<sup>143</sup> Although it is not a Crown entity, the House has resolved that the bank should be subject to the House's annual review procedures.<sup>144</sup>

## **State Services Commissioner**

The Governor-General may suspend the State Services Commissioner or a Deputy Commissioner from office for misbehaviour or incompetence. In this event, a full statement of the grounds on which the suspension was effected must be laid before the House within seven sitting days of the suspension.<sup>145</sup> The matter is then in the hands of the House. If the House takes no action within 21 days of the statement being given to it, the commissioner is automatically restored to office. However, if the House resolves within that time that the commissioner ought to be removed from office, then the Governor-General removes him or her from office as at the date of the suspension.<sup>146</sup>

## **Universities and tertiary institutions**

Universities, colleges of education and polytechnics may not be disestablished unless the House has first passed a resolution approving the proposed disestablishment.<sup>147</sup>

136 Independent Police Conduct Authority Act 1988, s 6.

137 Radio New Zealand Act 1995; Radio New Zealand Act Commencement Order 1995.

138 Radio New Zealand Act 1995, s 7(1)–(3).

139 Radio New Zealand Act 1995, s 7(4).

140 Commerce Committee *Review of the Radio New Zealand Charter* (21 December 2001) [1999–2002] AJHR I.1B; Commerce Committee *Inquiry: review of the Radio New Zealand Charter* (22 March 2006) [2005–2008] AJHR I.22A.

141 Commerce Committee *Review of the Radio New Zealand Charter* (21 December 2001) [1999–2002] AJHR I.1B at 5.

142 Reserve Bank of New Zealand Act 1989.

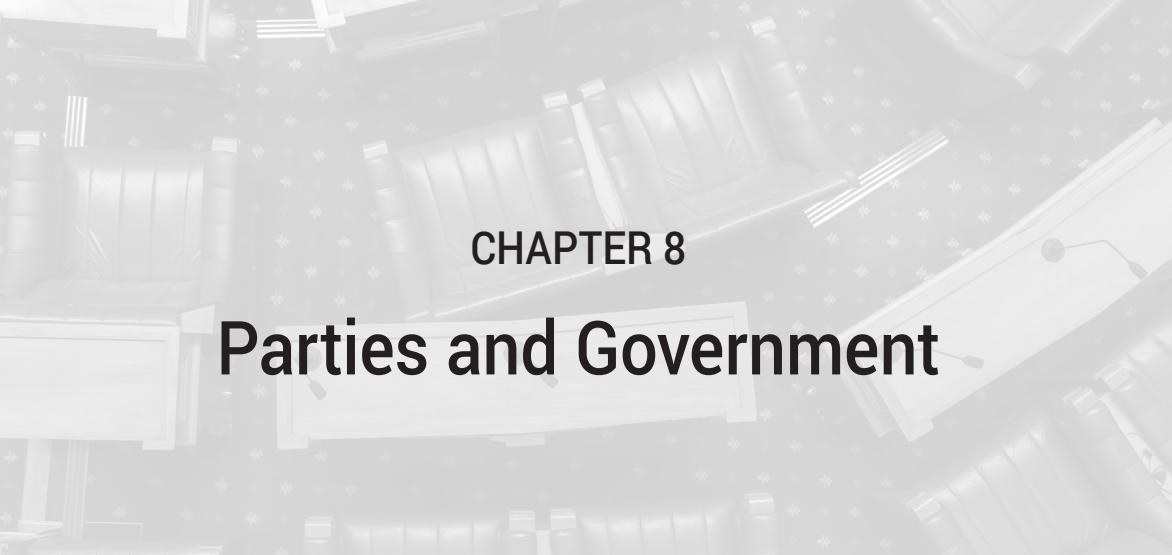
143 Reserve Bank of New Zealand Act 1989, s 161(2).

144 (1999) 581 NZPD 37; (2002) 602 NZPD 237.

145 State Sector Act 1988, s 16(3)–(4).

146 State Sector Act 1988, s 16(4).

147 Education Act 1989, s 164(2).



# CHAPTER 8

# Parties and Government

## PARTIES

Political parties have long played a crucial role in New Zealand politics. A “party system” developed in the 19th century in the parliamentary sphere and in the country at large as political parties organised themselves and began to compete for office. Since the late 19th century the composition of Governments has been determined by the various parties’ representation in Parliament. The party system helps to formulate and to translate voters’ preferences into a parliamentary line-up of members. It helps to give some coherence to political action undertaken by parliamentary means, on the basis of allegiances declared at the time of a general election.<sup>1</sup>

Although parties have occupied this central place in New Zealand politics for over a century, they have received very little legal or official recognition until comparatively recently, generally having been regarded as private, voluntary bodies. This state of affairs has now changed significantly. Since 1996, the electoral system has been based explicitly on the existence and effective organisation of parties. Thus there are provisions in the law for the registration of parties; votes are cast for parties, not just for individual candidates; seats are allocated to parties on the basis of those votes; election broadcasting time and resources are provided to parties; and parties must disclose the funds donated to them.

As a result of this fundamental change from an electoral system that essentially ignored parties to one that recognises parties as primary political actors, the House has radically changed its rules. In early 1996 (before the first general election under the new mixed member proportional electoral system), the House introduced Standing Orders recognising political parties, and explicitly determining many procedural rights on the basis of party representation in the House.<sup>2</sup>

### Recognition

Every registered political party<sup>3</sup> in whose name a member (constituency or list) was elected at the preceding general election or a subsequent by-election is entitled to be recognised as a party for parliamentary purposes.<sup>4</sup> Recognition is claimed by informing the Speaker of the name by which the party wishes to be known for

---

<sup>1</sup> See Sir Ivor Jennings *The British Constitution* (5th ed, Cambridge University Press, London, 1971) at ch II, for a characteristically forthright defence of the party system.

<sup>2</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 15–16.

<sup>3</sup> The political party must be registered under Part 4 of the Electoral Act 1993.

<sup>4</sup> SO 34(1).

parliamentary purposes, the identity of its parliamentary leader and other office-holders, and its parliamentary membership.<sup>5</sup> In the period between a general election and the election of a Speaker, these details are advised to the Clerk.<sup>6</sup> The recognition of parties is a mechanism for reflecting the results of elections in the proportional basis of House and committee procedures, and in the allocation of funding and services; therefore it is important that parties be able to attest their continuing representative capacity under the Electoral Act 1993.<sup>7</sup> Registration of parties under the Electoral Act and recognition of parties under the Standing Orders are distinct matters.<sup>8</sup> Registration allows political parties to contest the party vote at an election and to receive allocations to broadcast election advertising. Recognition acknowledges parliamentary membership of parties elected at the previous election.<sup>9</sup>

The name by which a party is known for parliamentary purposes need not be the same name under which it is registered with the Electoral Commission.<sup>10</sup> The name by which it wishes to be known is the one used in all parliamentary publications, such as the journals and *Hansard*. Members who do not seek recognition as members of a party for parliamentary purposes are treated as independent members, regardless of what they may call themselves outside the House.<sup>11</sup> If a party fails to maintain its registration under the Electoral Act after an election in which it wins seats in Parliament, it may continue to be recognised by the Speaker for parliamentary purposes on a temporary basis. This is so it can apply to be registered again.<sup>12</sup> A party that failed in its attempt to re-register would be recognised as a “new party”, and would lose its recognition if its membership fell below six members of Parliament.<sup>13</sup>

From this recognition as a party for parliamentary purposes flow a number of legal, procedural and funding consequences.

### **Procedural consequences**

The procedural consequences of recognition of a party for parliamentary purposes are myriad. In the Standing Orders “party” means the parliamentary membership of a political party that is recognised as a party for parliamentary purposes under the Standing Orders.<sup>14</sup>

Procedurally, recognition as a party entails:

- the leader of the largest Opposition party being recognised as Leader of the Opposition<sup>15</sup>
- the party, as far as practicable, occupying a dedicated block of seats in the Chamber<sup>16</sup>
- representation on the Business Committee<sup>17</sup>
- where possible, the opportunity to participate in each debate<sup>18</sup>
- allocation of speaking time on items of business in proportion to the party’s membership in the House<sup>19</sup>

5 SO 35(1).

6 SO 35(3).

7 Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 8.

8 (5 June 2013) 690 NZPD 10714 Carter.

9 (25 June 2013) 691 NZPD 11175 Carter.

10 (1999) 578 NZPD 17299 Kidd.

11 SO 34(5).

12 SO 34(3); Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 8.

13 SO 34(3)–(4).

14 SO 3(1).

15 SO 36.

16 SO 86(2).

17 SO 77(2).

18 SO 106(a).

19 SO 106(b).

- priority for spokespersons in debate<sup>20</sup>
- the right to vote by party<sup>21</sup>
- the right to exercise a proxy vote for party members<sup>22</sup>
- membership of select committees in proportion to the party's membership of the House<sup>23</sup>
- right to make temporary replacements of its members on select committees<sup>24</sup>
- the right of the leader (provided that the party has a minimum of six members) to comment on ministerial statements<sup>25</sup>
- asking oral questions in proportion to the party's membership of the House<sup>26</sup>
- the leader, if the party has six or more members, having a longer speech on the Budget debate, the Address in Reply debate and the Prime Minister's statement debate<sup>27</sup>
- the right to grant permission to be absent from the House.<sup>28</sup>

### ***Funding and other legal consequences***

The recognition of parties by the Speaker under the Standing Orders has the direct legal effect of qualifying them for the allocation of funding for parliamentary purposes.<sup>29</sup> This funding is administered by the Parliamentary Service, in accordance with directions issued by the Speaker, to help the parties discharge their parliamentary duties.<sup>30</sup> It includes allocations of amounts in recognition of party leadership and caucus responsibilities, and for other party activities as long as they are for parliamentary purposes.<sup>31</sup>

Aside from the allocation of funding for parliamentary purposes, few express legal consequences flow from party recognition. Regarding superannuation policy, attempts have been made from time to time to create a mechanism for achieving political consensus in legislation among the parties represented in Parliament. Provision was first made for party adherence to a political accord on superannuation in 1993.<sup>32</sup> It is now provided in legislation that before the Minister of Finance recommends the appointment of anyone to the Board of Guardians of New Zealand Superannuation there must be consultation with representatives of the other political parties in Parliament.<sup>33</sup> The leader of a party may notify the party's agreement to the parts of the legislation dealing with entitlements to New Zealand superannuation and the management of the New Zealand Superannuation Fund, and may also withdraw that agreement. Parties are listed in the schedule to the legislation as agreeing to the provisions on the basis of such notification. The schedule may have parties added to it or omitted from it by Order in Council reflecting their agreement to those parts or withdrawing it.<sup>34</sup> Parties are automatically omitted from the schedule if they are no longer represented in the House.<sup>35</sup>

<sup>20</sup> SO 106(c).

<sup>21</sup> SOs 141 and 143.

<sup>22</sup> SOs 154(4) and 155.

<sup>23</sup> SO 185(1).

<sup>24</sup> SO 187(3).

<sup>25</sup> SO 357.

<sup>26</sup> SO 381(2).

<sup>27</sup> SOs, App A.

<sup>28</sup> SO 38.

<sup>29</sup> Parliamentary Service Act 2000, s 3 "recognised party", and s 3B; Members of Parliament (Remuneration and Services) Act 2013, s 5 "party", and s 23.

<sup>30</sup> Members of Parliament (Remuneration and Services) Act 2013, s 23.

<sup>31</sup> Directions by the Speaker of the House of Representatives 2014. For details about party funding for parliamentary purposes, see pp 73–75.

<sup>32</sup> Retirement Income Act 1993.

<sup>33</sup> New Zealand Superannuation and Retirement Income Act 2001, s 56(6).

<sup>34</sup> See: New Zealand Superannuation (Political Commitment) Order 2003; New Zealand Superannuation (Political Commitment) Order 2004.

<sup>35</sup> New Zealand Superannuation and Retirement Income Act 2001, s 72.

Persons are nominated by the House to represent parties in Government and parties in Opposition on the Representation Commission (for the drawing of constituency boundaries), on the Parliamentary Service Commission, on the New Zealand Lottery Grants Board, on the Waitangi National Trust Board, and on the Intelligence and Security Committee. At least nominally, these are all cross-party appointments.

## **Leader of the Opposition**

The leader of the largest party not in Government and not in coalition with a Government party is entitled to be recognised as the Leader of the Opposition.<sup>36</sup>

The first true Leader of the Opposition is considered to have been John Ballance in 1889.<sup>37</sup> However, in the more fluid political situation before strong party organisations emerged in Parliament, other members were sometimes dubbed as “leader of the opposition” (often facetiously by their opponents).<sup>38</sup>

The office was first recognised by statute in 1933, when a special allowance was conferred on the holder. Although currently recognised in a number of statutes, the office is not created by statute (nor is that of Prime Minister); it is a product of the conventions of the parliamentary system. The Leader of the Opposition is paid a special salary by virtue of the office.

The party that the Leader of the Opposition leads is known as the official Opposition, and its members are seated immediately to the left of the Speaker’s Chair. As it is a parliamentary office depending upon recognition in the House, it is for the Speaker to determine any dispute as to who is the Leader of the Opposition.

Leader of the Opposition is a most important constitutional office,<sup>39</sup> marked at the State Opening of Parliament, where the Leader of the Opposition and the Prime Minister flank the Governor-General as the Governor-General reads the Speech from the Throne. In no other instance is the peculiar strength of the parliamentary system of government so vividly demonstrated as in its recognition of the office of Leader of the Opposition. By this means the Opposition is enlisted as an official Government-in-waiting.

The Leader of the Opposition or the Leader’s nominee is an ex officio member of the Parliamentary Service Commission<sup>40</sup> and of the New Zealand Lottery Grants Board.<sup>41</sup>

The Leader of the Opposition is accorded a special status regarding intelligence and security matters. The Leader is a member of the Intelligence and Security Committee.<sup>42</sup> The Director of the New Zealand Security Intelligence Service is obliged to consult the Leader of the Opposition regularly to keep him or her informed about matters relating to security.<sup>43</sup> The Leader of the Opposition must also be advised by the Prime Minister and the Attorney-General whenever an entity has been or is to be designated a terrorist entity, and must, if the Leader requests it, be briefed on the factual basis for the designation.<sup>44</sup>

The Leader of the Opposition is entitled to precedence on the Opposition side of the House in major parliamentary debates.

<sup>36</sup> SO 36.

<sup>37</sup> JO Wilson *New Zealand Parliamentary Record 1840–1984* (Government Printer, Wellington, 1985) at 282.

<sup>38</sup> For example: Julius Vogel in 1867; see Raewyn Dalziel *Julius Vogel—Business Politician* (Auckland University Press, Auckland, 1986) at 78.

<sup>39</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 8.

<sup>40</sup> Parliamentary Service Act 2000, s 18(1)(c).

<sup>41</sup> Gambling Act 2003, s 272(2)(c).

<sup>42</sup> Intelligence and Security Committee Act 1996, s 7(1)(b).

<sup>43</sup> New Zealand Security Intelligence Service Act 1969, s 4AA(3).

<sup>44</sup> Terrorism Suppression Act 2002, s 20(5).

## Party leaders

The appointment of a leader of a party is entirely a matter for the party itself. The House has no role in it. The leader of each party must be specifically identified to the Speaker, and will consequently be recognised as such by the Speaker.<sup>45</sup>

Party leaders in the House include, by definition, the Prime Minister and the Leader of the Opposition. Other Ministers, including the Deputy Prime Minister, may also be party leaders if their party is in a Government coalition.

Party leaders are by convention allocated a front-bench seat, and are accorded some precedence by the Speaker in calling members to speak. Those party leaders whose parties have six or more members may comment on a ministerial statement,<sup>46</sup> and they have longer speaking times on the Budget, Address in Reply and Prime Minister's statement debates. Before regulations relating to electoral advertisements displayed in public places can be made, the contents of the regulations must be agreed to by at least half of the parliamentary leaders of the parties represented in the House, and they must represent at least 75 per cent of all members of Parliament.<sup>47</sup>

A court has refused to make an order making party leaders representatives of their parliamentary membership for the purposes of legal proceedings as to how members were to vote.<sup>48</sup> However, as the proceedings took place before the introduction of the MMP electoral system and the consequent procedural changes (especially party voting) recognising parties in the House, this judgment may not be a reliable indicator of the current position.

A special salary is payable to a party leader who receives no other special salary (for example, as a Minister or as Leader of the Opposition). This salary increases incrementally according to the number of members in the party. A salary is also provided for the deputy leader of each party whose members in the House number at least 25.<sup>49</sup>

## Whips

The whips are an essential and peculiarly parliamentary manifestation of the party system. The term “whip” (which is derived from hunting) indicates vividly the principal task of the holder of this office: to ensure that that member’s party’s supporters are present in Parliament to support a question when it is put to the vote. Not all parties use the term “whip”. The Green Party instead uses the term “musterer”.

The whips, especially a Government party’s whips who need to maintain the Government’s voting majority, have to keep track of the movements of their members. If a member wishes to be absent from the House, he or she will be asked to justify the absence to the whips. If a member cannot or does not bother to do this, and is absent nevertheless, he or she can expect trouble with the party for a breach of discipline. The Standing Orders recognise the authority of whips to grant members permission to be absent from the House.<sup>50</sup> When such permission is granted, it is sufficient for members to avoid liability for deductions from their salaries on account of their absence.<sup>51</sup>

The whips carry out most of the tasks that enable parties to function as teams in the House, such as arranging the speaking order of their members and helping to smooth over personal and political differences within caucus. They possess certain powers under the Standing Orders, such as holding proxy votes and making temporary replacements on select committees.<sup>52</sup>

<sup>45</sup> SO 35(1)(b).

<sup>46</sup> SO 357.

<sup>47</sup> Electoral Act 1993, s 267B(1)(c), (d) and (2)(b), (c).

<sup>48</sup> *Thomas v Bolger (No 1)* [2002] NZAR 945 (HC).

<sup>49</sup> Parliamentary Salaries and Allowances Determination (No 2) 2015.

<sup>50</sup> SO 38(2).

<sup>51</sup> SO 39; Members of Parliament (Remuneration and Services) Act 2013, s 13(5). See pp 54–56.

<sup>52</sup> SOs 154(4) and 187(3).

The whips are the principal communicators between the parties represented in the House. The smooth running of the House depends to a large extent on the relationship that is built up between whips of different parties, and on the agreements and understandings they reach. Whips generally attend meetings of the Business Committee on behalf of their parties.

Whips first received additional remuneration by virtue of their office in 1961. A salary (increasing incrementally according to the number of members) is provided for one whip for a party with six or more members in the House, two whips for a party with 25 or more members, and three whips for a party with 45 or more members.<sup>53</sup> Parties can, of course, appoint as many of their members as whips as they wish, but no special remuneration is available beyond the proportionately specified number of positions. The arrangements for the appointment of whips are internal matters for the respective parties to determine. The Speaker must be advised of the appointment of whips.<sup>54</sup>

## Caucus

Meetings of members to discuss and co-ordinate parliamentary strategy were held even before a distinct party system emerged. In 1872 Sir David Monro recorded attending a meeting, which he termed a “species of caucus”, at a private house.<sup>55</sup>

Each party represented in the House holds a regular meeting of its members of Parliament called a caucus. At these meetings parties discuss parliamentary and other political business. Caucus has been described as playing a necessary but subordinate role in the decision-making process, often contributing particularly to policy formation.<sup>56</sup> A particular role of caucus is to agree on the tactics to be followed by party members in the House and at select committees.<sup>57</sup> Especially at caucus meetings of parties in Government, proposals for appointments to public office may be submitted to caucus for endorsement or consultation.

Depending upon each party's arrangements, caucus meetings may be attended by people who are not members, such as the party president. Caucus meetings are held each Tuesday morning during sitting weeks and at less frequent intervals during adjournments of the House. Joint caucus meetings of parties in coalition have been held at least since 1917.<sup>58</sup> However, the term “caucus” has taken on a wider meaning than a party meeting; it is also used to refer collectively to all the members of Parliament belonging to a particular party, without any connotation of a meeting being involved.

A caucus will often appoint committees to help formulate policy in particular subject areas. With the agreement of their Minister, departmental officials may attend meetings of such committees, especially those of a Government party's caucus, to provide factual information. Officials are not permitted to make personal comment on the merits of Government or party policy to a caucus committee.<sup>59</sup> While departmental officials can assist caucus committees on matters within

<sup>53</sup> Parliamentary Salaries and Allowances Determination (No 2) 2015; Directions by the Speaker of the House of Representatives 2014, cl 33.

<sup>54</sup> SO 35(1)(b).

<sup>55</sup> Rex E Wright-St Clair *Thoroughly a Man of the World: A Biography of Sir David Monro*, MD (Whitcombe & Tombs, Christchurch, 1971) at 271.

<sup>56</sup> John E Martin *The House—New Zealand's House of Representatives 1854–2004* (Dunmore Press, Palmerston North, 2004) at 236–237; see Keith Sinclair *Walter Nash* (Auckland University Press, Auckland, 1976) at 95, 164–167 for major policy changes adopted by caucus and not submitted for wider party endorsement until the following year, and the contribution of caucus to the development of the social security reforms of 1938.

<sup>57</sup> See, for example: Keith Sinclair *Walter Nash* (Auckland University Press, Auckland, 1976) at 103 (caucus agreeing on what members could refer to in a debate).

<sup>58</sup> Michael Bassett *Sir Joseph Ward—A Political Biography* (Auckland University Press, Auckland, 1993) at 243 (combined caucus meeting of Reform and Liberal parties); see, for a more recent joint caucus of National and New Zealand First parties, “Caucus meetings aim to cement coalition” *The Evening Post* (18 November 1997).

<sup>59</sup> Cabinet Office *Cabinet Manual* 2008 at [3.67].

their (official) areas of expertise, they do not themselves provide secretarial or administrative services to the caucus committees. These services are provided by employees of the Parliamentary Service who are engaged to assist the party groups. A department that advertised for submissions for a caucus committee and offered its own premises for the receipt of such submissions has been criticised by a parliamentary select committee for acting improperly in doing so.<sup>60</sup>

Caucuses and caucus committees are not governmental or parliamentary bodies; they are party bodies. Therefore documents prepared for caucus or caucus committees are not official information to which there is any public right of access, even if such papers are held by a Minister of the Crown.<sup>61</sup> However, such caucus information changes its status if it is attached to or incorporated in advice to Cabinet. It then becomes official information.<sup>62</sup>

Questions relating to caucus activities are not permitted in the House. The proceedings at party caucuses are not proceedings in Parliament and thus are not subject to the absolute legal protections that apply to the House's business.<sup>63</sup>

## Parliamentary party membership

The House is concerned with whether or not a party is registered under the Electoral Act 1993 to assure itself that a party retains its representative capacity. But it is not concerned with who is or who is not a member of a political party. That matter is relevant to the Electoral Commission. To be entered on the Register of Political Parties and thus allowed to compete for list seats, a party must establish to the commission's satisfaction that it has at least 500 current financial members who are eligible to enrol as electors.<sup>64</sup> If its membership falls below 500 its registration is cancelled.<sup>65</sup>

Party membership is also a matter about which there may be disputes between the party members themselves—for example, over whether the party's membership rules (as an incorporated or unincorporated society) have been complied with.<sup>66</sup>

The House is concerned with the *parliamentary* membership of the parties, which are recognised for parliamentary purposes. These details must be advised to the Speaker.<sup>67</sup> The Speaker must also be informed of any change in a party's parliamentary membership.<sup>68</sup> A party's membership may change during the term of a Parliament as a result of a member ceasing to be a member of Parliament (by death, resignation or disqualification), of other members being elected to Parliament in its interest, of a member resigning from the parliamentary party but continuing to sit as a member of Parliament, or of a member being expelled from the parliamentary party. The last two instances raise consequential issues as to the member's continuing status in the House. But in all cases parliamentary membership is determined entirely under the House's own rules, its Standing Orders.<sup>69</sup>

---

<sup>60</sup> Government Administration Committee, report on 1992/93 Estimates (Vote State Services Commission) (29 September 1992) [1991–1993] AJHR I.19C at 234–235.

<sup>61</sup> Office of the Ombudsman *Sixth compendium of case notes of the Ombudsman* (January 1985) (Case No 117) and *Ninth compendium of case notes of the Ombudsman* (July 1989) (Case No 1374).

<sup>62</sup> Office of the Ombudsman, report for the year ended 30 June 1994 (13 October 1994) [1993–1996] AJHR A.3 at 26.

<sup>63</sup> See David McGee "Parliament and Caucus" [1997] *New Zealand Law Journal* 137 (cited by McGrath *Jin Awatere Huata v Prebble* [2004] 3 NZLR 359 (CA) at [63]–[64]). See also *R v Turnbull* [1958] Tas SR 80 (SC) at 84. For a definition of "proceedings in Parliament" see Parliamentary Privilege Act 2014, s 10.

<sup>64</sup> Electoral Act 1993, s 63(2)(c)(vi).

<sup>65</sup> Electoral Act 1993, s 70(2).

<sup>66</sup> *Peters v Collinge* [1993] 2 NZLR 554 (HC).

<sup>67</sup> SO 35(1)(c).

<sup>68</sup> SO 35(1)(c).

<sup>69</sup> (3 August 2004) 619 NZPD 14513 Hunt.

### ***Resignation from the parliamentary party***

Any member can leave the parliamentary party in whose interest he or she was originally elected. This would normally be effected by a letter resigning from the parliamentary party, addressed by the member to the leader or whip of the party, and a letter to the Speaker advising the Speaker of this. A member in these circumstances would then be recognised as an independent for parliamentary purposes.<sup>70</sup> Alternatively, the member could join another parliamentary party already established in the House. In these circumstances the member advises the Speaker that he or she has joined that party with the agreement of its leader.<sup>71</sup> The member is then recognised as a member of that party, and party numbers in the House are adjusted accordingly.

A member who has ceased to be a member of his or her original parliamentary party can also seek recognition by the Speaker as a member of another party not hitherto established in the House, provided that the new party is registered as a party by the Electoral Commission and that it has a minimum of six members of Parliament.<sup>72</sup> Such a party loses its recognition for parliamentary purposes if its number of members in the House subsequently falls below six.<sup>73</sup>

Finally, a member who stood as a constituency candidate in the preceding general election for a component party (that is, a party that is itself a member of a registered party or has combined its membership with another party and registered the combined entity as a party) may leave the registered party and be recognised for parliamentary purposes as a member of the component party.<sup>74</sup>

When the Speaker receives advice that a member has left a party and is therefore an independent member or a member of another parliamentary party, the Speaker advises the House forthwith.<sup>75</sup> The Speaker acts only on advice received from a party leader that a party's membership has changed or on advice from a member that the member has left a party. It is not open to other members to give advice on behalf of another party or another member of such changes.<sup>76</sup>

From 21 December 2001 to 17 September 2005 (polling day for the 2005 general election) any member who resigned as a parliamentary member of the political party for which the member was elected automatically vacated his or her parliamentary seat.<sup>77</sup> This requirement was imposed by legislation (colloquially known as "party-hopping" or, in New Zealand parlance, "waka-jumping" legislation) that expired at the time of the general election in 2005.<sup>78</sup> No member resigned from parliamentary membership of their party during this period so as to trigger the legislation.

### ***Expulsion from the parliamentary party***

A party caucus may expel a member from membership.<sup>79</sup> How it does so is a matter for it rather than the House.<sup>80</sup> The leader of the party advises the Speaker of the change to its party membership, and the expelled member is thenceforth regarded as an independent member.<sup>81</sup>

From 21 December 2001 to 17 September 2005 a more formal legislative expulsion procedure was available to parliamentary parties under the waka-

<sup>70</sup> SO 34(5).

<sup>71</sup> SO 34(2)(a).

<sup>72</sup> SO 34(2)(b).

<sup>73</sup> SO 34(4).

<sup>74</sup> SO 34(2)(c).

<sup>75</sup> See, for example: (1999) 577 NZPD 16860; (1999) 580 NZPD 19421; (11 November 2003) 613 NZPD 9837 Hunt.

<sup>76</sup> (2002) 600 NZPD 15881 Hunt; (4 May 2004) 617 NZPD 12554 Hunt.

<sup>77</sup> Electoral Act 1993, s 55A(2), (3)(a).

<sup>78</sup> Electoral (Integrity) Amendment Act 2001, s 3.

<sup>79</sup> For an example see *Peters v Collinge* [1993] 2 NZLR 554 (HC) (no legal challenge was made to the caucus decision in this case).

<sup>80</sup> See Mai Chen "The long arm of caucus" *The Dominion* (8 October 1992), as to whether a decision to expel from caucus may be subject to judicial review.

<sup>81</sup> (11 November 2003) 613 NZPD 9837 Hunt.

jumping legislation, which, if utilised, resulted in the expelled member losing his or her seat.<sup>82</sup> The expulsion procedure was used on one occasion to vacate a member's seat.<sup>83</sup> This power expired at the time of the 2005 general election.<sup>84</sup>

### **Suspension from the parliamentary party**

The suspension of a member from a party caucus effects no change in the party's parliamentary membership.<sup>85</sup> For parliamentary purposes the suspended member remains a member of the party, and the party's voting strength is not affected. There is no obligation on a party to notify the Speaker of a suspension. Whether it does so or not is entirely a matter for it.

## **GOVERNMENT**

If he or she is not already Prime Minister, the leader of the political party that obtains a majority of seats in the House of Representatives is invited by the Governor-General to become Prime Minister and to form a Government. This is the essential feature of responsible government and is a cardinal constitutional convention. The action of the Governor-General in selecting and appointing a Prime Minister and a Government does not require any formal consultation with the House itself, nor does the Governor-General's choice of Prime Minister need to be confirmed by the House. In fact, the basis on which the Governor-General's choice is made—that the person concerned commands majority support in the House—should render formal confirmation or approbation by the House unnecessary.

If no one party has an overall majority of members of the House, the Governor-General still needs to find a member of Parliament to hold office as Prime Minister. For this purpose a coalition of parties sharing portfolios may be formed on the basis of a coalition agreement entered into between them. Alternatively, parties can enter into agreements to support the Government on matters of confidence and supply, but without forming a coalition as such. The signatories of a coalition agreement or a support agreement may include party functionaries, such as the party president, as well as parliamentarians. Such agreements generally set out the political arrangements for forming and operating a coalition or support arrangements. They do not confer any legal rights or obligations; they operate purely at a political level. They have been described as a political manifesto as to how the partners in Government will act.<sup>86</sup> As political documents, accountability for them lies with Parliament. They may be the subject of questions, especially to the Prime Minister, insofar as they have implications for Government business,<sup>87</sup> and have been the subject of a ministerial statement when a dispute arose between the partners.<sup>88</sup> Although such agreements between political parties are political, rather than legal, documents, all or part of the contents of the agreements may be approved by Cabinet and be promulgated by way of Cabinet Office circular.<sup>89</sup> The agreements may also be incorporated into Government policy at a ministerial or departmental level.<sup>90</sup> In these circumstances the agreement's provisions take on the status of official governmental procedures and legal significance may attach to them. The fact that parties have formed a coalition must be specifically advised to the Speaker.<sup>91</sup>

<sup>82</sup> Electoral Act 1993, s 55A(2), (3)(b).

<sup>83</sup> *Awatere Huata v Prebble* [2005] 1 NZLR 289 (SC); (19 November 2004) 150 New Zealand Gazette 3749.

<sup>84</sup> Electoral (Integrity) Amendment Act 2001, s 3.

<sup>85</sup> (11 February 2003) 606 NZPD 3257 Hunt.

<sup>86</sup> *South Taranaki Energy Users Association Inc v South Taranaki District Council* HC New Plymouth CP5/97, 26 August 1997 at 70.

<sup>87</sup> (2000) 587 NZPD 5483 Hunt.

<sup>88</sup> (1998) 570 NZPD 11318–11324.

<sup>89</sup> Cabinet Office *Cabinet Manual* 2008 at [3.71] and [5.16].

<sup>90</sup> See, for example: *Westhaven Shellfish Ltd v Chief Executive of Ministry of Fisheries* [2002] 2 NZLR 158 (CA) at [28] (coalition agreement to be taken into account in approving fishing permits).

<sup>91</sup> SO 35(2).

Under MMP, no single-party majority Government has been delivered at election. Instead, an evolution in party arrangements has favoured a series of minority Governments. These minority Governments consist of the major party in Government, its formal coalition partners, and/or a series of agreements or understandings with other parties in the House for confidence and supply. Such arrangements can be fluid outside of confidence and supply, and parties in such an arrangement may decide whether to support initiatives policy by policy. Some or all parties may have Ministers in Government. Cabinet's collective responsibility arrangements have evolved to take account of the fact that Ministers from different coalition parties may not agree on all matters of policy, outside of matters of confidence. Thus "agree to disagree" provisions are available to Ministers in coalition parties to allow them to maintain distinct party positions on issues or policies during the decision-making process.<sup>92</sup> Ministers outside Cabinet from parties supporting the Government are bound by collective responsibility only in relation to their particular portfolios, and are seen to speak as members of Parliament when addressing matters outside their portfolios.<sup>93</sup>

## Ministers of the Crown

The Prime Minister forms a Government by choosing members to hold office as Ministers of the Crown, and advising the Governor-General to appoint such persons accordingly. In a coalition or support arrangement, Ministers from two or more parties may share the portfolios. Ministers almost invariably have one or more departments of State assigned to them to administer, although a Minister may be appointed without control of a specified department.

Ministers are appointed to the Executive Council, which is the body that tenders formal advice to the Governor-General and is presided over by the Governor-General. Many important legal powers are exercised by the Executive Council, in particular the making of most statutory regulations. It has been described as a conventional instrument for the formal making of subordinate legislation and a host of other routine administrative decisions.<sup>94</sup>

Most Ministers are also members of the Cabinet, a body that is chaired by the Prime Minister and meets apart from the Executive Council. While having few if any legal powers itself, the Cabinet decides what advice is to be tendered to the Governor-General in the Executive Council, and makes many other decisions of a political or administrative nature, which are then implemented by Ministers in their individual capacities. It is thus the Cabinet, the meeting of the politicians charged with carrying on the Government, that makes policy decisions on behalf of the Government as a whole. These policy decisions are given legal authority by the Executive Council and translated into action by the Ministers themselves, as the political heads of the various Government departments.

Some members of Parliament may be appointed as Ministers but not made members of the Cabinet. Where members of parties formally supporting the Government have ministerial positions, they are most frequently Ministers outside Cabinet.<sup>95</sup> The decision as to whether or not a Minister should be a member of the Cabinet is made by the Prime Minister, though each party may have its own rules as to how these decisions are made (for example, by caucus electing the members of Cabinet).<sup>96</sup>

<sup>92</sup> Cabinet Office *Cabinet Manual* 2008 at [5.25]–[5.26].

<sup>93</sup> Ibid, at [5.27].

<sup>94</sup> FAI Insurances Limited v Winneke (1982) 151 CLR 342 at 354 per Stephen J.

<sup>95</sup> Cabinet Office *Cabinet Manual* 2008 at [5.26]–[5.27]. See, for example: Rt Hon John Key, Hon Tariana Turia and Te Ururoa Flavell "2014 Relationship Accord and Confidence and Supply Agreement with the Maori Party: 'Te Tatau ki te Paerangi'—A doorway to our horizons" (5 October 2014) at 3.

<sup>96</sup> See, for example: Margaret Hayward *Diary of the Kirk Years* (Cape Catley Ltd, Queen Charlotte Sound, and AH and AW Reed, Wellington, 1981) at 96–99 for a description of the election of Cabinet in 1972.

Ministers are entitled to the honorific “Honourable” (Hon) while they are in office. They lose this title when they cease to hold office, though the Sovereign may confer the title on former Ministers for life. Prime Ministers receive the title “Right Honourable” (Rt Hon) ex officio.

By convention, Ministers are individually responsible to the House for their official actions and for the general conduct of their departments and officials. This is a political accountability. It is not limited to matters over which the Minister has legal control.<sup>97</sup> This responsibility is given its most obvious parliamentary form by way of questions to Ministers. These questions can relate to any public affairs with which the Minister is officially connected.<sup>98</sup> This goes far beyond matters for which the Minister has legal authority. It extends to matters over which the Minister may have no legal control but which, by virtue of accepting office, Ministers assume a political responsibility to answer for.<sup>99</sup> Some statutes have in the past sought to confer a parliamentary accountability obligation on Ministers in respect of statutory functions that repose in them.<sup>100</sup> These provisions have been repealed, and were inadequate as formulations of the accountability relationship between Ministers and the House. Such relationships rest on constitutional convention, not on legal rules.

## **Parliamentary Under-Secretaries**

Since 1936 there has been provision for the appointment of Parliamentary Under-Secretaries. These are members of Parliament appointed by the Governor-General on the advice of the Prime Minister to assist particular Ministers in their departmental and parliamentary work. A Minister can delegate any of the ministerial functions, duties and powers he or she holds to his or her Parliamentary Under-Secretary.<sup>101</sup>

A Parliamentary Under-Secretary may answer a question on behalf of a Minister in the Minister’s absence.<sup>102</sup> Otherwise, a Parliamentary Under-Secretary cannot perform functions conferred by the Standing Orders on a Minister, such as taking charge of a Government bill.

## **Appointment of Ministers**

No person may be appointed or hold office as a Minister of the Crown or as a member of the Executive Council unless that person is a member of Parliament.<sup>103</sup> A similar provision applies to Parliamentary Under-Secretaries.<sup>104</sup> Ministers and Parliamentary Under-Secretaries automatically cease to hold their offices 28 days after ceasing to be members of Parliament.<sup>105</sup>

All members of Parliament cease to be members at the close of polling at the next general election after their election to the House.<sup>106</sup> Members (even those re-elected) do not come into office until the day following the return of the writ, for electorate members, or the day following the forwarding by the Electoral Commission to the Clerk of the House of a return of those elected, for party list members.<sup>107</sup> There is thus a period of some two or three weeks following each general election when there are no members of Parliament in office and it would consequently not be possible to appoint new Ministers. This could prevent a rapid

<sup>97</sup> Public Finance (State Sector Management) Bill (99–2) (commentary, 6 September 2004) at 23 ([2002–2005] AJHRI.22C at 253).

<sup>98</sup> SO 378(a).

<sup>99</sup> (1990) 509 NZPD 2705–2706 Burke.

<sup>100</sup> See, for example: Land Transport Management Act 2003, sch 4, cl 4; Gambling Act 2003, sch 4, cl 4 (both provisions repealed by the Crown Entities Act 2004).

<sup>101</sup> Constitution Act 1986, s 9(1).

<sup>102</sup> SO 385(2).

<sup>103</sup> Constitution Act 1986, s 6(1).

<sup>104</sup> Constitution Act 1986, s 8(1).

<sup>105</sup> Constitution Act 1986, ss 6(2)(b) and 8(2).

<sup>106</sup> Electoral Act 1993, s 54(1).

<sup>107</sup> Electoral Act 1993, s 54(2).

transfer of power to a new Government if this were desirable in the circumstances, and also inhibit the urgent reconstruction of a Government that had been returned to power.

Provision has therefore been made in law for people who were candidates at a general election to be appointed to office as Ministers of the Crown (but not as Parliamentary Under-Secretaries) even though they are not yet members of Parliament. It is also provided, however, that such appointees automatically cease to be Ministers if they have not become members of Parliament within 40 days of their appointment.<sup>108</sup>

While there is no express prohibition on the reappointment to ministerial office of a person who has lost office by failing to become a member of Parliament within 40 days, it would seem that such an appointment would be contrary to the general principle of law that Ministers must be members of Parliament.<sup>109</sup>

## **Resignation of Ministers**

All Ministers may continue in office beyond a general election until they tender their resignations to the Governor-General or until 28 days after the election, whichever occurs sooner.<sup>110</sup> In the case of a Government that is defeated at a general election, all Ministers resign along with the Prime Minister. In the case of a Government that is returned to power at the election or remains in office for a prolonged period as a caretaker Government because of extended coalition negotiations, the individual Ministers who did not themselves stand for re-election or who were defeated at the election may remain in office for up to 28 days afterwards. The other Ministers may be reappointed to office before the expiration of the 28-day period, on a caretaker basis if necessary. In the normal course of events, the resignation of an entire Government takes place when the election results for the seats in Parliament have been officially declared, two weeks or so after polling day, though this period may be prolonged by coalition negotiations.

## **Caretaker conventions**

Where a Government is defeated at a general election, its conduct during the period after the election (while it is holding over as the Government) is subject to certain constitutional conventions or understandings. These conventions were first expressed in the period following the defeat of the Government at the 1984 election.<sup>111</sup> The conventions applying to the Government following an election or a loss of confidence have now been given expanded expression in the *Cabinet Manual*.<sup>112</sup>

If it is clear, following the election, who the new Government will be, the caretaker Government is expected to act on the advice of the incoming Government regarding significant matters on which decisions cannot be delayed until the formal transfer of power (for instance, the situation in 1984 where the new Government wished to devalue the currency).

If the election outcome is uncertain, or if during the term of a Parliament a Government loses the confidence of the House and continues to hold office until a new Government takes office or the House's confidence in it is re-established, the Government holds office in a caretaker capacity.

A caretaker Government has executive authority and carries on the normal business of government. However, it is not expected to make significant policy decisions, especially any with long-term implications, by initiating new proposals or by changing existing policy. All such decisions should be deferred if possible.

<sup>108</sup> Constitution Act 1986, s 6(2)(a).

<sup>109</sup> *Chaudhuri v State of Punjab* [2001] AIR 2707 (SC) (attempted reappointment invalid).

<sup>110</sup> Constitution Act 1986, s 6(2)(b).

<sup>111</sup> Hon JK McLay, Deputy Prime Minister and Attorney-General (media release, 17 June 1984).

<sup>112</sup> Cabinet Office *Cabinet Manual* 2008 at [6.16]–[6.35].

If deferral is not possible, temporary or holding arrangements may be made by the caretaker Government. If a significant decision cannot be deferred or resolved temporarily, consultation with the other parties represented in Parliament must be undertaken to ascertain whether a proposed course of action has the support of a majority of the House.<sup>113</sup>

Different considerations apply in the immediate pre-election period.

In Australia a caretaker convention operates from the dissolution of Parliament until the election results are clear. In this period Governments are required to avoid implementing major policy initiatives, making important appointments or entering into major contracts or undertakings. The principle is that important decisions that would bind an incoming Government should not be made.<sup>114</sup> It is accepted in Canada too that conventions operate to constrain the powers of the Government after Parliament has been dissolved for an election, though there can be dispute as to whether these constraints apply in a particular case.<sup>115</sup>

The *Cabinet Manual* states that in New Zealand, in the period immediately before a general election, the Government is not bound by the caretaker convention (unless the election has resulted from the Government losing the confidence of the House).<sup>116</sup> Nevertheless, it suggests, Governments have chosen to restrict their actions to some extent for approximately three months before an election is due or from the date an election is announced if this is within three months of the election date. Examples of the forms of restraint exercised are the deferral of significant appointments and the limiting of Government advertising.<sup>117</sup>

As the *Cabinet Manual* indicates, there is clearly no established constitutional convention requiring the Government to act in a caretaker capacity in the pre-election period. However, when Parliament is dissolved before an election a Government (even one with a majority in the House) is no longer meeting Parliament and accounting to it for the exercise of executive power. There would therefore appear to be a strong case for saying that a caretaker convention ought to apply from that point onward, to constrain the making of important decisions by the Government until the outcome of the election is clear.

## Leader of the House

The Prime Minister is the leader of the Government in every sphere and through most of Parliament's history also played the role of a floor-leader in the House, deciding on the programming of Government business and parliamentary tactics.<sup>118</sup> However, since 1978 another senior Minister has been appointed to the ministerial office of Leader of the House of Representatives and given particular responsibility for Government business in the House. Because of the general precedence of Government business in the House, the Leader of the House initiates many procedural matters. The Leader of the House determines the order in which Government business will be taken, and is primarily responsible for the timing of the Government's legislative programme. The Leader attends meetings of the Business Committee to set out the Government's intentions regarding the business to be transacted and suggests the sitting programme to be followed.

<sup>113</sup> Ibid, at [6.20].

<sup>114</sup> BC Wright *House of Representatives Practice* (6th ed, Department of the House of Representatives, Canberra, 2012) at 60.

<sup>115</sup> Compare, for example: Andrew Heard "Constitutional Conventions and Election Campaigns" (1995) 18(3) *Canadian Parliamentary Review* 8, and John Wilson "Constitutional Conventions and Election Campaigns: The Status of the Caretaker Convention in Canada" (1995) 18(4) *Canadian Parliamentary Review* 12 (dispute over whether a contract for an international airport should have been entered into during this period).

<sup>116</sup> Cabinet Office *Cabinet Manual 2008* at [6.9].

<sup>117</sup> Ibid.

<sup>118</sup> Though in 1931 on the formation of the National Coalition Government a separate Leader of the House was apparently appointed—see Michael Bassett *Coates of Kaipara* (Auckland University Press, Auckland, 1995) at 169.

The Leader of the House or the Leader's nominee is an ex officio member of the Parliamentary Service Commission.<sup>119</sup>

## **Attorney-General**

The Minister of the Crown principally responsible for providing legal advice to the Government is the Attorney-General. When acting in this role as the Government's senior law officer, the Attorney-General acts independently and is not bound by the collective responsibility of Ministers for Cabinet decisions.<sup>120</sup> The Attorney-General is the ministerial head of the Crown Law Office. The chief executive of the Crown Law Office is the Solicitor-General.

The Attorney-General is responsible for reporting to the House on provisions in bills that appear to be inconsistent with the rights and freedoms set out in the Bill of Rights Act.<sup>121</sup> This must be done on the introduction of a Government bill, or as soon as practicable for other types of bill.<sup>122</sup> After a bill is passed by the House, the Attorney-General certifies to the Governor-General that the bill contains nothing that requires that the Royal assent should be withheld. (See Chapter 27.) The Attorney-General also usually chairs the Privileges Committee. Standing Orders require promoters to give the Solicitor-General notice of any private or local bill that affects the public revenues or the rights or prerogatives of the Crown or that affects a charitable trust.<sup>123</sup>

## **CONFIDENCE VOTES**

A Government subsists in office because it possesses the “confidence” of the House. This is the continuing basis of responsible government. The confidence of the House underpins any Government's right to hold office; constitutionally, except in a caretaker capacity, it cannot do so without that confidence. It is fundamental that a Government that has lost the confidence of the House must resign or seek a general election. A Government refusing to act appropriately in such circumstances could, it has been suggested, be dismissed by the Governor-General.<sup>124</sup> Indeed, the Governor-General may be obliged to do so to preserve constitutional government.

Strictly speaking, confidence is a negative (and somewhat circular) concept. A Government retains the confidence of the House for so long as it can avoid defeat on important parliamentary votes—those that involve a question of confidence. If a Government were defeated on such a vote, a new political settlement would need to be effected. This new settlement might take a number of forms. Another general election might be held, with the defeated Government acting in a caretaker capacity up to the holding of that election; or new coalition or support arrangements might form a Government with a majority in the House; or the defeated Government might be able to re-establish confidence in itself, having acted in a caretaker capacity in the meantime. (In any case if a new Government takes office, that new Government would itself continue in office only for as long as it retained the confidence of the House.) Whatever the new political settlement, demonstration of a loss of confidence in the Government is an event that demands a reconsideration of the basis on which the Government holds office. Until a new settlement has been effected, the defeated Government could continue in office only on a caretaker basis.

<sup>119</sup> Parliamentary Service Act 2000, s 15(1)(b).

<sup>120</sup> Cabinet Office *Cabinet Manual* 2008 at [4.2]–[4.5].

<sup>121</sup> New Zealand Bill of Rights Act 1990, s 7.

<sup>122</sup> SO 265(2).

<sup>123</sup> SOs, App C cl 4(2)(a), (h).

<sup>124</sup> Geoffrey Marshall *Constitutional Conventions—The Rules and Forms of Political Accountability* (Clarendon Press, Oxford, 1984) at 27.

The question of the Government possessing the confidence of the House is not peculiar to a party system of government. It existed in New Zealand politics from the time of responsible government in 1856, long before there were distinct parties in Parliament. Although legally the Prime Minister and the other Ministers are (on appointment by the Governor-General) carrying on the Sovereign's government, they are politically responsible to the House of Representatives in doing so, and are liable to dismissal, not legally by the House but at its behest, if they cannot maintain support there.

The advent of a party system introduced more stability into government, for once elected with a majority it became unlikely that the Government would lose the majority otherwise than at a general election. Even so, there were times when general elections did not produce a clear majority for a single party and uncertainty over confidence matters ensued.<sup>125</sup> The means by which the retention of confidence in the Government is tested is a vote in the House itself—a confidence vote. Not since 1928 has a Government been defeated on a confidence vote and therefore been obliged to resign. The adoption of proportional representation in 1996, making it unlikely that a single party will win an outright majority of seats at a general election, has refocused attention on the need for each Government to retain the confidence of the House.

In practice, if a Government is facing inevitable defeat in a confidence vote it is unlikely to wait for the vote to occur (as the Government did in 1928) before taking action to effect a new political settlement. So even if a Government has not been formally defeated in a confidence vote, it may be forced to recognise that defeat is inevitable, to act on the basis that it has occurred, and to resign or seek new coalition partners, new political agreements with other parties, or a new mandate at an election.

### **Definition of a confidence vote**

The confidence of a House in a Government is a matter of political judgement. It is not a matter of parliamentary procedure on which the Speaker can rule.<sup>126</sup> Ultimately, it is a matter for the Governor-General in the exercise of the reserve powers of the office to judge whether a Government possesses the confidence of the House. This can involve making fine judgements on the legitimacy or effect of the actions of politicians in their management of parliamentary affairs. It has been suggested, for example, that a Governor-General would be justified in refusing a Prime Minister's advice to dissolve Parliament and hold a general election if a motion of no confidence in the Government was under debate in Parliament, especially if the Government's capacity to win that vote was uncertain. The purpose of refusing to dissolve Parliament in these circumstances would not be to force the Government's resignation, but to allow Parliament to express its will.<sup>127</sup>

To be regarded as inherently a question of confidence of the House in the Government, a motion must be put before the House that raises the issue of the Government's survival in office. It is not enough that the motion raises an important issue. That might lead the Government to treat the motion as a question of confidence but does not inherently make it so.

A confidence vote must, by definition, be a party vote, with the party whips operating to ensure a turnout of members to support or oppose the Government. "Conscience" votes, where members are left to make up their own minds on an issue free of party discipline, cannot involve questions of confidence. But neither do most party votes. Governments may lose significant party votes without there

<sup>125</sup> See Michael Bassett *Three Party Politics in New Zealand 1911–1931* (Historical Publications, Auckland, 1982).

<sup>126</sup> Audrey O'Brien and Marc Bosc *House of Commons Procedure and Practice* (2nd ed, House of Commons, Ottawa, 2009) at 43.

<sup>127</sup> James Ross Hurley "The Royal Prerogative and the Office of Lieutenant Governor: A Comment" (2000) 23(2) *Canadian Parliamentary Review* 18.

being any necessity for them to resign or call a general election by virtue of the defeat. In 1983 the Government (a single-party majority Government) suffered a defeat on a major aspect of a bill on industrial law reform;<sup>128</sup> in 1998 a Government bill was defeated on its second reading;<sup>129</sup> and in 2001 the title of a Government bill was amended despite the Government voting against the amendment.<sup>130</sup> A Member's bill to adjust the public holidays marking Waitangi Day and ANZAC Day was passed in 2013 despite the main Government party voting against it.<sup>131</sup> In none of these instances was the defeat indicative of the Government losing the confidence of the House in a constitutional sense. Under MMP, Governments have worked with their support parties to generate support for legislative proposals. If support appears not to be forthcoming, measures may be delayed or changes discussed and a compromise reached before progress is made and the matter put to the vote.

But although not a resigning matter in itself, an important defeat could lead the Government to test its support in the House by a suitably worded motion intended to vindicate its decision not to regard the defeat as a defeat on a vote of confidence. A Government could also resign or seek the dissolution of Parliament after being defeated in the House even though the vote was not acknowledged as a matter of confidence before it occurred. In this case it would need to persuade the Governor-General that dissolution was warranted.

Parliamentary procedure does, however, determine the circumstances in which a vote of confidence can be forced on to a Government. If the survival of the Government is to be tested at the instigation of the Opposition, the Government's whole performance must be available for debate. There are only a few occasions in the House when the rules of debate allow so wide-ranging a debate to arise, thereby permitting a vote of confidence to be foisted on to the Government. An urgent debate, for example, where a particular matter is raised for debate, does not provide an opportunity to raise a question of confidence.<sup>132</sup> While the Government cannot, except in one of those exceptional types of debates, be forced to face a vote of confidence, it can of its own accord at any time put its survival on the line by declaring any vote, no matter how narrowly based, to be a vote of confidence. This does not widen the scope of the debate but it does indicate how strongly the Government is committed to winning that particular vote, and what the political consequences of its defeat would be. Members then cast their votes on the motion knowing the possible consequence if the Government is defeated. These different types of votes of confidence are examined below.

## **Votes of confidence arising independently of the will of the Government**

### ***Express votes of confidence***

There is no tradition in the House of Representatives, as there is in some other Parliaments, of the official Opposition putting down a motion expressing want of confidence in the Government, and the Government then finding time to debate the motion—though this has been done on rare occasions.<sup>133</sup> Motions expressing want of confidence in the Government normally arise by way of amendment to other motions before the House, and, since amendments must be relevant to the motion they seek to amend, such a broad amendment may only be moved to a motion that itself permits debate to be open-ended. There are only a few debates held each year on which the scope of debate is so wide that a motion or an amendment declaring that the Government has lost the confidence of the House is

128 (1983) 455 NZPD 4775 (Industrial Law Reform Bill).

129 (1998) 567 NZPD 8195 (Local Government Amendment Bill (No 5)).

130 (2000) 589 NZPD 7360 (Apprenticeship Bill).

131 (17 April 2013) 689 NZPD 9481 (Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Bill).

132 (1998) 570 NZPD 10782 Kidd.

133 (1931) 230 NZPD 297; (1946) 273 NZPD 601.

in order. The debate on the Prime Minister's statement (the first debate each year) now arises on an express motion of confidence in the Government moved by the Prime Minister.<sup>134</sup> Other debates that permit a question of confidence to be raised are the Address in Reply debate (the first debate of each Parliament), the Budget debate and any Imprest Supply debate. On these debates an amendment expressly raising a question of confidence can be, and often is, moved.

A question can arise as to how explicitly the motion or amendment must be phrased to raise a question of confidence. In New South Wales (where confidence motions have statutory recognition) it has been suggested that the words "no confidence in the Government" do not have to be used in order to raise a question of confidence but that the terms of the motion must unmistakably convey the meaning that there is an absence of confidence in the Government. Thus a motion that the House "lacks confidence" in the Government would, for example, suffice. It was also accepted that a motion of no confidence in the Premier (Prime Minister) was sufficient to express no confidence in the Government but not a motion of no confidence in any other individual Minister.<sup>135</sup>

### *Implied votes of confidence*

It has always been considered fundamental to the survival of a Government that it be able to obtain the authority of Parliament to expend money, that is, to obtain supply. (Indeed the terms "confidence" and "supply" are often linked in agreements between parties regarding support on votes in the House and in political discourse generally.)

A denial of supply at any point where a debate ranging over the whole field of government activity can arise automatically raises a question of the confidence of the House in the Government. Votes on an individual Minister's Estimates of expenditure do not automatically raise questions of confidence, as they are narrowly based questions.<sup>136</sup>

Unlike an express vote of confidence, which emanates from the Opposition, implied votes of confidence emanate inescapably from the Government. The Government cannot avoid asking the House for supply, for to do so would be to abdicate its responsibility as a Government. So the passing of the Budget and the granting of imprest supply inevitably raise questions of confidence. Even if no amendment is moved by the Opposition expressly raising a question of confidence, any vote at the conclusion of the second and third readings of bills granting supply is a vote that tests the confidence of the House in the Government. It is also the practice to regard the provisions of a tax bill setting the annual tax rates as inherently raising questions of confidence.<sup>137</sup> Other provisions of tax bills are not inherently confidence matters.<sup>138</sup>

In respect of these issues—supply and annual rates of taxation—a failure of a Government to secure parliamentary support at all for their grant or imposition demonstrates a loss of confidence in the Government.

### **Votes of confidence arising by declaration of the Government**

Even if no express or implied question of confidence arises as described above, it is open to the Government to declare that it will treat a vote on any issue before the House as a matter of confidence in itself and thus resign or seek an election if it is defeated. In 1929 the acting Prime Minister chose to interpret Opposition criticism of the Government's failure to raise public service salaries as a question

<sup>134</sup> See, for example: (10 February 2015) 703 NZPD 1363.

<sup>135</sup> Advice of the Crown Solicitor, New South Wales (23 December 1999).

<sup>136</sup> See KJ Scott *The New Zealand Constitution* (Oxford University Press, Oxford, 1962) at 56–57, for defeats on Estimates.

<sup>137</sup> (1998) 573 NZPD 13199–13200; (1 December 2004) 622 NZPD 17369 (Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions) Bill).

<sup>138</sup> (1998) 573 NZPD 13199–13200.

of confidence.<sup>139</sup> The vote on the motion before the House was taken in the knowledge that it was being treated as a question of confidence. A Government may also decide after the event that a defeat it has suffered involved a question of confidence and act accordingly. So, in 1891, a Government defeat on the vote on the election of the Speaker was treated by the Government as an indication that it did not have a majority in the House and it resigned.<sup>140</sup> The Government may itself take the initiative in proposing a question of confidence. In 1942 and in 1998, following reconstructions of the Government, the Government initiated and moved motions seeking positive expressions of confidence in itself. The motions were carried and in each case the Government continued in office.<sup>141</sup>

In each case it is a matter for the decision of the Prime Minister on behalf of the whole Government, rather than for an individual Minister to decide, if a matter is to be treated as a vote of confidence.<sup>142</sup>

There is no procedural reason for a Government to declare an issue to be a question of confidence. Nor is there any political reason for it to do so as long as its parliamentary majority is secure. A Government might declare a matter to be a question of confidence if it is unsure of all its members supporting it on the issue before the House and it wishes to ensure their support by introducing another factor—the survival in office of the Government—into the equation. Members who vote against the Government where a question of confidence is involved know that they risk bringing down the Government. Thus, in 1897 a motion critical of the Premier was treated by the Government as a motion of no confidence. Several members who might otherwise have voted for the motion felt obliged to support the Government in these circumstances and the motion was defeated by six votes.<sup>143</sup> On the other hand, a Government may not wish to hazard unnecessarily its continuation in office by declaring a matter to be a question of confidence and thus risking its position. These are matters for political judgement. A Prime Minister can always be challenged as to whether a particular vote is to be treated as a question of confidence<sup>144</sup> or as to the general circumstances in which the Government will regard votes as confidence votes.<sup>145</sup>

## CONSCIENCE ISSUES

Conscience issues are those on which the House takes decisions free of the dictates of party loyalties and allegiances. Members are formally free of such loyalties and allegiances at all times and may vote in any way they please on any issue, but they tend to act in accordance with caucus decisions in recognition of the covenant with the electorate that returned them to the House as members of a political party.

In a sense, until the rise of parties, all votes in the House were conscience, or free, votes. But members did form parliamentary groups to give each other mutual support, and the continued support of a majority of the House on all major issues was essential to the continuation in office of the Government. Members therefore voted together on certain issues regardless of their personal predilections. It is undoubtedly true, however, that a party system subsumes personal choices in casting a vote in the House far more than the looser alliances of the 19th century did. Non-party voting survives for issues like liquor licensing and gambling, which

<sup>139</sup> Michael Bassett *Coates of Kaipara* (Auckland University Press, Auckland, 1995) at 157–158.

<sup>140</sup> Michael Bassett *Three Party Politics in New Zealand 1911–1931* (Historical Publications, Auckland, 1982) at 2.

<sup>141</sup> Michael Bassett *Coates of Kaipara* (Auckland University Press, Auckland, 1995) at 267; (1998) 571 NZPD 11806–11841.

<sup>142</sup> See “Williamson backs down over shipping bill view” *The Dominion* (29 June 1994).

<sup>143</sup> David Hamer *The New Zealand Liberals—The Years of Power, 1891–1912* (Auckland University Press, Auckland, 1988) at 210.

<sup>144</sup> See, for example: (1998) 574 NZPD 13704 (Accident Insurance Bill); (2001) 590 NZPD 8062 (Electoral (Integrity) Amendment Bill).

<sup>145</sup> (1998) 571 NZPD 11795.

were regarded as too difficult ever to resolve into party matters, and for other issues (abortion and homosexual law reform, for example) that became public issues after the party system was established and were looked upon as matters for the individual's own conscience to determine and not matters on which members should be bound by a collective decision of party colleagues.

The decision whether to treat a vote as a conscience issue is essentially for each party to decide in respect of its own members, and depends upon the nature of the issue involved. The decision on what is a conscience issue may itself change over time as society's values change.

The consequence in parliamentary terms of a matter being treated as a conscience issue is that a personal vote, rather than a party vote, may be held on it.<sup>146</sup> For this purpose, the Speaker must be satisfied that the subject of the vote is to be treated as a conscience issue.<sup>147</sup> Usually, the fact that a matter is a conscience issue is known well in advance because the subject is one of those traditionally regarded as such over many Parliaments. But a conscience issue can arise out of the flow of debate (public and parliamentary) on a subject not normally understood to be a conscience issue.<sup>148</sup> Applications for personal votes have been declined where there was no indication from the debate that the matter was being treated as a conscience issue.<sup>149</sup> (See Chapter 17.) As an alternative to a personal vote on a conscience issue, parties may divide their vote totals to reflect individual members' votes (a "split-party" vote).<sup>150</sup> In practice, whether a matter is to be treated as a conscience issue will have been discussed in advance at the Business Committee so that members are not taken by surprise by the holding of a personal vote.

Sometimes the initiation of conscience matters is left to a Member's bill rather than a Government bill. But the Government often brings forward its own legislation on a subject that is a conscience issue and then leaves a decision on its fate to the free votes of members. This was the case with a bill on contraception, sterilisation and abortion, drafted to implement the recommendations of the royal commission into the subject.<sup>151</sup> The House has also treated certain parts or clauses of bills, or amendments to them, as conscience issues, and thus subject to a personal vote, and other parts or clauses are not treated as conscience issues and thus subject to a party vote.<sup>152</sup>

The Government invariably makes the services of the Parliamentary Counsel Office available to members wishing to propose amendments to a bill that is subject to a conscience vote, for there is every likelihood that some members' amendments to such a measure will be carried into law. The alternation of speakers in a debate may also follow members speaking for and against the measure rather than a strict party rotation.<sup>153</sup> In any event, the Speaker has to exercise more personal discretion in calling members to speak to a question when the whips are not operating.<sup>154</sup>

Select committees may also take a lead from the House in their handling of a bill that is being treated as a conscience issue in the House. Thus, a select committee has treated a bill as a conscience matter for the members of the committee, following

<sup>146</sup> SO 141.

<sup>147</sup> SO 142.

<sup>148</sup> (1996) 558 NZPD 38 Kidd.

<sup>149</sup> Ibid (appointment of Deputy Speaker); (1997) 560 NZPD 2087–2088 (Compulsory Retirement Savings Scheme Referendum Bill).

<sup>150</sup> SO 143(1)(b).

<sup>151</sup> (1977) 412 NZPD 2358 (Contraception, Sterilisation, and Abortion Bill).

<sup>152</sup> See, for example: the Committee of the whole House debate on the Alcohol Reform Bill: (30 August 2012) 683 NZPD 4997–5030, (23 October 2012) 685 NZPD 6046–6107, (24 October 2012) 685 NZPD 6140–6185 and (6 December 2012) 686 NZPD 7279–7313; and also the Committee of the whole House debate on the Gambling (Gambling Harm Reduction) Amendment Bill (7 August 2013) 692 NZPD 12491–12514.

<sup>153</sup> (1989) 499 NZPD 11487.

<sup>154</sup> (1976) 405 NZPD 2203 Jack. See also: (13 March 2013) 688 NZPD 8535 Roy (Deputy Speaker) (allocation of calls in the second reading debate on the Marriage (Definition of Marriage) Amendment Bill).

an announcement in the House that the bill was a conscience matter.<sup>155</sup> In these circumstances, seeing that free votes are to be held on the details of the bill when it is returned to the House, the select committee is expected to confine itself to recommending drafting amendments rather than substantive amendments<sup>156</sup> and, where appropriate, presenting the House with an intelligible range of alternatives for it to choose from, rather than attempting to impose its own views. The fact that conscience issues can lead to results that are difficult to predict has led to criticism regarding the quality of the law that is thereby produced.<sup>157</sup> However, criticism of poor-quality legislation is not confined to legislation passed as a conscience issue.

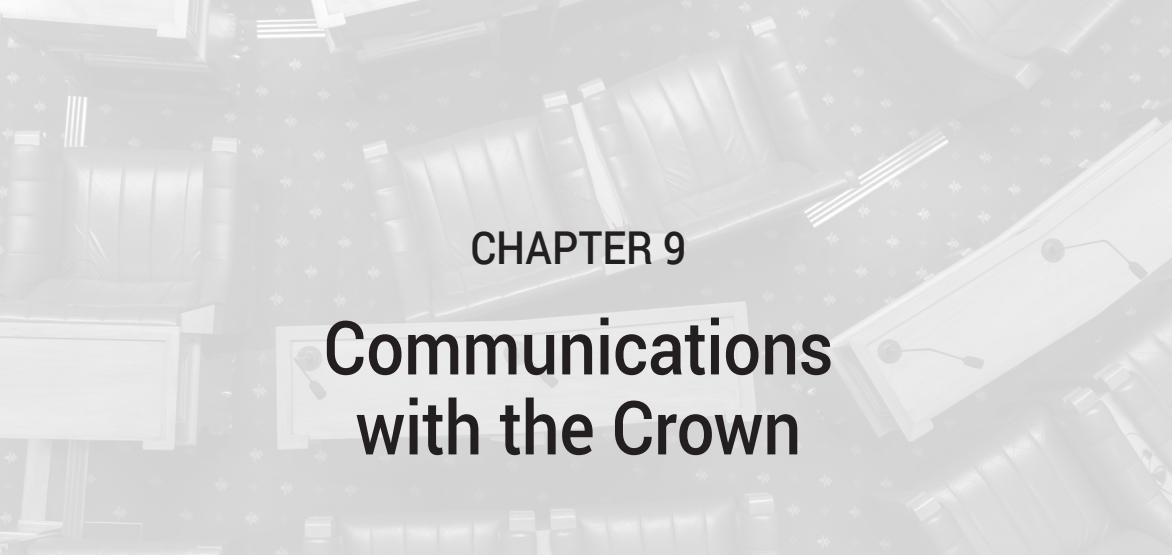
Conscience matters can be fractious, stimulating, moving and confusing by turns. But they remain a necessary safety valve to handle issues that cannot appropriately be treated as party matters.

---

<sup>155</sup> Commerce and Marketing Committee, report on the Casino Control Bill (5 December 1989) [1987–1990] AJHR I.1B at [3].

<sup>156</sup> Shop Trading Hours Act Repeal Amendment Bill (113–1) (report, 5 April 2001) ([1999–2002] AJHR I.22B at 42). See also (1999) 579 NZPD 18337–18339, 18556–18557.

<sup>157</sup> See, for example: Liquor Licensing Authority, report for the 12 months ended 30 June 1997 (15 October 1997) [1996–1999] AJHR E.8 at 4–6; Law Commission *Review of regulatory framework for the sale and supply of liquor: Part 1, Alcohol legislation and the conscience vote* (NZLC R106, 2009) (recommending that conscience voting not be used for alcohol bills).



# CHAPTER 9

## Communications with the Crown

The Sovereign and the House of Representatives together constitute the Parliament of New Zealand. There are, however, only a few formal occasions when these constituent elements of Parliament actually meet. Under a system of responsible government, Ministers of the Crown are members of Parliament. They are therefore present in the House to communicate the Crown's desires to the legislature and to relay the legislature's views to the Crown. Nevertheless, there are formal methods by which the Crown communicates with the House and the House with the Crown. These formal methods of communication are respectively a message, by means of which the Crown conveys its views to the House, and an address, by which the House expresses its opinions to the Crown.

### DIRECT INTERACTION

Direct interaction between the Sovereign or the Sovereign's representatives and the House takes place at the opening of a new Parliament or a new session of Parliament. The Governor-General does not attend the first meeting of a new Parliament in person but empowers Royal commissioners (who are usually senior judges) to attend on the Governor-General's behalf and formally declare the opening of Parliament to the assembled members. After the House has elected a Speaker, its members present their choice to the Governor-General at Government House for confirmation. The Governor-General also meets with members in the former Legislative Council Chamber at Parliament House to declare the reasons for the summoning of Parliament by delivering the Speech from the Throne. If there is more than one session of Parliament, the Governor-General will deliver another Speech from the Throne to members. (See Chapter 12.)

During the 19th century, the Governor-General met with members in Parliament House at the end of each session in a prorogation ceremony, which involved giving the Royal assent to legislation and then delivering a speech summing up the work of the session.

In 2014, the Business Committee was empowered to arrange State occasions.<sup>1</sup> Such an occasion may involve the Governor-General, for example for the delivery of a special message from the Sovereign.<sup>2</sup> A State occasion may provide a mechanism for the Sovereign to speak to the assembled members of the House without the need for Parliament to be prorogued for a State opening. (See Chapter 12.)

---

<sup>1</sup> SO 82(1).

<sup>2</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 6–7.

## MESSAGES

Messages originated as a means for the Sovereign to draw important matters to the attention of Parliament formally, in addition to the matters raised in the Speech from the Throne. The procedure developed from the growing preference for the Sovereign not to be present in person during debates.<sup>3</sup>

The announcement of a message is now relatively infrequent in New Zealand, and generally serves to convey the Crown's consent to the passage of Members', local and private bills that affect the rights or prerogatives of the Crown.<sup>4</sup> For many years, the purpose of most messages was to recommend the passing of bills appropriating public money or imposing a charge on the public revenue. However, the requirement for such a recommendation from the Crown was repealed in 2005 in light of the establishment of the financial veto procedure.<sup>5</sup>

It was formerly the Crown's practice to promulgate the fact of the Royal assent to a bill by advising the House of it by message. That practice was discontinued in 1985. The Governor-General also formerly had the power to transmit bills directly to the House for its consideration,<sup>6</sup> and this power was also exercised by message. This power, last exercised in 1949,<sup>7</sup> was repealed in 1986. Other matters that might occasion a direct communication from the Governor-General to the House and thus give rise to the use of a message include, for example, advice of the suspension of a senior official<sup>8</sup> or a reply to an address from the House.

### Obtaining messages

It is the Speaker's duty to ensure that the proper constitutional forms are observed and that no business that requires the consent of the Crown is transacted unless a message is first obtained.<sup>9</sup> But the Speaker has neither the obligation nor the power to obtain a message; this power lies with Ministers, who are the Crown's responsible advisers and on whose advice the Governor-General sends a message to the House. The premature release of a message before its announcement to the House has been held to be a contempt of the House.<sup>10</sup>

Following consultation with the Parliamentary Counsel Office, the Office of the Clerk advises the Leader of the House of the bills that require the Crown's consent so that the Government can consider whether it wishes to facilitate the bills' progress by obtaining messages. In the absence of a message, a Member's, local or private bill affecting the rights or prerogatives of the Crown cannot be passed.<sup>11</sup>

### Announcement to the House

The Speaker announces messages to the House by reading them out.<sup>12</sup> This is done at the first opportunity after receipt of the message. The announcement of a message can interrupt a debate but it cannot interrupt a member's speech.<sup>13</sup>

When the Speaker announces the receipt of a message from the Governor-General, members must stand in acknowledgement.<sup>14</sup> The Speaker then proceeds to read the communication to the House, starting with the Governor-General's

<sup>3</sup> Sir Thomas Erskine May *Treatise on the Law, Privileges and Usage of Parliament* (9th ed, Butterworths, London, 1883) at 502–505.

<sup>4</sup> SO 313; (1926) 209 NZPD 917–918 Statham.

<sup>5</sup> Constitution Amendment Act 2005, s 5; Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 67; Standing Orders Committee *Review of Standing Orders* (23 June 2005) [2002–2005] AJHR I.18C at 14.

<sup>6</sup> New Zealand Constitution Act 1852 (UK), s 55.

<sup>7</sup> (18 October 1949) [1949] JHR 240–243.

<sup>8</sup> State Sector Act 1988, s 16 (State Services Commissioner and Deputy Commissioner).

<sup>9</sup> (1909) 148 NZPD 1452 Guinness.

<sup>10</sup> (1955) 307 NZPD 2532–2539.

<sup>11</sup> (1930) 225 NZPD 584 Statham; SO 313.

<sup>12</sup> SO 167(1).

<sup>13</sup> SOs 167(2) and 132(d).

<sup>14</sup> SO 167(3).

name. Members may resume their seats as soon as the Governor-General's name has been read.<sup>15</sup>

The original copies of messages are retained by the Clerk among the records of the House. Under current arrangements they are transferred to Archives New Zealand after approximately six years.

## ADDRESSES

One of the privileges claimed by the Speaker on behalf of the House at the opening of each new Parliament is the right to free access to the Governor-General whenever occasion may require it.<sup>16</sup> This is a right of the House in its corporate capacity, led by the Speaker, to address the Governor-General whenever necessary, and this right cannot be asserted by individual members. The privilege is exercised by the presentation of addresses from time to time.

An address may be presented to the Crown on any topic on which the House wishes to communicate its views. In the early Parliaments in New Zealand, frequent addresses put before the Governor the House's arguments on constitutional arrangements and government policy. With the advent of full responsible government, addresses of this kind ceased to be employed, as the Ministers responsible for policy can be addressed directly in the House. However, the House communicates or may communicate with the Crown by a number of other types of addresses.

### Address in Reply

The best-known type of address is the Address in Reply, which is the House's response to the Speech from the Throne at the beginning of each session of Parliament. The form of the Address in Reply must itself be uncontroversial,<sup>17</sup> but it can be the subject of a "no confidence" amendment which, if carried, must be added to the text of the address.<sup>18</sup> The last time that a no-confidence amendment was carried was in the Address in Reply debate in 1928.<sup>19</sup>

The Address in Reply debate is technically about whether an address should be presented to the Governor-General in reply to the Speech from the Throne. It is not about the text of the address. The actual text of the Address in Reply is prepared by the Speaker while the debate is in progress so that (on the assumption that no amendment to it is carried) it can be read to the House and adopted immediately at the conclusion of the debate.

### Commending appropriations for Offices of Parliament

For many years the Address in Reply was the only common form of address made by the House to the Crown. Since 1989, however, addresses have been used to recommend appropriations for Offices of Parliament.

In respect of Offices of Parliament (the Auditor-General, the Office of the Ombudsmen, and the Parliamentary Commissioner for the Environment), the House approves Estimates of appropriations before the Government's Estimates are prepared and presented to the House. The method by which the House expresses its approval of proposed Estimates for the Offices of Parliament is by commending them to the Crown by means of an address. The address goes on to request that the appropriations be included as a vote in an Appropriation Bill for

---

<sup>15</sup> (1991) 521 NZPD 5913 Gerard (Deputy Speaker).

<sup>16</sup> SO 23.

<sup>17</sup> SO 168(2).

<sup>18</sup> SOs 168(2) and 352.

<sup>19</sup> (7 December 1928) [1928] 2 JHR 8.

that year.<sup>20</sup> Any alteration to appropriations for an Office of Parliament during the financial year is handled in the same fashion.<sup>21</sup>

The detailed work of considering appropriations for Offices of Parliament is carried out for the House by the Officers of Parliament Committee.<sup>22</sup> Addresses embodying the committee's recommendations are then adopted by the House.

## Royal occasions

The House adopts addresses from time to time to mark particular Royal occasions. A special address was adopted on the occasion of Her Majesty's presence in New Zealand in 1990, for example.<sup>23</sup> Addresses have also been adopted on the occasion of Royal births and deaths, and on the succession of a new Sovereign. Rather than adopting an address, the House may content itself with passing a congratulatory resolution.<sup>24</sup>

## Parliamentary occasions

An address was adopted at the special sitting held on 24 May 2004 to commemorate the 150th anniversary of the first sitting of the House.<sup>25</sup>

## Removal of office-holders

The presentation of an address is an essential prerequisite to the removal of certain office-holders. By law it is prescribed that superior court judges and the holders of a number of other important offices, such as the Clerk of the House and Officers of Parliament, can be removed by the Crown only if an address from the House seeking the office-holder's removal has been presented first. This ensures the office-holder's formal independence from the Crown, because the Crown cannot of its own volition remove him or her from office. The requirement that the House adopt an address and then present it to the Governor-General for action also ensures that the extreme step of removal is taken only in a case of the utmost gravity. No one has been removed from office under these provisions in New Zealand. (See pp 508–509.)

## Returns

Where the House wishes to obtain papers or documents that are in the Governor-General's hands, the presentation of an address is the appropriate way to seek them. In practice, however, this method is no longer used, since members can question Ministers directly in the House about documents they wish to obtain.

## Procedure for adopting an address

A motion that an address be presented may be moved after notice of it is given. The terms of the motion for an Address in Reply are specified in the Standing Orders;<sup>26</sup> otherwise a form of words appropriate to the subject-matter of the proposed address is devised. Most motions for addresses are proposed by Ministers as Government motions and dealt with as Government orders of the day. The motion for an Address in Reply is deemed to be a Government order of the day.<sup>27</sup> Notices of motion for addresses by other members are Members' orders of the day. Like any Member's notice of motion, they lapse one week after their first appearance on the Order Paper.<sup>28</sup>

<sup>20</sup> Public Finance Act 1989, s 26E(4).

<sup>21</sup> Public Finance Act 1989, s 26E(6).

<sup>22</sup> SO 395(1)(a).

<sup>23</sup> (14 February 1990) [1990] JHR 10–11.

<sup>24</sup> For example: (7 February 2012) [2011–2014] 1 JHR 25 (diamond jubilee of Her Majesty the Queen).

<sup>25</sup> (24 May 2004) 617 NZPD 13179–13213.

<sup>26</sup> SO 351(1).

<sup>27</sup> SO 67.

<sup>28</sup> SO 100.

A motion for an address (other than the Address in Reply) is debatable in the same way as any other motion, with each member allowed to speak for up to 10 minutes. The motion is open to amendment.

### **Preparation of an address**

The motion for an address asks the House to agree, in principle, to present an address to the Sovereign or the Governor-General. It may describe in detail or only in outline the content of the intended address. But it is not the address itself. The address must still be prepared and endorsed by the House. It is the Speaker's duty to prepare an address whenever the House has agreed to present one.<sup>29</sup> The address as prepared by the Speaker must include any words that the House has indicated it has agreed to in the resolution concerning the address.<sup>30</sup> Otherwise, as long as the wording of the address is consistent with the authorising resolution, the terms of the address are for the Speaker to determine. Apart from any words that the House specifically orders to be part of the address, an Address in Reply must not be controversial.<sup>31</sup> The chief opportunity for inserting controversial words into an Address in Reply arises on a no confidence amendment. Most other addresses are also framed in non-controversial terms, but they do not have to be—for example, an address for the removal of an office-holder may be highly controversial.

Immediately or as soon as possible after a motion for an address has been agreed to, the Speaker reads the address that has been prepared to the House and puts the question for its adoption. There is no amendment or debate on this question.<sup>32</sup>

### **Presentation or transmission of an address**

Addresses are presented or transmitted to the Governor-General by the Speaker on behalf of the House as part of the Speaker's representational role.<sup>33</sup> Strictly it is not necessary for the House to direct the Speaker by motion to present an address, but this may be done.

The Address in Reply is always presented by the Speaker in person, with some formality. For this purpose the Speaker goes to Government House, accompanied by the Serjeant-at-Arms, with the Mace, the Clerk, the Deputy Clerk, the mover and seconder of the motion, and any other members who wish to be present. In being presented, an address is read by the Speaker and then handed to the Governor-General, while the mover and seconder of the motion for the address stand at the Speaker's left hand. The Governor-General then makes a short formal reply to the address. In the case of the presentation of the address adopted by the House to mark the 150th anniversary of the first sitting of the House, the Speaker presented the address at a special function held in the Banquet Hall in the Executive Wing of the Parliament Buildings.<sup>34</sup>

Personal presentation by the Speaker is the formal way of presenting any address to the Governor-General. However, an address may be transmitted in a less formal way with the Governor-General's approval.<sup>35</sup> For addresses relating to Estimates for Offices of Parliament, less formal presentation has been agreed between the Governor-General and the Speaker. Such addresses are transmitted to the Governor-General privately on behalf of the Speaker.

If the address is to the Sovereign and the Sovereign is present in New Zealand, the address is presented to the Sovereign in person.<sup>36</sup> Otherwise the address is

<sup>29</sup> SO 168(1).

<sup>30</sup> SO 168(2).

<sup>31</sup> SO 168(2).

<sup>32</sup> SO 168(3).

<sup>33</sup> SO 169(1).

<sup>34</sup> (24 May 2004) 617 NZPD 13213.

<sup>35</sup> SO 169(2).

<sup>36</sup> (14 February 1990) [1990] JHR 11.

presented or transmitted to the Governor-General for communication to the Sovereign.<sup>37</sup>

### **Reply to an address**

Any answer made by the Sovereign or the Governor-General to an address is reported to the House by the Speaker,<sup>38</sup> or it may itself be the subject of a message to the House. The Governor-General conveys any answer from the Sovereign to the House. Any reply is entered in the *Journals of the House*.

---

37 SO 169(4).

38 SO 169(3).

## CHAPTER 10

# Summoning, Proroguing and Dissolving Parliament

A provision in the Bill of Rights 1688 declares that “for redress of all grievances, and for the amending, strengthening, and preserving of the laws, Parliaments ought to be held frequently”.<sup>1</sup> While the parliamentary context—and the frequency of sittings—has since changed greatly, there remain both constitutional and pragmatic considerations that ensure that Parliament meets each year. The most important is the principle that Parliament does not grant supply to the Government for more than one year at a time. In this regard, Parliament must meet by 30 June each year, for this is the last day of the financial year and the annual appropriations made by Parliament in the Appropriation Acts for that year will consequently lapse. Parliament must at least give the Government interim spending authority (imprest supply). In reality, the process for Parliament to examine and approve the Government’s spending plans begins well before the end of June. Income tax rates are fixed on an annual basis. If this is not done before the end of the tax year (31 March) there can be no assessment to tax, and much of the Government’s revenue will consequently dry up. By granting only temporary authorities to the Government in financial matters, Parliament ensures that it must be called to meet at least annually to renew them.

Political considerations also ensure that Parliament meets and that the House sits regularly. The House is the political forum of the nation. Although it is not the only place in which opposing political points of view can be expressed and Government actions tested and criticised, it is the highest institution in the land devoted to just such pursuits, and it is generally expected to meet fairly often and become a focus of political debate. Members of Parliament have important roles to perform in their own right in the business of legislating, which can only be carried out in Parliament, and in the ancillary business transacted by the House.

For these reasons, Parliament is summoned to meet regularly and the Crown promise to call a meeting of the newly elected Parliament is given in a proclamation issued in association with the one that dissolves the old Parliament.<sup>2</sup> This expectation is enshrined in New Zealand law in the requirement for the Parliament to meet soon after the declaration of the official result of each general election.<sup>3</sup>

---

1 Bill of Rights 1688 (Eng), art 13.

2 See, for example: (15 August 2014) 92 *New Zealand Gazette* 2621 at 2623.

3 Constitution Act 1986, s 19.

## PROCLAMATIONS

A proclamation is a formal document made and signed by the Governor-General and impressed with the Seal of New Zealand, and published in the *New Zealand Gazette*.<sup>4</sup> In signing a proclamation and affixing the Seal of New Zealand, the Governor-General acts on the advice of a Minister of the Crown.<sup>5</sup> The right to make proclamations is a remnant of the previously substantial legislative prerogative of the Crown,<sup>6</sup> and it is recognised in statute as a mechanism for the Governor-General to attend to various aspects of the ordering and administration of the country.<sup>7</sup>

The Governor-General, on behalf of the Sovereign, makes proclamations to superintend New Zealand's democratic institutions. The Constitution Act 1986 provides for proclamations to summon and dissolve Parliament in each electoral cycle, and proclamations can also be made to prorogue Parliament, or to alter its place of meeting in an emergency.<sup>8</sup> A proclamation under the Constitution Act 1986 is made effective by publication in the *New Zealand Gazette* or by being publicly read, by a person authorised to do so by the Governor-General, in the presence of the Clerk of the House and two other persons. Under the latter practice, which normally is employed only for the dissolution of Parliament,<sup>9</sup> the proclamation must also be published subsequently in the *New Zealand Gazette*.<sup>10</sup> While the issue by the Governor-General of a writ for an election is not itself effected through a proclamation,<sup>11</sup> it is customary for a proclamation to be issued notifying that this action has been taken.<sup>12</sup>

## SUMMONING OF PARLIAMENT FOLLOWING A GENERAL ELECTION

Parliament meets when it is summoned to do so by the making of a proclamation by the Governor-General.<sup>13</sup> The proclamation specifies the time and place at which Parliament is to meet. The summoning of Parliament effectively breathes life into the House of Representatives, which, although it still exists between Parliaments, can meet and transact business only while Parliament is in session. Because the House of Representatives is the working element of Parliament, the summoning of Parliament is really the calling of the House of Representatives into working mode.

By convention, after the Governor-General has issued a proclamation dissolving (that is, bringing an end to) the current Parliament, and issued a writ to the Electoral Commission to put in train preparation for the next general election, a proclamation is made summoning Parliament to meet for the first time after the election. The summoning of the new Parliament in association with the dissolution of the old is a token of the Crown's intention to preserve the continuity of the operation of parliamentary institutions in New Zealand. In respect of only one dissolution since 1860 has the date and time for the first meeting of the next Parliament not been appointed by a proclamation issued within a few days of the dissolution of the old Parliament. No such proclamation was issued in

<sup>4</sup> Interpretation Act 1999, s 29.

<sup>5</sup> Seal of New Zealand Act 1977, s 3.

<sup>6</sup> Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [15.3.1].

<sup>7</sup> For example, the taking of land for public works (Public Works Act 1981, s 26); the continuation of military service during a war or emergency (Defence Act 1990, ss 38–40); or the appointment of the date for a census (Statistics Act 1975, s 23).

<sup>8</sup> Constitution Act 1986, s 18.

<sup>9</sup> No proclamation summoning Parliament has yet been made by being read publicly.

<sup>10</sup> Constitution Act 1986, ss 18(3)–(4).

<sup>11</sup> Electoral Act 1993, s 125.

<sup>12</sup> See, for example: (22 August 2014) 97 *New Zealand Gazette* 2749 at 2750.

<sup>13</sup> Constitution Act 1986, s 18(1).

association with the dissolution of the 40th Parliament in June 1984. This and other procedures surrounding the “snap” election of 1984 were the subject of subsequent inquiry.<sup>14</sup>

## Appointment of place of meeting

The place of meeting appointed for the 51st Parliament was “in the parliamentary precincts in the City of Wellington”.<sup>15</sup> This wording allows the House to meet either in its usual Chamber or in a standby meeting space adjacent to Bowen House. However, a proclamation may appoint a different place of meeting (see pp 147–148).

## Date of first meeting

Until the 41st Parliament, there was no express statutory obligation on the Governor-General to summon a new Parliament to meet by a particular time, or indeed at all, except in the case of a proclamation of emergency. The usual practice was to allow several months to elapse before Parliament met.<sup>16</sup> However, since 1 January 1987 there has been an explicit statutory requirement for Parliament to meet not later than six weeks after the day fixed for the return of the writ for a general election.<sup>17</sup> The latest day for the return of the writ for an election is the 50th day after it is issued,<sup>18</sup> so the precise period after polling day within which Parliament must meet varies for each election, depending upon how long before the election the writ was issued. As the writ is usually to be returned some two to three weeks after the election is held, Parliament must effectively be summoned to meet within about two months of each general election. In practice, the date appointed for the opening of Parliament may be very soon after the writ is returned,<sup>19</sup> although this may depend upon the decisiveness of the general election result and the possible need for post-election negotiations to form a Government.

Parliament cannot be opened until the term of office of the members of Parliament returned at the general election has commenced. The law provides that members come into office on the day after the date of the writ or return that declares them elected.<sup>20</sup>

## Postponement of first meeting

The date appointed in the Governor-General’s first proclamation for the new Parliament to meet following the general election is not necessarily the day on which the new Parliament will actually meet. Between the making of that proclamation and the first projected meeting of Parliament, the Government may change as a result of the general election, and the incoming Government will have its own preferences for the timing of the first meeting of Parliament. Even if the same Government is returned at the polls it may alter the date initially appointed for the first meeting of Parliament. The Government does so by recommending that a further proclamation be made, superseding the first and appointing a different date for the opening of Parliament.<sup>21</sup>

Such alterations to the date first nominated for Parliament to convene are the rule rather than the exception, as the first proclamation summoning Parliament

<sup>14</sup> See Department of Justice *Constitutional Reform: first and second reports released by the Minister of Justice, the Hon. Geoffrey Palmer* (Department of Justice, Wellington, 1986).

<sup>15</sup> (16 October 2014) 127 *New Zealand Gazette* 3475 at 3553.

<sup>16</sup> For example, the 38th Parliament (1975–1978) did not meet until almost seven months after the election, and delays of four to five months were the norm. A statutory requirement did apply in respect of the first Parliament, as the Governor was required to appoint a time for the first meeting of the House as soon as convenient after the first writs were returned following the elections in 1853 (*New Zealand Constitution Act 1852* (UK), s 44).

<sup>17</sup> *Constitution Act 1986*, s 19.

<sup>18</sup> *Electoral Act 1993*, s 139(4).

<sup>19</sup> In 2011, the date fixed for the return of the writ was 15 December (although the writ was delayed by a judicial recount), and the opening of Parliament took place on 20 December.

<sup>20</sup> *Electoral Act 1993*, s 54.

<sup>21</sup> See, for example: (16 October 2014) 127 *New Zealand Gazette* 3475 at 3553.

to meet plays a symbolic rather than definitive role in determining when the new Parliament will actually meet. Nevertheless, whatever date is eventually chosen for the first meeting of Parliament, it must be within six weeks of the day fixed for the return of the writ for the election.<sup>22</sup>

### Time of day for first meeting

The time of day appointed in the proclamation summoning Parliament varies depending upon the advice of the Government, following consultation with the Clerk of the House about arrangements for the opening. There is no presumption that the first meeting will be at 2 pm (the normal meeting time of the House); it has begun more often at 11 am in recent years.<sup>23</sup>

### Proclamations appointing sittings in emergency

There is an express statutory requirement for the Governor-General to summon Parliament to meet if a state of national emergency is declared while Parliament is dissolved or has expired. In this case, if Parliament is not already due to meet again within seven days from the date of the declaration, it must be summoned to meet within seven days of the last day appointed for the return of the writ for the general election.<sup>24</sup> A similar provision requires the making of a proclamation appointing a day for Parliament to meet if an epidemic notice is given after Parliament has been subject to prorogation, dissolution or expiration.<sup>25</sup>

The Constitution Act 1986 also permits the Governor-General to make a proclamation changing the meeting place of Parliament, during a parliamentary session, if the current place of meeting is unsafe or uninhabitable.<sup>26</sup> (See Chapter 43.)

## PROROGATION

At any time the Governor-General may make a proclamation bringing the sittings of the House to a temporary conclusion. This procedure, known as prorogation, is rarely used now. The last time the Parliament of New Zealand was prorogued was in 1991 at the onset of the Gulf War, to allow an early sitting during an adjournment.<sup>27</sup> The Speaker now has authority to recall the House during an adjournment,<sup>28</sup> so prorogation is no longer necessary for this purpose (see Chapter 13).

The Governor-General exercises this power by issuing a proclamation announcing the prorogation of Parliament.<sup>29</sup> The House and its committees cannot meet following prorogation until Parliament is again specifically summoned to meet by the Governor-General. A proclamation proroguing Parliament does so only for a specified time, but this time may be extended by a further proclamation or proclamations.

Parliament as such is not brought to an end by prorogation. In this respect prorogation differs from dissolution, which not only halts the sittings of the House but also brings Parliament to an end and precipitates a general election. Parliament may be prorogued immediately before being dissolved, although the modern practice is to dissolve Parliament without first proroguing it.

<sup>22</sup> Constitution Act 1986, s 19.

<sup>23</sup> The Commission Opening commenced at 11 am in 1996, 1999, 2002, 2011 and 2014, and at 2 pm in 2005 and 2008.

<sup>24</sup> Civil Defence Emergency Management Act 2002, s 67(1) and (3).

<sup>25</sup> Epidemic Preparedness Act 2006, s 6(1)–(2).

<sup>26</sup> Constitution Act 1986, s 18(1A).

<sup>27</sup> (18 January 1991) 6 *New Zealand Gazette* 137.

<sup>28</sup> SO 55(1)–(2).

<sup>29</sup> Constitution Act 1986, s 18(2). In the 19th century, the Governor (until 1875) or commissioners appointed by the Governor (until 1887) attended Parliament in the Legislative Council Chamber to assent to bills and then prorogue Parliament in person.

## SESSIONS AND RECESSES

The period of parliamentary activity between an opening of Parliament and its prorogation, dissolution or expiration is formally known as a session. In the case of prorogation, a second session may be brought about in the same term of Parliament through a further State Opening (there is no need for another Commission Opening, as members are already sworn in). When there is more than one session in a Parliament, during the period between sessions the Parliament goes into “recess” rather than the House merely standing adjourned (although the terms are often used interchangeably).

Until 1984 one session of Parliament was usually held in each calendar year during each Parliament, though occasionally a special session was held in addition, as in 1977 on the occasion of the visit of Her Majesty the Queen. It was exceptional for a session (like the ones of 1921–1922 and 1941–1942, for example) to extend over more than one calendar year. Since the 1984 session was brought to an end for a snap election, sessions have been more variable and lengthier. There were, for example, only two sessions in each of the three Parliaments after that. From 1984 there was no longer a presumption that a session would correspond with a calendar year.

Since the 44th Parliament (1993–1996) a single session lasting the entire life of the Parliament has become the norm. The terms “session” and “recess” therefore are no longer commonly used in their formal sense.

A recess must be brought to an end for Parliament to meet in the event of a declaration of national emergency. If Parliament stands prorogued when such a proclamation is made and is not due to meet within seven days, it must be summoned by the Governor-General to meet within seven days of the making of the declaration.<sup>30</sup>

## DISSOLUTION

The Governor-General brings the life of Parliament to an end by issuing a proclamation dissolving it, initiating a course of events that leads to a general election. To attend Parliament when it next meets, a member must be returned to Parliament anew by the process of election.

The dissolution of Parliament is a legal power possessed by the Governor-General,<sup>31</sup> although constitutionally the Governor-General exercises it, like the other legal powers of the office, on the advice of the Prime Minister. A dissolution would not necessarily result from a loss of confidence in the Government by the House, as the Governor-General would first ascertain whether a new Government could be formed<sup>32</sup> (see Chapter 8).

Since the 43rd Parliament was dissolved in 1993, all Parliaments have been dissolved by a proclamation read on behalf of the Governor-General from the Parliament House steps or at some other prominent place within the precincts.<sup>33</sup> While this procedure is not celebrated with the rich tradition and pageantry of the opening of Parliament (see Chapter 12), it has come to be marked with some ceremony as a significant point in the democratic cycle.

<sup>30</sup> Civil Defence Emergency Management Act 2002, s 67(1) and (3).

<sup>31</sup> Constitution Act 1986, s 18(2).

<sup>32</sup> Cabinet Office *Cabinet Manual* 2008 at [6.36]–[6.42].

<sup>33</sup> See, for example: (15 August 2014) 92 *New Zealand Gazette* 2621 at 2622. Following the establishment of the procedure under the Constitution Act 1986 (s 18(3)(b)), the first Parliament to be dissolved by a proclamation read in this way was the 41st Parliament in 1987.

## TERM OF PARLIAMENT

The term of a Parliament can last for no more than three years from the day appointed for the return of the writ for the general election.<sup>34</sup> This has been the case since 1879, with the exception of the 1935 election (when members were elected for four years). Unless Parliament is dissolved sooner, it expires at the end of its three-year term.

The three-year limit for a term of Parliament is specified in a “reserved provision”, which means that it is entrenched so that its adjustment would require a referendum or a 75 per cent majority of all members of Parliament<sup>35</sup> (see pp 445–446). Two proposals for extending the term of Parliament from three to four years have been put to electors at referendums. In 1967 the proposal was rejected by some 700,000 to 300,000 votes, and in 1990 the majority against the proposal was one and a quarter million to 550,000.<sup>36</sup>

In the United Kingdom, the death of a Sovereign formerly caused an automatic dissolution of the existing Parliament. While it is questionable whether this rule ever applied in New Zealand, to remove any doubts on this score it was expressly provided in 1888 that the death of the Sovereign does not of itself dissolve Parliament.<sup>37</sup> This remains the law.<sup>38</sup>

The maximum term of the first Parliaments was five years. This was reduced to three years in 1879.<sup>39</sup> Since then the lives of Parliaments have been extended on four occasions, three of the extensions being confined to the Parliament then in existence, and the other, which was intended to apply to all Parliaments, being repealed before it could affect any subsequent Parliament. The life of the 19th Parliament, elected in 1914, was twice extended for one year. It was finally dissolved in 1919. In 1934 an Act was passed extending the life of Parliament (including the Parliament then in being) from three to four years. The election of 1935 was fought while this provision was in force, so the members chosen at that election were elected for a term of four years. However, in 1937 the parliamentary term, including that of the existing Parliament, was reduced to three years. The life of the 26th Parliament, elected in 1938, was extended for one year in 1941, and in 1942 it was extended until one year after the end of the war, provided that the House, by resolution each year, approved Parliament’s continuance. No such resolution was passed and Parliament was dissolved in 1943.

The 29th Parliament, elected in 1949, was dissolved in 1951 as a result of the waterfront dispute (the shortest of all New Zealand’s Parliaments, preceding the first snap election since 1881) and an election was held in September. This threatened to upset the normal calendar of November elections, and in 1954 the life of the 30th Parliament was extended by four weeks to put the election timetable back on course.<sup>40</sup> The 40th Parliament was dissolved in June 1984, four months before it would otherwise have been expected, and the 46th Parliament was dissolved in June 2002, three months earlier than might have been expected.

## EXPIRATION

Expiration is the bringing of the life of the Parliament to an end by automatic operation of law rather than by the deliberate action of the Governor-General. Parliament expires three years from the day fixed for the return of the writ at the

<sup>34</sup> Constitution Act 1986, s 17(1).

<sup>35</sup> Constitution Act 1986, s 17(2); Electoral Act 1993, s 268(1)(a).

<sup>36</sup> (12 October 1967) *New Zealand Gazette* 1792; (29 November 1990) *New Zealand Gazette* 4505–4506.

<sup>37</sup> Demise of the Crown Act 1888, s 2.

<sup>38</sup> Constitution Act 1986, s 5(1).

<sup>39</sup> The Triennial Parliaments Act 1879.

<sup>40</sup> Electoral Amendment Act 1953, s 6.

preceding general election unless it is dissolved sooner.<sup>41</sup> The only Parliament to run its full legal course and then expire was the 27th Parliament of 1943–1946. The election of 1943 was held two months earlier in the year than usual (September rather than November), causing the fact of Parliament's expiration in October 1946 to be overlooked. The validity of Acts assented to after the House had expired was upheld by the Court of Appeal in 1954.<sup>42</sup> The 42nd Parliament virtually ran its full course, since it was dissolved on 10 September 1990, the day on which it was due to expire in any case.

If a Parliament expires, the procedures for the holding of a general election operate as if Parliament had been dissolved on the date of expiration.

## EFFECT OF PROROGATION, DISSOLUTION AND EXPIRATION ON BUSINESS BEFORE THE HOUSE

Prorogation, dissolution or expiration bring the sittings of the House and the meetings of committees to an end, and disable the House from further activity.

Historically, they also caused all business then before the House to lapse, so that when Parliament resumed for its next session the slate had been wiped clean. This absolute effect has been thought not to be conducive to efficient parliamentary practice, and as long ago as 1886 a committee of the House recommended finding a way to avoid its effects in the case of prorogation.<sup>43</sup> A statutory means of avoiding the need for all unfinished business at the end of a session to be reintroduced and commence its passage through the House entirely anew in the succeeding session was first introduced in 1977.<sup>44</sup>

Prorogation now has no effect on any business before the House or its committees. Such business does not lapse and may be resumed in the following session of the same Parliament.<sup>45</sup> (However, a sessional order of the House ceases to have effect on prorogation.)

On the dissolution or expiration of Parliament all business then before the House or its committees lapses. Following the dissolution or expiration of Parliament there is no business before the House. However, the House has the power to reinstate by resolution any business that has lapsed when it sits in the new Parliament.<sup>46</sup> This power to reinstate, if it is to be exercised, must be utilised in the first session of the new Parliament, but reinstatement does not have to be effected at or by any particular time in that session, nor does it have to be accomplished on only one occasion. The House can deal with reinstatement at any time in the session and on as many occasions as it finds necessary. (See pp 200–201 for reinstatement of business.)

The period between the end of a Parliament and the opening of the new Parliament is commonly described as an “interregnum”, although this is not a legal or official parliamentary term.

---

<sup>41</sup> Constitution Act 1986, s 17(1).

<sup>42</sup> *Simpson v Attorney-General* [1955] NZLR 271 (SC).

<sup>43</sup> Legislative Expenditure Committee, report (3 August 1886) [1886] AJHR I.10 at [12].

<sup>44</sup> Legislature Amendment Act 1977.

<sup>45</sup> Constitution Act 1986, s 20(1)(a).

<sup>46</sup> Constitution Act 1986, s 20(1)(b) and (2).

## CHAPTER 11

# The Chamber, Buildings and Grounds

### MEETING PLACE FOR PARLIAMENT

The place at which meetings of Parliament are to be held is determined by the Governor-General (not by the House itself) and is indicated in the proclamation that summons Parliament to meet.<sup>1</sup>

It has been customary for a proclamation summoning Parliament to appoint a meeting place “in the Parliament House, in the city of Wellington”. However, in 2011, the Standing Orders Committee recommended that future such proclamations appoint the place of meeting as “in the parliamentary precincts in the City of Wellington”, rather than specifying Parliament House.<sup>2</sup> This wording was used to appoint the place of meeting of the 51st Parliament, and allows the flexibility to use the alternative chamber adjacent to Bowen House if necessary, without the need for a further Proclamation.<sup>3</sup>

The Governor-General may, by a further proclamation, change the place appointed for the meeting of Parliament if it is unsafe or uninhabitable,<sup>4</sup> for example as a result of an earthquake. Changing the place of meeting by such a proclamation does not bring the session to an end. Except in these circumstances, once Parliament has met following a summons, the place of meeting cannot be changed during the course of a session. Parliament would need to be prorogued and a new session summoned for the meeting place to be altered.<sup>5</sup>

The first meetings of Parliament from 1854 onwards were held in Auckland in a building shared with the Auckland Provincial Council. The transport problems for members from outside the Auckland province were immense. It has been claimed that the South Island members spent nine weeks at sea on their way to attend the first Parliament.<sup>6</sup> These difficulties, combined with the faster increase in population in the southern settlements, particularly Otago, throughout the 1850s, resulted in strong pressure for Parliament to meet at a more central location, or for its meetings to be rotated around the country. The proposed alternation of the sessions of Parliament between Auckland and Wellington was postponed on the outbreak of the New Zealand wars, but the 1862 session was held in Wellington. In 1865 the seat of government was transferred permanently from Auckland to

<sup>1</sup> Constitution Act 1986, s 18(1).

<sup>2</sup> Standing Orders Committee Review of Standing Orders (27 September 2011) [2008–2011] AJHR I.18B at 63.

<sup>3</sup> Ibid; (16 October 2014) 127 *New Zealand Gazette* 3475 at 3553.

<sup>4</sup> Constitution Act 1986, s 18(1A).

<sup>5</sup> Law Commission Final report on emergencies (NZLC R22, 1991), App B at B21.

<sup>6</sup> WP Reeves *The Long White Cloud* (George Allen & Unwin, London, 1950) at 182.

Wellington, on the recommendation of a commission appointed to study the matter. The site chosen for Parliament to meet was in Thorndon, Wellington, in the Wellington Provincial Council building, adjacent to the Government House of the time.

For over 40 years the Legislative Council and the House of Representatives shared this site with Government House, until the old Parliament House was destroyed by fire in 1907. The Governor moved to other accommodation to give the House a place to meet while a new building was being erected, and never returned to Parliament grounds, for shortly afterwards the present Government House was completed in Newtown. The General Assembly Library building had been completed in 1899, and work started on a new Parliament House adjacent to it in 1912. It was completed by 1922, but not to the original specification: as an economy measure, the southern section of the building was not constructed, and the old wooden Government House building was retained for use instead. As well as housing members, the new building accommodated Ministers' offices, which were moved away from their departments; "Parliament House thus became not only the home of Parliament but also the centre of the administration."<sup>7</sup>

The parliamentary buildings are still the centre of administration. Since 1979, Ministers' offices have been housed in an executive wing adjacent to Parliament House, popularly known as the Beehive because of its shape, to the south of the main Parliament House on the site of the old Government House building. The Beehive was built between 1969 and 1980. In addition to ministerial offices, it contains part of the Department of the Prime Minister and Cabinet, and a dining room, bar, café and kitchens, known as Bellamy's. Some ministerial accommodation is elsewhere in the complex, owing to pressure on space in the Beehive. The main Parliament House building contains the Chamber of the House of Representatives, the Council Chamber, the chamber of the former Legislative Council, select committee rooms, and offices for members and staff. A building connected to Parliament House and the Beehive, completed in 1981 for the Parliamentary Counsel Office, now houses the Parliamentary Press Gallery.

From 1991 to 1995, the House moved its meeting place to a temporary Chamber across the road from the Beehive at No 3 The Terrace. This was to allow Parliament House and the library building to be strengthened against earthquake, refurbished (with an emphasis on restoring much of its original appearance), and developed. Accommodation for members, their staff and the parliamentary administration was provided in a building adjacent to the Chamber known as Bowen House. Parliament House was reoccupied in January 1996. Bowen House has been retained on a lease now vested in the Parliamentary Corporation.<sup>8</sup> It continues to accommodate members and staff and is linked by an underground walkway to the Beehive.

## PARLIAMENTARY PRECINCTS

All of the land occupied for parliamentary purposes—Parliament House, the library building, the Beehive, the Press Gallery building at the rear of the Beehive, the land and premises subject to the Bowen House lease, and parts of No 1 and No 3 The Terrace—constitutes the parliamentary precincts both for legal and parliamentary purposes.<sup>9</sup> The House is empowered, by resolution, to vary the extent of the parliamentary precincts by adding to them or excluding from them land and premises. However, it cannot add land or premises unless the Crown or the Parliamentary Corporation already holds an interest in the property in

---

<sup>7</sup> HN Dollimore *The Parliament of New Zealand and Parliament House* (Government Printer, Wellington, 1973) at 44.

<sup>8</sup> Parliamentary Service Act 2000, s 24.

<sup>9</sup> Parliamentary Service Act 2000, s 3; SO 3(1).

question.<sup>10</sup> These powers were used to add parts of No 1 and No 3 The Terrace to the precincts in 2009.<sup>11</sup>

The ground on which Parliament House, the library, the Beehive and the Press Gallery building now stand comprises three distinct parcels of land set aside at different times as reserve for use for parliamentary purposes. The whole of that land is now vested absolutely in Her Majesty the Queen for parliamentary purposes.<sup>12</sup>

The Speaker is vested with the control and administration of the whole of the parliamentary precincts, on behalf of the House, whether Parliament is in session or not.<sup>13</sup> Between a general election and the first meeting of the House in a new Parliament, the person who was Speaker until the election continues to perform these functions.<sup>14</sup> During a vacancy in the office of Speaker, the Deputy Speaker may perform the Speaker's functions.<sup>15</sup>

## THE CHAMBER

The Chamber of the House measures 19.83 metres by 13.12 metres. The Speaker presides at an ornate raised chair—a gift of the House of Commons in 1951 to mark the centenary of parliamentary institutions in New Zealand<sup>16</sup>—and the Clerk of the House is seated at an oblong table (the Table of the House) immediately in front of and below the raised chair. On the Table are trays made of Samoan woods, presented by the Western Samoan Legislative Assembly in 1955.<sup>17</sup>

On either side of the Speaker's Chair and the Table the members sit at desks arranged in three to five tiers in an irregular horseshoe shape, which is divided at three points by gangways. One gangway at the far end of the Chamber leads beyond the bar of the House (which marks the boundary beyond which visitors may not pass when the House is in session) to an exit. The other two gangways are on either side of the Chamber. The one on the Speaker's right leads into the Ayes lobby, and the one on the left leads into the Noes lobby.

Members of the largest Government party occupy seats on the Speaker's right. Those in the block nearest to the Speaker are occupied by Ministers, whips, and members of the presiding officers' panel. Other Government members, and members of parties that support the Government, occupy the seats at the far end of the Chamber beyond the gangway and, if necessary, some of the seats at the far end of the Chamber on the Speaker's left beyond the central gangway. Members of the largest Opposition party occupy seats on the Speaker's left. Other Opposition parties generally occupy seats on the Speaker's left beyond the gangway. Although each member occupies an individual seat consisting of a leather chair and a bureau, the term "bench" (which is what members sit on in the House of Commons) is still used to refer to the seats occupied by Ministers (Treasury benches), the seats occupied by senior Opposition members (front benches), and the seats beyond the gangways on both sides of the House (cross benches), and to refer to non-ministerial members of Parliament generally (backbenchers).

The carpets and seats are green, a colour associated in the Westminster tradition with the lower chamber of a legislature, which is what the House was until the abolition of the Legislative Council. Wooden plaques commemorating battlefields and campaigns engaged in by members of New Zealand's defence forces are affixed to the Chamber and gallery walls.

<sup>10</sup> Parliamentary Service Act 2000, s 25.

<sup>11</sup> (15 December 2009) 659 NZPD 8513.

<sup>12</sup> Parliamentary Service Act 2000, s 23.

<sup>13</sup> Parliamentary Service Act 2000, s 26(1).

<sup>14</sup> Parliamentary Service Act 2000, s 3.

<sup>15</sup> Parliamentary Service Act 2000, s 33.

<sup>16</sup> (1951) 296 NZPD 961–966.

<sup>17</sup> (1955) 307 NZPD 2313–2316.

Ministerial advisers can converse with their Ministers from a bench situated immediately to the right of the Speaker's Chair. Immediately to the left of the chair there are seats for former members of Parliament, heads of diplomatic missions and visiting members of overseas parliaments.<sup>18</sup>

## **Seating in the Chamber**

The Prime Minister, Deputy Prime Minister, Leader of the Opposition and deputy to the Leader of the Opposition sit facing each other in recognised front-bench seats. Their respective whips are seated immediately behind them. Other Ministers and members are allocated seats within the area of the Chamber occupied by the party to which they belong, on a basis determined by the party. As far as practicable, each party occupies a block of seats in the Chamber, so that its members are seated contiguously.<sup>19</sup> If possible, seating is arranged so that members of the same party share seats that are grouped in twos. A member who is under suspension from his or her party continues to be seated within the area of seating allocated to the party.<sup>20</sup> However, a member who leaves his or her party without affiliating with another party will be allocated a seat at the back of the Chamber. It is also a recognised practice that, if at all possible, every party leader should have a front-bench seat, though the increasing number of parties with co-leaders has made this more difficult to arrange.

The Speaker resolves any disputes about seating that may arise.<sup>21</sup> This generally involves the Speaker determining which areas of the Chamber particular parties are to have allocated to them if the parties themselves cannot agree on this. At the beginning of the 50th Parliament, Opposition parties could not agree on the allocation of blocks of seats. As no Speaker had yet been elected, seating arrangements for the Opposition on the first sitting day were based on the alphabetical order of Members' names. Within each party's block, the allocation of seats to individual members is left to the party leaders and their whips, and the Speaker does not intervene.<sup>22</sup> Whenever a party changes the allocation of seats within its block, it should inform the Office of the Clerk, and a new seating plan for the Chamber will be published.

## **Conduct in the Chamber**

It is the Speaker's duty to maintain order and decorum in the House.<sup>23</sup> But Speakers often remind members that they too share in that responsibility so that the House can function in an orderly way without damaging its reputation. Speakers must also take account of the state of opinion among members in deciding the standards that they seek to impose. This state of opinion may be gauged by informal consultation, discussion at the Business Committee, and occasionally more systematic canvassing of members' opinions.

In a reversal of the normal rules of courtesy, members must resume their seats when the Speaker rises. They must also be silent so that the Speaker can be heard without interruption.<sup>24</sup>

Members can, within limits, speak from seats within their party's block that are not their own. But, except when speaking in debate or voting, members are expected to occupy a seat in the Chamber and not to move around it.<sup>25</sup> It is acknowledged, however, that some members (such as party leaders and whips) have duties to

<sup>18</sup> See further, HN Dollimore *The Parliament of New Zealand and Parliament House* (Government Printer, Wellington, 1973) and Rod Cook *Parliament—The Land and Buildings from 1840* (Parliamentary Service, Wellington, 1988).

<sup>19</sup> SO 86(2).

<sup>20</sup> (11 February 2003) 606 NZPD 3257 Hunt.

<sup>21</sup> SO 86(3).

<sup>22</sup> (1992) 530 NZPD 11441 Gray.

<sup>23</sup> SO 84(1).

<sup>24</sup> SO 84(2).

<sup>25</sup> SO 86(1).

perform in the House that require them to move around the Chamber to carry them out and the seating requirement is relaxed in this respect.<sup>26</sup> However, it is regarded as disorderly for members to change seats to improve their opportunities for interjection.<sup>27</sup>

Originally the seats that members occupied in the Chamber were intended to function as their offices, because members did not have individual office space in the building. Even today they are still designed to facilitate members' working on papers or electronic devices. The use of technology by members in the Chamber has been proscribed in the past; as recently as 2007, members were instructed that laptops and mobile devices could be used in the Chamber only after question time.<sup>28</sup> The ready availability of electronic devices that may be used unobtrusively has rendered such restrictions obsolete. Issues arising from members' use of electronic devices are dealt with by general rules to support the maintenance of order and ensure that the business of the House can proceed without disruption. The Speaker has ruled that electronic devices may be used, but not so as to disrupt the business of the House. They must be used in silent mode, and may be placed on the top surface of the members' desks when being used to display notes for speaking in debate. At all other times they should be placed on the drop-down work surface so that they in no way obstruct or interfere with the Speaker's view of the House or its members.<sup>29</sup> The Privileges Committee in 2015 endorsed this general guidance and recommended that the Speaker provide detailed guidance, particularly for controlling the use of smartphones on the floor of the House to post photographs to social media.<sup>30</sup>

Members are not permitted to drink or eat food in the Chamber (except water and inconspicuous confectionery such as peppermints).<sup>31</sup> Refreshment facilities are provided in the lobbies and members must repair to them if they wish to consume food or beverages.<sup>32</sup> Knitting is permitted in the Chamber, but not by a Minister who is at the Table in charge of a bill in committee.<sup>33</sup>

The issue of signage on the boxes that members take with them to the House has been raised from time to time. Party logos are acceptable, but no signage of any other kind is permitted. Members should remove boxes from view when they leave their seats.<sup>34</sup>

## Dress codes

The standard of dress of members is also regarded as a matter of order under the general control of the Speaker.<sup>35</sup> No fashion codes are prescribed. The Speaker is expected to take issue with any member, irrespective of gender, who is not dressed in appropriate business attire.<sup>36</sup> A female member wearing a rugby team's shirt has been instructed to leave the Chamber and return appropriately dressed. It is not appropriate, without the Speaker's prior permission, to advertise sports teams in the Chamber.<sup>37</sup> There is no rule against wearing a hat;<sup>38</sup> indeed, a hat was a normal article of attire among 19th-century parliamentarians (a member has been sworn

<sup>26</sup> (1976) 404 NZPD 852 Harrison (Deputy Speaker).

<sup>27</sup> (1963) 335 NZPD 609 Algie.

<sup>28</sup> (18 December 2007) 644 NZPD 14043 Hartley (Assistant Speaker).

<sup>29</sup> (27 June 2012) 681 NZPD 3465 Robertson (Assistant Speaker).

<sup>30</sup> Privileges Committee *Question of privilege regarding use of social media to report on parliamentary proceedings* (15 September 2015) [2014–2017] AJHR I.17A at 8.

<sup>31</sup> (1997) 559 NZPD 1061 Braybrooke (Chairperson); (1 July 2003) 609 NZPD 6970 Robertson (Chairperson).

<sup>32</sup> (1 July 2003) 609 NZPD 6970 Robertson (Chairperson).

<sup>33</sup> (21 May 2003) 608 NZPD 5908 Hunt.

<sup>34</sup> (14 October 2009) 658 NZPD 6993 Smith.

<sup>35</sup> (2000) 584 NZPD 2594 Hunt.

<sup>36</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 23.

<sup>37</sup> (7 June 2011) 673 NZPD 19066–19067.

<sup>38</sup> (1999) 578 NZPD 17631 Braybrooke (Chairperson).

in wearing a hat<sup>39</sup>) and a rule requiring members to take off any hat they were wearing only while actually speaking was revoked as recently as 1985. However, members cannot wear a hat with advertising or a message written on it for the purpose of making a “silent interjection” in the Chamber.<sup>40</sup>

## Maintenance of order

Any conduct or remark in the Chamber that is heard or comes to the attention of the Speaker may be dealt with by the Speaker as a matter of order. The Speaker, in the course of a debate, often requires members to withdraw unparliamentary expressions, and sometimes requires them to apologise for having used them.

### *Withdrawal from the Chamber*

To deal with more serious breaches of order there are more potent weapons in the Speaker’s armoury than merely requiring a member to apologise. They may be resorted to in exceptional cases. The Speaker has, on occasion, asked a member who has been persistently disorderly to withdraw voluntarily from the Chamber while a point of order or other matter is under discussion. This has helped to relieve tension and has obviated the need for more serious steps, but it depends on the cooperation of members.

In the absence of cooperation, or if the situation has deteriorated to such an extent that it is inappropriate to request a member to withdraw, the Speaker may order a member whose conduct is highly disorderly to withdraw from the Chamber for a period up to the remainder of the day’s sitting.<sup>41</sup> Any member who is thus ordered to withdraw cannot re-enter the Chamber during the period of exclusion. He or she cannot ask an oral question or have one asked on his or her behalf, but the member is not suspended from the service of the House and can carry out other duties as a member, such as voting.<sup>42</sup> Where the Speaker uses this power to order a member to withdraw from the Chamber, the objectionable conduct that gave rise to the Speaker’s action is dealt with finally by the order to leave the Chamber. The matter is at an end at that point. This contrasts with the situation where a member has defied the Chair and voluntarily left the Chamber rather than withdraw or apologise for unparliamentary remarks. In this case the matter is not at an end and the Speaker will deal with the member on his or her eventual return to the Chamber.<sup>43</sup>

The Speaker when excluding the member under this provision may specify the period of exclusion. If the Speaker does not name the period, the member may ask the Speaker through the Serjeant-at-Arms how long he or she is to be excluded from the Chamber.<sup>44</sup>

### *Naming and suspension of a member*

Whenever a member’s conduct is so grossly disorderly that the Speaker considers that simply ordering his or her withdrawal would not be adequate, the Speaker can “name” the member and thereby call on the House to pass judgement on the member’s conduct.<sup>45</sup> The first member said to have been “named” in this way was Julius Vogel in 1887.<sup>46</sup> When a member is named, the Speaker says, “I name ... [the member for ...] for grossly disorderly conduct.” It is not possible to define what conduct will be regarded as grossly disorderly and so warrant naming. This will

<sup>39</sup> Raewyn Dalziel *Julius Vogel—Business Politician* (Auckland University Press, Auckland, 1986) at 53.

<sup>40</sup> (1999) 578 NZPD 17631 Braybrooke (Chairperson).

<sup>41</sup> SO 89(1).

<sup>42</sup> SO 89.

<sup>43</sup> (2001) 596 NZPD 13099–13100 Hunt.

<sup>44</sup> (1985) 468 NZPD 8862–8863 Wall.

<sup>45</sup> SO 90.

<sup>46</sup> John E Martin *The House—New Zealand’s House of Representatives 1854–2004* (Dunmore, Palmerston North, 2004) at 98.

depend very much on the individual circumstances that confront a Speaker. But the Speaker has indicated that a member flagrantly defying the Chair can expect to be dealt with in this way.<sup>47</sup>

Where a member has been named, the House itself is asked to censure the conduct of the member and the Speaker accordingly states a question to the House immediately for the member to be suspended from the service of the House. This question is put without any amendment or debate.<sup>48</sup> If the motion is carried, the member is suspended for 24 hours, or for seven days if this is the second occasion on which he or she has been suspended in the same Parliament, or for 28 days if it is the third or more.<sup>49</sup> In each of the two latter cases, the day on which the member is suspended is not counted as one of the seven or 28 days of suspension. When a member is suspended, a day's pay is deducted from his or her pay for each day of the suspension.<sup>50</sup>

If a member who is suspended refuses to withdraw voluntarily from the House at once, the Serjeant-at-Arms will be called on by the Speaker to enforce the House's direction. A member who refuses to obey an order from the Speaker to leave the Chamber is automatically suspended from the service of the House for the remainder of the calendar year.<sup>51</sup>

### ***Consequences of suspension***

A member who is suspended from the service of the House suffers a number of disabilities during the suspension.<sup>52</sup> The member cannot:

- enter the Chamber (or the galleries<sup>53</sup>)
- have a vote cast in a party vote
- vote in a personal vote
- give or exercise a proxy vote (though the member is still part of the party's membership in the House for the purposes of calculating how many proxies may be exercised for the party)
- serve on (or be replaced on<sup>54</sup>) a select committee
- serve as a member of the Intelligence and Security Committee<sup>55</sup>
- lodge an oral or a written question (but a question already lodged may be dealt with or asked on the member's behalf)
- lodge a notice of motion (but a notice already lodged may be dealt with on the member's behalf)
- lodge an application for an urgent debate (but an application already lodged will be dealt with and, if it is accepted, a motion may be moved on the member's behalf)
- submit an item for inclusion on a select committee's agenda (but an item already submitted may be dealt with by the committee).

### ***Contempt of the House***

Serious disorder in the House by members could also be held to be a contempt of the House; indeed ultimately the House's power to protect itself against disorder, by its own members or by strangers, depends upon its privilege to punish for contempt. (See Chapter 46.) The fact that the House has set out in its Standing Orders procedures for the disciplining of members for breaches of order does not prevent it proceeding against a member under its privilege of punishing for

47 (2001) 596 NZPD 13099–13100 Hunt.

48 SO 91.

49 SO 93.

50 Members of Parliament (Remuneration and Services) Act 2013, s 14.

51 SO 94.

52 SO 95.

53 (1880) 37 NZPD 738 O'Rorke.

54 SO 187(4).

55 Intelligence and Security Committee Act 1996, s 10(1).

contempt.<sup>56</sup> Thus, even though a member may have been suspended for grossly disorderly conduct, the House may hold that member in contempt in respect of the same conduct and punish the member for it.<sup>57</sup> However, the fact that the member had already been suspended for the offence would be a factor for the Speaker to consider in determining whether a question of privilege was involved and for the Privileges Committee and the House to consider in determining any punishment for the contempt.

### ***Adjournment or suspension of the House for disorder***

In addition to the powers to proceed against individual members, the Speaker has authority to adjourn the House or to suspend the House's sitting if he or she considers it necessary to do so to maintain order.<sup>58</sup> The Speaker automatically resumes the Chair whenever the Chairperson temporarily suspends the proceedings of the committee of the whole House for disorder.<sup>59</sup> It is then up to the Speaker as to whether the House should be adjourned or suspended or whether the Speaker should otherwise deal with the disorder and declare the House in committee again.

After suspending a sitting the Speaker decides when the sitting will resume,<sup>60</sup> which may be at any time up to the time that the House would have otherwise adjourned. If the Speaker adjourns a sitting the House stands adjourned until the next sitting day.<sup>61</sup> The power to suspend the sitting was last used by the Speaker in 1987, when the sitting was suspended for five minutes.<sup>62</sup>

### ***Order in the committee of the whole House***

The rules for maintaining order in the Chamber in a committee of the whole House are similar to those in the House itself.<sup>63</sup> The Chairperson is responsible for keeping order in committee, and has the same powers as the Speaker in the House to require a member to withdraw an unparliamentary expression and apologise for having uttered it.

The Chairperson may also require a member whose conduct is highly disorderly to withdraw from the committee for a specified period. In this case the period cannot exceed the time that the House spends in committee that day, and the exclusion does not apply whenever the House resumes during the course of the sitting (for example, to take a ruling from the Speaker). If the member has not been readmitted to the Chamber by the time the committee reports back to the House that day, the exclusion automatically lapses.

The Chairperson may also name a member for grossly disorderly conduct. In such a case the proceedings of the committee must be suspended immediately and the fact of the naming reported to the House.<sup>64</sup> A committee of the whole House cannot punish a member; only the House can do that. Where the committee does report the naming of a member to the House, the Speaker institutes the same procedures as if the naming had been made by the Speaker in the House and immediately puts a question for the member's suspension.<sup>65</sup>

The Chairperson may also temporarily suspend the proceedings of the committee of the whole House in any case of grave disorder.<sup>66</sup> In such a case the

56 Privileges Committee, report on a question of privilege referred on 11 March 1986 (30 October 1986) [1986–1987] AJHR I.15; *Raj Narain Singh v Atmaram Govind, Speaker of the Uttar Pradesh Legislative Assembly* [1954] AIR (Allahabad) 319.

57 SO 96.

58 SO 50(1).

59 SO 177(2).

60 SO 50(2).

61 SO 50(3).

62 (26 March 1987) [1986–1987] JHR 740.

63 SO 173.

64 SO 92.

65 SO 92.

66 SO 177(1).

Speaker automatically resumes the Chair.<sup>67</sup> It is then for the Speaker to determine what, if any, further action is required. Whenever the committee resumes sitting again after such a temporary suspension, its proceedings are resumed at the point they had reached when the sitting was interrupted by the suspension.<sup>68</sup>

### ***Admission of officials to the Chamber***

Officials are permitted to occupy seats on the right of the Chair to assist Ministers with business before the House, or the seats on the right or left of the Chair to assist other members in charge of a bill before the House.<sup>69</sup> Officials are expected to conform to the dress standards required of members and otherwise to conduct themselves appropriately. Members are not permitted to refer to the presence of such officials in the course of debate or to approach them directly without the Minister's concurrence. If a member considers that an official is acting inappropriately, he or she should raise this as a point of order or discuss the matter privately with the Minister. On no account should the officials be directly accosted.<sup>70</sup>

From time to time the Speaker issues guidance on how officials should conduct themselves when occupying these seats.<sup>71</sup> Officials should be careful to retain an impassive demeanour in the House. They should not react in any way to anything said during the course of debate.

## **LOBBIES**

The lobbies on either side of the Chamber are set aside for the exclusive use of members while the House is sitting. Strangers should not enter them during this time.<sup>72</sup>

The lobbies are used in a formal sense to transact business of the House when a personal vote is being held. Generally, however, they are not a place of formal business, but rather a place of retreat. Consequently, there are few, if any, rules as to how they may be used (food and beverages may be consumed there, for example<sup>73</sup>). Indeed, formerly, the Speaker was not regarded as having jurisdiction over what occurred in the lobbies, except during a vote.<sup>74</sup> Now the Speaker's delegation of authority from the House to control admission runs equally to the lobbies, the Chamber and the galleries,<sup>75</sup> so disorder in the lobbies could be dealt with by the Speaker if necessary.

## **PRESS GALLERY**

The press gallery is situated immediately above and behind the Speaker's Chair. Admission to it is restricted to members of the Parliamentary Press Gallery.

## **PUBLIC GALLERIES**

Around the sides of the Chamber and at the far end of the Chamber are public galleries. The gallery at the far end of the Chamber is known as the Speaker's gallery. Admission to it may, at the Speaker's discretion, be subject to stricter dress standards than the other galleries. Some 400 people can be seated in the public galleries.

<sup>67</sup> SO 177(2).

<sup>68</sup> SO 179.

<sup>69</sup> (2001) 594 NZPD 10811 Roy (Assistant Speaker).

<sup>70</sup> (1998) 571 NZPD 12095–12098 Braybrooke (Chairperson).

<sup>71</sup> Speaker of the House of Representatives "Rules governing the admission of officials to the Chamber and lobbies of the House of Representatives" (4 July 2000).

<sup>72</sup> (1910) 153 NZPD 360 Guinness; (1913) 164 NZPD 240 Lang.

<sup>73</sup> (2000) 582 NZPD 947–948 Hunt.

<sup>74</sup> (1929) 222 NZPD 665 Statham.

<sup>75</sup> SO 44.

## Admission to the galleries

The right to control access to its proceedings and determine the conditions under which such access is granted is an aspect of the House's privileges.<sup>76</sup> (See pp 750–751.)

## Conduct in the galleries

Strangers are permitted to be present at proceedings of the House on condition that they do not misbehave or interrupt the business of the House. The Speaker and the Serjeant-at-Arms are authorised by the House to require any strangers who misconduct themselves or interrupt proceedings to withdraw from the galleries and the parliamentary precincts.<sup>77</sup> In committee, the Chairperson has this authority also. The Speaker has ordered all strangers to withdraw from particular galleries when it was impossible to distinguish between those who were misbehaving and those who were not.<sup>78</sup>

Control over the behaviour of strangers in the galleries is also exercised by means of the House's privilege to punish for contempt. A stranger wilfully interrupting the business of the House commits a contempt, which can be punished by the House as such.

Members are not permitted to converse with strangers from the floor of the House.<sup>79</sup> They must go out beyond the bar of the House if they wish to speak to visitors.<sup>80</sup> It is also a rule of debate that members should not refer in their speeches to what is happening in the galleries.<sup>81</sup> If members wish the House to acknowledge people in the galleries, they need leave of the House.<sup>82</sup> However, the Speaker will acknowledge visiting members of Parliament and their delegations by prior arrangement. Amongst other things, these rules are designed to avoid any provocation of interruptions to the proceedings of the House by strangers. Strangers must refrain from encroaching into those parts of the House set apart for members while the House is sitting; that is, the floor of the House and the lobbies.<sup>83</sup> Members themselves may not bring strangers into those areas.

## State occasions

The Business Committee may agree to a proposal from the Prime Minister regarding a State occasion to be held in association with a sitting of the House, for example that a foreign leader address the House. The Speaker maintains order during such a State occasion and the proceedings are reported in *Hansard*.<sup>84</sup>

## Celebrations in the galleries

The Speaker will permit contributions from the galleries in some circumstances. It is traditional when members make their maiden speeches for their families and supporters to be on hand to hear them, and a wider latitude is given to people in the galleries on these occasions. A group particularly affected by a piece of legislation may be permitted by the Speaker to celebrate the occasion of the legislation passing. It has become commonplace for waiata to be sung in the gallery when Treaty of Waitangi settlement legislation is passed by the House.

The Speaker has set out the circumstances and conditions in which a contribution from the galleries may be permitted.<sup>85</sup>

<sup>76</sup> *New Brunswick Broadcasting Co v Nova Scotia (Speaker of the House of Assembly)* [1993] 1 SCR 319, (1993) 100 DLR (4th) 212.

<sup>77</sup> SO 43.

<sup>78</sup> (1977) 414 NZPD 3751 Harrison (Acting Speaker).

<sup>79</sup> (1931) 228 NZPD 755 Statham.

<sup>80</sup> (1976) 408 NZPD 4344 Harrison (Deputy Speaker).

<sup>81</sup> (1990) 506 NZPD 967 Burke.

<sup>82</sup> (30 May 2012) 680 NZPD 2657 Smith.

<sup>83</sup> (1910) 153 NZPD 360 Guinness.

<sup>84</sup> SO 82.

<sup>85</sup> (1998) 572 NZPD 12347–12348 Kidd.

- Prior permission of the Speaker is always required.
- Permission of the Speaker must be sought in writing.
- Permission will only be given for a contribution that is celebratory in nature and relates to a speech or decision of the House.
- Usually the contribution will only be permitted between speeches, so as not to interrupt a member speaking, but on an occasion such as a maiden speech, if the member desires it, it can be permitted during a speech.
- Otherwise a celebratory contribution can take place only after the House's decision has been made; it can never be used to influence the House's deliberations.
- Karanga (welcoming call) and waiata (song) may be permitted, but not anything in the nature of a speech (whaikorero).
- Accompanying music may be permitted.

## THE PARLIAMENT BUILDINGS

The Parliament Buildings contain a number of separate buildings: Parliament House, the Parliamentary Library building, the Beehive and its annexe occupied by the Parliamentary Press Gallery. Bowen House and the parts of No 1 and No 3 The Terrace leased by the Parliament Corporation are not regarded as part of the Parliament Buildings, but are part of the parliamentary precincts and also under the control and administration of the Speaker. As well as the Chamber, the Parliament Buildings and leased properties contain meeting rooms for select committees and caucuses, office accommodation for members, their staff and parliamentary staff, and other service areas necessary for a complex with over 1,000 people working in it, through which approximately 100,000 visitors pass each year. Most of the visitors take tours conducted under the aegis of the Parliamentary Service. The buildings also contain reception areas, which may be used with the Speaker's permission by groups from outside Parliament.

The buildings are used for parliamentary purposes as places of work. They are not places in which it is traditional or appropriate to conduct demonstrations (unlike Parliament grounds, for example). They are protected by security guards employed by the Parliamentary Service to safeguard the personal security of members, staff and other people who are present to carry out parliamentary business or to observe proceedings. The Speaker exercises the powers of an occupier to exclude people who act inappropriately. Occasionally, the House has resolved that certain people be excluded from all or part of the buildings.<sup>86</sup> The Speaker, exercising control of the buildings on the House's behalf, has implemented these decisions under the powers of the Speaker as occupier.

The Speaker has entered into an agreement with the Commissioner of Police on the exercise of policing powers within the parliamentary precincts. The police liaise with the Parliamentary Service and acknowledge the need to seek the authority of the Speaker to interview members within Parliament Buildings.<sup>87</sup>

In 2006, a search warrant for the parliamentary and electorate offices of a member was executed in accordance with an interim agreement between the Speaker and the Commissioner of Police. The agreement was designed to ensure that the search warrant was executed without improperly interfering with the functioning of Parliament, and that any claim of parliamentary privilege in relation to physical or electronic documents that the police might have wanted

---

<sup>86</sup> (1981) 442 NZPD 4315–4325; (1992) 528 NZPD 10626–10631.

<sup>87</sup> “Policing functions within the parliamentary precincts—An agreement between the Speaker of the House of Representatives of New Zealand and the Commissioner of the New Zealand Police” (December 2007).

to seize could be raised and properly resolved.<sup>88</sup> The Privileges Committee has recommended that an amended version of the agreement be made permanent.<sup>89</sup>

In 2010 the Speaker entered into a draft memorandum of understanding with the New Zealand Security Intelligence Service (NZSIS) on the collection and retention of information on members of Parliament.<sup>90</sup> The agreement provides that the NZSIS will not generally direct the collection of information against any sitting member of Parliament. If it has a file on a person who becomes a member, it will be closed immediately and access to it prohibited for the duration of the member's term in Parliament (except for access by the member under the Official Information Act 1982 or the Privacy Act 1993). It may be reactivated once the member leaves Parliament only if the Director of Security is satisfied that this would be consistent with statutory obligations. Collection of information against a sitting member of Parliament will be permitted only where the member is suspected of activities relevant to security, the collection is personally authorised by the Director of Security, and the Speaker is briefed confidentially about the proposed collection and the reasons for it. If it is necessary to obtain an interception or seizure warrant against a sitting member, the Director will brief the Speaker in confidence on the existence of and reasons for the warrant, and any conditions made in the warrant to protect parliamentary privilege. The Speaker can discuss the matter with the Minister in Charge of the New Zealand Security Intelligence Service. The Privileges Committee has recommended amendments to the memorandum of understanding, and consideration of the making of a separate agreement with the Government Communications Security Bureau.<sup>91</sup>

The Speaker has also issued a protocol setting out the conditions under which reporters and associated camera and sound persons may have access to members for interviews and filming in the buildings (see Chapter 6).<sup>92</sup>

The courts have recognised the necessity for a legislature, for its proper functioning, to have control through its Speaker over the parliamentary precincts, including the power to exclude persons from the premises. It is for the House and the Speaker to judge whether in a particular case it is necessary to exclude a person.<sup>93</sup> Usually the power to exclude a person from the buildings would be invoked by an official of the Parliamentary Service under delegation from the Speaker, rather than by the Speaker personally or by the Speaker at the behest of the House.

A number of departments of State occupy accommodation in Parliament Buildings: the Office of the Clerk, the Parliamentary Service, the Department of Prime Minister and Cabinet, and the Department of Internal Affairs. (The Parliamentary Counsel Office, which was formerly located in the Parliament Buildings, now occupies its own premises outside the buildings.) These departments may have their own workplace policies on various matters.

## THE PARLIAMENT GROUNDS

The Parliament grounds are also part of the parliamentary precincts and are therefore subject to the Speaker's control and administration, but they are regarded as different from Parliament Buildings as regards access and use.

<sup>88</sup> (7 November 2006) 635 NZPD 6201 Wilson.

<sup>89</sup> Privileges Committee *Question of privilege concerning the agreements for policing, execution of search warrants, and collection and retention of information by the NZSIS* (11 July 2014) [2011–2014] AJHR I.17D.

<sup>90</sup> (18 September 2012) 684 NZPD 5265 Smith.

<sup>91</sup> Privileges Committee *Question of privilege concerning the agreements for policing, execution of search warrants, and collection and retention of information by the NZSIS* (11 July 2014) [2011–2014] AJHR I.17D.

<sup>92</sup> Speaker of the House of Representatives "Protocol for interviewing members, filming, and photographing in Parliament Buildings" (11 May 2011).

<sup>93</sup> *Zündel v Boudria* (2000) 181 DLR (4th) 463 (ONCA).

The Parliament grounds are freely open to, and used by, the public.<sup>94</sup> Traditionally, they have been a place of resort for persons wishing to hold rallies, demonstrations, meetings, and celebrations, sometimes with and sometimes without the prior permission of the Speaker. (This applies only to pedestrian access; vehicular access is expected to be for the purposes of transacting business in the buildings, and is subject to stricter controls, particularly for security reasons.) The law relating to criminal trespass does apply to the Parliament grounds. The Speaker can exercise the rights of an occupier to require persons to leave the grounds, and can delegate this power to other persons.<sup>95</sup> Trespass notices are not generally issued by the Speaker personally; they are issued by members of the police or senior Parliamentary Service staff under powers delegated to them by the Speaker.<sup>96</sup>

The powers that the Speaker possesses as the occupier of Parliament grounds are conferred for the performance of a public function. They are entrusted to the Speaker principally to promote the effective functioning of the parliamentary system. They are explicitly conferred on behalf of the House.<sup>97</sup> But the Speaker and the Speaker's delegates must exercise the rights of an occupier in a manner that is reasonable having regard to the fundamental right of every person to assemble peacefully,<sup>98</sup> a right that applies within Parliament grounds. If a demonstration became disorderly or breached or threatened to breach the peace or to infringe unreasonably the rights of others (including those of the occupier to use the grounds), the Speaker would not be acting unreasonably in requiring the demonstrators to leave the grounds.<sup>99</sup> But in no circumstances should the right to assemble be abridged arbitrarily or without good reason. In exercising the occupier's powers the Speaker must act in good faith, exercise the powers for the purposes conferred and not for an ulterior purpose (for example, party advantage), exercise the powers reasonably when balanced against the rights and freedoms of those affected, exercise the powers with due regard to others present in the grounds and others wishing to enter or use them, and take into consideration the need to operate, manage and control the property effectively.<sup>100</sup>

The Speaker has acknowledged these constraints on the exercise of the occupier's powers and has declared that the powers will be used positively to facilitate the holding of demonstrations at the traditional venue of Parliament grounds, provided that the manner of demonstrating is consistent with the Speaker's other duties to members and others using the buildings and grounds.<sup>101</sup> It is for the Speaker to judge in each case whether demonstrators' conduct makes it reasonable to require them to desist or to leave.

The Speaker's expectations for the use of the grounds by demonstrators are as follows.

- Participants must assemble within and disperse from the grounds in an orderly manner, using the pedestrian ways so as to avoid damage to the lawns and flower beds and so as not to interfere with the flow of vehicular traffic.
- Participants must not mount the main steps nor interfere with the use of Parliament Buildings by those entering or leaving it in the normal course of their business.

<sup>94</sup> *Melser v Police* [1967] NZLR 437 (SC) at 444.

<sup>95</sup> *Police v Beggs* [1999] 3 NZLR 615 (HC) at 623, 628; Parliamentary Service Act 2000, s 26(2).

<sup>96</sup> Reply to question 14306 (1997) (29 NZPD Supp 3832).

<sup>97</sup> Parliamentary Service Act 2000, s 26(1).

<sup>98</sup> New Zealand Bill of Rights Act 1990, s 16.

<sup>99</sup> *Police v Beggs* [1999] 3 NZLR 615 (HC) at 627.

<sup>100</sup> *Police v Beggs* [1999] 3 NZLR 615 (HC) at 631. See also: "Students get apology for protest arrests 12 years ago" *The Dominion Post* (18 November 2009) (Speaker's office issued an apology to students in 2009 following settlement of civil action against the Attorney-General).

<sup>101</sup> (1999) 579 NZPD 18473–18474 Kidd.

- Sound amplification equipment may be used, but never from the main steps of Parliament Buildings without express permission; it must be directed away from the buildings and not operated in a manner disruptive to occupants of the buildings.
- The size of any deputation from the group waiting upon a Minister or member is to be limited to six people.
- Participants are to conduct themselves in such a way as to avoid any breach of the peace.
- No food may be prepared or sold within Parliament grounds, but there is no restriction on people consuming food that they may have brought with them.
- Without express authority to the contrary, no demonstration should last for longer than a normal working day, that is, eight hours.
- No vehicles may be brought on to the grounds as part of a demonstration.
- No structure, such as a tent, may be erected.

Members are not prevented from taking part in demonstrations in the grounds or from addressing the crowds, but if they do so they must abide by the same rules as apply to the public.<sup>102</sup>

Organisers of demonstrations are asked to inform the Speaker's office or the Parliamentary Service management of the intention to hold a demonstration in Parliament grounds, particularly a large one, so that appropriate arrangements can be made to facilitate it.

---

<sup>102</sup> Ibid, at 18474; (9 September 2003) 611 NZPD 8439 Hunt.

## CHAPTER 12

# The Opening of Parliament

### FIRST MEETING OF A NEW PARLIAMENT

Parliament meets according to the Governor-General's proclamation appointing the place and time for it to convene (see pp 141–143). Seven minutes before the time appointed in the proclamation summoning Parliament the House's Chamber bells are rung for five minutes, and the members elected at the general election assemble in the Chamber of the House and await the Royal commissioners.<sup>1</sup>

#### Commission Opening

There are few times when both elements of Parliament, the Crown and the House of Representatives, come together to discharge their duties. The occasion of the opening of a new Parliament, when the Parliament is declared open before the assembled members, is one of them. In fact, neither the Sovereign nor the Governor-General attends this ceremony in person. Rather, they authorise Royal commissioners to attend on their behalf to declare Parliament open. Until the abolition of the Legislative Council, the commissioners opened Parliament from the Legislative Council Chamber. Now this task is performed in the House's own Chamber. There are three Royal commissioners, who are usually the Chief Justice or another senior judge as chief commissioner and two other judges.

At this time the House has no Speaker. Consequently, the Mace, being regarded as a symbol of the Speaker's authority, is not displayed. It is placed under the Table in the position it occupies when the Speaker leaves the Speaker's Chair and the House goes into a committee of the whole House. The Clerk of the House, as a permanent officer of the House, occupies the Clerk's chair at the Table. At the appointed time the Usher of the Black Rod (an officer who, until the abolition of the Legislative Council, was a permanent official of that Council, but who now performs only ceremonial duties as the Governor-General's messenger in communications with the House) announces the arrival of the Royal commissioners, who enter the Chamber and occupy the chairs at the Table. At the same time the Clerk retires to the upper step to the left of the Speaker's Chair. From that position the Clerk reads the Letters Patent by which the commissioners have been appointed and given the authority to act on behalf of the Governor-General.<sup>2</sup> Then the chief commissioner reads the proclamation summoning Parliament to meet. The chief commissioner also informs the House that the Governor-General will attend in person to declare to members the causes of Parliament being summoned to meet at that time—that

<sup>1</sup> SO 12(a).

<sup>2</sup> SO 12(b).

is, to deliver the Speech from the Throne. Before this, however, it is necessary for the House to elect a Speaker, and the chief commissioner indicates that it is the Governor-General's wish that this should be done, and that the House's choice of Speaker should be presented to the Governor-General for confirmation. The Royal commissioners then withdraw.

## SWEARING IN OF MEMBERS

By law, no member is permitted to sit or vote in the House until that member has taken the Oath of Allegiance<sup>3</sup> or made an affirmation in substitution for the oath.<sup>4</sup> A member is also not permitted to serve on a committee until that member has taken the oath or made the affirmation required by law.<sup>5</sup> The oath or affirmation must be taken before the Governor-General or some person authorised by the Governor-General to administer it.<sup>6</sup> For the purpose of swearing in members at the opening of a new Parliament, the Governor-General issues a commission to the Clerk of the House, giving the Clerk authority to administer the oath or affirmation. Consequently, when the commissioners have left the Chamber, the Clerk reads this commission to the House.<sup>7</sup> The Clerk then lays on the Table lists (taken from the returns forwarded by the Electoral Commission) of the members who have been elected to the House<sup>8</sup> and invites members whose names appear on the lists to come forward, up to five at a time, in alphabetical order, to the left of the Table to take the oath or make the affirmation.<sup>9</sup>

The terms of the oath and of the affirmation are set out in law. They may be taken in English or Te Reo Māori.<sup>10</sup> The first member to make an affirmation in Māori did so in 2004.<sup>11</sup> If the legally prescribed form is not used, the member will be required to withdraw immediately from the Chamber and return when prepared to make the affirmation according to law.<sup>12</sup> The Standing Orders Committee reviewed the matter in 2011. It took the view that using other wording alters the nature of the solemn promise made and does not fulfil the requirement of the Oaths and Declarations Act 1957 or the Constitution Act 1986. Members can make statements about their beliefs and other complementary allegiances at other times, but not when they are being sworn in.<sup>13</sup>

Aside from allowing for the succession of a new Sovereign,<sup>14</sup> the terms of the oath are as follows:

I, ..., swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors, according to law. So help me God.<sup>15</sup>

The equivalent in Te Reo Māori for the oath is:

---

<sup>3</sup> Constitution Act 1986, s 11(1).

<sup>4</sup> Oaths and Declarations Act 1957, s 4(1).

<sup>5</sup> SO 13(1).

<sup>6</sup> Constitution Act 1986, s 11(2).

<sup>7</sup> SO 12(c).

<sup>8</sup> Electoral Act 1993, ss 185(1)(c) and 193(5)(b); SO 12(d).

<sup>9</sup> SO 12(e).

<sup>10</sup> Oaths and Declarations Act 1957, s 30A.

<sup>11</sup> (27 July 2004) 618 NZPD 14293 (Tariana Turia, Te Tai Hauauru).

<sup>12</sup> SO 13(1); (14 July 2011) 674 NZPD 20107–20108 Smith.

<sup>13</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 10–11.

<sup>14</sup> Reference is to the “reigning Sovereign”, with the name of Her Majesty Queen Elizabeth the Second shown illustratively. Succession would also be recognised in the wording by application of the Constitution Act 1986, s 5(1).

<sup>15</sup> Oaths and Declarations Act 1957, s 17.

Ko ahau, ko ..... e oati ana ka noho pūmau taku pono ki a Kuini Irihāpeti te Tuarua me tōna kāhui whakaheke, e ai ki te ture. Ko te Atua nei hoki taku pou.<sup>16</sup>

The affirmation is in these terms:

I, ..., solemnly, sincerely, and truly declare and affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors, according to law.<sup>17</sup>

The equivalent in Te Reo Māori for the affirmation is:

Ko ahau, ko ..... e kīana i runga i te pono, i te tika, i te ngākau tapatahi me te whakaū anō ka noho piriwhakatia, ka noho pūmau ki a Kuini Irihāpeti te Tuarua me tōna kāhui whakaheke e ai ke te ture.<sup>18</sup>

On occasion the House has given leave for a member, immediately upon being sworn in, to repeat the oath or affirmation in another language.<sup>19</sup> Members swearing the oath generally do so while holding a copy of the Bible, New Testament, or Old Testament, but they may also take the oath in any way that they declare to be binding on them.<sup>20</sup> Julius Vogel (who had been raised in the Jewish faith) was sworn in in 1863 on the Old Testament while wearing his hat.<sup>21</sup> In 2002 a member held the Koran,<sup>22</sup> and since that time a number of members have used this or another holy book.

After having sworn or affirmed, members go to the other side of the Table and sign a roll of members. (For members affirming in Te Reo Māori, the written form of the Māori equivalent is used in the roll of members.<sup>23</sup>)

When the swearing in of members has concluded, the House proceeds to the election of a Speaker.<sup>24</sup>

## **Subsequent swearing in of members**

If any other members arrive after the election of the Speaker has commenced, the proceedings are interrupted and the member is invited to come forward to the left of the Table to take the oath or make the affirmation.<sup>25</sup>

In addition, there are often members who are unable to be present at the first meeting of Parliament, so they are not sworn in on the same day as the other members. These members must be sworn in at a subsequent sitting before they can take their seats in the House. Members elected during the term of the Parliament at by-elections or to fill party list seat vacancies must also take the oath or affirm before they can sit in the House. For the purpose of swearing in members during the term of the Parliament the Governor-General issues a commission to the Speaker, giving the Speaker authority to administer the oath or affirmation that is required by law to be made before members can take their seats. It is also the practice for a similar commission to be issued to allow the Deputy Speaker to act in the Speaker's absence.

Any business in progress may be interrupted at a convenient time for a member to be sworn in.<sup>26</sup> All such members must present themselves at the bar of the

16 Oaths and Declarations (Māori Language) Regulations 2004, reg 4(1).

17 Oaths and Declarations Act 1957, ss 4(2) and 17.

18 Oaths and Declarations (Māori Language) Regulations 2004, reg 5(1).

19 (21 October 2014) 701 NZPD 109 (Su'a William Sio granted leave by the House at opening of 51st Parliament).

20 Oaths and Declarations Act 1957, s 3.

21 Raewyn Dalziel *Julius Vogel—Business Politician* (Auckland University Press, Auckland, 1986) at 53.

22 "MP swears on covered Koran" *The Dominion Post* (27 August 2002).

23 Oaths and Declarations (Māori Language) Regulations 2004, reg 6(1).

24 SO 12(f).

25 SO 13(3).

26 SOs 13(3) and 132(e).

House.<sup>27</sup> Members are called forward by the Speaker to the Table, at the right of the Chair, for the purpose of being sworn in.

The Speaker is entitled (indeed it is the Speaker's duty) to establish that a person appearing at the bar to take the oath or affirmation has been duly elected as a member of Parliament. The best evidence of this is a copy of the writ for the election endorsed with the member's name on it, in the case of a member elected to represent an electoral district, and the list of those candidates declared by the Electoral Commission to be elected, in the case of party list candidates. The writ and an official list of members elected on a party list are required to be forwarded to the Clerk of the House by the Electoral Commission.<sup>28</sup>

In the case of a by-election, the member who has been returned may appear at the House before a copy of the writ has been seen by the Speaker. The Speaker has refused to admit a member when no notification of the member's election has been received.<sup>29</sup> It is not essential, however, that the Speaker actually receive a copy of the writ before a member can be admitted. It is now the practice for the Chief Electoral Officer to advise the Clerk of the House of the name of the person returned at a by-election by personally delivering the writ, and for the Speaker to read a copy of the writ to the House immediately before swearing in the member. In the case of the filling of a vacancy that arises among the members elected from a party list, the Electoral Commission files a return with the Clerk of the House indicating who has been elected to fill the vacancy.<sup>30</sup> The current practice is for the Speaker to swear the member in after the writ or return has been received and notify the House of this at the time. By law a member does not come into office until the day after the return of the writ or return.<sup>31</sup> Therefore, the soonest a member can be sworn in is the day after the Clerk receives the writ or return from the Electoral Commission.

A member already sworn in as a list member, who subsequently won an electorate seat at a by-election, was not required to be sworn in again. The member's membership of the House was uninterrupted, the member having not resigned as a list member until after taking office as an electorate member.<sup>32</sup>

## Failure to take the oath

While members of Parliament are paid a salary from the day after polling day, they do not enjoy the privileges of the House until they come into office under section 54 of the Electoral Act 1993, on the day after the return of the writ or return of party list members.<sup>33</sup> Failure to take the oath or make the affirmation prescribed by law does not affect one's status as a member of Parliament, but it does prevent the exercise of the most important incidences of that status, those of sitting and voting in the House of Representatives.<sup>34</sup> A member who has not been sworn cannot participate in proceedings of the House that require physical presence and cannot vote in any circumstances. Thus, an oral question cannot be asked by or on behalf of an unsworn member, though an unsworn member may lodge a question for written answer.<sup>35</sup>

In practice, it is the Speaker's duty to enforce the requirement that members be sworn before participating in proceedings or voting.<sup>36</sup> The votes of members who attempted to vote before they had been sworn have been disallowed,<sup>37</sup> and

<sup>27</sup> SO 13(2).

<sup>28</sup> Electoral Act 1993, ss 185(1)(c) and 193(5)(b).

<sup>29</sup> (24 June 1858) [1858] 1 JHR 83.

<sup>30</sup> Electoral Act 1993, s 138(a).

<sup>31</sup> Electoral Act 1993, s 54(1), (2)(a).

<sup>32</sup> (28 April 2015) 704 NZPD 2901 (Winston Peters, Northland).

<sup>33</sup> (1887) 59 NZPD 359.

<sup>34</sup> Constitution Act 1986, s 11(1).

<sup>35</sup> (1979) 423 NZPD 800 Harrison.

<sup>36</sup> Enid Campbell "Oaths and Affirmations of Public Office" (1999) 25(1) *Monash University Law Review* 132 at 154.

<sup>37</sup> (1976) 403 NZPD 9–10.

an unsworn member's vote may not be included in a party's total in a party vote.<sup>38</sup> However, the validity of any proceedings of the House is not affected by the fact that a member who has not taken an oath has participated in them.<sup>39</sup> The admission of a member to the House in order to take the oath or make the affirmation is regarded as an internal proceeding of the House within the exclusive cognisance of the House itself.<sup>40</sup> However, if there are any consequences outside the House that turn upon whether a member has taken the oath or affirmation, a court is entitled to make its own enquiry and determine whether a member has actually taken the oath or made the affirmation.<sup>41</sup>

## **Consequences of taking the oath**

While any person taking an oath or making an affirmation is expected to do so in good faith, the oath or affirmation of allegiance is not a promise to refrain from advocating a republican or a different system of government. It is a promise of allegiance to the Sovereign established according to law. It is perfectly consistent with the oath for a person to hold views favouring an alternative form of constitutional arrangement, always provided that any change that they support is to be effected lawfully. Nor is a breach of the oath or affirmation in itself a crime. But a consequence of taking the oath or affirmation of allegiance is that it is inconsistent for a member to take a subsequent oath pledging allegiance to a foreign power. To do so will result in the member's seat becoming vacant.<sup>42</sup>

## **No new oath or affirmation following the demise of the Crown**

It was formerly the law that all members were required to take fresh oaths or affirmations following the demise of the Crown (by the death or abdication of the Sovereign). This is no longer the case. The death or abdication of the Sovereign automatically transfers all obligations of allegiance to the Sovereign's successor, and no special action is required by members to effect this.<sup>43</sup>

## **ELECTION OF SPEAKER**

The House must, at its first meeting, elect one of its members to be its Speaker.<sup>44</sup> It proceeds to the election of a Speaker after the swearing in of members is completed.<sup>45</sup>

For the purpose of the election of a Speaker, the Clerk acts as Chairperson.<sup>46</sup> It was formerly the practice of the Clerk, when calling on a member to speak during these proceedings, to stand and point to the member rather than call the member by name. Now the Clerk calls members to speak and deals with questions of order that relate to the election in the same way that a Speaker would, if the Speaker were presiding. But the Clerk proposes no question for debate on the election of a Speaker and no debate can arise concerning the election.<sup>47</sup>

38 (1994) 539 NZPD 53 Tapsell.

39 Enid Campbell "Oaths and Affirmations of Public Office" (1999) 25(1) *Monash University Law Review* 132 at 154.

40 *Bradlaugh v Gossett* (1884) 12 QBD 271.

41 See, for example: *Haridasan Palayil v Speaker of the Kerala Legislative Assembly* [2003] AIR (Kerala) 328.

42 Electoral Act 1993, s 55(1)(b).

43 Constitution Act 1986, s 5(1).

44 Constitution Act 1986, s 12.

45 SO 12(f).

46 SO 15.

47 SO 16(3).

## Nominating a member

The Clerk calls for nominations for election as Speaker.<sup>48</sup> After the Clerk has called for nominations, any member, on being called by the Clerk, may nominate another member to the House for election as Speaker.<sup>49</sup> The Clerk will accept a nomination only if it is seconded by another member.<sup>50</sup> A member who is absent from the Chamber, on account of extraordinary circumstances beyond his or her control, may be nominated provided that the consent to the member to be nominated is produced in writing to the Clerk.<sup>51</sup>

## Uncontested elections

If there is only one member nominated, the Clerk puts no question to the House; there can be no vote on the nomination, and the member is declared to be elected Speaker.<sup>52</sup> The member leaves his or her seat and approaches the Speaker's Chair.

On reaching the Chair, the Speaker-Elect (who is not Speaker until confirmed by the Governor-General) addresses the House from the upper step on the right of the Chair, acknowledging the honour conferred by election to this position and advising the House of the member's hopes and aspirations for the discharge of the duties of Speaker. The Speaker-Elect then sits in the Chair and the Serjeant-at-Arms lays the Mace upon the Table.<sup>53</sup> Members may then offer their congratulations.

The Government normally announces in advance of the first meeting of Parliament who is to be its nominee for the office of Speaker, and the person so nominated may be elected unopposed. In contrast to the practice in the United Kingdom, there is no tradition, if the Government changes, of re-electing as Speaker the member who held that post in the previous Parliament.<sup>54</sup> In modern times, the largest party in the House has usually provided the Speaker from among its ranks, although the Speaker from 1923 to 1935 was an independent when he was first elected as Speaker,<sup>55</sup> and the Speaker from 1993 to 1996 was drawn from the major Opposition party.

## Two members nominated

There may be two members nominated for election. There were two candidates for election in 1996, 2002, 2013 and 2014.<sup>56</sup> Prior to this, the last time there were two candidates (under a different system for electing a Speaker) was in 1923.

If there are two members nominated, a personal vote is held to determine who is to be elected.<sup>57</sup> For this purpose, the Ayes lobby is used for those voting for the member whose name comes first in the alphabet, and the Noes lobby for those voting for the other member. (See Chapter 17 for personal votes.) No proxies are permitted for this vote.<sup>58</sup>

In the event of a tie on the vote, the Clerk calls for further nominations,<sup>59</sup> which may include either or both of the members who were first nominated.

## More than two members nominated

If more than two members are nominated for Speaker, members initially vote from their places in the House rather than by going into the lobbies as they do on a

<sup>48</sup> SO 15.

<sup>49</sup> SO 16(1).

<sup>50</sup> SO 16(1).

<sup>51</sup> SO 16(2).

<sup>52</sup> SO 17.

<sup>53</sup> SO 21.

<sup>54</sup> Electoral Law Committee *Second Report* (25 June 1981) [1981] AJHR I.17 at 40.

<sup>55</sup> Kenneth John Scott *The New Zealand Constitution* (Clarendon Press, Oxford, 1962) at 60.

<sup>56</sup> (12 December 1996) [1996–1999] 1 JHR 8–9; (26 August 2002) [2002–2005] 1 JHR 8–9; (31 January 2013) [2011–2014] 1 JHR 357; (20 October 2014) [2014–2017] 1 JHR 5–6.

<sup>57</sup> SO 18.

<sup>58</sup> SO 20.

<sup>59</sup> SO 18.

personal vote. The bells are rung for seven minutes and then the doors are locked.<sup>60</sup> Working alphabetically, members are then asked by the Clerk individually to rise in their places and state which of the nominated members they vote for. Members may record an abstention.<sup>61</sup> No proxy votes are permitted.<sup>62</sup> If, at the end of this process, any candidate has obtained an absolute majority of the votes of the members voting (that is, excluding any abstentions), that member is immediately declared elected.<sup>63</sup> Otherwise, the member with the fewest number of votes drops out and the votes are taken again until only two candidates remain.<sup>64</sup> If the two candidates with the fewest votes have the same number of votes, the entire vote is taken again. If the two candidates with the fewest votes still have the same number of votes, the Clerk determines which candidate is to drop out by drawing lots.<sup>65</sup>

When, after this process, there are only two candidates remaining, the election is decided by a personal vote.<sup>66</sup> Again, no proxies are permitted.<sup>67</sup> In the event of a tie on the personal vote, nominations are called for again.<sup>68</sup>

In 2005, in an election held during the term of Parliament to fill a vacancy arising from the resignation of a Speaker, there were three candidates nominated, and members voted from their places. This was the first time ever that there had been three candidates for Speaker. One candidate obtained an absolute majority of the votes cast on the first vote.<sup>69</sup>

## **Adjournment of the House following the Speaker's election**

When the Speaker-Elect takes the Chair and members have offered their congratulations, the House automatically adjourns under the Standing Orders so that the Speaker-Elect may seek the Governor-General's confirmation of the House's choice of Speaker. The next sitting of the House will be at the time at which the Governor-General has indicated that the Speech from the Throne will be delivered.<sup>70</sup> If an absent member is elected as Speaker, the House similarly adjourns at the conclusion of the election.

## **Confirmation**

The House's choice of Speaker becomes effective when it is confirmed by the Governor-General.<sup>71</sup> The Governor-General has never refused to confirm a Speaker-Elect, and it is almost inconceivable that this would occur.

The Speaker-Elect, accompanied by the Clerk, the Deputy Clerk, the Serjeant-at-Arms, carrying the Mace in the crook of the arm, and other members, representing the parties in the House, presents himself or herself to the Governor-General at Government House either later on the same day that the election of Speaker was held or on the following day, but, in any case, before the House next sits. If Government House is unavailable, the confirmation may take place in the Legislative Council Chamber.<sup>72</sup> The Speaker-Elect informs the Governor-General of the House's choice of Speaker and asks for the Governor-General's confirmation of that choice. Immediately the Governor-General confirms the House's choice of Speaker, the Serjeant-at-Arms raises the Mace to the shoulder. The Governor-General may approve special arrangements for confirming the House's choice of

<sup>60</sup> SO 19(1)(a).

<sup>61</sup> SO 19(1)(b), (c).

<sup>62</sup> SO 20.

<sup>63</sup> SO 19(1)(d).

<sup>64</sup> SO 19(1)(e).

<sup>65</sup> SO 19(3).

<sup>66</sup> SO 19(1)(f).

<sup>67</sup> SO 20.

<sup>68</sup> SO 19(2).

<sup>69</sup> (3 March 2005) 623 NZPD 18945–18946.

<sup>70</sup> SO 22.

<sup>71</sup> Constitution Act 1986, s 12.

<sup>72</sup> This occurred in 2008, when Government House was undergoing refurbishment.

Speaker and for the House's privileges to be claimed. For example, in the case of illness, the Speaker-Elect may not be able to attend on the Governor-General personally for these purposes.

### **Claiming the House's privileges**

The Speaker's first duty as Speaker is to lay claim to all the privileges of the House, especially to freedom of speech in debate and to free access to the Governor-General whenever occasion may require it. The Speaker also asks that the most favourable construction be put on all the House's proceedings.<sup>73</sup> In these claims are echoes of days of conflict and suspicion between the Crown and Parliament. The claim of free access to the Governor-General is for the purpose of the House as a body, headed by the Speaker, to be able to present communications to the Crown by means of an address. It is not intended to give individual members, as members of Parliament, the right to make official approaches to the Governor-General that could cause the holder of that office political embarrassment. There were, in colonial times, numerous communications from the House when the Governor exercised a more personal control of the Government than is exercised today. Now such communications are more standard and formal. The claim for a favourable construction to be put on the House's proceedings is said to be made "merely by courtesy",<sup>74</sup> and is not of any practical significance.

The Speaker has claimed the House's privileges from the Crown since Speaker Munro, the second Speaker, did so in 1861. The House's privileges are part of the ordinary law.<sup>75</sup> In general, they are those privileges enjoyed by the House of Commons on 1 January 1865.<sup>76</sup> The privileges of the United Kingdom House of Commons are also confirmed to the new Speaker on behalf of Her Majesty the Queen, but the privileges of the House of Commons, being part of the law and custom of Parliament, do not depend for their existence on confirmation by the Crown. Confirmation is mainly ceremonial in nature, and the House of Commons would enjoy its privileges even if they were not confirmed. The House of Representatives' privileges, being statutorily based by reference to privileges once enjoyed by the House of Commons, would appear to be in a similar position and not to require the Governor-General's confirmation to be effective.

The Speaker must report to the House the Governor-General's reply to the claim to the House's privileges.<sup>77</sup>

### **Term of office**

If during this term of office the Speaker becomes disqualified from membership of the House, or resigns from the House, the office of Speaker automatically becomes vacant, for the holder of this office must be a member of Parliament. The Speaker can resign office as Speaker at any time and remain as a member of Parliament. In 1972 the then Speaker resigned that office when he was appointed as a Minister of the Crown. In 2005 the Speaker resigned office and continued as a member for some four weeks before he resigned to take up a diplomatic appointment.

### **Vacancy in the office of Speaker**

In the case of a vacancy arising in the office of Speaker during a Parliament, the Deputy Speaker assumes the statutory functions of the office of Speaker (see pp 81–82). However, the House is obliged at its next meeting to choose another member as Speaker.<sup>78</sup> The Clerk reports the vacancy to the House when it meets.

<sup>73</sup> SO 23.

<sup>74</sup> Gilbert Campion *An Introduction to the Procedure of the House of Commons* (3rd ed, Macmillan & Co. Ltd, London, 1958) at 62.

<sup>75</sup> Parliamentary Privilege Act 2014, s 8(2).

<sup>76</sup> Parliamentary Privilege Act 2014, s 8(1).

<sup>77</sup> SO 24.

<sup>78</sup> Constitution Act 1987, s 12.

A Minister advises the House that it is the Governor-General's wish that it should proceed to elect a Speaker and present the Speaker-Elect to the Governor-General for confirmation.<sup>79</sup> The House then proceeds to elect a Speaker in the same way as is prescribed for the election of a Speaker at the opening of Parliament.<sup>80</sup> Once a Speaker has been elected, the House automatically adjourns until the next sitting day to permit the Speaker-Elect to seek the Governor-General's confirmation.<sup>81</sup> A Speaker elected during a Parliament does not again lay claim to the House's privileges. The Governor-General's confirmation of these at the beginning of the Parliament is regarded as lasting throughout its life.

## STATE OPENING OF PARLIAMENT

The Royal commissioners, when opening Parliament, inform the House of when the Governor-General will come before the House to declare to it the reasons for summoning Parliament. This is the occasion when the Governor-General delivers the Speech from the Throne. It is known as the State Opening of Parliament. In fact, in delivering the Speech from the Throne, the Governor-General is not opening Parliament; this has already been done by the commissioners. The Royal commissioners attend to open Parliament only once, at its first meeting following a general election. The State Opening of Parliament is thus the second sitting day of a new Parliament, though it is the first day of any subsequent session of that Parliament that may be held. The Governor-General's Speech from the Throne is not the instrument that actually opens the new session of Parliament. Parliament meets according to the Governor-General's proclamation summoning it to meet. When delivering the Speech from the Throne, the Governor-General is giving members the reasons for the opening of Parliament—an event that has, by then, already occurred.<sup>82</sup>

### Members assemble

On the second day of a new Parliament members assemble in the Chamber at the time fixed by the Governor-General for the delivery of the Speech from the Throne. This may, but does not need to, coincide with the House's ordinary meeting time of 2 pm.

Prayers are read by the Speaker,<sup>83</sup> who, in the case of the second sitting day of a new Parliament, has just been confirmed in office and, consequently, appears dressed as Speaker in the House for the first time. The Mace is in position on the Table. The Speaker proceeds to report to the House both the Speaker's confirmation in office by the Governor-General and the Governor-General's reply to the House's claim to its privileges.<sup>84</sup> The House then awaits a message from the Governor-General requesting its attendance.<sup>85</sup>

### Message from the Governor-General

The Usher of the Black Rod, on being commanded to do so by the Governor-General, comes from the Council Chamber, where the Governor-General's party has assembled, to the Chamber of the House to communicate the Governor-General's wish that the Speaker and members join the viceregal party. The door of the House's Chamber is locked as Black Rod approaches. Black Rod has to knock on it three times and is admitted only on the Speaker's command. The bar of the House is in a position that prevents Black Rod from advancing on to the floor of the

<sup>79</sup> For example: (31 January 2013) [2011–2014] 1 JHR 357.

<sup>80</sup> SO 25(1).

<sup>81</sup> SO 25(2).

<sup>82</sup> If there were to be multiple sessions, see Chapter 10.

<sup>83</sup> SO 14(1)(a).

<sup>84</sup> SOs 14(1)(a) and 24.

<sup>85</sup> SO 14(1)(b).

House, and is removed only with the Speaker's permission. The rituals of locking the door and putting the bar into position are designed to symbolise the House's independence of the executive, represented by the Crown's messenger. Once the bar has been removed, Black Rod advances into the centre of the Chamber and informs the House that the Governor-General desires its immediate attendance. On receiving this message the Speaker and members leave their places to attend on the Governor-General.<sup>86</sup>

Black Rod leads the Speaker's procession (the Serjeant, with the Mace, and the Speaker), the Clerks, the Prime Minister and the Leader of the Opposition, and the other members out of the Chamber, through the Grand Hall and into the Council Chamber, and into the Governor-General's presence.<sup>87</sup>

### **Speech from the Throne**

When the Speaker and the members have assembled in the Council Chamber, the Prime Minister presents to the Governor-General the speech that is about to be given. The Governor-General then delivers the Speech from the Throne.

The delivery of the Speech from the Throne is one of the principal State occasions. Ambassadors, judges, senior officers of the New Zealand Defence Force, the Mayor of Wellington and other dignitaries are invited to witness it. The State opening occurs in accordance with the Standing Orders, and should any matter of order arise it would be dealt with by the Speaker.<sup>88</sup> However, the delivery of the Speech from the Throne may also be seen as an exercise of royal prerogative, in association with the prerogative to summon Parliament. The procedure is best described as a meeting of the two constituent parts of the Parliament (the Governor-General and the House), rather than a sitting of the House as such.

The Speech from the Throne is the Crown's explanation to members of the reasons for their being called together in Parliament at that time. It is primarily designed as an outline of the matters that the Government wishes Parliament to consider in the course of the forthcoming session. It is, therefore, an announcement of the Government's legislative programme, and members will be told in the speech that bills on various matters will be introduced in due course. The speech, in this regard, is a statement of present intention; it is not absolutely binding on the Government's future action. The fact that a bill has been mentioned in the speech does not mean that the Government must introduce it. Circumstances may change, causing the legislation to be abandoned before it is introduced, or its introduction may be postponed. Nor does the absence of mention of a bill in the Speech from the Throne mean that such a bill cannot be introduced during that session. The Government can, and does, introduce bills that were not foreshadowed in the Speech from the Throne.

As well as dealing with legislation, the speech will refer to international and domestic affairs, particularly as they involve New Zealand and the policies of the Government. The Speech from the Throne is in the nature of a review of the state of the nation. The broad nature of the speech gives rise to a wide debate in the House shortly afterwards on the motion for an address to be made by the House to the Governor-General in reply to it.

After delivering the speech the Governor-General presents a copy of it to the Speaker. When the Governor-General has left the Council Chamber, members proceed back to their Chamber as part of the Speaker's procession.

As well as the Speech from the Throne being delivered by the Governor-General, it may be delivered by the Sovereign on any occasion on which she is

<sup>86</sup> SO 14(1)(b).

<sup>87</sup> During the refurbishment of Parliament House and the consequent unavailability of the Council Chamber in 1991 and 1993, the Speech from the Throne was delivered in the Banquet Hall in the Executive Wing.

<sup>88</sup> SO 82(4).

present in New Zealand. Her Majesty the Queen has, in fact, delivered the speech at the State Opening of sessions of Parliament held in 1954, 1963, 1970, 1974, 1977 and 1990. The same procedures of the House as apply to a State Opening performed by the Governor-General apply to one performed by the Sovereign or indeed by the Administrator of the Government and by Royal commissioners should the latter be authorised by the Governor-General to perform these functions.<sup>89</sup>

### **Speech reported to the House**

When the Speaker resumes the Speaker's Chair, the Governor-General's speech is formally reported to the House by the copy given to the Speaker being laid on the Table of the House.<sup>90</sup> The speech is published in both *Hansard* and the *Journals*, and subsequently in the *New Zealand Gazette*.

### **Business transacted on returning from hearing the Speech from the Throne**

Following the formal business of reporting the Speech from the Throne, the Speaker goes through the House's items of opening business: the announcement of the presentation of petitions, papers and bills that have been introduced.<sup>91</sup> There are no oral questions on this day.

While there are severe restrictions on the House transacting business on the day of the State Opening, the House may also wish to appoint its other presiding officers, and this is specifically permitted.<sup>92</sup> If Government notices of motion for the appointment of a Deputy Speaker and Assistant Speakers have been lodged with the Clerk by 11 am on the day of the Commission Opening of Parliament, they will appear on the Order Paper for the day of the State Opening and can be considered at this point before the House adjourns or the sitting is suspended for the commencement of the Address in Reply debate.<sup>93</sup> Similarly, if a notice of motion has been lodged, the House can deal with the reinstatement of business that had lapsed with the dissolution of the previous Parliament.<sup>94</sup> But the reinstatement of business does not have to be dealt with at this time. It can be attended to later as a Government (or Member's) order of the day.

### **Adjournment of the House**

After considering any Government notices of motion for the appointment of presiding officers and the reinstatement of business, the Standing Orders direct the House to adjourn or, if the sitting is in the morning, it may be suspended by the Speaker to permit the Address in Reply debate to commence later that day at 2 pm.<sup>95</sup> The Speaker would allow the Address in Reply debate to commence after convening the Business Committee, which may meet after the confirmation of the Speaker on the day of the Commission Opening to consider the business of the House for the day of the State Opening, business to be reinstated, the appointment of select committees, the roster for oral questions, arrangements for other debates and the ongoing sitting programme.

## **ADDRESS IN REPLY**

The Address in Reply debate is, along with the Budget, the most wide-ranging debate held each session. It is the first major debate upon which the House embarks in a new Parliament and in each new session of a Parliament if there is one.

<sup>89</sup> SO 3(2).

<sup>90</sup> SO 14(1)(c).

<sup>91</sup> SO 14(1)(d).

<sup>92</sup> SO 14(1)(e).

<sup>93</sup> SO 14(1)(e).

<sup>94</sup> SO 14(1)(e).

<sup>95</sup> SO 14(2).

The Address in Reply itself is adopted as an expression of the House's loyalty and fealty to the Crown and the Crown's representative, the Governor-General. Originally, when taking into consideration the Speech from the Throne, the House debated a motion for an Address in Reply to the speech. This motion answered, point by point, the matters raised in the speech. Debate in the House was not found to be a satisfactory way of considering, amending and redrafting a complex statement such as this, so from 1862 something akin to the present system was adopted. This involved debating a simple motion, that an Address in Reply to the speech be presented to the Governor-General. The details of the address were left to be settled later by a committee.

Nowadays, the Address in Reply debate takes place on a simple motion, "That a respectful Address be presented to [His or Her] Excellency the Governor-General in reply to [His or Her] Excellency's Speech".<sup>96</sup> This motion provides a vehicle for a wide-ranging debate on the Government's economic or foreign policy, or indeed for any other matters that members wish to raise. It also permits motions expressing lack of confidence in the Government to be moved by way of amendment to the unexceptionable original motion.

### **Moving for an Address in Reply**

The member who has the honour of moving the motion for the Address in Reply is a member of a Government party in his or her first term as a member of Parliament. The member may be chosen for this honour by the Prime Minister or by party colleagues, depending upon the party's or coalition's own internal arrangements. The motion for the Address in Reply may be seconded,<sup>97</sup> and the seconder is similarly chosen from the ranks of first-term Government backbench members.

It will be apparent that in moving the Address in Reply the mover will also be making a first speech in the House—a "maiden speech". This is regarded as a singular mark of distinction. The mover and seconder may wear formal attire for the occasion (for example, a korowai or clan tartan). The speeches are expected not to contain material of a highly partisan nature so that other members are not tempted or provoked to interject. This does not mean that the speeches must be blandly non-controversial but that they are expected to describe the members' individual beliefs and approach to politics rather than to deal with matters in a party political context.

### **Address in Reply debate**

The Address in Reply debate may commence at 2 pm on the day of the State Opening,<sup>98</sup> or may be moved on the next sitting day. The debate on the Address in Reply always takes precedence over other Government orders of the day,<sup>99</sup> and Government orders of the day take precedence over other orders of the day, even on a Wednesday (see p 205), while the Address in Reply debate is before the House.<sup>100</sup> Accordingly the debate is set down as the first major item of business to be considered by the House each day until it is finally disposed of. It may, however, be adjourned after it is reached on a particular day, thus enabling the House to proceed to business further down the Order Paper. Following the speeches by the mover and seconder, the Leader of the Opposition, the Prime Minister and other party leaders may speak.

Leaders of parties with six or more members represented in the House may speak for up to 30 minutes each, members making maiden speeches (including the mover and seconder) for up to 15 minutes, and other members for 10 minutes. The

---

<sup>96</sup> SO 351(1).

<sup>97</sup> SO 351(2).

<sup>98</sup> SO 14(2).

<sup>99</sup> SO 353.

<sup>100</sup> SO 76(2).

whole debate is limited to 19 hours, making it the longest debate that the House holds.<sup>101</sup> Question time operates as normal while the Address in Reply debate is running, but no general debate is held.<sup>102</sup> The entire debate should occupy about two sitting weeks. It is open-ended as far as relevancy is concerned.<sup>103</sup>

## Maiden speeches

As well as the speech of the mover of the Address in Reply motion having the added significance of being a maiden speech, this will also be the case with the seconder of that motion and with all other newly elected members when they come to speak in the debate. In making their maiden speeches on the Address in Reply, members usually try to set out their hopes and aspirations for their careers as parliamentarians. They set out their personal beliefs and describe the character and problems of the electorate that they represent or the sector of society with whose interests they feel most connected. It is customary that other members do not interject in the course of a maiden speech and that the speech itself (being made under this privilege) will not be provocative.<sup>104</sup>

Those new members who are unable to participate (for instance, through illness or absence) in the Address in Reply debate, and members elected during the course of a Parliament, may make a maiden statement to the House at a later time.<sup>105</sup> (See pp 268–269.)

Allowing a new member to speak on a bill, or another matter, when the Address in Reply debate has been adjourned does not curtail their opportunity to make a maiden speech of 15 minutes when the Address in Reply debate resumes.<sup>106</sup>

## Amendments

An amendment raising a question of whether the Government possesses the confidence of the House, in the sense of whether it commands the support of a majority of members, is the archetypal Address in Reply amendment. On most occasions when a Government has fallen as a result of an adverse vote of confidence in the House, the defeat has been on an amendment proposed to the Address in Reply motion. (The last occasion was in 1928.)

Only amendments adding words to the Address in Reply motion may be moved.<sup>107</sup> If an amendment is carried, the words so added must be included in the formal address presented to the House for its approval.<sup>108</sup> In the case of a no confidence amendment, this will include words to the effect that the Government does not possess the confidence of the House. Were the Government to be defeated on such an amendment, it would be expected that the Prime Minister would resign or advise the Governor-General to dissolve Parliament so that a new election could be held.

## Adoption of Address in Reply

When any amendments have been disposed of, the question is put on the motion that a respectful address be presented to the Governor-General in reply to the speech. Traditionally there is no vote against this motion. However, a vote has been taken on occasion.<sup>109</sup>

When the motion has been carried, the terms of the address itself have to be agreed to by the House, for the House has hitherto been debating the principle of

<sup>101</sup> SOs, App A.

<sup>102</sup> SO 392(3).

<sup>103</sup> (1969) 361 NZPD 1449 Jack.

<sup>104</sup> (1977) 410 NZPD 289 Jack.

<sup>105</sup> SO 360(1).

<sup>106</sup> (9 December 2008) 651 NZPD 125 Tisch (Deputy Speaker).

<sup>107</sup> SO 352.

<sup>108</sup> SO 169(2).

<sup>109</sup> (9 December 2008) 651 NZPD 58.

whether to have an address at all and not the details of that address. An address will, in fact, already have been prepared by the Speaker and this is brought before the House by the Speaker immediately after the motion for an address is passed. An Address in Reply must not contain any words or statements of a controversial nature, except where an amendment has been carried.<sup>110</sup>

The address usually thanks the Governor-General for the speech and gives assurance that the matters referred to in the speech will receive the House's careful attention. The Speaker reads the proffered address and then puts the question that it be adopted, without any further amendment or debate being permitted.<sup>111</sup> Once the House has adopted the Address in Reply, it must then be presented to the Governor-General by the Speaker.<sup>112</sup> (See p 138.)

---

<sup>110</sup> SO 168(2).

<sup>111</sup> SO 168(3).

<sup>112</sup> SO 169(1).

# CHAPTER 13

# Sittings of the House

## NATURE OF SITTINGS

Many features distinguish sittings of the House of Representatives from meetings of other bodies. Members gather formally and informally for various occasions, and it is possible that unfamiliar arrangements for sittings could be required in the event of an emergency (see Chapter 43). There must be no doubt that sittings are in fact meetings of the House of Representatives, with all the associated constitutional and legal significance.

Features of sittings of the House include the following.

- A sitting is appointed with proper authority. This appointment is usually by the House at a previous sitting, but may also be by the Governor-General (see Chapter 12) or, in some circumstances, by the Speaker.
- Sittings take place at a designated venue. Every sitting of the House to date has been held in a special Chamber designed for the purpose. The Standing Orders reflect the fact that sittings take place in the parliamentary precincts, and these precincts are defined under a statute.<sup>1</sup> However, another venue can be designated, for example in the wake of an emergency, and it is not strictly necessary for this venue to be accorded the status of parliamentary precincts.
- All people who hold office as members of Parliament at the time of a sitting are permitted to attend it.<sup>2</sup>
- The Speaker presides over proceedings, or another member exercises the authority of the Speaker in doing so.
- The Standing Orders, procedures and practices of the House are followed.
- Proceedings are noted by the Clerk and published as the *Journals*, and are subject to an official report (*Hansard*).
- The sitting is broadcast on radio and available for television coverage.

These general characteristics vary in some circumstances, and a number of exceptions are specifically provided for in the Standing Orders.<sup>3</sup> The House itself

---

<sup>1</sup> Parliamentary Service Act 2000, s 3, with provision for further land or premises to be added to or excluded from the precincts under s 25.

<sup>2</sup> Though only those who have been sworn in may sit or vote in the House (Constitution Act 1986, s 11(1)).

<sup>3</sup> For example, a member who is ordered to withdraw or who is suspended from the service of the House may not enter the Chamber during the period of withdrawal or suspension (SOs 89 and 95(1)). A further exception is the provision for the House to order strangers to withdraw. When such an order is in effect, the official report (*Hansard*) is not made and the broadcast ceases (SO 42(c) and (d)).

controls any variance in the essential elements that characterise a sitting, and always reserves the right to vary its procedures.

## THE SITTING DAY

The regular days on which the House meets (its “sitting” days) are Tuesdays, Wednesdays and Thursdays.<sup>4</sup> The House can appoint other days as sitting days if it so wishes. The House generally sits on a Friday only when a previous sitting is extended into Friday.<sup>5</sup> Neither Monday nor Saturday has ever been a regular sitting day for the House.<sup>6</sup> Sittings of the House on a Saturday occur occasionally when a previous day’s sitting is extended under urgency. The House fixed an additional sitting day on a Monday in 1991 and in 2000 to progress legislation that had been accorded urgency in the previous week but not completed.<sup>7</sup> In 2004 the House held a special sitting on a Monday to mark the 150th anniversary of the first sitting of the House.<sup>8</sup> The Standing Orders prohibit a sitting day being held on or continuing into a Sunday.<sup>9</sup>

A sitting day commences at the appointed time with prayers read by the Speaker, and is terminated by the adjournment of the House, resulting either from the operation of the Standing Orders or from a resolution of the House. A sitting day is a self-contained period in the operation of the House, with a programme of items of business to be transacted within this period as set out on the Order Paper or as the House directs.

A sitting day can be extended into another calendar day, in which case it is regarded as a continuation of the same sitting day. A “sitting day” should therefore be distinguished from a calendar day on which the House sits. Indeed, some sitting days can last for a number of calendar days.<sup>10</sup> All decisions made by the House during a sitting day are recorded with the same date, regardless of whether they are taken on the day the sitting has commenced or on a subsequent calendar day. To mark this practice, the calendars showing the date in the Chamber are not altered until the House rises.

## THE WORKING DAY

Some parliamentary business may be transacted on any working day even though the House is not sitting. A “working day” in this context means any day of the week other than:<sup>11</sup>

- (a) a Saturday, a Sunday, Good Friday, Easter Monday, ANZAC Day, Labour Day, the Sovereign’s birthday and Waitangi Day, and
- (b) if ANZAC Day or Waitangi Day falls on a Saturday or Sunday, the following Monday, and
- (c) any anniversary or other day observed as a public holiday in a locality to which a particular local bill or private bill subject to procedures under these Standing Orders relates, and
- (d) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.

<sup>4</sup> SO 45(1).

<sup>5</sup> Friday was a regular sitting day until 1985.

<sup>6</sup> Monday and Saturday sittings occurred more frequently in the past as the House endeavoured to get through all its business and allow members to return to their homes.

<sup>7</sup> (1991) 518 NZPD 3661; (2000) 586 NZPD 4594.

<sup>8</sup> (24 May 2004) 617 NZPD 13179–13213.

<sup>9</sup> SO 48. See also: “Adjournment of the House”, p 186. The adjournment of the House may be delayed beyond midnight on Saturday if a vote is in progress.

<sup>10</sup> For example, in the year to 30 June 2014, there were 84 sitting days but the House actually sat on 91 calendar days.

<sup>11</sup> SO 3(1). 15 January is not itself a working day.

On any working day, Government bills may be introduced,<sup>12</sup> select committee reports,<sup>13</sup> petitions<sup>14</sup> and papers<sup>15</sup> presented, and written questions lodged (in this case, by 10.30 am).<sup>16</sup> Where any deadline for performing an act (such as the time for a select committee to report to the House, or for members to make returns of pecuniary and other specified interests) expires on a non-working day, the act may be performed on the next working day.<sup>17</sup>

## SITTING HOURS

The regular sitting hours on Tuesdays and Wednesdays are from 2 pm to 6 pm and then from 7.30 pm to 10 pm. On Thursdays the regular sitting hours are 2 pm to 6 pm.<sup>18</sup> If a Monday, Friday or Saturday is appointed as a sitting day in its own right, the sitting hours for a Tuesday apply.<sup>19</sup> But the House may also appoint special sitting hours for such a day.<sup>20</sup>

The standard sitting hours prescribed for each day's sitting may be altered. The two most common means of doing so are a decision by the Business Committee or the House to make extended sitting hours available, and an urgency motion. A decision to take "extended sitting hours" dispenses with the normal time for adjournment, the House continuing to sit until 1 pm the following day unless the relevant business is completed sooner. When urgency has been accorded to business by order of the House, the sitting may continue beyond the normal time for its adjournment until consideration of that business is completed. "Urgency" extends the sitting of the House for as long as is required, although it cannot be extended beyond midnight on Saturday.

The House may resolve to meet or adjourn at a different hour from the one prescribed by the Standing Orders.<sup>21</sup> Alternatively, the House may give the Speaker the power to determine the precise time at which a sitting should commence by ordering that it meet "on the ringing of the bell" (an uncertain time determined by the Speaker) where members are engaged at a State or parliamentary luncheon. The Business Committee has standing authority to make minor adjustments to the hours of a specified sitting day.<sup>22</sup> This means that the committee can determine that the House will meet on the ringing of the bell, or that a sitting will be suspended for the dinner break after a maiden or valedictory statement is completed. The committee can adjust the times for a sitting in political arrangements for the House's consideration of business: for example, a sitting could be concluded when particular business is completed or when it reaches a particular stage. This power complements the Business Committee's other tools for constructive negotiations about the House's business.<sup>23</sup>

Even though particular times are prescribed for sittings to commence, be suspended and end, a failure by the House to abide by its own directives does not invalidate a decision it made when it should not have been sitting. Such a decision stands unless it is rescinded.<sup>24</sup>

<sup>12</sup> SO 276.

<sup>13</sup> SO 249(1).

<sup>14</sup> SO 369(1).

<sup>15</sup> SO 372(1).

<sup>16</sup> SO 382(1).

<sup>17</sup> SO 3(3).

<sup>18</sup> SO 45(1).

<sup>19</sup> SO 47.

<sup>20</sup> See, for example: (2000) 586 NZPD 4593.

<sup>21</sup> (11 November 2004) 621 NZPD 16865 (commencement of sitting at 4 pm following ceremonies for the interment of the Unknown Warrior).

<sup>22</sup> SO 79(a).

<sup>23</sup> Standing Orders Committee Review of Standing Orders (27 September 2011) [2008–2011] AJHR I.18B at 16.

<sup>24</sup> (6 May 2003) 608 NZPD 5294 Hunt.

The concept of a sitting day is recognised in the context of various statutory procedures. Examples can be found in several statutes, including the Electoral Act 1993 (in relation to appointments to the Electoral Commission),<sup>25</sup> the Legislation Act 2012 (in relation to the presentation and disallowance of delegated legislation),<sup>26</sup> and the Members of Parliament (Remuneration and Services) Act 2013 (regarding deductions from salaries of members who persist in being absent from the House).<sup>27</sup>

## EXTENDED SITTING HOURS

Since 2011 the Standing Orders have provided for the House to extend the hours of a sitting day. Concern over the limited time available to the House to conduct its business and over a growing use of urgency to supplement the time available had been expressed for many years.<sup>28</sup> The primary issue raised about urgency was that it tended to truncate the scrutiny of legislation by the House. This was exacerbated when urgency resulted in the omission of legislative scrutiny by select committees. The adoption of a procedure for extended sitting hours has provided a mechanism for the Government to seek extra hours for its business while avoiding raising concern about compromising legislative scrutiny by using urgency for non-urgent business. Extended sitting hours have become important among the Business Committee's tools for the flexible and effective arrangement of the House's business.<sup>29</sup> This procedure has mostly been employed to progress non-controversial business to improve the statute book, and has particularly been used to facilitate the passage of bills to implement Treaty of Waitangi settlements between the Crown and iwi.<sup>30</sup> There is also considerable scope for extending sitting hours to allow the continuation of debates on matters that are contentious or of high public interest.

The Standing Orders offer two distinct methods for the House to take extended sitting hours: on a motion moved without notice by a Minister, or by determination of the Business Committee.<sup>31</sup> To encourage the arrangement of business through cross-party agreements, the Business Committee has been accorded more flexibility to organise extended sittings, in combination with its powers to determine arrangements for debates. While the Government can unilaterally seek an extended sitting through a motion without notice, additional safeguards apply in this instance.

### Extended sitting hours by determination of the Business Committee

The making of a determination by the Business Committee is the more frequently used avenue for extending the sitting hours.<sup>32</sup> The Business Committee can make a wider range of decisions about extended sittings than the Government may seek by

<sup>25</sup> Electoral Act 1993, ss 4H(3) and 4I: an appointment to fill a vacancy in the membership of the Electoral Commission lapses if not confirmed by the House within 24 sitting days; and a report of the Representation Commission must be presented within 3 sitting days of its receipt by the Governor-General.

<sup>26</sup> Legislation Act 2012, ss 41(2), 43(1)(b) and 43(3)(a): legislative instruments and disallowable instruments must be presented to the House no later than 16 sitting days after they are made, and a notice of motion to disallow a disallowable instrument has automatic effect if it is not dealt with within 21 sitting days of it being given (see pp 477–479).

<sup>27</sup> Members of Parliament (Remuneration and Services) Act 2013, s 13: when a member has been absent from the House for 3 sitting days in a calendar year, a proportion of the member's salary is deducted for each subsequent sitting day that the member is absent in that year (see pp 55–56).

<sup>28</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 14; Claudia Geiringer, Polly Higbee and Elizabeth McLeay *What's the Hurry? Urgency in the New Zealand Legislative Process 1987–2010* (Victoria University Press, Wellington, 2011).

<sup>29</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 15.

<sup>30</sup> (29 March 2012) 678 NZPD 1511; (5 June 2013) 690 NZPD 10820.

<sup>31</sup> SO 56(1).

<sup>32</sup> Of the 30 extended sittings in the 50th Parliament, all but two were arranged by determination of the Business Committee.

motion without notice. The committee may determine that a sitting on a Tuesday, Wednesday or Thursday be extended, with provision for a Thursday sitting to be extended into the evening and then into the Friday morning.<sup>33</sup> The committee may extend more than one sitting in the same week,<sup>34</sup> and may also make a determination that sittings in more than one week be extended.<sup>35</sup> This enables the Business Committee to programme business and extended sittings some weeks in advance.<sup>36</sup> The committee has at times made innovative use of extended sittings to enhance the House's consideration of select committee reports on inquiries<sup>37</sup> and other matters of special interest.<sup>38</sup>

### **Extended sitting hours by motion without notice**

A motion to extend a sitting may be moved without notice only by a Minister. The question on such a motion is put without amendment or debate.<sup>39</sup> Unless the Business Committee determines otherwise, only one motion to extend a sitting may be moved in any one week and that motion must relate to an extension of only one sitting day, either a Tuesday or a Wednesday.<sup>40</sup> The Government cannot move a motion without notice to extend the sitting hours of a Thursday sitting.

The Government must advise the Business Committee before the week in which it intends to move that a sitting be extended, and the eventual motion must specify the orders of the day to be considered during the extended sitting.<sup>41</sup> Such business must be shown on the Order Paper as an order of the day, and only the stage set out on the Order Paper may be taken, unless the Business Committee agrees otherwise.<sup>42</sup> Motions for extended sitting hours therefore are designed to be used not to truncate the legislative process, but rather to increase the House's legislative capacity. Extended sittings are not simply urgency in disguise.<sup>43</sup> Accordingly, the preference has been for arrangements to be made through the Business Committee, and motions without notice have not been resorted to often as a means of obtaining extended sitting hours.<sup>44</sup>

### **Effect of extended sitting**

An extended sitting provides extra time for the consideration of specified business within the regular sitting pattern. If the relevant business is not completed within the hours set for the extended sitting, the House adjourns anyhow. In practice, the intended progress is often made well within the time allotted, especially if the business is non-controversial and the Business Committee has been involved in the arrangements.

When the Business Committee arranges an extended sitting, this is shown on the Order Paper, which usually would also show the order of the business to be considered. In the case of a sitting extended by motion without notice, the relevant

<sup>33</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 15.

<sup>34</sup> SO 56(3)(a), (b).

<sup>35</sup> SO 56(3)(c).

<sup>36</sup> On one occasion, the Business Committee determined a programme of four extended sittings over four months (Business Committee determinations for 27 March 2013).

<sup>37</sup> (10 December 2013) [2011–2014] 2 JHR 748 (Report of Health Committee on Inquiry into improving child health outcomes and preventing child abuse, with a focus from preconception until three years of age).

<sup>38</sup> A special debate on Pacific issues was held on 18 April 2013 in conjunction with a parliamentary conference hosted in the precincts. An extended sitting that morning allowed progress on Government business, freeing up time for the special debate to be held (Business Committee determinations for 27 March and 10 April 2013).

<sup>39</sup> SO 56(2)(a), (b).

<sup>40</sup> SO 56(2)(c).

<sup>41</sup> SO 56(2)(d), (e).

<sup>42</sup> SO 56(2)(e); Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 15.

<sup>43</sup> Ibid.

<sup>44</sup> Only two extended sittings were initiated by motion without notice during the 50th Parliament: (26 June 2012) [2011–2014] 1 JHR 161, (11 June 2013) [2011–2014] 2 JHR 521.

business is identified in the motion, although it must previously have been signalled to the Business Committee. Only the specified stages of the business for which the extended sitting was taken may be transacted during the extended sitting hours.

An extended sitting results in the House being suspended at the time it would normally adjourn. For an extended Tuesday or Wednesday sitting, the House resumes at 9 am the following morning. A Thursday sitting extended by the Business Committee resumes at 7.30 pm that evening and, if the business is not completed by 10 pm, is then suspended until 9 am on Friday. Under the Standing Orders, an extended sitting is adjourned at 1 pm the following day, or earlier if the specified business is dealt with. The House has, on occasion, given leave to continue past 1 pm if necessary to ensure the relevant matters are concluded.<sup>45</sup>

## URGENCY

A motion for “urgency” to be accorded to certain business allows the sitting of the House to continue so that it can complete the business before rising. Urgency may be claimed only by the Government, although it need not be claimed exclusively for Government business. For instance, urgency has been taken for a local bill<sup>46</sup> and for a Member’s bill.<sup>47</sup>

“Urgency” as a business tool has been available since 1903. For many years it was a key means for simply progressing Government business.<sup>48</sup> The persistent use of urgency for this purpose, rather than reserving it for business that genuinely seems urgent, has been criticised as inconsistent with principles of good law-making.<sup>49</sup> Procedures for extended sitting hours having been introduced in 2011, the Government would now be expected to employ them if it was necessary to make extra progress, rather than seeking to use urgency in the first instance.

The proportion of the House’s total sitting hours spent under urgency varies depending upon political circumstances and the exigencies of the Government’s legislative programme. The primary constraint on the use of urgency is political: a Government will move an urgency motion only if it is sure it will pass. The amount of urgency taken has tended to vary according to the make-up of the Government and the nature of its support agreements with other parties.

With that qualification, it is notable that urgency was used less during the 50th Parliament than in previous terms,<sup>50</sup> and the availability of extended sitting hours was no doubt a large factor in this decrease.

<sup>45</sup> (22 October 2013) 694 NZPD 14166.

<sup>46</sup> (2001) 593 NZPD 10314 (Bay of Plenty Regional Council (Maori Constituency Empowering) Bill).

<sup>47</sup> (2001) 597 NZPD 13965 (Local Government (Prohibition of Liquor in Public Places) Amendment Bill).

<sup>48</sup> Especially from 1929; see John E Martin *The House—New Zealand’s House of Representatives 1854–2004* (Dunmore Press Ltd, Palmerston North, 2004) at 193.

<sup>49</sup> Claudia Geiringer, Polly Higbee and Elizabeth McLeay *What’s the Hurry? Urgency in the New Zealand Legislative Process 1987–2010* (Victoria University Press, Wellington, 2011).

<sup>50</sup> This table provides a comparison:

PARLIAMENT	URGENCY AS PERCENTAGE OF TOTAL SITTING HOURS	EXTENDED SITTINGS AS PERCENTAGE OF TOTAL SITTING HOURS
43rd (1990–93)	30.3	—
44th (1993–96)	9.2	—
45th (1996–99)	30.7	—
46th (1999–2002)	13.1	—
47th (2002–05)	21.4	—
48th (2005–08)	9.9	—
49th (2008–11)	28.2	—
50th (2011–14)	5.6	7.8

For more detailed analysis of data for the use of urgency prior to the introduction of extended sitting hours, see Claudia Geiringer, Polly Higbee and Elizabeth McLeay *What’s the Hurry? Urgency in the New Zealand Legislative Process 1987–2010* (Victoria University Press, Wellington, 2011), esp ch 4.

## Signals about possible urgency

An occasional practice has developed for the Leader of the House, at the start of the sitting day on a Thursday, to indicate the prospect of urgency in the following week. This may be particularly likely if such an intention has already been signalled to the Business Committee. The practice is helpful to the House, and allows members to reorganise their diaries, and select committee meetings and other business to be rearranged. However, it is not obligatory; the moving of an urgency motion does not require notice.<sup>51</sup> Indeed, the urgent nature of the business concerned may mean that such forewarning is impossible, or sometimes undesirable.

## Moving an urgency motion

An urgency motion is moved by a Minister without notice. It is decided without amendment or debate; the only comment that may be made is the explanation by the Minister of the circumstances warranting the motion.<sup>52</sup>

Urgency cannot be moved until general business has concluded.<sup>53</sup> Thus, urgency is not available until after the House has completed question time and, if applicable, the general debate and any urgent debate or consideration of a report of the Privileges Committee.

An urgency motion is not one of the events that may interrupt a debate.<sup>54</sup> Once the House has entered upon a bill or other item of business, it is too late to move urgency for that bill or any business at that sitting.

If the House is debating a bill at 6 pm when the sitting is suspended, urgency cannot be moved on the resumption at 7.30 pm, for the House continues with the same debate in the evening and an urgency motion in these circumstances would interrupt it. However, if a debate has been interrupted by an adjournment of the House and set down for resumption on the next sitting day, urgency can be moved before the debate is resumed on that subsequent day.<sup>55</sup> The prohibition against interrupting a debate applies to a debate upon which the House has entered that day; it does not apply to a debate that was interrupted by the House adjourning on a previous day.

## Circumstances warranting urgency

An urgency motion is not properly moved unless the Minister moving it states what circumstances warrant the claim for urgency.<sup>56</sup> This is because the use of urgency is expected to be confined to situations where an urgent approach is genuinely needed. The Government may consider that legislation needs to be passed quickly for legal reasons—maybe to avoid uncertainty arising from an imminent statutory deadline, or to obviate a potentially difficult legal situation. An emergency or unforeseen event could require an urgent response. Political situations may also justify urgency, for example when the Government wishes to implement particular campaign pledges quickly after an election, or if its legislative programme has been unreasonably delayed in the House despite constructive attempts to arrange business through the Business Committee. The proposal of urgency is a political initiative of the Government, and the purpose of requiring the Minister to explain the circumstances is to impose a measure of political accountability for such initiatives.<sup>57</sup>

The motion will be disallowed if an explanation of the urgent circumstances is not forthcoming before the question for urgency is determined. The motion can,

<sup>51</sup> Though note that prior notice to the Business Committee affects the time for which the sitting is suspended on a Thursday.

<sup>52</sup> SO 57(1) and (3).

<sup>53</sup> SO 57(2).

<sup>54</sup> SO 132.

<sup>55</sup> (1976) 403 NZPD 706 Jack.

<sup>56</sup> SO 57(3).

<sup>57</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 17.

however, be moved again.<sup>58</sup> If the absence of an explanation is not perceived at the time, and the House agrees to the motion for urgency, there can be no re-opening of the apparent defect in the moving of the motion. Urgency, once accorded, comes to an end only by an event occurring subsequent to the House agreeing to the motion.<sup>59</sup> The explanation that the Minister provides is not required to be very detailed but some particularity is needed.<sup>60</sup> Merely to say that progress needs to be made is not sufficient.<sup>61</sup> Any bills to be introduced must be identified, except in the very rare instance that a Minister judges it is not in the public interest to give this information at the time the motion is moved.<sup>62</sup> The Speaker is not the judge of the adequacy of the Minister's explanation (unlike reasons for extraordinary urgency); that is a matter for the House.<sup>63</sup> Ultimately, the Government is politically accountable for the use of urgency.

## **Effect of urgency**

Urgency allows the business for which it has been accorded (usually a bill or bills) to be completed before the House adjourns on that day. Hence, the sitting continues beyond the time for the normal adjournment of the House if it is necessary for this purpose.<sup>64</sup> Urgency does not allow the House to sit beyond midnight on a Saturday. If the sitting continues until then, the House adjourns.<sup>65</sup> The Standing Orders also set out special rules for the suspension of sittings for breaks during urgency (see below).

Urgency may be taken for a single stage of a bill, for one or more stages of one bill, for one or more stages of different bills, or for a combination of these, or other business on the Order Paper. Urgency does not alter the sequence of business set out on the Order Paper. The urgency motion itself does not set out a binding order of business. It is indicative only and it is open to the Government to introduce bills in a different order from that set out in the urgency motion and to take subsequent stages of bills in any order it pleases.<sup>66</sup> The Government may also move motions postponing business on the Order Paper so as to alter the sequence of business. But no other business (other than that for which urgency was accorded) may be transacted while urgency is current.<sup>67</sup>

A motion for urgency does not expedite consideration of a bill or other matter that is unavailable for the House to consider. Thus, if a bill or other matter is subject to a waiting period, for example after its report from a select committee, it cannot be accorded urgency until the end of that period. The usual waiting period following the introduction of a bill does not apply to a bill to which urgency is accorded,<sup>68</sup> so as to encourage the Government to make a new bill publicly available as soon as possible rather than delaying doing so until urgency is taken.<sup>69</sup> Once an item of business is available for consideration, urgency enables the House to proceed with further stages through which it could not normally be taken on the same sitting day.

Occasionally, the House has sat overnight following the passage of an urgency motion. This can happen under extraordinary urgency, or when a bill being considered under urgency is subject to many votes on amendments following a

58 (1976) 405 NZPD 2019 Jack.

59 (1978) 421 NZPD 4042, 4047 Luxton (Acting Speaker).

60 SO 57(3).

61 (1985) 467 NZPD 8181 Terris (Deputy Speaker).

62 Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 17.

63 (1998) 569 NZPD 10121 Kidd.

64 SO 58(1).

65 SO 58(2)(d).

66 (1998) 569 NZPD 10091 Kidd; (2002) 600 NZPD 16085 Hunt.

67 SO 59(1).

68 SO 285(3).

69 Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] I.18B at 18.

closure motion (see Chapter 17). While extremely long sittings with overnight hours have occurred in the past,<sup>70</sup> this is increasingly rare.

## Extraordinary urgency

Ordinarily, all-night sittings of the House cannot happen because the sitting, even under urgency, is suspended from midnight<sup>71</sup> until 9 am the following day. But the House has a procedure known as extraordinary urgency, which dispenses with the overnight suspension altogether and allows the House to continue its sitting with immediate effect and, if necessary, to sit through the night, breaking only between 8 am and 9 am, 1 pm and 2 pm, and 6 pm and 7 pm. At midnight on a Saturday the House adjourns.<sup>72</sup>

Extraordinary urgency is designed to facilitate the passing of a particularly urgent piece of legislation.<sup>73</sup> An urgency motion may be moved from the outset as a motion for extraordinary urgency; or, after urgency has been taken, a further motion may be moved for extraordinary urgency for some part of the urgent business that warrants it.<sup>74</sup> As with ordinary urgency, there is no amendment or debate on a motion for extraordinary urgency, but the Minister moving it must inform the House of the nature of the business or the circumstances that warrant extraordinary urgency.<sup>75</sup> In this case, unlike that of ordinary urgency, the Speaker has to make a judgement as to the justification for the Government asking for extraordinary urgency.<sup>76</sup> It would not be justified, for instance, if it were claimed for legislation that was not drafted so as to come into force immediately on enactment. Extraordinary urgency is particularly designed for use in connection with legislation for a tax change with immediate effect.<sup>77</sup>

Extraordinary urgency was introduced in 1985 to ensure sittings demanding such endurance took place only when absolutely required in the public interest.<sup>78</sup> Accordingly, the extraordinary urgency procedure has been used sparingly, being employed a mere nine times in the 30 years since its establishment, most recently in 2010. Every occasion has related to tax measures, primarily excise duties.<sup>79</sup>

## Termination of urgency

Urgency terminates when the business for which it has been accorded is completed. If this happens before the normal time for the rising of the House, the House proceeds with business on the Order Paper until the normal time for it to adjourn. If the business under urgency is completed after the normal time of adjournment, the House rises immediately,<sup>80</sup> subject to considering any motion relating to its next sitting.

<sup>70</sup> The House sat under urgency from 2 pm on Tuesday 30 July 1991 to 11.30 pm on the following Saturday (a total of 67.5 sitting hours) to pass Budget-related legislation ((1991) 517 NZPD 3215–3660). The longest single sitting on record commenced at 7.30 pm on Wednesday 24 July 1889 and rose at 10.30 pm on Friday 2 August, including three all-night sittings for a total of almost 125 hours ([1889] JHR 91–98). The House was considering electoral legislation.

<sup>71</sup> Though note that the suspension is deferred if a vote is in progress (see Chapter 17).

<sup>72</sup> SO 61.

<sup>73</sup> Such as Budget legislation or legislation to deal with the collapse of a commercial or financial organisation, or a matter involving State security (Standing Orders Committee *First report* (19 July 1985) [1984–1985] AJHR I.14 at [2.3.1]).

<sup>74</sup> SO 60(1).

<sup>75</sup> SO 60(2).

<sup>76</sup> SO 60(3); (1998) 569 NZPD 10121 Kidd.

<sup>77</sup> (1998) 568 NZPD 8581–8582 Kidd.

<sup>78</sup> (1985) 464 NZPD 5862.

<sup>79</sup> (20 August 1985) [1984–1985] JHR 760 (Income Tax Amendment Bill (No 4)); (28 July 1988) [1987–1990] 1 JHR 771 (Customs Amendment Bill (No 2)); (1991) 517 NZPD 3287 (Finance (Revenue) Bill); (1998) 568 NZPD 8581 (Customs and Excise Amendment Bill); (1999) 577 NZPD 16619 (Stamp Duty Abolition Bill); (2000) 583 NZPD 1984 (Customs and Excise Amendment Bill); (2002) 598 NZPD 14767 (Customs and Excise Amendment Bill (No 5)); (6 May 2003) 608 NZPD 5358 (Customs and Excise (Alcoholic Beverages) Amendment Bill); (28 April 2010) [2008–2011] 1 JHR 703 (Excise and Excise-equivalent Duties Table (Tobacco Products) Amendment Bill).

<sup>80</sup> For example: (19 November 2013) 695 NZPD 15111.

The House is not obliged, just because urgency has been taken, to process all the bills or business named in the urgency motion.<sup>81</sup> It has the opportunity to do so at that sitting (subject to the sitting ending at the latest at midnight on Saturday) but it does not have to do so. The termination of urgency and therefore of the sitting can be precipitated before all business has been disposed of. As business that was not included in the urgency motion cannot be transacted during urgency except by leave,<sup>82</sup> a positive decision to bring urgency to an end is always needed.<sup>83</sup> Urgency does not terminate inadvertently.

The Government may indicate to the Speaker that Ministers do not intend to move motions regarding the remaining business for which urgency has been taken. When the next stage of a bill under urgency is the committee stage, it will not proceed against the Government's wishes. If the Government does not wish to make further progress, urgency terminates at that point, and if the House is sitting outside normal hours it adjourns.<sup>84</sup> The debate on a bill for which urgency was taken may be adjourned or, if it is in committee, progress may be reported, for this purpose. The Government may move a motion for the adjournment of the House while the House is sitting under urgency provided that the motion proposes a different time for the next meeting of the House from that at which the House would otherwise meet when it adjourns (in the latter case no adjournment motion is necessary anyway). The House always has the right, before rising, to fix the time for its next sitting.<sup>85</sup>

## SUSPENSION OF A SITTING

During its course, a sitting may be suspended for a period without being formally brought to an end by adjournment. This can be done under the Standing Orders, and it can also be done by direction of the House or, in certain circumstances, by order of the Speaker (see below). The House can, by leave, continue to sit during a time when the sitting would otherwise be suspended.<sup>86</sup> The timing of a suspension may also be adjusted by determination of the Business Committee.<sup>87</sup>

On the suspension of a sitting, the debate is interrupted<sup>88</sup> and the Speaker (or, in committee, the Chairperson) leaves the Chair. The bell is rung for 10 seconds to signal to people in the precincts that the House has come to a temporary halt.<sup>89</sup>

During any suspension, the Mace is left in the Chamber to signify that the sitting has not ended. If the House was in committee immediately prior to the suspension, the Mace remains under the Table.

## Deferral of interruption for suspension of sitting

Whenever a question is being put or a vote is in progress at the time for a sitting to be suspended, the suspension is postponed until the vote has been completed. Any further questions that the House is required to determine without debate are also dealt with before the sitting is suspended.<sup>90</sup> If a closure motion has been carried, the suspension is deferred until the determination of the original question.<sup>91</sup> This includes putting the question on any amendments that have been lodged,<sup>92</sup> and

<sup>81</sup> (1998) 569 NZPD 10121 Kidd.

<sup>82</sup> SO 59(1).

<sup>83</sup> (1997) 565 NZPD 6106 Kidd.

<sup>84</sup> (1998) 569 NZPD 10121 Kidd. For example, (17 November 2015) 710 NZPD 8325.

<sup>85</sup> (2000) 586 NZPD 4568–4569 Hunt.

<sup>86</sup> (1901) 119 NZPD 1034 Guinness (Deputy Speaker).

<sup>87</sup> SO 79(a).

<sup>88</sup> SO 132(c).

<sup>89</sup> (7 May 2003) 608 NZPD 5457 Hunt.

<sup>90</sup> SO 53(b). For example, if a bill is read a first time when a sitting is due to be suspended, the question will then be put on the nomination of the committee to consider the bill, without further debate, before the suspension occurs.

<sup>91</sup> SO 53.

<sup>92</sup> (1971) 376 NZPD 4733 Jack.

so can considerably delay the suspension if many votes are to be conducted. Apart from these circumstances, no further question can be put after the time for suspension without the leave of the House.<sup>93</sup>

### **Suspension of normal sittings**

Under normal circumstances, the House suspends its sittings only twice in the same week. The Standing Orders provide for sittings to be suspended on Tuesdays and Wednesdays from 6 pm to 7.30 pm for dinner.<sup>94</sup> The Standing Orders also provide that a sitting lengthened to consider specific business will be suspended for breaks at prescribed times.

### **Suspension of sittings during extended sitting hours**

When extended sitting hours are accorded by a determination of the Business Committee or a decision of the House, the sitting is suspended at the time it would normally be adjourned. In the case of extended sitting hours adopted on a motion moved by a Minister on a Tuesday or Wednesday, the sitting is suspended between 10 pm that evening and 9 am the next morning. The same applies when a Tuesday or Wednesday sitting is extended by a determination of the Business Committee. A Thursday sitting may be extended only by a determination of the Business Committee,<sup>95</sup> in which case the sitting is suspended between 6 pm and 7.30 pm and then between 10 pm and 9 am.<sup>96</sup>

### **Suspension of sittings under urgency**

In the case of urgency, if the day on which urgency is taken is a Tuesday, Wednesday, or (provided prior warning has been given to the Business Committee) a Thursday, there is an automatic suspension at 10 pm, the normal time for the adjournment of the House on Tuesdays and Wednesdays. The sitting then resumes at 9 am on the following day.<sup>97</sup> On the second and subsequent days of a sitting under urgency, the sitting is suspended between midnight and 9 am, between 1 pm and 2 pm, between 6 pm and 7 pm, and then again at midnight.<sup>98</sup>

If urgency is taken on a Thursday without prior warning to the Business Committee, the sitting is suspended at 6 pm until 9 am the following day.<sup>99</sup> However, if the Business Committee has been advised of the intention to move for urgency on the Thursday, sitting is suspended at 6 pm only to 7.30 pm, and the House sits through to 10 pm before being further suspended until the morning.<sup>100</sup> For advantage to be taken of this provision, there must be a Business Committee meeting at which the advice is conveyed to it, though the business to be transacted need not be specified in detail, and the advice can refer to alternative programmes of business to be taken under urgency. The fact that such advice has been given to the committee is noted in the committee's minutes, but the taking of urgency is not a determination of the committee nor is the committee's agreement to it required. The fact that the Government has given such notice does not oblige it to utilise the notice and actually move an urgency motion; the Government may refrain from moving urgency that it has foreshadowed.

The suspensions of a sitting under urgency are automatic unless dispensed with by the leave of the House. However, these suspensions begin to operate only after a sitting of the House has actually been extended. If urgency is taken during the course of an afternoon on a Tuesday or Wednesday, the normal suspension

93 (1960) 322 NZPD 704.

94 SO 45(1).

95 SO 56(2)(c), (3)(a).

96 SO 56(4)(b).

97 SO 58(2)(a).

98 SO 58(2)(c).

99 SO 58(2)(a).

100 SO 58(2)(b).

from 6 pm to 7.30 pm applies on that day, because at the time the sitting has not been extended.

In the case of a Monday sitting the rules for a Tuesday sitting apply unless the House has appointed different hours for the sitting.<sup>101</sup> Consequently, if urgency is taken on a Monday, the sitting is suspended at 10 pm unless a different time was appointed for the House to rise in the motion that ordered the sitting.

Where extraordinary urgency is taken, the sitting is not suspended at the normal time for adjournment nor at midnight, and may continue through the night. The morning suspension is only between 8 am and 9 am. As for urgency, under extraordinary urgency the sitting is then suspended between 1 pm and 2 pm and between 6 pm and 7 pm.<sup>102</sup>

### **Speaker suspending sitting**

The Speaker has authority to suspend a sitting of the House if the Speaker considers this necessary to maintain order, and in the event of an emergency.<sup>103</sup> In this case the Speaker leaves the Chair without putting any question and resumes it whenever he or she thinks it appropriate to do so.<sup>104</sup> If the Speaker does not resume the Chair by 10 pm on a Tuesday or a Wednesday or by 6 pm on a Thursday, the House is automatically adjourned until the next sitting day.

On certain special occasions sittings are suspended under the Standing Orders or other directions of the House. On the day of the State Opening of Parliament, the sitting is suspended for members to attend the Governor-General,<sup>105</sup> and the Speaker also has authority to suspend the sitting to permit the Address in Reply debate to commence later in the sitting day.<sup>106</sup> (See Chapter 12.)

## **ADJOURNMENT OF THE HOUSE**

Each sitting day comes to an end with the adjournment of the House. Occasionally, the House adjourns for a longer period than to the next regular sitting day. An adjournment of the House may be automatic under the Standing Orders, or a previous decision of the House, or it may result from a motion that causes the House to rise at a particular time.

When leaving the Chair at the conclusion of a sitting, the Speaker rises and bows to both sides of the House. Members must also rise and remain standing until the Speaker has left the Chamber.<sup>107</sup> As on the suspension of a sitting, the bell is rung for 10 seconds when the House adjourns to let people in the parliamentary complex know that the House has adjourned.<sup>108</sup>

### **Adjournment at scheduled times**

At the scheduled time for the conclusion of each sitting day, the Speaker interrupts the business in progress and leaves the Chair. The House then stands adjourned until the time for its next regular or appointed meeting.<sup>109</sup> This adjournment occurs automatically under the Standing Orders and there is no debate on it. For extended sitting hours, the scheduled time for the adjournment shifts to 1 pm the next day, unless the business is completed sooner. To allow an adjournment when the House is in a committee of the whole House, the Chairperson must report the progress made by the committee to the House at five minutes before the scheduled

<sup>101</sup> SO 47.

<sup>102</sup> SO 61(2).

<sup>103</sup> SO 50(1).

<sup>104</sup> SO 50(2).

<sup>105</sup> SO 14(1)(b).

<sup>106</sup> SO 14(2).

<sup>107</sup> SO 87.

<sup>108</sup> (7 May 2003) 608 NZPD 5457 Hunt.

<sup>109</sup> SO 49(1).

time for the conclusion of the sitting.<sup>110</sup> The Speaker leaves the Chair following the Chairperson's report, and the House stands adjourned.<sup>111</sup> Where the House concludes a piece of business within five minutes of the scheduled adjournment time and the next business would require the House to go into committee, the Speaker does not call the next business and adjourns the House at that point.<sup>112</sup> Under urgency, there is no scheduled time for the House to adjourn. However, the Standing Orders prohibit a sitting of the House on a Sunday, and a sitting of a previous day that continues until midnight on Saturday is interrupted and adjourned. If the House is in committee at 11.55 pm on a Saturday, the Chairperson reports progress to enable the House to adjourn.<sup>113</sup>

### **Deferral of scheduled adjournment when vote in progress**

If a question is being put or a vote is in progress at the time at which the Speaker is required to interrupt proceedings and adjourn the House, the interruption is postponed until the vote is completed. If a closure motion has been carried any consequential questions necessary to determine the original question are put (and may be voted on).<sup>114</sup> Where the Chairperson has accepted a closure motion and is in the process of putting the question on it to the committee at the time for reporting progress, determination of the question must be completed and, if it is carried, any consequential questions must also be put to the committee before progress is reported.<sup>115</sup> Before adjourning, the House will also deal with any remaining questions that are required to be put without further debate.<sup>116</sup>

### **Adjournment at other times without question put**

At the first sitting of the House following a general election, the House adjourns under the Standing Orders after it has elected a Speaker.<sup>117</sup> Other adjournments without a motion occur following the conclusion of business on the day of the State Opening of Parliament and if the Speaker exercises the power to adjourn the House in the case of disorder or an emergency situation. In these cases there is no motion to adjourn and, therefore, no question is proposed from the Chair on which a debate can arise or a vote can be held. The House automatically adjourns until its next appointed sitting day.<sup>118</sup>

### **Adjournment motions**

An adjournment motion is one that, if carried, will bring the current sitting of the House to an end.

The adjournment of the House may be moved only by a Minister.<sup>119</sup> The motion for the adjournment of the House cannot be moved by Opposition members as a delaying tactic. No notice of an adjournment motion is required, even for one fixing a different time for the House to resume sitting from that already prescribed.<sup>120</sup> An adjournment motion is debatable, and, unless the proposal for the adjournment is for the purpose of discussing a particular subject, the scope of debate on the adjournment is wide open. An adjournment motion is not a purely procedural motion; it is a motion on which members may raise any substantive matter.<sup>121</sup> In

<sup>110</sup> SO 52.

<sup>111</sup> SO 52(2).

<sup>112</sup> SO 51(2).

<sup>113</sup> SO 48.

<sup>114</sup> SO 53(a).

<sup>115</sup> (1971) 376 NZPD 4733 Jack; (2003) 613 NZPD 10003 Hunt.

<sup>116</sup> SO 53(b).

<sup>117</sup> SO 22.

<sup>118</sup> SOs 14(2) and 50(3).

<sup>119</sup> SO 49(2).

<sup>120</sup> (1889) 64 NZPD 565 O'Rorke; (1904) 131 NZPD 869–870 Guinness; (1932) 231 NZPD 68 Statham; (2000) 586 NZPD 4568–4569 Hunt.

<sup>121</sup> (1983) 451 NZPD 855 Harrison.

some other legislatures, adjournment motions are a regular feature of sittings, providing an opportunity for debating miscellaneous business. In New Zealand, however, the general debate serves this purpose, and adjournment motions are infrequent.

The adjournment of the House cannot be moved so as to interrupt a debate in progress, although a debate may be adjourned so as to permit an adjournment motion to be moved.

An adjournment motion lapses if it is under debate at the time already appointed for the House to rise, as the House adjourns without a question being put at that time.<sup>122</sup> Where a vote is in progress at the time for the House to adjourn or a closure motion relating to an adjournment debate has been accepted, the question on the adjournment is put even though this is after the time for the House to rise.<sup>123</sup> But if the House is sitting outside normal sitting hours under urgency, it is possible to move the adjournment of the House to fix a new time for the next sitting of the House.<sup>124</sup> No special time-limits are prescribed for speeches on adjournment motions, so the fall-back speaking time of 10 minutes for each member applies. It is not possible to move the adjournment of a debate on the adjournment of the House; the issue of the adjournment of the House must be decided one way or the other.

An adjournment motion may be a simple motion “That this House do now adjourn”. In this case, if the motion is carried, the House will meet again on its next regular sitting day or on the next sitting day already appointed by any other order of the House. Alternatively, the motion itself may go on to prescribe expressly a date or time to which the House should adjourn, in which case, if it is carried, the House will meet on that day or at that time. An adjournment motion could set a date for the next sitting but provide a mechanism for the House to reassemble sooner, for example through the appointment of a date by the Speaker.<sup>125</sup>

An adjournment motion may be amended, provided that any proffered amendment is relevant to the motion; so it must relate to the period of the adjournment suggested in the motion.<sup>126</sup>

During adjournments, select committees may continue to meet. In fact, the object of an adjournment is often to allow an extended period, free from commitments in the House, for select committees to progress their work.

Adjournment motions could be used as vehicles for special debates, but such debates tend to be separately arranged by the Business Committee. The House also uses adjournment motions as a means of paying its respects on the occasion of the deaths of parliamentarians or former parliamentarians.<sup>127</sup> It is the House’s invariable practice to adjourn whenever a current member of Parliament or a former Prime Minister dies.

## Motions regulating the period of adjournment

An adjournment motion always regulates the period of an adjournment, but so may other motions which are not themselves adjournment motions in the sense that they do not bring the current sitting of the House to an end but determine how long the House will be adjourned for once it rises. Such motions are usually distinguished by referring to the House’s actions “at its rising”.

The scope of debate on a motion regulating the period of adjournment, as opposed to an adjournment motion, is not wide open. Debate must be relevant to the question of adjourning for the period of time suggested in the motion, and

<sup>122</sup> SO 51(1).

<sup>123</sup> (13 April 1989) [1987–1990] 2 JHR 1230–1231.

<sup>124</sup> (2000) 586 NZPD 4568–4569.

<sup>125</sup> Though the Speaker has standing authority to order an earlier sitting of the House during an adjournment if the Prime Minister considers this is desirable in the public interest (SO 55).

<sup>126</sup> (1904) 131 NZPD 869–870 Guinness; (1993) 539 NZPD 32.

<sup>127</sup> For example: (7 May 2013) [2011–2014] 1 JHR 462 (death of Hon Parekura Horomia).

debate on substantive matters cannot be introduced. The most important type of motion regulating the period of the House's adjournments is the motion fixing the sitting programme for the year. It is usually lodged as a notice of motion, and the usual rules for the relevancy of debate and amendments apply, as for any other motion on notice.

### **Adjournment by leave**

It is not unusual for leave to be given for the House to adjourn earlier than the time appointed for the conclusion of a sitting. For the most part, such early adjournments by leave occur when the House concludes its consideration of an item of business a few minutes before the appointed time for rising, and members consider it is not worthwhile moving on to the next item in the short time remaining.

Leave may be given for the House to adjourn at any time according to the circumstances. In 2011, leave was given for the House to adjourn early as a mark of respect for the people of Christchurch and Canterbury following the deadly earthquakes in the region.<sup>128</sup>

## **EARLY RECALL OF THE HOUSE DURING AN ADJOURNMENT**

Just as there is provision for Parliament to be called into session if a declaration of national emergency is made while Parliament is prorogued or dissolved, so the House must reassemble if such a declaration is made during an adjournment and the House is not due to meet within seven days. For this purpose the Speaker must appoint, by notice in the *New Zealand Gazette*, a day for the House to meet. The day is not to be later than seven days after the date of the declaration. The House then meets and sits accordingly.<sup>129</sup> The law does not prescribe any particular action for the House to take in respect of the declaration that causes it to reassemble (see Chapter 43).

The Standing Orders also include express authority for the House to be reassembled during an adjournment before the date to which it has been adjourned. This provision was adopted to cater for a situation that arose at the time of the Gulf War in 1991, when the only way for the House to meet early during a lengthy adjournment was for Parliament to be prorogued and a new session called. Now, if it appears in the public interest that the House should meet at an earlier time than that to which it stands adjourned, the Prime Minister may, after consulting the leaders of all other parties in the House, inform the Speaker of this fact.<sup>130</sup> The Speaker is then obliged to appoint an appropriate date and time for the House to meet, and to advise members accordingly.<sup>131</sup> If the House meets in such circumstances the remainder of the previously appointed adjournment is cancelled. When the House sits, it could resolve on a new period of adjournment or resume sitting regularly from that point. The first time this provision was used the House sat on the day in question and then resumed the previously appointed adjournment.<sup>132</sup>

## **THE SITTING PROGRAMME**

Parliament meets throughout the year to transact business. Sittings normally commence in February, though in some recent instances regular sittings have started in late January,<sup>133</sup> and it is not unusual for select committees to meet then. Since 1984 it has become the norm for an annual sitting programme to be drawn

<sup>128</sup> (22 February 2011) 670 NZPD 16941.

<sup>129</sup> Civil Defence Emergency Management Act 2002, s 67(2) and (4).

<sup>130</sup> SO 55(1).

<sup>131</sup> SO 55(2).

<sup>132</sup> (1999) 580 NZPD 19461–19499 (deployment of peacekeeping forces to East Timor).

<sup>133</sup> Tuesday, 29 January 2013, and Tuesday, 28 January 2014.

up in advance, setting out the days on which it is proposed that the House should sit during the year.

## **Business Committee recommendation**

The responsibility for recommending a sitting programme to the House has rested with the Business Committee since its establishment in 1995.<sup>134</sup> The programme must be prepared on the basis that the House will commence its sittings no later than the last Tuesday in February and will sit for about 90 sitting days (30 weeks) in total in the course of the year.<sup>135</sup> In practice the House will often meet earlier in the year than this and sit for longer—in 2000, for example, the House sat for 34 weeks, the most on record.<sup>136</sup>

Planning for the annual sitting programme is built around the flow of parliamentary business that can be expected during the year. Much of this results from the process of granting supply and conducting annual reviews. (See Chapters 33, 34 and 35.) Other considerations include the debate on the Prime Minister's statement (a 13-hour debate that opens each year's sittings); the need to pass legislation fixing tax rates by 31 March; the popularity of 1 July as a commencement date for legislation (making it desirable for the House to have a sustained period of sitting leading up to that date); and the need to pass annual legislation of a validating or confirming nature before the end of the year.

The Business Committee is obliged to report to the House with its recommendations for the sitting programme not later than the third sitting day in December or, if the House does not sit in December, not later than the sitting day before the House is due to adjourn at the end of the year.<sup>137</sup> This is designed to permit the House to consider the sitting programme before the summer adjournment if it wishes to do so. In practice, the Leader of the House takes the initiative in drawing up proposals for the sitting programme. They are presented to the Business Committee in November and may be ready for report to the House well before the Business Committee's reporting deadline.

## **Adoption of the sitting programme**

The Business Committee's recommended sitting programme is just that—a recommendation. It has no effect unless and until adopted by the House. Following the committee's report, the Leader of the House prepares a Government motion setting out a proposed programme of sittings. This usually follows the Business Committee's recommendation, though it is not required to do so. The motion may be put to the House before it rises at the end of the year, or when it resumes early in the next year.

A sitting programme adopted by resolution of the House sets aside the basic Standing Orders requirement for the House to meet on every Tuesday, Wednesday and Thursday throughout the year,<sup>138</sup> and obviates the need for the House to pass adjournment motions during the year when it wants more extended adjournment periods. The sitting days during the course of the period (up to the end of the year) that are set out in the resolution become the House's sitting days, with effect subject to any subsequent decision of the House to the contrary.<sup>139</sup>

The motion setting out the programme usually lists the individual sitting days in the resolution as far as possible.<sup>140</sup> This avoids potential difficulty if the adjournment periods were specified as commencing after particular sitting days but those sitting days did not eventuate (for example, because of urgency).

<sup>134</sup> SO 81(1).

<sup>135</sup> SO 81(3).

<sup>136</sup> (2000) 589 NZPD 7517.

<sup>137</sup> SO 81(2).

<sup>138</sup> SO 45.

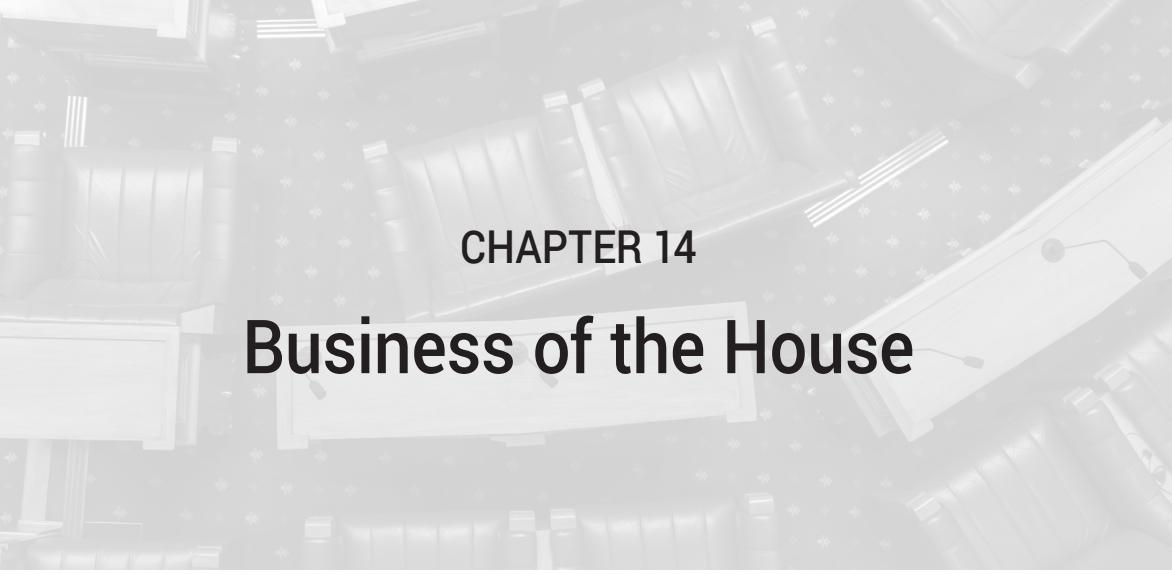
<sup>139</sup> SO 81(4).

<sup>140</sup> See, for example: (6 November 2014) 701 NZPD 707.

The House can adopt a sitting programme covering a period longer than one year. This may be done following a general election, when the House might meet for a few weeks before adjourning for the summer. The sitting programme can regulate the sittings for that period as well as the next year thereafter.<sup>141</sup>

### **Variation of the programme**

A sitting programme that has been adopted by resolution can be varied by taking an unscheduled adjournment or by cutting out a planned adjournment. A variation to the programme is effected by a new motion on notice, or by moving the adjournment of the House for a different period immediately before a planned adjournment.



## CHAPTER 14

# Business of the House

A warning bell is rung to announce the imminent sitting of the House. It rings for 15 seconds at nine minutes before the time appointed for the House to assemble, and then for five minutes commencing seven minutes before that time. The Speaker proceeds to the Chamber from the Speaker's office in a procession led by the Speaker's attendant and the Serjeant-at-Arms carrying the Mace, reaching the Chamber at the precise time for the commencement of the sitting. The Serjeant-at-Arms leads the Speaker into the Chamber through the Visitors' Door, opposite the Chair, announcing the Speaker's arrival to members as the Speaker's party enters. Members rise as the Speaker takes the Chair, the Serjeant remaining standing with the Mace, facing the Chair. The Speaker bows to the Government and Opposition sides of the House and then reads a prayer.<sup>1</sup>

## PRAYERS

The first vote ever held in the House was over whether a prayer should be recited.<sup>2</sup> A majority of the House favoured this course of action and the prayer was read by a local clergyman who was apparently present in the expectation of the House voting in favour of a prayer.<sup>3</sup>

The wording of the prayer has been altered on a number of occasions. The wording of the current prayer was adopted by resolution of the House in 1962,<sup>4</sup> but it is not written into the Standing Orders and is not regarded as binding on the Speaker.<sup>5</sup> It reads:

Almighty God, humbly acknowledging our need for Thy guidance in all things, and laying aside all private and personal interests, we beseech Thee to grant that we may conduct the affairs of this House and of our country to the glory of Thy holy name, the maintenance of true religion and justice, the honour of the Queen, and the public welfare, peace, and tranquillity of New Zealand, through Jesus Christ our Lord. Amen.

---

<sup>1</sup> SO 62.

<sup>2</sup> (24 May 1854) [1854] VP 3.

<sup>3</sup> "Mr Speaker at prayers in the House" *The Dominion* (29 July 1950).

<sup>4</sup> (21 June 1962) [1962] JHR 39–40.

<sup>5</sup> (1962) 330 NZPD 337–338.

The Speaker occasionally reads a karakia (prayer) in Te Reo Māori.<sup>6</sup> The fact that the House commences its sittings with a prayer, and what form the prayer takes, is a matter exclusively for it. The practice is not subject to scrutiny by a court or other body outside Parliament.<sup>7</sup> In 2014 the Speaker consulted members about adopting a new prayer but the preference was to retain the wording adopted in 1962.

Once the prayer has been read the Mace is placed on the Table by the Serjeant-at-Arms<sup>8</sup> and the business of the House may commence.

## BEFORE GENERAL BUSINESS

Immediately after the reading of the prayer, before the start of general business, the House commonly considers matters other than those on the Order Paper. Such matters are raised at this time only by convention, and not under Standing Orders. At this time the Speaker informs the House of the death of former Members (marked by Members standing and observing a period of silence); it is also the time for the introduction of distinguished visitors, the receipt of messages from the Governor-General, the referral of questions of privilege to the Privileges Committee, and the notification of other matters to the House.

Issues concerning membership of the House are also dealt with after the reading of the prayer. Electoral vacancies, and resignations and returns of members are announced, and new members take the oath or swear allegiance.

Government motions are sometimes moved on non-controversial matters such as the death of a prominent person, or a notable achievement or event. More unusually, a Member's motion can be moved at this time. Leave is required for such motions to be moved, because they have not yet been reached on the Order Paper or because they do not appear on the Order Paper. They may be moved with or without debate. Other issues related to procedure or the business of the House are commonly dealt with at this time, though they may be raised at other times. The Speaker may announce new rulings. Members, by way of points of order, may ask the Speaker about procedural issues that have recently arisen. If no matters are raised after prayers, the House moves straight to general business.

On Thursdays, the Leader of the House makes a statement about forthcoming business (the Business Statement).

## ORDER PAPER

The order in which the House transacts its business each sitting day is set out on an "Order Paper".<sup>9</sup> This is the House's agenda for the forthcoming sitting of the House. It is prepared by the Clerk for each sitting day, reflecting the requirements of the Standing Orders as to the order of business to be transacted on particular days, any relevant decisions of the Business Committee and any decisions of the House relating to particular business to be considered.<sup>10</sup> The Order Paper may indicate orders of the day that will be taken during extended sittings and committee stages<sup>11</sup> (as notified by the Government) that are to be taken in the current and following week, and that bills as reported from select committees contain majority amendments. Orders of the day not yet available for debate (because they are subject to a stand-down period<sup>12</sup>) are retained on the Order Paper, but below a line that marks off for each type of order of the day those that are available for debate.

<sup>6</sup> See, for example: (24 July 2012) 682 NZPD 3797.

<sup>7</sup> *Ontario (Speaker of the Legislative Assembly) v Ontario (Human Rights Commission)* (2001) 54 OR (3d) 595 (ONCA); Human Rights Commission "The Parliamentary Prayer" (22 November 2004).

<sup>8</sup> SO 62.

<sup>9</sup> SO 64.

<sup>10</sup> SO 64(2).

<sup>11</sup> SO 301(3).

<sup>12</sup> See Chapter 26 for stand-down periods applying to bills at different stages of the legislative process.

More than one version of the Order Paper may be produced.<sup>13</sup> In fact, two versions are usually produced each day—a provisional Order Paper and a final one.

The provisional Order Paper for a Tuesday sitting is available on the Parliament website at 4.30 pm on the previous Friday and is circulated in hard copy on the preceding Monday (or on Tuesday morning where Monday is a public holiday). The provisional Order Papers for Wednesday and Thursday sittings are available on the parliamentary website after the House adjourns on Tuesday and Wednesday respectively, and are circulated in hard copy on the mornings of the sitting days to which they relate. A provisional Order Paper for Wednesday or Thursday is not produced when a sitting of the House continues, as an extended sitting or under urgency, into the day to which that Order Paper would apply. A provisional Order Paper is, as its title implies, subject to change and correction. The Government may alter the order in which Government orders of the day stand,<sup>14</sup> which it has the right to do at any time up to the publication on the Parliament website of the final Order Paper. The provisional Order Paper for a Tuesday sitting may also change because of the introduction of further Government bills or the reporting back of other bills on the preceding Monday. Tuesday's final Order Paper incorporates any such developments.

The Order Paper must be circulated as early as possible before the House sits.<sup>15</sup> The final version is published on the Parliament website at 10.30 am unless the previous sitting of the House is continuing, in which case it is published immediately on the conclusion of that sitting, if it concludes in time for the House to sit on the day to which the Order Paper applies. The final Order Paper is circulated in hard copy about an hour before the House is due to sit.

The final Order Paper sets out the order of business to be followed by the House when it sits, and this can be departed from only if the House itself agrees to do so. But if there is an error in the Order Paper, the Standing Orders prescribing the business to be taken at each sitting take priority and must still be followed, irrespective of contrary indications on the Order Paper.<sup>16</sup>

### **Supplementary Order Paper**

As well as an Order Paper, Supplementary Order Papers may be circulated by members, showing details of amendments they propose to move to bills at the select committee or committee stage.<sup>17</sup> These papers are supplements to the Order Paper only as a matter of form and have nothing to do with the order of business to be followed by the House at any particular sitting. (See pp 434–435.)

However, as a supplement to the Order Paper, a Supplementary Order Paper must be dated according to a sitting day, for an Order Paper is produced only for a sitting day. It is irregular to circulate a Supplementary Order Paper with a date that is not a sitting day, and such a paper must be withdrawn. For this reason a Supplementary Order Paper with the next sitting day's date should be circulated only after the previous sitting concludes.

## **GENERAL BUSINESS**

One of the major types of business transacted by the House each day is known as “general business”.<sup>18</sup>

General business consists of miscellaneous business that involves announcements, formal motions, questions and some recurrent debates.<sup>19</sup> General

<sup>13</sup> SO 64(3).

<sup>14</sup> SO 68.

<sup>15</sup> SO 64(3).

<sup>16</sup> (1978) 421 NZPD 4259 Harrison; (1985) 467 NZPD 8218–8219 Wall.

<sup>17</sup> SO 306.

<sup>18</sup> SO 65(a).

<sup>19</sup> SO 66(1).

business is considered by the House before any orders of the day,<sup>20</sup> except where the Standing Orders expressly provide to the contrary, for example on Budget day. At the conclusion of general business the House moves on to consider orders of the day. Orders of the day correspond more closely with the House's legislative work, that is, the bills it considers. Urgency cannot be taken until general business has concluded.<sup>21</sup>

The announcements made as general business consist of lists of petitions, papers and select committee reports presented and of bills introduced. These lists are read to the House by the Clerk. They are all announcements of events that have occurred since the House last sat, because in each case the actual presentation or introduction is accomplished by delivery of the instrument or advice to the Clerk by 1 pm that day. In addition, the Speaker may present papers during general business.<sup>22</sup>

Oral questions follow these announcements as part of general business. These are questions lodged between 10.00 am and 10.30 am,<sup>23</sup> plus any urgent question accepted by the Speaker. (See Chapter 39.) Next, as general business, comes any debate on a matter of urgent public importance which a member has applied to the Speaker to hold and the Speaker allows. (See Chapter 41.) On Wednesdays only the weekly general debate is held as part of general business. (See Chapter 41.) Finally, as general business, the House debates any report from the Privileges Committee that has been presented to it. This gives consideration of reports from the Privileges Committee a priority that does not attach to those of other committees. (See Chapter 47.)

## ORDERS OF THE DAY

The principal items of business considered by the House each day are called "orders of the day". These are bills or other items that have been set down specifically for consideration by the House.<sup>24</sup> Bills or other matters are usually set down for consideration automatically pursuant to a provision in the Standing Orders, but they may be set down by direction of the House, the Business Committee or an individual member acting under a power conferred by the Standing Orders. Each order of the day stands in the name of a particular member. Orders of the day are sub-classified into Government orders of the day, private and local orders of the day and Members' orders of the day.<sup>25</sup>

Government orders of the day<sup>26</sup> consist principally of Government bills at their various stages. They also include Government notices of motion, which are notices of motion given by Ministers.<sup>27</sup> Certain other business that might not otherwise be considered to be Government business is also treated as a Government order of the day: the Address in Reply debate (even though it is moved by a backbench member of Parliament), the debate on the Prime Minister's statement, and the annual debate on Crown entities, public organisations and State enterprises (which for this purpose is put into the name of a Minister, often the Minister for State Owned Enterprises), and interim and special select committee reports on Government bills.

Government orders of the day have a general precedence over all other orders of the day except on the days when private, local, and Members' orders of the day take precedence.

<sup>20</sup> SO 66(2).

<sup>21</sup> SO 57(2).

<sup>22</sup> SO 372(2).

<sup>23</sup> SO 381(1)(b).

<sup>24</sup> SO 3(1).

<sup>25</sup> SO 65(b)–(d).

<sup>26</sup> SO 67.

<sup>27</sup> SO 3(1).

Private and local orders of the day<sup>28</sup> consist exclusively of private and local bills at their various stages. They have precedence over Government orders of the day every second Wednesday.

Members' orders of the day<sup>29</sup> consist largely of Members' bills at their various stages and Members' notices of motion, that is, notices of motion given by members who are not Ministers.<sup>30</sup> They also include the reports of select committees on briefings, inquiries, international treaty examinations or other matters, and reports of the Regulations Review Committee.<sup>31</sup> They do not include reports of the Privileges Committee (which are general business), reports on bills, reports on Estimates, Supplementary Estimates or annual reviews, or reports on affirmative resolution notices of motion (these categories of reports have their own procedures for their consideration by the House). Nor do they include reports on petitions in the first instance. Reports on petitions are not set down as orders of the day at all unless the Business Committee specifically directs this, in which case the report would be set down for consideration as a Members' order of the day.<sup>32</sup> However, reports on petitions forming part of a report on another matter become orders of the day by default.

Members' orders of the day usually have precedence over Government orders of the day every second Wednesday sitting, when they are taken immediately after private and local orders of the day. However, Government orders of the day are always taken first if debates on the Address in Reply, the Prime Minister's statement, or the Budget are before the House. In those circumstances, private, local and Members' orders of the day are taken first on the following Wednesday sitting.<sup>33</sup>

## **Arrangement of orders of the day**

The rules for the arrangement of orders of the day on the Order Paper differ between Government orders of the day and other orders of the day.

As far as Government orders of the day are concerned, the Government may arrange them in any order it wishes on the Order Paper, subject to any Standing Orders requirement to the contrary.<sup>34</sup> For this purpose the Leader of the House's office advises the Clerk by 10.30 am each sitting day of the order of the business (usually bills) to be debated that day. The final Order Paper is published to reflect this advice, with the orders of the day listed numerically. However, for the Budget debate, the Address in Reply debate and the debate on the Prime Minister's statement (which are all Government orders of the day), the Standing Orders require that they be taken ahead of all other Government orders of the day.<sup>35</sup> Therefore, while one of these debates is still before the House it is automatically listed as the first Government order of the day.

Private and local orders of the day and Members' orders of the day relating to bills are arranged in their respective groups on the Order Paper, in descending order of the state of their progress through the House.<sup>36</sup> Bills for third reading have priority over other bills, and those awaiting their first reading are at the bottom of the list. If debate on a bill at a particular stage has been interrupted, that bill takes precedence over other bills at the same stage.<sup>37</sup> Consideration of interim reports on bills is set down after bills awaiting their second reading.

<sup>28</sup> SO 69.

<sup>29</sup> SO 71.

<sup>30</sup> SO 3(1).

<sup>31</sup> SO 250(3).

<sup>32</sup> SO 250(2).

<sup>33</sup> SO 76(2).

<sup>34</sup> SO 68.

<sup>35</sup> SOs 334(1), 353, and 355(2).

<sup>36</sup> SOs 70(1) and 72(1).

<sup>37</sup> SOs 70(2) and 72(2).

The order in which private, local and Members' bills at the same stage stand on the Order Paper can be changed by the House, or by a member exercising his or her right to postpone an order of the day. The order can also be changed by determination of the Business Committee, which has the right to decide the order of business to be transacted in the House.<sup>38</sup> If the Business Committee exercises this power, the Order Paper is arranged to reflect its determination, which takes effect notwithstanding any Standing Order to the contrary.<sup>39</sup> A note is made on the Order Paper that it is the consequence of a determination of the Business Committee.

### **Setting business down as an order of the day**

The Standing Orders provide that bills, following their introduction, are set down for first reading and, after each subsequent stage in their passing is complete, are set down for their next stage (as Government, private and local, or Members' orders of the day as the case may be).<sup>40</sup> At each stage an order of the day is created for the consideration of the bill at the particular stage it has reached. When members give notices of motions they wish to move, these are set down for consideration by the House as orders of the day.<sup>41</sup> The annual review debate on Crown entities, public organisations and State enterprises is set down as an order of the day.<sup>42</sup>

Most orders of the day are set down for consideration or further consideration on "the next sitting day". Setting business down for the next sitting day does not mean that it will actually be dealt with on the next day.<sup>43</sup> That will depend on what other business the House has before it and the priority it is given. But business that has been set down as an order of the day must appear on the Order Paper, and potentially may be transacted by the House that day.

### **Reaching orders of the day**

As orders of the day on the Order Paper are reached, the Speaker directs the Clerk to "call" them, which the Clerk does by reading the item as listed on the Order Paper. The appropriate motion is then moved by the member in charge of the order, or the debate resumes at the point at which it was interrupted, as the case may be. Where the House has set business down as an order of the day at a particular time, other business is automatically interrupted at that time to enable the House to move on to the appointed order of the day.

### **Postponement of orders of the day**

An order of the day may be postponed before it is reached. Postponement keeps the item of business on the Order Paper for the day, though for consideration at a later time than that at which it was originally to be considered. Postponement may be to a later time on the same sitting day, thus altering the order in which business is to be considered, or it may be to a subsequent day. But in any event the period of postponement must be clear. It cannot be for an unspecified or indefinite time.

The member in whose name an order of the day stands has the right to have it postponed by informing the Clerk accordingly, except in the case of an order of the day for the first reading of a Member's bill.<sup>44</sup> The member may nominate the day it is to be postponed to, otherwise it is postponed to the next sitting day. Such a notice takes effect when the Order Paper shows the order of the day in its new position. The member can thus only effectively postpone an order of the day in this way by informing the Clerk before the final Order Paper is published. After that time

<sup>38</sup> SO 79(b).

<sup>39</sup> SO 80(2).

<sup>40</sup> SOs 285(1)–(2), 296, 299 and 310.

<sup>41</sup> SO 99.

<sup>42</sup> SO 349(1).

<sup>43</sup> (1905) 134 NZPD 312–313 Guinness.

<sup>44</sup> SO 74(1)(b) and (3)(a).

business is transacted in the order set out on the Order Paper.<sup>45</sup> Where an order of the day has been postponed by the member in charge, this is noted on the Order Paper. An order of the day may also be postponed on motion.<sup>46</sup> Such a motion does not require notice and is moved immediately before the order of the day is called, since, if carried, it prevents the House reaching the order. The member in charge of the order has priority of call to move such a motion if he or she so wishes, but any other member may move to postpone an order if the member in charge does not wish to. The question for postponement is put forthwith without any amendment or debate.<sup>47</sup>

Finally, the Business Committee has the power to postpone an order of the day in determining the order of business to be transacted in the House.<sup>48</sup> When this happens, a note to this effect is recorded on the Order Paper. If an order of the day is postponed it becomes a new order of the day for the day or time to which it has been postponed. If an order of the day for the first reading of a Member's bill is postponed by determination of the Business Committee, the determination should specify how the new order of the day is to be arranged on the Order Paper when the postponement expires.<sup>49</sup>

### **Discharge of orders of the day**

An order of the day may be discharged either before it is reached or on being reached. Discharge of an order of the day is a means of finally disposing of the business to which the order relates. In the case of a bill, the bill is regarded as having been withdrawn.

### **Automatic discharge**

An order of the day is discharged if the member in whose name it stands (or another member on that member's behalf) fails to move a motion relating to it when it is called. In such a circumstance the order of the day is automatically discharged.<sup>50</sup> In addition, certain types of orders of the day are automatically discharged if they have not been considered by the House within a prescribed period of time. The order of the day for consideration of the report by a select committee on an inquiry, briefing or international treaty is discharged if it is not dealt with within 15 sitting days or within 15 sitting days of a Government response to its recommendations, as the case may be.<sup>51</sup> Members' notices of motion lapse one calendar week after their first appearance on the Order Paper,<sup>52</sup> and the orders of the day for them are consequently discharged.

### **Discharge by the member**

The member in charge of an order of the day has the right to have it discharged by informing the Clerk accordingly.<sup>53</sup> Such a notice is effective on being received by the Clerk, and the order of the day is consequently discharged at that point, unless the final Order Paper for the following sitting day has been published. In effect, this requirement imposes a deadline of 10.30 am for the receipt of such notifications on a sitting day. Notification by email is acceptable.

<sup>45</sup> SO 63.

<sup>46</sup> SO 74(1)(a).

<sup>47</sup> SO 74(2).

<sup>48</sup> SO 74(1)(c).

<sup>49</sup> SO 74(3)(b).

<sup>50</sup> See, for example: (6 September 1989) [1987–1990] 2 JHR 1695 (Abolition of the Death Penalty Bill); (1994) 545 NZPD 5512 (Far North District Council (Rating and Loans Validation) Bill); (1997) 561 NZPD 3101 (Urban Trees Bill); (21 April 2010) [2008–2011] 1 JHR 692–695 (select committee reports).

<sup>51</sup> SO 74(4).

<sup>52</sup> SO 100.

<sup>53</sup> SO 74(1)(b).

## Discharge on motion

An order of the day may be discharged on motion.<sup>54</sup> Such a motion does not require notice and is moved immediately the order of the day is called by the Clerk. Once the member in charge has moved a motion relating to the bill or other matter which is the subject of the order of the day, it is too late to move for the discharge of the order on that day.

A discharge motion may be a simple motion to discharge the order of the day, or a motion to discharge the order for the purpose of referring the bill that is the subject of the order to a select committee. As a simple discharge motion if carried would remove the business from being before the House altogether, only the member in charge of the order or another member with that member's consent can move for its mere discharge.<sup>55</sup> If other members wish the business to be withdrawn from the House's consideration, their proper course is to vote against the substantive motion on the bill or other matter, not to have the order of the day discharged. Otherwise they may approach the Business Committee.<sup>56</sup>

But other members can move to have the order of the day discharged for the purpose of referring the bill or other matter to a select committee for consideration. If the member in charge wishes to do this, he or she has priority of call to move such a motion.<sup>57</sup> No discharge motion can be moved to refer a bill to a committee if the House has accorded urgency to the passing of the bill.<sup>58</sup> Nor can such a motion give instructions extending the select committee's terms of reference in considering the bill, though it may restrict them. If the committee's terms of reference are to be extended (for example, by widening the scope of permitted amendments or allowing the committee to meet at times that would otherwise be prohibited) this must be accomplished by motion on notice.

No debate or amendment is permitted on a motion to discharge an order of the day.<sup>59</sup>

## Accelerating consideration of orders of the day

Business is set down for consideration as an order of the day on a particular day. Most orders of the day are available for consideration each day (though in a particular order) by virtue of having been previously set down for consideration on the next sitting day. But some orders of the day are set down for consideration further ahead than this.

A Government bill introduced on any sitting day becomes available for consideration on the next Tuesday on which the House sits.<sup>60</sup> However, a Government bill introduced on any working day that is not a sitting day becomes available on the third sitting day following its introduction.<sup>61</sup> A private, local or Member's bill becomes available for first reading on the third sitting day following.<sup>62</sup> Bills reported from select committees are set down as orders of the day for their next stage on the third sitting day following.<sup>63</sup> The House may also appoint a future sitting day more than one day ahead for consideration of an order of the day.

In these circumstances only the House, by leave or on motion with notice, can accelerate consideration of the order of the day.<sup>64</sup> In such circumstances it is likely

<sup>54</sup> SO 74(1)(a).

<sup>55</sup> (1992) 525 NZPD 8496–8507.

<sup>56</sup> SO 74(1)(c).

<sup>57</sup> (1994) 543 NZPD 3954 Tapsell.

<sup>58</sup> (1999) 580 NZPD 19128 Kidd.

<sup>59</sup> SO 74(2).

<sup>60</sup> SO 285(1)(a).

<sup>61</sup> SO 285(1)(b).

<sup>62</sup> SO 285(2).

<sup>63</sup> SO 296.

<sup>64</sup> See, for example: (26 July 2005) 627 NZPD 22028 (Smoke-free Environments (Exemptions) Amendment Bill).

that the proposal will have been raised and discussed at a meeting of the Business Committee.

### **Reviving orders of the day**

Where an order of the day has been discharged, whether automatically, by the member or by order of the House, it can only be revived by the House itself, either by leave or by motion on notice.<sup>65</sup>

In addition, there is an automatic revival of orders of the day not reached each day. The House does not expect to work its way through all the items on the Order Paper at one sitting. Rarely will the House progress beyond the first six or so orders of the day. Orders dealt with in the course of a sitting are set down as necessary when completed. Business interrupted at the adjournment of a sitting is expressly ordered by the Standing Orders to be set down for consideration on the next sitting day.<sup>66</sup> Orders not reached on any day are carried forward to the following day's Order Paper and placed on it by the Clerk in accordance with the Standing Orders without an express order of the House.<sup>67</sup> They are then available for rearrangement by the Government if they are Government orders of the day. If they are private and local orders or Members' orders, they are set down in the order in which they stood on the previous day's Order Paper. Most orders of the day are carried forward in this way from day to day until the House deals with them.

## **REINSTATEMENT OF BUSINESS**

All business before the House or a committee lapses on the dissolution or expiration of Parliament.<sup>68</sup> In this way the new Parliament has a clean slate. It is not burdened with work in progress left over from the old Parliament, and can set its own agenda.<sup>69</sup> However, in setting this agenda, the new Parliament may wish to pick up business that was under consideration in the old Parliament. It does this by reinstating such business.

Business which has lapsed may be reinstated in the next session of Parliament, which will be the first session of the new Parliament.<sup>70</sup> Only business that has lapsed because of the dissolution or expiration of Parliament can be reinstated.

Reinstatement is effected by the House resolving in the next session that the business specified in the motion be reinstated.<sup>71</sup> Notice of motion is required. It has become the practice for the House to reinstate all of the business it wishes to resume in a single motion, but it can be done piecemeal in several motions moved at different times, provided they are all moved in the first session of the new Parliament. An opportunity to reinstate business is provided on the day of the State Opening of Parliament. If a notice of motion for reinstatement is given by the Government on the previous sitting day (Commission Opening), the House can deal with any Government order of the day for reinstatement before adjourning that day.<sup>72</sup> But this opportunity need not be utilised. Reinstatement can be addressed at any later time. To allow the House time to consider whether to reinstate business, proceedings of select committees that were confidential on the dissolution or expiration of the previous Parliament remain confidential for nine sitting days in the new Parliament.<sup>73</sup> If such business is reinstated or readopted by the committee

<sup>65</sup> See, for example: (20 September 1989) [1987–1990] 2 JHR 1775–1778 (Abolition of the Death Penalty Bill).

<sup>66</sup> SO 51(1).

<sup>67</sup> SO 73.

<sup>68</sup> Constitution Act 1986, s 20(1)(b).

<sup>69</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 15.

<sup>70</sup> Constitution Act 1986, s 20(1)(b).

<sup>71</sup> Constitution Act 1986, s 20(2).

<sup>72</sup> SO 14(1)(e).

<sup>73</sup> SO 241(1).

(in the case of business initiated by the committee itself) within this time, the confidentiality continues, otherwise it lapses at the end of the ninth sitting day.<sup>74</sup>

Reinstatement of an item of business automatically reapplys any obligation flowing from that item, such as the Government's obligation to respond to any recommendations in the report of a select committee that is reinstated as an order of the day.

Reinstated business is resumed at the stage it had reached in the previous Parliament.<sup>75</sup> This means that if a bill that has been reinstated was subject to a stand-down period before it could be considered at its next stage (for example, bills awaiting first reading and second reading must remain on the Order Paper for three sitting days), the stand-down period continues to apply when the bill is reinstated. No time runs in respect of reinstated business between the dissolution or expiration of Parliament and the date on which that business was reinstated. Thus, in calculating the 60-working-day period within which the Government must respond to recommendations in a reinstated select committee report, the period between the dissolution and the date of reinstatement is excluded. A similar principle applies to other reinstated business, for example regarding the time for reporting back on bills and on annual review. In practice, however, the House may decide to fix an entirely new timeframe for reporting back on such business to take account of the hiatus in parliamentary activity resulting from the general election.

## BUSINESS COMMITTEE

### Background

The new Standing Orders for the 45th Parliament, the first to be elected under the mixed member proportional (MMP) system, provided for a Business Committee to be established. The multi-party environment created by MMP meant that managing parliamentary business became more complex. The new Business Committee was to be a forum for discussion among the parties represented in the House as to the organisation of the business to be transacted, which could help to direct the flow of the House's work and spread information among members as to its management.<sup>76</sup>

For the 50th Parliament, the powers of the Business Committee were widened to provide incentives for more engagement between parties on the way business would be dealt with by the House, with the aim of using the House's time more effectively on the scrutiny and passage of legislation, and to provide opportunities for members to debate matters that were important to them. Parties were encouraged to be imaginative in their negotiations.<sup>77</sup>

### Establishment

The Business Committee is a committee of the House, but it is established in a different way from other select committees and its working practices are quite different. The Business Committee is convened by the Speaker, who is ex officio the chairperson of the committee.<sup>78</sup> The convening of the committee involves more than just the Speaker appointing a date and time for its first meeting; he or she must also establish who, from the parties represented in the House, are to be their members on the committee. These names must be given to the Speaker.<sup>79</sup> The practice has developed for the Speaker to set the first meeting of the Business

<sup>74</sup> SO 241(2).

<sup>75</sup> SO 83.

<sup>76</sup> Standing Orders Committee Review of Standing Orders (13 December 1995) [1993–1996] AJHR I.18A at 20.

<sup>77</sup> Standing Orders Committee Review of Standing Orders (27 September 2011) [2008–2011] AJHR I.18B at 9.

<sup>78</sup> SO 77(1).

<sup>79</sup> SO 77(3).

Committee down for the day of the Commission Opening, following his or her confirmation as Speaker.

## **Membership and participation**

A member of the Business Committee is a party representative, explicitly, and more so than those on other committees. Furthermore, membership of the committee is a fluctuating concept. It relates to each meeting of the committee rather than being an ongoing status. Every party recognised as a party for parliamentary purposes,<sup>80</sup> regardless of its size, is entitled to be represented at each meeting of the committee.<sup>81</sup> However, independent members are not members of the committee. In practice, at the commencement of the Parliament each party is asked to nominate a member or members to represent it at meetings, but representatives may change from meeting to meeting. Larger parties are often regularly represented by two or three members at meetings of the committee.

The “core” membership, in addition to the Speaker, consists of the Leader of the House, the shadow Leader of the House and the party whips, or in the case of parties with only one or two members, the leader. Other individual members attend and participate from time to time when a particular bill or other item of interest to them is under discussion. The committee rarely hears from officials, though it has done so to help it devise special committee-stage procedures for a complex piece of legislation.

The committee usually meets in the Speaker’s office each Tuesday afternoon while the House is sitting. It rarely meets more than once each week. Meetings are brief, usually lasting less than half an hour.

## **Basis of decision-making**

The Business Committee is unique among the House’s committees in that it does not vote on matters before it. The fact that votes are not taken is one reason it can be relaxed about its membership and the participation of members in its deliberations, and why the strict numerical quorum requirements for other select committees are not applied. It can take decisions only on the basis of unanimity or, if this is not possible, “near-unanimity”, which means agreement has been given on behalf of the overwhelming majority of members of Parliament.<sup>82</sup> This requirement of unanimity or near-unanimity applies to all business transacted by the committee.

Members represent and speak for their parties at the Business Committee. Each party’s opinion as expressed at the Business Committee carries the weight of the party’s representation in the House as a whole. If parties representing the overwhelming majority of members of Parliament agree at the Business Committee to a certain course of action, the dissent of one or two parties representing only a small fraction of the membership of the House will not be taken to have prevented the committee from making a decision.<sup>83</sup>

The Speaker is made the judge of whether unanimity has been or can be reached and, if not, whether there is near-unanimity and thus an effective determination by the committee.<sup>84</sup> Before concluding that near-unanimity exists, the Speaker must be satisfied that, having regard to their numbers in the House, a proposed determination is fair to all parties and does not discriminate against or oppress a minority party or parties.<sup>85</sup> It would be unusual for near-unanimity to be

<sup>80</sup> SO 34(1).

<sup>81</sup> SO 77(2).

<sup>82</sup> SO 78(1).

<sup>83</sup> SO 78(1)–(3).

<sup>84</sup> SO 78(2).

<sup>85</sup> SO 78(3).

recognised in the face of objection by a number of smaller parties.<sup>86</sup> The Speaker has held that there was near-unanimity, and therefore an effective decision made by the committee, where only a party representing four out of the 99 members of Parliament dissented from the proposal.<sup>87</sup> In practice, it is rare for the Speaker to be called upon to make such a judgement. Either agreement is reached or it is clear that there is not consensus, and therefore the committee is unable to make a decision. But to participate in a decision, a party must actually attend the committee's meeting and express its view. Unanimity or near-unanimity is judged on the basis of the views expressed at meetings of the Business Committee. If a party representative does not attend, that party's views go by default.

## Powers and functions

The Business Committee has the power to determine a number of matters:

- a minor adjustment to the hours of a specified sitting day<sup>88</sup>
- the extension of a sitting of the House<sup>89</sup>
- the taking of oral questions at any time during a sitting extended by urgency<sup>90</sup>
- the discharge or postponement of an order of the day<sup>91</sup>
- the order of business to be transacted in the House<sup>92</sup>
- when business may be transacted in the House<sup>93</sup>
- the time to be spent on an item of business<sup>94</sup>
- that any two or more items of business be taken together for the purpose of debate<sup>95</sup>
- how time on an item of business is to be allocated among parties represented in the House<sup>96</sup>
- the speaking times of individual members on an item of business<sup>97</sup>
- approving a member attending other official business as present in the House on a sitting day<sup>98</sup>
- the size of each select committee<sup>99</sup>
- appointments of members to select committees<sup>100</sup>
- appointing and removing non-voting members from select committees<sup>101</sup>
- permanent changes to select committee membership<sup>102</sup>
- authorising committees to consider bills or Supplementary Order Papers not otherwise referred to them<sup>103</sup>
- permission for committees to meet outside Wellington during a sitting<sup>104</sup>
- setting select committee reports on petitions down as Members' orders of the day and selecting Members' orders for debate<sup>105</sup>
- allowing omnibus bills to be introduced<sup>106</sup>

<sup>86</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 9.

<sup>87</sup> (1996) 557 NZPD 14359 Tapsell.

<sup>88</sup> SO 79(a).

<sup>89</sup> SO 56(1)(b).

<sup>90</sup> SO 59(2).

<sup>91</sup> SO 74(1)(c).

<sup>92</sup> SO 79(b).

<sup>93</sup> SO 79(c).

<sup>94</sup> SO 79(d).

<sup>95</sup> SO 79(e).

<sup>96</sup> SO 79(f).

<sup>97</sup> SO 79(g).

<sup>98</sup> SO 37(1)(c), (2).

<sup>99</sup> SO 185(2).

<sup>100</sup> SOs 185(3) (full membership) and 186(1) (non-voting membership).

<sup>101</sup> SO 186.

<sup>102</sup> SO 187(2).

<sup>103</sup> SO 189(3).

<sup>104</sup> SO 193(a).

<sup>105</sup> SO 250(2), (4).

<sup>106</sup> SO 263(c).

- extending the reporting times of bills<sup>107</sup>
- how a committee of the whole House will consider a bill and extending or restricting the committee's powers regarding its consideration<sup>108</sup>
- omitting the committee stage of bills and determining that the Clerk divide such bills in the manner set out in a Supplementary Order Paper<sup>109</sup>
- deciding the order in which votes and annual reviews are to be considered and how long is available for considering them<sup>110</sup>
- deciding the weekly allocation and order of oral questions<sup>111</sup>
- any other matters delegated to the committee under Standing Orders.<sup>112</sup>

When the Business Committee reaches agreement on one of these matters there is a Business Committee "determination" and it takes effect automatically upon publication. A determination does not require confirmation or endorsement by the House, and it applies notwithstanding any Standing Order to the contrary.<sup>113</sup>

On the day of each Business Committee meeting, a draft of each determination made at the meeting is circulated to the members who attended for their confirmation of the draft's accuracy. If there is no dispute as to the accuracy of the recorded determination, the determination is published by email to all members, and on the Parliament website, at 9.00 am on the following day. Determinations are listed in the *Parliamentary Bulletin*. Determinations relating to business before the House are also noted on the Order Paper. A determination takes effect on publication and circulation to all members. Determinations usually concern how a particular bill or item of business is to be dealt with, but they can be more general, relating to the way a class of business is to be dealt with.<sup>114</sup>

The Business Committee does not discuss and deal only with matters on which it has the power to make binding determinations. It discusses other matters too. They cannot result in binding determinations by the committee, but they may lead to leave being taken in the House after facilitation by discussion at the Business Committee and general agreement having been obtained there to the course of action proposed. Matters that may be discussed in this way include anything outside the formal powers of the committee as outlined above. Thus, the committee may discuss matters such as extensions of proxy voting, relaxing the rules on giving notice of motion, expediting consideration of orders of the day, and committees meeting during urgency or at times prohibited by the Standing Orders. A staple item on the committee's agenda is the forthcoming business of the House. For this purpose the Leader of the House is expected to outline the Government's intentions with its programme so that members will have a reasonable time to prepare themselves for the debates likely to take place over the coming week.

Where it is practicable, the Government advises the Business Committee which bills are intended by the Government to be considered in committee in the next week in which the House sits. Such advice is noted on the Order Paper unless the Business Committee agrees otherwise. Any notification given in the Business Statement of the forthcoming consideration of bills in committee is also noted on the Order Paper.<sup>115</sup>

The Business Committee also has the annual function of recommending a programme of sitting days for the following year.<sup>116</sup> (See pp 190–191.)

<sup>107</sup> SO 295(2).

<sup>108</sup> SO 301(1).

<sup>109</sup> SOs 299 and 309(4).

<sup>110</sup> SO 350(3).

<sup>111</sup> SO 381(2).

<sup>112</sup> SO 79(h).

<sup>113</sup> SO 80(2).

<sup>114</sup> See, for example: Business Committee determination for 17 September 2002 (relating to the time limits for speeches on the first reading of Members' bills).

<sup>115</sup> SO 301(3).

<sup>116</sup> SO 81(1).

While many Business Committee decisions are self-executing in the sense that they have automatic effect, the Business Committee is a committee of the House. Its decisions are therefore always liable to be countermanded by the House, provided that the House follows the appropriate procedures to do so. Thus the fact that urgency will override decisions on the order of business previously taken by the Business Committee cannot prevent the House taking urgency if it is so inclined.<sup>117</sup>

## **ORDER OF BUSINESS ON PARTICULAR DAYS**

The precise order in which business is transacted differs depending upon the day on which the House is sitting. In particular, Wednesday sittings have rules peculiar to them, for on alternate Wednesdays throughout the session backbench members' business takes precedence over Government business.

### **Tuesdays and Thursdays**

On Tuesdays and Thursdays the House transacts general business first and, at the conclusion of general business, proceeds to Government orders of the day.<sup>118</sup> The precise time at which the House reaches Government orders of the day depends largely upon whether the Speaker has allowed an application for an urgent debate. If there is no urgent debate, Government orders of the day are likely to be reached between 3 pm and 3.30 pm. If there is an urgent debate they will not be reached until after 4.30 pm. A debate on a Privileges Committee report will also result in delay in reaching Government orders of the day, but such a debate is uncommon.

### **Wednesdays**

On Wednesdays, general business is taken first. The general rule is then that private and local orders of the day and Members' orders of the day take precedence over Government orders of the day every other Wednesday.<sup>119</sup> General business on a Wednesday includes the general debate, so the time at which the House reaches orders of the day on a Wednesday will always be later than on other days. If no urgent debate has been allowed, orders of the day will be reached at or after 4 pm. If there is an urgent debate, orders of the day will not be reached until after 5.30 pm.

Government orders of the day are always taken ahead of other orders of the day while the Address in Reply debate, the debate on the Prime Minister's statement and the Budget debate are still before the House. Precedence for private and local orders of the day and Members' orders of the day is, in these circumstances, postponed until the next free Wednesday, when alternation resumes.<sup>120</sup> In addition, no general debate is held while these debates are running.<sup>121</sup> Consequently, on Wednesdays in these weeks, the House will reach Government orders of the day at much the same time that it does on a Tuesday and a Thursday.

### **Other days**

On any other day appointed to be a sitting day in its own right the rules for Tuesdays apply. General business is followed by Government orders of the day.<sup>122</sup>

---

<sup>117</sup> (1997) 558 NZPD 530 Kidd.

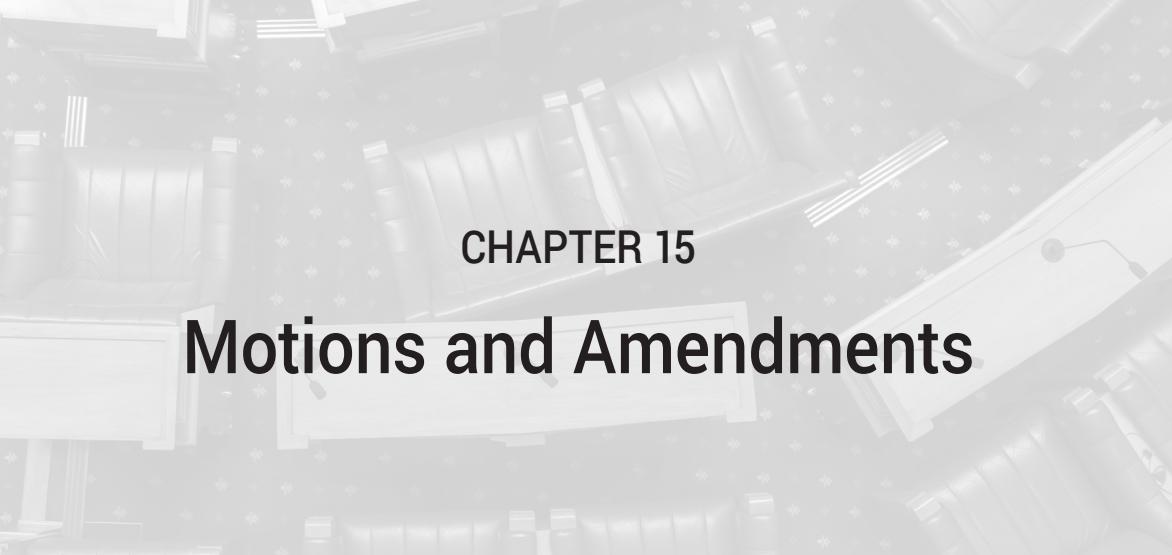
<sup>118</sup> SO 75.

<sup>119</sup> SO 76(1).

<sup>120</sup> SO 76(2).

<sup>121</sup> SO 392(3).

<sup>122</sup> SOs 47 and 75.



## CHAPTER 15

# Motions and Amendments

### HOUSE'S USUAL METHOD FOR CONSIDERING BUSINESS

The casual viewer of the House is most likely to catch it debating a matter; that is, discussing a particular subject by way of speeches from individual members. The habitual method by which the House proceeds with its business is to have a proposition for consideration placed before it by a member, to consider the proposition by discussing its pros and cons, and finally to decide whether a majority of the House agrees with it. There are other methods of proceeding that do not fall into this general pattern (including purely formal procedures such as the presentation of petitions and papers) and other ways of communicating information (such as the question procedure and making statements), but the overwhelming bulk of the House's work is transacted through debates and decisions on proposals. For example, this is how the House considers legislation, both financial and general, during its passage; it is how it considers reports from its select committees, and how it gives instructions to itself, its committees or its members (for example, instructions to either adjourn or meet at a particular time). The process of debate and decision-making in the House is described in this and the following two chapters.

### MOTIONS

A proposition brought before the House for its consideration is called a *motion*. The Standing Orders and other rules of procedure regulate the proposing of motions to ensure that only one motion is under consideration by the House at any one time, and that particular types of motions are moved in the House at particular times in the parliamentary day.

A motion must be worded in a way that is suitable for it to become a resolution of the House. In general, motions are debatable and can be amended, but there are several exceptions to this pattern, as explained below. Many motions require a preliminary step to be taken before they can be brought before the House. This involves giving the House warning of a member's intention to propose the motion—that is, giving *notice* of motion. Particular rules are set out for the form and contents of notices of motion, and motions moved in the House without notice are not exempt from these requirements. For example, the Speaker would not permit a motion with unparliamentary content.

## NOTICE OF MOTION

The House requires notice to be given of a member's intention to move most types of motion.<sup>1</sup> In this way, members are informed of the text of the motion, which is printed on the Order Paper, and so are not required to make a snap judgement as to its merits. They can consider and research the implications of the motion before they are asked to agree to it.

### Giving notice of motion

A member gives a notice of motion by delivering a written copy of the motion, signed by the member concerned, to the Clerk.<sup>2</sup> Such notices can be lodged only on a sitting day between 9 am and 10 am, although in practice a notice received earlier will be held and considered lodged at 9 am on the sitting day. There is no requirement for personal delivery by a member, and delivery is often effected by a staff member. The notice must be signed by the member giving it or by another member on that member's behalf. A notice signed on behalf of a member by a person who is not a member of Parliament is not acceptable.

### Form and content of notices

The Speaker is responsible for vetting and accepting notices of motion, though in practice the process is undertaken by the Office of the Clerk. The rules for the form and content of notices of motion are set out in the Standing Orders. A notice is a proposed motion. If adopted by the House, it would express the House's will or opinion on a subject. It must, therefore, be drafted in a form suitable for such an expression of will or opinion by the House.<sup>3</sup> It must have an internal logic, even if one may disagree with the premises on which its conclusion is based. An entirely illogical and incoherent notice of motion is not permitted.

Only one issue may be raised for debate in each notice. The issue must be clearly indicated and supported only by such facts as are necessary to identify it.<sup>4</sup> The inclusion of facts or supporting matter in the notice is limited to essentials. This is a reminder that the proper place to argue the case for the motion is in the subsequent debate, not in the motion itself. The "one issue" requirement is always difficult to police. A notice raising clearly disparate issues would be out of order. But there may be a number of facets to an issue, which makes any judgement on this requirement a question of degree.

All facts set out in a notice must be authenticated. This does not mean that they must be proved to be correct. The member must provide an extract from a newspaper, website or other source supporting the facts that are stated in the notice. If this is done, the assertion will be accepted as having been authenticated.<sup>5</sup> Evidence submitted will be accepted at its face value as being submitted in good faith, and no further steps will be taken to examine its validity. If the evidence substantiates the statement of fact in the notice, it is accepted.<sup>6</sup> The underlying truth or falsity of the statement is a matter to be canvassed in the subsequent debate on the subject.<sup>7</sup> Not all assertions contained in notices are regarded as statements of fact requiring to be authenticated.<sup>8</sup>

A notice of motion should not contain any person's name unless this is strictly necessary to render the motion intelligible.<sup>9</sup> There is a similar rule regarding

<sup>1</sup> SO 97.

<sup>2</sup> SO 98(1).

<sup>3</sup> SO 101(1).

<sup>4</sup> SO 101(1).

<sup>5</sup> (1979) 422 NZPD 179 Harrison.

<sup>6</sup> (1982) 445 NZPD 1611 Harrison.

<sup>7</sup> (1975) 400 NZPD 3912 Hunt (Acting Speaker).

<sup>8</sup> (1981) 437 NZPD 319–320 Harrison.

<sup>9</sup> SO 101(2)(b).

the inclusion of the names of persons in parliamentary questions. The extent to which members involve named individuals in their proceedings is largely over to them, but the House requires that, in motions and questions at least, members not introduce the name of a person unless this can be shown to be essential to the point of the motion or question.

Notices of motion cannot contain anything that would not be permitted in the course of debate.<sup>10</sup> Into this catch-all prohibition fall transgressions such as using unparliamentary expressions, and any other type of reference that would be ruled out of order if used in debate. It is specifically provided that a motion (and hence a notice of motion) cannot refer to a matter awaiting adjudication before any New Zealand court or suppressed by a court order, unless the Speaker decides otherwise.<sup>11</sup> (See pp 233–236.)

## Publication of notices

A notice of motion is given so that members of Parliament will know that the motion has been proposed. If a notice complies with the Standing Orders, copies of it are placed on the Table in the House when the House meets at 2 pm.<sup>12</sup> Copies of each day's notices are also made available in the Office of the Clerk at 2 pm. Once a notice has been made available at the Table it is set down as an order of the day for the next day on which the House sits.<sup>13</sup>

A notice of motion can be moved only after it has been published on the Order Paper,<sup>14</sup> although the lodging of a notice of motion does not prevent a member seeking leave of the House for the motion to be considered “without notice” before it is published. Notices of motion are set out on the Order Paper according to whether they are Government notices of motion or Members’ notices of motion.

## Government notices of motion

Any notice of motion given by a Minister becomes a Government notice of motion regardless of whether its content is related to the Minister’s portfolio or delegated responsibilities.<sup>15</sup> Government notices of motion remain on the Order Paper as Government orders of the day until dealt with or withdrawn. For a Government notice of motion that there is no intention to debate in the House, it is usual for the Office of the Clerk to arrange with the Minister who has given the notice a date on which it is to be withdrawn.

Whether and when Government notices of motion are dealt with depends upon the priority given to them by the Government in arranging its business on the Order Paper. Government notices of motion appear on the Order Paper below all other Government orders of the day until such time as the Leader of the House indicates that a notice of motion should be placed in a higher position.

Some Government notices relate to the sittings of the House or the management of the Government’s programme of business in the House. Others are of a congratulatory nature, similar to many Members’ notices. Occasionally a Government notice of motion will be given relating to an aspect of Government policy.<sup>16</sup>

<sup>10</sup> SO 101(2)(a).

<sup>11</sup> SO 115(1).

<sup>12</sup> SO 99.

<sup>13</sup> SO 99; (16 September 2004) 620 NZPD 15736 Hunt.

<sup>14</sup> SO 97.

<sup>15</sup> SO 3(1).

<sup>16</sup> Examples occurred in 1985, when a Government notice of motion was lodged urging the New Zealand Rugby Football Union not to accept an invitation for an All Black tour of South Africa (Order Paper, 28 March 1985); in 2000, when the Government gave a notice of motion asking the House to take note of a select committee report on the closer economic partnership agreement with Singapore (Order Paper, 7 November 2000); and in 2007, when a Minister moved a motion to endorse an increase in the Family Tax Credit ((27 March 2007) [2005–2008] 1 JHR 593–594).

## Members' notices of motion

A Member's notice of motion is a notice of motion lodged by a member who is not a Minister.<sup>17</sup> Members' notices of motion are placed on the Order Paper below Government notices of motion, and are kept there for only a limited time. Notices given by non-Ministers are removed from the Order Paper if the House has not considered them within one calendar week from the date of their first appearance on the Order Paper.<sup>18</sup> This means that Members' notices of motion appear on the Order Paper for three sitting days at most. An exception is made in the case of a notice for the disallowance of a disallowable instrument, if the notice is given by a member of the Regulations Review Committee. Such a notice is not struck off the Order Paper after a week but remains there to be dealt with while the statutory provisions for disallowance of disallowable instruments continue to run.<sup>19</sup>

While a high proportion of Government notices of motion are dealt with by the House, very few Members' notices are. Those that are dealt with are considered because they fall into the category of non-controversial motions of condolence or congratulation that the House by leave permits to be moved. Members' notices of motion, as Members' orders of the day, have too low a priority in the House's order of business to be reached in practice. However, many Members' notices of motion are lodged despite the remote prospect that they will actually be reached, simply so they can appear on the Order Paper. This provides an official channel for publishing members' congratulations or condolences.

## Withdrawal of notices

A notice of motion can be withdrawn by the member who lodged it at any time before it is made available to members in the Chamber at 2 pm. In such a case copies of the notice are not distributed by the Office of the Clerk. As an order of the day, a notice of motion that has been given may subsequently be withdrawn by the member informing the Clerk.<sup>20</sup> In any case, the member who gives a notice of motion is not obliged to move it when it is reached, and it disappears from the Order Paper if not moved by the member.

## Giving notice about motions relating to stages of legislation

The passage of a bill through the House requires a sequence of motions to be moved at successive stages. Notices are not lodged for these motions, but members are pre-warned of them by other means. At the conclusion of each stage of a bill, the Speaker announces that the bill is set down for consideration of its next stage. Ordinarily the ensuing stage of consideration is set down for the "next sitting day".<sup>21</sup> This means that the next stage for the bill will be shown on the Order Paper for the following sitting day (although it will not necessarily be dealt with on that day), and reflects the important principle that legislation should normally proceed only one stage at a time through the House's deliberative process.

## Motions not requiring notice

The general rule is that all motions require notice before they can be moved, but this is subject to any Standing Order or practice of the House to the contrary.<sup>22</sup> There are numerous exceptions to the requirement for notice.

<sup>17</sup> SO 3(1).

<sup>18</sup> SO 100.

<sup>19</sup> SO 321. See Chapter 28.

<sup>20</sup> SO 74(1)(b).

<sup>21</sup> This formula varies in some circumstances, for example if a bill is able to proceed through more than one stage on a sitting day following the passing of an urgency motion, or in accordance with the Standing Orders or a determination of the Business Committee. A bill also is not set down for "the next sitting day" if it is subject to a stand-down period after introduction or following the report of a select committee.

<sup>22</sup> SO 97.

In many instances the Standing Orders expressly allow particular motions to be proposed without notice, creating exceptions to the general rule. Examples include motions to suspend Standing Orders,<sup>23</sup> for extended sitting hours,<sup>24</sup> to accord urgency or extraordinary urgency,<sup>25</sup> or to end debates (“closure motions”).<sup>26</sup> In each of these cases, additional requirements must be fulfilled before the motions will be put, as set out below. Other kinds of motions that can be moved without notice include, for example, motions to discharge or postpone orders of the day,<sup>27</sup> instructions to committees,<sup>28</sup> and other procedural motions such as those for the adjournment of debate,<sup>29</sup> reporting from a committee of the whole House,<sup>30</sup> to recall the Speaker,<sup>31</sup> or to appoint an acting Chairperson.<sup>32</sup>

Certain other types of motion, although not expressly dealt with by the Standing Orders, have been ruled not to require notice:

- motions altering the time fixed for the next sitting of the House<sup>33</sup>
- motions dealing with the meetings of select committees during the current sitting of the House.<sup>34</sup>

Motions acknowledging communications to the House of a formal nature are also moved without notice, subject to the Speaker’s duty to ensure that this is appropriate. Thus, replies from the Crown to addresses are usually ordered to be entered in the *Journals* by motions moved without notice.

Otherwise, leave of the House is necessary to dispense with the requirement to give notice of motion.

## MOTIONS WITH SPECIAL REQUIREMENTS

Specific rules apply to many motions. Most of these exceptions relieve certain types of motions from requirements such as the need for notice or debate, or preclude members from moving amendments.

On the other hand, a few motions incur additional requirements before the Speaker will permit them to be dealt with by the House. Some procedural motions, while exempted from amendment or debate, have particular conditions. For example, motions for extended sittings require prior warning to the Business Committee.<sup>35</sup> An urgency motion cannot be moved until general business is completed, and must be accompanied by an explanation of the circumstances warranting the according of urgency.<sup>36</sup> A closure motion must be moved using a prescribed set of words, and will not be accepted unless the presiding officer considers it reasonable at the time.<sup>37</sup> An instruction to a select committee on a bill cannot be moved unless it has been foreshadowed on the commencement of the speech of the member moving the first reading.<sup>38</sup> Many procedural motions can be moved only by Ministers, or by other members only when acting in their capacity as sponsors of items of business before the House.

<sup>23</sup> SO 4(1) and (2).

<sup>24</sup> SO 56(1)(a).

<sup>25</sup> SOs 57(1) and 60(1).

<sup>26</sup> SOs 136 and 137.

<sup>27</sup> SO 74(1)(a).

<sup>28</sup> SOs 176 and 290.

<sup>29</sup> SO 133.

<sup>30</sup> SOs 181 and 183.

<sup>31</sup> SO 178.

<sup>32</sup> SO 172(2).

<sup>33</sup> (1932) 231 NZPD 68 Statham; (2000) 586 NZPD 4568–4569 Hunt.

<sup>34</sup> (1927) 215 NZPD 559–560.

<sup>35</sup> SO 56(2)(d); see Chapter 13.

<sup>36</sup> SO 57; see Chapter 13.

<sup>37</sup> SO 136; see Chapter 16.

<sup>38</sup> SO 287; see Chapter 26.

## Motions to suspend Standing Orders

Of all procedural motions, perhaps the most noteworthy are motions for the suspension of Standing Orders. When an intended course of action is not permitted under the Standing Orders, the usual approach is to seek consensus, either by leave of the House or through a determination of the Business Committee. Where consensus cannot be reached, however, the Government (or a member in charge of an item of business) may seek to move a motion to suspend a provision or provisions in the Standing Orders. Suspension of the Standing Orders may be for an indefinite period (in which case it lasts until the end of the parliamentary term or session), for a limited period,<sup>39</sup> or only in respect of a particular item of business.<sup>40</sup>

The constitutional importance of the Standing Orders, and of the balance of interests that they represent, is recognised by constraining the setting aside of these rules. (See Chapter 2.) The motion may be moved with or without notice, but if it is moved without notice there must be at least 60 members present when it is moved.<sup>41</sup> A motion to suspend Standing Orders cannot interrupt a debate that is in progress, and is not subject to amendment.<sup>42</sup> The suspension of Standing Orders can be moved while the House is sitting under urgency provided that the suspension is confined to the business for which urgency was taken.

Generally, a motion to suspend Standing Orders may be moved only by a Minister, but it can be moved by another member to permit some bill, clause or other matter of which the member has charge to proceed or be dealt with without full compliance with the Standing Orders.<sup>43</sup> This does not mean that members may move the suspension of Standing Orders merely to obtain more favourable procedures for the passing of a bill or other matter of which they have charge. The bill or other matter must actually be prevented by a Standing Order from proceeding further. In these circumstances the member can then move a motion designed to remove whatever prevents the bill from proceeding or causes it not to be dealt with.

A motion to suspend the Standing Orders must itself state the object or reason for the proposed suspension,<sup>44</sup> although it does not need to specify the particular Standing Orders that are to be suspended. Similarly, it is not essential (although it is desirable) for a motion to state explicitly that the Standing Orders are to be suspended if it is clear that this is its intention. Even where the specific Standing Order to be suspended is not identified in the motion, such a motion is not regarded as proposing the suspension of all Standing Orders, only those it is reasonably necessary to suspend to enable the House to proceed in the way it is asked to proceed in the motion.<sup>45</sup>

There is no specified time limit on the debate on a motion to suspend the Standing Orders. Individual speeches may be up to 10 minutes long. As in any debate, it must be relevant to the motion, in this case the suspension of certain Standing Orders for a particular purpose. There can be no general discussion of the Standing Orders on a motion to suspend particular Standing Orders.<sup>46</sup>

## Motions for statutory procedures

Occasionally the House passes motions in fulfilment of statutory obligations or in the exercise of statutory powers. The House is bound by the law,<sup>47</sup> and the Speaker

<sup>39</sup> (30 April 2003) [2002–2005] 1 JHR 558 (Standing Order suspended for eight months).

<sup>40</sup> (8 August 2007) [2005–2008] 2 JHR 735 (Standing Order suspended to permit omnibus amendments).

<sup>41</sup> SO 4(1), (2).

<sup>42</sup> SO 4(3), (4).

<sup>43</sup> SO 5.

<sup>44</sup> SO 4(3).

<sup>45</sup> (1981) 442 NZPD 4310 Harrison.

<sup>46</sup> (1903) 125 NZPD 529, 601 Guinness.

<sup>47</sup> (2002) 599 NZPD 15690 Hunt. See Chapter 2.

superintends the House's transaction of statutory procedures so as to take account of the particular legal requirements that apply in each case.<sup>48</sup> For example, in the case of statutory appointments to be recommended by the House, the statute may impose restrictions on who may be appointed or requirements as to the consultation to be undertaken. Conversely, a motion for the removal of an officer, such as a judge, may require certain preconditions to be met before it will have legal effect.<sup>49</sup> The Speaker will rule a notice of motion out of order if it is for an appointment or removal of an officer but necessary legal requirements have not been satisfied.<sup>50</sup> However, while the Speaker would prevent the moving of a motion if a required procedural step, such as consultation, had not been taken, the Speaker generally has no statutory role to judge the quality or extent of the action taken. The Speaker seeks the assurance of the member who intends to move the motion, but otherwise does not participate in the statutory process.<sup>51</sup> Any amendment that would cause the motion not to comply with statutory requirements is inadmissible (see below).

## MOVING OF MOTIONS

A motion is proposed to the House by a member *moving* it and thus formally putting the proposition that it expresses before the House, so that ultimately it may be adopted or rejected. If the motion is one of which notice has been given, at the appropriate point in the sitting the Speaker will call upon the member who gave the notice to move it. In the case of a bill, the Speaker directs the Clerk to announce the particular stage of the bill that is to be debated, and then the Speaker invites the member in charge of the bill to move the appropriate motion. With other motions that do not require notice, the member seeking to move a motion raises a point of order to request the Speaker's permission to speak, preferably after intimating privately to the Chair what course is intended. In most of these cases only a restricted class of members, usually Ministers, can move such motions without leave of the House. Members wishing to move amendments must first seek the right to speak in the debate in the normal way.

If the mover of a motion has a right to make a speech in support of the motion (not all motions are debatable), the motion is moved formally at the commencement of the speech. Where the terms of the motion are set out on the Order Paper, the member might not recite them at all in the speech, being content with informing the House that the motion is moved as set out on the Order Paper. A member is not obliged to read out the whole motion as it appears on the Order Paper.<sup>52</sup>

If the member intends to speak to the motion he or she must proceed immediately to the speech after moving the motion. Once the member sits down after moving a motion, the member's right to speak is ended.<sup>53</sup>

### Moving on behalf of another member

It is permissible for a member to move a motion on behalf of a colleague who is absent from the Chamber, provided that the member has the authority of that colleague to do so.<sup>54</sup> For this purpose members do not have to state that they have authority to act on behalf of other members, but if it is challenged, the Speaker will ask for an assurance of their authority.

A member cannot move a motion on behalf of a colleague that he or she could not move in his or her own right. Thus, Ministers have an absolute authority to

<sup>48</sup> (1909) 148 NZPD 1452 Guinness.

<sup>49</sup> See, for example: Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, ss 33 and 34.

<sup>50</sup> (1997) 560 NZPD 2023 Kidd (consultation not carried out as required).

<sup>51</sup> (24 February 2015) 703 NZPD 1838 Carter.

<sup>52</sup> (1992) 531 NZPD 12646 Gerard (Deputy Speaker).

<sup>53</sup> (1996) 556 NZPD 13643 Tapsell.

<sup>54</sup> (1906) 137 NZPD 19 Guinness; (1997) 558 NZPD 96 Kidd.

act for other absent Ministers;<sup>55</sup> but a non-Minister cannot act for a Minister—a Government motion must be proposed to the House by one of the Crown's responsible advisers. Conversely, a Minister cannot move a Member's bill on behalf of a member. While generally a Minister or member may act for another member only if the latter is physically absent from the Chamber, it is well established that a member can act for the Speaker in the Speaker's presence—for example, moving a local bill in the Speaker's name.<sup>56</sup>

## Failure to move motion

If a member fails to move a motion when the House reaches it, the motion is automatically discharged—that is, struck off the Order Paper (see p 198). A member who does not want to proceed with the motion on a particular day can seek to have it postponed.<sup>57</sup>

## Seconding motions

A seconder is not required to support any motion.<sup>58</sup> While there is no instance of a seconder being required by the Standing Orders, the Standing Orders do permit the motion for an Address in Reply to the Speech from the Throne at the Opening of Parliament to be seconded.<sup>59</sup>

## QUESTION PROPOSED

Once a motion has been moved, the Speaker proposes to the House a question based on the motion.<sup>60</sup> This question is of an altogether different nature from the questions that members address to Ministers seeking information about Government policy or the administration of a department. It is a question formulated by the Speaker, which allows one of two answers by the members of the House: yes, they agree with the motion, or no, they do not agree with it. An unequivocal yes or no is given by the House to every question (a tied vote means that the answer is no). What the House debates is this question: does it agree or disagree with the motion that has been moved?

The Speaker's propounding of the question puts the matter to be determined squarely before the House. It also creates a convenient break in the proceedings for the Speaker to consider whether the motion is in accordance with the rules of the House. In most cases, this will have been determined beforehand, when notice of the motion was lodged or when the member sought to move it on a point of order. However, before proposing the question, the Speaker may pause to consider the acceptability of the motion, and if the motion is considered to be out of order the Speaker will rule accordingly instead of proposing the question. The proposal of the question does not prevent the motion from subsequently being ruled out. The Speaker has authority to propose a question, allow the debate to run for a while, and then rule the motion out of order instead of allowing it to be put to a vote.

## Withdrawal of motion

The consequence of proposing a question is that the motion is no longer the exclusive property of one member. It now belongs to the House and cannot be withdrawn without the leave of the House.<sup>61</sup> In addition, where any amendment

<sup>55</sup> (1904) 129 NZPD 2 Guinness.

<sup>56</sup> (1990) 510 NZPD 3514.

<sup>57</sup> SO 74(1). See Chapter 14. Note that a motion for the first reading of a Member's bill cannot be postponed by the member in charge but requires approval by the House or the Business Committee.

<sup>58</sup> SO 102.

<sup>59</sup> SO 351(2). A seconder is required for the nomination of a member for election as Speaker, but such a nomination is not a motion.

<sup>60</sup> SO 103(1).

<sup>61</sup> SO 103(2).

has been proposed to the motion, the amendment must be withdrawn before the motion can be withdrawn.<sup>62</sup> Although the mover of a motion loses exclusive power over it when a question on it is proposed, the mover's presence is still necessary if a motion is to be withdrawn by leave, at this or any later stage in the proceedings.<sup>63</sup> Even though the mover cannot kill the motion unilaterally after this stage, he or she retains the right to keep it alive.

## AMENDMENTS TO MOTIONS

Once a motion is moved, members are not necessarily faced with an all-or-nothing decision on whether to support it. There will generally be an opportunity for members to seek to have the motion amended to reflect their preferred approach. Members can propose amendments to a motion unless this right is expressly removed by the Standing Orders. In a number of instances the Standing Orders do indeed preclude amendments, usually to motions that also are not debatable. Particular rules also exist for dealing with proposed amendments to a bill in a committee (see Chapter 26).

Aside from such exceptions, as set out in the Standing Orders, the proposal of amendments to motions is subject to general rules.<sup>64</sup> In 2008 the rules for amendments were considerably simplified to allow amendments to be debated along with the main question to which they relate.<sup>65</sup>

### Amendments to amendments

A member can move an amendment to a proposed amendment.<sup>66</sup> Theoretically, an amendment to an amendment could itself be the subject of an amendment, and so on endlessly. However, this is much less likely to happen now that all amendments moved are considered and decided along with the main question.

## FORM OF AMENDMENTS

There is no particular form prescribed in the Standing Orders for an amendment to take. Since an amendment, if it is agreed to, will be embodied in a resolution of the House it must be in a suitable form for this purpose. An amendment completely lacking form will thus not be permitted. An amendment must establish clearly how the original motion or wording in the bill would be amended were the amendment to be carried, usually by specifying particular words to "delete", "replace" or "insert". The precise verbal form used to express the amendment is not critical as long as the intended effect is clear.

## MOVING OF AMENDMENTS

A member can move an amendment to a motion upon being called to speak when that motion is under debate. Amendments to a question before the House need not be moved in any particular order. Members move their amendments as they are given the call by the Speaker.

When speaking to a question a member may move an amendment at any part of the speech, although the member's intention to do so is usually signalled to the House at the commencement of the speech.<sup>67</sup> Members lose their chances to move

<sup>62</sup> (1887) 58 NZPD 392 O'Rorke.

<sup>63</sup> (1891) 72 NZPD 398 Steward.

<sup>64</sup> SO 122.

<sup>65</sup> Standing Orders Committee *Review of Standing Orders* (27 August 2008) [2005–2008] AJHR I.18B at 16–18.

<sup>66</sup> SO 127.

<sup>67</sup> (1926) 209 NZPD 1204 Statham.

amendments entirely once they have spoken to a question.<sup>68</sup> The mover of a motion cannot move an amendment to it.<sup>69</sup> Furthermore, a member may move only one amendment to any particular question.<sup>70</sup>

No notice is required of a member's intention to propose an amendment to a motion. However, once a member has moved an amendment it must be put into writing, signed by the proposer and delivered to the Clerk at the conclusion of the speech.<sup>71</sup> Another member can sign the proposed amendment on behalf of the mover, provided the mover's authority has been given.<sup>72</sup> If the terms of the amendment as written differ from those as actually moved in the course of the speech, the amendment must be ruled out of order.<sup>73</sup>

Different rules apply to the moving of amendments to a bill in a committee of the whole House (see pp 434–436). In that situation, members often give prior notice of amendments by having them published on Supplementary Order Papers, and also can deliver signed copies of amendments to the Clerk at the Table at any time until the question is put on the provision under consideration. Members do not need to move such amendments through a speech to the committee, although they can draw attention to them and explain them when speaking.

## ADMISSIBILITY OF AMENDMENTS

The Speaker or (in committee) the Chairperson judges the admissibility of amendments.<sup>74</sup> An amendment is either in order or out of order. It is not the role of the Chair to amend proposed amendments to try and bring them into order.<sup>75</sup> If an amendment contains any element that is out of order this infects the entire amendment, and it is inadmissible unless leave is given to remove the offending material from it.

### General compliance

An amendment must not contain anything that is not permitted in motions generally or in debate on a motion. Thus the rules on motions and on the contents of speeches apply to limit the content of amendments, for a member cannot insert in an amendment something that would be unparliamentary if used in the member's speech debating it (see pp 229–231).

### Relevancy

An amendment must be relevant to the question it is proposed to amend.<sup>76</sup> Amendments can be used to change the details of the proposition before the House, but not the subject matter of the proposition itself.

The concept of what is relevant by way of amendment to the terms of a motion is linked to what is relevant in debating the motion. The moving of an amendment cannot expand the area of relevancy in debate. In debates such as those on the Address in Reply, the Budget and imprest supply, where relevancy is not a limiting consideration, there is a similar freedom in the scope of amendments that may be moved. For other subjects the area of debate and consequently of amendment is more restricted.

<sup>68</sup> SO 128(b).

<sup>69</sup> (1888) 60 NZPD 300 O'Rorke.

<sup>70</sup> SO 129.

<sup>71</sup> SO 124.

<sup>72</sup> (14 June 2005) 626 NZPD 21579 Simich (Chairperson); (14 June 2005) 626 NZPD 21581 Hartley (Chairperson).

<sup>73</sup> (1926) 210 NZPD 707 Statham.

<sup>74</sup> (1909) 147 NZPD 605 Guinness.

<sup>75</sup> (13 May 2009) 654 NZPD 3433 Chauvel (Temporary Chairperson).

<sup>76</sup> SO 123.

## Direct negatives

As well as the requirement of relevancy, an amendment must not be a direct negative of the motion before the House. The proper course of action for a member directly opposed to a motion is to vote against it, not to try to amend it, although a member may propose a “wrecking” amendment designed to blunt its effectiveness. A motion may not be completely reversed in meaning by the insertion of the word “not” before the main verb, for example; this is not permissible. Amendments that seek to delete all the words in a motion after the word “That” often radically change the nature of the proposition before the House, but as long as the words substituted by the amendment are relevant to the question and avoid the pitfall of directly negating it, such amendments are in order.

## Amendments to statutory motions

When playing its part in a statutory process, the House must comply with the applicable statutory conditions and the Speaker must be diligent to ensure that this is done. In particular, the Speaker will not accept any amendment that is contrary to a statutory obligation placed on the House. So an amendment restricting, and thereby failing to fulfil, a statutory obligation will not be accepted, though an amendment going further than the statute requires can be.<sup>77</sup> Where nominations for statutory appointments are merely submitted to the House for its endorsement or rejection rather than being made on the House’s recommendation, an amendment to substitute other nominations is not in order,<sup>78</sup> although an amendment simply to omit a nomination without substituting another may be acceptable in this case.<sup>79</sup>

## Restriction on second and subsequent amendments

Amendments to motions are not proposed often, and the Speaker does not often need to consider the admissibility of multiple amendments, because each amendment needs to be moved in a separate speech. The proposal of several amendments that are similar to previous amendments is not uncommon when bills are considered in committees of the whole House, and the Chairperson has been given explicit authority to group and select amendments in this context.<sup>80</sup> However, the Speaker has authority to rule amendments out of order if they are substantially the same as previous amendments that have been defeated, and for this purpose can select amendments to test the will of the House.<sup>81</sup> If the House has rejected an amendment to delete certain words, it has in effect decided that these words should remain in or “stand part” of the question. These words have received the House’s explicit approbation and no further amendment to them can be considered: they then must stand part of the question. Similarly, if the House has agreed to an amendment that inserts words, those words must also stand intact as having been agreed to by the House. In either case, however, further words may be added.

## Admissibility of amendments to amendments

Exactly the same rules apply for determining the admissibility of an amendment to an amendment as apply to an amendment to the main question. When an amendment is moved to an amendment, the first amendment is for the moment treated as the main question.<sup>82</sup> The second amendment is tested for relevancy to the first, not for relevancy to the original question before the House.

<sup>77</sup> (1989) 497 NZPD 10242 Burke (State-Owned Enterprises Act 1986).

<sup>78</sup> (1997) 560 NZPD 2023–2024 Kidd (Intelligence and Security Committee Act 1996).

<sup>79</sup> (18 February 2015) 703 NZPD 1717 Tisch (Assistant Speaker).

<sup>80</sup> SO 307(4) and (5) (see Chapter 26).

<sup>81</sup> (23 February 2010) 660 NZPD 9264–9265 Smith; Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 45.

<sup>82</sup> (1877) 24 NZPD 544 Fitzherbert.

## QUESTION PROPOSED ON AMENDMENT

Assuming that the Speaker allows the amendment to stand as being in order, a question based on it is then proposed to the House, in just the same way as on any other motion. The form of the question the Speaker proposes on an amendment is prescribed in the Standing Orders.<sup>83</sup> The Speaker does not normally read out the full text of the amendment at this point. The question put to the House for it to determine is “That the amendment be agreed to”. This question is agreed or not agreed by the House, just like any other question proposed to the House. The proposal of the question on an amendment places it before the House for decision, but amendments are not debated separately (see Chapter 16).<sup>84</sup>

## WITHDRAWAL OF AMENDMENT

Like motions, a proposed amendment may be withdrawn. However, once the Speaker has proposed a question to the House on the amendment, withdrawal can be effected only with the leave of the House.<sup>85</sup> The moving of an amendment means that before the original motion can be withdrawn, any amendment to it must also be withdrawn.<sup>86</sup>

## PUTTING OF THE QUESTION ON AN AMENDMENT

At the conclusion of the debate on a motion, the questions are put on amendments to the motion in the order in which they have been moved.<sup>87</sup> The rules for putting the question on an amendment and for determining the question on it are exactly the same as those for motions generally.

Once the question on the amendment has been decided, the Speaker puts the main question. For this purpose the Speaker restates the main question to the House. If an amendment has been agreed to, the Speaker puts the question that the original motion “as amended” be agreed to.<sup>88</sup> If the amendment has been rejected, the original question is merely restated.<sup>89</sup>

---

<sup>83</sup> SO 125(1).

<sup>84</sup> SO 126.

<sup>85</sup> SO 125(2).

<sup>86</sup> (1887) 58 NZPD 392 O’Rorke.

<sup>87</sup> SO 130(1) and (2).

<sup>88</sup> SO 130(3).

<sup>89</sup> SO 130(4).

## CHAPTER 16

# Debate

Free debate by elected representatives is perhaps the most essential feature of a parliament. Each question proposed for the House to decide is inherently debatable unless this right has expressly been taken away by the Standing Orders. While there are several types of motion that are not debatable, generally these relate to procedural matters, and preventing them from being debated means the time of the House can be focused on allowing members to speak about the legislation and other business before it.

### DEBATE ARISES AFTER QUESTION PROPOSED

Where a debate is permitted, the member who moves a motion then has the right to speak to it. This allows the member to explain the motion and the policy behind it, and to advocate its adoption by the House. Once the member has spoken, the Speaker proposes the question for the House to consider—whether to agree to the motion.<sup>1</sup> Once the question is proposed, the House proceeds to debate the motion's merits.

In general, each member may speak only once to a question before the House.<sup>2</sup> The main exception is in committee, where members may speak more than once, and there are a few other exceptions. After an amendment to a motion has been moved, a member who spoke before the moving of the amendment can speak again.<sup>3</sup> In some cases, the member who moved a motion can conclude the debate by speaking in reply to the contributions of other members.<sup>4</sup> Members may also speak again in debate to correct a misrepresentation of their speech by a subsequent speaker.<sup>5</sup>

### DECIDING WHO SPEAKS

There are generally 120 members of the House. One, the Speaker, presides and does not take part in the debate. Another, the mover, has concluded his or her speech when the debate is thrown open to other members. There are therefore 118 potential candidates for the privilege of speaking to the question before the House. In most cases the real number of potential speakers is likely to be much

<sup>1</sup> SO 103(1). See p 213.

<sup>2</sup> SO 109.

<sup>3</sup> SO 128.

<sup>4</sup> See “Speeches in reply”, p 221.

<sup>5</sup> SO 110. See pp 264–265.

lower than this, because not all members will be present or will wish to take part in the particular debate. Only on the Address in Reply, Prime Minister's statement and Budget debates will large numbers of members of the House participate in a debate. Even so, priority of speaking in a debate must be decided. Before a debate, the Business Committee may set out the arrangements for the debate, and party whips then have the job of co-ordinating particular speakers accordingly. Taking account of these arrangements, it is the role of the Speaker or Chairperson to decide which particular member can speak next, within the framework of the House's rules on the order of calling members in debate.

## **Obtaining the call**

When a member wishes to speak to a question, he or she must rise and request the Speaker's attention. If the Speaker then recognises the member by name, the member then has the "call"—the right to speak at that time—and may proceed to speak.<sup>6</sup> If more than one member is seeking the call, the Speaker exercises a discretion as to which of those members should speak, and the member selected is then entitled to speak.<sup>7</sup> The Speaker's discretion could operate arbitrarily, with each member trying to "catch the Speaker's eye" but being entirely ignorant of the criteria (if any) the Speaker employed to decide who should be next to speak. In fact, the Standing Orders, Speakers' rulings and practices devised by the Business Committee have laid down ground rules for the exercise of this discretion. Members can thus predict fairly accurately how the Speaker will exercise the discretion to call members in any particular instance.

## **Allocation of calls**

Until a change to the electoral system brought about a multi-party environment, New Zealand had had a two-party system in the House for some 60 years. In these circumstances Speakers had allocated calls to speak in debate on the principle that contributions alternated between the two sides of the House.<sup>8</sup>

Vestiges of this principle are still applied in deciding on the allocation of calls, but in a Parliament with more parties represented it is obviously no longer a sufficient criterion on its own. Furthermore, the direct election of parties to the House through proportional representation has brought more recognition of the party-representative nature of a member's contribution to debate, and thus the need to recognise this explicitly in the rules. A new set of criteria to guide the Speaker in allocating calls was therefore adopted in 1995 and set out in the Standing Orders.<sup>9</sup> The Speaker takes account of these criteria, but ultimately it is the Speaker's decision whom to call to speak in any particular instance. If, for example, the call is given to a member by the Speaker in misapplication of those criteria, it cannot be taken away (although the member may in these circumstances voluntarily surrender it).<sup>10</sup> On the other hand, if a member who has been called does not have speaking rights at all because he or she has already spoken in the debate, the Speaker will terminate the member's speech on becoming aware the call was invalidly given.<sup>11</sup>

## **Factors guiding the Speaker**

In addition to the vestigial influence of the principle of calls alternating between the two sides of the House, the Standing Orders require the Speaker to take four other factors into account in deciding whom to call to speak.<sup>12</sup>

6 (1987) 479 NZPD 7804 Wall.

7 SO 105.

8 (1936) 245 NZPD 279 Barnard; (1948) 280 NZPD 596–597 McKeen.

9 SO 106.

10 (1991) 516 NZPD 2899 Gray.

11 (1998) 574 NZPD 14422 Revell (Deputy Speaker).

12 SO 106.

*If possible, a member of each party should be able to speak in each debate*

It is desirable that at least one member of each party should be able to participate (if they wish) in each debate that is held. But, as the Standing Order recognises, this will not always be possible. On the first reading of Members' bills, private bills and local bills only 10 members can speak. In many other debates only 12 members can do so. Small parties and independent members cannot expect to be represented in every debate. An independent member, in particular, is regarded as 1/120th of the House and this will guide the Speaker in determining when to give the call to an independent, though the member's expertise and particular interest in the subject under debate will also weigh in the balance.<sup>13</sup>

*Overall participation in a debate should be approximately proportional to party membership in the House*

Party proportionality in participation in each debate is desirable. But only very approximate effect can be given to this criterion, especially given the principle of being as inclusive as possible in respect of party participation.

*Priority should be given to party spokespersons in order of size of party membership in the House*

The leading spokesperson for each party should be called as early as possible in each debate. This guides the order in which parties are given an opportunity to participate in debates in the House.

*The seniority of members and the interests and expertise of individual members who wish to speak*

The seniority of members and their interests and expertise come into play in the longer debates such as the Budget and the Address in Reply debates and in debates on conscience issues that are not being conducted along party lines. In debates on conscience issues, the Speaker exercises a more obvious discretion as to whom to call. But generally it is a matter for each party to determine who represents it in any particular debate.<sup>14</sup>

## Party arrangements

Allied with the guidance for the Speaker in deciding how to exercise the discretion to call members in a debate, there is likely to be a set of arrangements between the parties as to the sequence in which party members will be called. While they are always subject to the Speaker's discretion, arrangements are drawn up in the Business Committee, which devises guidance to help members be reasonably sure about when they may be called upon to speak on the various stages of bills. These arrangements differ depending upon the party make-up of each Parliament. They are adapted if party numbers change during the term of a Parliament. The Business Committee also has the power to determine how the time for debate on an item of business is to be allocated among the parties represented in the House.<sup>15</sup> It does this for the Wednesday general debate by approving a roster of the speaking slots to be given to each party in each debate. Parties may exchange these slots among themselves as they see fit.

Apart from lists drawn up by the Business Committee and its formal determinations, the party whips will often draw up speaking lists for longer debates. The Speaker will invariably follow these in giving the call. These pre-arrangements of speaking slots are considered a more efficient use of members' time than competing for a call in the Chamber at random. But the fact that a member is not on a party's speaking list does not deprive him or her of the right to

---

<sup>13</sup> (1998) 574 NZPD 14109 Kidd.

<sup>14</sup> (2002) 599 NZPD 15690 Hunt.

<sup>15</sup> SO 79(f).

seek the call. On the other hand, the fact that almost all debates in the House are subject to some limitation rules means that not all members can speak on every occasion that they wish to. The Speaker will endeavour to see that each member gets a fair chance to speak while, at the same time, being fair to other members.<sup>16</sup>

## **Speeches in reply**

There is no longer any general right for the mover of a motion in the House to speak for a second time in the debate as the concluding speaker in reply. This rule was abolished in 1999.<sup>17</sup> A right to speak for a second time in reply to a debate only exists where this is expressly set out in the Standing Orders. It is provided that the member in charge of the bill may speak in reply to the first reading debate on a Member's, a private or a local bill, and also that the Minister may reply to the Budget debate.<sup>18</sup> In these circumstances the member or Minister is called upon by the Speaker to reply when the debate has otherwise concluded.

## **Speaking in the committee of the whole House**

The criteria for the allocation of speeches in the House apply also to speeches in the committee of the whole House. But, in committee, members can speak more than once to the same question. There is no specific limit to the number of times a Minister or member in charge of a bill or other matter can speak in committee. Other members can have up to four speeches on each question proposed during the committee stage of a bill, but all four calls are not often used.

Consecutive calls to the same member can be given in a committee of the whole House.<sup>19</sup> This is entirely at the discretion of the Chairperson—no member can demand consecutive calls. In deciding whether to award another call, the Chairperson will consider the particular interest of the member and the overall proportionality of calls in the debate.<sup>20</sup> For example, the Chairperson has flexibility to give a further call to a party's primary spokesperson on the business being considered.<sup>21</sup> The relevance and quality of the member's contribution on the initial call will also be influential.

The Business Committee has general powers to organise debates, and specific functions to determine arrangements for the way a committee will consider a bill<sup>22</sup> and how long will be available for considering votes and annual reviews in committee.<sup>23</sup> It may do so by setting time limits for debates in the committee of the whole House and determining how the calls will be allocated amongst members.<sup>24</sup>

16 (1992) 530 NZPD 11440 Gray.

17 Standing Orders Committee *Review of the operation of the Standing Orders* (2 September 1999) [1996–1999] AJHR I.18B at 11–12.

18 SOs, App A. Moreover, the Minister who has made a ministerial statement can reply to comments by other members about the statement, though that procedure is not initiated by a motion and is not regarded as a debate as such (see pp 263–264).

19 Until 2003, preference was given to members who had not spoken. However, that rule was suspended and later revoked for the purpose of enabling consecutive calls. (30 April 2003) [2002–2005] 1 JHR 558; Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 22.

20 (12 October 2004) 620 NZPD 16018 Hartley (Chairperson).

21 Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 22.

22 SO 301(1)(a).

23 SO 350(3).

24 See, for example: Business Committee determinations of 26 November 2014 (that an additional two hours be transferred from the debate on the Prime Minister's statement to the annual review debate in the committee of the whole House); and 18 October 2012 (that in the committee stage on the Alcohol Reform Bill the question on provisions dealing with the age for sale and purchase of alcohol on licensed premises be put without debate).

## TIME LIMITS OF SPEECHES

### Individual speeches

Appendix A of the Standing Orders sets out a comprehensive list of individual speaking times in particular debates.<sup>25</sup> In addition, the Business Committee has power to determine the speaking times of individual members on an item of business.<sup>26</sup> The committee may use this power in respect of a particular debate to be held in the House or of all debates of a particular class. In both the 46th and 47th Parliaments, for example, it decided to vary the speaking times on the debate on the introduction of all Members' bills to accommodate the general time limits to the particular party alignments of those Parliaments.<sup>27</sup>

There is a general rule that each member is entitled to speak for 10 minutes except where expressly provided to the contrary. But Appendix A expressly provides for the time to speak in so many instances that falling back on this rule is the exception. To determine how long a member may speak to the question before the House, the type of debate must be considered. The shortest period allowed for an individual speech is five minutes (two minutes are permitted for a Minister to reply to comments on a ministerial statement), while the longest allowed an ordinary member is 15 minutes. The Minister of Finance in delivering the Budget is not limited in time at all. Extended times (up to 30 minutes) are prescribed for party leaders in major debates. Time taken up in interpreting a member's speech (whether the interpretation is rendered by the member or the official interpreter) is not counted against the time for the member to speak,<sup>28</sup> though this has become rare with the implementation of simultaneous interpretation of Te Reo Māori.

Time limits on speeches have been a part of parliamentary procedure since 1894. Before that, individual members were unrestricted in the length of time they could address the House—the longest ever speech was that of Mr WL Rees, who spoke for some 24 hours in 1876. The adoption of time limits at the end of the 19th century obviated for some time the necessity to adopt the more draconian procedures that the United Kingdom House of Commons was then forced to accept in the face of obstruction by Irish members.

### Splitting calls

An individual speaking time (in a debate subject to an overall time limit or one in which there are a limited number of calls) may be shared between two members of the same party or between two members of different parties if both parties agree.<sup>29</sup> The party or the parties that wish to utilise this right inform the Speaker in advance, and the Speaker, in calling the first of the two members to speak, informs the House that the call is to be shared. When members have shared a call in this way each is regarded as having spoken in the debate and cannot speak again.

In some circumstances, a Minister has been permitted to complete the interrupted speech of another Minister when a debate is resumed.<sup>30</sup> Leave has been given for a member to complete the interrupted speech of another member who was unable to complete it herself because of illness.<sup>31</sup> The member completing the speech was not regarded as having spoken in the debate.

### Debating amendments

An amendment is generally debatable together with the motion it seeks to amend.<sup>32</sup> However, a question is proposed on an amendment to a motion, which means

<sup>25</sup> SO 121(1). References to speaking times are references to Appendix A of the Standing Orders.

<sup>26</sup> SO 79(f) and (g).

<sup>27</sup> Notice Paper (29 March 2000); Business Committee determination 17 September 2002.

<sup>28</sup> (1999) 579 NZPD 17974–17975 Braybrooke (Deputy Speaker).

<sup>29</sup> SO 121(2).

<sup>30</sup> See p 240 ("Resumption of adjourned or interrupted debate").

<sup>31</sup> (2001) 592 NZPD 9608.

<sup>32</sup> SO 126.

that a member who has spoken before the moving of the amendment may speak a further time.<sup>33</sup> In practice, however, restrictions on the overall length of the debate will usually prevent members exercising this right. While amendments are not usually debatable separately, if amendments are considered in their own right, the time limit on a member's speech is the same as the time limit applicable to the original motion.<sup>34</sup>

### **Time taken for points of order**

As all individual speeches are limited in some way, members are jealous to protect their time from being eaten into by points of order (which are not speeches to a question and do not have a time limit of their own<sup>35</sup>). In general, a member has no right to claim an allowance for time lost in dealing with a point of order, but most Speakers allow members extra time for such interruptions by not counting the time taken up on a point of order as part of the member's speech.<sup>36</sup> This applies especially when the point of order is decided in favour of the member speaking. However, where points of order are raised because the member speaking is transgressing against the rules of the House, the Speaker will be less likely to allow extra speaking time in compensation.<sup>37</sup> A certain amount of flexibility is essential for the Speaker in this matter. On the one hand, if extra time were not allowed, a member's opponents could deny the member any speaking time at all by a constant series of spurious points of order. On the other hand, a member who persists in speaking irrelevantly or using unparliamentary language cannot expect any concessions for time lost as a result of any resulting disorder.

In committee, with its generally shorter speaking times, the practice has been to stop the clock when a point of order is raised. The Chairperson will subsequently decide whether the time occupied in determining the point of order is to be deducted from the speech. On the other hand, when the Chairperson intervenes to point out that the member speaking is not being relevant, the clock is not stopped and the member loses that time.<sup>38</sup>

### **Expiry of time for speech**

When the time limit for a member's speech is reached, the Speaker ends the speech by interrupting and informing the member that the time has expired. However, it is usual for members to be warned towards the end of the available time for each speech. An electric warning bell at the Speaker's Chair is sounded five minutes before the end of a 15-, 20- or 30-minute speech and two minutes before the end of a 10-minute speech. The warning bell may be rung by the Speaker when one minute is remaining of a five-minute speech, but generally this is done only by prearrangement. Other arrangements than these may be made if the member speaking or the whips ask for them and the presiding officer agrees. The time limit for speeches continues to apply even if the Speaker inadvertently omits to sound the warning bell.

Speeches in committees of the whole House have a standard time limit of five minutes, although the Chairperson has discretion to allow consecutive calls. When the five-minute time limit is reached, the call is ended with the ringing of the electric bell at the Table. No warning is given when a member's speaking time is nearly ended.

<sup>33</sup> SO 128(a).

<sup>34</sup> SOs, App A.

<sup>35</sup> (1904) 128 NZPD 175–176, 187 Guinness.

<sup>36</sup> (1969) 361 NZPD 1146 George (Deputy Speaker).

<sup>37</sup> (1962) 330 NZPD 905–906 Algie.

<sup>38</sup> (1992) 524 NZPD 7893 Anderson (Deputy Chairperson).

## MANNER OF SPEAKING

### Physical arrangements for speaking

Members are allocated individual seats in the Chamber. While they are expected to address the House from their allocated positions, there is no rule requiring this and members may speak from another seat within the seating allocated to their party that is unoccupied at the time<sup>39</sup> or even come to the Table for the purpose.<sup>40</sup> The Minister or member in charge of a bill in committee, for instance, always speaks from a position at the Table immediately on the Chairperson's right. Other members frequently speak from a position closer to the presiding officer's chair than their own seat, especially in committee.

Members must stand to speak in debate. But the Speaker may permit a member to speak from a sitting position by reason of disability.

### Forms of address

In debate a member addresses the Speaker, and the House only indirectly through the Speaker.<sup>41</sup> Members do not address each other directly. The origins of this practice are obscure, but it does, to some extent, help restrain quarrels or personal recriminations in the House, by figuratively interposing the Speaker between members. Members may not address each other directly in the second person.<sup>42</sup> According to the rules of the House, references to "you" are taken to be directed at the Speaker and will be ruled out of order, for it is not in order to involve the Speaker in the debate. However, the application of this rule is at the sole discretion of the Speaker.<sup>43</sup>

It was formerly a rule that members could not refer to each other by their names, but this rule was abolished when half of the House came to be elected from party lists and so had no electorates by which they could be referred to.<sup>44</sup> Consequently, members can now refer to each other by name (or by electorate or position held if they prefer to). But this does not authorise familiarity. A full name, title or position should be used, not just a member's first name.<sup>45</sup> Nicknames are not permitted as a form of address,<sup>46</sup> nor may members assign a title to a member's name.<sup>47</sup>

Debate in the House is a discussion among the members of the House present in the Chamber.<sup>48</sup> Unlike the practice in select committees, where non-members of the House take part in the proceedings, only members take part in debates. For this reason members should not address remarks to anyone in the gallery<sup>49</sup> or outside the House.<sup>50</sup> Outside the House includes people listening to the broadcast of parliamentary debates. Members should address the Chair, not the "listener".<sup>51</sup>

## LANGUAGES

### Official languages

Members have the option of addressing the House in English, Te Reo Māori, or New Zealand Sign Language.<sup>52</sup> For many years, the House's procedures have reflected

<sup>39</sup> (2000) 586 NZPD 4768 Hunt.

<sup>40</sup> (1990) 505 NZPD 666 Terris (Deputy Speaker); (1990) 510 NZPD 3560 Burke.

<sup>41</sup> SO 107.

<sup>42</sup> (1996) 554 NZPD 12339 Hilt (Chairperson).

<sup>43</sup> (9 December 2008) 651 NZPD 37 Smith; see also Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 28.

<sup>44</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 25–26.

<sup>45</sup> (1996) 553 NZPD 11403 Gerard (Chairperson); (1998) 571 NZPD 11820 Revell (Deputy Speaker); (18 March 2003) 607 NZPD 4164 Robertson (Assistant Speaker).

<sup>46</sup> (2002) 599 NZPD 15220 Braybrooke (Chairperson).

<sup>47</sup> (2000) 585 NZPD 3755 Hunt.

<sup>48</sup> (1971) 374 NZPD 3410 Jack.

<sup>49</sup> (1997) 562 NZPD 3215 Braybrooke (Assistant Speaker).

<sup>50</sup> (1976) 405 NZPD 1704 Jack.

<sup>51</sup> (1971) 375 NZPD 3495 Jack.

<sup>52</sup> SO 108.

the status of Te Reo Māori as an official language of New Zealand. Similarly, with the recognition of New Zealand Sign Language as an official language in 2006, the House has provided for the language to be used in its proceedings.

## **English and Te Reo Māori**

Most contributions to debate are made in English, but to an increasing extent Te Reo Māori is being used both in the Chamber and in committees, especially the Māori Affairs Committee. The use of Te Reo Māori in the Chamber is not by any means new. The first speech in Te Reo Māori was made (through an interpreter) in 1868,<sup>53</sup> and many Māori members spoke in Te Reo Māori in the 19th and early 20th centuries. The practice then was for the member to give his own interpretation or for an interpreter authorised by the Speaker to interpret the speech standing alongside the member for this purpose. As Te Reo Māori was not at that time an official language, no extra speaking time was allowed to the member for the time spent interpreting a speech.

## **Interpretation**

Te Reo Māori was given official recognition in the House in 1985 and subsequently declared an official language of New Zealand.<sup>54</sup> Members have the right to use Te Reo Māori and are not obliged to give an interpretation of their remarks made in it.<sup>55</sup> However, as not all members have competence in Te Reo Māori, a simultaneous interpretation of speeches in Te Reo Māori is provided by an official interpreter working in a room near the Chamber. The interpretation is available to members through earpieces at their seats in the House, and can be accessed by viewers of Parliament TV. This service commenced for proceedings in the House in 2010,<sup>56</sup> replacing the previous practice of interrupting remarks in Te Reo Māori periodically so that an interpretation could be given by an interpreter who stood next to the Speaker. Simultaneous interpretation had already been introduced (in 2000) for contributions in Te Reo Māori in the Māori Affairs Committee.

The interpretation is given under the control of the Speaker. If a member interprets for himself or herself, the member must be careful to do so accurately so as to avoid any accusation of misleading the House.<sup>57</sup> Any such error of interpretation by a member should be corrected as soon as it is appreciated, but there is no such requirement on the member where the error is made in the simultaneous interpretation.<sup>58</sup> An interpretation is not a polished version of what a member has said. It will always be somewhat rough and ready.<sup>59</sup> Given the different origins of the Māori and English languages there will always be differences over how to render one language into the other.<sup>60</sup>

The object of the interpretation is to enable members to have a reasonable, but not necessarily total, understanding of what is said. If the member speaking does not agree with the interpretation he or she is at liberty to clear up a misunderstanding on a point of order, but such a member cannot control the interpretation that is given by the official interpreter. Such control is exercised by the Speaker on behalf of the House.

It is not considered necessary to interpret from English into Te Reo Māori.<sup>61</sup>

The interpretation in the House is the oral rendering of words used in debate in Te Reo Māori into English.<sup>62</sup> The interpreter is not a translator providing an

53 (1868) 2 NZPD 270.

54 Māori Language Act 1987, s 3.

55 (1990) 508 NZPD 2336 Burke.

56 (9 February 2010) 660 NZPD 8641.

57 (2001) 593 NZPD 9983 Hunt.

58 (3 March 2004) 615 NZPD 11495 Hunt.

59 (2002) 603 NZPD 982 Hunt.

60 (3 March 2004) 615 NZPD 11496 Hunt.

61 (1999) 579 NZPD 18503 Neeson (Assistant Speaker); (2000) 585 NZPD 3716 Hunt.

62 (16 February 2005) 623 NZPD 18734–18735 Simich (Chairperson).

English version of documents written in Te Reo Māori that may be relevant to the debate.<sup>63</sup> Translation is a different process and takes place off the floor of the House when a speech given in Te Reo Māori is translated into English for inclusion in *Hansard*.

The interpreter, as a member of the staff of the Clerk, cannot be brought into the debate or asked to give assurances to the House about the accuracy of translations of documents presented to the House by Ministers or other members,<sup>64</sup> any more than could any other official be appealed to in the course of a debate about a matter in issue between members.

## New Zealand Sign Language

New Zealand Sign Language (NZSL) was made an official language of New Zealand in 2006.<sup>65</sup> Members can address the House in NZSL by right.<sup>66</sup> Members who wish to address the House in NZSL should provide advance notice so that simultaneous interpretation services can be arranged.<sup>67</sup> If simultaneous interpretation services are unavailable, the Speaker may give a member extra time so that a spoken translation can be supplied.<sup>68</sup>

It is important for the hearing-impaired community to have access to parliamentary proceedings.<sup>69</sup> The House provides NZSL signers for broadcasts of significant events for the hearing-impaired community.<sup>70</sup> Budget speeches by party leaders have been interpreted into NZSL in recent years. Question time has also been interpreted during annual weeks of celebration of the language. These signers are situated in a studio within the parliamentary precincts; the attendance of NZSL interpreters in the House itself is rare.

## Other languages

Members have the right to use English, Te Reo Māori or NZSL in the House,<sup>71</sup> but other languages are used from time to time. This is particularly common in members' maiden speeches, when new members have used other languages with a particular cultural or familial significance to them. In these circumstances the members concerned provide their own interpretation and translation of the language that they have spoken, though they are not usually accorded additional time for this purpose.

Occasionally, members employ phrases that are from other languages but are accepted in English usage—for example, some terms from French or Latin—or they use isolated foreign words such as greetings. These terms are permitted in the course of debate and are included in *Hansard* without any translation.

## CONTENTS OF SPEECHES

In general terms, members have absolute freedom of speech in debate and must exercise their own judgement as to how they use it. For instance, there is no rule preventing members from releasing private information,<sup>72</sup> though in practice members will often take care not to reveal personal details where it is inappropriate. However, there are a number of rules that limit what a member can say in the House.

<sup>63</sup> (16 February 2005) 623 NZPD 18731 Hartley (Deputy Speaker).

<sup>64</sup> (16 February 2005) 623 NZPD 18739 Hunt.

<sup>65</sup> New Zealand Sign Language Act 2006.

<sup>66</sup> SO 108.

<sup>67</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR 1.18A at 12–13.

<sup>68</sup> *Ibid.*

<sup>69</sup> Standing Orders Committee *Captioning proceedings of the House and webcasting select committee hearings* (30 November 2012) [2011–2014] AJHR 1.22A at 2.

<sup>70</sup> “Sign of the times” *The Dominion Post* (23 June 2004) (New Zealand Sign Language Bill).

<sup>71</sup> SO 108.

<sup>72</sup> (8 October 2003) 612 NZPD 8966 Hunt; (9 June 2005) 626 NZPD 21195 Wilson.

## Relevance

The overriding principle as to what may be said is that all debate must be relevant to the question before the House.<sup>73</sup> Nevertheless, the particular rules detailed below—unparliamentary language, issues before the courts, and so on—are instances of material that is out of order despite the fact that it may be relevant and therefore, on the face of it, suitable for inclusion in a speech. In these cases, even though it is relevant, the particular reference is not permitted on other grounds of parliamentary policy.

What is relevant depends exclusively on the question before the House. In a few debates—notably the debates on the Address in Reply, Prime Minister's statement, Budget, and Imprest Supply bills—the discussion can range over the whole sphere of Government activity and public affairs. The concept of what is relevant in these debates is virtually boundless, and members may introduce almost anything without fear of being ruled irrelevant.

In other debates the field is much narrower, and focuses on the specific proposition before the House. The Speaker may give members some licence to mention other matters in passing, but will call them back to the subject-matter at hand. An incidental mention of irrelevant material does not make it relevant,<sup>74</sup> nor can a member bring a matter into the ambit of a debate by arguing for its inclusion.<sup>75</sup> Irrelevant interjections also do not warrant discussion.<sup>76</sup>

If a member persists in advancing irrelevant arguments the Speaker may, after publicly warning the member, terminate the speech.<sup>77</sup>

At each stage of the passage of legislation, the concept of relevancy changes as the purpose of the House's consideration of the legislation changes. The question of relevancy is considered further as each different type of debate is looked at elsewhere in this work.

## Tedious repetition

The Speaker may also terminate the speech of a member who persists in repeating arguments that, though relevant, have been advanced earlier in the member's own speech or by other members in the debate.<sup>78</sup> This is known as “tedious repetition”. An argument becomes tediously repetitive only if the Speaker serves notice that its repetition will be regarded as being so. In the absence of such a warning from the Speaker, the fact that other members find a member's speech tedious is immaterial.

## Anticipating discussion

Members are not entitled to anticipate discussion of general business or an order of the day until that business or order is properly reached.<sup>79</sup>

In administering the rule against anticipating discussion, the Speaker must have regard to the likelihood of the business or order actually coming before the House for debate within a reasonable time.<sup>80</sup> If it is not likely to come up for debate on the same sitting day, the Speaker may permit references to it.<sup>81</sup> Applying this discretion, the Speaker has permitted references in the general debate to the general principles of a bill on the same day that its committee stage was to be debated.<sup>82</sup>

<sup>73</sup> SO 111(1).

<sup>74</sup> (1903) 127 NZPD 359 Guinness.

<sup>75</sup> (1931) 229 NZPD 673 Statham.

<sup>76</sup> (1936) 244 NZPD 772 Barnard.

<sup>77</sup> SO 111(2).

<sup>78</sup> SO 111(2).

<sup>79</sup> SO 113(1).

<sup>80</sup> SO 113(2).

<sup>81</sup> (9 February 2011) 670 NZPD 16595 Barker (Assistant Speaker).

<sup>82</sup> (20 June 2012) 681 NZPD 3145 Smith.

## Quotations

Members are permitted to use quotations to illustrate or support points that they wish to make in the course of their speeches. Formerly a restrictive view of quotations was taken. Members were expected to give their own views on the measure under debate and the quotation of outside comment on the matter under discussion was prohibited. This is no longer the practice. Quotations are permitted provided that they are relevant to the subject of debate and are themselves inherently in order. Quotations must be as free from unparliamentary language as a member's own words;<sup>83</sup> indeed, effectively a member makes a quotation his or her own by incorporating it into the member's speech. So no improper reflections on another member can be made by means of a quotation from a letter or a newspaper.<sup>84</sup>

Members are under no obligation to disclose the source of a quotation used in debate.<sup>85</sup> Similarly, members cannot be required to quote accurately or fully (although they must beware of deliberately misleading the House). Members naturally choose that portion of an article that best serves their argument and they are not obliged to read other portions that might not be so favourable, even in the face of the urgings of their opponents in the House.<sup>86</sup>

If a Minister, in the course of a speech, quotes from an official document, any member can require the Minister to lay the document on the Table.<sup>87</sup> The Minister is then obliged to table the document unless it is confidential. (See pp 618–619.) There is no obligation on members who are not Ministers to table a document from which they have quoted.<sup>88</sup>

## References to the Sovereign or the Governor-General

Members must not use the names of the Sovereign or the Governor-General disrespectfully in debate or for the purpose of influencing the House in its deliberations.<sup>89</sup> This rule does not strictly apply to a Governor-General designate, such references being a question of taste. References to the Sovereign's representatives in her other realms are not excluded from debate, so references to actions of the Governor-General of Australia at the time of that country's constitutional crisis in 1975 did not contravene the rule.<sup>90</sup>

## References to proceedings of a committee

References to the confidential proceedings of a committee are prohibited until those proceedings are reported to the House.<sup>91</sup> Effectively, this (at least temporarily) prevents references to what takes place at a select committee during consideration and deliberation and during the hearing of private or secret evidence. (Committees of the whole House conduct all of their business in public.) But this rule does not prevent a member referring to a bill or other business just because it happens to be before a select committee. What may not be referred to is information given to the committee in confidence and discussions at the committee among the members themselves behind closed doors. The committee's public proceedings can be referred to if they are relevant to the matter before the House. Once the committee has reported, all of its proceedings (except secret evidence) can be referred to.

<sup>83</sup> (1899) 106 NZPD 105 O'Rorke.

<sup>84</sup> (1898) 102 NZPD 70 O'Rorke; (1974) 391 NZPD 2467 Whitehead.

<sup>85</sup> (1970) 367 NZPD 1865 Jack.

<sup>86</sup> (1973) 383 NZPD 1853 Whitehead.

<sup>87</sup> SO 376.

<sup>88</sup> (1972) 381 NZPD 2706 Harrison (Deputy Speaker).

<sup>89</sup> SO 118.

<sup>90</sup> (1976) 403 NZPD 689 Jack.

<sup>91</sup> SO 114.

## UNPARLIAMENTARY LANGUAGE

Members have a duty to use the privilege of free speech responsibly, and one control mechanism is the prohibition on the use of unparliamentary language. Expressions used in debate may be ruled to be “unparliamentary” and be required by the Speaker to be withdrawn. The rules against unparliamentary language are designed to prevent personal invective and insults, and while they do not totally eliminate such exchanges, they do restrain members and provide a framework within which members’ speeches can be judged and controlled.

### Offensive or disorderly words

Members are not permitted to use any offensive words against the House.<sup>92</sup> In addition, the Speaker is required to intervene whenever any offensive or disorderly words are used in the Chamber, whether by the member speaking in the debate, or by another member by way of interjection or other comment.<sup>93</sup> As for comments by a member to a neighbour, it does not matter that it was not intended that the Chair should hear what was said (or another member, if another member objects and brings it to the Chair’s attention). If it is heard, it is within the jurisdiction of the Speaker, and if it is offensive or disorderly it must be withdrawn.

What is offensive or disorderly? There are some specific types of references that the Standing Orders hold to be unparliamentary—personal reflections and imputations of improper motives.<sup>94</sup> These might equally be regarded as offensive or disorderly; indeed, it may be very difficult to determine under precisely which provision of the Standing Orders an expression is being ruled out of order.

Whether a particular phrase is offensive or disorderly depends upon the context in which it is used, and an expression acceptable in one context may be unacceptable in another.<sup>95</sup> A list of expressions ruled out of order each year is published in the index to *Hansard*. Most such expressions are references to other members or parties. They may have been ruled to be unparliamentary because they could lead to disorder in the House, or because they are offensive in themselves, or because they are personal reflections.

In determining whether an expression is disorderly or offensive, Speakers take account of the state of the House at the time it is uttered. The Chair does not like to be constantly intervening in a debate any more than a referee likes to be continually blowing the whistle to interrupt a football match. If the advantage rule can be applied to both pursuits, it will be. However, where there is a real chance that disorder will arise if a statement is allowed to pass, the Speaker will take action.<sup>96</sup>

### Personal reflections

The Standing Orders specifically prohibit imputations of improper motives against a member, offensive references to a member’s private affairs and all personal reflections.<sup>97</sup>

Imputations of improper motives cover allegations of any form of corruption. Members have a duty to expose anything in the nature of bribery or corruption on the part of other members, but they must not do this by making veiled suggestions in debate.<sup>98</sup> Such allegations must be raised with the Speaker as a matter of privilege, charging the member explicitly with impropriety.<sup>99</sup>

<sup>92</sup> SO 117.

<sup>93</sup> SO 119.

<sup>94</sup> SO 120.

<sup>95</sup> (1984) 459 NZPD 2273 Terris (Deputy Speaker).

<sup>96</sup> (2000) 584 NZPD 3012 Roy (Assistant Speaker).

<sup>97</sup> SO 120.

<sup>98</sup> (1934) 239 NZPD 159–160 Statham.

<sup>99</sup> (13 May 2014) 698 NZPD 17729 Carter.

References to a member's private affairs are not automatically out of order. They are debarred only if they are very undesirable, insulting or offensive.<sup>100</sup> In judging whether something is offensive, the Chair should be guided to some extent by the reactions of the member to whom the remark is directed.<sup>101</sup> If he or she does not object to it, it will generally be allowed to pass. Often personal references are irrelevant to the question before the House; but, if it is relevant, reference may be made to a member's occupation or profession,<sup>102</sup> age or marital status,<sup>103</sup> or property,<sup>104</sup> provided this is not done in an insulting or injurious way. The general preference is to discourage such references, however, as they tend to reduce the standard of debate, and repeated references could provoke retaliation and lead to disorder in the House.<sup>105</sup>

It is a well-established rule that members should not question the conduct or character of another member's spouse, partner or family member except when a member introduces such people's conduct into the debate.<sup>106</sup> But if a spouse, partner or family member holds a political, commercial or public position separate from the relationship to a member, they may be referred to in debate. In these circumstances members must distinguish between quoting the person in question because of a position they hold and quoting them in the capacity of their personal relationship to the member.<sup>107</sup>

If any personal reflection is made the member against whom it is made may raise it with the Speaker. The Speaker will intervene to protect the member if, in the Speaker's view, the reflection attributes something dishonourable to the member or is very undesirable, insulting or offensive. An accusation of racism, for example, falls into this category and will invariably be ruled out of order if applied to a member or party.<sup>108</sup> On the other hand, there is no right for a member to have contestable remarks ruled out automatically.<sup>109</sup>

## **Accusations of lying**

It is a clear personal reflection to accuse another member of lying or of attempting deliberately to mislead the House.<sup>110</sup> Accusing a member of lying (whether allegedly inside or outside the House) is something that has been consistently ruled out of order.<sup>111</sup> If an accusation that a member had deliberately misled the House was correct, the member would have committed a contempt, and any member who believes that another member has misled or tried to mislead the House should raise this as a matter of privilege. That a member must not accuse another of lying does not mean that the correctness of another's statements may not be questioned, and it is in order to accuse a member of having misled the country.<sup>112</sup> But, while a member is free to criticise another member, a member cannot (in debate) accuse another member of having made a statement (on any occasion) knowing it to be incorrect or untrue, or impute a deliberate untruth to another member.<sup>113</sup>

## **References to the absence of a member**

It is a convention of the House that members do not refer to the absence of other members from the Chamber (at that time or previously).<sup>114</sup> This is not an absolute

<sup>100</sup> (1966) 346 NZPD 267 Algie.

<sup>101</sup> (1989) 502 NZPD 13428 Terris (Deputy Speaker).

<sup>102</sup> (1913) 163 NZPD 870 Lang.

<sup>103</sup> (1969) 364 NZPD 3705 Jack.

<sup>104</sup> (1959) 319 NZPD 500 Macfarlane.

<sup>105</sup> (1969) 364 NZPD 3273 Jack.

<sup>106</sup> (1938) 252 NZPD 194–196 Barnard.

<sup>107</sup> (1989) 503 NZPD 13892 Burke.

<sup>108</sup> (1998) 568 NZPD 8393 Kidd; (2001) 595 NZPD 11665 Braybrooke (Chairperson).

<sup>109</sup> (17 April 2008) 646 NZPD 15783 Wilson; (15 August 2007) 641 NZPD 11119 Wilson; (18 March 2008) 646 NZPD 14958 Wilson.

<sup>110</sup> (1927) 214 NZPD 112 Statham.

<sup>111</sup> (1985) 465 NZPD 6716 Terris (Deputy Speaker); (2 May 2012) 679 NZPD 1914 Roy (Chairperson).

<sup>112</sup> (1995) 546 NZPD 6088 Tapsell.

<sup>113</sup> (1952) 298 NZPD 1188 Oram.

<sup>114</sup> (1961) 329 NZPD 3168–3169.

rule and can be overridden if the fact of the absence is important enough to warrant referring to it.<sup>115</sup> There may be something intrinsic to the absence that makes it necessary to refer to it. But this does not mean that any member has the right to override the convention as a matter of choice. It is for the Speaker to decide whether such a reference is justified. It is not a breach of the convention to refer to the fact that a member did not speak in a particular debate<sup>116</sup> or to urge a member to take part in the current debate.<sup>117</sup>

The convention also applies to references to the absence of members from a meeting of a select committee,<sup>118</sup> but referring to the fact that a member was not a member of a particular committee and so did not attend its hearings is permissible.<sup>119</sup>

## References to parties

The examples discussed above have been mainly of unparliamentary expressions directed at individual members, but many unparliamentary expressions are directed at groups of members—the Government or parties. It was ruled many years ago that, since the Government consists of members of Parliament, a term cannot be applied to the Government that cannot be applied to members individually,<sup>120</sup> and this principle extends equally to other groups or parties. Thus, allegations of corruption on the part of the Government or a party and offensive terms applied to a party are just as disorderly as equivalent expressions applied to an individual member.<sup>121</sup>

A type of allegation to which parties are particularly prone is that of being dominated by an influential group in the country such as farmers, trade unions or the brewing industry. Such an allegation against one member raises the same issues. In carrying out their parliamentary duties, members must be free to act in the best interests of the country as a whole, and suggestions of domination or direction from outside are unacceptable,<sup>122</sup> although, of course, members receive external advice and are lobbied by interest groups outside the House and take these considerations into account in forming their opinions. A fine line has been drawn between suggestions that a party has been influenced in its policy by an outside body, which is in order, and a suggestion that it is being instructed or dominated by that body, which is not.<sup>123</sup>

## References to persons outside the House

In general, there is nothing to prevent a member commenting severely on the conduct of people outside the House, but only if it is relevant to the debate before the House.<sup>124</sup> Indeed, it is important for members to be free to speak out where this is necessary in the public interest. Members have been exhorted to use this privilege responsibly with regard to people who cannot defend themselves in the Chamber or vindicate themselves in a court of law, but this is left largely to the judgement of members. However, if a reference to a person outside the House is regarded as so insulting by a section of the House that, were it to stand unchallenged, it might provoke disorder, that would be a ground for requiring it to be withdrawn.

Anyone who claims to be adversely affected by a reference to them in the House may apply to the Speaker to have a response put before the House. (See Chapter 38.)

<sup>115</sup> (1970) 368 NZPD 3004 Jack.

<sup>116</sup> (1979) 426 NZPD 3224 Harrison.

<sup>117</sup> (2000) 583 NZPD 2030 Roy (Chairperson).

<sup>118</sup> (1979) 423 NZPD 1142–1143 Harrison.

<sup>119</sup> (1985) 462 NZPD 4221 Terris (Acting Speaker).

<sup>120</sup> (1905) 134 NZPD 447 Guinness.

<sup>121</sup> (1914) 171 NZPD 603 Lang; (6 April 2005) 624 NZPD 19625 Wilson.

<sup>122</sup> (1952) 297 NZPD 475, 889 Oram; (8 May 2014) 698 NZPD 17696 Carter.

<sup>123</sup> (1979) 428 NZPD 4742–4743 Harrison.

<sup>124</sup> (1979) 424 NZPD 2294 Harrison.

## Withdrawal of unparliamentary language

If the Speaker considers an expression to be unparliamentary, the usual course of action is to direct the member to withdraw it. If the expression has been grossly insulting towards another member or the House, or if the member who has been ordered to withdraw is unruly, the Speaker may also require him or her to apologise to the House for the conduct. When ordered to withdraw an expression, a member must do so without qualification or reservation.<sup>125</sup> If the member adds any words while withdrawing the expression, the withdrawal is qualified and does not satisfy the Speaker's requirement.<sup>126</sup> Similarly, if a member is required to apologise, unless required to apologise in a certain way (for example, to refer to the injured member), the apology must be made without qualification.<sup>127</sup> When the Speaker has ordered a member to withdraw a remark and this has been done to the Speaker's satisfaction, that remark is retracted and cannot be alluded to further by that member or by others speaking subsequently in the debate.<sup>128</sup> But a comment having been withdrawn does not mean that it is expunged from the record, as it has been uttered and can be reported by the news media, for example. The remark is ruled out only for the purposes of debate in the House, which continues with its business without further reference to it.<sup>129</sup>

If the Speaker considers that a member's conduct during a debate has been grossly disorderly and that the mere withdrawal of an apology for an expression used would not reflect adequately the gravity of the transgression, further disciplinary powers, such as ordering the member to leave the Chamber or naming the member, may be invoked. (See Chapter 11.) In one case, the House has censured a member by motion without notice for using obscene language.<sup>130</sup>

## MATTERS CONCERNING THE ADMINISTRATION OF JUSTICE

The House has adopted a number of rules designed to maintain respect for the judiciary and to avoid members breaching a suppression order or causing prejudice to any pending judicial proceedings. Apart from these specific rules, members are required to exercise their privilege of free speech in Parliament responsibly and to respect the position of the judiciary in its particular sphere of action, just as they would expect the judiciary to respect the privileges of Parliament.<sup>131</sup>

### Offensive references to judges

Members are not permitted to use offensive or unbecoming words against any member of the judiciary.<sup>132</sup> This rule applies to the judge's conduct in presiding in court or when heading a royal commission or a commission of inquiry.<sup>133</sup> Successive Speakers have held that members must not reflect on or speak disrespectfully of a judge.<sup>134</sup> This might be done, for example, by linking a particular court with the Government of the day—a clear case of questioning its impartiality—and this is not allowed to pass without intervention from the Chair.<sup>135</sup> A distinction must be drawn between disagreement with and criticism of a judgment delivered by a court on the one hand, and allegations directed at the judge that he or she has been consciously unfair or unjust on the other.<sup>136</sup> The House is an appropriate forum in

<sup>125</sup> (1891) 74 NZPD 788 Steward.

<sup>126</sup> (1975) 397 NZPD 1346–1347 Whitehead; (12 March 2015) 703 NZPD 2250 Mallard (Chairperson).

<sup>127</sup> Ibid.

<sup>128</sup> (1900) 115 NZPD 159 O'Rorke.

<sup>129</sup> (1983) 453 NZPD 3018 Harrison; (2000) 585 NZPD 3362 Hunt.

<sup>130</sup> (5 July 2000) [1999–2002] 1 JHR 305 (Grant Gillon).

<sup>131</sup> (1988) 489 NZPD 4315–4316, 4322 Burke. See Chapter 2.

<sup>132</sup> SO 117; (1977) 411 NZPD 1145–1146 Jack.

<sup>133</sup> (1980) 431 NZPD 1493–1494 Harrison.

<sup>134</sup> See for example: (1887) 57 NZPD 68 O'Rorke; (1932) 233 NZPD 435 Statham.

<sup>135</sup> (1925) 208 NZPD 107 Statham.

<sup>136</sup> (1951) 294 NZPD 328–329 Oram.

which to consider the implications of a legal decision, and criticism may be made of the effects of a finding. There may also be criticism of a court system.<sup>137</sup> This is not only allowed; it is the duty of members, if they consider the public good requires amendments to the judicial system, to advocate such change. It is incumbent on the Speaker and members, however, to uphold the dignity of the judiciary and not to attack judges themselves.

Having said that, in exceptional circumstances the House still has a high constitutional duty to perform that would of its nature involve the criticism of a judge. To preserve the independence of the judiciary it is provided by law that a judge of the High Court (which includes all judges of the Supreme Court and the Court of Appeal) can be removed from office only by the Sovereign or the Governor-General, acting on an address from the House of Representatives.<sup>138</sup> In the exceptional case of such an address being moved in the House (none ever has), the conduct of the judge concerned would be a relevant object of criticism. But if specific charges such as would call into question a judge's fitness to hold office are to be made in the House, they must be brought forward in a motion, which can then be debated in the normal way.<sup>139</sup> Such charges cannot be made in the course of debate on another matter.

## **Sub judice rule**

The Standing Orders prohibit reference in any debate to any matters awaiting or under adjudication in a court from the time the case has been set down for trial or otherwise brought before the court, subject to the discretion of the Speaker.<sup>140</sup> This rule is commonly called the sub judice rule. It also applies to such references in any motion or in any question to a Minister.

The purpose of the rule has been described as "to safeguard the interests of fundamental justice",<sup>141</sup> so that, for example, popular prejudice against a defendant is not aroused by parliamentary statements. In the case of judge-only or appellate proceedings, it is extremely doubtful that any prejudice could arise from discussion of a case, in the House or elsewhere.<sup>142</sup> But there is another strand to the rule, which is perhaps more important in a practical sense. This is the implicit acknowledgement by the legislature that the proper forum in which to resolve legal disputes is the courts; and that the legislature, above all other institutions, should take extreme care not to undermine confidence in the judicial resolution of disputes by intruding its views in individual cases. After all, if it is not satisfied with the courts' resolution of a particular legal issue, Parliament always has the option of changing the law. In the sub judice rule the House applies more rigorous inhibitory standards to itself than do the news media in reporting judicial proceedings.<sup>143</sup> This is not anomalous given the constitutional relationship between the House and the courts; the House and the news media are not in the same situation.<sup>144</sup> It is paralleled by the greater latitude the news media has to criticise the House than do the courts.<sup>145</sup>

## **Scope of the sub judice rule**

The House's sub judice rule takes effect regarding criminal cases from the moment a charge is made and for other cases from the time proceedings are initiated by filing the appropriate document in the registry or office of the court.<sup>146</sup> The

<sup>137</sup> (1927) 212 NZPD 479 Statham.

<sup>138</sup> Constitution Act 1986, s 23.

<sup>139</sup> (1932) 233 NZPD 435 Statham.

<sup>140</sup> SOs 115 and 116(1).

<sup>141</sup> (1988) 491 NZPD 6244 Burke.

<sup>142</sup> *Re Lonrho plc* [1990] 2 AC 154 (HL) at 209.

<sup>143</sup> (8 May 2014) 698 NZPD 17691 Carter.

<sup>144</sup> (25 June 2003) 609 NZPD 6551 Hunt; (3 December 2003) 614 NZPD 10353 Hunt.

<sup>145</sup> *Pepper (Her Majesty's Inspector of Taxes) v Hart* [1993] AC 593 (HL) at 638 per Lord Browne-Wilkinson; *Hamilton v Al Fayed* [1999] 1 WLR 1569 (CA) at 1586 per Lord Woolf MR.

<sup>146</sup> SO 115(1).

restraint ceases when the verdict and sentence are announced or when judgment is given.<sup>147</sup> (It also ceases if the Attorney-General directs that summary proceedings be stayed, in which circumstances there is no matter awaiting adjudication by a court.<sup>148</sup>) If notice of appeal is given, the restraint reappears from the time of the notice until the appeal has been decided.<sup>149</sup> Preliminary inquiries by the police following a complaint to them cannot be excluded from comment if a legal action has not been instituted, but as soon as legal proceedings are commenced the rule applies.<sup>150</sup> Individual members cannot waive the application of the rule to legal proceedings in which they are involved.<sup>151</sup>

The sub judice rule applies only to matters before a New Zealand court as defined in the Standing Orders.<sup>152</sup> This definition includes the following courts:

- Supreme Court<sup>153</sup>
- Court of Appeal<sup>154</sup>
- High Court<sup>155</sup>
- Court Martial of New Zealand<sup>156</sup>
- Court Martial Appeal Court<sup>157</sup>
- Employment Court<sup>158</sup>
- Māori Appellate Court<sup>159</sup>
- Māori Land Court<sup>160</sup>
- Environment Court<sup>161</sup>
- District Courts (which include the Family Courts and Youth Courts).<sup>162</sup>

Members are not banned from traversing matters that are before a tribunal or body that is not included in this definition of a New Zealand court. So reference to matters that are the subject of inquiry by a royal commission or a commission of inquiry is not out of order.<sup>163</sup> Similarly, an inquiry by an Ombudsman is outside the scope of the rule.<sup>164</sup> Administrative tribunals set up under legislation to adjudicate on statutory rights created by the legislation are not courts of law at all,<sup>165</sup> so their proceedings do not fall within the scope of the sub judice rule. However, members should always consider whether it is in the public interest to discuss such matters.

## Application of the sub judice rule

The House has not adopted a rule that leaves itself completely unable to intervene once a matter goes before a court, and the right of the House to intervene in

<sup>147</sup> SO 115(2).

<sup>148</sup> Criminal Procedure Act 2011, s 176(1).

<sup>149</sup> SO 116(3).

<sup>150</sup> (1975) 400 NZPD 3437 Whitehead.

<sup>151</sup> (1997) 564 NZPD 5239 Kidd.

<sup>152</sup> SO 3(1) New Zealand court. Previously the Standing Orders linked the sub judice rule with any “court of record”. This term was not defined in the Standing Orders, requiring reference to several statutory provisions that established various courts as courts of record. The Privileges Committee considered this unhelpful, and recommended that the relevant courts be listed instead in the Standing Orders (Privileges Committee *Question of privilege relating to the exercise of the privilege of freedom of speech by members in the context of court orders* (28 May 2009) [2008–2011] AJHR I.17A at 18).

<sup>153</sup> Supreme Court Act 2003, s 6.

<sup>154</sup> Judicature Act 1908, s 57(1).

<sup>155</sup> Judicature Act 1908, s 3(1).

<sup>156</sup> Court Martial Act 2007, s 8.

<sup>157</sup> Court Martial Appeals Act 1953, s 4(6).

<sup>158</sup> Employment Relations Act 2000, s 186(1).

<sup>159</sup> Te Ture Whenua Maori Act 1993, s 50.

<sup>160</sup> Te Ture Whenua Maori Act 1993, s 6(1).

<sup>161</sup> Resource Management Act 1991, s 247.

<sup>162</sup> District Courts Act 1947, s 3(1); Family Courts Act 1980, s 4; Children, Young Persons, and Their Families Act 1989, s 433.

<sup>163</sup> (1934) 240 NZPD 367 Statham.

<sup>164</sup> (1977) 410 NZPD 320 Jack.

<sup>165</sup> *Proceedings Commissioner v Air New Zealand Ltd* (1988) 7 NZAR 462 (Equal Opportunities Tribunal).

certain circumstances is recognised by the Standing Orders. The House expressly reserves to itself the right to legislate on any matter.<sup>166</sup> Notwithstanding the sub judice rule, a bill dealing expressly with litigation before a court may be introduced and proceeded with. The House's right to legislate on any matter is paramount.

Furthermore, the sub judice rule is subject to the discretion of the Speaker.<sup>167</sup> To enable the Speaker to exercise this discretion effectively, a member who intends to refer to a matter awaiting adjudication in a court must give written notice to the Speaker of this intention.<sup>168</sup> The Speaker has regard to the member's written notice in determining whether to exercise this discretion and also balances the privilege of free speech against the public interest in maintaining confidence in the judicial resolution of disputes, and takes into account the constitutional relationship of mutual respect between the legislative and judicial branches of government, and the risk of something said in debate prejudicing a matter awaiting or under adjudication.<sup>169</sup>

It has been emphasised, for example, that it would be wrong to apply the sub judice rule to cases generally in such a way as to inhibit members in discussing penalties for offences. The House is not debarred from discussing possible or desirable penalties for drink or drug offences or any other type of offence merely because some cases involving such offences are currently before a court. To apply the Standing Order so generally would be to stultify debate in the House.<sup>170</sup> The law in general may be discussed, but not its application to a particular case that is before the court.<sup>171</sup> When a Minister made a statement to the House of Commons about a finding that the Minister was in contempt of court,<sup>172</sup> the Speaker exercised his discretion to permit members to question the Minister on the statement, even though notice of appeal against the finding had been lodged and the sub judice rule still applied.<sup>173</sup>

The sub judice rule is applied differently too depending upon the stage at which the matter under adjudication has reached. Thus any reference to a criminal case is unlikely to be allowed up to the point at which the verdict is reached. However, where only sentence is outstanding, although the rule continues to apply, the Speaker may take a less exclusionary approach. References to the case that do not obviously impinge on sentencing (such as, for example, the performance of non-judicial agencies involved with the convicted person or the victim) may be permitted in the interval between verdict and sentence.

There has been growing recognition in New Zealand, and in other Commonwealth legislatures with a similar rule, that judges are not so faint-hearted that some obscure remark made in Parliament would cause them immediately to alter a judgment they would otherwise deliver. Such a view would be grossly insulting to the judiciary. There is, nevertheless, a greater danger that remarks made in the House and widely reported could influence jurors engaged on a case. In administering the rule, Speakers have tried to be realistic by not excluding all discussion on matters of public interest merely because a court is addressing the matter, while maintaining the underlying purpose of the rule of avoiding any real danger of prejudice to persons before a court and to maintain the separation of powers between the legislature and the judicature.

<sup>166</sup> SO 115.

<sup>167</sup> SO 115.

<sup>168</sup> SO 115(2); Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 26, implementing recommendations from Privileges Committee *Question of privilege relating to the exercise of the privilege of freedom of speech by members in the context of court orders* (28 May 2009) [2008–2011] AJHR I.17A.

<sup>169</sup> SO 115(3).

<sup>170</sup> (1981) 441 NZPD 3337–3338 Harrison.

<sup>171</sup> (1985) 464 NZPD 5596, 5617 Wall.

<sup>172</sup> *M v Home Office* [1992] QB 270.

<sup>173</sup> (2 December 1991) 200 GBPD HC at 30.

## Matters suppressed by court order

If members wish to refer to a matter that is suppressed by a court order, they must give written notice to the Speaker seeking the exercise of the Speaker's discretion. To fail to do so knowingly can be considered a contempt.<sup>174</sup> Members have judged such a transgression so seriously that it has been suggested that the Speaker report the member's conduct to the House immediately and refer it to the Privileges Committee as a question of privilege.<sup>175</sup> The Speaker has indicated to the House that where members have not given any such notice, the sub judice rule will be interpreted strictly in debate.<sup>176</sup> Further, documents tabled in the House will not (unless ordered by the House to be published) be circulated by the Clerk of the House in contravention of an order of the court.<sup>177</sup>

## Other references to judges

Judges appear before select committees from time to time to give evidence on matters that they consider warrant their contribution. In these circumstances there is no rule or convention to prevent members referring to the fact that a judge appeared before a committee.<sup>178</sup>

## INTERJECTIONS

Strictly speaking, a member is entitled to be heard in silence.<sup>179</sup> A speech can be interrupted only by a point of order, or matter of privilege, or the suspension or adjournment of a sitting.<sup>180</sup> However, in practice, other members do not always sit listening to the member speaking in mute respect; they interject comments or questions into the debate. This has become an established custom of the House, but interjectors do not have the floor, and the type and frequency of their interjections must be kept within bounds.

As an interjection is an attempt to contribute material to the debate, it is subject to all the rules that have already been discussed for the contents of members' speeches. An interjection must be relevant to the issue being debated. An irrelevant comment made by way of interjection is disorderly and does not justify a reply from the member who is speaking.<sup>181</sup> The reason for permitting interjections at all is to enable members to elicit further information or to test the arguments being used by the member speaking. Interjections do not allow a member who does not have the floor to address arguments for or against the measure under discussion. Members can do this when called on to speak in their own right.<sup>182</sup> The Speaker will, therefore, often intervene if an interjecting member is tending to monopolise the time of the member speaking by putting forward arguments opposing his or her views.

Speakers have for many years asked that interjections be "rare and reasonable".<sup>183</sup> A continuous series of interjections or a running commentary on a member's speech is out of order.<sup>184</sup> An interjection by way of contradiction is out of order,<sup>185</sup> as is a question to a member speaking to which the speaking member takes exception.<sup>186</sup>

<sup>174</sup> SO 410(y); (21 March 2012) 678 NZPD 1159 Smith.

<sup>175</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 25–26.

<sup>176</sup> (10 February 2015) 703 NZPD 1370 Carter.

<sup>177</sup> (1994) 539 NZPD 470 Tapsell.

<sup>178</sup> (1984) 457 NZPD 477 Arthur.

<sup>179</sup> (1932) 231 NZPD 362 Statham.

<sup>180</sup> SO 131.

<sup>181</sup> (1936) 244 NZPD 772 Barnard.

<sup>182</sup> (1923) 201 NZPD 653 Statham.

<sup>183</sup> (1923) 200 NZPD 1105 Statham.

<sup>184</sup> (1936) 247 NZPD 691 Barnard.

<sup>185</sup> (1924) 203 NZPD 279 Statham.

<sup>186</sup> (1933) 237 NZPD 719 Statham.

Members must stop interjecting when called to order by the Chair.<sup>187</sup> They may interject only from a seat in the Chamber, and must not make interjections while standing or leaving their seats or while moving around the Chamber.<sup>188</sup> It is also disorderly for a member to change seats in order to facilitate interjection—for example, by moving nearer to the microphone of the member speaking or to a position more noticeable by or distracting to that member.<sup>189</sup> Members have seats of their own in the Chamber but they often occupy another seat temporarily to discuss something with a colleague or even to speak in the debate from a seat nearer the Speaker's Chair, and they may interject from any seat they happen to be sitting in, provided they did not move seats originally for that specific purpose. The occasional interjection from a member who is not sitting in his or her own seat may be passed off as a subsidiary reason for sitting in that seat, but if the member embarks on a series of interjections the Speaker will be persuaded very soon that the member's motive for occupying the seat is to interject, and the member will be ordered to stop interjecting or return to his or her own seat.<sup>190</sup> Speakers have also ruled against members and Ministers in charge of bills taking advantage of the live microphone at the Table to interject.<sup>191</sup>

## **Yielding**

One method for accommodating interjections is the practice of yielding or giving way. This derives from the House of Commons practice whereby the interjector seeks to rise during the course of another member's speech with a question or comment relevant to a point made by that member. The member who has the floor may "give way" and resume his or her seat temporarily (or refuse to do so) so that the question can be asked or the comment made.<sup>192</sup>

A member may yield to another only for the purpose of allowing the other to refer to matters raised by the member speaking. Yielding is a way of allowing the making of an interjection, not of a speech. It should only be for a brief period, after which the member with the call resumes speaking. Yielding is not a means of transferring the call or of developing a subject at length. If too much time has been taken by the member who intervenes, the Speaker will interrupt and ask the original member to resume his or her speech.<sup>193</sup>

The time taken up by the member who interjects in this way is counted as part of the time of the member who gave way.<sup>194</sup>

## **Inclusion of interjections in *Hansard***

Hansard reporters are present in the Chamber at all times and may hear interjections and identify the members making them even when the remarks are inaudible on the broadcast. However, interjections are not transcribed unless they are responded to by the member who has the call. Thus it is the member who is speaking who effectively decides whether an interjection will be recorded in *Hansard*. For this reason the wittiest and most effective interjections may be omitted from *Hansard* because they leave their object speechless.

## **Provoking interjections**

A member speaking is under some obligation not to provoke interjections. If a member directs a constant series of questions to a member or to members present

<sup>187</sup> (1923) 200 NZPD 231 Statham.

<sup>188</sup> (11 March 2015) 703 NZPD 2186 Mallard (Assistant Speaker).

<sup>189</sup> (1963) 335 NZPD 609 Algie.

<sup>190</sup> (1980) 429 NZPD 691 Harrison.

<sup>191</sup> (1984) 458 NZPD 885 Arthur; (4 November 2004) 621 NZPD 16658 Robertson (Chairperson); (17 October 2006) 634 NZPD 5842 Robertson (Chairperson); (13 March 2014) 697 NZPD 16695 Robertson (Assistant Speaker).

<sup>192</sup> (26 October 2010) 668 NZPD 14813 Barker (Chairperson).

<sup>193</sup> (1992) 531 12223–12224 Gray.

<sup>194</sup> (1988) 486 NZPD 2266 Burke.

in the Chamber, the member is inciting them to disorder and may be asked to desist by the Speaker.<sup>195</sup> Members often ask questions, rhetorical or not, in the course of their speeches and they are not obliged to give members opposite an opportunity to reply there and then. Those members can seek the call and answer the questions later in the debate.<sup>196</sup> However, there comes a point where the employment of this debating tactic tends to lead to disorder and the Speaker feels obliged to intervene. A member speaking could yield time for an interjection in reply to questions that member has asked in the course of the speech, but the Speaker cannot require the member to yield.

## VISUAL AIDS

Members regularly seek to add a visual impact to their speeches by brandishing graphics or objects that illustrate points they wish to make.<sup>197</sup> Appropriate visual aids can be used by a member speaking, provided that they do not inconvenience other members or obstruct the proceedings of the House.<sup>198</sup>

The Speaker is the judge of whether such an object is appropriate and whether it is too inconvenient or obstructive. Members have been counselled not to trivialise Parliament by introducing inappropriate objects into the Chamber, and the Speaker will refuse to permit an object to be used if, in the Speaker's opinion, it would lower the esteem in which the institution is held.<sup>199</sup> In judging whether an aid is convenient, the size of the object to be used will also be a consideration. The Speaker will generally require that the visual aid be confined to the desk of the member speaking.<sup>200</sup> A member sitting at the same bench as the member with the call may assist by showing the visual aid, but it is not acceptable for visual aids to be shown from other benches.<sup>201</sup> The Speaker will not permit a demonstration to be staged in the Chamber.<sup>202</sup>

While members do not have to seek prior permission from the Speaker to use a visual aid, the object will sometimes be visible on being brought into the Chamber before the member's speech commences. In these circumstances the Speaker's permission to bring the object into the Chamber in the first place must be obtained. This can be done privately.<sup>203</sup>

Any visual aid may be displayed only while the member is speaking and must be removed from the Chamber at the end of the speech.<sup>204</sup> Members often deploy visual aids during question time; in this case the Speaker applies the same principles as are used when members seek to use visual aids in debate.

The Speaker will order the removal of more permanent visual displays; for example, when members have pinned notices or pennants to their seats or to the sides of their correspondence trays and displayed them prominently for a few days. The introduction into the Chamber of an object designed to make or illustrate a point in a member's speech is acceptable when it is reasonably necessary for that purpose, but objects introduced for the purpose of making a silent comment on

<sup>195</sup> (1969) 362 NZPD 2522 Jack.

<sup>196</sup> (1970) 367 NZPD 2476 Jack.

<sup>197</sup> The pair of bloomers held up by Mabel Howard to emphasise a point about the cost of ladies' underwear is a famous example (David Gee *Our Mabel* (Milwood Press Ltd, Wellington, 1977) at 155). Other members have introduced grocery items and charts. A member introducing a bill on drug misuse showed the House a stash can, a hookah pipe and other drug paraphernalia he wished to make illegal ("Ban on drug equipment considered" *The Dominion* (26 November 1992)).

<sup>198</sup> SO 112(1).

<sup>199</sup> (1997) 560 NZPD 1755 Kidd.

<sup>200</sup> (1997) 559 NZPD 1382–1385 Revell (Chairperson).

<sup>201</sup> (27 May 2010) 663 NZPD 11375 Smith.

<sup>202</sup> (1997) 560 NZPD 1755 Kidd.

<sup>203</sup> Ibid.

<sup>204</sup> SO 112(2).

issues, or that remain in the Chamber for a period of time, are not acceptable.<sup>205</sup> Advertising is not permitted in the Chamber.<sup>206</sup>

## INTERRUPTION OF DEBATE

A number of matters may cause the House to lay aside temporarily a debate upon which it is engaged. These matters do not necessarily permit the interruption of a member speaking. Most interruptions to a debate can only arise between speakers, not while a member is actually speaking.

Interjections might interrupt a member's speech, but they are contributions to the debate rather than interruptions of it if they are properly made. However, a member's speech or the debate is liable to be interrupted in other ways.

- The Speaker may be called upon to rule on a point of order.<sup>207</sup>
- A matter of privilege may arise relating to the conduct of strangers present.<sup>208</sup>
- The sitting or a debate may be suspended at a regular time or in accordance with a determination of the Business Committee, or in the event of disorder or an emergency.<sup>209</sup>
- A message from the Governor-General may be read to the House (this will only be done between speakers).<sup>210</sup>
- An unsworn member may take the oath or affirmation entitling the member to take a seat in the House (again only between speakers).<sup>211</sup>
- A motion may be made to exclude the press and the public from the galleries (but the moving of such a motion may not interrupt a member speaking).<sup>212</sup>
- A Minister may make a ministerial statement or a member may make a personal explanation or a maiden statement (also not so as to interrupt a member speaking).<sup>213</sup>

When a debate is interrupted by one of these events, the interruption is temporary as far as the sitting is concerned. When the interruption is concluded, the debate immediately resumes at the point it had reached.

## ADJOURNMENT OF DEBATE

A debate may be adjourned by its interruption at the adjournment of the House, or by virtue of a decision of the House or a determination of the Business Committee. The adjournment automatically suspends the debate for a period, and usually it will not be resumed until a subsequent sitting day.

When a debate is still running at the time appointed for the adjournment of the House or for the House to go on to other business, any debate in progress is automatically interrupted and set down for resumption on the next sitting day.<sup>214</sup> A debate is not regarded as having commenced—and thus is not considered to have been interrupted by the adjournment—if no member has started speaking to move the motion concerned.<sup>215</sup>

<sup>205</sup> (1982) 444 NZPD 1070 Harrison.

<sup>206</sup> (7 June 2011) 673 NZPD 19066–19067 Smith; (1999) 578 NZPD 17631 Braybrooke (Chairperson); (14 October 2009) 658 NZPD 6993 Smith.

<sup>207</sup> SOs 131(a) and 132(a).

<sup>208</sup> SOs 131(b) and 132(b).

<sup>209</sup> SOs 50(1), 79, 131(c), 132(c), and 177(1).

<sup>210</sup> SO 132(d).

<sup>211</sup> SO 132(e).

<sup>212</sup> SO 132(f).

<sup>213</sup> SO 132(g).

<sup>214</sup> SO 133(2).

<sup>215</sup> See, for example: New Zealand Superannuation and Retirement Income (Pro Rata Entitlement) Amendment Bill on the Order Paper for 27 August 2015. When the order of the day for a bill's first reading had been called (26 August 2015), but the member in charge of the bill had not started moving the motion, the first reading debate was not considered to have been interrupted.

## Motions for adjournment of debate

In addition to interruption by the automatic operation of the rules of the House, a debate may be adjourned purposefully, either to a later hour on the same day or to a subsequent day, by a motion to that effect.<sup>216</sup> A motion for the adjournment of a debate is sometimes referred to as a dilatory motion, for it can be used to delay proceedings. However, its use in the House of Representatives as an instrument of delay has been severely curtailed by the fact that, if it is moved, the question on it is put forthwith and determined without amendment or debate.<sup>217</sup>

A motion for the adjournment of a debate can be moved only by a member who is called to speak in the debate. The member must therefore have speaking rights. A member who has already spoken to the question cannot move the adjournment of the debate. A member proposing to move the adjournment must do so immediately on being called to speak. The member cannot speak to the question and then move the adjournment, nor can the member preface the adjournment motion with an explanation of why it is to be moved. If the member offers such a prefatory explanation, the member is treated as speaking to the question and cannot move the adjournment of the debate. If the motion for the adjournment is defeated, the member may continue the speech. If the member does not continue in these circumstances, he or she loses the right to speak.<sup>218</sup>

## Resumption of adjourned or interrupted debate

A debate is resumed at the point it had reached when it was adjourned or interrupted, whether under the Standing Orders or on a motion.<sup>219</sup> The member who was speaking when the debate was interrupted or on whose motion a debate was adjourned has the right to speak first when the debate is resumed.<sup>220</sup> For this purpose, the member must seek the call when the debate is resumed, otherwise other members can be called to speak. If the member whose speech was interrupted does not exercise the right to speak first on the resumption of the debate, the speech is concluded.<sup>221</sup> An exception has been made when the conclusion of a sitting has interrupted the speech of a Minister moving a motion. In this case, on the resumption of the debate another Minister has been permitted to complete the speech in order to aid the House's understanding of the policy of the bill or motion concerned, and in light of the collective responsibility of Ministers.<sup>222</sup>

When a debate has been adjourned by a motion, the member who moved the debate's adjournment is not obliged to exercise the right to speak first, and may speak later in the debate if he or she wishes. Such a member does not need to declare an intention to do this when the debate resumes; the right to do so applies automatically.<sup>223</sup> A member resuming the debate in these circumstances cannot again move its adjournment. The right to do so applies only when first being called to speak.

## ENDING DEBATE

A debate ends when:

- the maximum number of speeches allowed for the debate has been reached
- the time limit for a debate is reached
- a closure motion is accepted
- no members with speaking rights wish to speak
- all members have exhausted their speaking rights.

216 SO 133(1).

217 SO 133(1).

218 SO 135.

219 SO 54.

220 SOs 54 and 134.

221 SO 54.

222 (8 September 2015) 708 NZPD 6325–6327 Mallard (Assistant Speaker).

223 (1985) 468 NZPD 8562 Wall.

Once the debate has concluded, the Speaker “puts” the question to the House for a decision, and the House then decides the question through a vote.<sup>224</sup>

## RESTRICTIONS ON THE LENGTH OF DEBATE

The House has imposed strict restrictions on the length of most debates, by stipulating either a maximum number of speeches (which themselves are limited in length) or an explicit time limit for the whole debate. These rules represent an attempt to balance, on the one hand, reasonable expectations for the progress of bills and other business, with legitimate claims for the House’s time, on the other hand, to scrutinise, discuss, and even delay that business. This balance is occasionally adjusted through amendments to the Standing Orders, but there is constant active engagement between members to manage the House’s time. In particular, the House has given the Business Committee a much greater role in structuring debates so as to make the most effective use of House time.

Compared with some legislatures, members take the opportunity to filibuster less frequently as parties can discuss in the Business Committee how a debate should be structured. The New Zealand House of Representatives has not deemed it necessary to employ more draconian ways of terminating or limiting the debate, such as the guillotine motion that is occasionally used in the Parliament of Australia’s House of Representatives.

### Time limits on the whole debate

Some debates have overall time limits imposed on them, the Standing Orders specifying the number of hours each may last. The Business Committee has power to vary these time limits.<sup>225</sup> The debates subject to such time limits include the Address in Reply debate, the debate on the Prime Minister’s statement and most financial debates, such as the Budget debate.

Where a debate is subject to a time limit, it is taken to include any time expended on points of order in the course of debate, at least when the points of order arise directly out of that debate. So no extra time is added to the whole debate for time spent on points of order (but time may be added to individual speeches in the debate, in accordance with the principles discussed above).<sup>226</sup>

When the time allowed for a debate expires, the member speaking is immediately interrupted. There is no provision for an extension of the debate to allow his or her speech to be concluded.<sup>227</sup> Indeed, other members who might have expected to get the opportunity to speak may miss out altogether if much of the debating time has been expended on points of order. In the case of the Budget debate, where there is provision for the Minister to speak in reply to the debate, the debate is interrupted 10 minutes before it is due to conclude and the Minister is given the opportunity to speak in reply.

### Restrictions on the number of speakers

For most debates, except those subject to overall time limits as discussed above, there are restrictions on the number of speeches that may be made. This applies, for example, to debates on the various stages of bills. Generally, 12 speeches are allowed for each debate, although on the first reading of Members’ bills, private bills or local bills only 11 speeches are permitted, nine of which are limited to five minutes. In addition, the practice of splitting calls between two or more members

<sup>224</sup> See Chapter 17.

<sup>225</sup> SO 79(d). See, for example: the Business Committee determination of 26 November 2014, which transferred an additional two hours to the annual review debate.

<sup>226</sup> Similarly, any time spent interpreting members’ speeches is regarded as part of the debate and counts against the total time allowed for it: (1999) 579 NZPD 18503 Neeson (Assistant Speaker). The availability of simultaneous interpretation means this is no longer an issue.

<sup>227</sup> (1986) 472 NZPD 3096 Wall.

means that more members can speak in a debate than the allotted number of calls.

In such debates, even if a member does not use all of the individual speaking time available to him or her, no extra speeches are allowed. In debates that are subject to a simple time limit, by contrast, time saved by individual members in speaking may permit more members to participate in the debate.

The Business Committee may use its power to set limits on the number of speakers. It does so reasonably often for debates on Government notices of motion, which are not restricted in this way under the Standing Orders, by limiting the debates to one speaker from each party and setting an agreed time limit for each of the speeches.<sup>228</sup>

## CLOSURE

A closure motion is a motion that, if carried, brings the debate then in progress to an immediate conclusion even though there are still members who wish to speak in it. The closure motion in its present form was introduced in 1931, replacing a number of less potent weapons for curtailing debate. It is now an established aspect of parliamentary procedure, but because most debates in the House are now time-limited it is principally used in the committee of the whole House.

The closure motion is a motion moved by a member in the course of a debate asking the House to end its debate and proceed forthwith to decide the issue. The Speaker has to decide whether it is appropriate that a closure motion be put to the House at that point. But it is the House, in voting on the closure motion, that decides if the debate should end, not the Speaker.

### Moving the closure

The closure procedure is invoked by a member seeking the call in debate in the ordinary way and moving “That the question be now put”.<sup>229</sup> In order to be in a position to move the closure motion, the member must be called to speak to the question under debate,<sup>230</sup> so only a member who still has a right to speak to the question before the House is in a position to move the motion. Once the member has been called to speak, he or she can move the closure motion.<sup>231</sup> It may be moved from wherever the member happens to be sitting when called to speak.<sup>232</sup> The moving of a closure motion is itself treated as a speech, and once it has been moved the member’s right to speak has been exhausted, regardless of whether the motion is accepted by the Speaker or agreed to by the House.<sup>233</sup> But where, for example in committee, a member may speak more than once to a question, there is nothing to stop the member moving the closure on the second or subsequent call he or she takes.<sup>234</sup>

The actual words that the member must use in moving a closure motion are prescribed in the Standing Orders and the member must add nothing to them either before or after moving the motion.<sup>235</sup> The member cannot, for instance, give reasons for moving the motion. If a member adds anything to the terms of the motion it is not properly moved and will be declined at that point.<sup>236</sup> Members

<sup>228</sup> See, for example, the Business Committee determination of 12 August 2015 allocating one five-minute speech to each party in the debates on appointments to the Independent Police Conduct Authority and the Abortion Supervisory Committee.

<sup>229</sup> SO 136(1).

<sup>230</sup> SO 136(1).

<sup>231</sup> (2000) 586 NZPD 4768 Hunt.

<sup>232</sup> (13 November 2003) 613 NZPD 10014 Hunt.

<sup>233</sup> SO 136(1); (1971) 373 NZPD 2376 Jack; (1985) 468 NZPD 8562 Wall.

<sup>234</sup> (2000) 583 NZPD 2365 Hunt.

<sup>235</sup> Ibid.

<sup>236</sup> (1958) 318 NZPD 1600–1601 Macfarlane.

have sometimes employed minor variations on the words of the motion set out in the Standing Orders. If such a variation is recognised at the time, and if it is judged by the Speaker to involve more than a simple courtesy to the House,<sup>237</sup> the motion will be declined. But, even if a motion has been moved incorrectly, it will be allowed to stand if the House has agreed to it before objection is taken.

## **Restrictions on who may accept closure motions**

Because the Chair is invested with an onerous discretionary authority as to whether to accept a closure motion, only certain presiding officers may accept the motion.

In the House, no temporary Speaker may accept a closure motion.<sup>238</sup> This means that only the Speaker, the Deputy Speaker or an Assistant Speaker may do so. Similarly, in committee, no temporary Chairperson may accept the motion (although on one occasion this power was conferred on a temporary Chairperson).<sup>239</sup> In committee only the Chairperson (who is the Deputy Speaker or an Assistant Speaker<sup>240</sup>) may accept the closure. Occasionally, if the Deputy Speaker or an Assistant Speaker is not available when the House is about to go into committee, the House appoints another member as acting Chairperson.<sup>241</sup> Such a member can accept a closure motion.

## **Limited-time debates**

Where the Standing Orders prescribe the time allowed for a debate (whether by stating the time or limiting the number of speakers) or where the Business Committee has used its power to prescribe the time, no closure motion may be accepted.<sup>242</sup> To do so would frustrate the Standing Orders or the determination. This means that most debates in the House are not subject to closure motions, since limits are prescribed for them. But debates in committee are not subject to time limits, unless the Business Committee can agree on them, so the closure is still frequently employed there.

## **Acceptance of closure motion**

The Standing Orders leave the decision on whether to accept a closure motion solely to the Speaker (or other member presiding). The Speaker may accept the closure if, in his or her opinion, it is reasonable to do so.<sup>243</sup>

In deciding whether to accept a closure motion the Chair will always take into account the length of time spent debating the question and the number of members who have participated in the debate. The Chair will try to ensure that a party of large numbers gets an appropriate number of calls<sup>244</sup> and, if possible, that all parties make a contribution to the debate.<sup>245</sup> However, this does not mean that overall proportionality of party participation in the debate must be achieved before a closure can be accepted. That is a relevant consideration, but it does not bind the Chair in determining whether to accept a closure motion.<sup>246</sup> The degree to which members have been relevant or repetitious in the debate will also influence the presiding officer's decision.<sup>247</sup> Whether the Minister in the chair has engaged sufficiently has also influenced the decision of the Chair.<sup>248</sup> The acceptance

<sup>237</sup> (23 February 2010) 660 NZPD 9209 Smith.

<sup>238</sup> SO 136(4).

<sup>239</sup> SO 136(4); (3 October 2000) [1999–2002] 1 JHR 690.

<sup>240</sup> SO 172(1).

<sup>241</sup> SO 172(2); Standing Orders Committee *Review of Standing Orders* (27 August 2008) [2005–2008] AJHRI.1.18B at 19–20.

<sup>242</sup> SO 136(2).

<sup>243</sup> SO 136(3).

<sup>244</sup> (1998) 574 NZPD 14109 Kidd.

<sup>245</sup> (1998) 574 NZPD 14085 Roy (Chairperson).

<sup>246</sup> (2001) 594 NZPD 11125 Braybrooke (Deputy Speaker).

<sup>247</sup> (1998) 574 NZPD 14109 Kidd.

<sup>248</sup> (3 November 2015) 709 NZPD 7664 Mallard (Chairperson).

of the closure is about the content of the debate and the way the committee is conducting itself.<sup>249</sup> The number of times a closure motion is moved is not a relevant consideration when the presiding officer is determining whether sufficient time has been given over to the debate.<sup>250</sup> Whether a closure motion is accepted or not will always depend upon circumstances. For example, the drafting of a bill can influence the decision—it can be expected that a part of a bill consisting of numerous subparts will be subject to a longer debate before a closure motion will be accepted than otherwise would be the case.<sup>251</sup>

If the Speaker or Chairperson declines to accept a closure motion or if a closure motion is put to the vote and defeated, the debate continues. There is no rule preventing a closure motion that has been put to the vote and defeated being moved again, though in these circumstances it is unlikely that the Speaker or Chairperson would accept another closure motion until a reasonable amount of further debate had ensued.<sup>252</sup>

The Speaker will not review a decision of a Chairperson, in committee, to accept or refuse to accept a closure motion.<sup>253</sup>

### **Putting the closure motion**

If the Speaker or Chairperson decides to accept a closure motion, the presiding officer puts the question “That the question be now put” to the House for decision. This question is determined forthwith by the House or committee without any amendment or debate.<sup>254</sup>

Once a closure motion has been accepted, the House will usually agree to it. But this does not have to follow; the House may turn the motion down if members decide that they wish to continue the debate. This is no reflection on the Speaker. The Speaker in accepting a closure motion is not deciding to terminate a debate; the Speaker is giving the House an opportunity to do so. Although it is unusual, the House (or the committee) may turn this opportunity down.

### **Putting the question following agreement to the closure**

If a closure motion is carried, the Speaker proceeds to put the question that the House has just ordered to be put. There is no further opportunity for amendment or debate.<sup>255</sup> Where an amendment has been moved or lodged before the closure motion is carried, not only is the question on the amendment put, so is any other question already proposed from the Chair. The House works its way back to the main question by putting the question on all intervening amendments that have been moved or lodged, and by deciding them without further amendment or debate.<sup>256</sup> The main question is then similarly decided forthwith. The Standing Order does not provide for a closure motion only in respect of an amendment or a motion related to the matter under consideration, such as a motion proposing a change to a vote during the Estimates debate with further debate or amendment to the main question then following. This would defeat the purpose of the closure motion.<sup>257</sup> A closure motion, when agreed to, closes off all further debate on the main question too.

In both the House and the committee, any time for the sitting to conclude or be interrupted is deferred once a closure motion has been carried to allow these

<sup>249</sup> (16 May 2009) 654 NZPD 3635 Barker (Chairperson).

<sup>250</sup> (29 May 2013) 690 NZPD 10560 Carter.

<sup>251</sup> (26 March 2003) 607 NZPD 4420–4421 Hunt.

<sup>252</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 19.

<sup>253</sup> (1931) 227 NZPD 675 Statham; (1990) 510 NZPD 3735 Burke; (8 March 2011) 670 NZPD 17027 Barker (Assistant Speaker); (4 December 2007) 644 NZPD 13481 Wilson.

<sup>254</sup> SO 137.

<sup>255</sup> SO 138(1).

<sup>256</sup> SO 138(2).

<sup>257</sup> (1991) 520 NZPD 5203–5204 Gray.

questions to be put.<sup>258</sup> Thus the House or committee may continue sitting after the time has arrived for the sitting to be suspended, or for the committee to report progress or for the House to adjourn, in order in each case to complete voting on questions consequential on the carrying of a closure motion.<sup>259</sup>

## **Amendments**

Members are not denied the opportunity to have their amendments put to the House because a closure motion has been carried before an amendment to the motion has been considered. If a proposed amendment has been notified on a Supplementary Order Paper (as most ministerial amendments in committee are) or is handed in to the Table before the closure motion is accepted, and is in order, it is put to the House for decision (without any debate) even though it has not been formally moved.<sup>260</sup> Conversely, after a closure motion has been carried, a member may not withdraw an amendment on a Supplementary Order Paper or an amendment that has been handed in to the Table, without leave.<sup>261</sup>

## **LAPSE OF DEBATE**

It is possible that a debate may terminate without the question on the motion being put to the House at all. This happens when a motion lapses under the Standing Orders. Any motion for the adjournment of the House under debate at 10 pm (6 pm on a Thursday) lapses, for there is no occasion to put it to the vote when the time for the rising of the House has arrived in any case.<sup>262</sup> Motions to debate a matter of urgent public importance<sup>263</sup> and to hold a general debate on a Wednesday<sup>264</sup> also lapse at the conclusion of the time prescribed for them under the Standing Orders, and no question is put on them at the end of the debate for the House to decide.

Furthermore, no question is put on the third reading of a bill, on an amendment in the committee of the whole House, on a motion to change a vote or on a motion that has the force of law, if a financial veto certificate has been issued in respect of it.<sup>265</sup>

---

258 SO 53.

259 (12 November 2003) 613 NZPD 10003 Hunt.

260 SO 138(2).

261 (1986) 470 NZPD 1052 Terris (Chairperson).

262 SO 51(1).

263 SO 390(2).

264 SO 392(2).

265 SOs 328(3), (4) and 329(2); (5 December 2007) 644 NZPD 13575 Simich (Chairperson).

## CHAPTER 17

# Voting

Voting is the most significant procedure of the House, through which the will of the people—as expressed in parliamentary elections—is realised in the form of particular decisions that determine the laws and governance of the country. It is of fundamental importance that these decisions are settled with absolute clarity and certainty. This chapter explains the House’s decision-making process.

### MAJORITY REQUIRED

All questions put to the House are decided by a majority of votes in favour of or against the question. Each member is entitled to a single vote, or can abstain. A simple majority of the votes cast is enough to decide the matter.<sup>1</sup> Abstentions are ignored for this purpose, though they are noted in the record of the decision.<sup>2</sup>

There must be a positive majority for a resolution to be carried; in the event of a tie, the question is lost. The only exception is when the committee of the whole House considers a provision in a bill—the provision remains in the bill even if the question for its retention is tied.<sup>3</sup> In this case, a positive majority is needed to amend the bill by getting rid of a provision. There is no casting vote vested in the Speaker.<sup>4</sup>

A qualified majority of votes is required for changing certain provisions of the electoral law.<sup>5</sup> And if a proposal is made for any legislative provision to be entrenched, a qualified majority (rather than a simple majority) of votes in favour of it must be obtained for it to succeed. A proposal for legislative entrenchment is a provision in a bill or an amendment to a bill to the effect that the provision or amendment could itself only be repealed or amended by a majority of more than 50 per cent plus one of all members of the House. In this case the proposed provision or amendment must itself receive that same level of support for it to be adopted when it is considered at the committee stage.<sup>6</sup> If a proposal for entrenchment does not attain the qualified majority, it is lost.

<sup>1</sup> SO 139(2).

<sup>2</sup> SOs 139(2), 143(4) and 150(1).

<sup>3</sup> SO 305(1). See p 444.

<sup>4</sup> The Speaker previously could wield a casting vote, but this was abolished in 1996. See Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 30.

<sup>5</sup> Electoral Act 1993, s 268. See p 10.

<sup>6</sup> SO 266.

## PUTTING THE QUESTION

The Speaker begins the debate on a motion by proposing a question based on it, so members know what decision is before them for discussion. When the debate is ended, the Speaker states the question again for the House and asks if the House agrees to the motion.<sup>7</sup> This is called putting the question. The question is put after each debate, except in the few cases where the question lapses.<sup>8</sup> If a member seeks the call while the Speaker is still putting the question, then the Speaker can allow the member to speak.<sup>9</sup> But the debate is over once the question has been put from the Chair; no member may speak further to the question.

Members must then express an opinion for or against the motion. Once the question has been put and a vote has begun, it must be completed—the adjournment or suspension of the sitting is delayed if a vote is in progress at the time.<sup>10</sup> Moreover, the House will deal with any other questions that must be put without debate, and the interruption of the sitting is further postponed for this purpose.<sup>11</sup> This requirement for the House to complete its decision on a question that is in the process of being decided can be set aside only by leave.

If the question is complicated or it is convenient to vote on parts of it separately, it can be divided. But this must be done by leave; there cannot be a motion or amendment to divide a question. On occasion, the Speaker has suggested that it may be convenient to the House to vote on different parts of a question separately.<sup>12</sup>

## VOICE VOTE

The method by which the House votes initially on any question is by a vocal expression of opinion for or against the question—a voice vote.<sup>13</sup> The majority of voices decides “Aye” or “No” to the question.<sup>14</sup> In most cases this method of deciding a question is sufficient, without the House needing to employ further voting procedures to settle matters.

### Deciding the result on voices

In a voice vote, it is up to the Speaker to decide whether the Ayes or the Noes “have it”—that is, which side is in the majority. If the Speaker is not satisfied that members gave their voices in a way that allows the will of the House to be deduced confidently, the Speaker can ask the members to repeat the process, by putting the question again.

To determine whether the Ayes or the Noes have it, no decibel reading is taken; the Speaker uses intuitive judgement. Visitors in the gallery or people in the broadcast audience sometimes perceive that the less vocal side is declared to have prevailed in a voice vote, and ask why this occurs. It is the Speaker’s job to judge where the majority falls, on the basis of the voices, not to register who can shout loudest or most vehemently. For this purpose, the Speaker can expect that in all normal circumstances the Government will be in the majority. When a vote is not being taken on party lines, the Speaker needs to make an instant assessment of the will of the House from the strength of the voices, but these occasions are relatively few.

The Speaker’s determination of where the majority lies on the voices is often sufficient: either the House decides without any dissenting voice, or the members who have found themselves in the minority acquiesce in the Speaker’s judgement about the result. When the outcome for the motion is finalised on the basis of the voice vote alone, the official record shows the House’s decision as unanimous.

<sup>7</sup> SO 139(1).

<sup>8</sup> See Chapter 16, “Lapse of debate”.

<sup>9</sup> (28 May 2014) 699 NZPD 18443 Tisch (Chairperson).

<sup>10</sup> SO 53(a); (2000) 586 NZPD 4309 Roy (Chairperson).

<sup>11</sup> SO 53(b); (13 March 2013) 688 NZPD 8542–8543 Roy (Deputy Speaker).

<sup>12</sup> (1997) 560 NZPD 2023–2024 Kidd.

<sup>13</sup> SO 140.

<sup>14</sup> SO 139(2).

## Call for a further vote

After the Speaker has declared a result on the voices, members in the minority who are not satisfied with this method of determining the matter can instigate a more formal testing of the waters. They achieve this by objecting that the votes for the other side “have it” and then calling for a further vote to be held.<sup>15</sup> Such a challenge to the result declared on the voices must be made straight away, otherwise the House will go on to its next business and it will be too late for a further vote on that question.<sup>16</sup>

The right to challenge the Speaker’s assessment of how the voice vote has gone lies only with those in the putative minority.<sup>17</sup> For this purpose, the members in the minority include those who wish to abstain; they can call for a further vote so their abstentions are recorded.<sup>18</sup> On the other hand, members who voted with the majority as declared by the Speaker do not have a right to call for a further vote just to test the position of other members in the House.<sup>19</sup> The Speaker can refuse to allow a further vote if it is clear that a member calling for it was in the majority as declared by the Speaker on the voice vote.<sup>20</sup>

## PARTY VOTES

Most contested votes in the House are conducted by way of a system of party voting.<sup>21</sup> This system allows the party complexion of the House, as imparted by the party vote at general elections, to be reflected directly in the decisions it makes. Party voting was introduced in 1996 in anticipation of the first MMP election, and is based on a system of collective voting used in the Netherlands.<sup>22</sup>

When a party vote is held votes are cast as a block by party representatives on behalf of each of the various parties recognised in the House. However, each member remains free to withdraw his or her vote from the party vote and to use it in a different way from that of the party.

## Procedure for conducting vote

### Casting of votes

A party vote is held if members call for a further vote following a voice vote, unless the Speaker determines that a personal vote is required.<sup>23</sup> The Speaker directs the Clerk to conduct a party vote. For this purpose the Clerk calls on each party in turn, in order of their size, to cast its votes. Parties with the same number of members

<sup>15</sup> SO 140.

<sup>16</sup> (14 May 2014) 698 NZPD 17781–17782 Tisch (Assistant Speaker).

<sup>17</sup> (1987) 481 NZPD 9620–9621 Wall.

<sup>18</sup> (17 November 2015) 710 NZPD 8051–8052 Mallard (Assistant Speaker).

<sup>19</sup> (1997) 565 NZPD 6102 Kidd; (1999) 580 NZPD 19070 Kidd; (29 May 2014) 699 NZPD 18502 Tisch (Chairperson).

<sup>20</sup> (1998) 573 NZPD 13599 Revell (Chairperson).

<sup>21</sup> The following table sets out the numbers for party votes and personal votes since the current voting procedures were introduced in 1996.

TERM OF PARLIAMENT	PARTY VOTES (HOUSE)	PARTY VOTES (CWH)	PARTY VOTES —TOTAL	PERSONAL VOTES (HOUSE)	PERSONAL VOTES (CWH)	PERSONAL VOTES —TOTAL	TOTAL
45th Parliament: 1996–1999	410	1,033	1,443	13	27	40	1,483
46th Parliament: 1999–2002	426	2,070	2,496	12	42	54	2,550
47th Parliament: 2002–2005	674	2,754	3,428	33	83	116	3,544
48th Parliament: 2005–2008	325	862	1,187	8	0	8	1,195
49th Parliament: 2008–2011	473	2,199	2,672	7	0	7	2,679
50th Parliament: 2011–2014	404	966	1,370	14	21	35	1,405

Information from Schedules to the *Journals*: [1996–1999] 3 JHR 1334; [1999–2002] 3 JHR 1670; [2002–2005] 4 JHR 2243; [2005–2008] 3 JHR 1341; [2008–2011] 3 JHR 1377; [2011–2014] 3 JHR 943.

<sup>22</sup> Standing Orders Committee Review of Standing Orders (13 December 1995) [1993–1996] AJHR I.18A at 10, 23, 27–30.

<sup>23</sup> SOs 140–141; (14 May 2014) 698 NZPD 17781–17782 Tisch (Assistant Speaker).

are called in order of the relative size of their electoral support at the last election. Each party is called on by its parliamentary name,<sup>24</sup> and the call is directed to the leader of the party, or a member authorised by the leader, to cast the vote.<sup>25</sup>

In practice a whip or a member acting as whip casts the vote for each party. While parties are always invited to vote in order of size, if a party fails to vote when called (in which case no vote is recorded<sup>26</sup>) or votes and subsequently wishes to correct its vote, it can intervene while the vote is in progress and record its vote even though by doing so it votes in a different order from that suggested by its size in the House.<sup>27</sup> A vote is cast from any seat the member happens to be occupying, including a Minister in the chair, but cannot be cast from the floor of the House.<sup>28</sup> The whip or other member casting the vote stands in his or her place and responds to the Clerk by stating how the party casts its votes. If a party is present in the Chamber it must vote, and may not have a proxy vote recorded on its behalf.<sup>29</sup>

Following the casting of votes by parties, independent members are called on (in alphabetical order) to vote. Finally, if votes have not been cast for the total number of members of the House at this point, the Clerk will ask if there are any other votes. Members who wish to specifically record a vote that is contrary to their party (and have not been included in their party's vote) then have an opportunity to do so in person or by proxy.<sup>30</sup>

### ***Declaration of result***

When all parties and members have had a reasonable opportunity to vote, the Clerk calculates the total of the Ayes, Noes and abstentions and hands the list to the Speaker. The Speaker can allow members more time to vote if there is confusion or a mistake over a vote has occurred, so that the matter can be clarified rather than a dubious result being declared; but there is a limit to the indulgence given by the Speaker in these circumstances.<sup>31</sup> Once the Speaker is satisfied with the result, the Speaker declares it to the House.<sup>32</sup> The party vote is completed at that point.<sup>33</sup> Any error can be corrected subsequently only under the Standing Orders provisions for correcting errors or by leave of the House.

### ***Interjections during vote***

Interjections during the conduct of a party vote are regarded as particularly serious since there is no debate in progress, so they can have no justification. In particular, members are not permitted to comment as the party votes are cast.<sup>34</sup> Indeed, the Speaker has suggested that interjections at this point, as well as promoting confusion, could, if intimidatory, amount to a breach of privilege.<sup>35</sup> Comments made during voting are not recorded.<sup>36</sup>

### **Party vote totals**

A party vote is a collective vote cast on behalf of up to all of the members of the party concerned. Parties may cast votes up to their total parliamentary memberships as

<sup>24</sup> (2000) 586 NZPD 4548 Hunt. The name used is that notified to the Speaker as the party's name for parliamentary purposes under SO 35(1)(a).

<sup>25</sup> SO 143(1)(a).

<sup>26</sup> (1997) 561 NZPD 2640 Braybrooke (Chairperson).

<sup>27</sup> (1998) 569 NZPD 9778 Revell (Deputy Speaker).

<sup>28</sup> (2001) 593 NZPD 10635 Braybrooke (Chairperson); (2001) 597 NZPD 13650 Braybrooke (Chairperson).

<sup>29</sup> (20 March 2013) 688 NZPD 8784 Roy (Chairperson).

<sup>30</sup> SO 143(1)(d).

<sup>31</sup> (1998) 573 NZPD 13564 Kidd.

<sup>32</sup> SO 143(1)(e).

<sup>33</sup> (1998) 569 NZPD 9778 Revell (Deputy Speaker); (1998) 573 NZPD 13564 Kidd.

<sup>34</sup> (2000) 586 NZPD 4548 Hunt.

<sup>35</sup> (1998) 571 NZPD 11946–11947 Kidd.

<sup>36</sup> (22 March 2011) 671 NZPD 17439 Smith.

advised to the Speaker.<sup>37</sup> To be included in a party's vote (or participate in any vote) a member must have been sworn in. A member who is suspended by the House may not be included in any party vote total.<sup>38</sup> Where a party has suspended a member from its caucus, its parliamentary membership has not changed and the party may continue to include the member in its party vote totals.<sup>39</sup> But where a party expels a member from its caucus, its parliamentary membership changes and so does its party vote.<sup>40</sup> In these circumstances the member becomes an independent member and is no longer included in a party's vote.

### ***Presence in parliamentary precincts***

Any member present in the parliamentary precincts at the time of a party vote can automatically be included in the party vote total cast for that party.<sup>41</sup> For this purpose, members are regarded as present if they are attending a select committee meeting, or attending official business approved by the Business Committee, or if they are on an official inter-parliamentary delegation.<sup>42</sup> Party vote totals can also include a limited number of proxy votes, as explained below.

### ***“Zero” vote***

The Speaker has ruled that it is not acceptable for a party to cast a “zero” vote, and that such a vote will be treated as the absence of a vote. That is, if a party announces “zero” as its vote, it is treated as not participating at all, and accordingly there will be no record of its participation in the vote.<sup>43</sup> If a party wishes to have its position recorded as neither for nor against the motion, it can simply abstain.

## **Casting of proxies on party votes**

### ***Authority to cast proxies***

The leader of the party or the senior whip of the party, or any member acting for the time being in the House as leader or senior whip, holds a standing authority to exercise a proxy vote for all members of the party, unless a member directs otherwise.<sup>44</sup> Members do not need to give their whip specific authority to vote on their behalf in a party vote. That is inherent in membership of the party.

### ***Limit on proxy votes***

During a party vote, there are restrictions on the number of proxy votes that may be cast for a party.<sup>45</sup> If the party wishes to cast its full complement of votes, it therefore must be careful about the number of its members who are absent from the parliamentary precincts at the time. Proxy votes may not exceed 25 per cent of the party's total membership in the House. This figure is rounded up to the nearest whole number.<sup>46</sup> Thus a party of seven members can exercise proxy votes for two of its members (25 per cent of its membership, rounded upwards to the next whole number). It therefore needs to have five of its members present in the precincts (or officially recognised as present) in order to cast its full total of seven votes in a party vote. If, for example, only four of its members were present it would have to reduce its party vote total to six.

A member who has been suspended from the service of the House is still part of a party's parliamentary membership, unless the member is recognised by the

<sup>37</sup> SO 35(1)(c).

<sup>38</sup> SO 95.

<sup>39</sup> (11 February 2003) 606 NZPD 3257 Hunt.

<sup>40</sup> (11 November 2003) 613 NZPD 9837 Hunt.

<sup>41</sup> SO 143(1)(c). See Chapter 11 for discussion of the parliamentary precincts.

<sup>42</sup> SO 37(2).

<sup>43</sup> (2000) 586 NZPD 4768 Hunt.

<sup>44</sup> SO 154(4).

<sup>45</sup> SO 37(2). See Chapter 3.

<sup>46</sup> For example, a party with five members can cast up to two proxy votes. See Standing Orders Committee Review of Standing Orders (11 December 2003) [2002–2005] AJHR I.18B at 21.

Speaker as independent. A suspended member thus is counted when the limit on proxy votes for his or her party is calculated. The limit does not include any member to whom the Speaker has granted permission to be absent.<sup>47</sup> In this case, the member's proxy can be cast in addition to the full number of proxy votes the party is usually entitled to cast.

There is no limit on the number of proxies that may be exercised in the period from the declaration of a state of national emergency until it is terminated or expires.<sup>48</sup>

### ***Presence or absence of party***

A party that has six or more members must have at least one member present in the Chamber when the vote is held—its votes cannot be cast on its behalf by a member who is not in that party.<sup>49</sup> On the other hand, a party consisting of up to five members, and any independent member, may have their votes cast on their behalf by proxy. But the proxy may be exercised only if one of the members of the party or the independent member is present in the parliamentary precincts for the purposes of the Standing Orders<sup>50</sup> or is absent from the House with the permission of the Speaker.<sup>51</sup> When a member exercises a proxy for another party, the member does not have to state that a proxy is held. The member merely casts the vote.<sup>52</sup>

### **Split-party votes**

A party vote is normally cast wholly on one side or other of the question (or as an abstention) but it can be distributed over the three options: Aye, No and abstention. This is known as a split-party vote.<sup>53</sup>

Split-party voting has been employed as an alternative to holding a personal vote on a conscience issue since it saves time compared with a full personal vote. Where a party casts a split-party vote, the member casting the vote must deliver a list to the Clerk, immediately after the vote, showing how each member of the party has voted in that case.<sup>54</sup> This information is published in the *Journals* and in *Hansard*.<sup>55</sup>

### **Members voting contrary to their party**

Members voting on a question in a way contrary to their party's position have traditionally been described as “crossing the floor”. This was originally a reference to the fact that to vote contrary to his or her party a member had to physically enter the division lobby on the opposite side of the Chamber to that frequented by his or her party colleagues on that vote. Today members vote by entering the lobbies only on personal votes, which (as such votes are largely reserved for conscience issues) are not party matters in any case. The expression “crossing the floor” therefore is no longer literally accurate. Nevertheless, it is a metaphor still often employed for the action of a member who votes contrary to the position taken by his or her party on a particular question. Party or collective voting has not removed the ultimate right of a member to vote on any question as he or she sees fit. Members may still “cross the floor”.

Consequently, the whip or other member casting the party vote must omit from the party's number any vote for a member who wishes to vote contrary to the party. The whip will usually have been advised or otherwise know of this beforehand.

<sup>47</sup> SO 155(2) and (3). See Chapter 4.

<sup>48</sup> SO 155(5); Civil Defence Emergency Management Act 2002, pt 4. See also Standing Orders Committee Review of Standing Orders (21 July 2014) [2011–2014] AJHR I.18A at 13.

<sup>49</sup> SO 143(3).

<sup>50</sup> SO 37.

<sup>51</sup> SO 38(1), (2).

<sup>52</sup> (1996) 553 NZPD 11159–11160 Hilt (Chairperson).

<sup>53</sup> SO 143(1(b)).

<sup>54</sup> SO 143(2).

<sup>55</sup> SO 143(4).

But in the absence of any prior indication from the member concerned, the whip is entitled to presume that the party can cast the member's vote in the party's total. To withdraw that authority the member must take the initiative by "contracting out" his or her vote from the vote for the party. If the whip does not know that a member wishes to vote contrary to the party position and casts a vote for all members of the party, it is incumbent on the member intending to vote against the party to raise a point of order so that the vote can be corrected. In any case, if a member casts a vote contrary to his or her party when the party has already voted at its full strength, the inconsistency will need to be resolved by the Speaker before the result of the vote can be declared.

Sometimes a party may not vote at its full strength because of the absence of a number of its members or because of dissidence within its caucus. Which of these possibilities represents the position may not be apparent, especially if no member actually votes against the party on the vote. But the Speaker is not concerned with the reason a party has not voted its full strength, and will not entertain requests for an explanation from the party.<sup>56</sup>

A vote contrary to a member's party vote is cast after other votes (by proxy if desired).<sup>57</sup> (How such members are identified when they rise to cast their votes is a matter for the Chair. It could be done either by the members themselves or by the Chair.<sup>58</sup>) But there is no provision for a member who is voting on the *same* side of a question as his or her party to cast a vote separately from the party—for example, because the member wishes to emphasise some disagreement with or separation from the party. A member of a party voting on the same side of the question as the party can participate in a party vote only by being included in the party's total.<sup>59</sup>

## PERSONAL VOTES

If the issue on which a vote is to be held is a conscience issue, the alternative to a party vote is a personal vote.<sup>60</sup> A personal vote may also be held in addition to a party vote if the Speaker considers that a personal vote might make a material difference to the result.

### Conscience issues

The Speaker is the judge of whether a particular vote is to be treated as a conscience issue. In these circumstances the Speaker may permit a personal vote to be held instead of a party vote.<sup>61</sup>

Matters that are to be treated as conscience issues and are therefore to be the subject of a personal vote will almost invariably have been discussed beforehand by the Business Committee and arrangements made to warn members in advance that the relatively unfamiliar practice of holding a personal vote is to be followed. Members can then arrange to be present for the vote or can issue a proxy so that their position is reflected in the vote. It is regarded as highly undesirable to hold a personal vote without adequate forewarning of members. Apart from informal communications to members through their representatives on the Business Committee, the Leader of the House would normally refer to forthcoming legislation being treated as a conscience issue in the Thursday business statement, and the Speaker will announce to members in the House as early as possible that a

---

<sup>56</sup> (18 February 2003) 606 NZPD 3495 Hunt.

<sup>57</sup> SO 143(1)(d).

<sup>58</sup> (2000) 586 NZPD 4718 Hunt.

<sup>59</sup> Ibid, at 4720.

<sup>60</sup> SO 142.

<sup>61</sup> SO 142; (11 July 2013) 692 NZPD 11996–11997 Tisch (Assistant Speaker). See Chapter 7 for conscience issues.

personal vote will be held.<sup>62</sup> Where the House needs to decide procedural matters in association with a conscience issue, the Speaker may deal with any procedural decisions through party votes.<sup>63</sup>

Therefore, the Speaker will not be easily persuaded that a personal vote should be held without advance warning. If, for example, a debate on a matter follows normal party lines, it is most unlikely that the Speaker will accede to a request at the end of the debate for a personal vote to be held.<sup>64</sup> Nor is a personal vote likely to be permitted on a matter outside the traditional range of subjects that are regarded as conscience issues.<sup>65</sup> The fact that members have or are alleged to have views on an issue that differ from those of their parties is not a ground to treat the issue as a conscience issue. Conscience issues generally arise because parties do not have a position on an issue at all, not because members disagree with the party position. The party vote procedures themselves cater (by offering the option of a split-party vote) for members who wish to vote contrary to their parties' positions.

### **Personal vote following party vote**

The Speaker may also permit a personal vote to be held following a party vote if a member requests one and the decision on the party vote was so close that a personal vote might make a material difference to the result.<sup>66</sup>

The Speaker has emphasised that closeness on a party vote result cannot, by itself, be enough to justify holding a personal vote. Depending on party standings in the House, every party vote might be close.<sup>67</sup> A decision to permit a second vote, this time on a personal vote basis, can arise out of confusion as to the outcome of the first, although in this case the Standing Orders provide for a second vote of the same kind as the first to be held<sup>68</sup> and the Speaker would have to be convinced that following an uncertain outcome from a party vote, there were good reasons why a personal vote rather than a second party vote should be employed. Similarly, where the result of a party vote is clear, the fact that a number of members have voted against their parties is immaterial.<sup>69</sup>

### **Procedure for personal votes**

If the Speaker agrees that a personal vote is to be held, the Speaker directs the Clerk to ring the bells. This is the same electronic bell that is rung before each sitting of the House. It is activated from the Clerk's chair at the Table and is audible all over the parliamentary complex, though the fact that the bells fail to ring in any part of the buildings does not invalidate a vote.<sup>70</sup>

After ordering the bells to be rung, the Speaker directs those members who are for the Ayes to pass to the right of the Speaker (that is, into the Ayes lobby), those for the Noes to pass to the left (into the Noes lobby) and members abstaining to come to the centre (that is, to the Clerk at the Table). The Speaker appoints a teller for each side.<sup>71</sup>

<sup>62</sup> See, for example: (1997) 562 NZPD 3468 (Shop Trading Hours Act Repeal (Easter) Amendment Bill); (1997) 562 NZPD 3831 (Casino Control (Poll Demand) Amendment Bill); (1998) 574 NZPD 14457, 14471 (Gaming Law Reform Bill); (6 November 2013) 694 NZPD 14438 (New Zealand International Convention Centre Bill); (13 March 2013) 688 NZPD 8543 (Marriage (Definition of Marriage) Amendment Bill).

<sup>63</sup> (11 July 2013) 692 NZPD 11996–11997 Tisch (Assistant Speaker).

<sup>64</sup> (9 May 2012) 679 NZPD 2147–2158 (Gambling (Gambling Harm Reduction) Amendment Bill); (1997) 560 NZPD 2087–2088 (Compulsory Retirement Savings Scheme Referendum Bill).

<sup>65</sup> (1996) 558 NZPD 38 Kidd (appointment of Deputy Speaker).

<sup>66</sup> SO 144.

<sup>67</sup> (27 June 2012) 681 NZPD 3408 Smith; (1996) 558 NZPD 41 Kidd.

<sup>68</sup> SO 152(1).

<sup>69</sup> (2000) 588 NZPD 6825–6826 (Resource Management Amendment Bill).

<sup>70</sup> (1985) 462 NZPD 4606 Wall.

<sup>71</sup> SO 145(1)(b).

## Tellers

The tellers are members who act as poll clerks and actually record the vote cast by each member. There is a teller for each side of the question. The Speaker accepts voluntary offers to serve as tellers. If no member wishes to act as teller for one side of the question, the Speaker immediately declares the result in favour of the other side.<sup>72</sup>

A member who has accepted appointment as a teller and begun to act in that capacity must continue to act unless excused by the Speaker.<sup>73</sup> Other members are entitled to observe the work of the tellers in any part of the Chamber or the lobbies.<sup>74</sup>

## Time for ringing the bells

The Standing Orders require the bells to be rung for seven minutes.<sup>75</sup> However, this has been found to be unnecessary where votes are followed in quick succession and members have already made their way to the Chamber from other parts of the parliamentary complex. Therefore, the Speaker has a discretion to ring the bell for only one minute where a vote follows another vote without any intervening debate or other proceeding occurring.<sup>76</sup> In all cases the Speaker exercises the discretion to permit a one-minute bell if there is likely to be no prejudice to members participating in the vote.

## Locking the doors

The doors at either end of the lobbies and the doors at the far end of the Chamber are closed and locked on the Speaker's command when the bells have stopped ringing. The Speaker usually orders this to be done immediately after the seven minutes (or one minute, as the case may be) have expired, but may allow the doors to remain open longer,<sup>77</sup> for example, if there is doubt as to whether the bells were operating in a part of the building. When the doors have been locked in this way, all entry to and exit from the Chamber and lobbies is prevented. No further members can enter to cast a vote. They have missed the vote and their names cannot be recorded. While locking the doors is a necessary procedure designed to ensure that all members present when the vote is taken do vote and that no other members can enter subsequently and participate, failure to lock the doors adequately does not invalidate the vote, and is not sufficient reason for retaking it.<sup>78</sup>

Once the doors have been locked, the Speaker restates the question for the benefit of members who had arrived after it was first stated.<sup>79</sup>

## Obligation to vote

Every member within the locked doors is obliged to vote or record an abstention.<sup>80</sup> However, members can vote or have proxies recorded for them only after they have taken the Oath of Allegiance.<sup>81</sup>

If a member is locked in and inadvertently fails to vote, there is no procedure allowing that member to vote on a subsequent occasion, or the Speaker to amend the numbers to include the member.<sup>82</sup> The Speaker may amend the numbers only in the case of error or confusion concerning the result. A member's failure to vote may be an error on the member's part, but it is not an error in the conduct of the vote. While the Standing Orders do not provide for any penalty for a failure to vote,

<sup>72</sup> SO 149.

<sup>73</sup> SO 148.

<sup>74</sup> SO 145(2).

<sup>75</sup> SO 145(1)(a).

<sup>76</sup> SO 147.

<sup>77</sup> SO 145(1)(c).

<sup>78</sup> (1985) 462 NZPD 4606 Wall; (1985) 468 NZPD 8858 Wall.

<sup>79</sup> SO 145(1)(c).

<sup>80</sup> SO 145(1)(d).

<sup>81</sup> Constitution Act 1986, s 11(1).

<sup>82</sup> (1979) 427 NZPD 4242 Harrison.

a member who wilfully refused to vote or record an abstention could be held to be in contempt of the House.<sup>83</sup> Where a member fails to vote through inadvertence, he or she should take the first opportunity to apologise to the House for the lapse.<sup>84</sup>

## **Vote follows voice**

Members are subject to another obligation when voting in a personal vote. This obligation is expressed in the maxim: “vote follows voice”. Members are bound to vote in any ensuing personal vote in the same way as they indicated orally when the question was put to the House at the conclusion of the debate. Members, having given their voices one way on this occasion, must give their votes in the same way in the personal vote.<sup>85</sup> Similarly, any member who challenges the Speaker’s judgement of where the majority of votes lies on the voice vote has to vote consistently with that challenge in the subsequent personal vote.<sup>86</sup>

A number of members in New Zealand’s parliamentary history have given their voice with one side on the voice vote and then subsequently tried to vote with the other side. In these cases, on objection being taken, the Speaker has ordered the member’s name to be recorded on the side of the question to which the member gave his or her voice, and the vote list is amended accordingly.<sup>87</sup> However, objection must be made to the member’s inconsistent action before the numbers have been announced by the Speaker; after that point the member’s vote stands.

Other apparent inconsistencies are not formally held against members. A member may speak in the debate on one side of the question and vote on the other,<sup>88</sup> and a member is not compelled to vote for a motion or amendment that he or she has moved.<sup>89</sup> A Minister has, for example, introduced a bill and indicated to the House in introducing it that he intended to vote against it.<sup>90</sup>

## **Voting**

A member votes by entering the appropriate lobby and declaring his or her name to the teller on duty.<sup>91</sup> The teller crosses out that member’s name on a vote list that has been printed with all members’ names on it. To abstain on the question, a member approaches the Clerk at the Table, who records the member’s abstention. Members do not wait until the bells have ceased ringing and the doors have been locked before beginning to cast their votes. Members vote while the bells are still ringing. The Speaker, who must also vote, does not leave the Chair but asks another member to ensure that the Speaker’s vote is recorded.

It is expressly provided that once a member has cast a vote or an abstention, he or she must remain within the Chamber or the lobbies until the numbers are declared by the Speaker.<sup>92</sup> Members voting while the bells are ringing are voting with the doors to the Chamber and the lobbies still open. They are required to remain until the doors have been locked and all proceedings on the vote have terminated, at which point the doors are re-opened and members are free to leave if they wish. The vote of any member who fails to remain in the Chamber or voting lobbies until the result has been declared is disallowed.<sup>93</sup>

---

83 (1990) 509 NZPD 2922–2923 Burke.

84 (1979) 427 NZPD 4320–4321 Harrison.

85 (1890) 68 NZPD 292 O’Rorke.

86 (1899) 107 NZPD 315 O’Rorke.

87 See (9 October 1860) [1860] JHR 160 for the first example of this happening.

88 (1876) 21 NZPD 379 Fitzherbert.

89 (1888) 62 NZPD 198 O’Rorke.

90 (1991) 515 NZPD 2100 (Smoke-free Environments Amendment Bill (No. 2)).

91 SO 145(1)(e).

92 SO 146.

93 SO 146.

## Order during a vote

During a personal vote there is considerable movement of members in the Chamber, and between the Chamber and the lobbies. Members move around and talk to each other in a way that would be unacceptable during the course of debate. The Speaker has warned members that this must not get out of hand and, in particular, that banter between members at this time must not degenerate into verbal intimidation.<sup>94</sup>

## Conclusion of the vote

When all members have cast their votes, the tellers sign the respective vote lists as an authentic record of the vote and deliver them to the Clerk at the Table, who checks them and hands them to the Speaker.<sup>95</sup> The tellers are obliged to satisfy themselves as to the numbers recorded before signing and parting with the vote lists.<sup>96</sup> If the lists are handed back to the Clerk before the doors have been locked, any member who has not yet voted may still do so.<sup>97</sup> To allow for this, the Clerk does not hand the lists up to the Speaker until the doors have been locked. The Speaker, on receiving lists that are properly signed, accepts them as correct unless there are good grounds to suggest that there has been an irregularity.<sup>98</sup> But a personal vote is not completed until the Speaker has actually announced the result to the House.<sup>99</sup> Up to this point the lists can be corrected on the tellers' authority. Thus, when it was realised, after the lists had been checked but before the result had been announced, that a member present had not voted, the member's name was added to the list when it was established which side he would have voted on.<sup>100</sup>

The Speaker announces the result of the vote to the House,<sup>101</sup> and then directs that the doors be unlocked.

## VOTING ON MULTIPLE OPTIONS

The House can adapt its voting procedures to different situations. For example, the House has, by leave, provided for a matter to be decided by an election from options. The decision on the age for the sale and purchase of alcohol in 2012 was made in a committee of the whole House by way of a personal vote to elect one of three options. Members voted by entering the Noes lobby, where Clerks recorded the selection made by each member in turn. Provision was made that, if none of the three options obtained a majority of votes cast in the election, a personal vote would then be held between the two options that gained the most support in the first ballot.<sup>102</sup>

Furthermore, the Business Committee now has the power to determine how a committee of the whole House will consider a bill, and could by determination set out an extension of its powers in respect of the way a question is to be decided.<sup>103</sup>

## ERRORS

It occasionally happens that errors occur in recording or tallying the numbers who have voted in a party or personal vote. If such an error is discovered before the results are declared by the Speaker, they are corrected by the Clerk or the teller. During a party vote, if a member is inaudible when casting votes, or the Clerk at

<sup>94</sup> (1988) 487 NZPD 3140–3141 Burke.

<sup>95</sup> SO 145(1)(f).

<sup>96</sup> (1985) 468 NZPD 9064 Wall.

<sup>97</sup> (1980) 436 NZPD 5600 Harrison.

<sup>98</sup> (1985) 468 NZPD 9064 Wall.

<sup>99</sup> (1989) 503 NZPD 14139 Burke.

<sup>100</sup> (1992) 525 NZPD 8799–8800.

<sup>101</sup> SO 145(1)(f).

<sup>102</sup> (29 August 2012) [2011–2014] JHR 231; (29 March 2012) 683 NZPD 4851 (Alcohol Reform Bill).

<sup>103</sup> SO 301(1).

the Table is unsure about the votes that a member has cast, the member can be asked to cast the votes again. Errors discovered subsequent to the declaration of the result may be corrected by the Speaker.<sup>104</sup> Some errors may be more significant than a mere miscounting of names struck through. Thus, a member has been recorded as having voted on both sides of a question. When it was established that the member concerned had in fact voted in only one lobby, the Speaker corrected the result accordingly.<sup>105</sup> Other errors may result from the numbers of the votes cast being misheard or miscalculated. The Speaker may use the Speaker's power to correct errors that occurred in committee.<sup>106</sup> (Where the error is recognised before the committee has reported the bill on which the error occurred back to the House, the Chairperson corrects it.)

If there is such confusion concerning the numbers reported that the Speaker feels unable to resolve it by ordering a correction, the Speaker may direct that a second vote be held.<sup>107</sup> But before taking this extreme action, the Speaker must be satisfied that there is a serious prospect that the count on the vote is indeed wrong. The mere circumstance of a door not being locked, for instance, is not a ground for a second personal vote to be held. There has to be a real element of doubt as to the numbers.<sup>108</sup>

There are other mistakes that cannot be corrected at all. For example, the circumstance of a member locked in the Chamber and forgetting to vote cannot be corrected by adding the member's name to the list.<sup>109</sup> Similarly, a member who enters the "wrong" lobby for whatever reason is bound by the vote actually given and cannot have his or her name struck off the list.<sup>110</sup> Members cannot have their votes altered by appealing to the Speaker to correct the vote list, whether their wish to do this results from initial error or second thoughts.<sup>111</sup> On the other hand, when a member had actually voted but his name did not appear on the list, the Speaker was able to order the list's correction.<sup>112</sup>

The error that the Speaker may correct or that can be corrected by a second vote must be one connected with the administrative procedures for holding or recording a vote. It does not include an individual member's error or confusion as to his or her own vote. Such a correction can only be made if the House gives leave.<sup>113</sup> A recent, though uncommon, practice is for members to seek leave following the outcome of a vote to have their parties' voting intentions recorded in the *Journals* as a separate entry and without changing how the party vote—as it actually happened—is recorded.

## RECORDS OF VOTES

The number of votes cast for each party in a party vote must be recorded in the *Journals*.<sup>114</sup> The votes of independent members and members voting contrary to their parties are listed by name. In addition, where a party casts a split-party vote, the names of its members voting in the various categories must be recorded in the *Journals* and in *Hansard*.<sup>115</sup> The results of all personal votes with the names of the members voting or abstaining must also be recorded in the *Journals*.<sup>116</sup> The vote

<sup>104</sup> SO 152(2).

<sup>105</sup> (1978) 419 NZPD 1836 Harrison.

<sup>106</sup> (1900) 113 NZPD 688 O'Rorke; (1998) 569 NZPD 10092 Kidd.

<sup>107</sup> SO 152(1).

<sup>108</sup> (1985) 468 NZPD 8858 Wall.

<sup>109</sup> *Ibid.*, at 9064–9065.

<sup>110</sup> (1876) 23 NZPD 526 Fitzherbert.

<sup>111</sup> (1991) 518 NZPD 3691 Gerard (Chairperson); (1992) 532 NZPD 12815–12816.

<sup>112</sup> (1887) 58 NZPD 295 O'Rorke; (1994) 542 NZPD 3446.

<sup>113</sup> (29 May 2014) 699 NZPD 18471 (Parental Leave and Employment Protection (Six Months' Paid Leave) Amendment Bill).

<sup>114</sup> SO 143(5).

<sup>115</sup> SO 143(5).

<sup>116</sup> SO 150(1).

lists must also show if a vote or abstention was cast by proxy.<sup>117</sup> The name under which a member is recorded in the list is the name by which the member wishes to be known in parliamentary proceedings.<sup>118</sup>

When a vote list was misplaced after the result had been announced in the House, it was not possible to print a list showing how members voted, only the numbers voting.<sup>119</sup>

## GENERAL POINTS ABOUT PROXIES

Voting by proxy was introduced along with party voting in 1996.<sup>120</sup> Proxy voting is a means by which a member who is absent from the Chamber and cannot vote in person has his or her vote recorded. A proxy vote cannot be recorded for a member who has not taken the Oath of Allegiance.<sup>121</sup> A proxy on a personal vote cannot be recorded if the member is actually present in the Chamber, but a member in a part of the House from which it is impossible to vote, such as in the gallery, can have a vote recorded by proxy.<sup>122</sup> A number of aspects of the proxy system are discussed above under party voting.<sup>123</sup>

### Conferring proxies

A proxy is an authority given by one member to another authorising the other to cast a vote or record an abstention in the member's name.<sup>124</sup> The leader or whips possess a general proxy under the Standing Orders in respect of members of their party voting in party votes, though a member may withdraw this.<sup>125</sup> This general proxy does not apply on personal votes.<sup>126</sup> A proxy for a personal vote must be issued from one individual to another. A proxy must be signed and dated by the member giving it, recording the member's name and the name of the member to whom it is given, and stipulating the period or business in respect of which it is given.<sup>127</sup>

A proxy may be open in character, applying to all business for an indefinite period and leaving it to the proxy holder to decide how to use it. A proxy does not have to direct the holder on which side of a question a member wishes it to be exercised, though, of course, it can, and in the case of a proxy for a vote on a conscience issue it is likely to do so. The onus lies on the member giving a proxy to direct the proxy holder how to exercise it if he or she sees fit to give such a direction. If the member giving the proxy does direct how it is to be used, it must be exercised only as authorised.<sup>128</sup>

A proxy cannot be transferred by the named holder to another member,<sup>129</sup> but a member is at liberty to give out more than one proxy. If any dispute arose as to overlapping proxies, the Speaker would decide which, if any, applied.

### Withdrawal or amendment of proxy

A proxy can be withdrawn or amended at any time by the member who gave it, provided this is done before it is exercised in any particular case.<sup>130</sup> It cannot be

<sup>117</sup> SO 150(2).

<sup>118</sup> (1989) 499 NZPD 11114.

<sup>119</sup> (1886) 55 NZPD 147–148 O'Rorke; (1 December 1982) [1982] JHR 408.

<sup>120</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 29.

<sup>121</sup> Constitution Act 1986, s 11(1).

<sup>122</sup> (2001) 590 NZPD 8154 Hunt.

<sup>123</sup> See pp 204–207.

<sup>124</sup> SO 154(1).

<sup>125</sup> SO 154(4).

<sup>126</sup> (1998) 573 NZPD 13392 Kidd.

<sup>127</sup> SO 154(2).

<sup>128</sup> (1998) 566 NZPD 8013 Braybrooke (Chairperson).

<sup>129</sup> SO 155(1); (1998) 569 NZPD 10452 Kidd.

<sup>130</sup> SO 154(3).

withdrawn retrospectively so as to invalidate its exercise in a particular vote.

Withdrawal or amendment of a proxy does not have to be effected in writing. It can be done orally, for example by telephone,<sup>131</sup> or by electronic means such as email or text. But it must always be communicated directly to the proxy holder. It is not sufficient that a member has made public comments apparently inconsistent with the proxy or indicated to another member an intention to withdraw a proxy. Withdrawal of a proxy or any qualification to be placed on a proxy's exercise must be conveyed directly to the proxy holder.<sup>132</sup>

### **Disputes over proxies**

If there is a dispute about whether a valid proxy exists or about the propriety of its exercise, the Speaker decides the matter, having examined the proxy if need be.<sup>133</sup> But proxy obligations are matters between the member giving the proxy and the member exercising it and the Speaker will not intervene at the behest of other members. The Speaker will accept the word of the member exercising a proxy if a question arises during a vote as to its proper exercise. Ultimately, if a proxy were deliberately misused this would constitute a contempt.<sup>134</sup>

## **RESOLUTION OF A QUESTION**

When a question is put to the House and decided, whether on the voices or following a party vote or personal vote, it is said to be agreed to or not as the case may be. Where fewer than 20 members vote or abstain on a personal vote no decision at all is arrived at,<sup>135</sup> and certain decisions require a qualified majority of votes to be carried.<sup>136</sup> If it is agreed to, the question becomes a resolution or order of the House. Previously, a distinction was made between the two terms whereby a *resolution* expresses the opinion of the House, while by an *order* the House expresses its will. However, recently the term "resolution" has been used almost exclusively to describe the outcome when any motion has been passed by the House. In principle, mere resolutions of the House do not have legal effect,<sup>137</sup> but statute may attach legal consequences to a resolution<sup>138</sup> or confer powers on the House that it exercises by passing a resolution (for example, recommending the appointment of certain officers).

All decisions of the House are recorded in the *Journals* and are matters of public record. Occasionally, the Speaker is specifically directed by the House to convey a resolution or order of the House to a person at whom it is directed or who is specially affected by it. All members are at liberty to convey resolutions of the House to anyone they consider should have them drawn to their attention.

## **RESCISSON OF RESOLUTION**

Any resolution of the House may be formally rescinded. A resolution may be revoked even though it was passed many years ago. A motion for rescission of a resolution can be moved after notice has been given in the ordinary way.<sup>139</sup>

---

<sup>131</sup> (1998) 569 NZPD 10452 Kidd.

<sup>132</sup> Ibid, at 10445, 10451–10452.

<sup>133</sup> SO 155(1).

<sup>134</sup> (1998) 566 NZPD 8013 Braybrooke (Chairperson).

<sup>135</sup> SO 151.

<sup>136</sup> See p 246.

<sup>137</sup> *Dyson v Attorney-General* [1912] 1 Ch 158. See Chapter 2.

<sup>138</sup> For example: New Zealand Superannuation and Retirement Income Act 2001, s 73(3).

<sup>139</sup> SO 104.

## CHAPTER 18

# Statements

### INFORMING THE HOUSE

As well as speaking in debate, members address the House on other occasions, for example asking questions or raising points of order. In particular, there are types of proceedings in which members may make statements to inform the House about matters of particular concern to them. These statements are not debates, although they may arise out of debates. They allow members to claim the attention of the House on subjects of national or personal importance that the regular rules of debate would provide no opportunity to raise.

### Procedure

A member can make a statement only by way of a point of order,<sup>1</sup> unless the statement is predetermined by the House or the Business Committee. A member, in making a statement, is not speaking to a question before the House and the rules of debate do not generally apply. However, rules of debate that constrain unparliamentary language are applicable to statements. In fact, these rules may be more strictly applied when members are speaking on a point of order or with the indulgence of the House.<sup>2</sup> Conversely, interjections regarding a statement are usually disallowed or limited.<sup>3</sup>

### *Committee of the whole House*

When the House is in committee a statement generally would be permitted only if it related to the business before the committee at the time.<sup>4</sup> Otherwise, the usual practice would be for the member to wait until the committee reports to the House before making a statement, or for the committee to report progress and sit again presently after the statement is made.<sup>5</sup>

### Types of statement

The Standing Orders provide for members to make the following types of statement in the House:

- ministerial statements
- correcting misrepresentations in debate

<sup>1</sup> (16 October 2012) 684 NZPD 5795 Smith.

<sup>2</sup> (1973) 383 NZPD 1494 Whitehead; (10 December 2009) 659 NZPD 8451 Smith.

<sup>3</sup> (1973) 383 NZPD 1494 Whitehead; (1999) 575 NZPD 14768 Kidd; (22 February 2007) 637 NZPD 7619 Wilson (particularly relating to personal explanations).

<sup>4</sup> SO 175.

<sup>5</sup> (27 March 2013) 688 NZPD 8973 Carter.

- personal explanations
- responses to misrepresentations during oral questions
- maiden statements
- valedictory statements.

### ***Prime Minister's statement and Budget statement***

Some statements are made under the Standing Orders in the context of other procedures. The Prime Minister's statement was previously a verbal statement delivered in the House, but now is presented as a parliamentary paper at the commencement of a debate. Although the Budget statement is formally a speech to move the second reading of the main Appropriation Bill, it is treated as a prepared statement delivered separately from the debate.<sup>6</sup>

### ***Statements by the Speaker***

In addition, some statements occur as a matter of practice, rather than under specific provisions of the Standing Orders. The Speaker's role in maintaining order and facilitating proceedings entails an ability to address the House at any time on a matter of procedure, or to inform the House of some significant occurrence. For example, the Speaker may deliver a prepared ruling on a previous point of order, or may report to the House about interactions with the Governor-General, advise of the death of a member or a former member, or invite the House to welcome distinguished guests. The Speaker also reserves the right to address the House when he or she considers it appropriate; there is an established tradition that the Speaker makes concluding remarks before the adjournment of the House at the end of a year or parliamentary session.

### ***Business statement***

Another statement that is a regular part of the practice of the House—but not formally recognised under the Standing Orders—is the business statement by the Leader of the House. It provides general information about the Government's intentions for the next week in the House, and is usually made at the commencement of a sitting on a Thursday. A practice has developed for the shadow Leader of the House to make a further enquiry of the Leader of the House to clarify a matter. This procedure is encouraged by the Speaker as a helpful way to inform members of forthcoming business and sitting arrangements, but it is entirely voluntary.

## **PRIME MINISTER'S STATEMENT**

The first Prime Minister's statement was made in 1996.<sup>7</sup> The procedure requires the Prime Minister to present a statement to the House on the first sitting day of each calendar year, reviewing public affairs and outlining the Government's legislative and other policy intentions for the coming year.<sup>8</sup>

In establishing this procedure, the House revitalised the earlier practice of commencing each calendar year with an extensive debate of a wide-ranging character. Until 1984, such a debate took place in relation to the annual State Opening of Parliament, when the Governor-General delivered a Speech from the Throne that set out the Government's policy intentions for the year, followed by an Address in Reply debate. However, annual State Openings were no longer held after 1984, when the practice of proroguing Parliament at the end of annual sessions was discontinued (see Chapter 10). The procedure for the debate on the Prime Minister's statement allows the House to be informed of, and to judge, the Government's programme for the year without the need to open a new session of Parliament.

<sup>6</sup> SO 333(3) and App A.

<sup>7</sup> (20 February 1996) 553 NZPD 10917.

<sup>8</sup> SO 354(1).

## Presentation of the statement

The Prime Minister's statement is made each calendar year, unless the first sitting day marks the opening of a new session of Parliament or the Address in Reply debate has commenced within the previous three months.<sup>9</sup> Until 2008 the Prime Minister's statement took the form of a speech in the House. Unlike other statements, however, the Prime Minister's statement is no longer delivered orally in the House, but is presented as a parliamentary paper to allow more detail on the Government's programme to be included.<sup>10</sup> The statement must be provided to each party leader by 10 am in the morning of the day it is to be presented.<sup>11</sup> When the House sits at 2 pm, the Prime Minister presents the paper in the House.<sup>12</sup> There are no oral questions and no other general business is transacted on that day, although a member may be sworn in, and the Speaker may give a ruling or make an announcement before calling the Prime Minister. The Prime Minister's statement is published under the authority of the House.<sup>13</sup>

## Debate

The Prime Minister initiates the debate on the Prime Minister's statement by moving a motion relating to it immediately after presenting the paper in the House.<sup>14</sup> The motion is usually expressed as a confidence motion.<sup>15</sup> Even if it were not overtly framed in this way, the motion would be regarded as a test of confidence in the Government, because it effectively seeks the House's endorsement of the Government's whole legislative and policy programme. The debate is a wide-ranging debate without constraint, similar to the Address in Reply and Budget debates.

An amendment may be moved to the motion as long as it does not amount to a direct negation of the question. The scope of such an amendment is virtually unlimited as the motion relates to the entire sphere of government activity.

In the debate on the Prime Minister's statement party leaders are given the right to speak in order of the size of their parties,<sup>16</sup> although they do not have to follow this order if they wish to defer their speaking right to later in the debate. The leaders of parties with six or more members have up to 20 minutes to speak. Other leaders and all other members can speak for up to 10 minutes.<sup>17</sup> Leaders entitled to 20 minutes' speaking time may authorise other members to use them on their behalf;<sup>18</sup> in this instance these leaders, if they speak later, will have only 10 minutes.

The debate on the Prime Minister's statement is subject to a time limit of 13 hours.<sup>19</sup> The debate on the statement is a Government order of the day and automatically has precedence over all other Government orders of the day.<sup>20</sup> However, the debate may be adjourned and the House may go on to other orders of the day before it has concluded. No Wednesday general debate is held while the debate on the Prime Minister's statement is before the House,<sup>21</sup> but on the second and subsequent sitting days of the year general business, including questions, is held. It is possible, if no other business intervenes, for the House to complete

<sup>9</sup> SO 354(1), (4).

<sup>10</sup> Standing Orders Committee *Review of Standing Orders* (27 August 2008) [2005–2008] AJHR I.18B at 39.

<sup>11</sup> SO 354(2).

<sup>12</sup> SO 354(1).

<sup>13</sup> SO 354(3).

<sup>14</sup> SO 355(1).

<sup>15</sup> (9 February 2010) [2008–2011] JHR 612; (8 February 2011) [2008–2011] JHR 990; (29 January 2013) [2011–2014] JHR 354.

<sup>16</sup> (1999) 575 NZPD 14779–14780 Kidd.

<sup>17</sup> SOs, App A.

<sup>18</sup> SOs, App A, note.

<sup>19</sup> SOs, App A. This time limit was reduced in 2014 from 15 hours in return for lengthening the Budget debate and the Estimates debate (Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 26–27).

<sup>20</sup> SO 355(2).

<sup>21</sup> SO 392(3).

the debate within the first sitting week. However, the Government tends to move motions to adjourn the debate at some point each day so that it can progress other business. This practice means the debate can run into a second week or beyond, and has led the Business Committee to shift time from the debate to allow extra time for other procedures.<sup>22</sup>

## MINISTERIAL STATEMENTS

From the first session of the New Zealand Parliament, the practice of Ministers of the Crown making statements to the House on matters of public importance has been recognised. The procedure for the making of ministerial statements was expressly recognised in the Standing Orders for the first time in 1979.

### Minister's right to make statement

A Minister (including an Associate Minister) has an absolute right to make a statement in the House, but not so as to interrupt a member who is already speaking.<sup>23</sup> That is, although a ministerial statement may interrupt a debate,<sup>24</sup> it cannot interrupt a member's speech. However, this right to make a ministerial statement applies only in the House, and not in a committee of the whole House (see above). When there is a pressing need for the Minister to inform the House of a matter, it may be appropriate for the committee to report progress and ask to sit again presently.

### Circumstances giving rise to a ministerial statement

A ministerial statement must be for the purpose of informing the House of some matter of significant public importance that should be brought to the House's immediate attention.<sup>25</sup> Largely, it is for Ministers to judge whether a matter is significant enough to warrant a statement. However, when a statute requires a Minister to inform the House of a matter, this would typically be done by way of a ministerial statement.<sup>26</sup>

Ministerial statements were made on the outbreak of war and to keep the House informed of important events during the war. The commitment of substantial forces to peacekeeping duties and important events in other countries have given rise to statements. Ministers have used the procedure to inform the House about responses to natural disasters and civil defence emergencies. When a devastating earthquake struck Canterbury, the Prime Minister and Deputy Prime Minister made ministerial statements to inform the House of the situation, and a separate statement was made by the Minister of Civil Defence to announce the declaration of a state of national emergency.<sup>27</sup> That Minister made further statements when the state of national emergency was extended over the following weeks<sup>28</sup> and on its eventual expiry.<sup>29</sup>

Statements have also been made on other matters less important than these, which Ministers have nevertheless deemed worthy of announcement to the House in this form. There has been criticism of Ministers for making important policy

<sup>22</sup> Order Paper No 19, Tuesday, 10 February 2015: the debate on the Prime Minister's statement was shortened to 11 hours to allow two hours to be transferred to the annual review debate.

<sup>23</sup> SO 356(2).

<sup>24</sup> SO 132(g).

<sup>25</sup> SO 356(1).

<sup>26</sup> Examples of such statutory requirements include: Civil Defence Emergency Management Act 2002, s 66(2); Biosecurity Act 1993, s 147; Defence Act 1990, s 9(7); International Terrorism (Emergency Powers) Act 1987, s 7(1).

<sup>27</sup> (22 February 2011) 670 NZPD 16937; (23 February 2011) 670 NZPD 16943; (8 March 2011) 670 NZPD 16948, 16951.

<sup>28</sup> (8 March 2011) 670 NZPD 16964; (15 March 2011) 670 NZPD 17170–17171; (22 March 2011) 671 NZPD 17437; (5 April 2011) 671 NZPD 17659; (12 April 2011) 671 NZPD 17877–17878.

<sup>29</sup> (3 May 2011) 672 NZPD 18241–18242.

announcements outside the House rather than by way of ministerial statement,<sup>30</sup> but there is no convention in New Zealand that such announcements will always be made in the House.<sup>31</sup> Questions about whether important announcements should be made in the legislature arise in other countries too.<sup>32</sup>

## Making the statement

The Minister making the statement is exhorted to provide a copy of it to the leader of each party before making it.<sup>33</sup> However, failure to provide a copy does not prevent a Minister from making the statement,<sup>34</sup> nor is there any rule that a Minister can depart from this practice only in cases of national crisis. Indeed, some statements are not in written form when they are delivered. It is entirely up to the Minister concerned as to how copies of a statement are distributed.<sup>35</sup>

The Minister has up to five minutes to make the statement, although this time may be extended by leave. The leader of each party with six or more members is then entitled to comment on the statement for up to five minutes.<sup>36</sup> The House has on occasion agreed to extend this right to comment to smaller parties and other members,<sup>37</sup> and has considerably extended the total time allowed for comment on some major issues.<sup>38</sup> Any member may be authorised to substitute for the leader in making such comment, regardless of whether the leader is present in the Chamber. Finally, the Minister may reply to any comment for up to two minutes.<sup>39</sup>

## MISREPRESENTATIONS IN DEBATE

A member who has spoken in a debate and whose speech is misquoted, misunderstood or misrepresented in some material part by a subsequent speaker in the same debate has the right to be heard again to explain the words used.<sup>40</sup> The member is thus given a second opportunity to address the House in the debate. The second opportunity, however, is very circumscribed. The member is confined to explaining how he or she has been misquoted, misunderstood or misrepresented. No new matter can be brought forward.<sup>41</sup>

This right (a member does not need the leave of the House to exercise it) is often called a point of misrepresentation, and must be distinguished from the making of a personal explanation, to which it is closely related and which is dealt with below. A point of misrepresentation is much narrower than the making of a personal explanation, both in the occasions that give rise to it and in its permissible content. Misrepresentation arises solely out of a debate in the House. It has no relation at all to any statements made outside the House.<sup>42</sup> It arises only in respect of statements made earlier in the same debate by the member who claims to have been misrepresented. A misrepresentation of what the member said in a different debate does not give rise to a point of misrepresentation.<sup>43</sup>

<sup>30</sup> For example: Margaret Hayward *Diary of the Kirk Years* (Cape Catley, Queen Charlotte Sound, and AH and AW Reed, Wellington, 1981) at 157 (criticism of announcement of a wage and price freeze on television rather than in the House).

<sup>31</sup> (2000) 583 NZPD 1659 Hunt; (2002) 603 NZPD 1512 Hunt.

<sup>32</sup> For example: "Arrivederci?" *The Economist* (19 March 2005) (criticism of Italian Prime Minister for not announcing withdrawal of troops from Iraq in Parliament).

<sup>33</sup> SO 356(2).

<sup>34</sup> (1991) 512 NZPD 587–588 Gray.

<sup>35</sup> (1989) 496 NZPD 9777 Terris (Acting Speaker); (1991) 512 NZPD 587–588 Gray.

<sup>36</sup> SO 357.

<sup>37</sup> (2000) 586 NZPD 4019; (2002) 603 NZPD 1422; (8 March 2011) 670 NZPD 16951.

<sup>38</sup> (24 February 2015) [2014–2017] 1 JHR 94: a 10-minute statement, 12 comments of 10 minutes each, and a five-minute reply were allowed when the Prime Minister announced the deployment of troops to Iraq.

<sup>39</sup> SOs, App A.

<sup>40</sup> SO 110(1).

<sup>41</sup> SO 110(2).

<sup>42</sup> (1969) 360 NZPD 601–602 Jack.

<sup>43</sup> (1969) 364 NZPD 3628 Jack.

## Time for correcting a misrepresentation

A member who has been misrepresented by a subsequent speaker cannot interrupt that speaker to correct a misrepresentation. The member must wait until the end of the speech.<sup>44</sup> As a point of misrepresentation arises as part of the debate on a question, a member who has not corrected a misrepresentation before the debate concludes will have to seek leave to make a personal explanation. If the debate has been interrupted, the member must wait for the bill to be resumed before correcting a misquotation.<sup>45</sup> A member cannot correct a misrepresentation during consideration of another matter.

Although a point of misrepresentation is primarily designed to give a member who cannot speak again in the debate an opportunity to clear up a misunderstanding concerning his or her speech, a member who has already spoken and has subsequently been misrepresented may have the opportunity to speak for a second time in the debate, and so could deal with the point in the second speech. This will be the case in committee. In these circumstances the member can choose whether to take a point of misrepresentation or to seek a second call and deal with the point that way. The right to take a point of order to correct a misrepresentation promptly cannot be taken away from a member merely because he or she has the right to speak again.<sup>46</sup>

## Misrepresented interjections

The right to take a point of misrepresentation applies in respect of a misrepresentation of a material part of a member's speech. An interjector whose interjection is taken up by the member speaking and is misquoted has no right to correct the misquotation, for the interjector has not been misquoted as to a part of a speech, only as to an interjection. Members interject at their peril;<sup>47</sup> misrepresentation of what they have said by way of interjection is a risk that all interjectors run. They have no absolute right to correct a misrepresentation; all they can do is take the call and speak in the debate (if this is still open to them), or consider making a personal explanation.<sup>48</sup>

## How a point is corrected

What a member may say in explaining words that have been misrepresented is very circumscribed. Basically, the member may state what was misrepresented and then repeat the actual words used in the speech, and leave it at that.<sup>49</sup> It is helpful to support a point of misrepresentation by citing the relevant *Hansard* transcript, if one is available.<sup>50</sup> If a member adds anything to a juxtaposition of the two statements—the misrepresentor's and his or her own—debatable material is being introduced, and the member will be called to order by the Chair.<sup>51</sup>

## PERSONAL EXPLANATIONS

A personal explanation is a statement by a member explaining a matter of a personal nature.<sup>52</sup> A personal explanation is not part of the debate on a question, although it may arise out of matters raised or mentioned in a debate. It is designed to enable a member to explain to the House matters of a personal nature that reflect on the honour or integrity of the member, or are otherwise of some emotional

<sup>44</sup> (1901) 118 NZPD 171 Guinness (Deputy Speaker); (1913) 162 NZPD 243 Lang.

<sup>45</sup> (1987) 484 NZPD 1268 Burke.

<sup>46</sup> (1973) 383 NZPD 1809 Whitehead.

<sup>47</sup> (2002) 602 NZPD 680 Hartley (Deputy Speaker).

<sup>48</sup> (1987) 480 NZPD 9265 Wall.

<sup>49</sup> (1966) 347 NZPD 1087 Algie.

<sup>50</sup> (1960) 323 NZPD 1180 Macfarlane.

<sup>51</sup> (1926) 209 NZPD 559–560 Statham.

<sup>52</sup> SO 358.

import to the member. It is not designed merely as another channel to enable a member to take issue with a statement made in debate or outside the House on the grounds that it is mistaken or wilfully wrong. To use a personal explanation solely for the purpose of correcting a statement in this way is to come close to abusing the privilege and, as its use depends on the unanimous consent of the House, will prejudice its use by other members in the future.<sup>53</sup>

A personal explanation is not made as of right; it is made only with the leave of the House.<sup>54</sup> In order that members can judge the merits of the request when they are asked to grant leave to a member to make a personal explanation, a member is expected to indicate broadly to the House, when seeking its authority, what the personal explanation concerns.<sup>55</sup> While any member can deny leave for a personal explanation, it is unusual to do so.<sup>56</sup> Once leave has been granted, the privilege cannot be withdrawn by motion in the House.<sup>57</sup> Having been granted by the House unanimously, it would have to be taken away unanimously too. But if a member makes comments in the statement that are impermissible, the Speaker will intervene; and ultimately, if the member misuses the privilege, the Speaker can terminate the statement.<sup>58</sup>

### **Time for making a personal explanation**

There is no prescribed time at which a personal explanation must be made, for the House itself must decide unanimously in every instance in which a member seeks to make a personal explanation whether the member is to be granted permission to do so. It can therefore interrupt a debate,<sup>59</sup> although a member should not seek to make a personal explanation in a committee of the whole House unless the explanation is relevant to the committee's business. For example, a Minister should not interrupt a committee's business to seek to make a personal explanation correcting a reply to an oral question.<sup>60</sup> Interrupting the speech of another member to seek leave to make a personal explanation is strongly deprecated and members will often be told to wait until a speech ends.<sup>61</sup>

Although not part of the debate on a question, a personal explanation may be closely tied up with a debate currently in progress, and the fact that a member still has a right to speak in the debate is a relevant consideration when members are asked to allow a personal explanation to be made.<sup>62</sup> It may be that members will feel that in these circumstances the member concerned should seek the call and make the personal explanation in the course of a speech, but this is entirely for the House to decide when the member seeks leave for the personal explanation. There is no time limit within which a personal explanation must be made; it may refer to a statement or incident months or years beforehand.<sup>63</sup>

### **Explanation must be personal to the member**

The matter to be explained must be personal to the member seeking leave. A member cannot make a personal explanation on behalf of another member.<sup>64</sup> Personal explanations are used by Ministers when they have discovered an error in a reply that they have made to a question,<sup>65</sup> or by members in respect of any

53 (1977) 413 NZPD 2438 Jack.

54 SO 358.

55 (1974) 391 NZPD 2161 Whitehead.

56 (15 August 2012) 682 NZPD 4391–4392 Smith.

57 (1976) 407 NZPD 3682 Jack.

58 (1997) 563 NZPD 4285 Kidd.

59 SO 132(g).

60 (27 March 2013) 688 NZPD 8973 Carter.

61 (1997) 560 NZPD 1763 Revell (Chairperson).

62 (1978) 417 NZPD 844 Harrison.

63 (1973) 386 NZPD 3756–3757 Whitehead.

64 *Ibid.* at 3756.

65 (29 April 2003) 608 NZPD 5093 Hunt.

misleading statement they subsequently discover they have made to the House. Personal explanations may also be made by members who have been accused inside or outside the House of criminal conduct or improper practices, or where a member's word has been doubted or impugned. A member has made a personal explanation before resigning as a member, instead of a formal valedictory statement.<sup>66</sup>

As a personal explanation must be confined to matters personal to the member, a Minister or member cannot use this means to correct an answer or statement made by another member.<sup>67</sup> Nor can a personal explanation be used to attack, criticise—or defend—other members or anyone outside the House.<sup>68</sup> The Speaker will police the making of the statement to ensure that the member making the personal explanation does not go too far and strain the leave granted by the House.<sup>69</sup>

## **Effect of explanation**

A member's personal explanation cannot itself be debated.<sup>70</sup> Furthermore, it is an axiom of the House that a member's word must be accepted without question, and the most formal way a member can give an assurance to the House is by making a personal explanation on a matter. Greater weight is, therefore, put upon assurances given to the House by way of personal explanation than upon remarks made in the course of debate.<sup>71</sup> A statement made to the House in a personal explanation is a formal statement and, if it is misleading, can lead to a more ready presumption that the member intended to mislead the House.<sup>72</sup> A member who, in a personal explanation, denies making a statement or refutes an accusation, must have that denial or refutation accepted and cannot be challenged on the assurance that has been given.<sup>73</sup> This position obtains for as long as the member remains a member of the House, even if the denial was made in a previous Parliament.<sup>74</sup>

If a statement made by way of personal explanation is not true, it could constitute a contempt. Therefore, any questioning of a statement made in a personal explanation is, in effect, an accusation that the member has committed a contempt. It should therefore be brought forward as a matter of privilege. On the other hand, a member who states something in the course of debate is engaging in the debate, and the statement can be contested by another member, as long as the latter does not engage in a personal reflection.

Although members cannot impugn the reliability of a member's statement and cannot discuss any personal explanation once it has been made, they are not precluded from discussing the matter that was the subject of the personal explanation, providing that this is not done in such a way as to challenge the member's veracity.<sup>75</sup> No question can be lodged to a member about a member's personal explanation, although a personal explanation may be referred to in another question.

66 (14 May 2013) 690 NZPD 9855 (Aaron Gilmore).

67 (21 February 2013) 687 NZPD 8108 Carter.

68 (1997) 563 NZPD 4285 Kidd; (1892) 78 NZPD 2 Steward; (8 November 2012) 685 NZPD 6441 Smith (regarding a member's staff).

69 (1997) 563 NZPD 4285 Kidd; (8 November 2012) 685 NZPD 6441 Smith.

70 SO 358.

71 (1990) 505 NZPD 347–348 Burke.

72 (1986) 476 NZPD 5961 Wall.

73 (1881) 39 NZPD 100 O'Rorke; (1969) 360 NZPD 886 Jack.

74 (2000) 584 NZPD 3051 Hunt.

75 (14 May 2003) 608 NZPD 5679 Hunt; (1969) 360 NZPD 886 Jack; (1966) 346 NZPD 858 Algie.

## MISREPRESENTATIONS DURING ORAL QUESTIONS

In 2011 a procedure was introduced to enable members to apply to the Speaker for permission to respond to misrepresentations made during question time.<sup>76</sup> The intention was primarily to provide members with a remedy when misrepresented in an answer to an oral question, as an alternative to seeking leave to make a personal explanation (for example, when leave was denied).<sup>77</sup>

Despite the similarity of its name, this procedure is entirely distinct from the procedure for correcting misrepresentations in debate. Question time, by its nature, requires a different type of procedure. Responding to misrepresentations during oral questions involves a written application to the Speaker,<sup>78</sup> rather than the raising of a point of misrepresentation in the House. It can also relate to any misrepresentation that may adversely affect the member or damage the member's reputation,<sup>79</sup> and is not restricted to correcting misrepresentations or misquotations of a member's speech in the House.

### Procedure for application

A member who applies to the Speaker claiming to have been misrepresented during the time for oral questions must do so in writing at the earliest opportunity.<sup>80</sup> The Speaker may treat a matter of privilege as an application for this purpose.<sup>81</sup> This may enable the Speaker to provide a remedy for members who feel that they have been unjustly denigrated in answers to oral questions but whose concerns do not meet the high test for determining a question of privilege.<sup>82</sup> The Speaker will consider whether the member was misrepresented in a material way, and whether the misrepresentation could adversely affect the member or damage his or her reputation.<sup>83</sup> If the matter has been dealt with in the House, for example, through a personal explanation, the Speaker would take this into account.

### Response

Before allowing a member to respond to a misrepresentation, the Speaker may allow the member who made the misrepresentation an opportunity to withdraw it by way of a personal explanation. Otherwise, the Speaker can allow the misrepresented member to respond in the House on a subsequent day, usually immediately after question time.<sup>84</sup> When considering the application, the Speaker may wish to see the response that the member intends to deliver. The response must be succinct and strictly relevant to the misrepresentation, and consistent with the rules of parliamentary language.<sup>85</sup>

## MAIDEN STATEMENTS

Most newly elected members make their first or "maiden" speech during the Address in Reply debate following the opening of Parliament. However, a member may occasionally be prevented from participating in this debate (because of illness, for example); and members elected to fill vacancies arising during the course of a Parliament do not have any convenient debate in which to deliver the personal and

<sup>76</sup> SO 359.

<sup>77</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 51.

<sup>78</sup> SO 359(2).

<sup>79</sup> SO 359(1)(a).

<sup>80</sup> SO 359(2).

<sup>81</sup> SO 359(2).

<sup>82</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 51.

<sup>83</sup> Ibid, at 51–52.

<sup>84</sup> Ibid, at 52; SO 359(3).

<sup>85</sup> SO 359(3).

wide-ranging address that is normally expected as a maiden speech. (See Chapter 12 for maiden speeches.)

For this purpose, a member who has not (for whatever reason) made his or her maiden speech during an Address in Reply debate is permitted to make the equivalent address to the House as a maiden statement.<sup>86</sup> The statement may not be made during the course of another debate. Subject to this limitation, it is made at a time determined by the Speaker or the Business Committee.<sup>87</sup> Notice of the time for a maiden statement is given on the Order Paper.

A member has up to 15 minutes for the maiden statement, the same amount of time the member would have had for a maiden speech in the Address in Reply debate.<sup>88</sup>

## VALEDICTORY STATEMENTS

It is traditional for each resigning or retiring member to be given an opportunity to make a farewell address on or near their last day of service in the House. Until recently, the practice was for most members retiring at a general election to make valedictory speeches during the adjournment debate on the last sitting day of a Parliament. Those who could not do so, either because they were to be absent on the day the House finally adjourned or because they resigned earlier in the course of a Parliament, were usually permitted to make separate valedictory statements. Now, however, it has become the general practice to make such addresses as separate valedictory statements, and not as speeches in the adjournment debate.

Any member who is about to retire or resign is entitled to make a valedictory statement.<sup>89</sup> Although they were previously regulated solely by leave, valedictory statements are now arranged in advance by the Speaker or the Business Committee,<sup>90</sup> and are shown as items of business on the Order Paper. A time of 15 minutes is specified for each valedictory statement, although the Speaker has discretion to vary this time according to the length of service of a retiring member.<sup>91</sup> The Business Committee also has the power to vary the length of a valedictory statement.<sup>92</sup>

During valedictory statements, members may reflect on their participation and achievements during their time in the House, express views on the direction of the country, make observations about parliamentary life, and thank or pay tribute to family, friends, staff, colleagues, and even political foes. They may describe significant events or recount illustrative encounters, often with a touch of humour or poignancy. Valedictory statements tend to be insightful, thoughtful contributions by members making their parting remarks to the institution of Parliament.

---

<sup>86</sup> SO 360(1).

<sup>87</sup> SO 360(3).

<sup>88</sup> SOs, App A.

<sup>89</sup> SO 360(2).

<sup>90</sup> SO 360(3).

<sup>91</sup> SOs, App A.

<sup>92</sup> SO 79(g).

# CHAPTER 19

# Committees of the Whole House

## COMMITTEES CONSISTING OF ALL MEMBERS

As well as considering and debating issues as a full House, the House establishes committees of members to consider issues more conveniently. The House appoints two types of committees: committees of the whole House, of which all the members of the House are members (in this case the House forms itself into a committee); and select committees, each of whose membership is confined to selected members of the House. (See Chapters 20–23 for select committees.) Formerly three distinct types of committee of the whole House were distinguished: a Committee of Supply (for taking decisions on public expenditure), a Committee of Ways and Means (for taking decisions on taxation), and other committees of the whole House. The Committee of Supply and the Committee of Ways and Means were abolished in 1967.

A different committee of the whole House is created every time the House forms itself into such a committee. “Committee of the whole House” is simply a shorthand expression for the various forms of proceedings that apply when the House goes into committee. Committees of the whole House sit in the Chamber of the House; they are said to meet “on the floor of the House”.<sup>1</sup> As committees of the whole House consist of all members of the House and meet at the same venue as the House, it is physically impossible for the House to sit at the same time as a committee of the whole House meets.

The Speaker does not preside over a committee of the whole House. Indeed, this has been said to be the reason the House of Commons originally adopted the practice of going into committee. Speakers were regarded by members with some suspicion as the King’s or Queen’s men, who reported members’ (sometimes less than complimentary) deliberations to the Sovereign. Before legal immunity for parliamentary proceedings was established, this could be a dangerous matter for the individuals concerned. Going into committee to consider a matter without the Speaker in the Chair was a means of maintaining the privacy of the Commons’ proceedings from the Crown. (“Going into committee” has retained something of this sense of deliberating in private even today.) This explanation of the origins of the committee of the whole House has been disputed on the ground that it ignores the fact that the Speaker, even though not presiding, always had a right to attend

---

<sup>1</sup> For a proposal that such committees meet elsewhere, see Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 10.

debates held in a committee of the whole House and to speak and vote there.<sup>2</sup> The practice may have originated from nothing more than a wish for more relaxed procedural rules for occasions when it was desirable for the whole House to be able to participate in discussion of matters needing detailed attention to drafting. This is close to the modern role of the committee of the whole House.

The committee of the whole House is an extremely significant part of the operation of the House. Each year, for example, as much as a quarter of the total sitting time of the House is spent in committee.

## THE HOUSE IN COMMITTEE

Consideration of a matter in committee is set down on the Order Paper as an order of the day like any other item of business to be considered by the House. When the order of the day is reached, the Speaker directs the Clerk to call it, which the Clerk does by reading its description from the Order Paper. The Speaker thereupon declares the House in committee on the specified business and immediately quits the Chair. Formerly the Speaker proposed a question to the House on this point, "That the House do resolve itself into committee" and a debate was held on the question, but there is no longer any debate on whether the House should go into committee. When an order of the day for consideration in committee is reached, the House goes into committee automatically.<sup>3</sup>

However, the House does not go into committee on an item of business if less than five minutes remains before it would adjourn in any case. If business that would require the House to go into committee is reached within five minutes of the adjournment, the Speaker adjourns the House automatically.<sup>4</sup>

As the Speaker leaves the Chair, the Serjeant-at-Arms removes the Mace from its position on the Table of the House and places it under the Table on brackets suspended from the underside of the Table for the purpose.<sup>5</sup> This signifies that the Speaker (or a member acting on behalf of the Speaker) is no longer presiding over the House. The presiding officer is the Chairperson (see below), who sits in the Clerk's seat at the Table (though the Speaker may participate in the committee's proceedings like any other member of the House). Also seated at the Table on the Chairperson's right is the Minister or other member principally responsible for the business before the committee and, seated on the Chairperson's left, one of the Clerk's staff who acts as clerk to the committee.

### General rules for proceedings

A committee of the whole House may not adjourn its own proceedings.<sup>6</sup> An adjournment of the committee of the whole House would effectively adjourn the House. If the committee feels that it cannot proceed any further with the matter before it, its proper course is to report that fact to the House, whereupon the Speaker will resume the Chair and the House will decide the next step to take on it. Nor may a committee of the whole House subdelegate the task that has been given to it by appointing a subcommittee to consider the matter or by referring it to a select committee.<sup>7</sup> If the House wishes to have a smaller group of members consider a matter, the House may refer the matter to a select committee. This is not a function of a committee of the whole House.

Although committees of the whole House operate in a less formal way than the House itself, most of the formal rules for the House's proceedings also apply in

<sup>2</sup> Philip Laundy *The Office of Speaker in Commonwealth Parliaments* (Quiller Press, London, 1984) at 31–32.

<sup>3</sup> SO 170.

<sup>4</sup> SO 51(2).

<sup>5</sup> SO 171.

<sup>6</sup> SO 180.

<sup>7</sup> (16 February 2005) 623 NZPD 18723 Simich (Chairperson).

committee. Except where the Standing Orders expressly provide to the contrary, these general rules for the conduct of business apply in committee as they do in the House.<sup>8</sup>

### **Call in committee**

The proceedings of the House in committee are differentiated from proceedings in the House itself principally by the fact that members make shorter and more frequent contributions to the debate. Unlike in the House, members may speak more than once to a question before the committee.<sup>9</sup> This allows members to re-enter the debate to deal with points that have already been raised earlier in the debate. This is a particularly important relaxation of debating rules from the point of view of the Minister in charge of the bill or business under consideration, because it enables the Minister to respond to questions or points made by members in the course of the debate. All speeches in committee are limited to a maximum of five minutes.<sup>10</sup>

## **CHAIRPERSONS**

The Deputy Speaker is the chief presiding officer when the House goes into committee, presiding over each committee as Chairperson.<sup>11</sup>

In committee, the Chairperson performs the role played in the House by the Speaker. The Chairperson is the sole judge of all matters arising in committee: for example, the relevancy of debate, the acceptability of amendments, the grouping and selection of amendments,<sup>12</sup> whether there is tedious repetition and when to accept a closure motion. The Chairperson can also suspend the committee temporarily in specified circumstances: if grave disorder arises, in accordance with a decision of the House or the Business Committee, or in the event of an emergency situation.<sup>13</sup> In these circumstances the Speaker automatically resumes the Chair, as appropriate.<sup>14</sup> No individual member can appeal to the Speaker from a ruling of the Chairperson.<sup>15</sup> If a ruling given by the Chairperson is seriously disputed, a motion may be made that the Chairperson report progress to take the Speaker's ruling on the matter. This motion is moved on a point of order. It is not subject to amendment or debate.<sup>16</sup>

It has been the practice that the motion moved in a case of genuine dispute is not opposed, though on occasion it has been defeated.<sup>17</sup> The Speaker has warned members not to abuse the right to recall the Speaker to review a Chairperson's ruling. Invoking it inappropriately or too frequently could bring the practice of the majority agreeing to the Speaker's recall into question.<sup>18</sup> Even when the Speaker is recalled to rule on a matter that has arisen in committee, his or her role is limited. Speakers have consistently ruled that they cannot alter a decision of the Chairperson on a question of relevancy in debate or the admissibility of an amendment, whether or not they consider the Chairperson to have been wrong. Such a decision could be reversed only by the House itself passing a motion after notice of that motion had been given.<sup>19</sup> In respect of other matters, the Speaker, if appealed to by the committee, will give guidance as to the proper procedure to be followed in a committee of the whole House.

<sup>8</sup> SO 173.

<sup>9</sup> SOs, App A.

<sup>10</sup> SOs, App A.

<sup>11</sup> SO 172(1).

<sup>12</sup> SO 307(4) and (5).

<sup>13</sup> SO 177(1).

<sup>14</sup> SO 177 (2) and (3).

<sup>15</sup> (1881) 40 NZPD 97 O'Rorke.

<sup>16</sup> SO 178.

<sup>17</sup> (2002) 605 NZPD 2882–2883.

<sup>18</sup> (1998) 570 NZPD 10675 Kidd; (1998) 573 NZPD 13618 Kidd.

<sup>19</sup> (1910) 153 NZPD 961 Guinness; (1957) 313 NZPD 2118 Oram.

Reflections on the actions of the Chairperson or on any other member chairing the committee, such as insinuating that the Chairperson exercised rights he or she was not entitled to exercise under the Standing Orders, are not in order.<sup>20</sup> Any questioning of the impartiality of the Chairperson is regarded extremely seriously and may constitute a breach of privilege.

## **Other Chairpersons**

In the Deputy Speaker's absence an Assistant Speaker acts as Chairperson of a committee of the whole House.<sup>21</sup> The Deputy Speaker and the Assistant Speakers are completely interchangeable as Chairpersons, and all exercise the full powers of the office. There cannot, for example, be any appeal from one Chairperson to another. The only appeal from a ruling given in committee by whoever is in the Chair is to the Speaker in the House, if the committee decides to seek it. In practice, before the House goes into committee, the Deputy Speaker and the Assistant Speakers will decide between them who will preside and for what periods of time.

## **Temporary Chairpersons**

As in the House, the member presiding in committee may at any time ask another member to take over the duty of presiding over the committee. This is done without any formal communication to the committee; the member concerned simply takes the Chair at the Table as temporary Chairperson.<sup>22</sup> There is no restriction on who may take the Chair as temporary Chairperson; the decision lies with the Chairperson who invites the member to do so. A whip has taken the Chair as temporary Chairperson.<sup>23</sup> A temporary Chairperson is in the same position as any other Chairperson except that a temporary Chairperson cannot accept a closure motion;<sup>24</sup> however, in an exceptional case the House has given a temporary Chairperson the power to accept a closure motion.<sup>25</sup>

## **Acting Chairperson**

Before the House can go into committee there must be a member present who can take the Chair as Chairperson. If neither the Deputy Speaker nor an Assistant Speaker is present, the House must appoint a member as acting Chairperson before the Speaker leaves the Chair. This can be done by leave of the House, otherwise the Speaker will accept a motion for the appointment of an acting Chairperson.<sup>26</sup> A member who has been appointed acting Chairperson by the House exercises all the powers of the office while presiding, including that of accepting a closure motion. Appointment as acting Chairperson in these circumstances lasts only for the life of the particular committee of the whole House in respect of which it was made.

## **Participation in debate**

When he or she is not occupying the Chair, the extent to which a Chairperson participates in debates or other proceedings of the House is entirely a matter for the member holding that office to determine.<sup>27</sup> In practice, it is not regarded as consonant with the office for the Chairperson (who is also Deputy Speaker) to play a robust political role in the House.

An Assistant Speaker is less constrained in participating in debate in the House, although it is not regarded as good practice for an Assistant Speaker to debate in the House procedural issues that were dealt with in committee. If an Assistant

20 (1913) 167 NZPD 200–201 Lang.

21 SO 172(1).

22 SO 172(3).

23 (1995) 550 NZPD 9187.

24 SO 136(4).

25 (3 October 2000) [1999–2002] 1 JHR 690.

26 SO 172(2); see, for example: (21 October 1982) [1982] JHR at 298; (16 March 2004) 616 NZPD 11686.

27 (1974) 395 NZPD 5580 Whitehead; (1992) 531 NZPD 12131 Gray.

Speaker is also the chairperson of a select committee, there is no convention that the Assistant Speaker refrain from taking the Chair on a bill that has been considered by that committee.<sup>28</sup>

## MAINTENANCE OF ORDER

The maintenance of order in a committee of the whole House is the responsibility of the Chairperson. (See pp 154–155.)

## BUSINESS CONSIDERED IN COMMITTEE

Several types of business are considered in committees of the whole House and the precise rules for the conduct of the committee differ accordingly.

The most frequent use of a committee of the whole House is to consider a bill—the committee stage in passing legislation. (See Chapter 26.) The committee stage of the first or main Appropriation Bill of each financial year is the Estimates debate, when the committee goes through the various departmental votes seeking authority to spend money or incur expenses up to specified amounts. The annual review debate is held in a committee of the whole House, which is the committee stage of the annual Appropriation (Confirmation and Validation) Bill.<sup>29</sup> Annual reviews of Crown entities, public organisations and State enterprises are also debated in the committee of the whole House.<sup>30</sup> The Business Committee has in recent times determined that these annual review debates should be taken together.<sup>31</sup> Major revisions of the Standing Orders have also been considered in a committee of the whole House before their adoption by the House.<sup>32</sup> Finally, the House may conduct an examination of witnesses in a committee of the whole House.<sup>33</sup> (See pp 492–493.) The individual speaking times for these items of business and the particular rules applying to them are dealt with in the respective sections of this book.

## ARRANGEMENTS FOR CONSIDERATION IN COMMITTEE

Where practicable, the Government advises the Business Committee which bills are intended by the Government to be considered in committee in the next week the House will sit. This advice is noted on the Order Paper.<sup>34</sup> While failure to give such notice does not prevent the Government from taking a bill's committee stage, it provides less opportunity for members to submit their amendments as coherent alternative propositions.

To help maximise the time spent in debate rather than in voting, the Chairperson may group a member's amendments when putting the question, if this does not detract from their intent.<sup>35</sup> Schedules of amendments may be prepared in the Clerk's Office to assist in this regard, and members are encouraged wherever possible to have their amendments published by putting them on a Supplementary Order Paper.<sup>36</sup> This too is aimed at encouraging the submission of coherent alternative propositions, rather than numerous minor amendments.<sup>37</sup>

<sup>28</sup> (1986) 473 NZPD 3496 Wall.

<sup>29</sup> SO 347(1).

<sup>30</sup> SO 349(1).

<sup>31</sup> (28 April 2015) 704 NZPD 2918 Borrows (Chairperson); Business Committee determinations for 11 March and 1 April 2015. See also Chapter 35.

<sup>32</sup> (1931) 227 NZPD 544–545 Statham.

<sup>33</sup> SO 174.

<sup>34</sup> SO 301(3).

<sup>35</sup> SO 307(4); (19 June 2012) 681 NZPD 3098 Roy (Chairperson).

<sup>36</sup> See also: Office of the Clerk of the House of Representatives, annual report (20 October 2014) NZPP A.8 at 5 and 16 (growth of Supplementary Order Papers drafted for members).

<sup>37</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 45.

It reflects a change in the proceedings in the committee of the whole House. The Standing Orders Committee has recognised that since bills are now routinely considered part by part in committee, the committee stage lends itself to wider discussion. Members who have not spoken in first or second reading debates have an opportunity to take part in debate, and alternative propositions can be raised in a public forum for the record.<sup>38</sup>

The Business Committee can also determine how a committee will consider a bill. Committee stages might be organised by issues, through the grouping of parts, or by separating debates on in-principle decisions and from those on amendments to implement them.<sup>39</sup> A determination may be varied by a decision of the committee of the whole House or by an instruction of the House. The member in charge of the bill still has the right to postpone consideration of the bill's provisions.<sup>40</sup>

## INSTRUCTIONS

A committee of the whole House may consider only those matters that have been referred to it by the House.<sup>41</sup> Apart from referring particular items of business to the committee, the House directs and guides its committees by means of instructions. It does so by way of resolution of the House or by a determination of the Business Committee. An instruction may relate to the scope of the business to be considered by the committee—extending or restricting consideration of that business—or it may relate to the procedure the committee is to follow in considering the business referred to it.<sup>42</sup>

An instruction must be relevant to the subject matter of the bill or other business that has been referred to the committee. It must not be foreign to it or destructive of it.<sup>43</sup> If the instruction relates to an amendment, the amendment must similarly be consistent with the bill and not foreign to it for the instruction to be in order.<sup>44</sup>

An instruction must not be supererogatory—if the committee already possesses power to or is required by the Standing Orders to proceed in the way proposed in the instruction, the instruction cannot be given.<sup>45</sup> An instruction must extend or restrict the committee's powers, or require that they be exercised in a particular way and thus withdraw a discretion from the committee. An instruction must be supplementary to the task with which the committee is charged, not contrary to the functions of the committee as such. For example, an instruction seeking to permit the committee of the whole House to set up a subcommittee to report back to it and to embody the subcommittee's report in its own report to the House was found to be not in order.<sup>46</sup> The question of setting up subcommittees is one to be dealt with by the Standing Orders, not by means of an instruction. Similarly, a motion to report progress cannot include an instruction to refer a bill to a select committee, as this is beyond the competence of the committee.<sup>47</sup>

Most instructions relate to the way in which the committee is to consider a bill that has been referred to it. (See pp 428–429.)

<sup>38</sup> *Ibid.*, at 44.

<sup>39</sup> SOs 301(1) and 303(1)(c). See, for example, Business Committee determinations for 7 and 21 March 2012 (Alcohol Reform Bill); and Business Committee determination for 11 March 2015 (debate on annual reviews).

<sup>40</sup> SO 301(2)(b), (c) and (d).

<sup>41</sup> SO 175.

<sup>42</sup> SO 176(1).

<sup>43</sup> (1931) 227 NZPD 436 Statham (Finance Bill); (1993) 534 NZPD 14421 Gray (Taxation Reform Bill (No 6)).

<sup>44</sup> (9 December 2010) 669 NZPD 16257 Barker (Assistant Speaker) (State Sector Management Bill).

<sup>45</sup> (27 October 2010) 668 NZPD 14878 Roy (Assistant Speaker) (Rugby World Cup 2011 Empowering Bill).

<sup>46</sup> (1933) 236 NZPD 896 Statham (Reserve Bank of New Zealand Bill).

<sup>47</sup> (13 May 2009) 654 NZPD 3668 Tisch (Chairperson) (Local Government (Auckland Reorganisation) Bill).

## Instructions with or without notice

An instruction can be moved on notice as a Government or Member's motion. But an instruction may also be moved immediately after the order of the day for the committee stage of the business to which it relates.<sup>48</sup> This is how an instruction is commonly moved. While, in general terms, motions require notice, the House has expressly provided that notice is not required for instructions when the order of the day is called. This exemption is consistent with the principle that notice for legislative stages is given through their being set down on the Order Paper;<sup>49</sup> a motion for an instruction therefore is permissible without notice if it is reasonable to associate it with the order of the day. A motion that was not reasonably associated with the order of the day, such as a motion to convert a bill into an omnibus bill or to inject a completely foreign subject-matter into the bill, would require a separate notice of motion or would need to follow the special procedure for motions to suspend Standing Orders.<sup>50</sup>

## Moving an instruction

The initiative for moving an instruction at this point lies with individual members. Frequently, the Speaker will have received advance warning that a member intends to move an instruction, but this is not essential. What is essential is that the motion is moved before the House goes into committee.<sup>51</sup> But a member is not prevented from moving an instruction by a point of order being raised immediately after the order of the day is read; indeed a member wishing to move an instruction usually attracts the Speaker's attention by taking a point of order and moving the motion on being called by the Speaker to speak to the point of order.<sup>52</sup> An instruction relating to a Supplementary Order Paper may not be moved unless the Supplementary Order Paper has been printed and circulated to members.<sup>53</sup>

A member can only move one instruction to a committee on any one occasion. The Speaker will give preference to the member in charge of the business (usually a bill) if more than one member wishes to move an instruction on the same occasion, but more than one instruction can be moved on each occasion, provided that a later instruction is not inconsistent with a previous instruction already agreed to. An instruction given to a committee of the whole House on one day endures into a future day if the committee does not complete the pertinent business at one sitting and the House goes into committee on it again.

## Debate on instruction

The debate on a motion for an instruction is restricted to the subject matter of the motion and may not extend to the principles, objects or provisions of the bill or other matter to which the motion relates. Debate must be solely directed to the power or restriction that it is proposed to confer upon the committee.<sup>54</sup> One particular type of instruction—to consider a bill clause by clause—is not subject to debate or amendment at all.<sup>55</sup>

## Variation of an instruction

The House can vary or revoke an instruction. This can be done on notice as a Government or Member's motion, or as a further instruction before the House goes into committee to consider the business again.

<sup>48</sup> SO 176(2); (16 November 2010) 668 NZPD 15441 (Employment Relations Amendment Bill (No 2)).

<sup>49</sup> See Chapter 15 ("Giving notice about motions relating to stages of legislation").

<sup>50</sup> SO 4.

<sup>51</sup> (2000) 582 NZPD 902 Hunt.

<sup>52</sup> *Ibid.*

<sup>53</sup> SO 176(3).

<sup>54</sup> SO 176(5); (1 July 2008) 648 NZPD 17044 Simich (Deputy Speaker) (Land Transport Management Amendment Bill); (13 July 2011) 674 NZPD 20070 Tisch (Deputy Speaker) (Smoke-free Environments Amendment Bill).

<sup>55</sup> SO 176(6).

As a committee of the whole House consists of all members of the House, it can, by leave of the committee, vary the terms of an instruction given to it.<sup>56</sup> An instruction cannot be varied by a motion moved in committee.

## **Repetition of an instruction**

An instruction cannot be repeated. Where the House has given an instruction or defeated a motion for an instruction on a bill or other piece of business, a motion for a similar instruction on the same bill or business cannot be moved again in the same calendar year.<sup>57</sup>

# **REPORTS**

The committee must report the results of its deliberations to the House, whether they are final<sup>58</sup> or interim (referred to as “progress” or “no progress”).<sup>59</sup>

## **Motions to report**

The Chairperson may be directed by the committee to report to the House at any time during the committee’s consideration of the matter before it. A motion to report progress may be moved to take the Speaker’s ruling on a disputed point,<sup>60</sup> or it may simply be moved with the intention of bringing the committee’s deliberations to an end.<sup>61</sup> In the latter case the member moves, “That the committee report progress”. Only a member who has been given the call to speak in the ordinary way can move this motion; it cannot be done on a point of order.<sup>62</sup> A member who moves a motion for progress to be reported does so as an alternative to speaking to the question. When such a motion has been moved, the question on it is put at once without amendment or debate.<sup>63</sup> If the motion is lost, another member will be called to speak. Where a committee has defeated a motion to report progress, a further motion to report progress may not be moved while the committee continues to consider the same substantive question proposed by the Chair.<sup>64</sup> If a motion to report progress is agreed to, further consideration of that business ends and the Chairperson reports it to the House accordingly. Once reported, the business is then set down for resumption on a future day.

The member in charge of a bill before the committee may move a motion “That the committee report progress and sit again presently”.<sup>65</sup> In this case, too, the question is put at once without amendment or debate.<sup>66</sup> If this motion is agreed to the business can be resumed later in the same sitting.

## **Obligation to report**

The committee of the whole House must report back to the House five minutes before the sitting is due to end; that is, at 9.55 pm on a Tuesday and Wednesday and at 5.55 pm on a Thursday.<sup>67</sup> For this purpose the Chairperson interrupts the business at that time and the Speaker automatically resumes the Chair. If the Speaker is already in the Chair five minutes before the sitting is to end to rule on a point of order that the committee has reported to the House in order to take the

56 SO 176(7).

57 SO 176(4).

58 SO 182(1).

59 SO 182(2).

60 SO 178.

61 SO 181(1).

62 (1985) 468 NZPD 8439–8441 Terris (Chairman).

63 SO 181(3).

64 (4 August 2011) 674 NZPD 20329–20330 Smith (Education (Freedom of Association) Amendment Bill).

65 SO 181(2).

66 SO 181(3).

67 SO 52(1).

Speaker's ruling, or because of any other temporary suspension of the proceedings of the committee, the Speaker has the option of ruling on the matter there and then, or of deferring a ruling. In these circumstances, the Speaker declares the House in committee again so that the committee can complete the formalities of reporting to the House as if it were five minutes before the conclusion of the sitting.<sup>68</sup>

Occasionally, the Chairperson may be required to report progress at a particular time for the House to go on to other business. This will happen whenever the House specifically orders, or the Business Committee determines, that a bill or debate is to be held at a particular time.<sup>69</sup> In some cases the committee may resolve to report progress to allow an event such as the making of a personal explanation. Leave to give a personal explanation must be obtained from the House rather than the committee of the whole House.<sup>70</sup>

Whenever a vote is in progress five minutes before the conclusion of a sitting or a question is in the process of being put and a vote results, the interruption of proceedings by the Chairperson is postponed until after the vote is completed. No further question is put by the Chairperson unless a closure motion has been carried, in which case all consequential questions may be put (and voted on) in order to determine the original question before the committee reports to the House.<sup>71</sup> Where there are many amendments to a question before the committee, this can considerably prolong the sitting.

### **Manner of reporting**

When the Speaker resumes the Chair, the Chairperson stands on the floor of the House to the right of the Speaker's Chair, reports on each of the matters referred to the committee by the House and moves that the report be adopted. Where the committee has not fully considered a bill or other matter, the Chairperson reports that the committee has made progress or, if the bill was not reached at all, no progress.<sup>72</sup> The Speaker repeats the committee's report to the House and then puts the question for its adoption. This question is not subject to amendment or debate.<sup>73</sup> The motion to adopt the report is not usually opposed and so is not normally the subject of a vote. However, if the motion were to be defeated, the matter reported would be set down on the Order Paper for further consideration in committee next sitting day. The rejection of the committee's report on a bill would not defeat the bill. In effect, the House would have rejected the committee's report and required it to give the matter further consideration before reporting again.

---

<sup>68</sup> SO 179.

<sup>69</sup> SO 177(1)(b). See, for example, (23 September 2008) 650 NZPD 19029.

<sup>70</sup> (27 March 2013) 688 NZPD 8973 Carter; (26 September 2012) 684 NZPD 5700–5701.

<sup>71</sup> SO 53.

<sup>72</sup> SO 182(2).

<sup>73</sup> SO 183.

# CHAPTER 20

## Select Committees

Most large bodies find it convenient to refer issues to smaller groups of their members for detailed study and report back to the main body. Indeed, it has been said that a legislature must function through its committees.<sup>1</sup> That is certainly true of the House of Representatives. For this purpose, as well as employing committees consisting of all its members to debate the details of legislation and financial matters (committees of the whole House) the House also employs smaller committees of members to carry out a wide range of parliamentary work. These smaller groups of members are known as select committees.

The Standing Orders provide for the establishment at the commencement of each Parliament of 13 subject select committees (that is, select committees assigned to deal with business in specified subject areas) and four other select committees. A Business Committee is also established, but not as one of these select committees. Because the Business Committee must make all of its decisions in accordance with a principle of unanimity, it has a rather more fluid membership and working practices than those of other select committees. (See Chapter 14.) However, in other respects, the general rules for the conduct of select committee proceedings are applied as appropriate to the Business Committee's work.

It is in select committees that most of the intensive work of the House is carried on—whether of a legislative, financial or investigatory nature, or consists of scrutiny. In select committees the public is involved directly in the work of the House. By its nature, debate in the Chamber is confined to debate among members of Parliament. But select committee work is not conducted only by members of Parliament. It involves tens of thousands of non-members each year—Government officials, members of public bodies, trade unionists, the business community, non-government organisations, representatives of associations, and individual members of the public—who are themselves either the subject of some inquiry or scrutiny by a committee or, more often, wish to contribute to the consideration of a particular matter by a committee. This interchange between parliamentarian and public as part of the legislative process is a distinctive feature of New Zealand's parliamentary system.

Select committees are established by the House,<sup>2</sup> and are creatures of their parent body. They cannot have functions and powers that the House does not possess. Nor can they exercise functions and powers that have not been conferred on them by the House or that the House has directed them not to exercise. Their

---

<sup>1</sup> *Attorney General (Canada) v MacPhee* 2003 PESCTD 6, 221 Nfld & PEIR 164 at [42].

<sup>2</sup> SO 184.

duty is to carry out work on behalf of the House and to communicate their conclusions to the House in the form of reports. The creation of select committees has been regularised in that the House has provided in its Standing Orders for the automatic establishment of particular committees at the beginning of each Parliament. In addition to these committees recognised in the Standing Orders, other committees are set up from time to time for particular purposes. They are therefore referred to as “ad hoc” committees. Thus a committee may be set up to carry out a particular task or for a limited time, and go out of existence when it has performed that task or the specified time has expired. But most committees (regular or ad hoc) continue in existence for the duration of the Parliament.

## FUNCTIONS OF COMMITTEES

New Zealand’s Parliament operates a system of multi-purpose select committees. The functions performed by select committees cover almost the entire range of functions performed in the House itself. Indeed, because of the pressures on House time, many functions performed by committees are not performed in the Chamber at all, or are performed there to a much lesser extent.

### Legislation

With few exceptions, all bills that are introduced into the House are referred to select committees for study after they receive a first reading.

The part of select committees in the legislative process is one of the original functions they came to perform after they were first set up in 1854. It is the single most important type of work they perform, and it provides the main avenue through which the public participates in the parliamentary process.

A committee may be set up with the sole function of considering legislation that is referred to it,<sup>3</sup> but most committees combine a legislative function with others.

The proportion of time that each committee devotes to considering legislation as distinct from its other functions differs depending upon the committee’s subject area. It can also differ markedly from year to year as legislative priorities change. The greater part of most committees’ time is spent considering legislation, and for some of them this proportion can be high. On the other hand, a committee with a low legislative workload may devote only a small amount of its time to legislation and concentrate its efforts on other select committee functions.<sup>4</sup> (See Chapter 26 for consideration of bills.)

Notices of motion that the House approve or disallow a regulation or other legislative instrument stand referred to a select committee. The Clerk allocates such notices to the most appropriate committee. The committee must consider the notices and report to the House within specific timeframes set out in the Standing Orders dealing with affirmative and negative resolution procedures.<sup>5</sup>

### Petitions

Every petition presented to the House that is in order is allocated by the Clerk to a select committee for consideration and report.<sup>6</sup> This does not generally open up as wide a field of inquiry as the consideration of a bill, but, on occasion, it can lead

<sup>3</sup> (2000) 582 NZPD 1098–1108 (Employment and Accident Insurance Legislation Committee); (4 December 2003) 614 NZPD 10485–10488, (9 December 2003) 614 NZPD 10557–10566 (Fisheries and Sea-related Legislation Committee).

<sup>4</sup> Business Committee, report on review of inquiry function of subject select committees (15 December 1989) [1987–1990] AJHR I.14B at [5.3]; Standing Orders Committee Review of Standing Orders (13 December 1995) [1993–1996] AJHR I.18A at 31.

<sup>5</sup> SOs 322(1) and 323(1).

<sup>6</sup> SO 370.

a committee into an extensive round of meetings and evidence gathering.<sup>7</sup> (See Chapter 36 for petitions.)

## **Estimates and annual review**

Each year select committees conduct an examination of the Government's spending plans (Estimates) for, and a review of the previous year's performance of, each department, Office of Parliament, Crown entity, State enterprise and certain other public organisations. The Finance and Expenditure Committee allocates the Estimates and annual review work to the various committees for these purposes.

The Estimates examination takes place in May to August, following the delivery of the Budget. There may, in addition, be an examination of any Supplementary Estimates towards the end of the financial year.

Committees have the period from the presentation of a department's annual report (September/October, or rather later in an election year) to one week after the commencement of the House's sittings in the following year to conduct their annual reviews of departments. They have six months to conduct annual reviews of Crown entities, State enterprises and other public organisations. (See Chapters 33 and 35 for committees' financial work.)

## **International treaty examinations**

Select committees conduct examinations of international treaties with a view to drawing the attention of the House to any features of a treaty that a committee wishes to raise. In the first instance, treaties stand referred to the Foreign Affairs, Defence and Trade Committee, which may allocate them to the committee whose terms of reference relate most closely to the subject matter of the treaty. (See Chapter 42.)

## **Reports of Officers of Parliament**

Officers of Parliament may report to the House at any time on matters arising out of the performance and exercise of their functions, duties and powers. The reports are allocated to select committees for consideration and report.<sup>8</sup> This does not generally open up a wide field of inquiry, but offers an opportunity to consider the report's findings and make recommendations to which the Government will be required to respond.<sup>9</sup> (See Chapter 7 for Officers of Parliament.)

## **Matters referred to a committee**

The House may refer any particular issue to a committee for inquiry. This can occur because a statute requires such an inquiry to be undertaken by a committee, because of widespread public concern that the House wishes to address by having a committee conduct an inquiry,<sup>10</sup> or in response to a request from the committee because the committee does not have the power to inquire into a particular matter it considers needs attention.<sup>11</sup> (See Chapter 29 for statutory inquiries.)

Often ministerial amendments to a bill that is before the committee are placed on a Supplementary Order Paper, and where a committee might not otherwise

<sup>7</sup> (1970) 370 NZPD 4930–4931 (Lake Manapouri); Communications and Road Safety Committee, interim report on effect of Post Office closures on rural communities (8 December 1988) [1987–1990] AJHRI.2B; Communications and Road Safety Committee, report on effect of Post Office closures on rural communities (16 May 1989) [1987–1990] AJHR I.2C; Justice and Law Reform Committee, report on petition of Invercargill City Council re gang violence and crime (27 August 1996) [1993–1996] AJHRI.7C.

<sup>8</sup> SO 396(1), (2).

<sup>9</sup> See, for example: Local Government and Environment Committee, report of the Parliamentary Commissioner for the Environment on evaluating the use of 1080; and petitions 2008/47 and 2008/81 (8 September 2011) [2008–2011] AJHR I.22C; Health Committee *Report from the Controller and Auditor-General on effectiveness of arrangements to check the standard of services provided by rest homes* (21 October 2010) [2008–2011] AJHR I.22B.

<sup>10</sup> (1989) 497 NZPD 10004–10016 (Agent Orange).

<sup>11</sup> (1991) 518 NZPD 4308–4309 (wholesale and retail electricity prices).

consider them the House can refer the Supplementary Order Paper to the committee for it to study along with the bill. Indeed, this is expected in respect of substantial amendments.<sup>12</sup> To this end a Supplementary Order Paper relating to a bill that is no longer before a committee may also be considered by a committee, with the approval of the House or the Business Committee.<sup>13</sup>

Only the Privileges Committee is limited to considering issues specifically referred to it by the House.<sup>14</sup>

Apart from matters referred by the House, the Standing Orders recognise that matters can in certain instances be referred in other ways than by the House. Ministers can refer draft regulations, proposals for the creation of an Officer of Parliament and amendments to Local Legislation bills to the appropriate select committees. The committees are obliged to consider and report on such proposals.<sup>15</sup> Further, in respect of regulations, any person aggrieved at a regulation's operation may complain to the Regulations Review Committee, and this complaint must be considered at the next meeting of the committee.<sup>16</sup>

### Inquiries initiated by the committee

The House refers relatively few issues for select committee inquiry. This is largely because subject select committees have a general power to receive briefings on, or initiate inquiries into, matters related to their respective subject areas.<sup>17</sup> This was not always the case; before 1985 most committees had no power to initiate inquiries and could work only on the basis of matters referred to them by the House. "Briefings" can take the form of meetings with experts in a committee's subject area, discussions with visiting parliamentary delegations or preliminary information-gathering by a committee. "Inquiries" are more elaborate investigations of a topic, involving the receipt of evidence and advice, and culminating in a report to the House.<sup>18</sup>

When the committees were reformed in 1985 their subject areas were arranged to reflect the organisation of departmental responsibilities. They still maintain a close relationship to departmental responsibilities. But, since 1996, they are no longer tied to the policy or activities of Government. They extend to any matter falling within the general subject area allotted to the committee.<sup>19</sup> If a committee wishes to initiate an inquiry falling outside its own subject area, it can ask the House for permission to do so.<sup>20</sup> Whether the other committees the House establishes from time to time have authority to launch inquiries within the scrutiny areas allocated to them depends upon their precise terms of reference.

Some subject select committees can more readily utilise their powers to initiate inquiries than others. This results from the disparity in legislative work referred to committees. A committee may have little time left over from its heavy legislative commitments to devote to inquiry work. On the other hand, committees that work in subject areas that generate little legislation have much more opportunity to conduct inquiries. (See also p 493 for select committees' inquiry powers.)

<sup>12</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 56.

<sup>13</sup> SO 189(3).

<sup>14</sup> SO 407.

<sup>15</sup> SOs 318(2), 395(1)(c), and App C cl 23(1).

<sup>16</sup> SO 320(1).

<sup>17</sup> SO 189(2).

<sup>18</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 28.

<sup>19</sup> SOs 188 and 189(2).

<sup>20</sup> See, for example: Government Administration Committee *Special report seeking authority from the House to undertake an inquiry into the relationship between the role of members of Parliament and their outside interests* (21 October 1997) [1996–1999] AJHR I.5B; Māori Affairs Committee *Special report seeking authority to inquire into the determinants of wellbeing for Pacific children* (14 July 2011) [2008–2011] AJHR I.22C.

## Special functions

Apart from their general functions, committees may have special functions conferred on them. The Regulations Review Committee, for instance, carries out a scrutiny role in respect of regulations, drawing the House's attention to regulations with certain features.<sup>21</sup> The Officers of Parliament Committee has administrative functions to discharge regarding the Offices of Parliament, such as recommending the appointment of Officers of Parliament,<sup>22</sup> their funding and auditors, and developing codes of practice for them. The Finance and Expenditure Committee has a leading role in the House's financial scrutiny procedures and the examination of any whole of Government directions.<sup>23</sup> Any civil defence and emergency management strategies stand referred to the Government Administration Committee for examination and report to the House.<sup>24</sup>

## SCOPE OF COMMITTEE ACTIVITY

A select committee, being a creature of the House, may carry out only such investigations or functions as the House has empowered it to carry out. The committee's functions and any special powers, often referred to as the committee's terms of reference, are set out in the Standing Orders or in a resolution of the House establishing the committee or referring business. Such a resolution is known as an order of reference, but these are now largely confined to setting up ad hoc committees, as the usual select committees are established automatically under the Standing Orders<sup>25</sup> and most business stands referred under the Standing Orders or is initiated without the need for a specific order of reference.<sup>26</sup>

When a bill stands referred to a select committee following its first reading, a motion may be moved, usually by the member in charge of the bill, conferring special powers on the committee, or instructing it as to how it should go about its task of considering the bill.<sup>27</sup> Thus, for example, a committee has been ordered to return a bill to the House after having asked questions of officials and having been briefed on it, or after hearing evidence on the bill only. These were the only things it was empowered to do.<sup>28</sup> It is quite common for committees to be ordered to report bills back to the House by a particular date, or to have conferred on them power to meet at times otherwise prohibited or restricted by the Standing Orders.

The scope of the committee's investigations and any special powers assigned to it can therefore be ascertained only by reference to the Standing Orders and any relevant instructions from the House. The interpretation of a committee's remit is a matter for the committee itself to determine, subject to rulings by its chairperson and any direction it may receive from the House.<sup>29</sup>

## Instructions

As it does with a committee of the whole House, the House may give an instruction to one of its select committees extending or restricting its powers regarding the consideration of business before it, or requiring it to carry out its consideration in a particular way. At the time that a select committee is being established, or when

<sup>21</sup> SO 318.

<sup>22</sup> SO 395.

<sup>23</sup> SO 393.

<sup>24</sup> SO 394.

<sup>25</sup> SO 184. The procedure for the automatic establishment of select committees under the Standing Orders has operated since 2004. Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 25–26.

<sup>26</sup> (13 May 2009) [2008–2011] JHR 132–133 (Government motion—establishment of select committee).

<sup>27</sup> SO 290.

<sup>28</sup> (18 August 1981) [1981] JHR 136 (Social Security Amendment Bill (No 2)); (12 April 2011) [2008–2011] JHR 1148 (Local Government and Environment Committee to hear evidence on the Canterbury Earthquake Recovery Bill).

<sup>29</sup> Public Expenditure Committee *Report on inquiry into devaluation* (3 October 1984) [1984–1985] AJHR I.12C at 147 (Speaker's ruling).

business is being referred to it, there is an opportunity to move an instruction to the committee about how it is to deal with this business. In the case of instructions relating to bills, the Standing Orders set out a special procedure for them to be moved after being foreshadowed in the first reading speeches of members in charge.<sup>30</sup> Other than that, select committees can be instructed only by motions on notice, unless notice is waived by leave.

An instruction to a select committee may relate to the substantive matters before the committee, giving it power to investigate matters not originally referred to it. This has happened when the scope of the inquiry that the committee was initially set up to carry out needed to be widened.<sup>31</sup> A committee may also suggest an amendment to its own terms of reference, for example inviting the House to extend them to allow it to consider whether a bill of wider scope than that before it is desirable, and to permit it to draft, circulate and hear submissions on a wider bill.<sup>32</sup> Instructions may also be given to a select committee on procedural matters, for example to allow it to meet at times when it was not originally authorised to meet.

A select committee does not have the power to set aside an instruction by leave (as does a committee of the whole House).<sup>33</sup> However, when a power has been conferred on a select committee (as distinct from the committee being directed to do something) it is up to the committee whether or not it exercises that power.<sup>34</sup>

### **Terms of reference adopted by committees**

To give a focus to inquiries they decide to initiate, and to assist those who may wish to make submissions on them, committees usually draft and adopt terms of reference when they set out on an inquiry under their inquiry function. Provided the inquiry on which they have embarked is within the terms of reference conferred on the committee by the House, internally adopted terms of reference are for the committee's guidance only, and no question of the committee acting outside those terms can be raised except by committee members themselves at the committee.<sup>35</sup> Having adopted terms of reference for an inquiry, the committee may proceed to advertise them in the press and call for submissions, and may announce them in a media statement.<sup>36</sup>

## **TYPES OF SELECT COMMITTEES**

There are 17 select committees established by the House pursuant to its Standing Orders.

### **Subject select committees established by the Standing Orders**

Thirteen subject select committees are established by the Standing Orders.<sup>37</sup> These committees and their subject-area competencies are set out below.

*Commerce Committee:* business development, commerce, communications, consumer affairs, energy, information technology, insurance, superannuation and tourism.

<sup>30</sup> SOs 287(1)(b), (2) and 290. See Chapter 26.

<sup>31</sup> (30 May 1969) [1969] JHR 35 (Publicity Division Committee of Inquiry).

<sup>32</sup> Statutes Revision Committee, special report (4 November 1982) [1982] AJHR I.5 at 4; (13 May 1982) [1982] JHR 79 (Domestic Violence Bill).

<sup>33</sup> Standing Orders Committee *Review of the operation of the Standing Orders* (21 August 1996) [1993–1996] AJHR I.18B at 7.

<sup>34</sup> (2002) 599 NZPD 15303 Hunt.

<sup>35</sup> Public Expenditure Committee *Report on inquiry into devaluation* (3 October 1984) [1984–1985] AJHR I.12C at 147–148.

<sup>36</sup> Education and Science Committee, report on the quality of teaching (16 December 1986) [1986–1987] AJHR I.3A at [2.4.1].

<sup>37</sup> SOs 184(1)(a) and 188.

*Education and Science Committee*: education, education review, industry training, research, science and technology.

*Finance and Expenditure Committee*: audit of the financial statements of the Government and departments, Government finance, revenue and taxation. The committee examines and reports on the Crown's financial statements, the Budget Policy Statement, the fiscal strategy report, economic and fiscal updates, the statement of long-term fiscal position, the investment statement, whole of Government directions, and reports of the Controller and Auditor-General, if it has not referred them to another select committee. It allocates Estimates and annual review work to other committees. (See Chapters 30, 33 and 35.)

*Foreign Affairs, Defence and Trade Committee*: customs, defence, disarmament and arms control, foreign affairs, trade and veterans' affairs. The committee allocates proposed treaties to other committees for examination. (See Chapter 42.)

*Government Administration Committee*: civil defence, cultural affairs, fitness, sport and leisure, internal affairs, Pacific Island affairs, Prime Minister and Cabinet, racing, services to Parliament, State services, statistics and women's affairs. The committee reports on any national civil defence emergency strategy and any proposed civil defence emergency management plan, and reports of the Ombudsman, if it has not referred them to another select committee.

*Health Committee*: health.

*Justice and Electoral Committee*: courts, Crown legal and drafting services, electoral matters, human rights and justice.

*Law and Order Committee*: corrections, criminal law, police and serious fraud.

*Local Government and Environment Committee*: conservation, environment and local government. The committee reports on reports of the Parliamentary Commissioner for the Environment, if it has not referred them to another select committee.

*Māori Affairs Committee*: Māori affairs.

*Primary Production Committee*: agriculture, biosecurity, fisheries, forestry, lands and land information.

*Social Services Committee*: housing, senior citizens, social development, work and income support, and youth development.

*Transport and Industrial Relations Committee*: accident compensation, immigration, industrial relations, labour, occupational health and safety, transport and transport safety.

These subject committees conduct the full range of business discussed above, considering bills, petitions, Estimates, annual reviews, international treaties, reports of Officers of Parliament and other matters initiated by themselves or referred to them by the House.<sup>38</sup>

## **Other committees established under the Standing Orders**

The Standing Orders establish four other select committees each Parliament.<sup>39</sup>

*Officers of Parliament Committee*: approves and recommends the budgets for the Offices of Parliament (the Auditor-General, the Office of the Ombudsmen, and the Parliamentary Commissioner for the Environment), appoints auditors for the Offices of Parliament, considers proposals for the creation of an Officer of Parliament, recommends the appointment of Officers of Parliament, and develops

---

<sup>38</sup> SO 189(1).

<sup>39</sup> SO 184(1)(b).

or reviews codes of conduct for them.<sup>40</sup> The committee acts as the principal (though not the only) parliamentary contact for the Officers of Parliament in their relations with the House. (See Chapter 7.)

*Privileges Committee:* considers and reports on any matters that may be referred to it by the House as questions of privilege relating to or concerning the privileges of the House or its members.<sup>41</sup> (See Chapter 47.)

*Regulations Review Committee:* scrutinises all regulations and reports to the House on any matter relating to regulations. It reports on draft regulation referred to it by a Minister, to other committees on regulation-making powers in bills before them, and investigates complaints about the operation of regulations.<sup>42</sup> Since it was first created in 1985, this committee has been chaired by an Opposition member. (See Chapter 28.)

*Standing Orders Committee:* reviews the Standing Orders, procedures and practices of the House.<sup>43</sup> (See Chapter 2.)

### Other committees established

The House may establish other select committees in addition to these 17 committees.<sup>44</sup> Such other committees are established as the House decides that it needs them. In the 49th Parliament, for example, three extra committees were established—the Auckland Governance Legislation Committee, the Electoral Legislation Committee and the Emissions Trading Scheme Review Committee.<sup>45</sup>

## JOINT COMMITTEES

In bicameral Parliaments the two chambers often set up joint committees consisting of members of both chambers. In the 19th century the Legislative Council and the House of Representatives set up joint committees to study legislation or carry out inquiries on a number of occasions.<sup>46</sup>

In a unicameral Parliament, such as New Zealand's has been since 1951, a joint committee in these senses cannot be created. But occasionally the House has set up a committee whose membership consists of the members of two other committees. Such a committee, although loosely termed a “joint committee”, is in fact a distinct committee from the committees contributing to its membership. The last occasion on which such a committee was established was in 1970.<sup>47</sup> (See p 310 for joint meetings of committees.)

---

<sup>40</sup> SO 395.

<sup>41</sup> SO 401(1).

<sup>42</sup> SO 318.

<sup>43</sup> SO 7.

<sup>44</sup> SO 184(2).

<sup>45</sup> (13 May 2009) [2008–2011] JHR 133 (Auckland Governance Legislation Committee); (9 December 2008) [2008–2011] JHR 44–45 (Emissions Trading Scheme Review Committee); (25 March 2010) [2008–2011] JHR 663 (Electoral Legislation Committee).

<sup>46</sup> AH McLintock and GA Wood *The Upper House in Colonial New Zealand* (Government Printer, Wellington, 1987) at 198–200, 213–214.

<sup>47</sup> (19 May 1970) [1970] JHR 47–48 (Lands and Agriculture Committee and Labour and Mining Committee).

## CHAPTER 21

# Establishment and Personnel of Select Committees

### ESTABLISHMENT OF COMMITTEES

Select committees are established automatically by the Standing Orders or otherwise by the House on motion with notice. Seventeen select committees are established automatically at the commencement of each Parliament pursuant to the Standing Orders.<sup>1</sup> These committees cover the most important areas of work transacted by select committees. (See Chapter 20.) A motion to establish a select committee is only required if it is proposed to establish another committee outside of these 17.

#### Debate

Where a committee is established by motion, each member may speak for up to 10 minutes on the motion. Debate must be confined to the subject mentioned in the motion and reasons why the committee should or should not be established.<sup>2</sup> Other matters related to the subject proposed for consideration by the committee may be suggested for inclusion in the motion. The motion to establish a committee is not the place for a debate on the merits of the matter proposed for consideration or for members to discuss in detail the questions the committee will investigate,<sup>3</sup> though members may refer to what the committee can be expected to do.<sup>4</sup>

#### Amendment

Amendments that are relevant to any motion establishing a committee may be moved. An amendment may be designed to broaden or restrict the committee's terms of reference as set out in the motion, but it may not do so in a way that would conflict with terms of reference prescribed in the Standing Orders for this or other committees (or with a statute, in the rare cases where a statute prescribes terms of reference).

In general, the Business Committee appoints the members to serve on each committee. It is therefore not necessary for a motion establishing a committee to state the names of the members to serve on the committee (this was formerly obligatory), but this may still be done.<sup>5</sup> If the motion does deal with the personnel of the committee, this subject is open to amendment. Amendments have been moved to omit the name of a member from the motion,<sup>6</sup> to omit the name of a

<sup>1</sup> SO 184(1).

<sup>2</sup> (1905) 132 NZPD 24 Guinness.

<sup>3</sup> (1930) 225 NZPD 885 Statham.

<sup>4</sup> (1989) 497 NZPD 10229 Terris (Deputy Speaker).

<sup>5</sup> (2000) 583 NZPD 1597–1598 (MMP Review Committee).

<sup>6</sup> (19 May 1967) [1967] JHR 88.

member and substitute that of another member,<sup>7</sup> and to add a member to the nominated membership.<sup>8</sup>

## LIFE OF COMMITTEES

Unless the House orders to the contrary, all select committees endure for the life of the Parliament.<sup>9</sup> Most select committees established by the House do so.

Committees appointed for a specified time or to perform a specified task go out of existence at the expiration of that time or on completion of that task, upon the presentation of their final report on it.<sup>10</sup> Such temporary committees are usually established only to consider a particular bill when it is not considered appropriate to refer the bill to any of the subject select committees. Temporary committees may also be appointed to conduct particular inquiries.<sup>11</sup>

## SIZE OF COMMITTEES

The Standing Orders do not prescribe a standard size for each committee (from 1996 to 2004 a membership of eight was prescribed). The determination of the size of each committee is left to the Business Committee.<sup>12</sup> In the absence of a Business Committee decision, the House would need to determine the matter itself.

The actual size determined for each committee depends upon the state of the parties represented in the House and their priorities as to the committees they wish their members to serve on. A constraining factor governing the size of individual committees is the need to ensure overall proportionality in party membership on the 13 subject select committees, as far as practicable. The size of other regular committees is more flexible; and the size of any special committee may be controversial and thus need to be determined, ultimately, by the House rather than the Business Committee.

The variable sizes of committees is illustrated by the 13 subject committees established at the commencement of the 50th Parliament in 2011. Two committees each consisted of 12 members, two of 11 members, two of 10, four of nine, two of seven and one of six.

Its power to determine the size of each committee allows the Business Committee to increase or reduce the size of a committee after its initial determination. The House may also alter the size of a committee by motion on notice or by leave.<sup>13</sup>

## MEMBERSHIP OF COMMITTEES

### Overall proportionality

The general principle governing membership of select committees is that overall membership must be proportional to party membership in the House so far as is reasonably practicable.<sup>14</sup> Thus, a party that holds half of the seats in the House should, if possible, have half of the select committee memberships. This has been a formal rule of the House since 1996, but even before that select committee memberships had by convention tended to reflect the balance of parties in the House.<sup>15</sup>

<sup>7</sup> (29 May 1969) [1969] JHR 31.

<sup>8</sup> (2000) 583 NZPD 1615.

<sup>9</sup> SO 184(3).

<sup>10</sup> SO 184(3).

<sup>11</sup> For example: (2000) 583 NZPD 1597–1625 (MMP Review Committee).

<sup>12</sup> SO 185(2).

<sup>13</sup> See, for example: (2000) 582 NZPD 1071 reducing the size of the Māori Affairs Committee from 10 to nine members.

<sup>14</sup> SO 185(1).

<sup>15</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 34.

A number of issues arise from this general principle. First, the total number of select committees is itself indeterminate. While the Standing Orders provide for 17 select committees to be established, the House may set up additional committees. Where the total number of committees is fluid, overall proportionality is impossible to achieve without constantly disrupting the memberships of established committees as new committees are set up. For this reason the obligation to achieve overall proportionality is taken to refer to the 13 subject committees. These are the general legislative and scrutiny committees, which carry out the bulk of the House's committee work. Their overall membership must, as far as possible, be arranged on a party-proportional basis.

Secondly, there is no standard size for a select committee. This means that the size of each committee can be adjusted in order to achieve overall proportionality in the subject select committees.

Thirdly, there is a continuing obligation to maintain proportionality within certain limits. If a member of a committee leaves his or her party, that member retains membership of the committee unless replaced on it by the House or, with the member's agreement, by the Business Committee. In these circumstances the overall proportional balance on select committees may be distorted.

### **Initial appointment of members**

The House may appoint the membership of a select committee, either in the order establishing the committee (if there is one) or by a separate motion. The House occasionally appoints members to committees,<sup>16</sup> but this is now comparatively rare. In practice, it is the Business Committee that appoints the members to serve on each committee established by the Standing Orders or by the House. The Business Committee may also fill any vacancy in the membership of a committee.<sup>17</sup> In carrying out this function at the commencement of a Parliament, the Business Committee's main concern is to agree which parties will be represented and in what numbers so as to achieve overall proportionality of party representation. Parties with only one or a few members cannot be represented on every committee, nor would they necessarily wish to be. However, each party will have particular committees that it wishes to serve on. The Business Committee will endeavour to agree on a formula for representation that accommodates their wishes as far as possible. A particular effort is also made to ensure that every party has the opportunity, if it wishes, to have a member on the Finance and Expenditure Committee, reflecting its centrality to the House's financial scrutiny work. Consequently this committee tends to have a larger membership than the other committees.

While the Business Committee formally appoints members to committees at the outset of a Parliament, it is normally concerned only with the party proportions on committees, not with the identity of the individual members who will serve on each committee. This is regarded as a matter for each party to determine according to its own internal arrangements and preferences. A convention has accordingly developed of the Business Committee not interfering in such matters. So once the Business Committee has decided on how parties will be represented on committees, each party names its members who are to serve on each committee. These names are then formally endorsed by the Business Committee as the members appointed to the various committees.

No intimation to an individual member from the Business Committee that he or she is being appointed to serve on a select committee is necessary. Nor is a member's agreement to serve on a committee necessary. (These are matters left to each party to attend to.) The member's appointment is recorded in a published determination of the Business Committee.

---

<sup>16</sup> See, for example: (2000) 583 NZPD 1597–1625.

<sup>17</sup> SO 185(3).

## Non-voting members

Members may be appointed as non-voting members of committees. This practice developed to extend ongoing membership rights to members in suitable instances, but without destroying the party balances determined at the outset of the Parliament. In this way a small party unable to justify a full membership on every committee can participate in business of interest to it being transacted by a committee on which it does not have a full member.

While the House may confer the status of a non-voting member, the Business Committee has also had this power since 2004,<sup>18</sup> and in practice it makes all such appointments.

A non-voting member may not vote on any question put to the committee or participate in any decision taken by leave.<sup>19</sup> This means that the member cannot be a formal participant in any decision that the committee reaches. A non-voting member does not count towards the quorum.<sup>20</sup> In all other respects (bar voting and the quorum) a non-voting member is a full member of the committee for the purposes for which he or she was appointed and is subject to replacement in the same way as any other member of the committee.

A non-voting member may be appointed to a committee permanently, for a limited time, or just for the committee's consideration of a particular matter.<sup>21</sup> Generally, non-voting members have been added to a committee's membership for the consideration of a particular bill. This appointment has sometimes been made at the same time as the bill was referred to the committee.<sup>22</sup> More often it is done after the bill's referral. The House has appointed two non-voting members to a particular committee during its consideration of a bill.<sup>23</sup> Non-voting members have also been appointed to a committee for the consideration of particular Estimates or the review of a particular agency.

Exceptionally, members have been appointed as non-voting members of committee for all purposes.<sup>24</sup> The Business Committee may end a non-voting member's appointment where it has not otherwise lapsed.<sup>25</sup>

## Vacancies in membership

Members who have been appointed to a select committee cannot resign from it. The House may remove a member, or the Business Committee may replace the member with another, but a member cannot simply take himself or herself off a committee to which he or she has been appointed. Nor can the committee itself remove one of its members.<sup>26</sup> But if a member dies or otherwise loses his or her seat (for example, by resigning from the House), a vacancy in the membership of the committee automatically arises. Such a vacancy can be filled by the House or by the Business Committee.<sup>27</sup> In filling the vacancy, regard must be had to the need to maintain party proportionality in the overall membership of select committees.<sup>28</sup>

## Replacing members

Until 1972, members on select committees could be replaced only by the House on motion with notice. In that year new practices for making changes to select committee personnel were instituted, allowing them to be attended to by the whips. The making of changes has now largely become an administrative matter dealt

<sup>18</sup> SO 186(1).

<sup>19</sup> SO 186(1).

<sup>20</sup> SO 209(2).

<sup>21</sup> SO 186(2).

<sup>22</sup> (2001) 591 NZPD 8672 (Shop Trading Hours Act Repeal Amendment Bill).

<sup>23</sup> (2000) 589 NZPD 7464 (Injury Prevention and Rehabilitation Bill).

<sup>24</sup> (2002) 602 NZPD 237; Business Committee determination for 25 November 2009.

<sup>25</sup> SO 186(3).

<sup>26</sup> (2000) 582 NZPD 1071.

<sup>27</sup> SO 185(3).

<sup>28</sup> SO 185(1).

with off the floor of the House, rather than a matter of business to be transacted in the House.

A member cannot be replaced on a committee while he or she is under suspension from the service of the House.<sup>29</sup> During such a period the suspended member cannot serve on any committee<sup>30</sup> and, as no one can replace the member, the committee's effective membership is temporarily reduced by one. But a member who has been subjected to a lesser disciplinary process than formal suspension from the House, such as exclusion from the House or from a meeting of a select committee, may in the former case continue to serve on a committee, and in the latter case, be replaced on the committee during the period of exclusion.

Changes to the membership of a committee may be permanent for the life of the committee or temporary changes for a limited time or for the consideration of a particular matter.<sup>31</sup>

### ***Permanent changes***

Permanent changes may be made by the House itself but usually they are made by the Business Committee.<sup>32</sup> Parties sometimes wish to change their personnel on select committees. Such changes are formally effected by the Business Committee without its questioning any party's reasons for seeking the change. The committee would exercise its own judgement on the proposal only if it were proposed to vary the party proportions on a committee by replacing a member of one party with a member of another. Given the requirement for unanimity or near-unanimity in the Business Committee's decision-making, such a proposal would not be agreed to unless as a minimum both parties involved in the change were in agreement. Any such inter-party permanent replacements are also subject to the requirement to maintain overall party proportionality on committees, although if the Business Committee were inclined to agree to the change, this condition is likely to have been met in any case.

Changes approved by the Business Committee are actioned as Business Committee determinations.

### ***Temporary changes***

Temporary changes to substitute select committee members are inevitably made on days when committees are meeting, as whips make arrangements to cope with the unavailability or indisposition of their members. Temporary changes of this kind may be made by the House but this is extremely rare. Temporary changes may be effected under the authority of the leader or a whip of the party whose members are involved. If two parties are involved, the leaders or whips of both parties must agree to the change.<sup>33</sup> No question of varying overall party proportions on committees arises out of temporary changes. Where a permanent member has been temporarily replaced on a committee he or she is entitled to resume his or her place on the committee at any time. If the member does so the temporary replacement is regarded as cancelled.

Temporary changes are advised to the clerk of the committee in writing by the whip or whips involved. They are effective, according to their tenor, when the advice is received. It is often given while the committee is actually meeting. It is sufficient that notification of a temporary replacement is received in the name of a whip, and a person acting as a whip may give them. They may also be signed on behalf of a whip by a person authorised by the whip. Only in cases of doubt

<sup>29</sup> SO 187(3).

<sup>30</sup> SO 95.

<sup>31</sup> SO 187(1).

<sup>32</sup> SO 187(2).

<sup>33</sup> SO 187(2).

that authority exists would a replacement advice be questioned. Temporary replacements are recorded in the committee's minutes.

## **Additional members**

Once a committee has been established and its size fixed, the House or the Business Committee may subsequently appoint an additional full member or members to the committee, either on a permanent basis or for a particular item of business. The House has done this where a party had no representation on a particular committee and it was desired to have them fully represented on the committee for consideration of a particular bill.<sup>34</sup>

## **Participation by other members**

Any member of the House who is not a member of the committee can attend the committee's proceedings but can participate in them only with the leave of the committee.<sup>35</sup> But in the case of the Privileges Committee, while other members may attend its proceedings generally, they may attend while it is deliberating only with the specific leave of the committee.<sup>36</sup> If a member who was not a member of a committee attempted to participate in its proceedings without permission, the House could treat such a matter as a contempt.<sup>37</sup> A member who is not a committee member and who is disorderly may be excluded from the meeting by the chairperson.<sup>38</sup>

The member in charge of a bill before a select committee, if not already a member of the committee (when the member participates fully in that capacity), has the right to take part in any proceedings of the committee on that bill. But a member attending in these circumstances may not vote on any question put to the committee.<sup>39</sup>

Nothing prevents members appearing before committees in another capacity and members often give evidence as witnesses to committees. A member has also acted as counsel (unpaid) before a committee.<sup>40</sup>

## **Disqualification of members**

In some circumstances a member is disqualified from serving on a select committee for a certain period of time or in respect of a particular item of business.

A member suspended from the service of the House cannot serve on a select committee or be replaced during the period of suspension.<sup>41</sup> (See p 153.) A committee may itself exclude one of its members from its meeting for highly disorderly conduct. Such an exclusion is for the remainder of the meeting,<sup>42</sup> and there is nothing to prevent the member being replaced in this situation. If a member of the committee participates in the committee's proceedings in another capacity, for example as a witness, he or she may be temporarily replaced while so doing.

Members may also be disqualified from serving on a committee for reasons of natural justice. In general, the previously stated views or conduct of a member are no disqualification from service on a particular committee or from participating in consideration of a particular bill or other matter. It is part of the role of members to make public declarations of their views and then to participate in the consideration of legislation they have advocated or opposed. No concept of predetermination can be applied to disqualify members from carrying out their parliamentary duties, especially in the legislative sphere.

<sup>34</sup> See, for example: (1999) 577 NZPD 16320 (Auckland Domain (Temporary Closure for APEC) Bill).

<sup>35</sup> SO 210(1).

<sup>36</sup> SO 210(3).

<sup>37</sup> (1977) 414 NZPD 3127 Birch (Acting Deputy Speaker).

<sup>38</sup> SO 214(2).

<sup>39</sup> SO 210(2).

<sup>40</sup> Privileges Committee, report on a question of privilege referred on 11 March 1986 (30 October 1986) [1986–1987] AJHR I.15, Annex B.

<sup>41</sup> SO 95.

<sup>42</sup> SO 214(3).

Where committees are investigating the conduct of particular individuals or activities (whether in the performance of a legislative function or a general inquiry function) with the potential to inflict damage on personal interests such as reputation or livelihood, committees are legally obliged to observe rules against bias.<sup>43</sup> The Standing Orders have given some attention to this obligation in a parliamentary context. So there are exceptional situations where a member's previous actions or statements mean that, in order to retain respect for the integrity of the select committee process, a member is prohibited by the House's own rules from serving on a particular inquiry.

A member who makes an allegation of breach of privilege or contempt cannot serve on any inquiry into that allegation, even if he or she is a regular member of the Privileges Committee.<sup>44</sup> Where a member raises a matter of privilege on behalf of another member, the other member is also disqualified from serving on any Privileges Committee inquiry into it.<sup>45</sup> In these circumstances the member must be replaced on the committee.

Apparent bias on the part of a member may disqualify the member from serving on a committee. Apparent bias results when a member has made an allegation of crime or expressed a concluded view on any conduct or activity of a criminal nature, identifying a particular person as responsible for it. In such circumstances, the member cannot serve on any select committee inquiry into that person's responsibility for or association with that criminal matter, nor may the member participate in any other select committee proceedings that may seriously damage the reputation of the person in question.<sup>46</sup>

A complaint of apparent bias may be made in writing to the chairperson of the committee concerned by any member of Parliament (whether or not a member of the committee) or by the person whose reputation it is claimed may be seriously damaged.<sup>47</sup> The chairperson must permit the member concerned to comment on the complaint. Having received their comment, the chairperson decides whether the member is disqualified.<sup>48</sup> Whether the chairperson upholds the complaint or not, any member of the committee has a right of appeal to the Speaker against the chairperson's decision. This right of appeal is exercised by writing to the Speaker. If an appeal is made, the Speaker issues a decision in writing to the committee. The Speaker's decision is then final.<sup>49</sup>

The Speaker has emphasised that the rule on apparent bias is designed to prevent members serving on a committee if they have expressed decided views against a person whose reputation is in issue before the committee. It does not apply to supportive statements. It is a specific, not a general, bias rule and must be construed accordingly. Concepts drawn from public law may help to elucidate it, but they cannot be used to construct a general set of rules on bias requiring the disqualification of members outside the scope of the Standing Order.<sup>50</sup> In particular, the rule is not a rule against predetermination in respect of the issues to be considered by the committee. Any resulting disqualification arises only from allegations of criminality and not, for example, from allegations of breach of privilege.<sup>51</sup>

<sup>43</sup> Philip A Joseph "Report to the Standing Orders Committee on Natural Justice" in *Standing Orders Committee Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A, App F at [6.1].

<sup>44</sup> SO 408.

<sup>45</sup> Privileges Committee *Question of privilege referred on 24 February 1998 relating to a reflection on the Speaker* (6 May 1998) [1996–1999] AJHR I.15C at 9–10.

<sup>46</sup> SO 232.

<sup>47</sup> SO 233(1), (2).

<sup>48</sup> SO 233(3).

<sup>49</sup> SO 233(4).

<sup>50</sup> Privileges Committee, report on question of privilege relating to an allegation of assault (14 May 1997) [1996–1999] AJHR I.15A, App 3.

<sup>51</sup> Privileges Committee *Question of privilege referred on 24 February 1998 relating to a reflection on the Speaker* (6 May 1998) [1996–1999] AJHR I.15C at 9.

Though there are no general rules of bias to disqualify members from serving on select committees, members may in particular cases voluntarily step down from serving on a particular inquiry where their previous statements or activities would compromise the integrity of any outcome of the inquiry. For example, a member against whom a complaint of apparent bias was not upheld has stood down voluntarily.<sup>52</sup> Whether a member who has expressed views on a matter to be considered by a committee or who has a relationship that might render it inappropriate to serve on an inquiry<sup>53</sup> should stand down from the committee during its consideration of the matter is for the member to judge. For example, members who had signed a petition allocated to a committee of which they were members withdrew from participation in the committee's consideration of it.<sup>54</sup>

## **Financial interests**

As with participation in proceedings in the House, members serving on a select committee are obliged to declare any financial interest in an item of business before the committee.<sup>55</sup> But this is simply an obligation to declare; it is not a disqualification from participating. (See 62–64.)

## **PRESIDING OFFICERS**

### **Chairperson**

#### *Election by the committee*

At its first meeting, the committee's first duty is to elect a chairperson.<sup>56</sup> Until the committee has done this it is not in working mode. If it becomes clear during the first meeting that the committee is unable to elect a chairperson, the meeting is simply adjourned. The committee can transact no other business, nor can it decide when it will meet again. The Speaker convenes a further meeting of the committee.

For the election of a chairperson, a procedure similar to the election of the Speaker is followed. The clerk of the committee acts as chairperson for the election of the chairperson of the committee and calls for nominations for election. Members are nominated for the office by other members, and may be nominated while unavoidably absent as long as they agree to this in writing. The nomination must be seconded. If there is only one nomination that member is declared elected and immediately takes the chair. If two members are nominated a vote is held. If more than two members are nominated the clerk polls each individual member of the committee, asking them in turn to vote for one of the nominees. If one member obtains the votes of an absolute majority of the members voting, he or she is elected; otherwise the lowest-polling member drops out until there are only two candidates remaining, when a vote is held. A member may abstain on the election of a chairperson.

There are some conventions concerning the election of chairpersons. The Regulations Review Committee has always been chaired by a member of the Opposition since its creation in 1985. The Privileges Committee is often chaired by the Attorney-General,<sup>57</sup> and it is customary for the Speaker to preside over the Standing Orders Committee. There is no convention that overall party proportionality will be observed in the election of committee chairpersons. Most chairpersons are drawn from the ranks of the Government party or parties, though members from non-Government parties are also elected.

<sup>52</sup> Health Committee *Inquiry into the adverse effects on women as a result of treatment by Dr Graham Parry* (22 October 2002) [2002–2005] AJHR I.6A at 5.

<sup>53</sup> (2002) 598 NZPD 14979 (Privileges Committee).

<sup>54</sup> "Dalziel steps aside" *The New Zealand Herald* (13 March 2004); Justice and Electoral Committee, report on petitions 2002/55 and 2002/70 (8 August 2005) [2002–2005] AJHR I.22D at 644.

<sup>55</sup> SO 165(1).

<sup>56</sup> SO 201(1).

<sup>57</sup> Privileges Committee *Question of privilege referred on 24 February 1998 relating to a reflection on the Speaker* (6 May 1998) [1996–1999] AJHR I.15C at 10; the Attorney-General did not chair the committee in the 47th, 48th and 49th Parliaments.

### **Appointment by the House**

The Speaker is ex officio the chairperson of the Officers of Parliament Committee.<sup>58</sup> It is possible for the House, in establishing a committee, to designate a member as the chairperson. The House has done this with a committee that the Speaker was to chair.<sup>59</sup>

The House may be forced to appoint the chairperson of a committee where the committee fails to elect the chairperson itself.<sup>60</sup>

### **Functions and duties**

The chairperson performs a similar role with the committee to that of the Speaker in chairing the House or a presiding officer in chairing the committee of the whole House—calling on members to speak or ask questions, keeping order, ruling on disputed aspects of procedure and putting questions to the committee for formal decision. The chairperson's role also extends to attending to many preparatory matters for committee meetings, such as setting the agenda. (See pp 314–315.)

In addition to the function of chairing the committee, the chairperson is a fully participating member of the committee as regards the substantive business before it. In this respect the chairperson's role is radically different from the Speaker's or that of the Chairperson of the committee of the whole House, since presiding officers in the House do not participate in the debate on the business before the House other than to chair it in an impartial way. The chairperson is bound to ensure that the House's rules and practices regarding the conduct of select committee business are observed, and to rule on their application with fairness and integrity. But the chairperson, as a member of the committee, is not an impartial figure like the Speaker, and may exercise discretions attaching to the office of chairperson in line with his or her own personal opinions on the merits of the substantive business before the committee, as long as this is done consistently with the House's rules and practices.

It is in the committee's interest for the working relationship among members to be harmonious so that business can be progressed. Nakedly partisan chairpersonship does not promote such harmony. Indeed, it is likely to be counterproductive. In practice, chairpersons carry out their duties so as to endeavour to satisfy the interests of all members of the committee as far as practicable. Chairpersons also have a duty to represent the views and interests of the committee, both in authorised statements that they make to the House and the public and in less formal situations when arrangements for business that is to be considered by the committee are being discussed.

Chairpersons must always be prepared to consider whether it is entirely appropriate for them to chair the committee or a particular meeting in the light of relevant factors or interests. For example, the chairperson of the Finance and Expenditure Committee indicated that he was reconsidering his position when he was appointed an Associate Minister. He referred the matter to the committee for consideration,<sup>61</sup> and subsequently stepped down. When the chairperson of the Māori Affairs Committee was appointed Parliamentary Under-Secretary he resigned the chairpersonship.<sup>62</sup>

Where the chairperson is the member in charge of a bill that is before the committee or has some other personal interest in a matter before it, he or she may decide to step aside from chairing the committee on that issue. This can be done either by being temporarily replaced on the committee or by the committee resolving to authorise the deputy chairperson to chair meetings while a

58 SO 201(3).

59 (2000) 583 NZPD 1597–1625 (MMP Review Committee).

60 (2000) 581 NZPD 585–599 (Government Administration Committee), 601–611 (Education and Science Committee), 611–620, 631–632 (Commerce Committee).

61 "Carter sees conflict in roles" *The Dominion* (13 January 1999); (1999) 575 NZPD 14927–14928.

62 "Select committee reward for Mahuta" *The Dominion Post* (6 August 2004).

particular item of business is under consideration.<sup>63</sup> (In the absence of the deputy chairperson, the committee may authorise another member to take the chair in these circumstances.) It is up to the chairperson to decide whether it is appropriate to invite the committee to transfer the chairperson's powers in this way. When a deputy chairperson or other member chairs the committee in this way the chairperson may continue to participate as a full member in the committee's business.<sup>64</sup> In this instance, the chairperson resumes the chair when the committee moves on to other business. Unless the committee authorises another member to take the chair, the chairperson is obliged to chair a meeting at which he or she is present.

It has been suggested from time to time that a chairperson should not chair the committee on a particular issue because of an alleged conflict of interest. Whether the chairperson steps down in any particular case is a matter for him or her to decide.<sup>65</sup> The committee cannot transfer the chairperson's powers to another member during a meeting unless the chairperson invites it to do so.<sup>66</sup>

### **Remuneration**

The chairpersons of the 13 subject select committees and of the Regulations Review Committee enjoy a special salary by virtue of holding these offices.<sup>67</sup> No special remuneration is provided for the chairpersons of other committees. If a chairperson holds another office for which a higher salary is payable, he or she receives that salary rather than the chairperson's salary. Members cannot receive more than one parliamentary salary,<sup>68</sup> nor can they receive elements from more than one salary.

### **Removal from office**

The chairperson can only be removed from office by the committee at a meeting of which at least seven days' notice is given of the intention to move a motion seeking the removal of the chairperson.<sup>69</sup> Notice of such a motion may be given orally at a meeting of the committee or in writing delivered to the clerk of the committee. If it is written, the clerk circulates a copy of the notice to all members of the committee immediately and automatically includes it on the agenda for the first meeting of the committee that is held at least seven days later. (However, if that meeting is being held on the authority of the House or the Business Committee to consider only specified business, a motion for removal must be deferred for consideration to the next regular meeting of the committee.)

Other than through the formal removal process, a chairperson cannot be removed from office by the committee. Nor can the rights of chairpersonship be usurped by a motion to appoint an acting chairperson when the chairperson is present and has not invited the transfer of authority to preside.<sup>70</sup>

### **Vacancy**

A chairperson may resign office at any time by advising the committee.<sup>71</sup> The chairperson also ceases to hold office if he or she is no longer a member of the committee, by being permanently replaced on it or by ceasing to be a member of Parliament.

<sup>63</sup> SO 203(1).

<sup>64</sup> SO 203(2).

<sup>65</sup> See, for example: "Lobby wants O'Regan to step aside" *The Dominion* (19 November 1997) (Casino Control (Moratorium) Amendment Bill); (2002) 598 NZPD 14979 (Privileges Committee).

<sup>66</sup> SO 203(1).

<sup>67</sup> Parliamentary Salaries and Allowances Determination 2013, sch 1.

<sup>68</sup> Parliamentary Salaries and Allowances Determination 2013, cl 5(2).

<sup>69</sup> SO 201(2).

<sup>70</sup> (1992) 526 NZPD 9031–9032 Gerard (Acting Speaker).

<sup>71</sup> (1978) 417 NZPD 765 Harrison.

Whenever a vacancy arises, the committee must proceed to elect a new chairperson at its next meeting.<sup>72</sup> The election procedure is the same as that followed for electing a chairperson at the first meeting. However, if a committee proves unable to elect a new chairperson in these circumstances, the committee can continue to meet and function as a committee under the chairpersonship of the deputy chairperson.<sup>73</sup> The filling of the vacancy would be the first item on the committee's agenda each time it met until it was resolved, but the committee would not be disabled from transacting other business before it.

## **Deputy chairperson**

At its first meeting, immediately after the election of a chairperson, the committee must proceed to the appointment of a deputy chairperson.<sup>74</sup>

A deputy chairperson is appointed by the committee rather than elected by it, using the same procedure as for any other motion considered by the committee. Any member may move that a member of the committee be appointed deputy chairperson. This motion is subject to amendment to substitute the name of any other member of the committee.

If a committee is deadlocked and fails to appoint a deputy chairperson this is not disabling, as the failure to elect a chairperson at the first meeting would be. The committee proceeds to its next business. The question of the appointment of a deputy chairperson is placed first on the committee's agenda from meeting to meeting until it is resolved. A committee has on one occasion informed the House by way of special report of its failure to appoint a deputy chairperson and sought guidance from the House.<sup>75</sup> The House has appointed deputy chairpersons to committees that were clearly unable to make the appointments themselves.<sup>76</sup>

The Standing Orders Committee's practice is to appoint the member of the committee with the longest service in the House as its deputy chairperson (the Speaker is always elected as chairperson).<sup>77</sup> Apart from this practice there are no conventions as to who is appointed to particular committee deputy chairpersonships. However, the general practice has been to appoint as deputy chairperson a member from a different party from that of the chairperson. Thus, some members from Opposition parties are regularly appointed deputy chairpersons.

The deputy chairperson automatically acts as chairperson in the chairperson's absence at the commencement or during the course of a meeting. The deputy chairperson also acts as chairperson if the chairperson is overseas, and while there is a vacancy in the office of chairperson.<sup>78</sup> When the deputy chairperson is acting as the chairperson in these circumstances he or she performs the duties and exercises all the authority of the chairperson's office, both while the committee is meeting and outside of committee meetings, for example in calling meetings and answering questions in the House addressed to the chairperson.<sup>79</sup> But a deputy chairperson can do this only while the circumstances pertaining to the absence of the chairperson persist—that is, during a meeting, if the chairperson is absent, or otherwise while the chairperson is overseas, or if there is a vacancy. At all other times the chairperson performs the duties and exercises the authority of the office exclusively, and they cannot be usurped by the deputy chairperson. Thus, a

<sup>72</sup> SO 201(1).

<sup>73</sup> SO 202(1).

<sup>74</sup> SO 201(1).

<sup>75</sup> Internal Affairs and Local Government Committee, special report (6 March 1997) [1996–1999] AJHR I.22 at 295.

<sup>76</sup> (2000) 581 NZPD 585–599 (Government Administration Committee), 601–611 (Education and Science Committee), 611–620, 631–632 (Commerce Committee).

<sup>77</sup> Standing Orders Committee *Review of the operation of the Standing Orders* (2 September 1999) [1996–1999] AJHR I.18B at 18.

<sup>78</sup> SO 202(1).

<sup>79</sup> SO 202(1).

deputy chairperson cannot, without leave of the House, answer a question in the House addressed to the chairperson during a casual absence of the chairperson from the Chamber. However, committees have authorised the deputy chairperson to perform some functions outside a meeting, such as presenting a report, signing committee correspondence or making a media statement, while the chairperson has been absent but not overseas.

Where the committee authorises the transfer of the chairperson's powers during a meeting while particular business is considered, those powers are conferred by default upon the deputy chairperson, if he or she is present, even though the chairperson may still participate as a committee member.<sup>80</sup>

The deputy chairpersons of the Regulations Review Committee and of the 13 subject committees are paid a special salary by virtue of their office.<sup>81</sup>

A deputy chairperson may be removed from office in the same way as a chairperson—at a meeting of the committee, seven days' notice having been given of the intention to move for the removal of the incumbent.<sup>82</sup> If the office becomes vacant the committee must proceed at its first meeting after the vacancy arises to the appointment of a new deputy chairperson in the same way as when the committee first met.<sup>83</sup>

## Other chairpersons

If neither the chairperson nor the deputy chairperson is present at the commencement of a meeting, but there is a quorum, the committee may elect a member to take the chair.<sup>84</sup> The clerk of the committee acts as chairperson for such an election. An acting chairperson elected in such circumstances chairs that meeting and performs the duties and exercises the authority of chairperson in respect of that meeting only.<sup>85</sup> The acting chairperson's election lapses when the meeting adjourns, and he or she has no further powers as chairperson outside the particular meeting in respect of which he or she was elected. If the chairperson or deputy chairperson subsequently attends the meeting then he or she takes over from the acting chairperson as presiding officer.

In the course of a meeting the chairperson or the deputy chairperson (if presiding) may ask another member to take the chair temporarily while he or she is absent from the meeting. If so, the temporary chairperson performs the duties and exercises the authority of chairperson only while actually chairing the committee.<sup>86</sup> Similarly, a member authorised to take the chair for a meeting at which the chairperson remains as a participating member exercises the authority of the chairperson only during that meeting.<sup>87</sup>

## STAFF OF COMMITTEES

The Clerk of the House is the clerk of each committee.<sup>88</sup> In practice, this duty must be exercised by others on the Clerk's behalf. The Clerk may therefore authorise another person to be clerk of each particular committee.<sup>89</sup> Staff employed in the Office of the Clerk perform the duties of clerks of committees,<sup>90</sup> and are assigned to particular committees accordingly.

<sup>80</sup> SO 203(3).

<sup>81</sup> Parliamentary Salaries and Allowances Determination 2013, sch 1.

<sup>82</sup> SO 201(2).

<sup>83</sup> SO 201(1).

<sup>84</sup> SO 202(2).

<sup>85</sup> SO 202(2).

<sup>86</sup> SO 202(2).

<sup>87</sup> SO 202(3).

<sup>88</sup> SO 3(1).

<sup>89</sup> SO 3(1).

<sup>90</sup> (1988) 488 NZPD 3397 Burke.

The clerk of the committee mirrors the role performed by the Clerk of the House as the principal procedural adviser to an assigned committee, and is supported by a small secretariat. The clerk of the committee co-ordinates the secretariat in its delivery of services to the committee. The role includes presiding at the election of a chairperson, providing advice on select committee procedure and operations, servicing a committee's meetings, recording its decisions, drawing up its programmes of work, informing its consideration of items of business, drafting its reports to the House and providing advice on public engagement and communication.

The committee's secretariat may be augmented for the provision of further independent advice to inform a committee's consideration of items of business. The secretariat may provide analysis of submissions, prepare issues papers and broker independent advice for committees. Specialist subject advice may be prepared by researchers from the Parliamentary Library. Further legal and legislative drafting advice may be made available from the Office of the Clerk to assist with technical matters of legislative quality,<sup>91</sup> and committees may be helped when necessary to obtain the services of independent specialist advisers.<sup>92</sup>

## ADVISERS

Committees are empowered to seek the assistance of advisers to help them with the work before the committee.<sup>93</sup> Advisers involved with committees in this way fall into a number of categories.

### Officers of Parliament

A committee can ask an Officer of Parliament to conduct an inquiry for it. Any committee may refer a petition, or any matter to which a petition refers, to an Ombudsman for report.<sup>94</sup> There is rather wider provision in respect of the Parliamentary Commissioner for the Environment, who may be requested to report to a committee on any petition, bill or other matter before it that may have a significant effect on the environment.<sup>95</sup> In these circumstances the officers are enlisted directly in the work of the committee.

Staff from the office of the Auditor-General are intimately involved in helping committees to carry out their Estimates and annual review work, providing briefings before a vote or department is examined and advice during the course of the examination. For this purpose they work closely with the committee's secretariat to co-ordinate work on issues and briefing papers. As well as assisting committees with their financial business, the Auditor-General's staff may also provide support on inquiries being undertaken by committees, and the office may carry out inquiries itself and report to committees to assist them with investigations.<sup>96</sup>

The Speaker, at the request of any select committee, may require the Parliamentary Commissioner for the Environment to make staff available to advise the committee.<sup>97</sup> It has never been necessary to invoke this power. In fact the office of the Parliamentary Commissioner for the Environment has readily attached staff to

<sup>91</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 18–19.

<sup>92</sup> Hon Margaret Wilson, *Speaker Protocol for the provision of independent specialist assistance to select committees* (19 June 2007) [2005–2008] AJHR J.5A at 6–7.

<sup>93</sup> SO 211(1).

<sup>94</sup> Ombudsmen Act 1975, s 13(4).

<sup>95</sup> Environment Act 1986, s 16(1)(d); Planning and Development Committee *Inquiry into planning for flood mitigation* (27 July 1989) [1987–1990] AJHR I.11A.

<sup>96</sup> Controller and Auditor-General, report for the year ended 30 June 1991 (8 October 1991) [1991–1993] AJHR B.28 at 18–19.

<sup>97</sup> Environment Act 1986, s 14.

committees, either on the office's own initiative or at a committee's request, to assist with bills, Estimates, annual reviews or other inquiries.<sup>98</sup>

The Officers of Parliament Committee has approved codes of practice for the provision of assistance to select committees by the Auditor-General and the Parliamentary Commissioner for the Environment.<sup>99</sup> They set out the ways in which the officers may become involved with select committees in inquiries that the committees are undertaking or contemplating.

## **Legislative drafters**

For all Government bills the Parliamentary Counsel Office (or the Inland Revenue Department in the case of tax legislation) undertakes the drafting of proposed amendments that select committees wish to consider.

The Parliamentary Counsel Office is responsible to the Attorney-General but, nevertheless, provides advice and drafting services to select committees. However, the services of the Parliamentary Counsel Office are not available as a matter of course to select committees considering all bills. Committees must ask the Attorney-General if a parliamentary counsel will be made available to them to draft amendments they wish to consider. While such assistance is taken for granted for Government bills and is virtually always forthcoming for private and local bills, it has been refused for a Member's bill.<sup>100</sup> If the services of the Parliamentary Counsel Office are not made available, a committee can apply to the Clerk of the House for legislative drafting assistance to be made available from the Office of the Clerk.

## **Departmental officials**

The principal source of advice available to committees considering Government bills is the officials of the department of the Minister in charge of the bill. Sometimes a team of officials from more than one department provides this service. Such officials are, almost as a matter of course, accepted by the committee as advisers to it and attend the committee's proceedings at all times, including the consideration and deliberation phases, unless specifically excluded. Although they are advisers to the committee, their primary duty as public servants is to their respective Ministers, and it is always for Ministers to decide whether to make officials available as advisers, and which officials.<sup>101</sup> It would be an exceptional event for a Minister to refuse departmental assistance on a Government bill, for it benefits both the Government and the committee to have the participation of officials with a detailed knowledge of the measure, but even so the Government will have to consider the priority it gives to the legislation for which assistance is sought, given competing demands for officials' time.<sup>102</sup> If departmental assistance were refused, the committee would not be prevented from proceeding with the bill, but it might require other support to do so effectively.

Officials acting as advisers to committees on bills are regarded as doing so in support of ministerial accountability to Parliament, and are ultimately subject to ministerial direction. They are expected to keep their Minister informed of their dealings with a committee and, as Ministers generally do not attend committees,

98 Parliamentary Commissioner for the Environment, annual report (14 October 2004) NZPP C.12 at 20.

99 Officers of Parliament Committee *Code of practice for the provision of assistance by the Parliamentary Commissioner for the Environment to the House, select committees, and members of Parliament* (17 June 2016) [2014–2017] AJHR I.15D; Officers of Parliament Committee *Code of practice for the provision of assistance by the Auditor-General to the House, select committees, and members of Parliament* (17 June 2016) [2014–2017] AJHR I.15C.

100 Justice and Law Reform Committee *Interim report on the Conveyancers Bill* (17 November 1998) [1996–1999] AJHR I.8A.

101 See generally, State Services Commission *Officials and select committees—guidelines* (August 2007, revised July 2008).

102 Internal Affairs and Local Government Committee, report on 1997/98 Estimates (Vote Internal Affairs) (21 August 1997) [1996–1999] AJHR I.19A at 157 (Local Government Law Reform Bill).

can be crucial in preventing misunderstanding between the Government and the committee on the progress of the bill.

Departmental officials provide information to the committee about the legislation and how it is intended to be implemented. They comment on evidence as it is received, if asked to, and after all the evidence has been heard they invariably produce a report for the committee summarising the submissions and making their recommendations (with their Minister's endorsement) for amendments to the bill.

Although their primary duty is to their Ministers, they are officials of the committees that they are servicing. As well as observing the general confidentiality obligations applying to all committee proceedings not held in public, they have obligations to act responsibly and in good faith towards the committee. For example, it is expected that all relevant matters raised in public submissions will be noted by officials in their report, even if these submissions are not in agreement with the Government's policy. They are expected to provide complete and accurate information to the committee, making it clear when they are unable to do so, for example, because of a ministerial direction. Failure to be open with the committee in this way is an abuse of their position as advisers to the committee.

Departmental officials must keep their Minister and chief executive informed of their work for a committee. When a committee asks a department to provide a governmental view on a matter, it is implicitly understood that consultation with other interested departments may be undertaken first as a matter of course. With other information requests it may not be immediately apparent that inter-departmental consultation will be necessary, and officials are expected to inform the committee before communicating committee proceedings to another department. In any case where carrying out work for a committee will entail consultation outside the public service, the committee should be informed first.<sup>103</sup>

Departmental officials must not, without the committee's express authority, take action in a committee's name.<sup>104</sup> Not only is this a usurpation of the committee's authority, it is constitutionally inappropriate since departmental officials are employees of the executive, not the legislature.

On private and local bills, officials are often invited by committees to play a similar role to that they undertake on Government bills. Subject to their Minister's agreement, they are likely to do so. They may be invited to act as advisers on Members' bills too, though such assistance has on occasion been denied by Ministers.<sup>105</sup> If the committee requests it, advisers may be engaged by the Office of the Clerk on Members' bills; otherwise the committee can proceed with no special advisory assistance.<sup>106</sup>

## Other advisers

Committees often decide that they wish to obtain additional advisory assistance beyond the range of support available within the Office of the Clerk or from Officers of Parliament or departmental sources. This may be because the committee requires the services of a person with a particular expertise or skill in relation to a particular inquiry, because departmental assistance is not available (for example, on a Member's bill), or because it is inappropriate to use departmental advisers (for example, on an inquiry into a department's performance). Obtaining such

<sup>103</sup> Regulations Review Committee *Complaints relating to the Fisheries (Allocation of Individual Catch Entitlement) Regulations 1999* (14 June 1999) [1996–1999] AJHR I.16P.

<sup>104</sup> (1988) 488 NZPD 3397–3398 Burke.

<sup>105</sup> Justice and Law Reform Committee *Interim report on the Conveyancers Bill* (17 November 1998) [1996–1999] AJHR I.8A; a decision later reversed; see, Justice and Law Reform Committee, report on 1998/99 Estimates (Vote Justice and Vote Treaty Negotiations) (6 July 1998) [1996–1999] AJHR I.19B at 194.

<sup>106</sup> Shop Trading Hours (Abolition of Restrictions) Bill (272–1) (commentary, 30 June 2000) at 4–5 ([1999–2002] AJHR I.22A at 19–20).

assistance is not new—a professor of economics is recorded as having been enlisted as part of a committee’s secretariat in 1931.<sup>107</sup> A member of Parliament who was a doctor has been used by a committee in a pertinent advisory role.<sup>108</sup>

In such cases committees can appoint an adviser from a public body that is prepared to make its services available.<sup>109</sup> Occasionally a particular expert may donate his or her assistance. But usually where such assistance is necessary it will be engaged under contract with the Clerk of the House. Sometimes this assistance can be ongoing, such as the expert tax adviser position that has been available to the Finance and Expenditure Committee since 1992 for its consideration of tax legislation.<sup>110</sup> Generally, however, advisers are engaged ad hoc for a particular item of business before a committee.

The Speaker (as responsible Minister for the Office of the Clerk) has approved a protocol for the engagement of specialist advisers for select committees where this is to be funded from Vote Office of the Clerk.<sup>111</sup> It requires committees to notify the Clerk of the House formally of their need for specialist advice, setting out the reasons for the request and an estimate of the cost. Such requests may be referred to the Speaker for approval. The method of selecting an adviser will depend on the size and nature of the particular engagement, but a cost-effective, fair and transparent process must be followed. The adviser is engaged under contract with the Clerk of the House and the clerk of the committee manages and monitors the performance of the contract. Where any adviser encounters a conflict or potential conflict of interest in carrying out his or her work, this must be disclosed to the committee. It may then be necessary for the adviser to withdraw from the engagement or from parts of the committee’s proceedings.<sup>112</sup> Whether a conflict exists and whether it renders it necessary for the adviser to withdraw is ultimately for the committee to determine.<sup>113</sup>

The role performed by the adviser for the committee is defined in the terms of the contract for the adviser’s engagement and is subject to the control of the committee.

<sup>107</sup> Michael Bassett *Coates of Kaipara* (Auckland University Press, Auckland, 1995) at 167–168.

<sup>108</sup> Human Assisted Reproductive Technology Bill (195–2) (commentary, 6 August 2004) at 16 ([2002–2005] AJHR I.22C at 756).

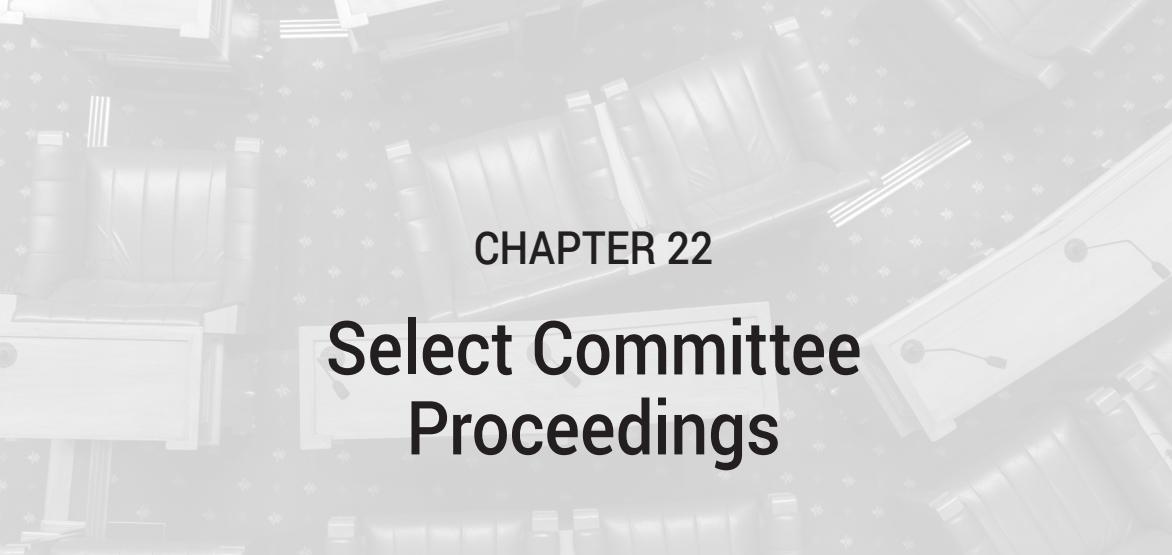
<sup>109</sup> Report of the Electoral Commission for the year ended 30 June 1998 (12 November 1998) [1996–1999] AJHR E.57 at 18.

<sup>110</sup> “Finance committee to get own adviser” *The Dominion* (10 March 1992).

<sup>111</sup> Hon Margaret Wilson, Speaker *Protocol for the provision of independent specialist assistance to select committees* (19 June 2007) [2005–2008] AJHR J.5A.

<sup>112</sup> (1999) 577 NZPD 16268 (Taxation (Accrual Rules and Other Remedial Matters) Bill).

<sup>113</sup> See, for example: “MPs unmoved by fish firm’s cries of foul” *The New Zealand Herald* (17 February 2003).



# CHAPTER 22

## Select Committee Proceedings

### MEETINGS OF COMMITTEES

#### First meeting

The time for the holding of the first meeting of a committee after it has been established is determined by the Speaker.<sup>1</sup>

The Speaker appoints a time for the first meeting that is within the regular meeting times for committees set out in the Standing Orders. Members must have notice of the meeting at least one day ahead. The Speaker does not appoint a time that would otherwise require leave of the committee, such as during a sitting of the House. If it is proposed that the first meeting take place without a day's notice<sup>2</sup> or during a sitting,<sup>3</sup> the leave of the House is necessary to appoint such a time for the meeting.

The Speaker advises all the members of the committee in writing of the time appointed for the first meeting. Usually the arrangements for the first meeting are determined in consultation with the whips. It is irregular for any action to be taken in the committee's name before the committee holds its first meeting.<sup>4</sup> The only arrangements in connection with the business of the committee that may be made before its first meeting are those made by, or on behalf of, the Speaker for the purpose of convening the meeting.

#### Place of meeting

The first meeting of each committee is held in Parliament Buildings.

Committees may meet at any place within New Zealand.<sup>5</sup> They can meet overseas if they are specially authorised to do so by the House.<sup>6</sup> The first committee to be given the authority to meet outside New Zealand was the Foreign Affairs and Defence Committee, which in 1989 was authorised to meet its counterpart committee in Canberra.<sup>7</sup> A committee that has been authorised by the House to meet outside New Zealand is automatically given the power to determine its own procedures for doing so.<sup>8</sup> However, standard procedures have been adapted for

---

<sup>1</sup> SO 190(1).

<sup>2</sup> (1997) 558 NZPD 641–642; (1999) 581 NZPD 154.

<sup>3</sup> (1999) 581 NZPD 154.

<sup>4</sup> (1981) 439 NZPD 2441 Harrison.

<sup>5</sup> SO 192.

<sup>6</sup> SO 192.

<sup>7</sup> (22 August 1989) [1987–1990] JHR 1664.

<sup>8</sup> SO 192(3).

meetings that form part of the annual exchange with the Parliament of Australia. (See p 697.)

In practice, most select committee meetings are held in Parliament House in Wellington or in the adjacent Bowen House, which is within the parliamentary precincts. Nevertheless, committees often travel to other centres. If they wish to meet outside the Wellington area (defined as comprising the cities of Wellington, Hutt, Upper Hutt and Porirua, and the Paekakariki/Raumati and Paraparaumu Wards of the Kapiti Coast District)<sup>9</sup> certain restrictions on meeting apply.

To meet outside the Wellington area during a sitting of the House, a committee needs the agreement of the Business Committee.<sup>10</sup> To meet outside the Wellington area at any other time requires the leave of the committee concerned;<sup>11</sup> it cannot be done on the chairperson's authority alone. Meetings held outside the parliamentary precincts are treated by the police in the same way as any other public meeting. (See p 317.)

### **Calling of meeting**

Once a committee has held its first meeting and elected its chairperson, the arrangements for its subsequent meetings are its own affair. The committee may itself appoint the times for subsequent meetings, or it may leave this to be done by the chairperson.

In principle, the time for each committee's next meeting is decided by a resolution of the committee passed before the committee adjourns. In the absence of such a decision, the chairperson fixes, by notice in writing, when the next meeting will be held.<sup>12</sup> An informal agreement among members of the committee as to when it will meet does not constitute an appointment of a meeting by the committee.<sup>13</sup> Committees adjourn from meeting to meeting.<sup>14</sup> A formal appointment of a meeting, by the committee or by the chairperson, relates only to the committee's next meeting. However, it is of obvious benefit to committee members to have a programme of meetings set out in advance, and such a programme is often prepared on a non-binding basis.

In practice, most committees leave the calling of meetings in the hands of the chairperson as the most convenient way to proceed, but this practice is subject to general understandings with the members. If there is no chairperson or deputy chairperson or they are both overseas, the Speaker exercises the chairperson's authority to call meetings of the committee.<sup>15</sup>

### **Notice of meeting**

Notices to the members of the committee informing them of the committee's meeting time, place and business to be conducted, in accordance with the committee's or the chairperson's directions, must be communicated to members by the clerk of the committee no later than the day before the meeting.<sup>16</sup> In practice, notices for the regular Wednesday and Thursday meetings of committees are communicated to members, if possible, at least two days in advance. Committee proceedings are available to all members in a customised web-based system known as the committee system. Meeting papers are communicated to members through the committee system.

The requirement for notice at least a day in advance may be waived if all the members of the committee or the leaders or whips of their respective parties

<sup>9</sup> SO 3(1).

<sup>10</sup> SO 193(a).

<sup>11</sup> SO 193(b).

<sup>12</sup> SO 190(2).

<sup>13</sup> (1988) 493 NZPD 7280 Burke.

<sup>14</sup> SO 190(2).

<sup>15</sup> SO 190(3).

<sup>16</sup> SO 205(1).

agree.<sup>17</sup> If a committee meeting has lapsed or been adjourned because there is no quorum present and it may be possible to reconvene later in the day, agreement to waive notice is required only from those members who were expected to attend the aborted meeting.<sup>18</sup>

The notice of meeting must contain a summary of the items of business proposed to be dealt with at the meeting.<sup>19</sup> Members need to know what is likely to happen at a committee meeting on a given day so they can decide whether to attend and how to prepare themselves.<sup>20</sup> The notice describes the items, indicates any action proposed, and lists the relevant papers, such as draft reports. If they are available the papers are communicated to members at the same time as the notice of meeting. If notice of additional substantive items of business to be dealt with is received after the circulation of the notice of meeting but in time to be included on its agenda, this may justify circulating an amended notice of meeting.

A schedule of the meetings of committees to be held is published on the Parliament website, the first edition becoming available on Friday of the preceding week.

## **Meeting times**

The time appointed for the committee to meet does not need to be a specific time—it can be fixed by reference to an uncertain event. However, the time is always expressed in terms of a calendar day. Select committees “meet”; they do not “sit”. The concept of a sitting day refers to the House’s sittings, not a select committee’s meetings, but a sitting day helps to define the times at which it is permissible for a select committee to meet. References to the day on which a select committee is to meet are therefore references to the calendar day, not to a sitting day.<sup>21</sup>

During sitting weeks, most select committees hold their regular meetings on Wednesday or Thursday mornings. At the beginning of the Parliament the Business Committee or the whips come to an informal arrangement as to which of the subject select committees will be “Wednesday” committees and which will be “Thursday” committees and therefore on which of those days they will be called to meet regularly. Committees may meet at other times too during a sitting week according to the Standing Orders, but there is a firm understanding that meetings will not be called during the times that party caucuses meet—after 10 am on Tuesdays in sitting weeks. Committees are much freer in arranging meetings during adjournments, but even then, days on which parties have advised that they will be holding caucuses are avoided.

There are a number of other constraints on committee meeting times. The Business Committee may, however, determine in certain circumstances that a select committee will meet at a time prohibited by the Standing Orders.<sup>22</sup>

### **Sundays**

The House is specifically precluded from sitting on a Sunday by the Standing Orders,<sup>23</sup> and this absolute prohibition is taken to apply to select committee meetings too.

### **Fridays**

In a week in which there has been a sitting of the House, a committee may not meet on Friday, except with the leave of the committee.<sup>24</sup>

<sup>17</sup> SO 205(2).

<sup>18</sup> SO 205(2).

<sup>19</sup> SO 205(1).

<sup>20</sup> (1971) 373 NZPD 2080 Jack.

<sup>21</sup> (1991) 515 NZPD 2311 Gray.

<sup>22</sup> SO 190(4).

<sup>23</sup> SO 48.

<sup>24</sup> SO 191.

This restriction was introduced when Friday sittings were abolished in 1985. It was intended to prevent programmes of Friday select committee meetings precluding the freeing up of members for constituency work on Fridays.<sup>25</sup> When referring a bill to a committee the House may confer power on it to meet on Fridays, although the House has been sitting that week; a motion to confer this power is debatable.<sup>26</sup> In these circumstances, the committee or the chairperson can appoint a meeting on a Friday without needing the leave of the committee. A subcommittee has also been authorised to meet on a Friday during sitting weeks to work on an inquiry it was carrying out for the full committee.<sup>27</sup>

Where a committee has been authorised by the House to meet during a sitting of the House, and the sitting extends into Friday, this general power to meet while the House is sitting does not authorise the committee to meet on the Friday. The restriction on meeting on a Friday is a different one from the limited power of committees to meet during a sitting, and the latter does not override the former. Leave of the committee or distinct authority from the Business Committee or the House is necessary in such a case.

### ***Question time***

A committee that is meeting in the Wellington area may not meet during question time, as it is expected that all members attend the House for question time.<sup>28</sup> If a committee is meeting outside the Wellington area (which it may do during a House sitting only with the Business Committee's agreement), this restriction does not apply, as it would serve no purpose. Where question time has not concluded by the time for which a committee meeting has been appointed, the committee's meeting is automatically adjourned, subject to any leave being granted by the House for the meeting to proceed.

### ***Sittings of the House***

Apart from the constraint regarding question time, there are other restrictions on committees meeting while the House is sitting. These restrictions apply equally during a committee of the whole House, since it takes place during a sitting of the House.<sup>29</sup>

For a select committee meeting in the Wellington area whose members would otherwise have been expected to attend the House sitting, leave of the committee is essential for it to meet while the House is sitting.<sup>30</sup> Even then, such leave can authorise the committee to meet only after question time and up to 6 pm (see below for evening meetings). However, the House or the Business Committee may authorise committees to meet during the sittings of the House.<sup>31</sup> In fact whether committees are authorised to meet has become a routine part of the Business Committee's negotiations for extended sittings.

When referring a bill to a committee, the House may authorise the committee to meet while the House is sitting. A motion for such authority is debatable.<sup>32</sup> This and the authority of the Business Committee gives the committee, by resolution, and the chairperson, by appointment, power to convene meetings while the House is sitting during an afternoon. Leave of the committee is not required in such circumstances. Whether the committee or the chairperson choose to exercise, by notice, such a power that has been conferred on the committee is a matter for them. There is no convention that a committee with authority to meet during

25 Standing Orders Committee *First report* (19 July 1985) [1984–1985] AJHR I.14 at 8.

26 SOs 287 and 290.

27 (1991) 513 NZPD 818–819.

28 SO 194(1)(a).

29 SO 193(a).

30 SO 194(1)(b).

31 SO 190(4).

32 SO 290.

sittings will not meet during an extended sitting or while the House is sitting under urgency.<sup>33</sup> However, the Business Committee or the whips would be likely to discuss compromises to committee meeting plans in these circumstances to accommodate members with duties in the Chamber.

### ***Evenings***

A committee that is meeting outside the Wellington area is unrestrained as to meeting during the evening. A committee meeting on a non-sitting day is similarly unconstrained, whether or not it is held in the Wellington area. But a committee meeting in the Wellington area on a day when there has been a sitting of the House may not take place after 6 pm unless leave is forthcoming for the limited purpose of concluding business still in progress at 6 pm.<sup>34</sup> This restriction applies whether or not the House is sitting, so it prevents committees meeting on Thursday evenings even when the House adjourns at 6 pm. Only the House or the Business Committee<sup>35</sup> can release a committee from this restriction.

When referring a bill to a committee, the House may confer on the committee power to meet during the evening of a day on which there has been a sitting. In such a case the committee, by resolution, or the chairperson, by notice, may appoint a meeting for the evening; and a meeting already in progress may continue after 6 pm without leave of the committee.

### ***After midnight and before 8 am***

The Speaker has ruled that, unless all members of the committee agree or the House specially authorises, committees should not meet between midnight and 8 am.<sup>36</sup> If it were otherwise, this would defeat the purpose of a major Standing Orders change introduced in 1985 to ensure that the House did not sit through the night except in extraordinary circumstances. There are no known examples of either the House or a committee giving permission for a select committee to meet after midnight.

### **Varying restrictions on meeting times**

In referring a bill to a committee the House often varies the restrictions on meeting times imposed by the Standing Orders and allows the committee to meet on a Friday of a sitting week, during the sitting hours or during the evening on a sitting day, in the same way that it can meet at other times. Such a motion is usually moved after the House has determined the committee to consider the bill, and is debatable.<sup>37</sup> The Business Committee may also vary restrictions on committee meeting times by determination.<sup>38</sup>

Restrictions on select committee meeting times are subject to any other order of the House or Business Committee determination to the contrary, given either to a particular committee or in respect of a particular item of business, for example for a bill subsequent to its referral to the committee. It is, however, improper for committees to anticipate the granting of such authority and to issue notices of meeting for a time that is prohibited under the Standing Orders. While it is permissible for members to be sounded out about the possibility of such a proposed meeting and for officials in Wellington to be alerted to the possibility, no arrangements should be made for witnesses to attend before the authority of the House is obtained.<sup>39</sup>

The initiative for a committee (after a bill has been referred to it) to be granted unlimited authority to meet during a sitting of the House or to meet at another

<sup>33</sup> (2002) 599 NZPD 15303 Hunt.

<sup>34</sup> SO 194(1)(c), (2).

<sup>35</sup> SO 190(4).

<sup>36</sup> (1988) 488 NZPD 3395–3396 Burke.

<sup>37</sup> SO 290(3).

<sup>38</sup> SO 190(4).

<sup>39</sup> (1993) 537 NZPD 16847 Gray.

prohibited time may come from the committee by way of a special report, or from the House itself or the Business Committee.<sup>40</sup> A motion for a committee to have power to meet during the current sitting of the House does not require notice,<sup>41</sup> but a motion authorising a committee to meet during a future sitting does. The permission to meet might relate only to the consideration of certain business—for instance, to consider a certain bill—or it might be a power for a committee to sit on a particular day or days, without reference to the business to be transacted. The debate on such a motion is limited to the question of whether the committee should have the power to sit, and if it should not, then why not.<sup>42</sup> It is not an opportunity to debate the merits of business to be transacted by the committee at the meeting.

The fact that a committee is granted wider authority to meet than is conferred by the Standing Orders does not prevent it from meeting at any other time in accordance with the Standing Orders.<sup>43</sup> Such an authority widens the committee's powers; it does not take away powers the committee would otherwise have. Whenever a committee has been given wider power to meet, it is for the committee to decide how and in what circumstances to exercise this power.<sup>44</sup> The fact that there is no apparently urgent business to transact at a meeting does not prevent it going ahead if the committee has power to meet and decides to exercise it.<sup>45</sup> It is a matter for the judgement of the committee.

### **Cancellation of meeting**

Where the committee appoints the time for its next meeting, the chairperson may not cancel the meeting,<sup>46</sup> nor alter the time for its commencement,<sup>47</sup> though this may be done on a “round-robin” basis with the agreement of all members of the committee or all the members who can reasonably be contacted. The chairperson can cancel a meeting that has been called under the chairperson's authority.

### **Suspension of meeting**

The chairperson may suspend a meeting if grave disorder arises at the meeting.<sup>48</sup> The meeting resumes at the time that the chairperson determines, having given reasonable notice to members present at the time of the suspension. As a meeting may not extend into a second calendar day,<sup>49</sup> if the meeting is to resume at all, it must be later in the same day and before any time set for the meeting to adjourn, unless that time was purely indicative. If the meeting does not resume after it has been suspended by the chairperson, the chairperson appoints the time for a new meeting of the committee on a future day.

Except in cases of grave disorder, only the committee can suspend its own meeting. If a meeting is scheduled to extend over the greater part of a day, times for the meeting to be suspended for lunch and dinner will usually be determined in advance and included in the notice of meeting. If the committee appoints the meeting, it will include suspension times in the appointing resolution. But usually suspension times for a day-long meeting are discussed in advance by the committee only informally, if at all, and are included in the notice of meeting on the chairperson's authority. Whether the committee follows them or not is a matter for it to decide.

<sup>40</sup> (1976) 408 NZPD 3975 Jack.

<sup>41</sup> (1927) 215 NZPD 560 Statham.

<sup>42</sup> (1961) 327 NZPD 1287 Algie.

<sup>43</sup> (1976) 408 NZPD 4010 Jack.

<sup>44</sup> (2002) 599 NZPD 15303 Hunt.

<sup>45</sup> (1990) 510 NZPD 3939 Burke.

<sup>46</sup> (1985) 466 NZPD 7006 Wall.

<sup>47</sup> (1991) 518 NZPD 4194 Gray.

<sup>48</sup> See: SO 177(1) (committee of the whole House).

<sup>49</sup> (1988) 487 NZPD 2918 Burke.

## Adjournment of meeting

A select committee meeting concludes and the committee adjourns when:

- the committee has completed all of the business on its agenda, or
- the time appointed for the committee to adjourn arrives, or
- a time during which the committee is prohibited from meeting arrives, or
- the committee decides to adjourn.

While the chairperson of a select committee may suspend the meeting in a case of grave disorder, he or she may not adjourn it (nor may the Chairperson of a committee of the whole House).

The committee may adopt formal meeting times in advance of a meeting but this is unusual. Usually, while meeting times may have been discussed at a prior meeting, the advertised times for the meeting are notified on the chairperson's authority and are indicative only. Thus, when the advertised time for the meeting to end is reached and the committee adjourns, this is because the committee has decided (perhaps implicitly) to adjourn at that point, not because adjournment is automatic. In such circumstances, while there is a presumption that the meeting will conclude at the advertised time, it is always open to the committee to continue to meet.

On the other hand, where a committee meeting extends to a time during which a committee is prohibited from meeting, adjournment is automatic. Thus, a committee meeting in the Wellington area cannot, even by leave, continue its meeting after 2 pm on a sitting day because committees are prohibited from meeting in the Wellington area during question time,<sup>50</sup> which commences at 2 pm or a few minutes thereafter. Adjournment at this time is thus automatic. In the case of a committee meeting at any other time when a sitting resumes (for example, at 9 am under urgency) leave of the committee would be required for the meeting to continue,<sup>51</sup> otherwise the committee must adjourn. (In all cases this is subject to any special permission from the House or the Business Committee allowing a committee to meet at a time that is otherwise prohibited.) There is a firm convention that any select committee meeting in progress when caucuses usually meet (after 10 am on Tuesdays in sitting weeks) will conclude and the committee will adjourn.

At midnight a committee adjourns unless leave of the committee is given to continue the meeting.<sup>52</sup> Even so, a meeting continued in this way could only be for the purpose of concluding within a reasonable time an item of business on which the committee was engaged at midnight, because meetings held on separate calendar days are, in principle, separate meetings rather than one continuous meeting.<sup>53</sup> Consequently, an extension of a meeting beyond midnight, even though all members were in agreement, could be for only a limited period of time. A new meeting of the committee would need to be appointed to resume business.

Any member of the committee can move that the committee do now adjourn. This motion can be moved only between items of business, not while an item of business is under consideration. (Though consideration of the item may itself be adjourned to permit a motion for the adjournment of the committee to be moved.) While more than one adjournment motion cannot be moved between the same items of business, subsequent adjournment motions can be moved during the continuance of the same meeting if the committee has transacted further business since it last rejected a proposal to adjourn. It is up to the chairperson how much discussion to permit on a motion to adjourn before the question is put to the committee. The fact that the committee had rejected a motion to adjourn earlier in

<sup>50</sup> SO 194(1)(a).

<sup>51</sup> SO 194(1)(b).

<sup>52</sup> (1988) 488 NZPD 3395–3396.

<sup>53</sup> (1988) 487 NZPD 2918 Burke.

the meeting would be a factor to consider in the length of the discussion to permit on such a motion.

### **Joint meetings**

A joint meeting is a meeting between two or more select committees, each of which retains its own separate identity as a committee. Such a meeting can be held without the express authority of the House, provided that the subject of the meeting is within the terms of reference of both participating committees.<sup>54</sup> Where a joint meeting is to be held, the committees must resolve by agreement between them how they are to conduct their business (unless the House has determined this). Both committees must agree to the procedures to be adopted; the members at the joint meeting do not vote as one body on questions, unless each committee has agreed to operate in this way. The minutes and other key documents of the joint committee meeting become part of the record for each of the committees that took part in the meeting.

A special type of joint meeting has been held between select committees and their counterpart committees in the Parliament of the Commonwealth of Australia and in a number of state parliaments in Australia.

## **SUBCOMMITTEES**

Select committees have a general power to appoint subcommittees to help them perform their tasks.<sup>55</sup> They may do this to carry out or contribute to the consideration of substantive business before the committee, or to discharge administrative or procedural functions.<sup>56</sup>

A subcommittee is a creature of the committee that appoints it, and it is wholly responsible to that committee. It can consist only of members who are members of the full committee (although the usual rules for replacing members for meetings apply). It does not report to the House; it reports to the committee.<sup>57</sup> Then the committee may endorse or reject its work as it sees fit; if it is endorsed, the committee makes the subcommittee's conclusions its own and takes responsibility for them. A committee may confer on a subcommittee any of the powers the House has conferred on it in respect of business it refers to the subcommittee (for example, the power to meet during an evening).

The rules for the conduct of business by a subcommittee may be prescribed by the committee, provided they are not inconsistent with the Standing Orders, for a committee cannot authorise a subcommittee to do anything that it cannot do itself. Subject to any specific rules prescribed by the committee, the same rules for the conduct of business apply to the subcommittee as apply to the full committee.<sup>58</sup>

The committee may appoint the subcommittee's chairperson or leave this to the subcommittee. A subcommittee must have at least two members. The same formula for the quorum of a subcommittee applies as applies to the committee itself—half of the subcommittee's membership constitutes a quorum. More than one subcommittee of the same committee may meet at the same time, provided that enough members of the committee are available to service two such meetings,

<sup>54</sup> Health Committee *Inquiry into improving child health outcomes and preventing child abuse, with a focus from preconception until three years of age* (18 November 2013) [2011–2014] AJHR I.6A; Māori Affairs Committee *Inquiry into the determinants of wellbeing for tamariki Maori* (20 December 2013) [2011–2014] AJHR I.10B.

<sup>55</sup> SO 198(1).

<sup>56</sup> (24 August 2004) 619 NZPD 14944; (7 September 2004) 620 NZPD 15382–15383 (Fisheries and Other Sea-related Legislation Committee; subcommittee appointed to suggest which witnesses (of 3937) should be heard in person).

<sup>57</sup> Privileges Committee *Question of privilege referred on 14 February 2001 relating to Stonhill v Mackey* (11 December 2001) [1999–2002] AJHR I.17B.

<sup>58</sup> SO 198(2).

and a subcommittee may meet at the same time as the full committee, provided that they both have a quorum.

A subcommittee reports to the full committee, and if it is endorsed its report is presented to the House as a report of the committee. Once a subcommittee established to carry out a particular task has made its final report to the full committee, it ceases to exist (though the committee may establish another subcommittee if it sees fit).<sup>59</sup> Otherwise, it is up to the committee how long the subcommittee remains in existence.

The chairperson of a subcommittee may have a question addressed to him or her,<sup>60</sup> and may, with the agreement of the subcommittee, make a public statement on the nature of the business before the subcommittee.<sup>61</sup> A subcommittee operates with the same powers and limitations as the full committee, but a full committee can impose limitations on the operation of its subcommittee. A subcommittee's proceedings are open to the public during any hearing of evidence and subject to confidentiality at other times, as are the full committee's. (See pp 321–326.)

## QUORUM AND ATTENDANCE

The quorum of a select committee is half of the committee's membership, rounded up if need be.<sup>62</sup> This relates to the committee's membership at any particular time. While the size of a committee is fixed by the House or the Business Committee, its membership may vary from time to time not just in personnel but also in number. If there is a vacancy on a committee, this reduces its membership, and the quorum is reduced accordingly.

Physical presence at the meeting is required for a member to count towards a committee's quorum (members are not permitted to participate in a committee meeting by videoconference in any case). A non-voting member of the committee is not counted in the quorum,<sup>63</sup> and is left completely out of account as far as its determination is concerned. A committee cannot proceed to transact any business unless a quorum is present.

If there is not a quorum present within 10 minutes of the time appointed for a meeting, the committee stands adjourned.<sup>64</sup> If a committee becomes inquorate during a meeting, its proceedings are suspended for up to 10 minutes.<sup>65</sup> If by this time there is still no quorum, the committee stands adjourned. In either circumstances, the time for its next meeting is decided by the chairperson. However, following the adjournment of a meeting for lack of a quorum, if all members expected to attend the meeting subsequently agree and the quorum is met, a new meeting can be initiated immediately if members agree to waive notice requirements for it.<sup>66</sup>

The members who attend a committee meeting are listed in the minutes.<sup>67</sup> However, it is up to members themselves whether they attend a meeting; there is no compulsion on them to do so. In practice, the party whips will endeavour to ensure that members are present at meetings so that the party's point of view is represented. For the larger parties, this will involve arranging temporary replacements for members who are unavoidably absent. Replacing members is a

<sup>59</sup> Privileges Committee *Question of privilege referred on 14 February 2001 relating to Stonhill v Mackey* (11 December 2001) [1999–2002] AJHR I.17B.

<sup>60</sup> (1977) 415 NZPD 3918.

<sup>61</sup> SO 242(1).

<sup>62</sup> SO 209(1).

<sup>63</sup> SO 209(2).

<sup>64</sup> SO 209(3).

<sup>65</sup> SO 209(3).

<sup>66</sup> SO 205(2).

<sup>67</sup> SO 208. During the 49th and 50th Parliaments some smaller parties provided permanent authority for any of their members to be replaced by any member of the New Zealand National Party, a larger party with which they had a support agreement.

more serious difficulty for smaller parties. A member from one party can replace a committee member from another party, provided the whips for both parties have agreed to the replacement.<sup>68</sup>

Members attending select committee meetings are recorded by the Clerk as present in the House during a sitting day.<sup>69</sup> (See pp 54–56.) This means that members who are participating in select committee meetings are regarded as present in the parliamentary precincts when party votes are conducted.<sup>70</sup> (See p 250.)

## GENERAL PROCEDURES OF SELECT COMMITTEES

Proceedings in select committees are necessarily conducted in a different way from those on the floor of the House. First, the House transacts business mainly by its members making speeches. Members do not make formal speeches in select committees. They question witnesses and they discuss issues with each other across a table—quite different forms of proceeding. Secondly, proceedings in the House are confined to members; other people do not participate in them. In contrast, one of the principal advantages of the select committee system is that it involves people other than members directly with the consideration of parliamentary business. For both of these reasons it is not appropriate to have such elaborate rules for the conduct of proceedings in select committees as it is for the House. Select committees are conducted more informally and this relative informality is an important aspect of their mode of proceeding.

Nevertheless, a number of Standing Orders prescribe rules specifically for the conduct of business by select committees. Rules for the conduct of business generally by select committees are set out in Chapter 4 of the Standing Orders. Rules relating to the way particular items of business before select committees (bills, regulations, petitions, and so on) are to be dealt with are set out in the chapters of the Standing Orders relating respectively to those types of business. Select committees have themselves developed common practices as to how business is conducted. But the specific rules for select committees are not as comprehensive as those for the House itself. Therefore, it is provided that where there is no express provision in the Standing Orders or any practice of the House to the contrary, the same rules for the conduct of proceedings as apply to a committee of the whole House are to apply to select committees.<sup>71</sup> A committee of the whole House is itself enjoined to follow the House's procedures subject to any express rule applying to it,<sup>72</sup> so a select committee may have recourse for procedural guidance, first, to the particular rules applying to a committee of the whole House, and then to those of the House itself.

This does not mean that the Standing Orders relating to the House and to committees of the whole House are in effect for select committees; only that in the absence of more specific rules directly applying to a committee those Standing Orders may be applied by analogy to select committee proceedings. Some House rules (for example, the House's detailed time limits on speeches) can have no analogous application to select committees at all, while others may apply only imperfectly to the circumstances of a select committee meeting. Practices adopted by individual committees may be followed by agreement within those committees as long as they are not inconsistent with the Standing Orders, but they are not part of the general rules relating to select committees and they continue to apply for only as long as the members of the particular committee agree to observe them. (Such agreement may relate to seating practices at a particular committee, for example.)

---

<sup>68</sup> SO 187(3).

<sup>69</sup> SO 37(1)(b).

<sup>70</sup> SOs 37(2), 143(1)(c) and 155(4)(a).

<sup>71</sup> SO 204.

<sup>72</sup> SO 173.

## Ruling on matters of procedure

On matters of procedure, the chairperson of each select committee is in the same position as the Chairperson presiding over a committee of the whole House. The Chairperson deals with all points of order arising in the committee, and the Speaker cannot interfere with the Chairperson's decisions unless the committee decides to report to the Speaker to seek a ruling.<sup>73</sup> Matters of order in select committees are to be dealt with in committee. It is not proper to raise them in the House.<sup>74</sup> However, in the House the Speaker can, on a point of order, deal with general questions as to a committee's jurisdiction.<sup>75</sup>

This does not mean that all matters arising in a select committee are decided exclusively by the chairperson. This would mean the chairperson would usurp the role of the committee in many instances. The chairperson is subject to control by the committee, although for convenience a great deal is left to his or her initiative. The chairperson of a select committee, being a participant in the substantive business transacted by the committee, has a much more active role in leading the committee than do the Speaker and the Chairperson of a committee of the whole House, who, in their respective spheres, confine themselves to keeping order and deciding procedural disputes. In each instance it is important to establish, therefore, whether the chairperson is deciding something for the committee as a presiding officer (such as whether an amendment is in order), in which case the decision is final and cannot be reversed by the committee unless it resolves to seek a ruling on the matter from the Speaker; or whether the chairperson is acting on behalf of the committee as its leader (for example in arranging the committee's agenda), in which case the committee could overrule the arrangements that have been made. While the power to make a decision on a matter may well rest with the committee (by a majority if need be), in practice the decision may be made (at least in the first instance) by the chairperson on behalf of the committee.

When a procedural difficulty arises that the committee feels unable to resolve, the committee may ask the Clerk of the House to attend the committee to advise on the appropriate procedure.<sup>76</sup> According to long-standing practice, select committees may instruct their chairpersons to consult the Speaker privately on matters of procedure. In this case the Speaker may give a private ruling for the guidance of the committee.<sup>77</sup> But, in any case, it is for the committee to authorise the seeking of advice or a formal ruling.

Procedural matters that arise in a select committee cannot be raised as points of order in the House. They must be dealt with in the committee.<sup>78</sup> The House has no cognisance of anything that takes place in a committee until it is reported to it by order of the committee.<sup>79</sup> Therefore, if a committee desired to seek the Speaker's ruling in the House, the committee would have to direct the chairperson to present a report to the House accordingly.<sup>80</sup>

When the Speaker has ruled at the request of the committee, whether privately or in the House, that ruling is final and conclusive.<sup>81</sup> Rulings made within their authority by individual chairpersons are also final and bind the committee. But they are not precedents in the sense that Speakers' rulings are. They do not bind other committees and they do not bind chairpersons of the same committee when different items of business arise subsequently, though in either case an earlier

<sup>73</sup> (1912) 161 NZPD 547 Guinness; (1979) 424 NZPD 1832–1833 Harrison.

<sup>74</sup> (1997) 562 NZPD 3715 Kidd.

<sup>75</sup> (1991) 512 NZPD 156 Gray.

<sup>76</sup> (1984) 459 NZPD 1892 Arthur.

<sup>77</sup> (1977) 414 NZPD 3394 Harrison (Acting Speaker).

<sup>78</sup> (1997) 562 NZPD 3715 Kidd.

<sup>79</sup> (1926) 209 NZPD 744 Statham.

<sup>80</sup> (1926) 209 NZPD 744 Statham.

<sup>81</sup> (1913) 165 NZPD 511 Lang.

chairperson's ruling may be followed if a subsequent chairperson is persuaded that it is appropriate to do so.

### Matters subject to judicial decision

The House's rules against references to matters awaiting or under adjudication in any New Zealand court, references to matters that are suppressed by order of a court, or offensive references against any member of the judiciary,<sup>82</sup> apply also to the proceedings of select committees.<sup>83</sup> (See pp 233–236.) The chairperson of a select committee must have regard to the principles followed by the Speaker in applying the rules.<sup>84</sup> Thus, the chairperson could direct that a line of questioning be discontinued in order to prevent an infringement of the rules. Committees have accepted that reviews they are carrying out must be more limited for the time being where relevant matters are before a court.<sup>85</sup> In one case an applicant for judicial review discontinued those proceedings so as not to inhibit a select committee's inquiry into the same matter.<sup>86</sup> But select committees have available to them the power of hearing evidence in private or secret, and these are likely to be effective ways of avoiding any prejudice to legal proceedings that might otherwise arise.<sup>87</sup> A committee may also be able to delay presentation of its report until the legal proceedings are concluded so as to avoid prejudice. The fact legal proceedings have not yet concluded does not in any event prevent a committee deliberating on its report, since this is always done in private.<sup>88</sup>

The rules are intended to preserve a relationship of mutual respect and restraint between the House of Representatives and the judiciary so that one branch of government does not usurp the role of the other.<sup>89</sup> Therefore, committees should take care not to usurp the role of the judiciary, regardless of whether their consideration of a matter is held in public or in private. Some procedures, such as delaying the presentation of committee reports until after the conclusion of legal proceedings, give select committees a wider range of options to use outside the constraints of these rules than are available to the House.

## COMMITTEE'S AGENDA

In accordance with standard meeting practice, every committee has an agenda for each meeting setting out the business proposed for the meeting and the order in which business is to be transacted.

The agenda is prepared by the clerk of the committee under the chairperson's direction. There may be items that it must include because of previous decisions by the committee, and notices of business given by members, but how it is organised is largely at the discretion of the chairperson. The agenda is not formally adopted at each meeting. Committees generally follow the agenda as it is laid before the committee, though a committee may vary the agenda as long as it does so in a way that is consistent with previous committee decisions and with the notices of business given by members. The committee may also give leave to vary the agenda to consider an item of business that did not appear on the notice of meeting.

<sup>82</sup> SO 115.

<sup>83</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 813.

<sup>84</sup> BC Wright *House of Representatives Practice* (6th ed, Department of the House of Representatives, Canberra, 2012) at 689.

<sup>85</sup> Social Services Committee 1996/97 financial review of the Accident Rehabilitation and Compensation Insurance Corporation (5 May 1998) [1996–1999] AJHR I.21B at 12.

<sup>86</sup> Primary Production Committee Inquiry into the Government's fisheries cost recovery regime (9 April 1998) [1996–1999] AJHR I.10A at 34.

<sup>87</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 813.

<sup>88</sup> Ibid.

<sup>89</sup> (2001) 590 NZPD 7802–7803 Hunt.

Standard items on an agenda include announcements of changes in committee personnel, confirmation of the previous meeting's minutes, and lists of papers to be formally received by the committee at the meeting. Alongside the items of business to be considered at the meeting, it is usual to record the names and designations of those who are to participate in consideration of each item as advisers or witnesses. An item designated as "general business" is placed on the agenda (unless the meeting is restricted to considering a particular item of business). Under this item (which is often taken after other items of business) members can give notice of business or motions they wish to have on the agenda at the next or a subsequent meeting of the committee. They can also raise under general business, if the committee unanimously agrees, a matter for discussion at the meeting that was not on the agenda for it. But "general business" is not an opportunity for members to raise for decision by the committee substantive items of business, which require notice, unless the other members of the committee concur in this.

## **Items of business**

The committee's agenda shows the items of business to be transacted by the committee. They must be set out precisely, so that members are clear about what is to be considered. In principle, different types of proceedings on a bill, for example, such as briefing by officials, hearing evidence, considering departmental and other reports, and deliberating on the bill should be separate items of business, and transacted at different meetings, though a committee may depart from this if it sees fit. All items of business included on an agenda must have been advised to members in a notice of meeting circulated at the latest on the day before the meeting. No item may be included on the agenda or dealt with at the meeting (except with the leave of the committee) if it has not been advised in summary form in a notice of meeting.

Members of the committee may give notice of an item of business or motion to be considered by the committee either orally at an earlier meeting of the committee (under the item "general business", or at any other point in the meeting that is acceptable to the committee) or in writing, delivered to the clerk of the committee.<sup>90</sup> Notices given orally at a meeting and any received in writing by the clerk before 2 pm on the day before the next meeting of the committee are included in the notice of meeting sent to members; they must be placed on the agenda for that meeting or, if longer notice is prescribed by the Standing Orders (such as the seven days' notice for removal of the chairperson<sup>91</sup>), on the agenda for the first meeting after the minimum period of notice has expired.<sup>92</sup> The requirement to place such notices of business or motions on the agenda for the next meeting applies even when the committee has already set the agenda for its next meeting. But if the committee has been given special permission from the House to meet at a particular time at which it could not otherwise meet for the sole purpose of considering a particular item of business, any notices relating to other business are placed instead on the agenda for the next regular meeting of the committee.

The right of any member of the committee to have business or motions placed on its agenda is always subject to the business or motion being relevant to the committee's work. The chairperson has the power to rule whether a proposed notice is in order.<sup>93</sup> A notice about a subject that is outside the committee's terms of reference is not in order. If a notice is ruled out of order it is not placed on the agenda. If it is already on the agenda when the chairperson rules on it, it is removed. In each case it is for the chairperson to decide if the notice that has been

---

<sup>90</sup> SO 206(1).

<sup>91</sup> SO 201(2).

<sup>92</sup> SO 206(2).

<sup>93</sup> SO 206(3).

given is in order. Members do not have an untrammelled right to place items on the committee's agenda.

When the committee reaches an item on the agenda it can be deferred by the committee to later in the meeting or postponed to a future meeting, unless, in the latter case, it was specifically placed on the agenda for that particular meeting by an earlier decision of the committee. In that case, leave of the committee is necessary to postpone it to another meeting. Once the committee has entered upon consideration of an item of business, it is open to the committee to adjourn further consideration of it until later in the meeting or to a future meeting. Business that was not on the committee's agenda can be introduced only with the leave of the committee.

## MANNER OF TAKING DECISIONS

Committees take decisions on the matters before them by resolving a question. This, in principle, is a similar process to that followed in the House, involving notice, a member moving a motion, a question proposed by the chairperson, discussion of the question, the question being put by the chairperson, and a vote being held. However, committees operate less formally than the House. Notice is not necessary in a number of instances and some of the other steps may be omitted if members concur on this.

Votes on questions put by the chairperson are given by members, indicating from their seats by voice how they wish to vote. The chairperson then expresses the sense of the vote by stating whether, in his or her opinion, the "Ayes" or the "Noes" have it. At this point, or before the vote is taken, any member of the committee may require that a formal record of how members wish to vote be entered in the minutes, regardless of whether that member agrees or disagrees with the way the chairperson has expressed the sense of the vote. Unless a member asks that the votes be formally recorded, the minutes will merely show that a decision has been taken without dissent.<sup>94</sup>

Where a vote is formally recorded, members are asked by the chairperson to indicate their votes individually. Their names for, against or in abstention on the question are recorded by the clerk and included in the minutes.<sup>95</sup> Where a series of votes is to be held, the committee may agree to a more informal practice for recording members' votes. As long as these practices are clear this is acceptable.<sup>96</sup> Members must be physically present at the meeting to record a vote. There are no proxy votes at select committee meetings.

Questions are resolved by a majority of the votes. The House has on one occasion imposed on a select committee a requirement of unanimity or near-unanimity similar to the rule applying to the Business Committee, because of the constitutional and political significance of the matters before it.<sup>97</sup>

## MAINTENANCE OF ORDER

As the Speaker is in the House, the chairperson is responsible for maintaining order in a select committee. But this duty is shared more equally with the members of the committee than it is in the larger gatherings of the House and the committee of the whole House.

On questions of dress and consumption of food and beverages, for instance, there is no reason why select committees (which operate much less formally than

<sup>94</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 37.

<sup>95</sup> SO 213.

<sup>96</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 37.

<sup>97</sup> MMP Review Committee *Inquiry into the review of MMP* (8 August 2001) [1999–2002] AJHR I.23A at 10–11.

the House) should follow exactly the House's practices. Indeed, different select committees may choose to apply different standards. Committees conduct much of their business in public and there may appropriately be different rules for the public and private phases of their work—for example, as to eating during a meeting. Ultimately, as matters of order, these are matters for the chairperson to determine, having taken due account of the views of members of the committee.<sup>98</sup>

A member of a committee (including a non-voting member in respect of the portion of the meeting for which he or she is a member) may be excluded from a meeting for highly disorderly conduct only on the order of the committee, and not at the direction of the chairperson alone.<sup>99</sup> Such a motion may be moved at any time during the meeting. Although the decision to exclude the member is the committee's, it is solely for the chairperson to determine whether occasion for the exercise of the power to exclude has arisen, that is, whether the member has actually been guilty of highly disorderly conduct in the chairperson's opinion. Unless the chairperson rules that a member has been guilty of highly disorderly conduct, the committee cannot exclude a member. The House's rules for excluding, naming and suspending members do not apply to a select committee; a member can be excluded from a meeting only in accordance with the Standing Orders applying to select committee meetings.<sup>100</sup> The period for which the member is excluded from the committee meeting may not exceed the remainder of the meeting held on that day.<sup>101</sup>

The chairperson may order, on his or her own authority, any other member of Parliament present at the committee who is not a member of the committee to withdraw from the meeting if the member's conduct is disorderly.<sup>102</sup>

The meetings of a select committee are open to the public during the hearing of evidence, but any member of the public who is guilty of disorderly conduct can be ordered by the chairperson to withdraw from the meeting.<sup>103</sup> This applies equally to witnesses and representatives of the news media. Furthermore, it is a contempt of the House for anyone to misconduct him- or herself before a committee,<sup>104</sup> so in a serious case of disorder a person may be proceeded against for a breach of privilege.

## Suspension of meeting on account of disorder

The chairperson of a select committee may suspend the meeting of a committee for grave disorder in the same way as may the Chairperson of a committee of the whole House.<sup>105</sup> In the case of a suspension, the chairperson decides when the meeting will be resumed.

## Order at meetings outside the parliamentary precincts

Meetings held outside the parliamentary precincts differ from those held within Parliament House and the other areas under the Speaker's control. The Serjeant-at-Arms has a duty of enforcing order at parliamentary proceedings within the precincts, but not beyond them. A select committee meeting held outside the parliamentary precincts is no different from any other public meeting as far as the police are concerned. Ordinarily, the police would be unlikely to act to prevent interruptions by heckling or other means unless a breach of the peace or another offence seemed likely.<sup>106</sup> However, the occupier of the premises in which

<sup>98</sup> (2000) 584 NZPD 2594 Hunt.

<sup>99</sup> SO 214(3).

<sup>100</sup> (1988) 487 NZPD 2918 Burke.

<sup>101</sup> SO 214(3).

<sup>102</sup> SO 214(2).

<sup>103</sup> SO 214(1).

<sup>104</sup> SO 410(p).

<sup>105</sup> SO 177(1)(c).

<sup>106</sup> House of Commons (UK) Committee of Privileges *Second report* [1968–1969] HC 308.

a committee is meeting may delegate to the committee the occupier's power to remove trespassers. In this case, persons interrupting a meeting may be required to leave by the police, under trespass powers, at the committee's request. If grave disorder arises at a meeting held outside the precincts, the chairperson's only option may be to suspend the meeting. A chairperson has closed a meeting of a committee in these circumstances on the ground that it was becoming unruly.<sup>107</sup>

## BROADCASTING OF PROCEEDINGS

The broadcasting of proceedings at meetings of select committees is a matter for the committee to decide upon. However, attendance of news broadcasters at hearings of evidence is now common, and committees may give a general authority rather than considering each request separately. There is a standing authority for Press Gallery members to take notes and sound recordings of select committee proceedings that are open to the public, unless directed otherwise by the committee. Television operators require the approval of the chairperson of the committee<sup>108</sup> or of the committee concerned for other filming or photography.<sup>109</sup> The Press Gallery and other media must operate according to the rules set out for them and approved by the Speaker.<sup>110</sup> Confidential proceedings cannot be recorded or broadcast. On occasion, a committee may also approve other recording and broadcasting of public sessions. For example, specific hearings of the Māori Affairs Committee and Privileges Committee of the 49th Parliament were webcast by private providers; the Finance and Expenditure Committee regularly agrees to allow the Reserve Bank of New Zealand to record oral evidence provided by the Governor of the bank; and during the 50th and 51st Parliaments a pilot webcasting of select committee hearings was undertaken.

Whether to approve broadcasting or recording is a matter for the committee to decide upon if its permission to do so is requested. There is no presumption of approval. Such requests are considered on their merits, having regard to the public interest in the subject matter and any particular need of individual witnesses for privacy.<sup>111</sup>

## MINUTES

The clerk of the committee prepares the minutes of each committee meeting. Minutes are not a verbatim report of the meeting; they are intended principally to record decisions taken by the committee. For this purpose they are definitive. The confirmed minutes of a select committee meeting are conclusive evidence of resolutions passed by the committee.<sup>112</sup>

The minutes must show the names of the members of the committee present at the committee meeting.<sup>113</sup> This means only the names of members present as members of the committee (including temporary replacement members and non-voting members), not of other members exercising their general right to attend the meeting. It does not matter how long a member remained present at the meeting; if the member attended the meeting at all as a member of the committee, the member's name must be recorded in the minutes relating to that meeting. The Standing Orders also require that the votes of members on questions put to the

<sup>107</sup> "Unruly hearing closed" *The Evening Post* (24 February 1988).

<sup>108</sup> Rt Hon Lockwood Smith, Speaker "Rules of the Parliamentary Press Gallery" (11 May 2011) at [22].

<sup>109</sup> Rt Hon Lockwood Smith, Speaker "Protocol for interviewing members, filming and photographing in Parliament Buildings" (11 May 2011).

<sup>110</sup> Rt Hon Lockwood Smith, Speaker "Rules of the Parliamentary Press Gallery" (11 May 2011) at [22], and "Protocol for interviewing members, filming and photographing in Parliament Buildings" (11 May 2011).

<sup>111</sup> (1996) 556 NZPD 13901.

<sup>112</sup> (1905) 135 NZPD 76 Guinness; (2000) 582 NZPD 1029, 1123 Roy (Chairperson).

<sup>113</sup> SO 208.

committee be recorded in the minutes if any member requires this.<sup>114</sup>

In practice, the minutes also record a number of other matters, such as the time the meeting commenced and ended, apologies from members for non-attendance, notified replacements and details of the times or items to which they relate, names and designations of other people participating in or present at the meeting as advisers or witnesses, and papers and documents that are presented to the committee or that witnesses or advisers undertake to provide.

Wherever practicable, draft minutes of the previous meeting are communicated to members with the notice of meeting for the next meeting, and are confirmed or amended by the committee at that meeting.

## CALLING FOR EVIDENCE

Select committees generally have free rein to call for submissions and hear evidence in relation to items of business before them. The extent to which a committee does so is for it to decide. It is most unusual for business to be referred to committees under terms that expressly constrain their ability to seek evidence. The whole point of most referrals of bills to committees for study is so that the proposal can be subjected to examination and criticism, and for this purpose the committees can collect information on the bills in the form of evidence. Similarly, committees seek submissions on significant inquiries they have initiated. In the case of Estimates and annual review examinations, scrutiny of treaties and most petitions, committees do not generally advertise publicly for submissions, usually being content to hear from the Ministers, departments, organisations or individuals directly concerned, supplemented by advice from staff assisting the committee. However, people have sometimes been invited to give evidence on an agency's annual review, and committees have occasionally called for public submissions on treaties or petitions.

### Calling for submissions

In seeking evidence, committees often issue a general call for the public to make submissions, especially on bills. They can also contact specific interested parties to invite them to submit. Witnesses must be given an opportunity to provide a written submission before they appear before the committee to give oral evidence.<sup>115</sup>

Whether to call for submissions is a decision of the committee; it is not required to do so. A committee cannot call for submissions in anticipation of a bill or other matter being referred to it.<sup>116</sup> Calling for submissions, like inviting submissions, may only be done in respect of a matter that is before the committee.

The chairperson of a select committee has the power to invite any person to appear before the committee to give evidence or to produce papers and records that are relevant to its proceedings.<sup>117</sup> The chairperson does not need to have been directed by the committee to exercise this power; the chairperson can do it of his or her own volition. But any action taken by the chairperson to request evidence is taken on behalf of the committee. It is not a general right to request information. Evidence can only be invited where it is relevant to a matter before the committee.<sup>118</sup> Furthermore, it is only a power to request. Penal powers to enforce a request for evidence or the production of documents lie with the House and the Speaker. (See pp 494–497.)

A chairperson usually exercises the power to invite evidence by initiating the process of calling generally for submissions.

<sup>114</sup> SO 213.

<sup>115</sup> SO 215.

<sup>116</sup> (1996) 555 NZPD 12949 Tapsell (Adoption Amendment Bill (No 2)).

<sup>117</sup> SO 195(1), (2).

<sup>118</sup> Standing Orders Committee Review of Standing Orders (11 December 2003) [2002–2005] AJHR I.18B at 31.

If a call for submissions is made by the chairperson, rather than the committee, the advertisement will reflect this. In these circumstances the wording of the advertisement must not give the impression that all members of the committee participated in the decision to place it.<sup>119</sup> Placing an advertisement on the chairperson's authority is necessary if the committee is not due to meet for a little while and to wait for a meeting to authorise the advertising would be to lose valuable time for potential witnesses to prepare their submissions. In such a case the chairperson may consult senior members of the committee before exercising this power.

Where the chairperson exercises this power, the committee when it next meets may endorse or repudiate the decision, as it sees fit.<sup>120</sup> If a bill or other matter has been referred to a committee since it last met and no call for public submissions has been made, the committee itself will decide the advertising arrangements to be followed in respect of it.

### **Extent of advertising**

Calls for submissions are advertised on the Parliament website and sometimes in the public notices section of the major daily newspapers. Newspaper advertising may also be localised where there is only likely to be a local interest. Further steps may be taken to publicise the committee's existence and its wish to receive evidence. For example, on an electoral law inquiry, advertisements were placed in 37 newspapers and broadcasts made in Māori, Samoan, Tongan, Cook Islands Māori and Niuean, specifically inviting submissions to the committee.<sup>121</sup> A committee has advertised for submissions via a regional television station and communicated the advertisement via social media.<sup>122</sup> Often a committee will write to groups it recognises as having a special interest in the subject under study, or even invite experts in the field to make submissions.

A committee has sought public feedback on its work through a dedicated website and the use of social media is increasing, with committees and committee members using Facebook and Twitter to communicate directly with the public.<sup>123</sup> Witnesses may themselves make suggestions as to the appropriate form of advertising in a particular case.<sup>124</sup>

### **Closing date for submissions**

In calling for public submissions a committee also names a date by which submissions should be made. This date may have been initially determined by the chairperson, but on this matter the chairperson is always subject to direction by the committee. The date fixed for the closing of submissions on a bill will vary depending upon the date the committee is required to report finally to the House. The standard time for committees to allow is from four to six weeks, but the time allowed may be shorter if the committee has been given less than six months to consider a bill. Conversely, committees could set a longer period if this were warranted.<sup>125</sup> A committee may begin to hear evidence before the time fixed for submissions to be made has elapsed, if submissions are received early enough. Submissions arriving out of time may be received by the committee if it so decides, but there is no guarantee that it will.

<sup>119</sup> (2000) 586 NZPD 5168 Hunt.

<sup>120</sup> Ibid.

<sup>121</sup> First report of the select committee on the electoral law (29 May 1980) [1980] AJHR I.17 at 7.

<sup>122</sup> The Local Government and Environment Committee posted an advertisement on its Facebook page calling for submissions on the Environment Canterbury (Transitional Governance Arrangements) Bill <[www.facebook.com/localgovtenvironment/](http://www.facebook.com/localgovtenvironment/)> (19 October 2015).

<sup>123</sup> "Website set up for investigation into constitution" *The Dominion Post* (29 April 2005).

<sup>124</sup> Social Security Amendment Bill (5–2) (commentary, 9 June 1997) at i ([1996–1999] AJHR I.22 at 560) (community newspapers being suggested).

<sup>125</sup> Standing Orders Committee Review of Standing Orders (27 September 2011) [2008–2011] AJHR I.18B at 42.

## ACCESS TO EVIDENCE AND PROCEEDINGS

The general presumption is that a select committee hears the evidence submitted to it in public and conducts its other business in private.<sup>126</sup> Written submissions are presented to the committee in the name of the submitter, and are published on the Parliament website once the submissions have been released.

### Public evidence

During the hearing of evidence on any matter by a select committee, the proceedings are open to the public, subject to the committee's right to hear evidence in private or in secret.<sup>127</sup> The House could direct otherwise when referring a matter to a select committee, but this would be extremely unlikely. Any member of the public may attend a select committee meeting while the committee is hearing evidence in public. The chairperson may order a member of the public who is being disorderly to leave the meeting.<sup>128</sup>

A written submission may be released to the public by the committee at any time after the committee has received it.<sup>129</sup> Committees routinely authorise the release of written submissions at the meeting after their receipt. Where a committee does not authorise release in this way, the submission automatically becomes available to the public when the committee hears oral evidence on the submission from the person who made it.<sup>130</sup> In any case, the person who made the written submission to the committee is free to release it at any time.<sup>131</sup>

### Private evidence

A committee may decide to hear (or in the case of written evidence, receive) evidence as private evidence.<sup>132</sup> This means that the evidence does not become available to the public until the committee reports to the House on the matter to which the evidence relates.<sup>133</sup> Until that point it remains confidential to the members of the committee. It cannot be referred to, even in the House.<sup>134</sup>

The suggestion that evidence be given in private may come from the committee itself, though it is more likely to come from the witness or potential witness. Before providing written evidence a witness may ask that it be received by the committee in private. Wherever practicable, potential witnesses are informed that they may request this.<sup>135</sup> Before giving evidence and at any time while they are being heard, witnesses may apply to be heard in private. All witnesses are informed of their right to make such an application before they appear before the committee.<sup>136</sup> If witnesses ask to be heard in private, they must give the reasons for making such a request.<sup>137</sup>

Where a committee becomes aware that evidence contains allegations against a person, it is always obliged to consider hearing the evidence in private to limit the evidence's potential damage.<sup>138</sup> Furthermore, a person against whom allegations are made in private evidence retained by the committee must be given a copy of it, if it is in writing, or otherwise adequately informed of it so that he or she can respond to the allegations.<sup>139</sup>

<sup>126</sup> SOs 222 and 239(1).

<sup>127</sup> SO 222(1).

<sup>128</sup> SO 214(1).

<sup>129</sup> SO 217(1).

<sup>130</sup> SO 217(2).

<sup>131</sup> SO 217(3).

<sup>132</sup> SO 218(1).

<sup>133</sup> SO 218(3).

<sup>134</sup> SO 114.

<sup>135</sup> SO 220(1).

<sup>136</sup> SO 220(2).

<sup>137</sup> SO 220(3).

<sup>138</sup> SO 234(1).

<sup>139</sup> SO 235(1).

Apart from limiting damage to a person's reputation, other reasons may persuade a committee to hear evidence in private. For example, a submitter may request that evidence be received or heard in private if it contains personal information of a sensitive nature, or if it involves commercial confidentiality. Concerns about the identification of individuals have been dealt with by receiving submissions anonymously, with evidence heard in private.<sup>140</sup> The Regulations Review Committee has heard evidence on draft regulations in private to preserve their confidentiality at the policy development stage.<sup>141</sup>

Where a matter is before a court or suppressed by a court order, it could be discussed in private, as long as the chairperson has been forewarned and has determined that it may be raised.<sup>142</sup> However, while hearing evidence in private might reduce the prospect of prejudice to a case, it does not absolve the committee of the duty to recognise the House's respectful relationship with the judiciary, and exercise restraint accordingly.<sup>143</sup>

Evidence may be received as private evidence only if the committee agrees by leave to receive it as such.<sup>144</sup> A single member's objection prevents it. The only exception is evidence received in response to serious allegations made in private evidence or in advice, in which case the response is automatically received or heard in private.<sup>145</sup> Where a committee has agreed to hear oral evidence in private, the committee may require members of the public to withdraw from the meeting.<sup>146</sup> However, the committee is not obliged to exclude all members of the public from a meeting while private evidence is being heard, and there may be a good reason why a particular person or persons should be allowed to remain present—for example, to hear first-hand an allegation that is to be made against them.<sup>147</sup>

Hearing evidence as private evidence gives that evidence a temporary confidentiality only, as no obligation of confidentiality attaches to it once the committee has reported to the House.<sup>148</sup> Until that time any unauthorised disclosure of the evidence would be a contempt.<sup>149</sup> It must be explained to a witness before he or she gives evidence that the confidentiality is only temporary and that if the evidence contains allegations that would seriously damage someone's reputation, it will be disclosed to that person.<sup>150</sup>

## **Secret evidence**

A means of according long-term confidentiality to evidence is to hear it as secret evidence. The suggestion that evidence be given in secret may come from the committee or from a witness. An application may be made before providing written evidence for it to be received as secret evidence. If practicable, witnesses are informed of their right to make such an application.<sup>151</sup> Before giving evidence, or while giving it, a witness may apply to be heard in secret. Witnesses are informed of their right to apply to be heard in secret before they appear before the committee.<sup>152</sup> A witness asking to be heard in secret must give reasons for the request.<sup>153</sup>

<sup>140</sup> Justice and Electoral Committee *Inquiry into victims' rights* (18 December 2007) [2005–2008] AJHR I.7C.

<sup>141</sup> Regulations Review Committee *Activities of the Regulations Review Committee during 1999* (8 October 1999) [1996–1999] AJHR I.16X at 35.

<sup>142</sup> SO 115.

<sup>143</sup> SO 115(3).

<sup>144</sup> SO 218(1).

<sup>145</sup> SO 238(2)(a).

<sup>146</sup> SO 218(2).

<sup>147</sup> SO 234(1).

<sup>148</sup> SO 218(3).

<sup>149</sup> SO 410(q).

<sup>150</sup> SO 220(4).

<sup>151</sup> SO 220(1).

<sup>152</sup> SO 220(2).

<sup>153</sup> SO 220(3).

As with private evidence, a committee can only declare evidence to be secret evidence by leave of the committee.<sup>154</sup>

Furthermore, a committee may give leave to receive secret evidence in either of two sets of circumstances:

- where the committee believes that it can only obtain the information it wishes to obtain if it can assure the person in possession of that information that the evidence given to the committee will remain confidential,<sup>155</sup> or
- where the committee is satisfied that secrecy is necessary to protect the reputation of any person.<sup>156</sup>

As a committee must be unanimous on according secrecy, each member of the committee must make an individual judgement as to whether either of these sets of circumstances obtain, and that, furthermore, secrecy is justified. In making this judgement, members are aware that secrecy is an exception to the strong presumption that any evidence presented to a select committee should be made publicly known so that it can be tested and criticised before it is accepted as an influence on the making of public policy. In these circumstances a committee may forgo receiving certain evidence because it does not wish to agree to secrecy being accorded to it.

Where evidence is to be heard in secret, the committee must require all members of the public to leave the meeting unless leave is given for any person to remain present.<sup>157</sup> The committee may, by leave, permit any person to remain if there is good reason for this, for example if an allegation is to be made against him or her. However, in the case of secret evidence, allowing such a person to remain present or even disclosing the allegation to that person might defeat the purpose of according secrecy to the evidence in the first place (for example, in a situation involving domestic violence). Accordingly, a committee is given some discretion as to how it deals with an allegation against a person made in secret evidence. If the evidence is retained by the committee, it must communicate it to that person only if it considers that the possible damage to his or her reputation outweighs any detriment that disclosure will cause to the witness who made the allegation (such as possible retribution).<sup>158</sup> This is the only possible exception to the principle that a person against whom an allegation is made in select committee proceedings must be informed of the allegation and given an opportunity to respond.

Where a person is responding to an allegation that may seriously damage his or her reputation, and the allegation was made in secret evidence, the response is automatically received as secret evidence.<sup>159</sup>

Long-term confidentiality attaches to secret evidence. Not only may it not be disclosed while the committee's consideration is still under way (except to give a person an opportunity to respond to an allegation), it may not be disclosed even after the committee has reported, unless the House specifically authorises this.<sup>160</sup> Before giving secret evidence a witness must be informed by the committee that the evidence could be disclosed to a person against whom an allegation is made and also that the House has power to authorise its disclosure after the committee reports.<sup>161</sup> (See pp 352–353 for custody of select committee records.)

---

<sup>154</sup> SO 219(1).

<sup>155</sup> SO 219(1)(a).

<sup>156</sup> SO 219(1)(b).

<sup>157</sup> SO 219(2).

<sup>158</sup> SO 237(2)(b).

<sup>159</sup> SO 238(2)(b).

<sup>160</sup> SO 219(3).

<sup>161</sup> SO 220(4).

## Proceedings other than evidence

The proceedings of each committee and subcommittee other than during the hearing of evidence are not open to the public and remain strictly confidential until the committee reports to the House.<sup>162</sup> A similar restriction applies to the premature disclosure of the committee's report or draft report.<sup>163</sup> Such proceedings cannot even be referred to in the House until the committee reports.<sup>164</sup> An unauthorised disclosure of such proceedings would be a contempt of the House.<sup>165</sup>

This rule is designed partly to maintain any temporary confidentiality that is warranted for the contributions of others, such as the committee's advisers, to the committee's work. But it is also designed to facilitate members of the committee working together, respecting each other's confidences and promoting frank and constructive contributions to the committee's work. Premature release of a committee's proceedings is likely to be selective, and to reflect incompletely the work undertaken by the committee. It may have a chilling effect on the frankness of the committee's advisers, could allow particular persons or organisations an unfair advantage in speculative investments or administrative decision-making, and could lead to pressure being placed on members, staff and officials to release material. These factors are held to justify the continuation of some restrictions on the public availability of certain committee proceedings before the committee reports to the House.<sup>166</sup> However, the fact that committees carry out their work in private apart from the hearing of evidence has been criticised.<sup>167</sup>

Confidentiality until the committee reports to the House includes all proceedings relevant to the committee's work on an item of business still before the committee. This covers members giving notice of business, notices of meetings circulated, papers circulated for consideration at a meeting, communications with witnesses and advisers about their appearance or attendance at a committee meeting and other formal communications with the committee. (See Chapter 23 for reports and draft reports.) Unauthorised disclosure of these proceedings may be treated as a contempt. Disclosure by the committee or a member of the committee of proceedings to another member or to the Clerk or an officer of the House in the course of their duties is authorised. Nor does members discussing select committee business among themselves (for example, in caucus) constitute a contempt. Since 2014, members and their immediate support staff have had access to all committee proceedings (except secret evidence) through the electronic committee system.<sup>168</sup>

Any disclosure of proceedings pursuant to the Standing Orders (for example, in order to fulfil natural justice obligations) is authorised.<sup>169</sup> Proceedings may also be divulged by the committee or a subcommittee to any person for the purpose of that person assisting the committee or subcommittee in its consideration of the matter.<sup>170</sup> This enables the committee to ask for comment on reports it has received that it does not wish to disseminate widely. Such comments are treated as private evidence (unless the committee declares them secret evidence).<sup>171</sup> The committee

<sup>162</sup> SO 239(1).

<sup>163</sup> SO 240.

<sup>164</sup> SO 114.

<sup>165</sup> SO 410(q).

<sup>166</sup> (1997) 562 NZPD 3232 Kidd; Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 43–44.

<sup>167</sup> See, for example: New Economics Party "Submission to the Standing Orders Committee on the review of Standing Orders" (50th Parliament); Public Law Committee, Wellington Branch of the New Zealand Law Society "Submission to the Standing Orders Committee on the review of Standing Orders" (49th Parliament) at [33]–[37].

<sup>168</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 16.

<sup>169</sup> SO 240(2)(b).

<sup>170</sup> SO 242(2).

<sup>171</sup> SO 242(2).

should always make this clear to the person concerned on sending the proceedings for comment.<sup>172</sup>

If a committee wishes to make some or all of its confidential proceedings available to the general public during its consideration of an item of business, the mechanism for this is an interim report to the House. When an interim report to the House is made, all proceedings on the item of business are released publicly, except for any proceedings the committee has resolved should remain confidential.<sup>173</sup> Any proceedings that are kept confidential in this way are released when the committee finally reports to the House.

### ***Matters no longer before the committee***

While the House maintains restrictions on the disclosure of select committee proceedings that are current, there is no value in maintaining such restrictions regarding business that is no longer before the committee or is not under its active consideration.

All business before the House or a committee is automatically carried forward between sessions of the same Parliament.<sup>174</sup> But all business before the House at the dissolution or expiration of a Parliament lapses, though it may be reinstated in the first session of the next Parliament.<sup>175</sup> To preserve the confidentiality of such lapsed business until the House and the committees in the new Parliament have considered whether they wish to reinstate or readopt business, confidential select committee proceedings remain confidential on dissolution or expiration, although they have lapsed.<sup>176</sup> This confidentiality then continues for the first nine sitting days of the new Parliament. It ceases then if the business to which it relates has not been reinstated by the House or readopted by the committee concerned by that time.<sup>177</sup>

There is also no point in maintaining confidentiality if a committee receives information or a communication about a matter on which it has already reported, or where it receives a briefing or starts an inquiry that it subsequently discontinues. In either circumstances there is little likelihood that the committee will make a report to the House that makes the proceedings available to the public. Technically, therefore, they are likely to remain confidential to the committee until the end of the Parliament.

Consequently, there is provision for proceedings that do not relate to business still before the committee to be disclosed.<sup>178</sup> The onus is on members to ensure that such matters are no longer covered by the confidentiality provisions of the Standing Orders before disclosing them.<sup>179</sup>

### ***Matters of process and procedure***

There is also provision for members to disclose some current committee information if it relates only to process and procedure (such as the fact that a report is to be presented on a particular date, or the appointment or non-appointment of advisers to the committee).<sup>180</sup> While such process matters may be disclosed, this does not extend to members revealing information about the substantive business before the committee, or anything that reflects or divulges the contents of a report

<sup>172</sup> Privileges Committee *Question of privilege relating to an article published in the Sunday Star-Times purporting to summarise the contents of a draft report of the Māori Affairs Committee on its inquiry into the Crown Forestry Rental Trust* (14 October 2003) [2002–2005] AJHR I.17D at 4, 7.

<sup>173</sup> SO 239(4).

<sup>174</sup> Constitution Act 1986, s 20(1)(a).

<sup>175</sup> Constitution Act 1986, s 20(1)(b).

<sup>176</sup> SO 241(1).

<sup>177</sup> SO 241(2).

<sup>178</sup> SO 239(3)(a).

<sup>179</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 46.

<sup>180</sup> SO 239(3)(b).

or draft report of the committee or reveals a committee's findings.<sup>181</sup> Nor may a member disclose proceedings relating to process or procedural issues still under active consideration by the committee.<sup>182</sup>

Again, the onus is on any member making a disclosure of select committee information to ensure that it may properly be disclosed.<sup>183</sup>

### ***Departmental officials***

Where departmental officials are advisers to a committee, they must take special care to ensure that information on select committee proceedings is not disclosed inappropriately. It is recognised that if committees ask for a Government point of view, this will necessarily involve inter-departmental consultation and, therefore, some sharing of select committee information with other departments that may not have adviser status with the committee. Disclosure is implicitly authorised in these circumstances. But where committees make simple information requests of a departmental adviser to the committee, it may not be apparent to the committee that this will involve the adviser seeking assistance from another department. If it will, the advisory department is expected to seek the committee's agreement to involve the other department or departments in the select committee work being undertaken. Authority to consult outside the public service departmental structure is never implied. If a departmental adviser wishes to share select committee information with a Crown entity, a State enterprise or any other person outside the public service, the adviser should always seek the committee's agreement first.<sup>184</sup>

Where advisers wish to clarify with submitters issues raised in their evidence, this interaction must be authorised by the committee. The submission process is an opportunity for members of the public to raise their concerns directly with Parliament for members' consideration, and departmental officials should not intervene in this direct relationship without good reason and specific committee approval. Where such authorisation is granted, advisers would be expected to limit their interaction to the clarification authorised by the committee, and report to the committee on any conversations with submitters.

### **Chairperson's statement**

Another authorised means of disclosing select committee proceedings before the committee reports to the House is a public statement made by the chairperson. Such a statement can be made only with the agreement of the committee. It is confined to informing the public of the nature of the committee's consideration of a matter. A subcommittee can authorise its chairperson to make a similar type of statement.<sup>185</sup>

Such statements are made by chairpersons from time to time to announce the decisions made by committees on how they propose to carry out their business. A committee, in deciding to conduct an inquiry, should always consider authorising the chairperson to announce this decision by means of a statement, even if detailed terms of reference for the inquiry have not yet been devised.<sup>186</sup> A chairperson's statement is not an appropriate means of announcing a committee's conclusions, even provisional conclusions, on the business before it. Conclusions should be communicated to the House by means of a final or interim report. Where a chairperson does make a public statement, other members may comment publicly on it and refer to the committee's proceedings insofar as they are disclosed in the statement. In the case of a statement announcing the decision of a committee to

<sup>181</sup> SO 239(3)(b)(ii), (iii).

<sup>182</sup> SO 239(3)(b)(i).

<sup>183</sup> Standing Orders Committee Review of Standing Orders (11 December 2003) [2002–2005] AJHR I.18B at 46.

<sup>184</sup> Regulations Review Committee *Complaints relating to the Fisheries (Allocation of Individual Catch entitlement) Regulations 1999* (14 June 1999) [1996–1999] AJHR I.16P; State Services Commission Officials and Select Committees—Guidelines (August 2007, revised July 2008).

<sup>185</sup> SO 242(1).

<sup>186</sup> (2002) 602 NZPD 545 Hunt.

hold an inquiry, members are then free to talk about the committee's proceedings leading up to its taking that decision.<sup>187</sup> A chairperson can be asked a question in the House regarding any statement.<sup>188</sup>

The power to make a public statement under the Standing Orders applies only in respect of an item of business that is before the committee. It does not apply once the committee has presented its report on the bill or other matter concerned to the House (or, in the case of a subcommittee, to its parent committee). After a report has been presented to the House, any person can comment on and disclose the committee's proceedings (except for secret evidence); the chairperson is in no special position compared with other members.<sup>189</sup>

## WRITTEN EVIDENCE

As late as 1928 it was still regarded as irregular for select committees to receive written submissions. Giving evidence to committees was regarded as properly an oral process transacted in person.<sup>190</sup> But this view has changed radically. Written submissions may now be received by committees as evidence in their own right, and every person who wishes to appear before a committee must be given the opportunity to make a submission in writing in advance of their appearance.<sup>191</sup>

Written submissions are received by the clerk of the committee through the Parliament website, via email, or by post. They are communicated to members via the electronic committee system and become part of the proceedings upon being formally received by the committee by being "tabled". A committee may release a written submission at any time after receiving it.<sup>192</sup> Released submissions are published on the Parliament website. However, if a witness requests that the evidence be received in private or secret the committee must consider the request before authorising the evidence's release. A submitter can make their own submission available to the public, even if the committee that received the submission has not yet released it.<sup>193</sup>

A committee has a continuing obligation to give a witness reasonable access to any material or other information that he or she has provided to the committee.<sup>194</sup>

How many written submissions are received on an item of business depends upon the amount of interest in the bill or other matter. There may be no submissions at all.<sup>195</sup> On the other hand, the select committee considering the Marriage (Definition of Marriage) Amendment Bill 2012 received 21,533 submissions (18,635 of them were in standard forms).<sup>196</sup> The submissions received by a committee are likely to come from a mixture of individuals, professional, sectoral and community groups, and public sector organisations.

## Return of written submissions

A committee is not obliged to accept a submission if it considers it inappropriate or undesirable to do so. A committee can choose not to receive any piece of evidence that is provided to it. It may return any evidence, once it has been tabled, that it considers to be irrelevant to its proceedings, offensive, possibly defamatory

<sup>187</sup> Ibid.

<sup>188</sup> (1978) 417 NZPD 660 Harrison.

<sup>189</sup> Privileges Committee *Question of privilege referred on 14 February 2001 relating to Stonhill v Mackey* (11 December 2001) [1999–2002] AJHR I.17B at 3.

<sup>190</sup> (1928) 219 NZPD 572–573 Statham.

<sup>191</sup> SO 215.

<sup>192</sup> SO 217(1).

<sup>193</sup> SO 217(3).

<sup>194</sup> SO 221.

<sup>195</sup> For example: (1992) 530 NZPD 11872 (Local Legislation Bill).

<sup>196</sup> Marriage (Definition of Marriage) Amendment Bill (39–2) (commentary, 27 February 2013) at 2 ([2011–2014] AJHR I.22B at 630).

or suppressed by a court order.<sup>197</sup> It may also return a written submission if it contains an allegation that may seriously damage the reputation of a person, if the committee is not satisfied that the evidence is relevant or if it considers that the risk of harm to the person concerned outweighs the benefit to the committee of receiving the evidence.<sup>198</sup> The committee itself cannot delete any material from a written submission, but it can indicate to the witness that it will only receive the submission if it is resubmitted with the offending material omitted.

## ORAL EVIDENCE

Many written submissions are made as a prelude to the witness giving oral evidence to the committee. Indeed, witnesses are asked to indicate in their submissions if they wish to appear before the committee in person in support of their submissions. While not everyone who makes a written submission also wishes to give oral evidence (they may regard their written evidence as sufficient), it would be unusual for a person who had not made an initial written submission to appear before the committee to give evidence in person; though this can happen where the committee identifies a person who has not made a submission but from whom it wishes to hear. Witnesses must always be given the opportunity to make a submission in writing before appearing before a committee to give oral evidence.<sup>199</sup>

While a witness's wish to appear in person before the committee will be met, if possible, committees are not obliged to hear all, or indeed any, of those wishing to appear in person. A committee's ability to do so depends upon the time constraints under which it is operating. It is for the committee to determine whether it hears oral evidence at all or hears from some or all of the submitters wishing to give oral evidence on the matter before it.<sup>200</sup> A committee has appointed a subcommittee to help it make these decisions.<sup>201</sup> While committees have to make hard decisions as to how many of the persons wishing to appear before them can be heard in the time available, it is most unusual for a committee to decide to hear no evidence at all in person.

Oral evidence is heard in committee meeting rooms in Parliament Buildings, Wellington (sometimes by videoconference or teleconference), or on marae and at other venues out of Wellington when a committee travels to other centres.

A committee may agree to record, and sometimes transcribe, the oral evidence presented to it. If a transcript is prepared, witnesses must be given a reasonable opportunity to correct transcription errors in any transcript of their evidence.<sup>202</sup> Once a corrected transcript is adopted by the committee, it becomes part of the committee's proceedings. Where it relates to evidence heard in public, it is not strictly confidential to the committee and may be made available.<sup>203</sup> Members have sought leave in the House to table such transcripts prior to a committee reporting to the House.

A committee may decide to append a transcript to its report on an item of business. Alternatively, a committee may resolve to post a transcript of public hearings to the Parliament website at any time after the transcript is adopted.

<sup>197</sup> SO 216; Reserve Bank of New Zealand Bill (commentary, 12 December 1989) at [3.1] ([1987–1990] AJHR I.4E at [3.1]).

<sup>198</sup> SO 236(a).

<sup>199</sup> SO 215.

<sup>200</sup> Shop Trading Hours (Abolition of Restrictions) Bill (272–1) (commentary, 30 June 2000) at 4–5 ([1999–2002] AJHR I.22A at 19–20); Sale and Supply of Alcohol (Extended licensing hours during Rugby World Cup) Bill (55–2) (commentary, 26 August 2015) at 1 (Justice and Electoral Committee invited written submissions only due to time constraints).

<sup>201</sup> (24 August 2004) 619 NZPD 14944; (7 September 2004) 620 NZPD 15382–15383 (Foreshore and Seabed Bill).

<sup>202</sup> SO 231.

<sup>203</sup> (5 July 2011) 673 NZPD 19730–19731 Smith.

## Videoconference and teleconference

Committees may hear oral evidence by videoconference or teleconference if they choose to do so. Multiple simultaneous videoconference links have been employed for a select committee hearing.<sup>204</sup>

These technologies are used to make the select committee process more publicly accessible, particularly for potential witnesses who cannot afford to travel to Wellington to present their submissions. But they are not intended to eliminate committee visits to other centres and regions. Where there are many submissions to be heard in a particular region, it will still usually be desirable for a committee to meet in a regional centre to hear from the witnesses in person.

Videoconferencing and teleconferencing are available only for hearings of evidence.<sup>205</sup> They cannot be used for the transaction of committee business between members. Members must be present at the same physical location to participate in a committee's proceedings. A committee meeting conducted by videoconference or teleconference has the same parliamentary privilege status as any other select committee meeting. But a witness participating from an overseas location is subject to the law of that jurisdiction (which may itself confer a qualified privilege for evidence given to a foreign, that is, the New Zealand, legislature). Videoconferencing and teleconferencing are not considered suitable for hearing private or secret evidence, though a witness giving evidence by one of these means may request it.

## Particular categories of witness

### Ministers

Ministers have a right to attend and take part in the proceedings of a committee considering a bill of which they have charge, but without being able to vote on any question.<sup>206</sup> Ministers commonly appear before committees as witnesses to give evidence and to submit to examination. Since 1994 Ministers have regularly attended the Estimates examinations of the Votes or appropriations for which they are responsible, often accompanied by the chief executive of the administering department, and other senior departmental officials.<sup>207</sup> When a Minister did not wish to appear with the chief executive on an Estimates examination, the meeting was postponed at the Minister's request to accommodate his wishes.<sup>208</sup> The Minister of Finance is expected to attend the Finance and Expenditure Committee's consideration of the Budget policy statement as a matter of course as the principal witness.<sup>209</sup> Less often, but still occasionally, Ministers give evidence to committees considering bills or other matters with which they are officially connected. The Standing Orders Committee has taken the view that a committee's consideration of bills could be much enhanced by ministerial participation to explain policy matters at a sufficiently early stage.<sup>210</sup>

### Other members

Members generally, including Ministers, may voluntarily appear as witnesses before select committees. They are not subject to the coercive powers of committees and cannot be directed to take an oath or to answer a particular question.<sup>211</sup> Apart

<sup>204</sup> Government Administration Committee *Petition of Dr George Paterson Barton Vaitoa Sa and 100,000 others* (20 May 2004) [2002–2005] AJHR I.5C at 41 (links to Apia, Auckland and Christchurch).

<sup>205</sup> Speaker's letter to committee chairpersons (1 May 2002).

<sup>206</sup> SO 210(2).

<sup>207</sup> See "Entertainment tax looks likely to stay in place" *The Evening Post* (2 August 1994) (for the first appearance of the Minister of Finance following a Budget).

<sup>208</sup> Reply to question 7202 (2001) (48 NZPD Supp 1589–1590).

<sup>209</sup> SO 332(3).

<sup>210</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 36.

<sup>211</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 36.

from this limitation, when members give evidence to committees they are treated in a similar way to other witnesses. Members may give evidence to a committee of which they themselves are a member. In this case they change their status before the committee temporarily while they are witnesses, because a member cannot simultaneously be a participating member of a committee and a witness to it. In these circumstances, the member will not count towards the quorum of the committee. The chairperson of a committee can leave the chair to the deputy chairperson for the purpose of giving evidence to the committee.

Members often make submissions to the Standing Orders Committee and give evidence to the Privileges Committee. They occasionally give evidence to other committees too. Like Ministers, other members who have charge of bills are entitled to participate in the consideration of those bills, and there can be real benefit in their doing so. To begin with they can attend as witnesses to account for their bills in a public setting, and they can continue to participate thereafter.

### ***Public servants***

The Government department whose Minister is in charge of a bill will provide officials to assist the committee. As a general practice, the department whose Minister is responsible for the bill represents the Government's views to the select committee. A committee, of course, will accept a submission from any department. But the Government requires that departments wishing to make submissions on a Government bill do so only with the express approval of their Ministers and of the appropriate Cabinet committee.<sup>212</sup> Select committees have occasionally sought the Government's approval for departments to make individual submissions on measures before them.<sup>213</sup>

Officials always appear before select committees as witnesses on Estimates and annual review examinations and the relevant Government department will usually be invited to make a submission on a petition within its area of responsibility.

The State Services Commission has issued guidelines for public servants appearing before committees as witnesses in their official capacity.<sup>214</sup> The guidelines emphasise that as witnesses public servants are acting on behalf of their Minister and to help the Minister to fulfil his or her accountability obligations to Parliament. Officials are enjoined to keep Ministers informed about their appearances before select committees and not to attempt to justify policy or suggest alternative policy proposals without explicit ministerial approval. Discussion of Government policy with a select committee is looked upon as the preserve of Ministers.<sup>215</sup> As Ministers are responsible to the House for bills they are promoting and for the general administration of their departments, it is regarded as ultimately a matter for them to determine which of their officials represent the department before a select committee.<sup>216</sup>

### ***Wider State sector***

Agencies from the wider State sector may also appear regularly before committees. Crown entities, State-owned enterprises, and certain public organisations are subject to annual review, and their staff will commonly appear as witnesses before committees undertaking reviews.

Organisations in the wider State sector with particular specialist expertise may also appear as witnesses on items of business that fall within their field of interest,

<sup>212</sup> Cabinet Office *Cabinet Manual 2008* at [7.103].

<sup>213</sup> Public Finance Bill (commentary, 23 May 1989) at [3.1] ([1987–1990] AJHR I.4C at [3.1]) (13 departmental submissions).

<sup>214</sup> State Services Commission *Officials and Select Committees – Guidelines* (August 2007, revised July 2008) at 19–37.

<sup>215</sup> Ibid; (2001) 593 NZPD 10212–10214.

<sup>216</sup> Lord Wilson of Dinton “The Robustness of Conventions in a Time of Modernisation and Change” [2004] *Public Law* 407 at 419.

or may be invited by committees to do so. For example, the Law Commission has previously been invited to submit on legislation before the Justice and Electoral Committee, and the Governor of the Reserve Bank of New Zealand commonly provides evidence to the Finance and Expenditure Committee when it examines the bank's quarterly monetary policy statements.

### *Officers of Parliament and officers of the House*

The Officers of Parliament (the Controller and Auditor-General, the Ombudsmen and the Parliamentary Commissioner for the Environment) and the Clerk of the House may give evidence to a select committee. They do so from time to time. No special authority from the House is required. The Controller and Auditor-General often appears as a witness before committees that are examining his or her reports. If an Officer of Parliament who has been assisting a committee as an adviser is asked to give evidence to it as a witness, the officer's change of status from adviser to witness should be clearly identified. Where the Officers of Parliament appear before committees to speak about their reports, they appear as witnesses unless the committee has specifically agreed otherwise.<sup>217</sup>

### *Judges*

Whether judges ought, on constitutional or other grounds, to give evidence to a parliamentary committee on business before the legislature has been questioned.<sup>218</sup> Judges have occasionally given evidence to select committees, at the invitation of a committee or on their own initiative. A committee has devoted an entire report to a briefing it received (partly in public and partly in private) from the Principal Family Court Judge on the work of the court.<sup>219</sup>

A committee is quite likely to agree to hear a submission from the judiciary in private or even in secret, and it has been argued that there is a convention that evidence received from members of the judiciary will be treated as private evidence.<sup>220</sup> But there is no requirement that this be done and, in fact, judges have been heard at public hearings of committees. It is in every case a matter for the committee to determine. In reality a committee is unlikely to refuse a submission on the basis that it had come from a judge. It is for the judiciary to determine how to conduct their judicial role and for committees to be mindful of the relationship of mutual respect that exists with, and the independence of, the judiciary.

Where a judge does appear before a committee, it is not out of order to refer to this fact later in debate in the House, nor is there any convention to prevent such a reference being made, unless the evidence has been heard in secret.<sup>221</sup>

### **Preliminary matters**

Before appearing before a committee to give evidence, witnesses must be informed that they can ask to give evidence in private or in secret.<sup>222</sup> The clerk of the committee informs the witness of this in the correspondence confirming the arrangements for the witness to appear. Before appearing, the witness may raise any matters of concern about the evidence to be given with the clerk, who will bring them to the attention of the committee.<sup>223</sup> This can include any intention to refer to matters

<sup>217</sup> Officers of Parliament Committee *Code of practice for the provision of assistance by the Auditor-General to the House, select committees, and members of Parliament* (17 June 2016) [2014–2017] AJHR I.15C.

<sup>218</sup> See AJ Hannan *The Life of Chief Justice Way* (Angus and Robertson, Sydney, 1960) at 212 (South Australian Attorney-General thought not; the judges themselves thought otherwise).

<sup>219</sup> Social Services Committee Report on a briefing from His Honour Principal Family Court Judge Mahony (2 August 2001) [1999–2002] AJHR I.22B at 1328–1333.

<sup>220</sup> Supreme Court Bill (16–2) (commentary, 16 August 2003) at 6 ([2002–2005] AJHR I.22B at 672) (Justice and Electoral Committee).

<sup>221</sup> (1984) 457 NZPD 477 Arthur.

<sup>222</sup> SO 220(2).

<sup>223</sup> SO 223.

suppressed by a court order. Failing prior notification, a witness should inform the chairperson before referring to such matters at the committee meeting. Failing to do so may be a contempt of the House.<sup>224</sup>

Finally, a person who is to appear before a committee must be informed or given a copy of any evidence (other than secret evidence) or material in the committee's possession that contains an allegation that may seriously damage the reputation of that person.<sup>225</sup> In this way, if possible, the witness is given prior notice of any allegation, so that in giving evidence he or she can reply to it.

## Representation

Any witness is entitled to be accompanied by counsel.<sup>226</sup> The choice of counsel is a matter for the witness. But to appear as counsel a person must have been properly admitted to practice at the New Zealand bar, though need not necessarily be the holder of a current practising certificate.<sup>227</sup> A member of Parliament who is legally qualified may act as counsel before a select committee provided that the member is not remunerated for the work.<sup>228</sup>

The witness may consult counsel during the meeting.<sup>229</sup> In addition, counsel has a number of procedural rights. Counsel may make written submissions to the committee on the procedure to be followed by it, and, with the committee's agreement, may address the committee in person on this before the witness gives evidence.<sup>230</sup> During the examination of the witness, counsel may intervene to object to a question on the ground of relevancy or on any other ground.<sup>231</sup> Counsel has the right to ask the committee to hear from further witnesses when the witness's reputation may be seriously damaged by proceedings of the committee.<sup>232</sup> In addition to these procedural rights as counsel, it is open to a committee to concede to counsel other procedural rights if it sees fit, such as, for example, the right to examine or re-examine the witness. While a witness has a right to be accompanied by counsel, a witness may seek the committee's agreement to be represented by any person. Although a committee is only obliged to permit representation by counsel it may permit representation by any other person. The procedural rights of such a representative are then to be defined by the committee. It is not uncommon for witnesses to be accompanied to hearings by support people.

The appearance of counsel before the Privileges Committee is common. It is much less common before other committees and may attract comment from them. Only in exceptional cases should witnesses consider that they need to be accompanied by counsel.<sup>233</sup> In particular, chief executives of public bodies are expected to be able to represent themselves before select committees to answer questions about the organisation's performance without counsel, whatever their rights may be in this regard.<sup>234</sup> In-house legal staff from departments and corporations are regarded as appearing as part of the department's or corporation's team of witnesses rather than as counsel, unless they specifically request this status.

<sup>224</sup> SO 410(y).

<sup>225</sup> SO 234(2).

<sup>226</sup> SO 228(1).

<sup>227</sup> Privileges Committee, report on a question of privilege referred on 11 March 1986 (30 October 1986) [1986–1987] AJHR I.15, Annex B.

<sup>228</sup> Ibid.

<sup>229</sup> SO 228(1).

<sup>230</sup> SO 228(2)(a), (b).

<sup>231</sup> SO 228(2)(c), (d).

<sup>232</sup> SO 228(2)(e).

<sup>233</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 81.

<sup>234</sup> Justice and Law Reform Committee *Inquiry into the Race Relations Commissioner* (8 May 1995) [1993–1996] I.7A at 26.

## Order of hearing witnesses

The order of hearing witnesses is determined by the chairperson, subject to any direction of the committee.<sup>235</sup> The scheduling of the witnesses' appearances before a select committee is arranged by the clerk of the committee under the chairperson's direction. Even after a schedule of witnesses has been prepared and advised to the committee, the chairperson can alter it, though such a decision by the chairperson can be overturned by the committee.

## Conduct of examination

A witness is invited to the select committee table and seated at the opposite end from the chairperson, with members of the committee to either side. The chairperson announces the name of the witness to the committee and introduces the witness to committee members. At this point, if it is desired that the witness give sworn evidence, an oath or affirmation is administered by the clerk of the committee;<sup>236</sup> however, this is rare.

The witness's written submission will have already been distributed to the committee members. If it has not already been released by the committee, it becomes available at this point to the public.<sup>237</sup> It is the invariable practice to take the written submission as read rather than have the witness actually read it to the committee. The chairperson invites the witness to make an opening statement by way of summary or emphasis before questioning begins.

Witnesses are questioned in whatever way the chairperson, with the approval of the committee, directs.<sup>238</sup> Members may put questions to the witness through the chairperson,<sup>239</sup> though this is not taken to prevent a member addressing the witness directly if the chairperson permits it, as they normally do. The chairperson may begin the questioning or invite another member to do so. Other members will then be called upon in turn to put any questions they have. Subject to control by the chairperson, a member may re-examine the witness more than once, and put supplementary questions during examination by another member.

## Relevancy

All questions put to a witness must be relevant to the matter under consideration by the committee, though they do not necessarily have to arise directly out of the written evidence or the opening remarks of the witness. As with all questions of relevancy, the chairperson is the sole judge. The chairperson is required by the Standing Orders to ensure that questions are relevant and that they seek only information that is necessary for the purposes of the committee's proceedings.<sup>240</sup> The chairperson will intervene if he or she perceives that the questioning is becoming irrelevant to the subject before the committee. In addition, the witness or counsel to the witness may object to a question on the ground that it is not relevant.<sup>241</sup> The chairperson, after hearing argument on the matter to the extent that the chairperson sees fit, decides if the question is relevant. If it is determined that it is, the question may be put to the witness again. If it is ruled not to be relevant, it is out of order.

## Other objections to answer

Apart from relevancy, it is not in order for a member to address certain questions to a witness in any circumstances. They include questions that allege crime by

<sup>235</sup> SO 224(1).

<sup>236</sup> SO 230(2).

<sup>237</sup> SO 217(2).

<sup>238</sup> SO 224(1).

<sup>239</sup> SO 224(2).

<sup>240</sup> SO 225(1).

<sup>241</sup> SOs 225(2) and 228(2)(c).

identified persons<sup>242</sup> or make charges against the private conduct of members.<sup>243</sup> If a question of either kind is asked, the chairperson may rule it out of order on his or her own initiative or following objection by other members, the witness or counsel. Questions that raise matters before a New Zealand court or suppressed by a court order are also not permissible, subject to the discretion of the chairperson.<sup>244</sup> Members intending to raise such matters in questions must notify the chairperson in advance.<sup>245</sup>

A witness and counsel may also object to the witness having to answer a question on any other ground.<sup>246</sup> The witness must state the ground on which objection is taken.

In the case of objection by a witness to answer on a ground other than relevancy, the committee, not the chairperson, decides whether the question should be asked. It may decide summarily that the question should not be pressed; otherwise it must consider, in private, whether to insist on an answer. In taking this decision it must have regard to the importance to its proceedings of obtaining an answer to the question asked.<sup>247</sup> It may decide that the question is not important enough to insist on an answer from a witness, who is, after all, appearing voluntarily before the committee. It may also be that a witness is reluctant to answer because of the public nature of the examination, and that their concern could be assuaged by having the answer given in private or secret. The committee will consider this option too.<sup>248</sup> (Though, of course, the objection to answering may be made at a hearing that is already being conducted in private or in secret.) Committees have been urged not to insist on witnesses giving sensitive personal or commercial information in a public forum unless this is really necessary.<sup>249</sup>

### **Grounds for objection**

There is no list (comprehensive or indicative) in the Standing Orders of the categories of circumstances in which witnesses may object to answering questions that are otherwise relevant. One likely ground on which a witness might object—self-incrimination—was acknowledged as a legitimate ground for objection in the report recommending the Standing Order on objections to answer.<sup>250</sup> While it is not listed as a specific ground for objection in the Standing Orders, it is a statutory ground for objection when evidence is being taken under oath.

A witness who is examined on oath before a select committee has a right to ask to be excused from answering any question that may be incriminating to the witness. If such a claim is made, and the committee considers that an answer to the question is essential to its inquiry, it may report the matter to the House, which may then order the witness to answer the question.<sup>251</sup> A witness who answers fully and faithfully after being directed to do so by the House has the same privileges and immunities in respect of that evidence as has a witness giving evidence on oath or affirmation in a court (except for perjury).<sup>252</sup> But examination under oath is rare.

The State Services Commission, in its guidance to departmental officials appearing before committees as witnesses, suggests that they should apply the criteria in the Official Information Act 1982 in considering their responses to

<sup>242</sup> SO 199(1).

<sup>243</sup> SO 200(1).

<sup>244</sup> SO 115(1).

<sup>245</sup> SO 115(2).

<sup>246</sup> SOs 226 and 228(2)(d).

<sup>247</sup> SO 227(1).

<sup>248</sup> SO 227(3).

<sup>249</sup> Privileges Committee, report on matter of privilege referred on 10 April 1991 (31 March 1992) [1991–1993] AJHR I.15 at [6].

<sup>250</sup> Philip A Joseph “Report to the Standing Orders Committee on Natural Justice” in Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A, App F at [8.12].

<sup>251</sup> SO 227(4).

<sup>252</sup> Parliamentary Privilege Act 2014, ss 9 and 25.

information requests. For example, if information would have been made available under that Act, it should, as a matter of course, be provided to a committee if requested. The Official Information Act does not constrain the powers of the House, and departments should never refuse to provide information on the ground that it does.<sup>253</sup> However, that Act does specify categories of sensitive information that, the State Services Commission suggests, officials may object to producing. It suggests information could be justifiably withheld if this means:

- protecting the security of New Zealand, or the international relations of the Government of New Zealand (including information given in confidence to the Government by Governments of other countries)
- protecting the maintenance of the law
- avoiding endangering the safety of any person
- preventing serious damage to the economy of New Zealand
- protecting the privacy of individuals
- protecting commercially sensitive information
- protecting information that is subject to legal privilege
- maintaining constitutional conventions relating to the confidentiality of advice, ministerial responsibility and the political neutrality of officials.<sup>254</sup>

The State Services Commission also asks its officials to bear in mind a number of conventions that have developed, before responding to a committee's request for information.<sup>255</sup>

- Ministerial approval should be sought before providing information on the policies, administration and expenditure of a previous administration.
- Cabinet papers should be treated as confidential to the Government. Ministerial approval should be sought before such papers are released to a committee, unless officials are aware they are already in the public domain, and the proceedings of Cabinet or its committees should not ordinarily be divulged.
- Committees have accepted that it may be inappropriate to require the public disclosure of commercially sensitive information.
- Committees have not normally insisted on the presentation in public of information where this would infringe the privacy of individuals or of individual bodies, particularly where that information has been given in confidence.
- Officials are entitled to refuse to disclose opinion or advice given to Ministers without the agreement of the Minister.

Departments are also reminded that there are specific restrictions on the disclosure of information in particular statutes. Whether they prevent the release of information to select committees is a legal question.<sup>256</sup> Statutory secrecy provisions do not prevent a committee from making requests or questioning witnesses; it is for the agency concerned to consider how legislation might constrain its response. In any of these circumstances officials can be expected to object to answering a question or to producing information, at least in a public setting or without an opportunity to refer first to the Minister. It is always for the committee to decide whether to accede to any such objection. Committees should take care not to undermine statutory secrecy provisions. If a committee were doubtful about an agency's objections on statutory grounds to answering, the committee could

<sup>253</sup> Standing Orders Committee Review of Standing Orders (13 December 1995) [1993–1996] AJHR I.18A at 31.

<sup>254</sup> State Services Commission Officials and Select Committees—Guidelines (August 2007, revised July 2008) at [28].

<sup>255</sup> Ibid, at [29].

<sup>256</sup> Ibid, at [30].

inform the House of this doubt through a special report. However, the best approach might be to negotiate a workable solution with the agency concerned.

In Canada, the role of the public service as implementers and administrators of policy, rather than determiners of what policy should be, has been seen as justifying some limitations on its obligations to respond to committees. For example, public servants have been excused from commenting on policy decisions made by the Government. It has also been said in the Canadian parliamentary context that “committees will ordinarily accept the reasons that a public servant gives for declining to answer a specific question or series of questions which involve the giving of a legal opinion, or which may be perceived as a conflict with the witness’ responsibility to the Minister, or which is outside of their own area of responsibility or which might affect business transactions.”<sup>257</sup> The Australian Senate’s Procedure Committee has acknowledged that the country’s freedom of information legislation provides persuasive, though not binding, grounds for not producing information sought by a committee.<sup>258</sup>

### ***Objection overruled***

If the committee decides that it requires an answer despite objection (perhaps in private or in secret), it informs the witness accordingly.<sup>259</sup> The question is then put to the witness again. A witness who declines to answer a question in these circumstances may be held in contempt of the House.<sup>260</sup> The committee may report the failure to answer to the House for it to take such action as it deems appropriate.<sup>261</sup>

### **Conclusion of examination**

When the examination concludes, the witness may be asked whether he or she wants to add anything to the evidence that he or she has given, and will then leave the committee table. Often witnesses (especially departmental witnesses) agree to supplement their oral answers with written responses to questions asked of them during the examination that require some research to answer adequately. Such questions for later written response are minuted and responded to subsequently in writing. Sometimes, too, the committee will supplement its oral examination of a particular witness with written questions. This is common in Estimates and annual review examinations. Such supplementary evidence is forwarded to the clerk of the committee for distribution to committee members.

### **Interpretation and translation**

As in the House, English or Te Reo Māori may be used in select committee proceedings.

In the Māori Affairs Committee’s meeting room (Māui Tikitiki-a-Taranga) facilities for simultaneous interpretation have been permanently installed.<sup>262</sup> Mobile interpretation facilities are also available for meetings held elsewhere. Interpreters employed by the Office of the Clerk provide the service at the request of the committee. Documents received by committees in one of the official languages may be translated into the other at the direction of the chairperson of the committee.

Sign language interpretation will be arranged by the Office of the Clerk when hearing-impaired witnesses are giving evidence to committees, and the New Zealand Relay system has been used where hearing-impaired witnesses wished to

<sup>257</sup> Audrey O’Brien and Marc Bosc *House of Commons Procedures and Practice* (2nd ed, House of Commons, Ottawa, 2009).

<sup>258</sup> Senate (Aust) Procedure Committee *Third report of 1992* [1992] 510.

<sup>259</sup> SO 227(2).

<sup>260</sup> SO 410(v).

<sup>261</sup> SO 227(4).

<sup>262</sup> “MPs get direct language versions” *The Evening Post* (24 February 2000).

give evidence by teleconference. Submissions received in braille are also translated where received.

Interpretation and translation for non-official languages is not generally available. It is expected that a document submitted to a committee in another language will be accompanied by a translation into English or Te Reo Māori. But special arrangements may be made for an item of business of peculiar concern to a particular language group.<sup>263</sup>

## RESPONDING TO ALLEGATIONS

In 1996 procedures were adopted for bringing any allegations that might seriously damage a person's reputation to the person's attention, along with his or her right to respond to such allegations. Committees, and particularly committee chairpersons, should be alert to the possibility of preventing irrelevant and unnecessary personal allegations being made in the first place. Select committee hearings are not occasions for personal vendettas. However, if an allegation is made, committees have power to expunge irrelevant allegations from any committee transcript, and to return written evidence that contains them and ask that it be resubmitted.<sup>264</sup> If a committee chooses not to expunge or return such material, it may consider seeking an order of the House to suppress the evidence permanently.<sup>265</sup> The committee may also consider hearing the evidence in private.<sup>266</sup> But these actions may not be enough to remove the stain of an allegation that has entered the public domain. In the case of an allegation made at a public hearing, merely expunging the evidence from the transcript without informing the person concerned and giving him or her an opportunity to respond is not likely to deal adequately with the matter.

### Serious damage to reputation

The right to be informed and the right to reply arise where an allegation is made against a person that may "seriously damage the reputation" of that person. (A person includes an organisation, such as a corporation.<sup>267</sup>) Whether an allegation may cause serious damage to reputation is a matter for the committee to assess in deciding whether it must activate the information or reply provisions of the Standing Orders. The threshold for serious damage to reputation may vary, and factors a committee may take into account in this decision include whether the subject of the allegation is a private individual, a public figure, or an organisation. It may also take into account the status of the person's reputation before the allegation was made. Mere criticism, especially of a public body, will not usually be seen as amounting to serious damage to a reputation. In the political environment of parliamentary proceedings a higher threshold for criticism applies than might operate generally. This does not mean that a committee will never, or ought never, permit rebuttal of criticism not amounting to a serious damage to reputation. Committees invite or accept rebuttal in these circumstances, not least so that they are better informed about the issues before them.<sup>268</sup> But committees are not obliged to do so unless they consider that an allegation that may seriously damage a reputation has been made.

---

<sup>263</sup> Government Administration Committee *Petition of Dr George Paterson Barton Vaitoa Sa and 100,000 others* (20 May 2004) [2002–2005] AJHR I.5C. The Education and Science Committee of the 50th Parliament received and translated submissions in Pacific languages during its *Inquiry into Pacific languages in early childhood education* (28 November 2013) [2011–2014] AJHR I.2B.

<sup>264</sup> SOs 216 and 236.

<sup>265</sup> SO 236(c).

<sup>266</sup> SO 234(1).

<sup>267</sup> SO 3(1); (1997) 558 NZPD 706 Kidd.

<sup>268</sup> Commerce Committee *Report on statements made concerning Vodafone New Zealand Limited in relation to the Telecommunications Bill* (9 November 2001) [1999–2002] AJHR I.22B at 144–150.

## Information on allegations

Where a committee determines allegations that may seriously damage the reputation of a person have been made in evidence, and it chooses not to return or expunge the evidence, the committee should consider hearing the evidence in private.<sup>269</sup> It must also inform the subject of the allegations about them, and offer them an opportunity to respond.<sup>270</sup> It may invite the subject of the allegations to attend the hearing where it expects the relevant evidence to be given.<sup>271</sup>

A person who is about to appear before a committee must be informed of, or given a copy of, any evidence or material in the committee's possession (other than secret evidence) that contains an allegation that may seriously damage that person's reputation.<sup>272</sup> It is then expected that that person will respond to the allegation in giving evidence. At the very least the person will thereby have an opportunity to do so. Anyone whose reputation may be seriously damaged by a committee's proceedings can request from the clerk of the committee a copy of all material, evidence (other than secret evidence), records or other information the committee possesses concerning him- or herself.<sup>273</sup> Such a request is considered by the committee and, if it considers it is necessary to prevent serious damage to that person's reputation, the material is provided to the person concerned.<sup>274</sup> It may, however, be provided in a different form from that requested so as to avoid undue difficulty, expense or delay.<sup>275</sup>

In the case of a serious allegation made or received in secret, the committee is also obliged to consider whether to return the evidence or seek to suppress it. If no such action is to be taken, it must then inform the person against whom the allegation was made of it, if it considers that the damage to that person's reputation outweighs any detriment to the witness who gave the evidence.<sup>276</sup> In the case of a witness who reasonably fears violence or other retribution from the person against whom the accusation was made, the committee may conclude that any damage to that person's reputation (limited in any case because the proceedings are secret) is outweighed by the personal danger that disclosure would involve for the witness. This balancing of damage, however, applies only in respect of evidence given by a witness. If a serious allegation is made in secret by a member or by an adviser,<sup>277</sup> the person must be informed if the allegation cannot otherwise be satisfactorily suppressed.

## Response

Where a serious allegation has been made against a person, that person must be given a reasonable opportunity to respond to the allegation by written submission and personal appearance before the committee.<sup>278</sup> The person (or counsel) may also ask the committee to hear evidence from further witnesses in that person's interest.<sup>279</sup> While the committee is obliged to consider such a request, it is not obliged to accede to it.

A person given an opportunity to respond to allegations made against him or her may decline to do so,<sup>280</sup> or may be content to make a written response rather than also appearing before the committee to answer the allegation. A person appearing before the committee to answer an allegation made against him or her is a witness

<sup>269</sup> SO 234(1).

<sup>270</sup> SO 238.

<sup>271</sup> SO 234(1).

<sup>272</sup> SO 234(2).

<sup>273</sup> SO 235(1).

<sup>274</sup> SO 235(2).

<sup>275</sup> SO 235(3).

<sup>276</sup> SO 237(2).

<sup>277</sup> SO 237(3).

<sup>278</sup> SO 238(1)(a).

<sup>279</sup> SOs 228(2)(e) and 238(1)(b).

<sup>280</sup> Justice and Law Reform Committee, report on 1996/97 Estimates (Vote Serious Fraud) (18 July 1996) [1993–1996] AJHR I.19D at 225.

before the committee. If the allegation was originally made in private or in secret, a response to it will be treated as private or secret evidence accordingly.<sup>281</sup> Even where the allegation was made in public, the person making a response can request to be heard in private or secret if they wish.<sup>282</sup> The person can be questioned on the response after making it to the committee.

How the committee deals with allegations and responses in its report to the House is a matter for it. It may decide not to mention them at all. On the other hand, it may simply record them without adding any comment of its own.<sup>283</sup>

While the committee is obliged to give a person an opportunity to make a response, it and its members are not obliged to believe or accept the response that is made (or to believe or accept the initial allegation for that matter). If the matter is considered material enough to the committee's work, the committee may make findings based on it. However, if the committee intends to make adverse findings in its report about a person, the person must be given an opportunity to comment on these findings at the draft report stage. The committee must take any response provided into account before making its report to the House.<sup>284</sup> A committee has made a report putting on record a response to submissions made to it on a bill on which it had already reported. While it did not believe that the Standing Orders required it to seek a response in that instance, it nevertheless wished to ensure that all sides had an opportunity to put their views on record.<sup>285</sup>

## EXPENSES

Witnesses are not reimbursed for expenses incurred in appearing before a committee, except with the Speaker's permission.<sup>286</sup> Committees, chairpersons or other persons may not give any promise or undertaking that a witness's expenses will be reimbursed without first obtaining the authority of the Speaker.<sup>287</sup> This will generally be given only where witnesses have had to travel to Wellington twice because of the committee's actions; for example, as a result of a last-minute cancellation of a meeting because the House was sitting under urgency. Where a committee invites a witness to give evidence for some special reason, the financial hardship of the witness may also be a good ground for reimbursement of expenses.

## RECORDINGS AND TRANSCRIPTS OF PROCEEDINGS

Committees have the power to decide to record evidence given at their meetings and, if they think fit, to have the evidence transcribed.<sup>288</sup> Recording and transcription, if they are desired, are arranged by the Office of the Clerk, Hansard reporting service. A committee must take positive action to agree to record evidence or have a transcript; it is not done as a matter of course. If they are prepared, committee recordings and transcripts become an official record of the proceedings, and part of the public select committee record. Other note-taking facilities, such as those employed to assist hearing-impaired members, do not constitute an official record of proceedings. They are provided solely for the assistance of the individual concerned, and are not made available publicly, or to the committee, unless by the person for whom they are prepared. As they are not an official record of proceedings, such notes cannot be adopted as a transcript by the committee.

---

<sup>281</sup> SO 238(2).

<sup>282</sup> (1996) 556 NZPD 13901.

<sup>283</sup> Finance and Expenditure Committee, report on 2003/04 Estimates (14 July 2003) [2002–2005] AJHR I.19B at 310, 335–352.

<sup>284</sup> SO 246.

<sup>285</sup> Commerce Committee Report on statements made concerning Vodafone New Zealand Limited in relation to the Telecommunications Bill (9 November 2001) [1999–2002] AJHR I.22B at 144–150.

<sup>286</sup> SO 229(1).

<sup>287</sup> SO 229(2).

<sup>288</sup> SO 231(1).

Where evidence is transcribed, a proof copy is provided to the witness, who is given a reasonable opportunity to suggest corrections.<sup>289</sup> Corrections can be made to errors of transcription only; this is not an opportunity to amend the substantive content of the evidence. They are accepted on the same basis as corrections for the preparation of an official report of debates in the House. Once the committee has agreed to corrections, it may adopt the transcript as a true and correct record of its proceedings.

The committee may expunge evidence from the transcript that it considers to be irrelevant to its proceedings, offensive or possibly defamatory, or that is suppressed by a court order.<sup>290</sup> A committee must also consider expunging any evidence that contains a serious allegation against a person that the committee is satisfied creates a risk of harm to the person not justified by the benefit to the committee from the evidence.<sup>291</sup> The fact that a committee has expunged evidence from a transcript does not mean that the evidence was not given on a privileged occasion. A committee cannot remove the protection that exists as a matter of law for proceedings in Parliament.

Evidence that has been transcribed may be reported as an appendix to the committee's report or as a separate volume of evidence.<sup>292</sup> It has become the regular practice for the Finance and Expenditure Committee to include in its reports the transcripts of some of its more important examinations, such as its examinations of the Budget policy statement and the Reserve Bank of New Zealand's monetary policy statement. Other committees also do this from time to time. The House has also itself specifically authorised the publication of evidence tendered to a select committee.<sup>293</sup>

---

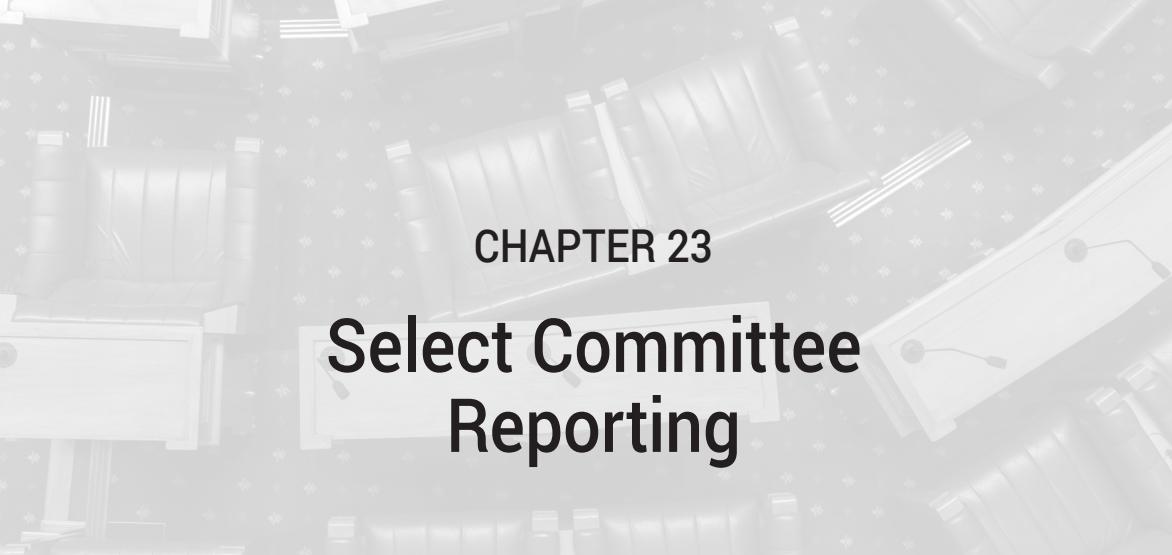
<sup>289</sup> SO 231(2).

<sup>290</sup> SO 216.

<sup>291</sup> SO 236(b).

<sup>292</sup> See, for example: Justice and Electoral Committee, special report on transcripts of evidence given on inquiry into matters relating to the visit of the President of China to New Zealand in 1999 (22 May 2001) [1999–2002] AJHR I.7B.

<sup>293</sup> (1992) 532 NZPD 13286 (inquiry into contractual arrangements for flight inspection of aviation navigation aids).



# CHAPTER 23

## Select Committee Reporting

### TYPES OF REPORT

Select committees, as creatures of the House, make their reports to the House and through the House to the world at large.

#### Interim reports

All committees have the power to make interim reports to the House to inform it of some of the committee's conclusions or of the progress of its investigations on the matter before it.<sup>1</sup>

The power has been used to give the public an indication of the substantial amendments to a bill before it that the committee had provisionally resolved upon. An interim report has also been presented as an opportunity for one last round of consultations with interested groups to canvass the acceptability of the committee's proposals.<sup>2</sup> A committee has used an interim report as a means of calling for submissions on an inquiry it had initiated and detailing how it proposed to progress the inquiry.<sup>3</sup>

When a committee makes an interim report, in principle, all prior proceedings of the committee relevant to the report that are not already publicly available become available on the presentation of the report,<sup>4</sup> though in practice the committee may resolve to withhold some or all of them.<sup>5</sup>

#### Special reports

All committees may make special reports to the House. Special reports do not deal with the substantive issues before the committee, but serve to request authority from the House to do something, seek guidance on a procedural issue, or merely inform the House of a matter relating to the committee's proceedings.<sup>6</sup>

---

<sup>1</sup> SO 243.

<sup>2</sup> Manukau City Council (Regulation of Prostitution in Specified Places) Bill (197–1) (interim report, 10 February 2012); Maori Fisheries Bill (interim report, 19 September 1989) ([1987–1990] AJHR I.24A).

<sup>3</sup> Local Government and Environment Committee, interim report on inquiry into the role of local government in meeting New Zealand's climate change obligations (21 December 2000) [1999–2002] AJHR I.9A.

<sup>4</sup> Standing Orders Committee Review of Standing Orders (11 December 2003) [2002–2005] AJHR I.18B at 47.

<sup>5</sup> SO 239(4).

<sup>6</sup> SO 244.

A committee has used a special report to inform the House that it was unable to elect a deputy chairperson;<sup>7</sup> to acknowledge that the procedure for adopting a previous report had been flawed as not all members had seen a proposed amendment;<sup>8</sup> to announce that it had initiated a major inquiry;<sup>9</sup> to provide a Te Reo Māori translation of a committee's report on a bill;<sup>10</sup> to correct a factual error in a previous report it had presented;<sup>11</sup> and to seek authority to conduct an inquiry outside its subject area.<sup>12</sup>

Since, unlike interim reports, special reports are not used to convey a committee's conclusions on the substance of the matter before it, there is no presumption that all prior proceedings of the committee become publicly available with the report, though the proceedings of the committee directly relevant to the adoption of the special report do become available. Again, however, a committee can resolve to withhold details of its proceedings that would otherwise become available.<sup>13</sup>

## Final reports

The committee presents its conclusions to the House in a final report on the bill or other matter that is the subject of the report. This does not mean that the committee will always be able to reach firm conclusions on the substantive issues before it. Indeed, the final report may record the committee's inability to do so.<sup>14</sup> A committee may use its power to report for the purpose of conveying information to the House (such as the evidence it has heard) rather than to present conclusions. When a committee presents a final report on a bill or matter, the bill or matter is no longer in the committee's hands and it cannot deal further with it.<sup>15</sup> If the matter fell within the committee's general subject area terms of reference, however, it could initiate a new inquiry.

Not every matter referred to a committee or every briefing or inquiry initiated by it will result in a final report. A bill or other item of business referred by the House that has not been reported lapses at the end of a Parliament, though it may be reinstated. Any briefing or inquiry initiated by the committee that is uncompleted at the end of a Parliament also lapses, though it too may be readopted as an inquiry by the committee in the new Parliament. Proceedings on a bill or other matter that has lapsed in this way (including any draft report) remain confidential for the first nine sitting days of the new Parliament to give the House and the committee time to consider whether they wish to reinstate or readopt such business.<sup>16</sup> Whether they do so is a matter for the newly constituted House and committee to decide. Also, a committee may simply decide to discontinue a briefing or inquiry it has initiated, from lack of interest in it or for any other reason.

<sup>7</sup> Internal Affairs and Local Government Committee, special report (7 March 1997) [1996–1999] AJHR I.22 at 295.

<sup>8</sup> Social Services Committee *Special report on a matter relating to the 1995/96 financial review of the Department of Social Welfare* (14 May 1997) [1996–1999] AJHR I.22 at 547.

<sup>9</sup> Finance and Expenditure Committee *Special report on the powers and operations of the Inland Revenue Department* (2 September 1999) [1996–1999] AJHR I.24 at 140.

<sup>10</sup> Māori Affairs Committee *Special report providing the Te Reo Māori translation for the Nga Wai o Maniapoto (Waipa River) Bill* (231–2) (7 July 2011) [2008–2011] AJHR I.22C.

<sup>11</sup> Commerce Committee, special report in relation to the 1998/99 financial review of Television New Zealand Ltd (24 May 2000) [1999–2002] AJHR I.21A at 486; Foreign Affairs, Defence and Trade Committee *Special report on the 2003/04 financial review of New Zealand Trade and Enterprise* (6 May 2005) [2002–2005] AJHR I.22D at 407.

<sup>12</sup> Māori Affairs Committee *Special report seeking authority to inquire into the determinants of wellbeing for Pacific children* (14 July 2011) [2008–2011] AJHR I.22C.

<sup>13</sup> SO 239(4).

<sup>14</sup> Limits on Campaign Spending for Candidates in Local Body Elections Bill (155–1) (report, 10 July 1997) at 313–317 ([1996–1999] AJHR I.22 at 313–317); Electoral (Integrity) Amendment Bill (3–1) (report, 17 April 2000) at 573–597 ([1999–2002] AJHR I.22A at 573–597); Government Administration Committee *Inquiry into New Zealand's adoption laws* (31 August 2001) [1999–2002] AJHR I.22B at 667–675.

<sup>15</sup> (1980) 429 NZPD 523 Harrison.

<sup>16</sup> SO 241.

Finally, the committee may fail to present a report within an applicable time limit on a bill. In these circumstances the bill is automatically discharged from the committee and returned to the House.<sup>17</sup>

## Activities reports

Committees can present periodic final reports of a miscellaneous nature called “activities reports”. The Regulations Review Committee presents an annual activities report. In these reports the committee describes the range of its activities in the period dealt with by the report. Many of the matters referred to are dealt with in more detail in other more specific reports that have already been presented to the House. An activities report can also assume some of the characteristics of an interim report, telling the House of the work in progress before the committee. Activities reports deal with many issues addressed by committees that do not warrant particular reports of their own. They allow the numerous issues dealt with by a committee over a period to be conveyed to the House in a convenient form.<sup>18</sup>

## TIME LIMITS FOR REPORTING

### Time for report fixed

If a time has been fixed for the presentation of the final report on a bill or other item of business, that report must be presented by the select committee on or before the day so fixed.<sup>19</sup> (The presentation of interim, special and activities reports is always optional.) A time may be fixed for a final report by the Standing Orders, by the House, by the Business Committee (for extensions of time only) or, exceptionally, by statute. A select committee cannot impose a binding time limit on itself, though it may adopt a work programme for a particular bill or item of business under which it tries to work to a timetable. Where a report is required to be presented by or on a particular day or within a limited period of time, it may be presented on the next working day if the specified day or the last day of that period is not a working day.<sup>20</sup>

The Standing Orders prescribe the time for select committees to report on bills and in respect of various kinds of financial business.

Six months is the standard reporting time prescribed for all bills referred to select committees. They must be finally reported to the House within this time.<sup>21</sup> But the House, on referring a bill to a select committee may, and often does, vary this standard time by requiring the committee to report the bill within a shorter (or, exceptionally, longer) timeframe.

The Standing Orders prescribe standard reporting times for select committees on their Estimates examinations (two months from the Budget),<sup>22</sup> and on their annual reviews of departments, Offices of Parliament (within one week of the first sitting day in each year),<sup>23</sup> and of Crown entities, public organisations, and State enterprises (six months in each case).<sup>24</sup> The Finance and Expenditure Committee has specific reporting time obligations for some of the financial business it transacts: examination of the Budget policy statement (within 40 working days),<sup>25</sup> the fiscal strategy report and the economic and fiscal update (two months from the Budget),<sup>26</sup> the annual financial statements of the Government (within one week of the first sitting day in each year), its long-term fiscal position (within six

<sup>17</sup> SO 295(3).

<sup>18</sup> Regulations Review Committee, reports [1987–1990] AJHR I.16.

<sup>19</sup> SO 248.

<sup>20</sup> SO 3(3).

<sup>21</sup> SO 295(1).

<sup>22</sup> SO 338(2).

<sup>23</sup> SO 345(2).

<sup>24</sup> SO 345(3).

<sup>25</sup> SO 332(2).

<sup>26</sup> SO 336(2).

months of its presentation), and the investment statement (within two months of its presentation).<sup>27</sup> A committee to which a notice of a motion has been referred for the approval of a regulation pursuant to a statute (an affirmative resolution) must report on the notice of motion no later than the first working day 28 days after the notice was lodged.<sup>28</sup>

The Finance and Expenditure Committee, or any committee to which a whole of government direction stands referred for examination, must report to the House on the direction no later than 12 sitting days after its referral to the committee.<sup>29</sup> The Government Administration Committee, to which any national civil defence emergency management strategy stands referred, must report to the House on the strategy no later than 12 sitting days after its referral to the committee.<sup>30</sup>

It is always open to the House, in referring a matter to a committee, to fix a date by which the committee must report on it to the House. Exceptionally, statute may do this. In the case of the statutory select committee review of the MMP election system, the committee was required to report by 1 June 2002.<sup>31</sup> The statutory review by a select committee of the legislation implementing New Zealand's obligations under a United Nations Security Council resolution on terrorism had to be reported on by 1 December 2005.<sup>32</sup>

Where business that had lapsed is reinstated, the business is resumed at the same stage that it had reached in the old Parliament.<sup>33</sup> However, if that business is subject to a reporting time limit, the time does not run between the lapse of the business and the date on which it is reinstated.

### **Failure to report within time fixed**

A committee that fails to report within any time fixed for presentation of its final report is immediately in breach of its obligation to the House. The members of the committee can be ordered by the House to discharge their obligation to report, with the threat that if they fail to do so they will be in contempt of the House.

In the case of a bill, failure to present a report in time also means that the committee's task is at an end. The bill is automatically discharged from further consideration by the committee and is set down for its next stage in the House.<sup>34</sup> In the case of other business with a time limit for reporting that a committee fails to meet, the committee's obligation is not automatically discharged.<sup>35</sup> If the House in referring the matter has made provision for what must be done if a committee has not reported, that provision applies. In the absence of such a provision and if the House does not regularise the position by granting an extension, the Speaker determines when the committee must report, and the consequences of its failure to do so.<sup>36</sup> The Speaker has ordered a committee that failed to report in due time on an annual review to report later in the week, failing which its task of review would be at an end and no report would be made at all.<sup>37</sup>

### **Extensions to reporting time**

The House may, on motion with notice or by leave, extend any time fixed for reporting by the Standing Orders or in a previous order of the House, including general extensions to bills and other business reinstated from the previous

27 SOs 336(3), (4) and 345(1).

28 SO 322(2).

29 SO 393(3).

30 SO 394(2).

31 Electoral Act 1993, s 264(2).

32 Terrorism Suppression Act 2002, s 70(3) (repealed).

33 SO 83.

34 SO 295(3).

35 (1999) 577 NZPD 16437 Kidd.

36 Ibid.

37 Ibid.

Parliament.<sup>38</sup> However, this matter is now usually attended to by the Business Committee at the commencement of a new Parliament.<sup>39</sup> While the House may grant extensions to reporting times on bills, extensions to bills during the life of a Parliament are mostly a matter for the Business Committee to determine. The House has also granted extensions to select committees for the annual reviews they were carrying out,<sup>40</sup> and to the Finance and Expenditure Committee for financial business under its consideration.<sup>41</sup>

In respect of bills, the Business Committee may extend (but not reduce) the time for a committee to report.<sup>42</sup> About one-third of all bills have their reporting times extended, often more than once, and the Business Committee is the most common means of effecting the extension. Select committees write directly to the Business Committee seeking an extension. The Business Committee will not grant an extension without hearing the views of the member in charge of the bill. These views are given either in the select committee's letter or by way of a separate letter from the member in charge, which is considered by the Business Committee at the same time as the select committee's application for an extension. If the committee and the member are in agreement about an extension, the Business Committee will invariably grant it, but it may alter the length of the requested extension by increasing or decreasing it. If they disagree, the Business Committee will make its own judgement.

## **ADOPTION OF REPORT**

### **Consideration**

When the committee has heard all the evidence on the bill or other matter that it is prepared to hear, it begins the process of deciding upon its report to the House. The first stage in the process is known as the consideration stage.<sup>43</sup> At this point the committee listens to comment from the committee's departmental or other advisers on the submissions heard by the committee. The committee may call for papers and analysis from its staff and advisers. At the consideration stage (which may involve several meetings) the committee, in a relatively informal way, discusses and reconsiders the details of the evidence and any advice it has received. It may also make its proceedings available to any person to assist its consideration. When proceedings are released in this way, they are done so on a confidential basis and any evidence in response is received in private.<sup>44</sup> The committee does not take binding decisions as to the form of the report (though it may have a draft report before it), thus giving members an opportunity to discuss the matters among themselves and with colleagues. This stage in the formation and adoption of the committee's report also gives the committee the opportunity to invite comment on its provisional findings from persons who may be commented on adversely in the finalised report.

### **Draft report**

Either in the consideration phase or arising from it, a draft report will be prepared for the committee to consider. In the case of a bill, this will be a draft of the select committee's commentary. Although the draft report is usually prepared by the staff of the committee, it may be prepared if the committee agrees by the chairperson, a subcommittee, or by any member of the committee. It has the status of a draft report because it is prepared under the instructions of the committee and not

<sup>38</sup> (2002) 602 NZPD 54.

<sup>39</sup> SO 248.

<sup>40</sup> (1999) 581 NZPD 37; (2001) 597 NZPD 14074.

<sup>41</sup> (1999) 581 NZPD 37; (2000) 582 NZPD 1342–1343.

<sup>42</sup> SO 295(2).

<sup>43</sup> (1985) 467 NZPD 7984 Wall.

<sup>44</sup> SO 242(2).

merely on the personal initiative of a member of the committee or a member of staff. As such it is strictly confidential to the committee. The disclosure of a draft report is a serious breach of privilege.<sup>45</sup> A draft report may be disclosed by the committee or by a member of the committee to another member of Parliament or to the Clerk and other officers of the House in the course of their duties.<sup>46</sup> The committee may also make it available to any person for the purpose of assisting the committee in its work by providing comment on the draft.<sup>47</sup> A draft report has been referred for academic peer review before being presented to the House.<sup>48</sup>

## **Adverse findings**

If a committee provisionally determines to include in a report any findings that may seriously damage the reputation of a person to be named in the report, it must, as soon as is practicable, acquaint that person with the provisional findings and give him or her a reasonable opportunity to respond to the committee on them.<sup>49</sup> The response can be made orally or in writing or both, as the committee determines. The committee is then obliged to take the response into consideration in making its report to the House.<sup>50</sup> It is axiomatic that if a committee reaches the stage of considering making an adverse finding against someone, it will have heard from that person (or have invited him or her to appear before it) earlier in its proceedings as a witness. If it has not, an adverse finding of any description can hardly be justified at all. It is also quite likely that, if an allegation has been made against that person earlier in the committee's inquiries, the person will have been given an opportunity to respond to it then. This is a separate process from considering whether to make an adverse finding against a person in the committee's report. The fact that a response may have been invited at an earlier stage of proceedings does not remove the obligation to give the person concerned an opportunity to comment before making an adverse finding in the report.<sup>51</sup>

The obligation to refer draft adverse findings for comment lies with the committee. But the chairperson has the interpretative responsibility of recognising findings that may be adverse and in respect of which the obligation may therefore arise. Not all comments in a report that someone may consider objectionable will need to be referred for comment. In particular, the procedure is not an opportunity for a second comment on an issue just because a witness might disagree with the committee's view of it. It is a rule concerned solely with reputation. Bodies that are under recognised accountability obligations to Parliament, such as departments, Crown entities and State enterprises, are in practice subject to a higher threshold for adverse findings. The accountability relationships with these bodies mean that they may be subject to criticism or rebuke from a select committee without necessarily being afforded an opportunity to comment on a draft report. Only if the criticism in respect of these organisations was particularly damning in respect of an identified individual would a committee feel obliged to acquaint them with it, though it may do so as a matter of discretion rather than obligation. A committee may always go further than the Standing Orders require and circulate its draft report for review as to its accuracy, even though it is not obliged to do so. The committee must allow a reasonable opportunity for comment, though precisely how long it does allow is a matter for it. Generally one week (a committee's normal meeting interval) is the norm. But a shorter response time may be necessary if a

<sup>45</sup> (1997) 562 NZPD 3232 Kidd.

<sup>46</sup> SO 240(2)(a).

<sup>47</sup> SOs 240(2)(b) and 242(2).

<sup>48</sup> Commerce Committee *Inquiry into the capital structure of State-owned electricity generators* (15 November 2001) [1999–2002] AJHR I.1A at 3–4.

<sup>49</sup> SO 246(1).

<sup>50</sup> SO 246(1).

<sup>51</sup> Privileges Committee *Question of privilege relating to an article published in the Sunday Star-Times purporting to summarise the contents of a draft report of the Māori Affairs Committee on its inquiry into the Crown Forestry Rental Trust* (14 October 2003) [2002–2005] AJHR I.17D at 5, 7.

committee is under a particular time constraint in reporting. Any response received by a committee in these circumstances is strictly confidential to the committee until it reports to the House.<sup>52</sup> The committee should make this clear to anyone who is invited to make a response to it.<sup>53</sup>

Having received comment on a draft adverse finding, the committee must take the comment into account in framing its report.<sup>54</sup> At the highest level a comment on an adverse finding may cause the committee to change its mind entirely about its provisional conclusion and omit the finding or alter it to remove any adverse reflection. It may, on the other hand, not change the committee's mind at all, or at least not materially. While the committee is obliged to take account of the comment in response, it is not obliged to reflect the comment in its report or even to refer to the fact that it sought it. However, it is usual for a committee report containing findings seriously affecting a person's reputation to record the fact that the person's comment was sought, if only to put on record that the committee has carried out its obligation to do so. A committee may build the comment it receives into the text of its report if it sees fit, commenting on it in turn. Committees have also published the comments they have received as an annex to their reports.<sup>55</sup>

A committee's obligation to permit a response to adverse findings also applies where such findings are confined to minority views included in its report. In this case too it must take such a response into account in finalising the report.<sup>56</sup>

## **Deliberation**

"Deliberation" is the stage at which the committee goes through the bill or draft report before it, and takes definite decisions about it by resolution or by leave.<sup>57</sup> Deliberation must be specifically listed on the notice of meeting communicated to members as an item of business to be transacted, otherwise the committee can proceed to deliberate only by leave. Deliberation must take place before any report (interim, special or final) can be presented to the House. Like consideration, deliberation varies in the time it takes, though it is usually much shorter than consideration, often being confined to the formal endorsement of positions worked out during consideration. Deliberation is also confidential until the committee reports to the House.<sup>58</sup> While generally members of Parliament who are not members of the committee have a right to remain present during any part of a committee's proceedings, including deliberation, they must withdraw when the Privileges Committee goes into its deliberation phase unless the committee, by leave, permits them to stay.<sup>59</sup>

Occasionally, a committee may find itself unable to conclude deliberation at its scheduled meeting and decide to agree a final report by "round robin" or subject to certain conditions. The Speaker has ruled that if, in its deliberation, a committee sets a deadline for the receipt of amendments, it is effectively agreeing a closure and should be careful to ensure that the effect of the closure resolution is very clear. However, the setting of a closure does not presuppose that the amendments

52 SO 246(2).

53 Privileges Committee *Question of privilege relating to an article published in the Sunday Star-Times purporting to summarise the contents of a draft report of the Māori Affairs Committee on its inquiry into the Crown Forestry Rental Trust* (14 October 2003) [2002–2005] AJHR I.17D at 4, 7.

54 SO 246(1).

55 Internal Affairs and Local Government Committee *Inquiry into the New Zealand Fire Service Commission* (14 December 1998) [1996–1999] AJHR I.7B, Appendices G–I; Internal Affairs and Local Government Committee *1997/98 financial review of the New Zealand Fire Service Commission* (20 May 1999) [1996–1999] AJHR I.21C at 331, 345–346; Finance and Expenditure Committee *1999/2000 financial review of the Public Trust Office* (29 March 2001) [1999–2002] AJHR I.21B at 361–370.

56 Commerce Committee *Petition 2002/6 of John Andrew Dickson* (20 June 2003) [2002–2005] AJHR I.22B at 42.

57 (1985) 467 NZPD 7984 Wall.

58 (1997) 562 NZPD 3232 Kidd.

59 SO 210(3).

or minority views in question will be agreed to. In agreeing to such resolutions to conclude deliberation outside a committee meeting, a committee should also give careful consideration to including a resolution to deal with the situation where agreement cannot be reached.<sup>60</sup>

It is obviously desirable that the members participating in deliberation (and consideration) are the same members who listened to the witnesses giving evidence, but there is nothing to prevent members who have been absent from the hearings from informing themselves of the evidence placed before the committee and participating knowledgeably in deliberation.<sup>61</sup>

In the case of deliberation on a bill, the committee, unless it decides otherwise or the bill is not drafted in parts, considers the bill part by part. It must decide whether to recommend that the parts remain part of the bill, with or without any amendments.

Either before or after doing this, it considers the draft narrative commentary that will form part of its report on the bill, and decides what the final form of the commentary will be. In the case of deliberation on an inquiry, the committee will consider the draft report or successive draft reports before agreeing on a final report.

Proxy voting does not exist for select committees, as members serve in their individual capacities and can be replaced on a temporary basis by advice from the party whip.

### **Minority or differing views**

There is only one report presented to the House from a committee on each occasion it reports. That is the one adopted as the committee's report, by a majority of the committee if need be. There is no such thing as a "minority report".

But there is nevertheless a strong presumption that differing views will be reflected in reports, and so committees can indicate in their reports the differing views of the members of the committee.<sup>62</sup> These expressions of differing views are often referred to as minority views, but they need not in fact be views of a minority. There may indeed not be a majority/minority split on the committee at all; it may be equally divided on an issue. Thus a committee's report has consisted solely of a commentary setting out matters relating to consideration of the bill by the committee and then the respective parties' views. The committee itself was unable to agree on any amendments to the bill.<sup>63</sup>

The dissenting views of members were not at first recognised in select committee reports and for them to be revealed was looked upon as somewhat unusual, not to say improper.<sup>64</sup>

Summaries of minority or differing views are now commonplace in select committee reports. They are usually presented as the differing views of the parties represented on the committee (even when a party only has one member on the committee), but they may be presented as the views of individual members.<sup>65</sup> No member of the committee has the right to have differing views represented in the committee's report; the decision on whether to do so is for the committee to make.<sup>66</sup> Minority views should be excluded only as a last resort, if they are significantly misleading or intemperate and efforts to compromise have failed.<sup>67</sup>

60 (8 September 2009) 657 NZPD 6020 Smith.

61 (1976) 407 NZPD 3169 Birch (Acting Speaker).

62 SO 245; Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 32.

63 Foreshore and Seabed Bill (129–1) (report, 4 November 2004) at 2 ([2002–2005] AJHR I.22C at 380).

64 (1867) NZPD 1167–1169; see Raewyn Dalziel *Julius Vogel—Business Politician* (Auckland University Press/Oxford University Press, Auckland, 1986) at 77–78.

65 See, for example: Relationships (Statutory References) Bill (151–2) (commentary, 1 March 2005) at 8–11 ([2002–2005] AJHR I.22D at 592–595).

66 (2000) 589 NZPD 6893 Hunt.

67 Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 32.

If the committee does decide to include differing views in its report, it cannot rewrite those views to express them in a way acceptable to a majority of the committee. That would be to misrepresent them. Nevertheless, if a minority or a differing view is too objectionable or too long, a majority of the committee might refuse to accept it for inclusion in the report altogether unless the minority or differing members agree to some rewriting of it. There can then be a trade-off.<sup>68</sup> Also, minority or differing contributions to a committee's report, like every other contribution, must be relevant to the subject of the report and must be free of unparliamentary language. In either of these cases the chairperson rules whether the contribution is wholly in order.<sup>69</sup>

For a member to release publicly a draft of a minority view intended to be presented to the committee for its consideration would prejudice the proper functioning of the committee process, and the Speaker has indicated that this could be treated as a contempt. Such a draft should be conveyed to the committee first.<sup>70</sup>

Amendments to bills are displayed in the reprinted bill as "unanimous" or "majority" once the bill has been reported to the House. This is done to facilitate a House process—majority amendments must be separately endorsed by the House on the second reading of the bill. They are not a means for committees to express the differing views of their members. That should be done in the committee's narrative commentary on the bill.<sup>71</sup>

## **Adoption of report**

At the conclusion of deliberation the chairperson puts the question to the committee that the report be adopted.<sup>72</sup> Once the committee has adopted a report it must be presented to the House.<sup>73</sup> An original copy of the report is prepared (if it does not already exist) incorporating any final textual amendments agreed to by the committee. It is signed by the chairperson<sup>74</sup> to authenticate the report as adopted by the committee. In the chairperson's absence it may be signed by the deputy chairperson or another member of the committee who has been authorised by the committee to do so.<sup>75</sup>

A committee can decide to report on more than one matter in the same report.<sup>76</sup> This course is often adopted with closely related subjects, such as a bill and a Supplementary Order Paper or petitions on the bill, that have been referred to the committee. It is also done with petitions of a similar nature.

Although the hearing of evidence on a matter is critically important in helping to shape a committee's conclusions, the report to the House embodies the opinions and policies of the members of the committee. It may or may not accord with the weight of the evidence received. (There is in any case no presumption that any decision will necessarily accord with the sheer weight of numbers of submissions received.<sup>77</sup>) Matters, particularly legislation, are considered by committees as part of a larger political programme. Parliamentary decisions are accordingly taken in this wider context. Also, committees consist of only a small proportion of the House's membership and cannot themselves take final decisions on behalf of the House. It would not be reasonable for a committee to act as if it could. For these

68 (2000) 589 NZPD 6893–6894 Hunt.

69 Ibid.

70 (1993) 538 NZPD 18335 Gray.

71 Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 37.

72 Ibid, at 48–49.

73 Ibid, at 49.

74 SO 247.

75 SO 247.

76 (1982) 449 NZPD 5782–5783 Harrison.

77 *Auckland City Council v Auckland Electric Power Board HC* Auckland CP26/93, 16 August 1993; *South Taranaki Energy Users Association Inc v South Taranaki District Council HC* New Plymouth CP5/97, 26 August 1997.

reasons, the committee's report may diverge from the preponderance of opinion expressed to it.

## Languages

A report may be presented in the English language or Te Reo Māori. A report presented in one language may be translated, under the Speaker's direction, into another language.<sup>78</sup> A select committee's report has been translated into Samoan, for example.<sup>79</sup> In 2004 a select committee presented a bilingual report—that is, a report that had been deliberated on and adopted by the committee in both official languages.<sup>80</sup> More recently, the Māori Affairs Committee presented a bilingual report on the Mokomoko (Restoration of Character, Mana, and Reputation) Bill. For the first time the bill commentary and the provisions of the bill were translated into Te Reo Māori, deliberated on, and adopted by the committee in both official languages.<sup>81</sup> Both versions of a bilingual report are equally authoritative; one is not a translation of the other, regardless of any predominance of one of the languages in the preparation of the report as the committee's actual working language. In the case of an authorised translation of a committee's report, the authoritative version of the report is that in the original language.

## Confidentiality of report

The report adopted by a committee is confidential to the committee until it is presented to the House in the same way as the private proceedings of a committee or a draft report.<sup>82</sup> (See Chapter 22 for proceedings that are confidential.) Unauthorised disclosure of a copy of a report before its presentation may be treated as a contempt.<sup>83</sup> Disclosure by the committee or by a member of the committee of the report to another member or to the Clerk or an officer of the House in the course of their duties is authorised.<sup>84</sup> This allows the likely outcome of a committee inquiry to be discussed in caucus and the necessary printing arrangements for the report to be put in train before it is formally presented.

## Effect of adoption of report

Once the committee has directed the chairperson to report finally to the House, it has performed its ultimate function in respect of the bill or matter before it and should not afterwards reconsider the report. Only if a chairperson were uncertain about what he or she was to report to the House could a committee return to a bill or other matter.<sup>85</sup> In these instances, a practice has developed for a chairperson to delay the presentation of a report in order for the committee to revisit its consideration of it. This is done before the committee confirms the minutes of the meeting in which the report was deliberated. Any delay of a report should be confined to one week.<sup>86</sup> Events after that point must take their course.

A committee set up to consider one matter only, such as a special committee on a bill or a special committee set up to report on a particular topic, ceases to exist as a committee when the House receives the report; if the House wishes to give the committee further work to do it must first revive it. For permanent committees the adoption and presentation of a final report does not

<sup>78</sup> SO 375.

<sup>79</sup> Government Administration Committee *Petition of Dr George Paterson Barton Vaitoa Sa and 100,000 others* (20 May 2004) [2002–2005] AJHR I.5C.

<sup>80</sup> Te Runanga o Ngati Awa Bill (176–2) (commentary, 1 December 2004) ([2002–2005] AJHR I.22C at 1063–1076).

<sup>81</sup> Mokomoko (Restoration of Character, Mana, and Reputation) Bill (343–2) (commentary, 28 June 2013) ([2011–2014] AJHR I.22B).

<sup>82</sup> SO 240(1).

<sup>83</sup> SO 410(q).

<sup>84</sup> SO 240(2)(a).

<sup>85</sup> (1934) 239 NZPD 261 Statham; (1977) 410 NZPD 322, 396 Jack.

<sup>86</sup> (1995) 552 NZPD 10603 Tapsell.

dissolve the committee as such, but it does take the particular matter that was the subject of the report out of the committee's hands.<sup>87</sup> (However, a committee may utilise its inherent power to initiate an inquiry to follow up on matters arising out of its consideration of the bill or other matter that was the subject of the report.<sup>88</sup>)

## PRESENTATION OF REPORT

When a report has been adopted it must be presented to the House within a reasonable time. The House may order that a report be presented if the chairperson does not act with despatch in the matter.<sup>89</sup> But the chairperson is justified in holding back a report for a few days so that the necessary arrangements can be made to have it printed in time for its presentation and an adequate check can be made as to its accuracy. It was unreasonable when a chairperson delayed for three months in presenting a report, but a delay of a week in presenting a report is quite acceptable.<sup>90</sup>

A report is presented to the House by the original copy being delivered to the Clerk. This may be done on any working day, but no later than 1 pm on a day on which the House sits.<sup>91</sup> (If the House sits on a non-working day—a Saturday—no report may be presented.) A list of all select committee reports presented since the House last sat is read out to the House by the Clerk (part of the first item of business each day).<sup>92</sup>

Reports from the Intelligence and Security Committee on bills and other matters referred to it by the House are presented in the same way as a report from a select committee. The annual report the committee is required to make to the House on its activities is a statutory requirement and is presented as a parliamentary paper, as it is not a function referred by the House or undertaken on its behalf.<sup>93</sup> (Reports from the Intelligence and Security Committee on any of its other statutory functions are presented as papers in the same way as reports from any other non-parliamentary body.)

Committees may hold press conferences following a report's presentation to publicise their findings. Such press conferences are not formal proceedings of the committee and may not be protected by parliamentary privilege.<sup>94</sup> Nor are they necessarily authorised parliamentary communications, absolutely protected under the Parliamentary Privilege Act 2014,<sup>95</sup> but a qualified immunity from civil or criminal legal liability may exist.<sup>96</sup> Public comments made by individual members of the committee (even the chairperson) on a report are not protected by parliamentary privilege either.<sup>97</sup>

## PUBLICATION OF REPORT

All select committee reports are published under the authority of the House.<sup>98</sup> Bills are reprinted in a form that indicates the committee's proposed amendments together with the committee's commentary describing its consideration of the bill. (See pp 418–419.) Other reports presented by select committees are published

<sup>87</sup> (1892) 77 NZPD 586–587 Steward.

<sup>88</sup> See, for example: Commerce Committee, report on statements made during consideration of the Telecommunications Bill (9 November 2001) [1999–2002] AJHR I.22B at 144–150.

<sup>89</sup> (1935) 243 NZPD 422–423 Statham.

<sup>90</sup> (1995) 552 NZPD 10603 Tapsell.

<sup>91</sup> SO 249(1).

<sup>92</sup> SO 249(3).

<sup>93</sup> Intelligence and Security Committee Act 1996, s 6(1)(e).

<sup>94</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 836.

<sup>95</sup> Parliamentary Privilege Act 2014, s 17.

<sup>96</sup> Parliamentary Privilege Act 2014, s 18.

<sup>97</sup> Privileges Committee Question of privilege referred on 14 February 2001 relating to *Stonhill v Mackey* (11 December 2001) [1999–2002] AJHR I.17B.

<sup>98</sup> SO 249(2).

to the Parliament website and printed either at the time of or shortly after their presentation, or at the end of the session. It is obviously desirable for narrative reports to be published to the Parliament website and in print at the time the committee reports to the House so that they are immediately made publicly available. For the purposes of the Appendix to the Journals, short and formal reports by select committees are collected together at the end of the year or the end of the Parliament and compiled into a compendium of reports by each committee. Major narrative reports are included in the Appendix to the Journals with other parliamentary papers and are allotted a shoulder number with the prefix "I". No copyright subsists in reports of select committees.<sup>99</sup>

## CUSTODY OF SELECT COMMITTEE DOCUMENTS

When a select committee makes a final report to the House, its minutes, evidence, advice, and other documents relating to the subject of the report come into the possession of the Clerk of the House, who is the custodian of all records of the House and its select committees.<sup>100</sup> All evidence (unless secret) and advice is published to the Parliament website and is publicly available. However, evidence is likely to have been published already, as the practice of committees is now to publish their evidence on the Parliament website as it is released during their hearings of evidence. (See Chapter 22.) The full electronic record of a select committee's proceedings is retained by the Clerk of the House. It is available to members and their staff, subject to any express direction under the Standing Orders or by the House to the contrary.

Secret evidence must be delivered into the custody of the Clerk and is not available for perusal even by members unless the House expressly authorises disclosure.<sup>101</sup> While it is open to the House to remove the protection of secrecy that has been conferred on evidence by a committee, this will not be done lightly. As has been said by a committee of the Australian House of Representatives when considering a petition for the disclosure of confidential evidence:<sup>102</sup>

When confidentiality is requested and then given, and even more so when it is promised in advance and thus becomes a pre-condition for receiving information, a "contract" has been entered into between a committee and the provider of the information. Such a contract is not enforceable legally. The committee holds to the view that the House has a strong moral obligation to protect such a contract.

Apart from secret evidence, which is automatically protected from release even after the committee reports, the House may itself order that evidence given to one of its committees not be released by the Clerk.<sup>103</sup> Where a select committee has retained evidence containing serious allegations against a person that it did not consider relevant to its proceedings, or evidence that creates an unjustifiable risk of harm to a person, it is under an obligation to consider seeking an order from the House giving continuing confidentiality to the evidence.<sup>104</sup> The House may subsequently lift any continuing confidentiality order by rescinding it if the conditions that led to its making the order no longer obtain.<sup>105</sup>

In the case of an interim report or a special report, the committee continues to retain custody of all select committee documents relating to the bill or inquiry,

<sup>99</sup> Copyright Act 1994, s 27(1); Copyright Act Commencement Order 2000.

<sup>100</sup> (1894) 86 NZPD 909 O'Rorke.

<sup>101</sup> SO 219(3).

<sup>102</sup> House of Representatives (Aust) Standing Committee on Transport, Communications and Infrastructure *Release of tyre safety inquiry documents* [1989] 41 at [3.37].

<sup>103</sup> (1996) 557 NZPD 14312; (1999) 580 NZPD 19755.

<sup>104</sup> SO 236(c).

<sup>105</sup> (2000) 581 NZPD 247–248.

but any confidentiality applying up to that time to matters dealt with in the report is automatically lifted unless the committee decides to retain it.<sup>106</sup> Where business before a select committee lapses at the end of a Parliament, the Clerk maintains custody of the records relating to that business on behalf of the new Parliament's equivalent committee. The records remain confidential for the first nine sitting days of the new Parliament. If not readopted as business by the new committee they then become publicly accessible.<sup>107</sup>

Documents in the custody of the Clerk as an officer of the House belong to the House of Representatives and are not official information. Nevertheless, virtually unrestricted access is granted to such documents on the Parliament website.<sup>108</sup>

## RESPONSES TO RECOMMENDATIONS

The Government has been required to respond to recommendations in select committee reports on petitions since 1967. A general requirement for the Government to respond to recommendations addressed to it in select committee reports was introduced in 1986.<sup>109</sup> This requirement for a Government response applies in respect of reports made by committees on petitions, and in the discharge of their inquiry function (whether self-initiated or referred), including treaty examinations. It does not apply to reports on bills or questions of privilege, or to the Estimates and annual review reports made under the Standing Orders.<sup>110</sup>

The Government is required to respond formally to any recommendation addressed to it within 60 working days of the report being presented.<sup>111</sup> If the 60 days expire on a non-working day, the response may be presented on the next working day. While the Government must respond to the House within this period, it may make an earlier policy announcement related to the recommendations in the committee's report. Where consideration of a report is outstanding, any obligation to respond lapses at the end of a Parliament. However, if the report is reinstated in the new Parliament the obligation to respond is also reinstated. The 60-day period for a response starts to run again on the day of reinstatement.

Where a select committee report contains recommendations addressed to the Government, the Office of the Clerk alerts the Cabinet Office. The Cabinet Office asks the appropriate Minister to report on the recommendations and prepare a response. If the select committee's report suggests action that would require the Government to make a policy decision, the issue must be referred to the appropriate Cabinet Committee for decision in the normal way for any policy submission. Once any policy matters are finalised, the proposed response is submitted to the Cabinet Legislation Committee and then Cabinet for final approval.<sup>112</sup>

The response takes the form of a paper presented to the House by the Minister.<sup>113</sup> Responses are ordered to be published and are compiled in the Appendix to the Journals at the end of the Parliament, as part of the J series. There is no reason why the Government cannot make more than one response to the same report, especially where the issues are complex. In these circumstances the Government may present, within the 60-day period, what is effectively an interim response and follow up with a detailed response when it has considered the issue thoroughly. Thus the report of a working party set up to consider recommendations from the Regulations Review Committee on deemed regulations was incorporated into a

<sup>106</sup> SO 239(4).

<sup>107</sup> SO 241.

<sup>108</sup> Office of the Ombudsmen, annual report (19 September 2002) NZPP A.3 at 32.

<sup>109</sup> Standing Orders Committee, second report (18 November 1986) [1985–1986] AJHR I.18A at 10–11.

<sup>110</sup> SO 252(2).

<sup>111</sup> SO 252(1).

<sup>112</sup> Cabinet Office *Cabinet Manual* 2008 at [4.96]–[4.99].

<sup>113</sup> SO 252(1).

further response from the Government to the report.<sup>114</sup> While the Government's response to recommendations in a select committee report is intended to facilitate any debate on the report by the House, the fact that the House has debated the report before a response is received does not obviate the obligation to present a response in due course.

Although not subject to the Standing Order, the Speaker has presented a response to a select committee recommendation in respect of an office for which the Speaker was responsible—the Office of the Clerk and the Parliamentary Service.<sup>115</sup>

Committees have, occasionally, when dissatisfied with a Government response or with the time that it has taken the Government to respond, conducted a further inquiry into the response themselves and reported to the House on it.<sup>116</sup>

## CONSIDERATION OF SELECT COMMITTEE REPORTS

Reports from select committees are set down for consideration as prescribed by the Standing Orders. Any report presented will appear on the Order Paper for the next sitting day. A report presented up to 1 pm on a sitting day will be on the Order Paper for the following sitting day.

In the case of final reports on bills, the bill is set down as an order of the day (Government, private and local or Member's, as the case may be) for its second reading on the third sitting day following presentation.<sup>117</sup> The committee's report is considered when the House holds the second reading debate on the bill. Interim or special reports on bills are set down as orders of the day for consideration.<sup>118</sup>

A report from the Privileges Committee is set down for consideration as part of the next sitting day's general business.<sup>119</sup> Reports on briefings, inquiries, international treaty examinations and reports from the Regulations Review Committee (whether final, interim or special reports) are set down for consideration as a Members' order of the day on the next sitting day.<sup>120</sup> Where a report is on a notice of motion (the affirmative resolution procedure), the report is set down for consideration along with the notice of motion (which will usually be a Government order of the day).<sup>121</sup> A report on a notice of motion to disallow a regulation or other legislative instrument (the negative resolution procedure), which recommends that the resolution be passed, is set down for consideration, along with the notice of motion, in place of the first general debate after the committee's report is presented, provided the time within which the House's resolution must be passed as set out in law has not expired.<sup>122</sup>

Reports on Estimates and annual reviews are considered when those debates are held.<sup>123</sup> Reports of the Finance and Expenditure Committee on the Budget policy statement,<sup>124</sup> long-term fiscal position or investment statement are set down in place of the next general debate after the report is presented.<sup>125</sup> In the case of

<sup>114</sup> Government response to report of Regulations Review Committee on its inquiry into instruments deemed to be regulations (5 October 1999) [1996–1999] AJHR A.5.

<sup>115</sup> Speaker of the House of Representatives, response to report of the Regulations Review Committee (20 September 1988) [1987–1990] AJHR I.20 at 35–36; Speaker of the House of Representatives *The accessibility of services to Parliament* (10 December 2014) [2014–2017] AJHR J.12 (responding to Government Administration Committee Inquiry into the accessibility of services to Parliament (28 May 2014) [2011–2014] AJHR I.5B).

<sup>116</sup> Regulations Review Committee, report on Government response to inquiry into the Reserve Bank of New Zealand Order 1988 (5 October 1999) [1987–1990] AJHR I.16 at 27–29.

<sup>117</sup> SO 296.

<sup>118</sup> SO 296(b).

<sup>119</sup> SO 250(1)(a).

<sup>120</sup> SO 250(3).

<sup>121</sup> SO 250(1)(d).

<sup>122</sup> SO 323.

<sup>123</sup> SO 250(1)(c).

<sup>124</sup> SO 332(4).

<sup>125</sup> SO 336(5).

reports on petitions, the Business Committee has the power to direct that a report be set down for consideration as a Members' order of the day.<sup>126</sup>

Reports on bills, questions of privilege, Estimates, annual review and other financial business are debated in due course. But in practice, reports on briefings, inquiries, treaty examinations and petitions are unlikely to be the subject of a specific debate devoted to them, unless the Business Committee so determines. Reports of select committees on briefings, inquiries and treaty examinations do not have a high priority even as Members' orders of the day, since they come after Members' bills on the Order Paper.<sup>127</sup> This means that they are most unlikely to be reached even on days on which Members' orders of the day have priority over Government orders of the day.

If a report does not require a Government response, its consideration is removed from the Order Paper 15 sitting days after it has been set down (or sooner if it is considered by the House earlier). A report that requires a response is removed 15 sitting days after the response is presented. In either case the order of the day for the consideration of the report is discharged when the period has elapsed.<sup>128</sup>

If orders of the day for consideration of select committee reports are reached, the House works through them as they stand on the Order Paper. As each order is reached the chairperson or a member of the committee moves a motion to take note of the report.<sup>129</sup> If neither the chairperson nor any member of the pertinent committee is present when an order is reached, the order is discharged and the House proceeds to the next order.<sup>130</sup> There is no prescribed limit to the number of speeches. The time to be spent on the debate would be a matter for the Business Committee to determine. Such debates have been allocated time during extended sittings.<sup>131</sup>

If a committee wants the House to debate a report, it can write to inform the Business Committee of its wish to debate the report and to seek House time in which to do so. In doing so, the committee improves its chances of moving the report up the Order Paper for debate on the next Members' day in the House. A report selected for debate by the Business Committee remains on the Order Paper until reached.<sup>132</sup>

The opportunity for consideration of select committee reports set down on the Order Paper lapses at the end of the Parliament unless the reports are reinstated by resolution in the next Parliament.<sup>133</sup>

---

<sup>126</sup> SO 250(2).

<sup>127</sup> SO 72(1).

<sup>128</sup> SO 74(4).

<sup>129</sup> SO 251(1).

<sup>130</sup> (1992) 531 NZPD 12581 Gray.

<sup>131</sup> Business Committee determination for 4 December 2013; (10 December 2013) 695 NZPD 15457–15470 (report of Health Committee on improving child health outcomes and preventing child abuse).

<sup>132</sup> SO 74(5).

<sup>133</sup> SO 83.

## CHAPTER 24

# Classification and Form of Legislation

Probably the most important business transacted by the House, and certainly the most significant in terms of the commitment of its time, is the process of passing legislation.

Supreme legislative power is vested in the Parliament of New Zealand, not in the House of Representatives alone. An Act of Parliament is a declaration of law made by the two constituent elements of Parliament—the Sovereign and the House of Representatives.<sup>1</sup> But the effective work of passing legislation is carried out in the House of Representatives and its committees.

The next series of chapters examines the procedures whereby a proposed law (a bill) is introduced into, considered, and passed by the House of Representatives, and, once passed, is submitted to the Sovereign or the Governor-General, upon whose concurrence (the Royal assent) it becomes law. This chapter deals with the form a bill takes, and how it is classified as one of the four different types of bill recognised by the House. A bill's classification determines the procedure for its consideration. Some of the principal components of a bill are described, and some of the standard types of bill considered by the House are described.

### BILLS

Some of the early English Parliaments, when they wished to correct an injustice of general interest, often employed the expedient of petitioning the King for action to remove the injustice. If the King and the King's Council agreed to the petition, a reply to the petition was drafted. This reply came to be regarded as a statute with the force of law. As this procedure developed, Parliament increasingly became a legislative assembly. Gradually, the members of Parliament developed the practice of drafting the law themselves and sending the draft instead of a petition to the King, possibly because the statutes as framed by the King and Council sometimes did not adequately meet the cases raised in the petitions. All the King had to do then was to accede to the law or reject it, and there was no opportunity for it to be tampered with by the Royal officials after it had left the members' hands. The draft law was called a "bill". This is still the name for a draft or proposed law that is before the House.

A proposal to change or add to the body of statute law in force in New Zealand comes before the House in the form of a bill, which will take effect as law if the bill

---

<sup>1</sup> Constitution Act 1986, ss 15(1) and 16.

is passed. Once enacted by Parliament, the bill becomes an Act or statute and so part of the general law of New Zealand.

## CLASSIFICATION OF BILLS

Until 1 November 1999, Acts of Parliament were categorised as either Public Acts or Private Acts.<sup>2</sup> This dichotomy was followed by the House in classifying bills as either public bills or private bills (with further category subdivisions of public bills). In fact, it was doubtful whether there was any legal significance to the distinction between Public Acts and Private Acts.<sup>3</sup>

The Interpretation Act 1999 does not make any distinction between types of Acts of Parliament. It no longer refers to Public Acts or Private Acts at all, though Acts are still numbered in Public, Local and Private Act series depending upon the classification of the bill that became each Act. This change to the law has been reflected in the House's procedures, with the disappearance of the concept of a public bill and its subdivisions.

The House now categorises each bill that comes before it into one of four categories:<sup>4</sup>

- Government bills
- Members' bills
- local bills
- private bills.

All categories of bills are of equal status as proposed additions or amendments to the body of statute law in force in New Zealand. The differences between them are defined by two factors: the member in charge of the bill (Ministers for Government bills, non-Ministers for Members' bills), and the extent of their application (confined to a locality in the case of local bills, for the benefit of a limited class in the case of private bills). Government and Members' bills (and any Acts that result from them) may thus be regarded as bills of general application. Conversely, local and private bills are designed to be of limited application only. If they were not so limited they would not be local or private bills.

The consequence of classification in a particular category primarily affects the internal procedures of the House. Categorisation as one or other of the four types of bill determines the process the House will employ in considering the bill, and the procedures with which those promoting it must comply if it is to be introduced into the House. In particular, promoters of local and private bills must comply with a number of preliminary advertising and notice procedures before their bills may be introduced.

While as a formal instrument each bill is of equal status with each other, in practical terms Government bills are far more important than the other types of bills because of the political and procedural advantages that attach to them. These advantages allow Ministers to prepare, introduce and advance their legislative proposals far more readily than other members. Non-Government legislation, for example, is considered only at alternate Wednesday sittings. Consequently, far more Government bills are introduced into and passed by the House than any other kind. Besides their numerical superiority, Government bills are intrinsically more far-reaching in their effects than other bills.

The parliamentary procedures for a local bill or a private bill are more onerous than are those for a Government bill or a Member's bill, so there is nothing inconsistent from a procedural point of view in an important matter being dealt with

<sup>2</sup> Acts Interpretation Act 1924, s 5(a).

<sup>3</sup> Ross Carter *Burrows and Carter Statute Law in New Zealand* (5th ed, LexisNexis, Wellington, 2015) at 9.

<sup>4</sup> SO 253(1).

by a local or private bill rather than a Government bill or a Member's bill. However, there has been a pronounced movement away from legislation being promoted and enacted at the specific request of local authorities and individual suitors to the House, in favour of most legislation being promoted for general public effect. This is particularly the case where public funding or important governmental functions are involved. The fact that a bill affects the rights of the Crown does not prevent it proceeding as a local or a private bill, although the Government in such cases can prevent its passage, for such a bill needs to be consented to by the Crown before it can be passed, and if such consent is not forthcoming the bill will lapse.<sup>5</sup>

## Government bills

A Government bill is a bill dealing with a matter of public policy introduced by a Minister.<sup>6</sup> In 2013, 77 per cent of the bills introduced into the House were Government bills and 94 per cent of the bills passed started their lives as Government bills. Thus they are overwhelmingly the most numerous and important of the bills dealt with by the House. The vast bulk of the legislation in force today was introduced into the House as Government legislation. Indeed, a major function and expectation of Governments is the initiation and passing of legislation to implement their political programmes.

A member who is a Minister may introduce a private bill or a local bill, but only a Minister may introduce a Government bill (this also excludes Parliamentary Under-Secretaries).

## Members' bills

A Member's bill is a bill dealing with a matter of public policy introduced by a member who is not a Minister.<sup>7</sup>

There is no difference in the potential substance of a Member's bill and a Government bill. The essential distinction lies in the status of the member introducing the bill, the latter being a Minister. There is a difference, however, in their relative numbers and even more so in their prospects for success. While all but a handful of the Government bills are eventually passed, few Members' bills make it into law. Before the end of the First World War the number of bills initiated by the Government was not much greater than the number initiated by other members. Since then Government legislation has become much more preponderant.

For a long time after the Second World War the prospects of a Member's bill passing were extremely remote. In the 40 years up to the beginning of 1985 only three such bills were passed. Changes to the Standing Orders made in that year have redressed the balance somewhat in terms of Members' bills being introduced, and increased the prospects for their becoming law. While there are still relatively few instances of this happening, important legislation has been enacted by this route.<sup>8</sup> In 2013 10 Members' bills were introduced, compared with 58 Government bills. Only six Members' bills became law in that year.

Furthermore, ideas that were initially given a legislative airing as Members' bills have been adopted as Government policy and subsequently enacted. The introduction of the Pardon for Soldiers of the Great War Bill in 1998 by Mark Peck led to a Government-commissioned report entitled *Review of Deaths by Execution in the First World War of 1914–1918* by Sir Edward Somers, a former Court of Appeal Judge, being presented to the House by the Minister of Defence. The bill

<sup>5</sup> SO 313.

<sup>6</sup> SO 253(1)(a).

<sup>7</sup> SO 253(1)(b).

<sup>8</sup> For example: Adult Adoption Information Act 1985; Homosexual Law Reform Act 1986; Habeas Corpus Act 2001; Prostitution Reform Act 2003; Human Assisted Reproductive Technology Act 2004; Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010; Marriage (Definition of Marriage) Amendment Act 2013.

was then formally adopted by the Government and assented to on 14 September 2000.<sup>9</sup> The Hon Rex Mason's campaign for the introduction of decimal currency, which he pursued by introducing a Member's bill every year from 1950 to 1956, eventually came to fruition, though by means of a Government not a Member's bill.<sup>10</sup> Other Members' bills have had their provisions adopted wholesale and incorporated into Government bills—among them a bill on the publication of names in cases of sexual offences, the provisions of which were enacted as part of a Government bill.<sup>11</sup> A bill introduced by the Hon Lianne Dalziel to repeal the defence of provocation under the Crimes Act 1961 was discharged and a replacement Government bill introduced on the same day.<sup>12</sup>

Apart from the more obvious examples, it is difficult to say to what extent Members' bills have directly and indirectly influenced legislation eventually introduced by the Government and passed into law.<sup>13</sup> An Opposition Member's bill, for instance, may be produced in response to current Government policy in order to emphasise the contrast between the Government and the Opposition's proposed approach to the subject. Some are the result of individual initiatives by members to highlight a perceived defect in the law and suggest a remedy. Still others are of a more speculative nature, designed to float an idea and gauge public reaction to it.<sup>14</sup>

A Member's bill may not deal with a matter that is properly the province of a private bill or a local bill.

## **Local bills**

Until the abolition of provincial government in 1876, laws affecting only particular localities were dealt with by Provincial Councils. From 1876, these matters began to be brought before Parliament in Wellington, leading eventually to the recognition of local legislation as a separate category of bill.

Local bills are bills promoted by a local authority and are confined in their effects to a particular locality.<sup>15</sup> They may be introduced by any member, Minister or non-Minister. This does not affect their treatment by the House.<sup>16</sup>

### **Purpose**

Local bills are intended to change or limit the effect of the general law in its application to the locality concerned. The need for local bills is thus closely connected with the provisions of the general law, particularly local government law.

A study by a select committee carried out in 1996 found that, while a number of local bills were promoted by local authorities to procure special powers to deal with unique situations (the opening of a community centre, the management of a museum, for example), most set out to validate irregularities that were inconsistent with local government legislation. Most of these irregularities were concerned with rating decisions made by local authorities.<sup>17</sup> In 1996 local authorities were given a general power to replace invalid rates.<sup>18</sup> This general power has largely obviated the need for local bills validating rates. The conferring of wider powers on local

<sup>9</sup> Pardon for Soldiers of the Great War Act 2000.

<sup>10</sup> Decimal Currency Act 1964.

<sup>11</sup> (1980) 430 NZPD 937 (Criminal Justice Amendment Bill).

<sup>12</sup> Crimes (Abolition of Defence of Provocation) Amendment Bill (61–1) (30 July 2009); Crimes (Provocation Repeal) Amendment Act 2009.

<sup>13</sup> David McGee "Members' bills or private bills?" [1999] *New Zealand Law Journal* 405 at 405.

<sup>14</sup> Ross Carter Burrows and Carter *Statute Law in New Zealand* (5th ed, LexisNexis, Wellington, 2015) at 56–57.

<sup>15</sup> SO 253(1)(c).

<sup>16</sup> (1888) 60 NZPD 350.

<sup>17</sup> Internal Affairs and Local Government Committee *Inquiry into matters raised during consideration of local bills* (27 August 1996) [1993–1996] AJHR I.6A at 2.

<sup>18</sup> Local Government (Rating) Act 2002, s 120.

authorities (the “power of general competence”)<sup>19</sup> has also helped to limit the need for local authorities to seek special powers by way of local Act.

The promotion of ad hoc local legislation has led sometimes to amendments being made to the general law by a Government bill, so that all local authorities can take advantage of a well-conceived local reform. In 1982 enabling legislation permitted ratepayers to make lump-sum contributions to the capital costs of waterworks and drainage works. Schemes of this kind had been introduced by a few local authorities by means of separate local Acts. Their success led eventually to the Government introducing an amendment to the Local Government Act 1974 permitting all territorial authorities to levy charges for such works by lump-sum contributions without the need for special local legislation each time.<sup>20</sup> In 1991 an amendment was made to the Rating Powers Act 1988 allowing councils to remit or postpone rates on property to be used for the construction of housing, or for industrial, commercial or administrative purposes. This general provision replaced a number of local Acts that had authorised individual local authorities to take this step. These local Acts inspired the general reform effected by the amendment.<sup>21</sup>

### **Promoter**

Only a local authority may promote a local bill. While a bill may, in substance, be a local bill, if there is no local authority promoter, a local bill cannot be promoted. A local authority is taken to be a body to which Parliament has given statutory authority to promote legislation affecting the inhabitants of its territory. Local authorities within the meaning of the Local Authorities Loans Act 1956 were expressly given this authority by statute.<sup>22</sup> Since the repeal of that Act and the inclusion of local authority borrowing powers in the Local Government Act,<sup>23</sup> a local authority that may promote a local bill is taken to be any local authority under general local government legislation such as the Local Government Act 2002 or the Local Electoral Act 2001—that is, essentially, a territorial authority or a regional council. It also includes certain special-purpose authorities such as licensing trusts, the administering bodies of reserves, and museum trust boards. However, the fact that a local authority is promoting a bill does not automatically make it a local bill; the bill must in substance be a local bill.

### **Locality**

A local bill may affect a particular locality only. The “locality” takes its meaning from the context of the bill. A bill dealing with a function carried out by a regional council will obviously extend over a wider area than one promoted by a district council. The concept of “locality” is more extensive in respect of the former than the latter. A local authority may promote a local bill only for an area that is within its jurisdiction. Occasionally, local bills have been jointly promoted where contiguous geographic areas under different authorities were involved.<sup>24</sup> A bill would not be regarded as relating to a locality if its effects were region-wide regarding a function that was not generally administered as a regional matter. This was the case with a bill designed to provide a site for Victoria University College, because the college was to serve all the middle districts of New Zealand. The bill was therefore held not to be a local bill.<sup>25</sup>

---

<sup>19</sup> Local Government Act 2002, s 12(2).

<sup>20</sup> Local Government Amendment Act (No 2) 1982, s 11 (replacing four local Acts).

<sup>21</sup> Rating Powers Amendment Act 1991, s 6 (replacing six local Acts).

<sup>22</sup> Finance Act 1978, s 2.

<sup>23</sup> By the Local Government Amendment Act (No 3) 1996.

<sup>24</sup> Waitakere Ranges Heritage Area Act 2008.

<sup>25</sup> (1901) 119 NZPD 1184 Guinness (Deputy Speaker) (Victoria College Site Bill).

### **Amending other Acts**

Bills with the objective of amending general Acts must be introduced as Government or Members' bills and not local bills, even when they relate only to a particular district or locality.<sup>26</sup> This is the case, too, with a bill whose sole purpose is to amend a Local Legislation Act. Such bills must be distinguished from bills that, while not amending a general Act, seek to create an exception to it in respect of a particular locality, because this is one of the principal reasons for promoting local bills. Also, local bills may make incidental or consequential amendments to a general Act without losing their status as local bills as a result.

Proposed amendments to a local Act must be brought forward in a local bill, regardless of whether the bill is introduced by a Minister or a non-Minister.<sup>27</sup> Thus, when a Government bill contained a clause making a substantive (and not consequential) amendment to a local Act, the Speaker ordered that the clause be struck out of the bill as printed following its introduction.<sup>28</sup> A Government bill to allow part of Riccarton Racecourse to be developed for housing was introduced in 2015 together with a local bill that proposed substantially amending the local Act dealing with the governance and reserve status of the racecourse. While both Government and local bills were required to implement this measure, each reading was taken as cognate Government orders of the day.<sup>29</sup> Certain local matters, however, may be dealt with as matters of State policy and then proceed as Government bills (for example, legislation relating to the Auckland Harbour Bridge). A Government bill dealing with a matter of State policy can, incidentally, amend or repeal a local Act.<sup>30</sup> Subject to these exceptions, local legislation must be introduced in a local bill or in a Local Legislation bill.<sup>31</sup> While the power to introduce Local Legislation bills continues under Standing Orders, this provision has not been used since 1991.

### **Private bills**

A private bill is a bill promoted by a person or body of persons for the particular interest of that person or body of persons.<sup>32</sup> In 2013 two private bills were introduced. No private bills were passed that year.

#### **Purpose**

In a society in which governmental activity touches almost every facet of life, it is not immediately obvious why there is a category of private bills. To find its causes one must look back to a time when legislative intervention was considered a much more exceptional occurrence than it is today. When Parliament had not passed so many general laws it was necessary for people to come to Parliament as suitors seeking parliamentary assistance for a change in the law to benefit their own circumstances. That assistance was sought in the form of legislation affecting only the individual suitor and not affecting the general public, which a general Act does. Apart from the possibility of obtaining a Royal grant, it was consequently "private" legislation.

Private legislation was the only means of securing a divorce until a general divorce Act was passed in 1867 (although no one in New Zealand appears to have used this possible avenue to terminate marriage before the general Act was passed). Other than by obtaining a Royal grant, it was the only means by which inventors

26 (1903) 124 NZPD 438 Guinness.

27 (1908) 145 NZPD 591 Guinness.

28 (1989) 504 NZPD 14723 (Taxation Reform Bill (No 7)).

29 (22 October 2015) 709 NZPD 7538; (1 June 2016) 714 NZPD 40; (14 June 2016) 715 NZPD 11943; (16 June 2016) 715 NZPD 12106 (Riccarton Racecourse Development Enabling Bill, Riccarton Racecourse Bill).

30 Land Transport Amendment Act 2009; (1885) 51 NZPD 446 O'Rorke.

31 SO 274(1).

32 SO 253(1)(d).

could protect the fruits of their ingenuity until a patents Act, passed in 1860, provided for the registration of inventions and their protection from exploitation without the patent-holder's permission.

Private legislation fills in gaps left by the general law, for the benefit of individuals. Today there are fewer gaps to be filled. There are now general statutes dealing with divorce and patents, and other subjects that have been dealt with in the past by private bills. There is, on the face of it, less need for people to have resort to private legislation to deal with their own special circumstances, though the privatisation of some State activities has created a new demand for private legislation.

There remain, however, occasions when legislation for the benefit of an individual or a small number of people is necessary because there is no redress or remedy in any other way; and, in fact, the number of private bills that come before the House has not changed appreciably since the early days. Paradoxically, a demand for a private bill can arise to exempt an individual from the large volume of public legislation that has failed to take account of individual circumstances. In 1982, a private bill was passed to permit a marriage to take place because, under the relevant general legislation, the two people concerned were too closely related (through the adoption of one into the family of the other) to be able to marry legally.<sup>33</sup> In 2014, a private bill was passed allowing the daughter of a same-sex couple to have both parents named on her birth certificate. This followed the passing of the Marriage (Definition of Marriage) Amendment Act 2013, which provided for same-sex marriage.<sup>34</sup> Situations like this can give rise to applications to the House for private bills to alter the effect of general Acts on particular individuals.

Private bills commonly involve matters relating to private trusts—lands held on trust for community use, burial grounds or deeds of family arrangement.<sup>35</sup> Matters such as changes of the trustees administering an estate or a private trust, and the validation of scholarships and allowances provided by a private trust board, are matters for private, not general, legislation.<sup>36</sup> Some private bills relate to marriage within the degrees of relationship prohibited by the Marriage Act 1955. Bills relating to private schools are private bills. Bills dealing with the constitution of public schools are public bills unless they deal with matters relating to the school board peculiar to its personal capacity—for example, property rights under a trust or will—in which case they can proceed as private bills.

One of the most important uses to which private bills have been put is to facilitate reconstructions and amalgamations of banking corporations.<sup>37</sup> These examples show that private bills need not be intrinsically unimportant or trivial. They will never appear to be so to the parties promoting them in any case, but they need not be devoid of wider public importance to retain their private bill status.

Bills designed to inject State funding into corporations or other activities are general (Government or Members'), not private, bills. Thus, a bank originally created by a private Act of Parliament became liable to be dealt with by a Government bill when it was proposed that a State guarantee be given to it in legislation.<sup>38</sup>

In recent years a number of bodies have been restructured by legislation for sale or incorporation as private corporations. If the body being restructured is a public body (for example, a Crown entity or Crown-owned company) constituted by a general Act, then a Government or Member's bill is required to effect the

<sup>33</sup> Papa Adoption Discharge Act 1982.

<sup>34</sup> Sullivan Birth Registration Act 2014.

<sup>35</sup> (1918) 183 NZPD 1007–1014.

<sup>36</sup> (1940) 257 NZPD 1024–1025, 1029.

<sup>37</sup> ANZ Banking Group (New Zealand) Act 1979; Westpac Banking Corporation Act 1982; National Bank of New Zealand Limited Act 1994; Westpac New Zealand Act 2011.

<sup>38</sup> (1894) 83 NZPD 486 O'Rorke (Bank of New Zealand Share Guarantee Act 1894 Amendment Bill).

restructuring.<sup>39</sup> But if the body is not of a public nature, its restructuring or dissolution may be effected by a private bill even though the body is constituted under general legislation such as the Companies Act and amendment of a general Act is required.<sup>40</sup> Private bills have been used to reconstitute governance entities (*rūnanga*) that are to administer claims settlements made under public Acts, and to establish entities to hold and deal with settlement property.<sup>41</sup> A public corporation restructured by general legislation may be dealt with subsequently in a private bill.<sup>42</sup> A private bill can incidentally amend a general Act for the particular benefit of the person or body promoting the bill. It is a matter of policy for the House to decide whether to pass such a bill.<sup>43</sup>

If entities seek particular exemption from the general law for their own benefit, this may be the subject of a private bill. However, where the intent of the bill is simply to vary the decision-makers' rights or the criteria to allow an exemption, this is a matter of public policy and is properly the subject of a Government or Member's bill.<sup>44</sup> In 1981, a bill seeking to require the Licensing Commission to hear and, if it saw fit, grant an application for a liquor licence from a particular applicant that under the general law it would be obliged to reject, was held to be a Member's bill. Although designed for the interest of one company, it affected the powers of a statutory body.<sup>45</sup>

### ***Relationship to general law***

Private bills are required to have a preamble, which must address why the promoter prefers legislation if the objects of the bill could be attained by invoking the general law as it already exists.<sup>46</sup> This is a reminder that Parliament is reluctant to grant special legislative rights to private persons, unless there is a proven necessity. For example, while Parliament has provided, in general legislation, the machinery for the variation or revocation of trusts,<sup>47</sup> it is also possible for the terms of a trust to be varied by private legislation. The promotion of a private bill is not prohibitively expensive; it may even be less expensive than applying to the court. However, having established a judicial procedure to deal with variations of trusts, Parliament is reluctant to create legislative exceptions to it for the benefit of individuals or small groups unless compelling reasons can be advanced. In general, people such as trustees must apply to the court where the law provides avenues for them to attain their objectives, and not look to Parliament to play the role that has been given to the courts.<sup>48</sup>

Usually, if machinery exists under the general law to accomplish what the party (whether a trustee or not) wishes to effect, this is the course that must be followed. Private legislation should be a last resort when what is intended is impossible to effect without it, or because to proceed under the general law would be not merely inconvenient but impracticable or manifestly unfair in some way. Promoters must address themselves to this question at the outset of their bill, in its preamble and in the petition they must present to the House seeking the introduction of the bill.

<sup>39</sup> See, for example: Bank of New Zealand Act 1988; Maori Education Foundation (Abolition) Act 1993; Children's Health Camps Board Dissolution Act 1999.

<sup>40</sup> See, for example: Royal Society of New Zealand Act 1997.

<sup>41</sup> See, for example: Te Runanga o Ngai Tahu Act 1996; Te Runanga o Ngati Awa Act 2005; Maraeroa A and B Blocks Incorporation Act 2012.

<sup>42</sup> See, for example: the legislative steps by which the Government Life Insurance Office (a Government department) became the Tower Corporation (a private corporation): Government Life Insurance Corporation Act 1983; Government Life Insurance Corporation Act 1987; Tower Corporation Amendment Act 1989; Tower Corporation Act 1990 (the latter a private Act).

<sup>43</sup> (1882) 41 NZPD 410.

<sup>44</sup> (1939) 255 NZPD 44–45 Barnard.

<sup>45</sup> (1981) 438 NZPD 1352–1357 (Winton Holdings Licensing Bill).

<sup>46</sup> SO 258.

<sup>47</sup> Trustee Act 1956, s 64A.

<sup>48</sup> Okains Bay Maori and Colonial Museum Bill (4–1) (report, 10 October 1979) ([1979] AJHR I.16 at 3–4).

## DETERMINING A BILL'S CLASSIFICATION

All bills must show on their face which type of bill they are.<sup>49</sup> But this claim made by the promoter or the member introducing the bill is not conclusive; at best it allows the bill to proceed as if it were what it proclaims itself to be unless, or until, it is challenged. Formerly, if any doubt arose as to how a bill should be classified, it was referred to a committee for examination of the matter. Now the Speaker decides any question as to the character of a bill.<sup>50</sup> This may require the deferral of further progress on the bill until the Speaker has reached a decision.

The Speaker may make a determination on a question as to a bill's classification being raised on a point of order, on the Speaker's own initiative<sup>51</sup> or following a report from a select committee questioning the status of the bill or some of its provisions.<sup>52</sup> But the Speaker does not intervene until a bill is introduced.<sup>53</sup>

As the House has no concept of a "hybrid" bill falling into more than one of the four categories of bills, it may be necessary for the Speaker or the House to order that a bill be divided<sup>54</sup> or that a clause be omitted from it to reflect its proper classification.<sup>55</sup> In all cases the House can suspend its Standing Orders to permit a bill to proceed even though it contains provisions relating to more than one type of bill.

## ADOPTION OF MEMBER'S BILL BY THE GOVERNMENT

As well as adopting the ideas set out in a Member's bill for inclusion in its own legislation, the Government may formally take over a Member's bill and convert it into a Government bill.

This can be done only with the consent of the member in charge of the bill.<sup>56</sup> If this consent is forthcoming, the Speaker must be notified in writing by the Minister who is taking charge of the bill that it has been adopted by the Government.<sup>57</sup> The Speaker announces this fact to the House.<sup>58</sup> The bill is consequently listed among the Government orders of the day and treated thereafter as a Government bill.<sup>59</sup>

## FORM OF BILLS

Where there are provisions requiring the inclusion of particular provisions in a bill, they must be observed, otherwise the bill will not comply with the Standing Orders. The House requires that any bill presented to it conform to the prescribed standards. There are now a number of such requirements, which are examined below. They are effectively drafting instructions to those preparing bills. The fact that a bill must be introduced in conformity with these requirements does not necessarily mean that any resulting Act will also include them; the House may amend the bill by omitting them as the bill is being passed. But in fact this is quite

<sup>49</sup> SO 253(1).

<sup>50</sup> SO 253(2); (17 March 2010) 661 NZPD 9570–9585 (Christ's College (Canterbury) Amendment Bill), a private bill introduced to amend a local bill of a predominantly private nature.

<sup>51</sup> (1989) 504 NZPD 14723 (Taxation Reform Bill (No 7)).

<sup>52</sup> (1929) 223 NZPD 1177–1178 Statham (Petone and Lower Hutt Gaslighting Amendment Bill).

<sup>53</sup> (1981) 437 NZPD 754.

<sup>54</sup> Wellington Harbour Board Reclamation and Empowering Bill (report, 14 July 1908) ([1908] AJHR I.7 at 1); (15 July 1908) [1908] 1 JHR 46.

<sup>55</sup> Reynolds Hall Trust Bill (report, 10 September 1980) ([1980] AJHR I.19 at 3); (10 September 1980) [1980] 1 JHR 171; (1989) 504 NZPD 14723 (Taxation Reform Bill (No 7)).

<sup>56</sup> SO 272(1).

<sup>57</sup> SO 272(2).

<sup>58</sup> (3 June 1977) [1977] JHR 55 (Evidence Amendment Bill); (1999) 580 NZPD 19500 (Taonga Maori Protection Bill); (2000) 582 NZPD 799 (Conservation (Protection of Trout as a Non-Commercial Species) Amendment Bill); (2000) 585 NZPD 3682 (Pardon for Soldiers of the Great War Bill); (9 September 2008) 650 NZPD 18593 (Waste Minimisation Bill).

<sup>59</sup> SO 272(3).

unlikely. The object of specifically requiring that bills contain a minimum set of provisions is designed to improve the utility of enacted legislation, as well as the process of legislation at the bill stage. However, there are relatively few formal rules requiring a bill to be drafted in any particular form.<sup>60</sup>

Nevertheless, although the specific Standing Orders requirements are few, bills are expected to conform to a certain form and style in their presentation. In 1997 a number of format and drafting changes were instituted by the Parliamentary Counsel Office and in successive Parliaments since then the House has given authority for these changes to be made to bills already before it as they are reprinted during their passage through the House.<sup>61</sup> A more substantial revision to the format in which bills are produced was undertaken in 1999 to coincide with the new Interpretation Act and consequent Standing Orders changes, the first major change in the form of bills since 1956. In this case, too, the House has agreed that bills introduced before the 1999 format changes were introduced should be amended to conform to them as they are reprinted.<sup>62</sup> More recently, in 2012 the Parliamentary Counsel Office revised its style for amending enactments. This revision, however, was not made retrospectively to bills already before the House.<sup>63</sup>

Electronic publication of legislation has had consequences for the form of bills before the House. Showing amendments to bills by revision tracking is now standard practice following the select committee and committee of the whole House stages. Also, amending Acts are now published in full text and the principal Acts they amend can be seen both in current form and as they were before amendment. The legislative history of an Act and the sources of amendments to it are thus easily accessible electronically. This has removed the need to divide most amending omnibus bills for third reading.

While a fairly wide latitude is given to those preparing legislation to decide what form it should take, its form can be taken into account by the presiding officers in exercising discretions given to them by the Standing Orders, for example in deciding whether to accept a closure motion.<sup>64</sup>

## Preamble

A preamble recites the reasons for the legislative provisions proposed in the bill.

It has been said that there is a difference between the preamble and the subsequent substantive provisions of a bill (or Act): “Parliament ‘does’ only what is set out in the enactment. The preamble may explain and justify; it may ... outline a whole political philosophy, or ... accept as given vast novel assertions; but it can never record what parliament has done.”<sup>65</sup> Accordingly, if there is a preamble, it precedes the enacting words of the statute. But while a preamble may not enact law itself, it is one indication of the meaning of the enactment.<sup>66</sup>

Private bills are required to include a preamble setting out the facts on which the bill is founded, the circumstances that gave rise to it, and, if there is an alternative to legislation, why legislation is preferred.<sup>67</sup> But in other types of bills preambles are not often employed. To a large extent the functions performed by the preamble have been taken over by the explanatory note. However, an Appropriation Bill always has a preamble in the form of an address from the House to the Crown,<sup>68</sup> and bills effecting Treaty of Waitangi settlements almost invariably contain preambles with

<sup>60</sup> (1989) 498 NZPD 10819 Burke; (2001) 597 NZPD 14010; (26 March 2003) 607 NZPD 4421.

<sup>61</sup> (1997) 559 NZPD 869–879; (1999) 581 NZPD 37; (2002) 602 NZPD 308–309.

<sup>62</sup> (1999) 581 NZPD 37; (2002) 602 NZPD 308–309.

<sup>63</sup> Parliamentary Counsel Office *Style Manual* (3rd ed), App 4.

<sup>64</sup> (26 March 2003) 607 NZPD 4421.

<sup>65</sup> GR Elton *England under the Tudors* (Methuen & Co Ltd, London, 1955) at 268.

<sup>66</sup> Interpretation Act 1999, s 5(3).

<sup>67</sup> SO 258.

<sup>68</sup> (1982) 446 NZPD 2711.

extensive recitations of the background to the settlements.<sup>69</sup> If a bill is introduced without a preamble, one cannot be inserted by way of amendment to the bill,<sup>70</sup> but an existing preamble in a bill can be amended or omitted.

## Enacting words

The preamble, if there is one, is followed by enacting words. This is a declaration testifying to the formal nature of the document as being intended by Parliament to have legislative effect. The formula, which was adopted in 1999, reads: “**The Parliament of New Zealand enacts as follows:**”. If there is a preamble the words read: “**The Parliament of New Zealand therefore enacts as follows:**”.<sup>71</sup> The provisions of the bill follow this statement.

## Preliminary clauses—Title

This is the name by which the bill is commonly known, and by which the resulting Act may be referred to in legal proceedings. The title of the bill (formerly known as the Short Title) is printed prominently across the top of the front page, and the first clause in the bill itself following the enacting words must be the provision giving the bill its title.<sup>72</sup> A bill may have two titles, one in Te Reo Māori and the other in English.<sup>73</sup> The decision as to what title to use is a drafting decision made by the member introducing the bill. The Speaker cannot intervene unless it were to contain something quite extraordinary, such as an obscenity.<sup>74</sup>

A bill with the same title as another bill currently before the House or the same as that of a bill that has been before the House earlier in the same session is distinguished from the other bill by the addition of a number, “(No 2)”, as part of its title. This number immediately follows the word “Bill”. If “(No 2)” is not available because a bill has already been assigned that number, the next available number is used, and so on.

Bills have been regularly held over or reinstated from session to session and from Parliament to Parliament since the 1970s. Consequently, it is not possible to number similarly entitled bills in a consecutive series for each session or even each Parliament. Numbers assigned to the title therefore do not imply anything about the order in which similarly entitled bills were introduced; they merely distinguish the bills. Even so, distinguishing between bills with similar titles can be difficult. Therefore in recent years an attempt has been made to give bills unique descriptive titles, rather than ones that largely duplicate the titles of bills already before the House. Appropriation bills, Imprest Supply bills and Taxation bills setting annual tax rates are given titles that identify precisely the financial year, the subject (Estimates, Supplementary Estimates, confirmation and validation of appropriations) or the order (first, second and so on) of enactment in relation to the financial year in question. In the case of local bills the title or name of the local authority, and in the case of private bills the name of the person or organisation promoting the bill, should be included in the title of the bill, helping to avoid any duplication of title.

## Preliminary clauses—Commencement

A bill must set out precisely when it is proposed that it come into force.<sup>75</sup> This rule reflects the legal rule that an Act comes into force on the date stated or provided for

<sup>69</sup> See, for example: Waikato Raupatu Claims Settlement Act 1995; Ngai Tahu Claims Settlement Act 1998.

<sup>70</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 583.

<sup>71</sup> SO 254.

<sup>72</sup> SO 255.

<sup>73</sup> See, for example: Te Ture Whenua Maori Act 1993, s 1(1).

<sup>74</sup> (2001) 597 NZPD 14010.

<sup>75</sup> SO 256(1).

in the Act.<sup>76</sup> In principle, the commencement provision should fix a precise date.<sup>77</sup> But the commencement of legislation can be deferred for it to be brought into force by Order in Council if there are considered to be good reasons for doing so. In these circumstances the reasons for deferring the commencement of the legislation to an unspecified date are set out in the bill's explanatory note.<sup>78</sup> Any use of the power to defer the commencement of a bill's provisions other than for the reasons given in the explanatory note is likely to attract criticism.<sup>79</sup> The Parliamentary Counsel Office maintains a list of legislation waiting to be brought into force. The list is presented to the House each year as a non-parliamentary paper, and is published on the Parliamentary Counsel Office website. The list includes departmental notes updating progress on commencement.<sup>80</sup>

Until 1999 the commencement of a bill was invariably dealt with in the first clause, along with the title. It must now be in a distinct clause devoted solely to the commencement.<sup>81</sup> This is the second clause of the bill and, along with the title clause, it forms one of a bill's preliminary clauses, which precede the first distinct part in the bill (if the bill is drafted in parts).<sup>82</sup>

Different provisions in the bill may come into force at different times. This must be indicated in the commencement clause, with cross-references to the other clauses where the precise commencement details are set out.<sup>83</sup>

## Preliminary clauses—Principal Act clause

Many bills are designed to amend an Act already in force (known as the “principal Act”). A separate clause describing the principal Act being amended by a bill appears after the commencement provision. Until 2006, such provisions tended to be placed in a subclause of the title clause. A principal Act clause is now recognised as a preliminary clause and is defined as such.<sup>84</sup>

## Temporary laws

Bills sometimes contain “sunset” provisions whereby the enactment is to remain in force for a limited time and is then to be wholly repealed or to expire. Such a provision must be included as a distinct clause in the bill. It cannot be tagged on to another provision or annexed as a subclause in a clause dealing with other matters.<sup>85</sup> An expiry provision is not a preliminary clause.<sup>86</sup>

Where only a single provision in the bill is subject to a sunset provision, the latter may be included in a separate clause or in a subclause as is convenient.<sup>87</sup> This requirement for a separate clause does not apply where a bill is inserting into another Act sections that are to be subject to a sunset clause.<sup>88</sup>

## Clauses

Clauses are the major building-blocks of a bill. Many older English bills and Acts set forth their provisions with little regard for the reader, with no punctuation or breaks in the text. This style of drafting was never employed in New Zealand.

<sup>76</sup> Interpretation Act 1999, s 8(1).

<sup>77</sup> Regulations Review Committee *Investigation into the commencement of legislation by Order in Council* (23 August 1996) [1993–1996] AJHR I.16K at 1–20.

<sup>78</sup> George Tanner “Legislation Drafting: Some Practical Issues” (2001) *New Zealand Law Society Seminar: New Legislation Guidelines* at [18].

<sup>79</sup> Regulations Review Committee *Investigation into the commencement of legislation by Order in Council* (17 June 2002) [1999–2002] AJHR I.16L at 7–9.

<sup>80</sup> Parliamentary Counsel website <[www.pco.parliament.govt.nz](http://www.pco.parliament.govt.nz)>.

<sup>81</sup> SO 256(1).

<sup>82</sup> SO 3(1).

<sup>83</sup> SO 256(2).

<sup>84</sup> SO 3.

<sup>85</sup> SO 259(1).

<sup>86</sup> (23 February 2010) 660 NZPD 9268 Barker (Chairperson).

<sup>87</sup> SO 259(2).

<sup>88</sup> SO 259(3).

All bills are divided into clauses (numbered consecutively in arabic numerals<sup>89</sup>) so that the subject matter of a bill can be arranged logically. A clause may in turn be subdivided into subclauses (marked by arabic numerals in brackets), subclauses into paragraphs (lower-case letters in brackets), and paragraphs into subparagraphs (small roman numerals in brackets).

While bills are drafted in clauses, these clauses become known as “sections” when the bill becomes an Act (and a subclause then becomes known as a subsection). For this reason a bill is drafted exactly as it would read if it became an Act. A reference in a clause to another clause in the same bill refers to that other clause as a section. Similarly the word “bill” is not used in a bill’s text; when it refers to itself, a bill calls itself an “Act”.

Printed above the text of each clause is a heading (formerly known as a marginal note when it was printed in the margin), which is really the title of each clause, describing as pithily as possible the clause’s provisions. These headings are collected together and printed at the front of the bill as the contents of the bill. The headings may be used as indications of the meaning of the enactment.<sup>90</sup> They are subject to amendment as the bill is passing through the House in the same way as any other part of the text of the bill.<sup>91</sup>

As well as the preliminary and temporary law clauses already discussed, a number of other types of clauses are commonly encountered.

If a bill needs to define words it uses to assist with its interpretation, this is often done in a distinct clause. Indeed sometimes there may be more than one clause dealing with interpretation issues.<sup>92</sup> Other distinct clauses often found in bills include a purpose clause (declaring the objects that the bill is intended to achieve); an application clause (defining the persons or period or types of actions the bill’s provisions are to apply to); and a clause declaring that the Act is to bind the Crown (an Act does not bind the Crown unless it expressly states that it does<sup>93</sup>). In larger bills increasing use is being made of overview clauses, which outline the structure and content of a bill in more detail than the table of contents.<sup>94</sup> Bills often also contain provisions authorising the making of delegated legislation. Such provisions are subject to the special scrutiny of the Regulations Review Committee. (See Chapter 28.)

## Parts and other divisions

Most bills are divided into parts consisting of groups of clauses. Parts are numbered consecutively in arabic numerals. Older Acts were sometimes divided into what used to be called divisions or titles, which are similar to parts. A part may be divided into subparts. Other headings and subheadings without a formal division into parts may also be used to group together similar clauses. Decisions on whether to employ parts and headings (and also exactly when to use clauses, subclauses and the like) are essentially drafting decisions, though they will be taken into account by chairpersons when deciding how long to allow for debate on the bill in committee.<sup>95</sup>

## Schedules

A schedule of a bill, which may be in tabular form, is often employed as a convenient way to set out provisions relating to repeals or amendments of previous Acts or

<sup>89</sup> Some tax bills use a different, alpha-numeric, system.

<sup>90</sup> Interpretation Act 1999, s 5(3).

<sup>91</sup> Acts and Regulations Publication Amendment Bill (299–2) (commentary, 27 August 1999) at iv–v ([1996–1999] AJHR I.24 at 242–243).

<sup>92</sup> For example: in the Injury Prevention, Rehabilitation, and Compensation Act 2001, 13 sections deal with interpretation.

<sup>93</sup> Interpretation Act 1999, s 27.

<sup>94</sup> For example: Financial Markets Conduct Act 2013, s 5.

<sup>95</sup> (26 March 2003) 607 NZPD 4421.

other provisions too detailed to include in the main body of the bill. Any schedules of the bill are placed after the clauses.

A schedule has been described as an appendix to the bill, to which effect is given by a preceding clause in the bill.<sup>96</sup> This is almost invariably the case, but a schedule has been added to a bill without any preceding clause giving effect to it.<sup>97</sup> A schedule of an Act is a full part of the Act and may contain very important provisions. Complaints have sometimes been made that matters included in a schedule should more appropriately have been included in the main body of the bill, but that is a matter for the House's judgement in deciding whether to agree to the schedule.<sup>98</sup>

## Explanatory note

When it is introduced every bill must contain a memorandum, known as an explanatory note, stating the policy that the bill seeks to achieve.<sup>99</sup> The explanatory note may also (and usually does) explain the individual provisions of the bill.<sup>100</sup> An explanatory note is an attempt to set out in non-legal or less formal terms the purport of the bill that has been presented to the House. It is regarded as a very important indicator of the meaning of the language used in the bill and the subsequent Act,<sup>101</sup> even though in New Zealand (unlike the United Kingdom)<sup>102</sup> it is not amended to reflect changes made to the bill as the bill passes through the House. In this regard the commentary produced by the select committee following its consideration of the bill supersedes the explanatory note in parliamentary terms.

The explanatory note of a Government bill is prepared by the Parliamentary Counsel Office and the department principally responsible for promoting the legislation. In all cases an explanatory note must be drafted in factual, not argumentative, terms.<sup>103</sup> While the note must not mislead the House, whether members agree with its assertions or accept them as correct is a matter for debate and is not something on which the Speaker can rule.<sup>104</sup> If the Minister in charge of the bill becomes aware of a factual error in the explanatory note, the House should be informed and a correction tabled. An explanatory note that does not set out the policy of the bill or describe the nature of the changes to the law that the bill proposes to make has been criticised by the committee to which the bill was referred.<sup>105</sup>

The explanatory note for a Government bill has also become the locus for departmental scrutiny information about the bill. Cabinet Office rules require regulatory impact analysis to be performed for a Government bill. Since November 2009 a URL link has replaced the full text of any departmental regulatory impact statement supplied in the explanatory note for the bill.<sup>106</sup> The Government has also agreed to provide disclosure statements for most Government bills introduced.<sup>107</sup> A URL link is provided in the explanatory note to material grouped into four areas: General Policy Statement; Background Material and Policy Information; Testing

<sup>96</sup> BC Wright *House of Representatives Practice* (6th ed, Department of the House of Representatives, Canberra, 2012) at 349.

<sup>97</sup> Local Government Amendment Act (No. 2) 1989, sch 4; Maori Reserved Land Amendment Act 1997, sch 5.

<sup>98</sup> (1998) 574 NZPD 14311 (Accident Insurance Bill).

<sup>99</sup> SO 257.

<sup>100</sup> SO 257.

<sup>101</sup> *Real Estate House (Broadtop) Ltd v Real Estate Agents Licensing Board* [1987] 2 NZLR 593 (CA).

<sup>102</sup> *R (Westminster City Council) v National Asylum Support Service* [2002] UKHL 38, [2002] 1 WLR 2956 at [4] per Lord Steyn.

<sup>103</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 531.

<sup>104</sup> (2002) 598 NZPD 14825–14826 Hunt (Customs and Excise Amendment Bill (No 5)).

<sup>105</sup> Survey Amendment Bill (173–2) (commentary, 17 June 1996) at vi.

<sup>106</sup> Treasury *Regulatory Impact Analysis Handbook* (July 2013) at 4.7.

<sup>107</sup> Cabinet Office Circular "Disclosure Requirements for Government Legislation" (4 July 2013) CO 13/3.

of Legislative Content; and Significant Legislative Features. Disclosure statements support the effective parliamentary scrutiny of legislation and the implementation of the legislative quality standards promoted in documents such as the Legislation Advisory Committee Guidelines.<sup>108</sup> An explanatory note has also been used to convey the results of consultation carried out before legislation to amend the New Zealand Superannuation Act was introduced,<sup>109</sup> though it is normal practice to do this in a separate report.

## OMNIBUS BILLS

Early Royal instructions from the Sovereign enjoined Governors to take care, as far as was possible, to ensure that different matters were dealt with in different laws.<sup>110</sup> Until recently there were no formal parliamentary rules requiring adherence to such a principle.<sup>111</sup> However, there has been a huge development, especially since the 1970s, in the use of omnibus bills to “fast-track” legislation through Parliament. The earliest of such omnibus bills were Statutes Amendment bills, which made amendments to a large number of disparate statutory provisions of a minor or tidying-up nature. From the mid-1950s onwards Statutes Amendment bills have been divided into separate amending bills at the committee stage and passed into law as separate Acts. Statutes Amendment bills are still subject to strong conventions that ensure cross-party agreement to their provisions.

But, beginning in the late 1970s, a new type of omnibus bill, usually called a Law Reform (Miscellaneous Provisions) Bill, came into use. This bill also amended a number of disparate legislative provisions; but it was not confined to minor, non-controversial matters. It was used to introduce and pass highly important and controversial legislation, sometimes of an entirely different character from legislation already in force. Including a large number of provisions in the same bill meant that parliamentary consideration of the measure was severely truncated, and interested parties found it difficult to find the provisions affecting them since they were combined with other quite different provisions in the same bill.

In 1995 the Standing Orders Committee reacted to this development of defective legislative process by prohibiting Law Reform (Miscellaneous Provisions) bills and controlling the circumstances in which omnibus bills could be employed.<sup>112</sup>

### Bills to relate to a single subject area

The principle is now that a bill introduced into the House must relate to one subject area only, except insofar as the Standing Orders provide otherwise.<sup>113</sup> This is a modern reaffirmation of the principles in the early Royal instructions. The Speaker is charged with the examination of each bill that is introduced to ensure compliance with this principle. The Speaker may order that a bill be discharged, or be amended as a condition of its proceeding, so that it complies with the rule.<sup>114</sup> A Member’s bill introduced to enhance access to official information and to amend the secrecy provisions of the tax Acts has been amended under this rule by the deletion of the tax Acts provisions.<sup>115</sup> In the case of an omnibus bill that can be saved by being amended, the Speaker will normally give the member the option of

<sup>108</sup> Legislation Design and Advisory Committee <[www.dlac.org.nz](http://www.dlac.org.nz)>; Standing Orders Committee Review of Standing Orders (July 2014) [2011–2014] AJHR I.18A at 18–19.

<sup>109</sup> New Zealand Superannuation Bill (89–3) (explanatory note, 28 November 2000).

<sup>110</sup> Instructions to Col Thomas Gore Browne CB, Governor of New Zealand, 9 February 1855, cl 5 ([1856 sess 4] 2 *Votes and Proceedings* at 4). This rule was reiterated in subsequent Royal instructions, including those issued in 1892, but was omitted in the instructions issued in 1907.

<sup>111</sup> Though the rule was incorporated in the Standing Orders from 1856 to 1865.

<sup>112</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 49–51.

<sup>113</sup> SO 260(1).

<sup>114</sup> SO 261.

<sup>115</sup> Access to Official Information Bill (84–1A) (23 November 2000).

choosing which provisions of the bill to excise so as to bring it within the Standing Orders, otherwise it will be entirely out of order.

The rule against omnibus bills is not automatically infringed by a bill amending more than one Act. A bill can make purely consequential amendments to a number of Acts affected by its provisions without thereby becoming an omnibus bill.<sup>116</sup> But if a bill proposes to amend more than one Act substantively (that is, other than consequentially), it is inherently an omnibus bill. Even if a bill does not amend more than one Act it may still be an omnibus bill if it deals with more than one substantively distinct subject. In each case, a judgement must be made as to whether a bill is of an omnibus nature, and making this judgement is not obviated by the technicality that no amendment of an already existing Act is involved.

## Types of omnibus bills that are permitted

There are a number of standard types of bills that, though they are omnibus in nature, have become established as acceptable for consideration by the House. These are Finance bills; confirmation and validation bills; Taxation bills; Local Legislation bills; Māori Purposes bills; Reserves and Other Lands Disposal bills; revision bills; and Statutes Amendment bills.<sup>117</sup> These types of bills are described below. The permissible contents of Local Legislation bills, Māori Purposes bills, Reserves and Other Lands Disposal bills, and Taxation bills are regarded as better defined than those of Finance bills; consequently, matter more appropriate for inclusion in one of the former group is to be included in it, rather than in a Finance Bill.<sup>118</sup>

Apart from these standard omnibus bills, it is possible to introduce omnibus bills in four sets of circumstances.

1. A bill dealing with an interrelated topic that can be regarded as implementing a single broad policy may be introduced even though it amends several Acts.<sup>119</sup>

This exception is intended to permit a single bill to be introduced to effect an overarching set of reforms. Instances given by the Standing Orders Committee in 1995 were the companies reform legislation of the early 1990s, occasional customs legislation and the very common taxation reform legislation.<sup>120</sup> The majority of permissible omnibus bills that are introduced fall under this exception.

2. A bill effecting similar amendments to a number of different Acts may be introduced.<sup>121</sup>

Where, for example, statutory references need to be changed throughout the statute book, it is convenient to do this by a single bill even though it will technically be an omnibus bill.<sup>122</sup>

3. An omnibus bill may be introduced if the Business Committee agrees to it being introduced.<sup>123</sup>

There are no criteria limiting the nature of a bill that may be introduced with the Business Committee's agreement, but, because of the rule of unanimity or near-unanimity applying to that committee,<sup>124</sup> a bill

<sup>116</sup> SO 260(2).

<sup>117</sup> SO 262(1).

<sup>118</sup> SO 262(2).

<sup>119</sup> SO 263(a).

<sup>120</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 51.

<sup>121</sup> SO 263(b).

<sup>122</sup> See, for example: Treasurer (Statutory References) Bill (15–2) (1 May 1997) amending references to the Minister of Finance to references to the Treasurer.

<sup>123</sup> SO 263(c); see, for example: Infrastructure Bill (63–2) (5 August 2009) (introduction as an omnibus bill agreed to by the Business Committee on 28 July 2009).

<sup>124</sup> SO 78.

containing controversial provisions is most unlikely to obtain its approval for introduction. As a condition of its agreement the committee may require a particular provision to be omitted from the draft bill submitted for its approval and insist on the provision's introduction as a separate measure. Notwithstanding this, a select committee has criticised the Business Committee's decision to allow a bill to proceed as an omnibus bill on the grounds that it contained substantial policy proposals that should have been introduced separately.<sup>125</sup>

Where the Business Committee agrees to an omnibus bill being introduced, this fact is mentioned in the bill's explanatory note, thus making it explicit why it can proceed even though it is an omnibus bill.

4. The Standing Orders may be suspended to permit an omnibus bill to be introduced.

Where Business Committee agreement to the introduction of an omnibus bill cannot be obtained, it is always open to the House to suspend the Standing Orders to permit such a bill to proceed.<sup>126</sup> This has been done on notice.<sup>127</sup>

### **Amendments of an omnibus nature**

It is axiomatic that, since a bill cannot be introduced as an omnibus bill (subject to the exceptions already described), neither can a bill be turned into an omnibus bill by way of amendment as it is proceeding through the House, except by leave of the House or the suspension of Standing Orders.

In the case of a bill introduced as an omnibus bill, substantive amendments are permitted to Acts not proposed to be amended at introduction, provided that the amendments are relevant to the subject matter of the bill, are consistent with the principles and objects of the bill, and otherwise conform to the Standing Orders and practices of the House.<sup>128</sup>

## **PARTICULAR TYPES OF BILLS**

There are several types of general bills that are introduced into the House on a regular basis. These bills may have particular parliamentary rules attaching to them, or be defined by their special contents. In practice, they are invariably introduced as Government bills. Some of them are omnibus bills proposing amendments to a number of different Acts already in force or dealing with a number of disparate subjects.

### **Appropriation bills**

There may be three or more Appropriation bills relating to each financial year. The first or main Appropriation Bill is introduced on Budget day. The second reading of this bill constitutes the Budget debate. The bill contains the Government's main expenditure plans, and consideration of the Estimates takes place at its committee stage. The bill must be passed within three months of the delivery of the Budget.<sup>129</sup> There is also one or more Appropriation Bill containing Supplementary Estimates of expenditure that must be passed before the end of the financial year.

The Appropriation (Confirmation and Validation) Bill is a bill introduced after the end of the financial year, containing provisions confirming or validating financial matters in respect of that year, such as any unappropriated or emergency

<sup>125</sup> Business Law Reform Bill (319–2) (commentary, 2 October 2000) at 2–3 ([1999–2002] AJHR I.22A at 49–50).

<sup>126</sup> SO 4.

<sup>127</sup> (12 June 2003) 609 NZPD 6233–6238 (Business Law Reform Bill).

<sup>128</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 47.

<sup>129</sup> SO 340(1).

expenditure that has been incurred. This bill is the vehicle by which the House debates the Government's annual statements and holds its annual review debate.<sup>130</sup>

Apart from an Appropriation (Confirmation and Validation) Bill, an Appropriation Bill must relate only to the current financial year. It supersedes all Imprest Supply Acts still in force at the time it is passed. Grants of imprest supply merge into the appropriations made under an Appropriation Act. The introduction of an Appropriation Bill is accompanied by the presentation of Estimates and other supporting information setting out how the amounts to be appropriated are to be charged to each vote.<sup>131</sup> (See Chapters 31, 33 and 35.)

### **Confirmation and validation bills**

A number of Orders in Council and other regulations have only temporary effect unless confirmed by Act of Parliament within a certain time. Therefore, there is usually at least one bill each year confirming subordinate legislation that has been made in the period since the last legislative confirmation. Such a bill may be an omnibus bill dealing with confirmation of a number of different instruments.<sup>132</sup> A confirmation and validation bill is not an appropriate legislative vehicle for amending legislation nor for making substantial validations of illegal regulations and related actions. The task of compiling the bill is co-ordinated by the Parliamentary Counsel Office.<sup>133</sup>

### **Customs Acts Amendment bills**

An omnibus bill called the Customs Acts Amendment Bill may be introduced to amend Acts dealing with customs and excise duties. Sometimes this bill has been divided up into separate amending Acts at the committee stage, and on other occasions it has been passed as a single Act.

### **Finance bills**

Finance bills contain miscellaneous provisions that do not warrant enactment in separate legislation and do not conveniently fall into any other category of legislation. There is no significance in the title "Finance Bill". The scope of debate on a Finance Bill is determined entirely by its contents.<sup>134</sup> While such bills were once common, they are rarely introduced now.

A Finance Bill may contain one-off provisions, such as validations and authorisations and repeals of spent enactments, introduced as an omnibus bill.<sup>135</sup> It may not be used to make permanent amendments to legislation, which should be made in separate legislation or, if appropriate, in a Statutes Amendment Bill. Even in the case of validations and authorisations, there may be another more appropriate "washing-up" bill in which the provisions can be included. In either case, one of those bills should be used rather than a Finance Bill.<sup>136</sup> A Finance Bill may not contain clauses in the nature of a private Act, relating for example to private trusts.<sup>137</sup>

A Finance Bill is introduced by a Finance Minister.

### **Imprest Supply bills**

There are two or three Imprest Supply bills each financial year. An Imprest Supply Bill authorises the expenditure of public money or the incurring of expenses or

<sup>130</sup> SOs 346–348.

<sup>131</sup> Public Finance Act 1989, ss 13 and 16.

<sup>132</sup> SO 262(1).

<sup>133</sup> *Regulations Review Committee Inquiry into regulation-making powers that authorise international treaties to override any provisions of New Zealand enactments* (12 March 2002) [1999–2002] AJHR I.16H at 24.

<sup>134</sup> (1987) 485 NZPD 1825 Terris (Chairman).

<sup>135</sup> SO 262(1)(a).

<sup>136</sup> SO 262(2).

<sup>137</sup> (1940) 257 NZPD 1024–1025, 1029 Barnard.

capital expenditure in anticipation of a formal appropriation by an Appropriation Act. A grant of imprest supply is a vote by Parliament to the Government of funds to keep the machinery of State running until the Government's detailed expenditure proposals have been examined and approved.

An Imprest Supply Bill is passed before the financial year opens on 1 July, to allow expenditure to continue until the main Appropriation Bill is enacted. Another Imprest Supply Bill is likely to be passed at the time of the passing of the main Appropriation Act, to authorise expenditure not appropriated in that Act that will be brought forward in an Appropriation Bill containing Supplementary Estimates to be passed before the end of the financial year. There may be a further Imprest Supply Bill depending upon the need for more interim appropriation during the financial year.

An Imprest Supply Bill may contain provisions dealing only with temporary financial authority to continue public services. Other material would alter the nature of the bill and it would not then be subject to the procedures prescribed in the Standing Orders<sup>138</sup> for an Imprest Supply Bill. (See Chapters 31 and 33.)

## **International treaty bills**

It has been estimated that a fifth of New Zealand's legislation is designed to give effect to international obligations that have been, or are to be, entered into by the Government.<sup>139</sup> The House now has procedures whereby multilateral treaties and some bilateral treaties are presented to it in draft and subjected to some parliamentary examination before they become binding.

There is no single form in which bills to give effect to treaty obligations are drafted.<sup>140</sup> However, where the treaty text itself is annexed to the bill, it is well recognised that it is not for the House to seek to amend the text, which has its own independent origin.<sup>141</sup> As the object of such a bill is to implement a treaty, committees have also accepted that it is not open to them to amend the bill in a way that is inconsistent with the treaty.<sup>142</sup> It is for the House (as with Treaty of Waitangi settlement legislation) to decide whether to incorporate a treaty into New Zealand law and, if so, what form the incorporation will take.

## **Local Legislation bills**

A Local Legislation Bill is a Government bill introduced by the Minister of Local Government, containing provisions that otherwise would have been required to be the subject of separate local bills.<sup>143</sup> It is a permissible type of omnibus bill.<sup>144</sup> It allows small amendments to local legislation, which might not in themselves have warranted the promotion of a special bill, to be effected. It is the local bill equivalent of the Statutes Amendment Bill, though the provisions in a Local Legislation Bill are not solely confined to amending local Acts already in force; they may validate a technical illegality or confer a power on a particular local authority without reference to a principal Act.

Clauses are included in the bill by the Minister of Local Government on the application of local authorities.<sup>145</sup>

As well as local legislation clauses initiated by local authorities, a Local Legislation Bill can contain clauses repealing spent local Acts, spent Local

<sup>138</sup> SO 331.

<sup>139</sup> Mark Gobbi "Examining New Zealand's Treaty Examination Process: Some Supporting Notes" (2012) *Beeby Colloquium on International Law* (unpublished).

<sup>140</sup> Mark Gobbi "Drafting Techniques for Implementing Treaties in New Zealand" (2000) 21(2) *Statute Law Review* 71 at 71.

<sup>141</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 578.

<sup>142</sup> Pitcairn Trials Bill (7–2) (commentary, 26 November 2002) at 1 ([2002–2005] AJHR I.22A at 169).

<sup>143</sup> SOs 274(1) and App C cl 18–23.

<sup>144</sup> SO 262(1)(c).

<sup>145</sup> SOs, App C cl 18.

Legislation Acts or spent provisions in a Local Legislation Act.<sup>146</sup> It is most unlikely that a local authority would wish to initiate a clause for any of these purposes (the local authority that promoted the legislation may no longer exist, though if it does, it is likely to be consulted about the proposed repeal), so in the interests of tidying up the statute book the Minister of Local Government may include such provisions in a Local Legislation Bill on the Minister's own initiative.

A Local Legislation Bill is not divided into its constituent local bills at the committee stage; it is passed in a single enactment. Although once an annual item on the legislative calendar, Local Legislation bills are infrequent now.

## Māori Purposes bills

A Māori Purposes Bill may be an omnibus bill.<sup>147</sup> Such a bill makes tidying-up amendments to legislation relating to Māori affairs that do not warrant enactment as separate amending Acts. It can also effect miscellaneous authorisations, transfers and validations relating to Māori land and property. Provisions concerning Māori land and trusts that would otherwise require private legislation can be included in a Māori Purposes Bill.<sup>148</sup> The Minister of Māori Development introduces the bill.

## Reserves and Other Lands Disposal bills

Reserves and Other Lands Disposal bills are miscellaneous omnibus bills.<sup>149</sup>

They effect authorisations, transfers and validations of matters relating to Crown land and reserves, and other land held for public or private purposes. They may also amend previous Reserves and Other Lands Disposal Acts. A Reserves and Other Lands Disposal Bill may not give effect to a deed of family arrangement, which should be dealt with by a private bill.<sup>150</sup>

Where legislation is necessary for a step to be taken in respect of land held for public purposes, a Reserves and Other Lands Disposal Bill is an appropriate vehicle. Thus, by law, land may be excluded from a national park only by Act of Parliament.<sup>151</sup> A Reserves and Other Lands Disposal Bill is the appropriate means by which such exclusions are effected.

In general, a Reserves and Other Lands Disposal Bill makes only the minimum provisions necessary for effecting the authorisation, transfer or validation concerned. Where more elaborate provision is necessary, separate legislation should be employed.<sup>152</sup> Land Information New Zealand assumes responsibility for liaising with local bodies, statutory authorities and Government departments about items for inclusion in such a bill. Matters are only included if they are determined to be non-controversial and have the consent of all parties involved.<sup>153</sup>

## Revision bills

A revision bill re-enacts laws in an up-to-date and accessible form, but without changing their effect except in two limited respects. While restating the existing law, a revision bill may make minor amendments to clarify Parliament's intent or to reconcile inconsistencies between provisions; and it may make CPI adjustments to any monetary amount (apart from an amount that specifies a jurisdiction, offence or penalty) or provide for the amount to be prescribed by Order in Council.<sup>154</sup> Bills certified as revision bills are given truncated passage through the House.

<sup>146</sup> SOs, App C cl 21.

<sup>147</sup> SO 262(1)(d).

<sup>148</sup> (1918) 183 NZPD 1007–1014.

<sup>149</sup> SO 262(1)(e).

<sup>150</sup> (1918) 183 NZPD 1008 Lang.

<sup>151</sup> National Parks Act 1980, s 11.

<sup>152</sup> Reserves and Other Lands Disposal Bill (168–2) (commentary, 9 November 1998) at i ([1996–1999] AJHR I.23 at 892).

<sup>153</sup> Reserves and Other Lands Disposal Bill (207–1) (report, 13 December 2002) [2002–2005] AJHR I.22A at 411.

<sup>154</sup> Legislation Act 2012, s 31.

There is no debate or amendment on the question for first and third reading, and there is no committee of the whole House stage unless required by the Business Committee or the Minister in charge of the bill.<sup>155</sup> The Parliamentary Counsel Office is responsible for the revision process, and the Attorney-General is required to present a draft three-yearly revision programme at the beginning of each new Parliament. Revision bills may be omnibus bills.

## **Settlement bills**

Bills to effect settlements of claims under the Treaty of Waitangi have become recognised as a distinct type of bill.

Such bills embody conditions in deeds of settlement between the Crown and Māori. They almost invariably have preambles setting out the background to the settlement. It has been accepted that it is not the House's task to amend settlement terms agreed by other parties unless those parties themselves agree.<sup>156</sup> Like the texts of international treaties, such provisions have an independent origin.<sup>157</sup> Any amendment to the bill must also be consistent with its object—that is, the implementation of the settlement.<sup>158</sup> It is for the House to decide whether to give effect to the settlement and, if so, in what form.<sup>159</sup>

Some settlement bills have been introduced as omnibus bills that deal with multiple settlements.<sup>160</sup> Omnibus bills have been used where the settlements have been negotiated in parallel processes mandated by iwi. Such bills have been divided at the committee of the whole House stage. Another mechanism used to progress multiple settlements or settlements involving both public and private bills has been to use cognate bills. (See pp 401–402.)<sup>161</sup>

## **Statutes Amendment bills**

The Statutes Amendment Bill is the archetypal omnibus bill. It was the first type of bill, in 1955, to be divided up at the committee stage into separate bills that were then passed as individual enactments. Until then Statutes Amendment bills had been passed as single Acts. The practice is now invariably to divide Statutes Amendment bills.

A Statutes Amendment Bill consists entirely of amendments to other Acts of Parliament (including provisions repealing other Acts).<sup>162</sup> Unlike other bills, provisions are included in a Statutes Amendment Bill only with the prior agreement of all other party spokespersons on a subject. This does not mean that the provision will inevitably be passed. Any member still has the right to object to a clause in a Statutes Amendment Bill at the committee stage. In such a case the clause is struck out of the bill.<sup>163</sup> There is a long-standing convention that a clause in a Statutes Amendment Bill that is objected to will be withdrawn.<sup>164</sup>

A select committee considering a Statutes Amendment Bill can, with unanimous agreement, add clauses to the bill amending Acts not already amended by the bill as introduced.<sup>165</sup> However, a committee has complained about requests

<sup>155</sup> SO 271.

<sup>156</sup> Ngati Ruanui Claims Settlement Bill (215–2) (commentary, 16 December 2002) at 1–2 ([2002–2005] AJHR I.22A at 395–396).

<sup>157</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 578.

<sup>158</sup> Ngati Ruanui Claims Settlement Bill (215–2) (commentary, 16 December 2002) at 1–2 ([2002–2005] AJHR I.22A at 395–396).

<sup>159</sup> Ngai Tahu Claims Settlement Bill (111–2) (commentary, 19 August 1998) at iii ([1996–1999] I.23 at 624).

<sup>160</sup> (19 October 2010) 667 NZPD 14599 (Ngati Manawa and Ngati Whare Claims Settlement Bill).

<sup>161</sup> Maraeroa A and B Blocks Incorporation Act 2012; Maraeroa A and B Blocks Claims Settlement Act 2012.

<sup>162</sup> SO 262(1)(f).

<sup>163</sup> SO 305(2).

<sup>164</sup> (1973) 388 NZPD 5231–5232.

<sup>165</sup> SO 292(3).

from departments for additions to the bill. Cross-party support must always be demonstrated in the case of a provision in a Statutes Amendment Bill, and late requests for amendment can undermine the goodwill that such a bill requires.<sup>166</sup> The Minister in charge of the bill co-ordinates the cross-party support process.<sup>167</sup>

While amendments effected by Statutes Amendment bills must, by definition, be non-controversial, they can be far-reaching. But provisions with significant policy implications should not be promoted by way of Statutes Amendment bills.<sup>168</sup>

Statutes Amendment bills are introduced throughout the parliamentary term. More than one such bill may be dealt with in the same year.

## Taxation bills

Taxation bills are another type of permissible omnibus bill.<sup>169</sup> Taxation bills are acceptable for introduction as an omnibus bill provided that they are confined to amendments to Inland Revenue Acts (as currently defined by section 3(1) of the Tax Administration Act 1994).<sup>170</sup> Other legislation (such as accident compensation and social security) may be amended as part of the package where the Commissioner of Inland Revenue performs a collection or enforcement role in respect of it. Such tax bills are usually, but not invariably, divided up into their component amendment bills at the committee stage. There are often several taxation bills in a year.

---

<sup>166</sup> Statutes Amendment Bill (No 4) (102–2) (commentary, 10 August 2004) at 9 ([2002–2005] AJHR I.22C at 611).

<sup>167</sup> Cabinet Office Circular “Statutes Amendment Bill for 2015” (20 March 2015) CO 15/2.

<sup>168</sup> Statutes Amendment Bill (No 5) (185–2) (commentary, 1 April 1999) at ii and vi ([1996–1999] AJHR I.24 at 193 and 197).

<sup>169</sup> SO 262(1)(b).

<sup>170</sup> Standing Orders Committee *Review of Standing Orders* (27 August 2008) [2005–2008] AJHR I.18B at 26.

# CHAPTER 25

# Preparation of Legislation

Bills undergo varying periods of gestation before they come before the House. The idea for legislation on a particular topic may originate in party meetings and result in a commitment being made in a party's election manifesto. An organisation set up to look after the professional interests of its members may lobby the Government successfully for a bill that would help the members in some way. The Law Commission or a committee of inquiry may recommend legislative changes in the light of its investigations. A department or statutory body may suggest legislation arising from its experience in administering policies or programmes. In these ways, in combinations of them and in other ways, an idea that eventually results in legislation may be raised.<sup>1</sup>

## GOVERNMENT'S LEGISLATIVE PROGRAMME

Governments prepare an annual legislative programme by inviting requests from Ministers towards the end of each year for bills to be included in the next year's programme. The number of bids invariably exceeds the available drafting resources and parliamentary time likely to be available. After discussion of the proposals by officials, ministerial groups led by the Leader of the House, and the Cabinet Legislation Committee, Cabinet endorses an intended programme for the year. Bills that do make it on to the legislative programme are allocated a priority, ranging from bills that must be passed as a matter of law (those dealing with appropriations, imprest supply, confirmation of regulations and so on) to bills on which drafting may commence if time permits. The programme is not static; it is constantly reviewed and revised by the Cabinet during the year. In some years as many as half of the Government bills introduced into the House were not in the Government's legislative programme initially.<sup>2</sup> It is not the practice for the Government to release details of the programme in advance,<sup>3</sup> and the Chief Ombudsman has accepted that it may be kept confidential to Ministers and certain officials, on a need-to-know basis.<sup>4</sup>

1 See: Ross Carter *Burrows and Carter Statute Law in New Zealand* (5th ed, LexisNexis, Wellington, 2015) at ch 3, for a discussion of how ideas for legislation emerge.

2 See: George Tanner "The Role of Parliamentary Counsel" (1999) *New Zealand Law Journal* 423.

3 Reply to question 776 (1995) (20 NZPD Supp 2419).

4 *Ombudsmen Quarterly Review* (December 2001).

## PRE-LEGISLATIVE SCRUTINY BY THE HOUSE

Sometimes the House will be involved with legislation or proposed legislation before it is formally introduced in the form of a bill. The House spends over half of its sitting time considering bills. A similar proportion of the meeting time of select committees is devoted to considering bills. Items of House business not directly involving the consideration of bills—questions, urgent debates, select committee inquiries—can have legislative implications. There is no hard-and-fast distinction regarding the types of business the House transacts between legislative and non-legislative functions. Passing law is such a central feature of government that all roads may lead to it.

Thus, under their powers to initiate inquiries, committees may sometimes study what are effectively legislative proposals even before a bill has been drafted and introduced into the House. In September 1993 the Finance and Expenditure Committee initiated a study of the report of a working party on the reorganisation of income tax legislation. In its report the following year it recommended policy and format changes for inclusion in the proposed legislation, including amendments of draft legislation intended to satisfy objections that it was inconsistent with the New Zealand Bill of Rights Act 1990.<sup>5</sup>

The House may itself refer policy proposals to a committee for examination before legislation is prepared on the subject. This was done before the creation of the comprehensive accident compensation scheme. The recommendations in the report of the royal commission (the Woodhouse report) were referred to a special select committee for study and, on the basis of this committee's recommendations,<sup>6</sup> a Government bill was prepared and introduced. In the case of the Bill of Rights, a policy proposal containing draft legislation was referred to a select committee for consideration. Following this committee's report, a bill was introduced, based on the draft but amended to reflect the committee's recommendations.<sup>7</sup> In other instances draft bills have been considered by a committee<sup>8</sup> or even prepared in the committee,<sup>9</sup> subjected to briefings by officials or the hearing of evidence, reported on by the committee and subsequently used as the basis for bills introduced by the Government and passed into law. Select committees have encouraged Governments to release exposure drafts of legislation for public consultation before its introduction to the House where this can help to reduce the drafting resources that will be needed during the select committee consideration of the bill.<sup>10</sup> This course has been followed on occasion.<sup>11</sup>

## NEW ZEALAND BILL OF RIGHTS

The New Zealand Bill of Rights Act 1990 came into force on 25 September 1990. (It has no direct relationship to the Bill of Rights 1688, also in force in New Zealand.) The Act is designed to affirm, protect and promote human rights and fundamental freedoms in New Zealand, and to affirm New Zealand's commitment to the International Covenant on Civil and Political Rights.<sup>12</sup> For this purpose it specifies

<sup>5</sup> Finance and Expenditure Committee, report on report of Working Party on Reorganisation of the Income Tax Act 1976 (27 September 1994) *1994 reports of select committees* at 43.

<sup>6</sup> *Report of select committee on compensation for personal injury in New Zealand* (12 November 1970) [1970] AJHR I.15.

<sup>7</sup> (9 October 1985) [1984–1985] JHR 819; Justice and Law Reform Committee, white paper on bill of rights (4 October 1988) [1987–1990] AJHR I.8C.

<sup>8</sup> (10 December 1976) [1976] JHR 616; *Public Expenditure Committee* 1977 (14 December 1976) [1977] AJHRI.12 at 22–24 (public finance).

<sup>9</sup> (13 May 1982) [1982] JHR 79 (domestic violence).

<sup>10</sup> Justice and Electoral Committee *2003/4 financial review of the Parliamentary Counsel Office* (4 February 2005) [2002–2005] AJHRI.20C at 377–378.

<sup>11</sup> See Hon Judith Tizard “Draft Patents Bill ready for comment” *The Independent* (9 February 2005) at 10.

<sup>12</sup> New Zealand Bill of Rights Act 1990, long title.

a number of important civil and political rights to which the protection of the Act is extended. The protection thus extended to civil and political rights by the Bill of Rights Act is in addition to the protections existing under the general law, and is also subject to the Act being in harmony with provisions of the general law applying in the same areas. No other enactment is to be regarded as implicitly repealed or revoked or to be invalid or ineffective because it is inconsistent with the provisions of the Bill of Rights Act. Nor can a court decline to apply any provision of an enactment by reason of an inconsistency with the Bill of Rights Act.<sup>13</sup> On the other hand, where an enactment can be given a meaning that is consistent with the civil and political rights set out in the Bill of Rights Act, that meaning is to be preferred to any other.<sup>14</sup>

The question of the relationship between proposals for new laws in a bill and the rights and freedoms set out in the Bill of Rights Act is obviously important to the House when it is dealing with a bill. The Bill of Rights Act effectively sets out a checklist of most of the important public law tests that could be devised for a proposed law. This does not mean that Parliament will never decide to legislate inconsistently with the Bill of Rights Act. It may, in a particular case, decide to do so if it considers that the circumstances warrant it. But Parliament should do this knowingly and only after considering carefully the relevant provisions of the Bill of Rights Act. These provisions must in every case create a strong initial presumption of good practice, which should be departed from only for compelling reasons.

### **Reporting on inconsistencies**

The Attorney-General is required to bring to the House's attention any provision in a bill that appears to be inconsistent with any of the rights and freedoms set out in the Bill of Rights Act. In the case of a Government bill, this must be done on the introduction of the bill; in any other case, as soon as practicable after the introduction of the bill.<sup>15</sup> A distinction is drawn between Government bills and other bills as to the time within which the Attorney-General must fulfil this duty, because the Attorney-General as a Minister will have access to drafts of Government bills well before they are introduced and so is in a position to perform this task as soon as they are introduced. But in respect of other bills, the Attorney-General will receive no more notice than any other member and more time is needed for considering their provisions.

To enable the Attorney-General to carry out this reporting function and also to ensure that, as far as possible, Government bills as introduced do not contain provisions inconsistent with the Bill of Rights Act, submissions to Cabinet committees on policy proposals and bills must include a statement on the consistency of the proposal or legislation with the Act.<sup>16</sup> (A similar statement is required addressing consistency with the Human Rights Act 1993.)

In addition, in the preparation of legislation, each draft Government bill is examined to determine if its provisions are consistent with the Bill of Rights Act.<sup>17</sup> The examination is carried out by the Ministry of Justice or, where a bill is to be introduced by the Minister of Justice, by the Crown Law Office. For this purpose, the draft legislation must be provided to the ministry or the office at least two weeks before the meeting of Cabinet's Legislation Committee at which it is to be considered.<sup>18</sup> It is incumbent on the department that is promoting a bill to keep the Ministry of Justice informed of all background facts that are relevant to a judgement on consistency with the Bill of Rights Act. So, for example, a department has been

<sup>13</sup> New Zealand Bill of Rights Act 1990, s 4.

<sup>14</sup> New Zealand Bill of Rights Act 1990, s 6.

<sup>15</sup> New Zealand Bill of Rights Act 1990, s 7.

<sup>16</sup> Cabinet Office Circular (18 February 2003) (CO 03/2).

<sup>17</sup> Walter Iles "New Zealand Experience of Parliamentary Scrutiny of Legislation" (1991) *Statute Law Review* 165.

<sup>18</sup> Cabinet Office Circular (18 February 2003) (CO 03/2).

criticised when it was learnt that it had failed to inform the ministry that legal proceedings had been issued on a matter dealt with in the draft bill.<sup>19</sup> Advice on a bill's consistency is formally tendered to the Attorney-General by the Ministry of Justice or the Crown Law Office. In the case of any difference of opinion between the Ministry of Justice and the Crown Law Office, the Solicitor-General may provide separate advice.<sup>20</sup> Nevertheless, regardless of the views of officials, the legal responsibility for reporting an inconsistency with the Bill of Rights rests with the Attorney-General.

The results of the officials' examination are also reported to the Cabinet, which takes a political decision as to whether to introduce legislation that includes a provision inconsistent with the Bill of Rights Act. All such advice is posted on the Ministry of Justice's website once the bill has received its first reading.<sup>21</sup>

In considering whether a bill contains provisions inconsistent with the Bill of Rights Act, the Attorney-General takes account of the balancing provision in the Act. This section acknowledges that the rights and freedoms set out in the Act are subject to reasonable and justifiable limitations.<sup>22</sup> Only if the Attorney-General considers that a provision cannot be justified under this section does he or she report that a provision is inconsistent with the Bill of Rights Act.<sup>23</sup>

The obligation to report to the House is a safeguard designed to alert members to legislation that may give rise to an inconsistency with the Bill of Rights Act, and to enable them to debate the proposal on that basis.<sup>24</sup> It has been aptly described as a "watchdog" provision.<sup>25</sup> But the Attorney-General's obligation to report or to decide not to report is part of a parliamentary proceeding and cannot be reviewed by a court.<sup>26</sup>

Nor can the Speaker entertain any question of whether a bill is consistent with the Bill of Rights Act. The requirement to report to the House is a matter solely for the Attorney-General and it is for the Attorney-General, not the Speaker, to judge whether occasion has arisen for the House's attention to be drawn to an apparent inconsistency.<sup>27</sup> Ultimately, it is for the House itself to determine whether it believes that a bill is inconsistent with the provisions of the Bill of Rights Act (on which it may reach a different conclusion to the Attorney-General) and, if it considers that it is, whether it nevertheless wishes to pass the bill. An Attorney-General's report to the House stands referred to a select committee with the expectation that the committee report its conclusion as to whether the bill should proceed with an inconsistency or not.<sup>28</sup>

## DRAFTING

### Parliamentary Counsel Office

Anyone can draft a bill for introduction but, in practice, Government bills (apart from tax bills) are drafted in the Parliamentary Counsel Office by specialist law drafters.<sup>29</sup> Because of the volume of legislation introduced into the House, the

<sup>19</sup> Taxation (Accrual Rules and Other Remedial Matters) Bill (241–2) (commentary, 23 April 1999) at vi–vii ([1996–1999] AJHRI.24 at 123–124).

<sup>20</sup> Reply to question 4508 (1998) (32 NZPD Supp 1169).

<sup>21</sup> Hon Margaret Wilson, Attorney-General "Minister goes public on Bill of Rights vets" (media release, 18 February 2003).

<sup>22</sup> New Zealand Bill of Rights Act 1990, s 5.

<sup>23</sup> (1992) 528 NZPD 10621–10623 (Summary Proceedings Amendment Bill (No 3)); Civil Aviation Amendment Bill (91–2) (commentary, 14 September 2001) at 4, 9 ([1999–2002] AJHR I.22B at 1400, 1405).

<sup>24</sup> *Mangawaro Enterprises Ltd v Attorney-General* [1994] 2 NZLR 451 (HC) at 457.

<sup>25</sup> *R v Poumako* [2000] 2 NZLR 695 (CA) at [66] per Henry J.

<sup>26</sup> *Mangawaro Enterprises Ltd v Attorney-General* [1994] 2 NZLR 451 (HC) at 456; *Boscawen v Attorney-General* [2009] NZCA 12, [2009] 2 NZLR 229 at [35].

<sup>27</sup> (1991) 516 NZPD 2968 Gray.

<sup>28</sup> SO 265(5).

<sup>29</sup> Legislation Act 2012, s 59(1)(a).

Government has on occasion employed private drafting services,<sup>30</sup> but even then a parliamentary counsel reviews the bill before its introduction to the House. A parliamentary counsel attends meetings of the select committee when it is deliberating on a bill for which he or she is responsible. The drafting of the amendments to the bill that the committee proposes to include in its report is undertaken by the parliamentary counsel. Parliamentary counsel also draft all amendments to a bill proposed by the Government at the committee of the whole House stage. They do not normally draft amendments for other members, though they may do so when authorised by the Attorney-General. This happens when a bill is to be considered as a conscience issue and members' amendments have a high prospect of being carried, or when it becomes apparent that a Member's bill is likely to be passed.<sup>31</sup>

The Parliamentary Counsel Office has a statutory responsibility to examine every local and private bill that is introduced into the House,<sup>32</sup> but in practice the promoters of local bills and private bills consult the office before such bills are introduced in any case.

## Other drafters

Tax legislation is treated differently from other Government bills. The Inland Revenue Department is authorised by Order in Council to draft tax bills.<sup>33</sup> So in respect of tax legislation, the Inland Revenue Department performs similar functions to those carried out by the Parliamentary Counsel Office in respect of Government bills generally. A select committee has recommended that this function be transferred back to the Parliamentary Counsel Office.<sup>34</sup>

For Members' bills, members may obtain drafting assistance from the Office of the Clerk, whose officers are familiar with drafting forms, or may obtain private assistance. The Parliamentary Counsel Office may be required to report upon such bills to the Prime Minister or the Attorney-General,<sup>35</sup> otherwise, the office becomes involved with Members' bills only if expressly authorised to do so by the Attorney-General. Like members' amendments to Government bills, this would occur only with Members' bills that were to proceed as conscience issues or otherwise with general support, and which therefore had a likelihood of being passed into law. An increasing trend has been detected for the Government to direct that parliamentary counsel assistance be made available for Members' bills that gain political support.<sup>36</sup>

When a local authority decides that it wishes to promote local legislation or an organisation decides to promote private legislation, its first task is to draft the bill, for the bill must be available for inspection from the moment the first formal step is taken in respect of it. The drafting of the bill is a matter for the promoter to arrange. The Parliamentary Counsel Office does not normally draft local or private bills for local authorities or organisations, but the office will advise on and assist with the drafting of these bills.<sup>37</sup> Before initiating any proceedings, the promoter of a local or private bill should, after consulting parliamentary counsel, have finalised the draft of the bill to be introduced. The Parliamentary Counsel Office has a statutory duty to examine every local and private bill that is introduced into the House and to report to the Prime Minister or the Attorney-General on the effects

<sup>30</sup> Reply to question 276 (1989) (1 NZPD Supp 98).

<sup>31</sup> (1989) 498 NZPD 10932 (*Sale of Liquor Bill*); see George Tanner "The Role of Parliamentary Counsel" (1999) *New Zealand Law Journal* 423.

<sup>32</sup> Legislation Act 2012, s 59(1)(h).

<sup>33</sup> Legislation Act 2012, s 60.

<sup>34</sup> Finance and Expenditure Committee *Inquiry into the powers and operations of the Inland Revenue Department* (13 October 1999) [1996–1999] AJHR I.3I at 49–50.

<sup>35</sup> Legislation Act 2012, s 59(1)(h)

<sup>36</sup> Justice and Electoral Committee *2002/03 financial review of the Parliamentary Counsel Office* (11 December 2003) [2002–2005] AJHR I.20B at 302.

<sup>37</sup> Legislation Act 2012, s 59(1)(i).

of the bills examined, particularly on whether the rights of the Crown or the public are affected by them, and on their relationship to other legislation.<sup>38</sup>

## Drafting practice

Drafting practice must comply with any statutory or Standing Orders requirements governing the way a bill must be prepared. (See Chapter 24 for a discussion of these rules.) The Legislation Design and Advisory Committee provides advice to departments and Government agencies on the design and content of bills. Its guidelines on the process and content of legislation recommend drafting practices for particular types of bills and types of provision, and generally embody good drafting practice. Departments and Government agencies are expected to adhere to the guidelines.<sup>39</sup> The Regulations Review Committee (in consultation with the Parliamentary Counsel Office) has suggested standard clauses for use where a bill proposes to incorporate material by reference.<sup>40</sup> But drafting practice is largely determined by the practices followed by the Parliamentary Counsel Office. They vary from time to time as a result of conscious decisions being formally adopted<sup>41</sup> and as a result of individual drafting decisions being absorbed into general practice. The Parliamentary Counsel Office seeks to reflect these practices in its drafting manual. Statute authorises the Chief Parliamentary Counsel to reprint Acts of Parliament in formats and styles that accord with the drafting practice that is currently being followed in New Zealand.<sup>42</sup>

## PRINTING AND PUBLISHING

The member introducing a bill is obliged to provide printed copies to the Clerk for circulation.<sup>43</sup> This is an essential condition for the introduction of a bill,<sup>44</sup> otherwise the contents of a bill before the House would be known only to the member introducing it. In practice, the obligation to provide copies of bills is discharged for the member by the Parliamentary Counsel Office and the Office of the Clerk. The Parliamentary Counsel Office is responsible for the printing of Government bills.<sup>45</sup> The Office makes arrangements accordingly for printing Government bills for introduction as an internal governmental matter. The Office of the Clerk assumes responsibility for the printing of Members', local and private bills for introduction. At present, the Office of the Clerk does this by way of a service-level agreement with the Parliamentary Counsel Office, whose printing unit produces all bills for introduction. All bills are published in full text on the legislation website upon introduction.

A member lodging a notice of proposal for a Member's bill must provide a fair copy of the bill for printing.<sup>46</sup> In practice, this means supplying both a hard copy and a corresponding electronic version. Proposed Member's bills are published on the parliamentary website to allow members to see the detail of the proposal to help them decide whether or not to support the bill.<sup>47</sup>

<sup>38</sup> Legislation Act 2012, s 59(1)(h).

<sup>39</sup> Cabinet Office *Cabinet Manual* 2008 at [7.49], [7.60] and [7.61]; Cabinet Office "Legislation" CabGuide <<http://cabguide.cabinetoffice.govt.nz>>.

<sup>40</sup> Regulations Review Committee *Inquiry into material incorporated by reference* (July 2004) [2002–2005] AJHR I.16G.

<sup>41</sup> Parliamentary Counsel Office "A new approach to describing how amendments are made in legislation" <[www.pco.parliament.govt.nz](http://www.pco.parliament.govt.nz)>.

<sup>42</sup> Legislation Act 2012, ss 23–27.

<sup>43</sup> SO 267(1).

<sup>44</sup> But this has not always been the case: see Michael Bassett *Coates of Kaipara* (Auckland University Press, Auckland, 1995) at 195 (bill introduced but no copies available).

<sup>45</sup> Legislation Act 2012, s 59.

<sup>46</sup> SO 279(1).

<sup>47</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 40.

In the case of a local or private bill, the deposited copies of the bill must be forwarded to the Clerk before its introduction.<sup>48</sup> Often the bill will be printed before the preliminary procedures on it commence so that a printed copy can be available for inspection. But this is not obligatory and a typescript copy can be used for this purpose.

The fees payable by promoters of local and private bills are intended to help to defray printing costs.

## MEMBER IN CHARGE OF THE BILL

In the case of any bill, the name of the member who is to introduce and sponsor the bill during its passage through the House is printed at the top of the front page of the bill. This is the member in charge of the bill.

### Government bills

In the case of a Government bill the member in charge is the Minister the Government determines will introduce the bill. An Associate Minister who holds a ministerial warrant in his or her own right, or who has formal delegated responsibility for a particular area, may introduce a Government bill.<sup>49</sup> In the Minister's absence from the House at any stage of the bill's passage, any other Minister may act on the Minister's behalf.<sup>50</sup> If ministerial portfolios change (as a result of a reshuffle, a dismissal or a resignation, or where a bill is reinstated following a general election), the new Minister automatically becomes the Minister in charge of the bill and any subsequent reprint of the bill will show the new Minister's name. Even without a reshuffle the Government can transfer the responsibility of acting as Minister in charge of a bill to another Minister by advising the Clerk accordingly.

### Members' bills

The member who introduces a Member's bill cannot be a Minister. A Parliamentary Under-Secretary may introduce a Member's bill.

If the member in charge of a Member's bill is appointed to ministerial office, the responsibilities of the member in charge of the bill must be transferred to a non-ministerial member (with his or her agreement), otherwise the bill must be withdrawn. A Member's bill cannot remain in the name of a Minister. The transfer of a bill is effected by advising the Clerk. It is reflected on the next Order Paper published. If a member in charge is defeated or retires from Parliament and the bill is reinstated, this does not affect the ability of any select committee to which it has been referred to continue to consider the bill. But when the bill is set down for second reading, a member must take charge of it if it is to proceed. In practice, members of the party of the former member are consulted to establish who might take charge of it.

### Local bills

A local authority is entitled to ask any member to take charge of a local bill. Normally the member of Parliament for the locality involved is asked to take charge, whether a Minister or not. In larger local authority districts there may be more than one member of Parliament. In that case, the member for the centre of the district or the member for the area in which the promoter has its offices is usually selected, but there is no hard-and-fast rule. The fact that a member agrees to take charge of

<sup>48</sup> SOs, App C cl 11(1).

<sup>49</sup> (1970) 367 NZPD 2136 Jack; Hon Gerry Brownlee, Leader of the House "Schedule of Responsibilities Delegated to Associate Ministers" (3 March 2014) (Hon Tariana Turia, Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill; Hon Peter Dunne, Game Animal Council Bill).

<sup>50</sup> (1904) 129 NZPD 2 Guinness; Constitution Act 1986, s 7.

a local bill does not mean that the member supports the bill.<sup>51</sup> If the member in charge of a local bill ceases to be a member of Parliament, the member succeeding him or her as the member for that electoral district is invited to take charge of the bill, since there is presumed to be a territorial connection between the member in charge and the locality dealt with by the bill. If the new member does not wish to take charge of the bill, another member can do so.

### **Private bills**

The promoter of a private bill must obtain the agreement of a member to introduce the bill. A Minister may introduce a private bill.

The promoter is entitled to ask any member to take charge of a private bill, and the fact that the member agrees to this does not imply that the member is necessarily in favour of the bill.<sup>52</sup> Normally, the promoter will ask the local member, where the promoter is an individual, or the local member for the district in which the company's or trust's head office is situated, if the promoter is a corporation. Where a private bill relates to land, the appropriate member to take charge of the bill is the member for the area in which the land is situated and not, for instance, the member for the company's or trust's head office, which might be in an entirely different centre. In this case, if the member in charge ceases to be a member of Parliament, the member succeeding the member as the member for the electoral district is invited to take charge of the bill since there is a territorial connection between the member in charge and the subject matter of the bill. In other cases, the promoter will be asked to nominate a new member to take charge of the bill.

### **PROMOTER**

Local bills and private bills differ from Government bills and Members' bills in that for the former types of bill an organisation or person outside the House initiates the bill and takes formal responsibility for compliance with the House's rules regarding its passage. Although such bills must be introduced into the House by a sponsoring member, these outside bodies retain an "ownership" of the bills even after introduction; for they may, at any time, withdraw their bills by advising the Speaker in writing.<sup>53</sup> Such an organisation or person is known as the promoter of the bill. If there is no promoter, there can be no local or private bill.

A local bill is promoted only by a local authority.<sup>54</sup> Each local bill must have a local authority promoter to be classified as a local bill. (See p 360 for local authorities that may promote a local bill.)

Occasionally a local authority promoter may go out of existence after a local bill has been introduced or after all the preliminary steps have been taken in the promotion of the bill but before it is introduced.<sup>55</sup> In such cases the bill can proceed; it is for the select committee to which the bill is referred to recommend to the House whether it should be passed, and for the House to decide on the matter. Where the demise of a local authority results from a local government reorganisation, there will usually be an identifiable successor to the local authority, and the new authority can decide whether it wishes to proceed with the bill.

The promoter of a private bill is a person or body of persons (whether incorporated or not) who stand to benefit from the change in the law that is proposed in the legislation.<sup>56</sup> No one can be the promoter of legislation as the agent of another person, though an agent can act on behalf of a promoter in taking steps

51 (1976) 408 NZPD 4701 Harrison (Deputy Speaker).

52 (1982) 445 NZPD 2217 Harrison.

53 SO 275(1).

54 SO 253(1)(c).

55 (1989) 502 NZPD 13446; (2015) 703 NZPD 1923 (Manukau City Council (Regulation of Prostitution in Specified Places) Bill).

56 SO 253(1)(d).

required by the Standing Orders and in executing the requisite documents. But all such actions must be taken in the name of the promoter, that is, the person who is directly interested in the passage of the bill. The Standing Orders require the person who is the promoter to be identified at several stages.

In practice, promoters often engage agents, such as solicitors, to arrange for the required steps to be taken in the promotion of private legislation to be attended to on their behalf. Corporations incorporated outside New Zealand have promoted private bills.<sup>57</sup>

## SAME BILLS PROPOSED

A bill that is the same in substance as another bill that has previously received, or been defeated on, a first, second or third reading may not be proposed again in the same calendar year in which it received the reading or was defeated.<sup>58</sup> In the case of members' bills, this precludes entry in the ballot of a bill that is the same in substance as a bill defeated in the same calendar year.<sup>59</sup> Two bills may seek to achieve a similar outcome by policies that are so different as to merit the House allocating time to consider the proposals separately. Such bills would not be considered the same in substance.<sup>60</sup>

It was formerly a rule that Parliament could not repeal an Act passed earlier in the same session. This was a relic of proceedings of the medieval English Parliament, when all legislation passed in one session was regarded as part of one statute and therefore could include no inconsistencies. The rule was abolished in New Zealand in 1858.<sup>61</sup> A bill to repeal an Act passed earlier in the same session or year may be introduced.<sup>62</sup> The rule against proposing the same bill is not engaged merely because a question on a bill was proposed from the Chair earlier in the year. If the question was never actually put to the House, for example, because the debate on it was adjourned and the bill withdrawn, the bill has not received a reading or been defeated, and another bill in the same terms is in order.<sup>63</sup>

The fact that a bill with similar provisions is already before the House when the second bill is introduced is irrelevant if the former did not receive a reading earlier in the calendar year.<sup>64</sup>

## PRELIMINARY PROCEDURES FOR PRIVATE AND LOCAL BILLS

A further way in which local bills and private bills differ from Government bills and Members' bills is that certain procedures must be followed by promoters before such bills may be introduced into the House. These steps are designed to alert interested persons, and members themselves who may be particularly concerned, to the fact of the promotion of the bill. They can then make early representations to the promoter and other members, or prepare submissions to the select committee that will eventually consider the bill. Compliance with these preliminary procedures is a condition for the grant of the legislative privilege sought by the local authority or other person who is promoting the bill.

### Preamble for private bills

A private bill must comply with a requirement as to its form that other types of bills are not required to meet.

<sup>57</sup> See, for example: the National Bank of New Zealand Bill 1985.

<sup>58</sup> SO 264(a).

<sup>59</sup> (2015) 709 NZPD 7281 (Healthy Homes Guarantee Bill (No 2)).

<sup>60</sup> (2012) 684 NZPD 5557.

<sup>61</sup> Interpretation Act 1858, s 6.

<sup>62</sup> (1976) 406 NZPD 2464–2465 Harrison (Deputy Speaker) (Foreign Travel Tax Repeal Bill).

<sup>63</sup> (1976), 407 NZPD 3880 Jack (Sale of Liquor Amendment Bill (No 2)).

<sup>64</sup> (20 March 2003) 607 NZPD 4270–4271 Hunt (Resource Management Amendment Bill (No 2)).

The bill has to contain a preamble stating the facts on which it is founded and the circumstances that have necessitated it. An important requirement is that the preamble deal expressly with a point that will be prominent in the consideration of the committee to which the bill is referred: that is, whether its objects could be attained otherwise than by legislation. If they could be, the preamble must state why legislation is preferred.<sup>65</sup> The preamble deals with this question only if the promoter in the declaration for the bill has stated that there is an alternative remedy to legislation. If there is no real alternative, the point is not dealt with in the preamble. However, the promoter's failure to identify an alternative means of proceeding is subject to challenge, particularly when the bill is before the select committee. If there is a real alternative, and the promoter has not mentioned it or addressed it in the preamble, the committee may find that the preamble has not been proved and this will prejudice the chances of the bill proceeding.

## **Form of notices**

The preliminary procedures for private bills and local bills require the promoter of the bill to give written notice of the intention to introduce the bill before it can be introduced.<sup>66</sup> This notice must be given on a number of occasions. Each notice is to be headed with the title of the proposed Act of Parliament.<sup>67</sup> The notice must then go on to state that the promoter intends to promote the bill, describe its objects, give a postal address for the promoter or the promoter's solicitor or agent to which communications may be sent, specify the address of the promoter at which the bill may be inspected, specify the website on which a copy of the bill is publicly available, and provide the dates during which it will be available for inspection.<sup>68</sup>

The description of the objects of the bill in the notice of intention to introduce it limits the scope of any amendments that may be recommended or made to the bill as it is passing through the House.<sup>69</sup>

## **Advertising**

The promoter must advertise the notice of intention to introduce the bill in various newspapers at least once in each of two consecutive calendar weeks.

For a private bill, this must be in a daily newspaper circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch and Dunedin.<sup>70</sup> In the cases of Auckland and Hamilton this can be the same newspaper. For a local bill or any private bill that affects land, the notice must also be advertised in a daily newspaper circulating in the locality in which the land is situated, or the local authority district or region.<sup>71</sup>

Promoters must also ensure the notice is available on a website that is either maintained or held on behalf of the promoters for at least two weeks after the day on which the notice is first advertised.

## **Delivery of notices to persons with a direct interest**

As well as placing general advertisements, the promoter is required to serve the notice on persons who, to the promoter's knowledge, have a direct interest in the subject matter of the bill or in the exercise of any power proposed to be given by the bill.<sup>72</sup>

This could be a wide and onerous requirement if it was taken to apply to all interests generally. For example, in the case of a bill promoted by a company, its

<sup>65</sup> SO 258.

<sup>66</sup> SOs, App C cl 1.

<sup>67</sup> SOs, App C cl 2(1).

<sup>68</sup> SOs, App C cl 2(2).

<sup>69</sup> SOs 292(2) and 302(3).

<sup>70</sup> SOs, App C cl 3(1)(a).

<sup>71</sup> SOs, App C cl 3(1)(b).

<sup>72</sup> SOs, App C cl 4(1).

shareholders, creditors and employees could be said to have an “interest” in any actions it takes. However, the requirement of a “direct” interest is taken to imply a more restricted interest, such as a legal interest in property dealt with under the bill. Owners, mortgagees, lessees and occupiers of land or buildings transferred or otherwise dealt with by the bill must have notices served on them, but this is not required for persons with more remote or indefinite interests. Other types of interests that must be recognised by the service of notices are those concerned with family relationships that could be altered by legislation, such as an adoption or a marriage bill.

## **Delivery of notices to specified parties**

Notice must also be given to a number of office-holders in certain cases.

In the case of the bill affecting the public revenues or the rights or prerogatives of the Crown, notice must be served on the Secretary to the Treasury and the Solicitor-General.<sup>73</sup> Where it is proposed to modify, restrict, repeal or amend the provisions of any general Act of Parliament, notice must be given to the chief executive of any Government department or agency charged with the administration of the Act.<sup>74</sup> A private bill can propose to repeal or amend a general Act incidentally to achieving its objects,<sup>75</sup> but most private bills seek to create exceptions to general Acts rather than to amend them. The Government department charged with administering the legislation that would be affected in this way must be specifically apprised of the promotion of the bill by being served a notice of it. The appropriate department on which to serve a notice can be ascertained from the note printed at the foot of each published Act of Parliament that identifies the department charged with administering the Act.

A notice must be given to the Commissioner of Inland Revenue in the case of a bill affecting liability under an Inland Revenue Act.<sup>76</sup> An Inland Revenue Act means the Estate and Gift Duties Act 1968, the Stamp and Cheque Duties Act 1971, the Gaming Duties Act 1971, the Goods and Services Tax Act 1985, the Land Tax Abolition Act 1990, the Child Support Act 1991, the Student Loan Scheme Act 1992, the Estate Duty Abolition Act 1993, the Income Tax Act 1994, the Tax Administration Act 1994, and the Taxation Review Authorities Act 1994, the KiwiSaver Act 2006, the Income Tax Act 2007 and the Student Loan Scheme Act 2011.<sup>77</sup> It also includes the Income Tax Act 2004. Notice must also be given to the chief executive of the New Zealand Customs Service where liability to excise duty or a related duty may be affected.<sup>78</sup>

In the case of a bill alienating or disposing of Crown land or proposing to exchange Crown land for other land, notice must be given to the Commissioner of Crown Lands.<sup>79</sup> Where land administered as a reserve, national park, conservation area or otherwise for conservation purposes is affected, notice must be given to the chief executive of the relevant department<sup>80</sup> and to the Registrar-General of Land if the bill relates to the transfer of title to land.<sup>81</sup>

Notice must be given to the Solicitor-General if a bill would affect a charitable trust,<sup>82</sup> and to the relevant registering authority if the incorporation or registration of any body would be affected by the bill.<sup>83</sup>

<sup>73</sup> SOs, App C cl 4(2)(a).

<sup>74</sup> SOs, App C cl 4(2)(b).

<sup>75</sup> (1882) 41 NZPD 410 O’Rorke (Government Contractors Arbitration Bill).

<sup>76</sup> SOs, App C cl 4(2)(c).

<sup>77</sup> Tax Administration Act 1994, s 3(1) and Schedule.

<sup>78</sup> SOs, App C cl 4(2)(d).

<sup>79</sup> SOs, App C cl 4(2)(e).

<sup>80</sup> SOs, App C cl 4(2)(f).

<sup>81</sup> SOs, App C cl 4(2)(g).

<sup>82</sup> SOs, App C cl 4(2)(h).

<sup>83</sup> SOs, App C cl 4(2)(i).

## Notices served on members

As well as the general advertising notices specified above, the promoter must serve specific notice of the intention to promote a local bill on all members of Parliament for general or Maori electoral districts whose constituents may be affected by the provisions of the bill.<sup>84</sup> This requirement does not extend to list members as, although they may live in a place affected by the bill, their mandate is not tied to a particular district. The chief executive of the local authority must certify that such members (by name) have been given notice. The certification must specify the date on which notice was given, and must be signed and dated.<sup>85</sup>

## How notice is given

A notice to a person with a direct interest, to a specified person, or to a member of Parliament may be given in a number of ways.

It may be delivered to the person or to the office or department or agency concerned.<sup>86</sup> It may be posted or delivered by courier to the person's last known address or address for service, or to the address of the department or agency concerned, or by delivering it to a document exchange that the addressee uses.<sup>87</sup> Finally, it may be communicated electronically (by facsimile or email).<sup>88</sup>

The notice may be included with another document, provided that it is given reasonable prominence.<sup>89</sup>

## Deposit and inspection

The promoter is obliged to make a copy of the local or private bill available for inspection on a website maintained by or on behalf of the promoter. This must be done at the time of the appearance of the first notice advertising the intention to promote the bill.<sup>90</sup> This means on the day of the advertisement or on the next working day.

A copy of a private bill must be deposited in the office of the promoter or the promoter's solicitor or agent. In the case of a local bill, the bill must be deposited in a public library or service centre.<sup>91</sup>

A bill that has been deposited must remain available for public inspection during normal business hours, without fee, for 15 working days.<sup>92</sup> This timeframe excludes weekends, public holidays (national, and provincial in the locality to which the bill relates) and also the period 25 December to 15 January.<sup>93</sup>

At the end of the period of deposit, the copy lodged at the promoter's or other office must be certified by the promoter, the promoter's solicitor or agent or the promoter's chief executive.<sup>94</sup> The certificate is written directly on to the copy of the bill, not given separately from it. It must state the first and last whole days on which the copy was available for public inspection. The person certifying the copy of the bill signs, over his or her designation, and it is dated.<sup>95</sup>

The bill that is subsequently introduced into the House may differ from the copies that were made available for inspection only in respect of immaterial corrections, such as misprints or spelling mistakes or matters of form. If there is a material difference, the copy that was made available for inspection was not a copy at all and the Standing Orders have not been complied with. Whether or not

<sup>84</sup> SOs, App C cl 5(1).

<sup>85</sup> SOs, App C cl 5(2).

<sup>86</sup> SOs, App C cl 6(1)(a).

<sup>87</sup> SOs, App C cl 6(1)(b).

<sup>88</sup> SOs, App C cl 6(1)(c).

<sup>89</sup> SOs, App C cl 6(2).

<sup>90</sup> SOs, App C cl 7(3).

<sup>91</sup> SOs, App C cl 7(1).

<sup>92</sup> SOs, App C cl 7(3).

<sup>93</sup> SO 3(1).

<sup>94</sup> SOs, App C cl 8(1).

<sup>95</sup> SOs, App C cl 8(2).

the copy was a true copy is ultimately determined by the select committee when it considers the bill.<sup>96</sup>

## Bills dealing with land

There are special requirements regarding bills that propose to take power to deal with any land. In these cases, the copies of the bills made available for inspection must be accompanied by a description of the land (this may also be contained in a schedule in the bill) and a true copy of the plan of the land. The description and plan must be certified as correct by the chief executive of the department responsible for the administration of the Cadastral Survey Act 2002 (Land Information New Zealand) or any person to whom the chief executive delegates the power.<sup>97</sup> The plans must be drawn in a form specified by rules made under the Act. The plan must be lodged with the relevant Land Information New Zealand office and endorsed by the chief executive as having been approved for parliamentary purposes.<sup>98</sup> The promoter must certify that these documents have been available for inspection along with the bill.<sup>99</sup>

The description and the plan circumscribe the extent of land that may be dealt with by the bill. After it is introduced, it is not possible for the bill to be amended to include land not encompassed by the description, though the legal description of the land contained in the bill may be corrected if it is found not to accord with the lodged description and plan. If the bill is subsequently amended to restrict the area of land dealt with in the bill, it is not necessary to lodge a further plan, though the select committee is likely to require further certification from the chief executive of Land Information New Zealand before it agrees to amend the legal description in the bill in any way.

A true copy of the plan is not required in three sets of circumstances:<sup>100</sup>

- where the land to be dealt with is wholly comprised in any certificate of title issued under the Land Transfer Act 1952 or any computer register created under that Act
- where the land has been previously dealt with and described in a statute, ordinance, proclamation, declaration, notice or Order in Council
- where the land to be dealt with is wholly comprised in a separate lot or other surveyed subdivision shown on a plan deposited in the relevant Land Information New Zealand office or lodged in the office of the chief executive.

However, even in these cases a description of the land to be dealt with, certified as correct by the chief executive, must be made available for inspection along with the bill.

## Fees

A fee of \$2,000 (including goods and services tax) is payable by the promoters of all bills. It must accompany the documents forwarded to the Clerk.<sup>101</sup> It is applied to defray the general administrative expenses incurred for the promotion of such bills.<sup>102</sup> The fee must be paid before the bill's compliance with Standing Orders can be certified. No fee is payable if the Standing Orders have not been complied with and the bill does not proceed to be introduced. The fee for a bill may be refunded in whole or in part on the ground of hardship if the House so directs on

<sup>96</sup> (1980) 435 NZPD 4898 (Chatham Islands County Council Empowering Bill).

<sup>97</sup> SOs, App C cl 9(1).

<sup>98</sup> SOs, App C cl 9(3).

<sup>99</sup> SOs, App C cl 10.

<sup>100</sup> SOs, App C cl 9(2).

<sup>101</sup> SOs, App C cl 13(1).

<sup>102</sup> SOs, App C cl 13(2).

the recommendation of the committee that considers the bill. In such a case the Clerk refunds the fee.<sup>103</sup>

## **Declaration for local or private bill**

Before a local or private bill can be introduced, the promoter must make a declaration to the House.<sup>104</sup>

The declaration requests that the bill be introduced. It must set out the reasons for the bill and the objects it is intended to achieve. If they could be attained otherwise than by legislation, the promoter must state why legislation is preferred. The promoter certifies in the declaration that the advertising has been done and notices given as required by the Standing Orders. A specimen declaration is set out in Appendix C to the Standing Orders, and the declaration must, in general, conform to it.<sup>105</sup>

## **Examination by the Clerk**

Each deposited copy of the bill, as certified by the promoter, together with deposited copies of descriptions of land affected, along with copies of notices and other documents required by the Standing Orders, must be forwarded to the Clerk.<sup>106</sup> These supporting documents are attached to the declaration for a local or private bill.<sup>107</sup> The documentation must be lodged with the Clerk within six months of the first publication of the notice of the bill for the bill to remain effective.<sup>108</sup> Thus, promoters have six months from taking their first formal step to promote a bill to complete the preliminary procedures.

The Clerk examines the bill, declaration and supporting documentation to ascertain whether the Standing Orders have been complied with.<sup>109</sup>

The examination of the declaration and associated documents by the Clerk culminates in the Clerk endorsing the declaration “Standing Orders complied with”, if that is the case, and signing and dating the endorsement.<sup>110</sup> If, on the other hand, the Clerk considers that the Standing Orders have not been complied with, the declaration and the fee are returned to the promoter.<sup>111</sup>

It is not the Clerk’s function in making the examination to determine whether the bill is actually a local or a private bill. However, in discussions with the promoter any doubts on the proper classification of the bill will be raised, in an endeavour to settle this before the promoter takes steps to promote the bill. But if, after its introduction, a question nevertheless arises as to a bill’s classification, the Speaker can determine it.<sup>112</sup> The Clerk’s certification that the Standing Orders have been complied with refers only to the procedural steps for advertising, inspecting, giving notice, paying fees and lodging documents; it is not a certification that the bill is a local or a private bill.

Once a declaration in respect of a local or private bill has been endorsed by the Clerk as complying with the Standing Orders notice may be given for the introduction of the bill.<sup>113</sup>

## **Effect of certification by the Clerk**

The Clerk’s certification that the Standing Orders have been complied with is essential for a local or private bill to be introduced. A bill lacking that certification

<sup>103</sup> SOs, App C cl 14.

<sup>104</sup> SOs, App C cl 15.

<sup>105</sup> SOs, App C cl 16.

<sup>106</sup> SOs, App C cl 11(1).

<sup>107</sup> SOs, App C cl 11(2).

<sup>108</sup> SOs, App C cl 12.

<sup>109</sup> SOs, App C cl 17(1).

<sup>110</sup> SOs, App C cl 17(2).

<sup>111</sup> SOs, App C cl 17(3).

<sup>112</sup> (9 December 2009) 659 NZPD 8367 Smith (Christ’s College (Canterbury) Amendment Bill).

<sup>113</sup> SO 273; SO 274(2).

can only be introduced on a suspension of Standing Orders.<sup>114</sup> But the Clerk's certification that Standing Orders have been complied with is not conclusive and can be challenged. If the select committee to which a bill is referred receives evidence that casts doubt on its compliance, it is expected to draw this to the attention of the House.<sup>115</sup> This can be done either in the committee's final report on the bill or by way of special report. If such a doubt is raised in this or in any other way, the Speaker must then determine whether the Standing Orders have been complied with. If they have not, the House decides whether to set them aside to permit the bill to proceed.

## INCLUSION OF CLAUSES IN A LOCAL LEGISLATION BILL

Local matters may be included in a Local Legislation Bill by a local authority applying to the Minister of Local Government for preliminary consideration and provisional approval of a clause or clauses.<sup>116</sup>

The promoter must first give a copy of the proposed provision to all members of Parliament for general or Māori electoral districts whose constituents may be affected by it, advising them in writing of the intention to apply for its inclusion in a Local Legislation Bill. The local authority must forward a draft of such clause or clauses to the Minister, with a certificate certifying that those members have been advised of the intention to apply for its inclusion in a Local Legislation Bill. The certificate must specify the date on which notice was given and must be signed by the authority's chief executive.<sup>117</sup> Copies of the provisions and the required notices are served by personal delivery, post, courier, document exchange or by facsimile or email.<sup>118</sup>

The Minister may set a deadline by which such applications must be received when a bill is being prepared. Objections to the inclusion of provisions in a Local Legislation Bill on any grounds may be lodged with the Minister. Any objections received by the Minister to a clause subsequently included in a Local Legislation Bill must be transmitted to the select committee considering the bill.<sup>119</sup> The bill is drafted in the normal way as a Government bill, consisting of clauses of which the Minister has provisionally approved and other clauses repealing any spent Local Legislation Act or spent provision in such an Act.<sup>120</sup>

Further clauses provisionally approved by the Minister after a Local Legislation Bill has been introduced may be added to the bill by being placed on a Supplementary Order Paper and referred by the Minister to the select committee examining the bill.<sup>121</sup> This is an exception to the general rule that Ministers, or indeed any persons or bodies other than the House, may not refer matters directly to a select committee. The committee usually reports the Supplementary Order Paper back to the House in the same report as it reports on the bill. When the committee has reported the bill back to the House, it is no longer competent for the Minister to refer a Supplementary Order Paper containing amendments to the bill to the select committee.

---

<sup>114</sup> (1993) 536 NZPD 16805–16806 (Te Runanga o Ngai Tahu Bill).

<sup>115</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 56.

<sup>116</sup> SOs, App C cl 18(1).

<sup>117</sup> SOs, App C cl 18(2), (3).

<sup>118</sup> SOs, App C cl 18(4).

<sup>119</sup> SOs, App C cl 20.

<sup>120</sup> SOs, App C cls 19 and 21.

<sup>121</sup> SOs, App C cl 22.

## REVISION BILLS

### Programme

Revision bills re-enact laws in an up-to-date, accessible format, but without changing their effect (apart from certain minor exceptions). The Legislation Act 2012 sets out the procedure for the preparation and certification of these bills. The Parliamentary Counsel Office is responsible for the revision process, and the Attorney-General is required to present a three-year revision programme at the beginning of a new term of Parliament.<sup>122</sup> The programme sets out the revisions that are proposed to be started and those that are expected to be enacted during the three-year period it covers. Once it is finalised, the Parliamentary Counsel Office must follow the programme in preparing revision bills.

### Preparation

In preparing a revision bill, the Parliamentary Counsel Office is permitted to exercise certain powers set out in section 31 of the Legislation Act 2012; but, in general terms, a revision bill must not change the effect of the law except in two limited respects.<sup>123</sup> These exceptions are making minor amendments to clarify Parliament's intent or reconcile inconsistencies between provisions, and making Consumer Price Index adjustments to any monetary amount (apart from an amount that specifies a jurisdiction, offence or penalty) or provide for the amount to be prescribed by Order in Council. The preparation of a revision is expected to involve routinely the release of exposure drafts and extensive consultation. A revision bill must include in its explanatory note a statement setting out in general terms the inconsistencies, anomalies, discrepancies and omissions that were found in preparing the revision, and how they have been remedied in the bill.<sup>124</sup>

### Certification

Once a revision bill has been prepared, it is submitted to a panel of certifiers comprising the President of the Law Commission, the Solicitor-General, a retired Judge of the High Court, and the Chief Parliamentary Counsel. Under section 33, the certifiers may then certify the bill if they are satisfied that the revision powers set out in section 31 have been exercised appropriately and the revision bill does not change the effect of the law, other than as authorised in respect of the two exceptions noted above. Once a revision bill is certified, the bill and certificate are provided to the Attorney-General. The Attorney-General presents the certificate to the House on the introduction of the bill.

---

<sup>122</sup> Revision Bill programme 2015 to 2017 <[www.pco.parliament.govt.nz](http://www.pco.parliament.govt.nz)>.

<sup>123</sup> Legislation Act 2012, s 31(3).

<sup>124</sup> Legislation Act 2012, s 32(2).

# CHAPTER 26

# The Legislative Process

## INTRODUCTION

The term “legislative process” denotes the process by which legislation passes through the House and receives the Royal assent. The legislative process “can be seen as a series of hurdles or tests that a proposal for legislation (a bill) must negotiate if it is to survive and become law”.<sup>1</sup> The test is essentially in two parts.<sup>2</sup>

- First, whether the bill is needed as an addition to the body of law.
- Second, if a bill is deemed to be needed, whether it is fit for purpose. The question is whether the manner in which a bill seeks to affect change is effective and without adverse consequences—or, if unavoidable, minimal adverse consequences.

The New Zealand Parliament was said in 1979 to make the fastest law in the west.<sup>3</sup> Not only was Parliament seen as passing too many laws, but it also was observed that it was passing them too quickly in an “end of session rush” at the behest of the Government of the day. This meant that often legislation—both more and less important—was introduced hastily and not considered thoroughly before it was passed. This has been described as a poor process constitutionally.<sup>4</sup> Under MMP there are more constitutional and political constraints on legislating than prevailed in the late 1970s. Minority Governments are the norm, and they require the Government to secure the backing of one or more other parties for each bill; parties that undertake to support the Government on confidence and supply matters tend to reserve the right to distinguish their positions on legislative proposals. Moreover, it is in a Government’s interest to consult and compromise with other parliamentary parties if it is to progress its legislative agenda smoothly and with minimal opposition. House procedure has been changed to compensate the Government for the greater political difficulty of progressing a legislative programme under MMP.<sup>5</sup>

The House’s procedures have been adjusted recently with a view to improving the effectiveness of the legislative process. A balance has been sought between giving the Government appropriate opportunity to implement its legislative programme,

---

1 David McGee “Concerning Legislative Process” (2007) 11(3) *Otago Law Review* 417 at 421.

2 Ibid.

3 Geoffrey Palmer *Unbridled Power? An Interpretation of New Zealand’s Constitution and Government* (Oxford University Press, Wellington, 1979) at ch 7.

4 Ibid, at ch 7.

5 David McGee “Concerning Legislative Process” (2007) 11(3) *Otago Law Review* 417 at 418 and 429.

on the one hand, and allowing for thorough scrutiny, on the other.<sup>6</sup> In particular, constructive engagement between parties has been encouraged, to focus the time of the House on matters of political and parliamentary importance, while facilitating the passage of bills with wide support to improve the statute book. Such engagement has been promoted by giving the Business Committee more flexibility to negotiate and determine arrangements for how the House will deal with legislation.<sup>7</sup>

## STAGES IN THE PASSING OF BILLS

For a bill to become law it must pass through a series of stages, at each of which the test of its validity set out at the beginning of this chapter may be reapplied. The vast majority of bills pass through the following stages in the House:

- introduction
- first reading
- select committee consideration
- second reading
- committee of the whole House consideration
- third reading.

At each of these various stages discussion on the formal proposals in the bill may take place. Procedural issues (for example, referral instructions to a select committee) may arise during each stage, and there are procedural questions to be decided as a bill passes from stage to stage, but the proposals in the bill may be debated only during the stages themselves.

Some bills do not go through all of the stages set out above. Occasionally, bills introduced under urgency are not referred to a select committee for consideration. Other exceptions may also be made. Bills that confirm or confirm and validate subordinate legislation may not receive an airing in the committee of the whole House.<sup>8</sup> And following the presentation to the House of a committee's report on a statutes revision bill, the Business Committee may determine how the bill is to progress through the House, sometimes without a committee of the whole House stage and without debate on the third reading.<sup>9</sup>

All bills must have three "readings" by order of the House before they are passed.<sup>10</sup> "Reading" a bill is a term drawn from early English Parliaments when not all members could read and copies of documents were not readily available, so that the Speaker or Clerk would actually read or describe the bill to the House before the Speaker asked the members if they agreed to it. In those days a "reading" preceded the passing of the bill through each stage; now a reading follows it. However, the bill is not read in full each time. Once the House has agreed to read a bill, whether for the first, second or third time, the Clerk merely reads the title of the bill and this now constitutes its being read.<sup>11</sup>

## INTRODUCTION OF BILLS TO THE HOUSE

### Government bills

#### *Time of introduction*

A Government bill may be introduced on any working day or by 1 pm on any sitting day.<sup>12</sup> A bill has been introduced after 1 pm by leave where copies of it

---

<sup>6</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 8.

<sup>7</sup> Ibid, at 9.

<sup>8</sup> SO 325.

<sup>9</sup> SO 271.

<sup>10</sup> SO 268(1).

<sup>11</sup> SO 268(2).

<sup>12</sup> SO 276.

became available only after the House met.<sup>13</sup> In addition, an Appropriation Bill, an Imprest Supply Bill or a bill to which the House has accorded urgency may be introduced during a sitting (but not while a debate is in progress).<sup>14</sup>

This means that, apart from the period from 25 December to 15 January, weekends and public holidays,<sup>15</sup> Government bills may be introduced during adjournments of the House. (A bill cannot be introduced while Parliament is prorogued, dissolved or has expired.) While bills cannot be introduced after 1 pm on a sitting day (unless they are included in an urgency motion), if the House sits into a subsequent day under urgency and then adjourns and does not sit again on that day, a bill can be introduced at any time during the remainder of the day. If the House does sit again on that day, bills may be introduced in the period between its adjournment and 1 pm.

### ***Procedure for introduction***

When the Government intends to introduce a bill into the House, the parliamentary counsel (or the Inland Revenue Department drafter in the case of tax bills) makes arrangements for it to be published.

Introduction is effected by the Leader of the House informing the Clerk that the Government intends to introduce a bill.<sup>16</sup> Advice is effected by the Leader's office delivering a written note to this effect, giving the title of the bill, the Minister in charge, and the bill's reference number. For the notice to be effective, copies of the bill must also be delivered to the Clerk so that it can be circulated to members on introduction,<sup>17</sup> and it is published on the New Zealand legislation website. When the House is sitting under urgency at the time that a bill is to be introduced, copies of the bill must be available at the Table before it can be introduced.<sup>18</sup> Without leave, there can be no introduction of a bill without copies of it being made available for circulation to members. Leave has been given, however, to permit a bill to be introduced even though copies of it were not available at the proper time.<sup>19</sup>

## **Members' bills**

### ***Giving notice***

Unlike a Government bill, a Member's bill cannot be introduced without notice having been given. The member intending to introduce the bill must give a notice of proposal to introduce it. Such a notice is given by delivery to the Clerk on any working day.<sup>20</sup>

The member is obliged to deliver to the Clerk a fair copy of the bill proposed for introduction, no later than the time at which the member gives the notice of proposal to introduce. If the notice of proposal is in order, it is retained until the bill is drawn from the ballot or the member withdraws it.

Member's bills for which the Clerk holds a notice of proposal are posted on the New Zealand Parliament website.<sup>21</sup> This allows members to take advantage of technology for social and political networking, to disseminate links to a bill in order to promote their proposals and generate debate about it. Members can also indicate their support for a proposed bill on the bill's webpage.<sup>22</sup> While these indications of support do not have any procedural effect, such demonstration of the support of other members can promote consultation on legislative initiatives by members who are not Ministers. (See Chapter 24, "Members' bills".)

<sup>13</sup> (1996) 556 NZPD 13890 (Producer Board Acts Reform Bill).

<sup>14</sup> SO 284.

<sup>15</sup> SO 3(1) working day.

<sup>16</sup> SO 276.

<sup>17</sup> SO 267(1).

<sup>18</sup> (1998) 567 NZPD 7938 Kidd.

<sup>19</sup> (1996) 556 NZPD 13890 (Producer Board Acts Reform Bill).

<sup>20</sup> SO 278(1).

<sup>21</sup> SO 279(2).

<sup>22</sup> SO 280.

### ***Number of bills before the House***

There was formerly no restriction on the number of Members' bills that could be introduced on the same day. Notices for the introduction of Members' bills were set down on the Order Paper in the order they were received by the Clerk. This led to unseemly queueing by members to gain priority on the Order Paper.<sup>23</sup> The procedure has been altered so that priority is determined by ballot rather than stamina. No significance is now accorded to the order in which notices are lodged.

The number of Members' bills on the Order Paper awaiting their first reading on any one day is restricted to a maximum of eight, which are selected by ballot. Where the debate on the first reading of a bill has been commenced and then adjourned, the bill is not counted as a bill awaiting first reading. Bills awaiting first reading that have been postponed by determination of the Business Committee are arranged on the Order Paper as the committee determines.<sup>24</sup> Such a bill is normally below the line (see "Setting a bill down for first reading" below) for the period of postponement, and is not available for first reading. It is therefore not counted as a bill awaiting first reading.

When the Clerk sees that fewer than eight bills are available for debate, he or she conducts a ballot at midday on a sitting day to select bills to be introduced and to decide the order in which they will be introduced.<sup>25</sup> This is most likely to happen on a Thursday morning following a Wednesday on which Members' bills have been debated and processed by the House. The number of Members' bill slots for new bills that become available each fortnight thus varies from none at all to eight, depending upon how many Members' bills at first reading are dealt with on the preceding Members' day.

While the Minister or member in charge of a bill normally has the right to postpone its consideration simply by informing the Clerk, this right is curtailed for Members' bills. The first reading of a Member's bill can be postponed only by either the Business Committee making a determination or the member in charge moving a motion without notice.<sup>26</sup> The member in charge cannot postpone the first reading at his or her own prerogative. This restriction was imposed to avoid situations where members postponed first readings repeatedly while campaigning for public support, leaving the House with insufficient business to transact on Members' days.<sup>27</sup>

### ***Conduct of the ballot***

To prevent members boosting their chances in the ballot by lodging multiple notices, members cannot propose more than one Members' bill for introduction at any one time.<sup>28</sup> A member who entered more than one notice would be invited to nominate which should proceed. Failure to nominate one by the time the ballot is held would lead to all notices from that member being rejected. Furthermore, only one notice may be entered in respect of bills that are the same or substantially the same in substance. If similar bills are entered by different members, which Member's bill proceeds into the main ballot is itself determined by ballot.<sup>29</sup> Similarly a member may not enter a bill in the ballot that is the same or the same in substance as a bill that received, or was defeated on, first, second or third reading in the same calendar year.<sup>30</sup>

<sup>23</sup> See, for example: Jane Clifton "Parliamentary midnight stake-out ends with a deal, a smile and a drink" *The Dominion* (21 November 1989) at 2; Jane Clifton "Marbles save the day in private member's bill battle" *The Dominion* (4 April 1990) at 2.

<sup>24</sup> SO 74(3)(b).

<sup>25</sup> SO 281(1).

<sup>26</sup> SO 74(3).

<sup>27</sup> Standing Orders Committee Review of Standing Orders (27 September 2011) [2008–2011] AJHR I.18B at 22.

<sup>28</sup> SO 278(3).

<sup>29</sup> SO 281(2).

<sup>30</sup> SO 264(a); (15 October 2015) 709 NZPD 7281 Carter (Healthy Homes Guarantee Bill (No 2)).

When a ballot is to be held, members are advised by email shortly after 10 am of the titles of the bills for which notices have been lodged, and are invited to be present at the ballot in person or by representative. The ballot is conducted in one of the offices of the Office of the Clerk in Parliament House at midday. Members are advised of the result of the ballot shortly thereafter.

### ***Introduction by leave***

The House may give leave for a Member's bill to be introduced without notice, and without being drawn in the ballot. Members occasionally seek leave for their bills to be preferred in this way, but they are rarely successful.<sup>31</sup> Where leave is granted to introduce a Member's bill, it is treated as if it had been drawn in the ballot.<sup>32</sup>

### **Private bills and local bills**

A private bill or local bill is introduced by a member's notice of intention to introduce it. Such a notice is given by delivery to the Clerk on any working day or by 1 pm on any sitting day.<sup>33</sup> A private or local bill may be introduced only after it has been endorsed by the Clerk as complying with the preliminary procedures in Appendix C to the Standing Orders.<sup>34</sup>

The Clerk arranges on behalf of the member for sufficient copies of the bill to be printed (if this has not already been done) and circulated to members as soon as possible after the bill's introduction,<sup>35</sup> and for it to be published on the New Zealand legislation website.

There are no restrictions on the number of private or local bills that may be introduced on the same day. Such bills are listed on the Order Paper in the order in which notice of them was received by the Clerk.

## **CIRCULATION OF BILLS**

Once a bill has been introduced it is circulated to members.<sup>36</sup> This is done internally through the Bills Office, which is part of the Office of the Clerk. Following its introduction, hard copies are made available for sale to the public, and electronic copies are made available on the New Zealand Legislation website.

## **SETTING A BILL DOWN FOR FIRST READING**

At the next sitting of the House after the introduction of a bill, the Clerk announces the bill's introduction as an item of general business.<sup>37</sup> If introduced on a sitting day, a Government bill is set down for first reading on the next Tuesday that is a sitting day.<sup>38</sup> A Government bill introduced on a non-sitting day may have its first reading on the third sitting day following its introduction.<sup>39</sup> Private, local or member's bills are set down for first reading on the third sitting day after their introduction.<sup>40</sup> During this waiting or stand-down period the bill is shown on the Order Paper as a Government, Members' or local and private order of the day (as the case may be), below other orders of the day and without an order of the day number. A line is printed on the Order Paper under other orders of the day and above any bills that

<sup>31</sup> See, for example: (20 September 2007) 642 NZPD 12078.

<sup>32</sup> See, for example: (13 March 2008) 645 NZPD 14917 (Family Proceedings (Paternity Orders and Parentage Tests) Amendment Bill); (20 March 2008) 646 NZPD 15130 (Electoral Finance Amendment Bill).

<sup>33</sup> SO 282.

<sup>34</sup> SOs 273 and 274.

<sup>35</sup> SO 267(1).

<sup>36</sup> SO 272(1).

<sup>37</sup> SO 283.

<sup>38</sup> SO 285(1)(a).

<sup>39</sup> SO 285(1)(b).

<sup>40</sup> SO 285(2).

are in this waiting period. Such bills are therefore said to be “below the line” and are not available for consideration unless urgency has been accorded<sup>41</sup> or leave of the House has been granted.<sup>42</sup> On their third such appearance on the Order Paper, introduced bills are moved “above the line”. They may then be scheduled for their first reading if they are Government orders of the day, and they will be placed after other bills awaiting a first reading if they are Members’ and private and local orders of the day.<sup>43</sup>

## WITHDRAWAL OF A BILL

A bill that has been introduced may be withdrawn.

The promoters of local bills and private bills may withdraw them at any time. If there are joint promoters, each must agree to withdrawal. Withdrawal is effected by notifying the Speaker in writing that the bill is to be withdrawn. The concurrence of the member in charge of the bill is not required. Withdrawal is effective on the day that the Speaker receives the letter notifying it. The Speaker informs the House at the next opportunity that the bill has been withdrawn.<sup>44</sup> The consequence of withdrawal of a bill is that it is discharged from further consideration by the House.<sup>45</sup> If the bill is before a select committee at the time of its withdrawal, it is discharged at once from the committee and no report is made on it. If a promoter wishes to bring a bill that has been withdrawn before the House again at a later date, the procedures for promoting a local or private bill must begin anew. (A promoter of a bill has been ordered by a court to apply to Parliament for leave to withdraw a bill. This was not regarded as an interference with parliamentary proceedings, on the ground that the decision whether to accede to the request is still left to Parliament.<sup>46</sup>)

As distinct from withdrawal of a local bill or private bill by the promoter, an order of the day relating to a bill (Government, Member’s, private or local) that is before the House may be discharged. This can be effected by the member in charge of the bill informing the Clerk accordingly,<sup>47</sup> by determination of the Business Committee,<sup>48</sup> or on motion without notice, moved when the order of the day is reached.<sup>49</sup> A bill that is before a select committee is not an order of the day and so cannot be withdrawn under these procedures.

The discharge of an order of the day relating to a bill is treated as equivalent to the withdrawal of the bill. However, unlike withdrawal of a local bill or private bill by its promoter, a discharged order of the day can be reinstated by a motion on notice.

## REPORT UNDER THE NEW ZEALAND BILL OF RIGHTS ACT

Where the Attorney-General considers that a bill as introduced includes a provision that appears to be inconsistent with any of the rights and freedoms set out in the New Zealand Bill of Rights Act 1990, the Attorney-General is obliged to report this inconsistency to the House. In the case of a Government bill, this must be done on the bill’s introduction. (A report will have been presented before such

<sup>41</sup> SO 285(3).

<sup>42</sup> See, for example: (2001) 592 NZPD 9400–9401 (Hauraki Gulf Marine Park Amendment Bill).

<sup>43</sup> SOs 70 and 72.

<sup>44</sup> SO 275(1). See, for example: (19 September 2007) 642 NZPD 11987 (Palmerston North Reserves Empowering Amendment Bill); (17 February 2010) 660 NZPD 8947 (Wanganui District Council (Port and Harbour) Bill).

<sup>45</sup> SO 275(2).

<sup>46</sup> *Fairfold Properties Ltd v Exmouth Docks Company Ltd* (1990) *The Times Law Reports* 660.

<sup>47</sup> SO 74(1)(b).

<sup>48</sup> SO 74(1)(c).

<sup>49</sup> SO 74(1)(a).

a bill was introduced.<sup>50)</sup> In the case of any other type of bill, it must be done as soon as practicable after the bill's introduction.<sup>51</sup> This means that when the House holds its first debate on a bill after its introduction, it will be aware of any provision in the bill that the Attorney-General considers to be inconsistent with the Bill of Rights Act.

The Attorney-General is not required to report on every bill certifying whether it is or is not consistent with the Bill of Rights Act, only on those bills that he or she considers to demonstrate such an inconsistency.<sup>52</sup> An Attorney-General's report takes the form of a paper, which is presented in the ordinary way and published under the House's authority.<sup>53</sup> The paper stands referred to a select committee chosen by the Clerk.<sup>54</sup> If a bill is introduced under urgency, the Attorney-General may present the paper certifying an inconsistency at the time of introduction.<sup>55</sup>

The paper must indicate which provision of the bill is considered to be inconsistent with the Bill of Rights Act and how it appears to be inconsistent.<sup>56</sup> The Attorney-General may also respond to challenges concerning the compatibility of proposed legislation with the Bill of Rights Act in other ways: for example, by participating in debates on the bill, by making a ministerial statement, or by answering oral or written questions on the subject.<sup>57</sup> The Attorney-General's report relates only to the bill that is introduced. Thus when a bill was consistent in itself with the Bill of Rights Act, but amended a provision in another Act that itself was inconsistent, no report was presented.<sup>58</sup> However, the Attorney-General has noted when a bill preserved an inconsistency that had previously been noted in the principal Act.<sup>59</sup>

The Attorney-General has no continuing responsibility to report on a bill as it proceeds through its various stages. Amendments at the select committee or committee of the whole House stages are not subject to a formal Attorney-General's report,<sup>60</sup> though the Attorney-General, the select committee and other members may address the issue of consistency with the Bill of Rights Act in considering whether to adopt proposed amendments to the bill.

## DEPARTMENTAL DISCLOSURE STATEMENTS

In July 2013, Cabinet implemented a trial of Departmental Disclosure Statements for some Government bills and substantive Supplementary Order Papers.

When a bill is introduced, or a substantive Supplementary Order Paper released, a disclosure statement prepared by the responsible department is published electronically by the Parliamentary Counsel Office and circulated to members by the Office of the Clerk. Departmental Disclosure Statements arise from Cabinet requirements, and are not formally required under the House's procedures. However, they are useful for informing members of matters of legislative quality arising from bills, and thus they facilitate good scrutiny of legislation.<sup>61</sup>

<sup>50</sup> Attorney-General, report under the New Zealand Bill of Rights Act 1990 on the Future Directions (Working for Families) Bill (27 May 2004) NZPP E.63; (27 May 2004) 617 NZPD 13424.

<sup>51</sup> New Zealand Bill of Rights Act 1990, s 7.

<sup>52</sup> (1991) 516 NZPD 2968 Gray.

<sup>53</sup> SO 265(4).

<sup>54</sup> SO 265(5).

<sup>55</sup> SO 265(3); (16 May 2013) 690 NZPD 10053.

<sup>56</sup> SO 265(1).

<sup>57</sup> See, for example: Reply to question 7699 (2001) (48 NZPD Supp 1702) (Local Electoral Bill).

<sup>58</sup> (1999) 575 NZPD 15251 (Social Welfare (Transitional Provisions—Special Portability Arrangement) Amendment Bill).

<sup>59</sup> Attorney-General, report on Parole (Extended Supervision Orders) Amendment Bill (17 April 2014) [2011–2014] AJHR J.4.

<sup>60</sup> *R v Poumako* [2000] 2 NZLR 695 (CA) at [25], [66] and [96]; (2001) 597 NZPD 13349; Reply to question 18874 (2001) (50 NZPD Supp 4172).

<sup>61</sup> See: Cabinet Office Circular "Disclosure Requirements for Government Legislation" (4 July 2013) CO 13/3 at [2].

The disclosure statement provides details of the objectives of the legislation, its background, policy analysis, any quality assurance work such as Bill of Rights Act vetting undertaken, and any especially important or unusual provisions in the bill or Supplementary Order Paper.

Disclosure statements are departmental, not ministerial, documents, and reflect the responsible department's understanding of each bill's preparation. Disclosure statements are required for all Government bills except:<sup>62</sup>

- Imprest Supply and Appropriations bills
- Statutes Amendment bills
- Regulatory Reform (Repeal) bills
- Subordinate Legislation (Confirmation and Validation) bills
- Revision bills.

Substantive Supplementary Order Papers that require a disclosure statement are those that propose material change to the policy given effect by the bill, or propose changes to offences, penalties, court jurisdictions, privacy provisions, or any significant or unusual provision in the bill.<sup>63</sup>

## AMENDMENTS TO NEW ZEALAND SUPERANNUATION

On the introduction of any Government bill to amend the New Zealand Superannuation and Retirement Income Act 2001, the Minister of Finance (or other Minister charged with the administration of that Act) must bring to the House's attention the consultation process that was followed in formulating the proposed amendment. In particular, the statement that the Minister makes must state what consultation has taken place with political parties represented in Parliament that are listed in the Act or in any Order in Council made under the Act<sup>64</sup> as supporting the part of the Act that is to be amended, and what consultation has taken place with the Guardians of New Zealand Superannuation. The statement must also convey the results of the consultation.<sup>65</sup>

Such a statement can be made by way of a ministerial statement, by the presentation of a paper to the House<sup>66</sup> or in the bill's explanatory note.<sup>67</sup>

## COGNATE BILLS

Sometimes the House has before it two or more bills on related matters—cognate bills. In the debate it is very difficult to prevent debate spilling over from one to another. To deal with this the House can take all the bills together for the purposes of discussion, permitting members to refer to all the cognate bills on the Order Paper. Among recent examples were legislation to regulate the conduct of the financial markets, and to effect treaty settlements. At the conclusion of the debate the question for the reading of each bill is put separately. The Standing Orders provide for the second reading debate on any Imprest Supply bill to be taken together with the third reading of the main Appropriation bill and with the

<sup>62</sup> Treasury Disclosure statements for Government legislation: technical guide for departments (28 June 2013) at 7.

<sup>63</sup> Ibid, at 8.

<sup>64</sup> See: New Zealand Superannuation (Political Commitment) Order 2003; New Zealand Superannuation (Political Commitment) Order 2004.

<sup>65</sup> New Zealand Superannuation and Retirement Income Act 2001, s 73.

<sup>66</sup> New Zealand Superannuation Act 2001: Minister of Finance's Statement on the Consultation Process followed in the formulation of the Amendments to the New Zealand Superannuation Act 2001 proposed in the Relationships (Statutory References) Bill, presented pursuant to section 73 of the Act (21 June 2004).

<sup>67</sup> See, for example: Statutes Amendment Bill (71–1) (explanatory note, 14 October 2015); Statutes Amendment Bill (101–1) (explanatory note, 24 November 2009); New Zealand Superannuation Amendment Bill (119–1) (explanatory note, 6 April 2004).

second reading of an Appropriation (Supplementary Estimates) bill.<sup>68</sup> The debate on the third reading of bills divided out of a bill during the committee stage may be taken together.<sup>69</sup> In every other case the House or the Business Committee can determine, before or after introduction, whether two or more bills will be treated as cognate; and such a determination can relate to any or all of the first, second or third readings of the bills concerned.<sup>70</sup> This offers an alternative to the introduction of omnibus bills. (See Chapter 24, “Omnibus bills”.)

## FIRST READING

### Nature of debate

The first reading debate is the House’s first opportunity to debate the legislative proposal that has been put before it. The House may decide that it does not wish to spend any more time considering the proposal and reject it out of hand. But most bills (and especially Government bills) are not rejected at their first hurdle, and the first reading debate is looked upon as a prelude to sending the bill for detailed study by a select committee. It is therefore an opportunity for the Minister, in the case of a Government bill, to explain to the House why the Government has introduced the bill and what it hopes that it will accomplish, and to give a brief résumé of its provisions.

It is an opportunity also for other members, and especially parties, to put on record their positions on the proposal; or they may reserve their positions until they have benefited from information gleaned during the select committee’s consideration of it. So while a first reading can lead to an “in principle” decision on the bill, it does not have to. It is perfectly consistent with the first reading process for judgement on the bill to be deferred to allow it to be given more detailed examination.

The question of consistency or inconsistency with the Bill of Rights Act is always a legitimate debating point to be raised, especially during the first reading debate.<sup>71</sup> Indeed the Minister moving the first reading may deal explicitly with how the Government perceives that the bill’s provisions relate to the Bill of Rights Act.<sup>72</sup>

### Speech of member in charge

In initiating the first reading debate the member in charge of the bill moves “That the … Bill be now read a first time”,<sup>73</sup> and proceeds directly to speak to that motion. For most bills, the first reading precedes consideration by a select committee, and, after moving the motion for the first reading, the member in charge of the bill must nominate which select committee the member intends to consider the bill.<sup>74</sup> This must be done at the commencement of the member’s speech.<sup>75</sup> If the member in charge fails to do so, the Speaker will require this to be done before the debate proceeds.<sup>76</sup> The Standing Orders provide that bills stand referred to a select committee for consideration after their first reading.<sup>77</sup> Therefore, no motion to refer a bill to a committee is required: following the first reading the Speaker simply puts a question on the particular committee to consider the bill, which is nominated by the member in charge.<sup>78</sup>

<sup>68</sup> SOs 340(3) and 342(2).

<sup>69</sup> SO 312(2).

<sup>70</sup> SO 269. See, for example: Business Committee determinations for 21 October 2015, 5 November 2014 and 8 February 2012.

<sup>71</sup> (1990) 511 NZPD 103–104; (1998) 567 NZPD 8268.

<sup>72</sup> (1990) 511 NZPD 593 (Bail (Miscellaneous Provisions) Bill).

<sup>73</sup> SO 286.

<sup>74</sup> SO 287(1)(a).

<sup>75</sup> SO 287(1)(a); (8 May 2012) 679 NZPD 2001 Tisch (Assistant Speaker).

<sup>76</sup> (1998) 568 NZPD 8523–8524 Revell (Deputy Speaker) (Ministry of Energy (Abolition) Amendment Bill (No. 2)).

<sup>77</sup> SO 288.

<sup>78</sup> SO 289(2).

If it is intended to give the committee any special powers or instruction (for example, allowing it to meet outside the hours prescribed in the Standing Orders or requiring it to report the bill back by a particular date) this too must be specifically indicated at the commencement of the speech.<sup>79</sup> Written notice of the motion to be moved in respect of the special powers or instruction must be lodged at the Table immediately after the speech.<sup>80</sup> That motion is moved after the bill has been read a first time and the committee to consider the bill has been determined.

When speaking to the motion for the first reading, the member in charge is advising members of his or her intentions regarding the bill, so that the first reading debate can proceed in full knowledge of those intentions. Members taking part in the debate are at liberty to comment on the appropriateness of the committee nominated to consider the bill or on the powers or instruction to be given to it. If the member does not mention any special powers or instruction in the speech, a motion for them cannot be moved subsequently.<sup>81</sup> Further, if the member in charge does mention special powers in the speech, the motion for them must be in the same terms. So a Minister who indicated a particular date for reporting the bill back to the House in his speech could not move a motion with a different date without leave of the House.<sup>82</sup>

## **Amendments to motion for first reading**

An amendment to the motion that a bill be read a first time can be moved, but not an amendment that would extend the debate in a way that is not relevant to the first reading debate.<sup>83</sup> Thus, a want of confidence amendment would not be acceptable, nor is it acceptable to move an amendment relating to select committee consideration at this point, since there is a later procedure expressly dealing with such a motion.

## **Length and conclusion of debate**

The debate on a Government bill is limited to 12 speeches (including the Minister's), each of no more than 10 minutes' duration.<sup>84</sup> In the case of Members' and local and private bills there are 11 speeches, the first two members' speeches being 10 minutes in duration, followed by eight further speeches of five minutes' duration. The member in charge then has five minutes to reply to the debate.<sup>85</sup> A right of reply is no longer common in debate. It is not just another speech. It is a last chance for the member in charge, having listened to the debate, to respond and convince the House of the merits of his or her Member's bill. If the member in charge is not available, no other member may take the reply. The Business Committee has from time to time used its power to vary the speaking times set out in the Standing Orders for the debate on a Member's bill.<sup>86</sup> Indeed this is likely to vary from Parliament to Parliament depending upon the party composition of the House. It is understood that at least one of the members speaking in the debate on a Member's bill should be from the same party as the member in charge.

At the conclusion of the debate the Speaker puts the question, which is decided in the normal way. If the question for first reading is decided affirmatively (as it almost invariably is for Government bills), the bill is read a first time by the Clerk. The Clerk merely rises and reads the title of the bill.

<sup>79</sup> SO 287(1)(b).

<sup>80</sup> SO 287(2).

<sup>81</sup> (1997) 561 NZPD 2726–2729 Revell (Deputy Speaker).

<sup>82</sup> (1997) 562 NZPD 3508 Kidd (Taxation (Superannuitant Surcharge Abolition) Bill).

<sup>83</sup> (1985) 468 NZPD 8981 Wall.

<sup>84</sup> As for other debates, speaking slots can be shared, so a 10-minute call can be split between two members who each would have up to five minutes (SO 121(2)).

<sup>85</sup> SOs, App A.

<sup>86</sup> Business Committee determinations for 9 November 2005 and 5 March 2008.

If the debate on the first reading of a bill is interrupted by the adjournment of the House, the debate is set down for resumption next sitting day. In the case of a Government bill, when it is subsequently dealt with depends upon its position among the other Government orders of the day. Other types of bills interrupted by adjournment will automatically take priority over any other bills at the same stage.<sup>87</sup> The debate on the first reading of a bill can also be adjourned by a motion to that effect.<sup>88</sup> In this case, too, the adjourned debate would be set down as an order of the day.

## First reading without debate

Some categories of bills, such as Appropriation bills and Imprest Supply bills, are always set down for first reading without debate.<sup>89</sup> Recently two further categories of bills—revision bills and bills for the confirmation and validation of subordinate legislation—have been accorded streamlined procedures, which include the putting of the question on the first reading without amendment or debate.<sup>90</sup> When a bill set down for first reading without debate is reached, the order of the day is called, the member in charge moves that the bill be read a first time and the question on the first reading is put immediately. Following the first reading of the bill, the question of select committee consideration is dealt with forthwith, if the House is required to do so. Appropriation bills and Imprest Supply bills are not considered by committees. In the case of a revision bill, a question is put, without amendment or debate, on the committee nominated to consider the bill by the Minister in charge of the bill and notified in the bill's explanatory note.<sup>91</sup> A confirmation and validation bill stands referred to the Regulations Review Committee for consideration.<sup>92</sup>

## REFERRAL OF BILLS TO THE WAITANGI TRIBUNAL

There is a statutory provision for the House to refer any proposed legislation before it to the Waitangi Tribunal, so that the tribunal may report on whether the provisions of the legislation are in any way contrary to the principles of the Treaty of Waitangi.<sup>93</sup>

A bill before the House may be referred for report only by resolution of the House.<sup>94</sup> Such a resolution requires notice of motion to be given first; a motion to refer a bill to a body outside the House cannot be moved by way of amendment on the second reading of a bill.<sup>95</sup> Referring a bill to the Waitangi Tribunal for report discharges any order of the day in respect of the bill, and discharges it from any select committee to which it has been referred. Further parliamentary progress on the bill is arrested until the tribunal reports.

The tribunal's report on a bill referred to it is made to the Speaker. The Speaker then lays it before the House.<sup>96</sup> Apart from formal referral of a bill to it by the House in this way, the Waitangi Tribunal has no jurisdiction in respect of a bill before the House of Representatives.<sup>97</sup>

Government departments are required to report in disclosure statements as to whether a bill is consistent with the Government's Treaty of Waitangi obligations.

<sup>87</sup> SOs 70(2) and 72(2).

<sup>88</sup> SO 133.

<sup>89</sup> SOs 331(2), 333(2) and 342(1).

<sup>90</sup> SOs 271(2) and 325(2).

<sup>91</sup> SO 271(3).

<sup>92</sup> SO 325(2).

<sup>93</sup> Treaty of Waitangi Act 1975, s 8(1).

<sup>94</sup> Treaty of Waitangi Act 1975, s 8(2)(a); (24 July 2014) 700 NZPD 19545 (Māori Language (Te Reo Māori) Bill). The House denied leave for the moving of a motion to refer the bill to the Waitangi Tribunal.

<sup>95</sup> (1975) 397 NZPD 869 Whitehead.

<sup>96</sup> Treaty of Waitangi Act 1975, s 8(3)(a), (4).

<sup>97</sup> Treaty of Waitangi Act 1975, s 6(6).

It is always open to select committees themselves to consider whether the terms of a bill that has been referred to them are consistent with the principles of the Treaty of Waitangi.<sup>98</sup>

## REFERRAL OF BILLS TO SELECT COMMITTEES

### Almost all bills referred

With very few exceptions, every bill stands referred to a select committee for consideration after its first reading.<sup>99</sup> This rule of nearly universal referral of bills to select committees was introduced in 1979.

Appropriation bills and Imprest Supply bills are not referred to a select committee.<sup>100</sup> These exceptions are more apparent than real, however. The contents of Appropriation Bills (Estimates, Supplementary Estimates and annual reviews) are considered by select committees even though the bills, as the formal vehicles for debate in the House, are not. An Imprest Supply Bill is passed at one sitting, so there would be no opportunity for select committee consideration in any case (there are no more than three such bills each year). Moreover, the use of public money that is given interim authority through an Imprest Supply Bill is subject to subsequent approval through an Appropriation bill.

The real exception to the rule that all bills are referred to select committees is bills to which the House accords urgency to their passage. But urgency does not necessarily preclude select committee consideration. Urgency may be taken for a bill's introduction and first reading, allowing for it to go to a select committee, and it may be taken again for the passage of the bill through its remaining stages after the select committee has considered it.

Occasionally a matter of such urgent importance arises that the Government considers it necessary to introduce and pass a bill through successive stages or indeed all its stages in one day. To do this, it asks the House to accord urgency for the introduction and subsequent stages of the bill. If urgency is so accorded, the bill is exempted from the requirement under the Standing Orders that it be referred to a select committee, and no motion to refer the bill to a select committee will be accepted by the Speaker.<sup>101</sup> The Standing Orders Committee has asserted that urgency should be confined to situations that genuinely require an urgent approach. But it has qualified this with regard to the use of urgency to make progress:<sup>102</sup>

Beyond the situations when bills require urgent consideration for legal reasons, urgency could ultimately be justified to make progress if the Government's legislative programme has been unreasonably delayed in the House despite constructive attempts to negotiate arrangements in the Business Committee.

There might also be an expectation that, immediately after an election, a Government will seek to implement its key campaign pledges quickly. In practice, some 95 per cent of all Government bills introduced and read a first time (and virtually 100 per cent of all other bills) are now referred to select committees for study.

### Choice of committee to nominate

In most cases, a bill fits naturally into the subject area of one committee, which is nominated accordingly. However, allocation by subject area is not compulsory.

<sup>98</sup> Supreme Court Bill (16–2) (commentary, 16 September 2003) at 71–78 ([2002–2005] AJHR I.22B at 737–744).

<sup>99</sup> SO 288(1).

<sup>100</sup> SO 288(2).

<sup>101</sup> (1985) 460 NZPD 3048 Arthur (Income Tax Amendment Bill (No. 3)).

<sup>102</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 17.

A bill does not have to be considered by any particular committee, even one whose subject area seems to make it the most suitable. Nor does a bill have to be considered by a committee that is already in existence. A bill can be considered by a special committee to be established for the purpose.<sup>103</sup> However, no committee can be established by the member in charge's nomination in his or her first reading speech. Such a nomination can merely indicate a proposal to establish a committee to consider the bill. The committee must be established by a motion of which notice has been given in the ordinary way. In practice, only a Government bill is likely to be referred to a special committee in this way, unless leave is forthcoming. A Government notice of motion to establish the committee may be before the House as an order of the day at the same time as a Government bill is read a first time. The order of the day for the establishment of such a committee can be taken on the same day,<sup>104</sup> or on a subsequent day, and also can be dealt with before the first reading of the bill concerned.<sup>105</sup>

### **Determination of committee to consider bill**

Immediately after the bill is read a first time, the Speaker puts the question without debate on the committee to consider the bill, as nominated in the speech by the member in charge. Which committee the member in charge nominates is a matter for that member. It is a political judgement, though it will depend to some extent on the subject matter of the bill and the workload of the committees.

Other members may object to the committee nominated by the member in charge on the grounds that another committee would be more appropriate. During the first reading debate, when members were forewarned of the committee nominated by the member in charge, they could debate the nomination. It is open to any member to nominate a different committee to consider the bill by lodging a written nomination with the Clerk at the Table.<sup>106</sup> If another member has done so, then the Speaker will put the question only if the House has not agreed with the committee proposed by the member in charge.<sup>107</sup>

### **Special powers or instructions**

After the House has resolved which committee will consider the bill, the member in charge can move a motion to give the committee special powers or particular instructions for its consideration of the bill, as long as the member described them in the first reading speech.<sup>108</sup> Such a motion can seek to vary the standard powers and obligations that would otherwise apply to the committee when considering the bill, for example to permit the committee to meet at times normally restricted under the Standing Orders, or to adjust the default six-month deadline for the committee's final report. Special powers or an instruction moved immediately after the first reading of a bill may relate only to the committee's consideration of that bill.<sup>109</sup> They cannot extend to other business before the committee or to the committee's subject area, functions or powers generally.

The motion is subject to amendment and debate, unless it relates only to the time for reporting on the bill and provides for a report date that is between four and six months.<sup>110</sup> Any debate is restricted to the subject matter of the motion and must not extend to the principles, objects, or provisions of the bill to which the motion relates.<sup>111</sup>

<sup>103</sup> SO 289(3).

<sup>104</sup> (1999) 581 NZPD 106–118 (Accident Insurance (Transitional Provisions) Bill).

<sup>105</sup> (13 May 2009) [2008–2011] 1 JHR 132–133 and 390 (Local Government (Auckland Council) Bill).

<sup>106</sup> SO 289(1).

<sup>107</sup> SO 289(2).

<sup>108</sup> SO 290(1).

<sup>109</sup> (1997) 558 NZPD 671 Kidd.

<sup>110</sup> SO 290(2).

<sup>111</sup> SO 290(3); (8 May 2013) 689 NZPD 9677, 9683–9689 (Government Communications Security Bureau and Related Legislation Amendment Bill).

Special powers or an instruction can subsequently be given by the House by motion on notice. However, it is more convenient for the Government to move the motion immediately after the first reading, as debate on the motion will be limited in its scope<sup>112</sup> or not permitted at all.<sup>113</sup> Furthermore, it is unlikely that any member in charge of a Member's bill will get a subsequent opportunity to move for such powers, since Members' notices of motion normally are not dealt with by the House. Where a special committee is to be established, special powers can be conferred on it through a motion moved after the first reading of the bill concerned, provided that those powers were mentioned in the member in charge's speech. Otherwise they can be conferred in the motion establishing the committee.

### **Transfer of bill to another committee**

Because the House orders a particular committee to consider each bill that has been read a first time, only the House can transfer a bill from one committee to another.

A motion to effect this by rescinding the House's original order can be moved after notice has been given in the ordinary way. Alternatively, leave of the House could be given for this purpose. Committees occasionally raise the question of transferring a bill to another committee that they consider more appropriate, and they may report to the House suggesting this.<sup>114</sup> Normally any proposal to transfer a bill to another committee will be discussed first by the Business Committee.

If a bill were to be transferred to another committee the standard six months' time limit for reporting would start to run anew from the date of transfer; but if any specific reporting date had been imposed on the former committee by the House, that date would continue to apply to the new committee.

## **CONSIDERATION OF BILLS BY SELECT COMMITTEES**

The House of Representatives has throughout its history made a regular practice of referring bills to select committees for detailed examination. Until 1979 this was done after second reading on an ad hoc basis. Approximately 30 per cent of Government bills (and virtually every other type of bill that received a second reading) were referred in this way. In 1979 a procedure of automatic referral of all bills (with limited exceptions) after their first reading was introduced. Between 1996 and 1999 the House reverted to its previous practice of referring bills after their second reading, then in 1999 the House returned to referring bills after first reading. Given the importance of select committee consideration of bills, it was considered that the House should take its "in principle" decision on legislation—that is, the decision made at the second reading of the bill—after the select committee had considered it and with the benefit of that consideration.<sup>115</sup>

Select committees are charged with examining bills that are referred to them to determine whether they should pass.<sup>116</sup> This is the fundamental question that is raised in respect of every bill introduced into the House, and the select committee to which a bill is referred is expected to express its opinion on it. This does not mean that a select committee has the power to determine whether a bill will be passed or not passed. Only the House can do that. But select committees are not only authorised to express their opinions on this matter, they are enjoined by the Standing Orders to do so.

<sup>112</sup> SO 290(3).

<sup>113</sup> SO 290(2).

<sup>114</sup> See, for example: Internal Affairs and Local Government Committee, special report on the Local Elections (Single Transferable Vote Option) Bill (29 May 1997) [1996–1999] AJHR I.22 at 297.

<sup>115</sup> Standing Orders Committee Review of the operation of the Standing Orders (2 September 1999) [1996–1999] AJHR I.18B at 23.

<sup>116</sup> SO 291(1)(a).

A committee may be unable to agree on whether a bill should pass.<sup>117</sup> This should not prevent the committee from reporting on the bill. When dealing with a bill that raises conscience issues, a committee may well prefer to focus on improving the wording and legislative quality of the bill without expressing a view on the form that amendments should take—leaving that judgement and other decisions on broader policy matters to the full body of members in the House.<sup>118</sup>

As well as considering the question of the bill's passing, a select committee may recommend amendments to the bill.<sup>119</sup> While they must be relevant to the bill, they can be of fundamental importance and alter its shape substantially (another reason to defer the “in principle” decision on the bill’s passing until after select committee consideration).<sup>120</sup> Sometimes instructions to committees circumscribe the committee in its work. The committee must operate within any limitations laid down by the House when the bill is referred to it, and is always subject to subsequent direction by the House by means of an instruction.

## PROCESS FOLLOWED BY COMMITTEES

Each committee is relatively free to organise for itself the performance of the legislative task it is given. All of the 13 subject select committees consider bills at some time or other, as does the Regulations Review Committee.<sup>121</sup> Even the Standing Orders Committee has done so.<sup>122</sup> From time to time committees are established to consider particular bills. Committees are not obliged to discharge their task in any particular way unless the House specifically directs them to.

Most bills are considered by committees that are already in existence. Even so, it is irregular for the committee to take formal action in relation to a bill—such as advertising for submissions—before the bill is actually before it.<sup>123</sup> Nevertheless, the committee may have been informally advised by the Minister in the case of a Government bill that a bill is to be considered by the committee, and it is quite proper for the committee to discuss in advance how the bill is to be processed once it is before the committee.

### Briefings

Exceptionally a bill may be referred to a committee for it to receive only a briefing on the bill from the Minister in charge of it or officials from the Minister’s department.<sup>124</sup>

In such a case the committee may not advertise for submissions or hear evidence. How, if at all, the committee considers written communications on the bill is a matter for it to decide. But the committee may appoint advisers and receive reports from them on the bill, in addition to receiving briefings from the Minister and departmental officials. The committee still has the function of examining the bill to determine whether it should pass, and the power to recommend relevant amendments to it.<sup>125</sup>

<sup>117</sup> Local Government Act 2002 Amendment Bill (27–2) (commentary, 30 October 2012) at 1 ([2011–2014] AJHR I.22A at 605).

<sup>118</sup> Standing Orders Committee *Review of Standing Orders* (27 August 2008) [2005–2008] AJHR I.18B at 28. See also, for example: Sale of Liquor Amendment Bill (No 2) (211–2) (commentary, 5 July 1999) at i–iv ([1996–1999] AJHR I.24 at 471–474).

<sup>119</sup> SO 291(1)(b).

<sup>120</sup> Standing Orders Committee *Review of the operation of the Standing Orders* (2 September 1999) [1996–1999] AJHR I.18B at 23.

<sup>121</sup> (6 August 2013) 692 NZPD 12426 (Subordinate Legislation (Confirmation and Validation) Bill (No 2)).

<sup>122</sup> (2002) 602 NZPD 114 (Remuneration Authority (Members of Parliament) Amendment Bill); (16 October 2003) 612 NZPD 9281 (Members of Parliament (Pecuniary Interests) Bill).

<sup>123</sup> (1996) 555 NZPD 12949 Tapsell (Adoption Amendment Bill (No 2)).

<sup>124</sup> (17 March 1992) [1991–1993] 2 JHR 1243; (16 June 1992) [1991–1993] 2 JHR 1635; (20 March 2003) 607 NZPD 4311 (Resource Management Amendment Bill (No 2)).

<sup>125</sup> SO 291(1).

Generally, a committee cannot receive a briefing or initiate an inquiry into a bill that is not before it, unless the House or the Business Committee has authorised it.<sup>126</sup> The main exception to this rule is the Regulations Review Committee, which is empowered, on its own initiative, to consider bills before other committees in relation to regulation-making matters, and to report accordingly to the committees concerned.<sup>127</sup> A committee to which a bill has been referred can also seek opinions from other committees about provisions in the bill.<sup>128</sup>

## Advertising

The committee determines the extent of the advertising for submissions to be undertaken on a bill. However, if a bill is referred to a committee at a time when it is not due to meet for some days and it is desirable not to lose the intervening time, the chairperson may, on behalf of the committee, direct the clerk of the committee to place advertisements calling for submissions by a particular time. But these steps are provisional, and are subject to the ultimate authority of the committee, which may repudiate or alter the chairperson's action.<sup>129</sup> It is normal practice for an advertisement to include a concise neutral summary of the bill's provisions. These summaries are prepared by the committee staff, subject to the final control of the committee.<sup>130</sup>

Where a bill is referred to a special committee that has been newly set up, the committee must meet and elect a chairperson before the calling of submissions can be arranged, and it is improper for anyone to act in the committee's name before that time.<sup>131</sup>

The extent of the advertising that is undertaken will depend upon the perceived level of interest in the bill and any time constraints placed on the committee's consideration of the bill. If the committee considers that a bill must be processed with despatch, or the House has required that the bill be reported back within a matter of days, the committee may decide not to place any advertisements calling for public submissions.<sup>132</sup> A committee has decided not to call for submissions on a bill that it considered to be straightforward and uncontroversial.<sup>133</sup> But these situations are uncommon.

The Parliament website notifies the public of all bills before select committees and where submissions have been called for by committees. To help people make submissions it provides links to the bills and other relevant information, such as disclosure statements and regulatory impact statements and the Bills Digest prepared in the Parliamentary Library. It also provides the means for making submissions. Committees may also use various other means to alert those wishing to make submissions, including social media. The means of advertising is a matter for the committee, and will depend on its view of the amount of public interest.

## Period for submissions

The time allowed for submissions to be lodged is for the committee to determine. It has been suggested that the normal period to allow for submissions is a minimum

<sup>126</sup> SO 189(3).

<sup>127</sup> SO 318(3) (see Chapter 28).

<sup>128</sup> SO 293 (see p 411).

<sup>129</sup> (2000) 586 NZPD 5168 Hunt (New Zealand Public Health and Disability Bill).

<sup>130</sup> Ibid.

<sup>131</sup> (1981) 439 NZPD 2441 Harrison.

<sup>132</sup> Local Government and Environment Committee *Hearing of evidence on the Canterbury Earthquake Recovery Bill* (14 April 2011) [2008–2011] AJHR I.22C at 803; Finance and Expenditure Committee, report on Taxation Reform Bill (26 November 1987) [1987–1990] AJHR I.4A at 10; New Zealand/Singapore Closer Economic Partnership Bill (75–1) (report, 30 November 2000) at 1 ([1999–2002] AJHR I.22A at 482).

<sup>133</sup> Medicines (Specified Biotechnical Procedures) Amendment Bill (254–1) (report, 4 May 2005) ([2002–2005] AJHR I.22D at 501).

of six weeks.<sup>134</sup> This gives those who wish to make submissions a realistic time to formulate their comments, even on a substantial bill.<sup>135</sup> Shorter timeframes will be appropriate if the House has restricted the time for report by the committee or if the bill is of limited interest.<sup>136</sup> There are likely to be complaints from members and the public if a limited timeframe is allowed for a substantial bill.<sup>137</sup> A committee could allow longer than six weeks for submissions on a very large, complex bill.<sup>138</sup> However, in general terms allowing more time for submissions could curtail the overall extent to which a Government could reasonably expect to implement its legislative programme in a three-year parliamentary term.<sup>139</sup>

Although local and private bills have been the subject of preliminary procedures designed to draw attention to their promotion, it is still the practice for select committees to advertise for submissions on them in the appropriate locality.<sup>140</sup> Submissions are also requested from the promoters and any Government department with a particular interest in the subject matter of the bill, though such a department will often be appointed as an adviser to the committee and provide its input in that capacity instead.

From 2011 those wishing to make a submission to a select committee have been able to do so electronically via the Parliament website. Members of the public can use the secure system as an easy way to communicate their views to a select committee.

## Hearing submissions

The chairperson and the committee staff organise a programme of hearings on the bill, during which those who wish to appear before the committee, and those from whom the committee wishes to hear, give evidence. Witnesses may include members of Parliament themselves. Committees are not strictly required to hear submissions, but a decision not to hear any evidence at all would be highly unusual.

The number of submissions received varies from none to thousands. In the case of the Smoke-free Environment (Tobacco Plain Packaging) Amendment Bill, more than 15,600 submissions were received (including almost 15,500 standard form submissions).<sup>141</sup> Even for a local bill, the committee has received as many as 209 submissions.<sup>142</sup> In these circumstances, it is not always possible to oblige everyone who wishes to appear in person before a committee. To some extent this problem can be met by “grouping” similar submissions and inviting witnesses to appear jointly before the committee even though they have put in separate submissions. When consideration of a bill had taken a long time and substantial amendments to the bill had been circulated on a Supplementary Order Paper, a committee invited witnesses to make resubmissions to the committee on the bill with the amendments.<sup>143</sup>

Committees need not simply wait for people and organisations to initiate submissions. They can, if they consider it desirable, seek out submissions from

<sup>134</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 39.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> See, for example: Social Security (Residence of Spouses) Amendment Bill (129–2) (commentary, 13 June 2001) at 3 ([1999–2002] AJHR I.22B at 1315).

<sup>138</sup> Standing Orders Committee *Review of Standing Orders* (27 August 2008) [2005–2008] AJHR I.18B at 29.

<sup>139</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 42.

<sup>140</sup> Standing Orders Committee *Second report* (18 November 1986) [1986–1987] AJHR I.18A at [4.4].

<sup>141</sup> Smoke-free Environments (Tobacco Plain Packaging) Amendment Bill (186–2) (commentary, 5 August 2014) at 5 ([2011–2014] AJHR I.22C at 387).

<sup>142</sup> Manukau City Council (Regulation of Prostitution in Specified Places) Bill (197–1) (commentary, 5 December 2014) at 8.

<sup>143</sup> Search and Surveillance Bill (45–1) (interim report, 6 August 2010) at 2 ([2008–2011] AJHR I.22B at 1026).

groups that they consider likely to have particularly useful perspectives on the legislation before the committee. Thus the Finance and Expenditure Committee sought submissions on the Public Finance Bill 1989 from Government departments, State enterprises and private-sector financial institutions when these groups seemed to be unwilling to make submissions or unaware of the implications of the bill for them.<sup>144</sup> Committees from time to time ask the Minister in charge of a bill to appear before them to explain policy matters relating to their bills.<sup>145</sup> It has been suggested that committees should do this more often.<sup>146</sup>

Committees may meet anywhere in New Zealand<sup>147</sup> and they frequently travel to hear evidence outside Wellington. (For example, the Māori Affairs Committee, when considering legislation facilitating settlement between the Crown and an iwi, will usually travel to the region of the iwi concerned to hear submissions.) But evidence is usually heard in a committee room in Parliament Buildings, where the witness appears before the committee in person, or from a remote location using videoconferencing or teleconferencing facilities. At these hearings, witnesses elaborate on their written submissions and are questioned by members of the committee. In this way the select committee process brings the legislator into direct contact with the citizen.

## Opinions from other committees

A bill may relate to matters falling within the subject areas assigned to two or more committees. For this reason the committee to which such a bill is referred is empowered to ask any other committee for its opinion on a part, clause, schedule or other provision of the bill.<sup>148</sup> Any other committee that is asked for its opinion in this way may effectively treat the provision involved as if it had been referred to it by the House as a separate bill. It may call for submissions and hear evidence on the provision. When it reports its opinion to the committee that requested it, it can at the same time recommend amendments to the provision in question.<sup>149</sup>

The Regulations Review Committee has its own standing authority to report to any committee on any regulation-making power in a bill, on any provision in such a bill that proposes to delegate the power to make instruments of a legislative character, and on any other matter relating to regulations pertaining to a bill that has been referred to a committee.<sup>150</sup> Indeed, other committees often ask the committee to examine specific issues (such as matters raised in submissions, questions about empowering provisions, and departmental advice) in bills before them.<sup>151</sup> The Regulations Review Committee makes its reports on the bill in correspondence with the committee, and by its members and staff appearing personally before the committee. (See Chapter 28.) The Regulations Review Committee itself may seek comment from other committees on the annual Subordinate Legislation (Confirmation and Validation) Bill where there may be policy issues concerning the setting of confirmable levies that are pertinent to the committees. Such consultation has been facilitated by the earlier referral of the bill to the committee now that the first reading is no longer debated in the House.<sup>152</sup>

---

<sup>144</sup> Finance and Expenditure Committee Report on the Public Finance Bill (23 May 1989) [1987–1990] AJHR I.4C at 4–5.

<sup>145</sup> See, for example: (1996) 555 NZPD 12663.

<sup>146</sup> Standing Orders Committee Review of Standing Orders (11 December 2003) [2002–2005] AJHR I.18B at 36.

<sup>147</sup> SO 192(1).

<sup>148</sup> SO 293(1).

<sup>149</sup> SO 293(2).

<sup>150</sup> SO 318(3).

<sup>151</sup> Regulations Review Committee Activities of the Regulations Review Committee in 2004 (20 April 2005) [2002–2005] AJHR I.16I at 18; Regulations Review Committee Activities of the Regulations Review Committee in 2012 (19 March 2014) [2011–2014] AJHR I.16E at 19.

<sup>152</sup> SO 325(2).

## Advisers and drafting

As well as hearing evidence from witnesses, committees also receive reports from their own advisers. All such advice is arranged and circulated to committee members through staff of the Office of the Clerk attached to the committee for the purpose.

In the case of Government bills, officials from the department whose Minister is in charge of the bill are invariably accepted by the committee in the role of its advisers for the duration of its consideration of the bill. Departmental advisers will prepare a report for the committee summarising the evidence received and suggesting amendments to the bill. In the case of local and private bills, committees will usually seek similar support from the relevant department to help in their consideration of bills that are likely to become law. Occasionally, committees seek departmental involvement in the consideration of a Member's bill before them. Such assistance will only be rendered with the agreement of the Minister for the department concerned and is therefore problematic. A committee has been refused departmental assistance for a Member's bill.<sup>153</sup> Offices of Parliament also provide advisers from time to time to assist committees on bills,<sup>154</sup> as do bodies such as the Electoral Commission for bills on which they have a particular expertise.

Other advisers may be engaged under contract with the Clerk of the House to assist the committee for their particular expertise or skill pertaining to the bill before the committee. The Finance and Expenditure Committee has made a long-standing practice of engaging a tax adviser to assist it with the consideration of tax bills.

The drafting of amendments that a committee wishes to propose to a Government bill is undertaken by a parliamentary counsel who attends for the consideration and deliberation phases of the committee's work. The parliamentary counsel also drafts amendments to local and private bills before the committee. Whether drafting assistance will be forthcoming for amendments to Members' bills depends upon whether the Attorney-General agrees to make such a service available. This is normal for a bill being progressed as a conscience issue but may be refused in other cases.<sup>155</sup> In at least one case, departmental officials have drafted amendments for the member in charge of a Member's bill, although the committee considering the bill was concerned that it would be inappropriate for officials to use a Member's bill as a vehicle for the department's own amendments.<sup>156</sup> Committees can also obtain drafting assistance from the Office of the Clerk.

## Legislative quality

The Standing Orders Committee has encouraged select committees to examine legislative quality issues when preparing their reports on bills. In particular, it has indicated that respect for the rule of law requires the avoidance of the arbitrary deprivation of rights and freedoms; and it has referred to the principles for good legislation-making expounded by the former Legislation Advisory Committee (now the Legislation Design and Advisory Committee) in its *Guidelines on Process and Content of Legislation*,<sup>157</sup> where it observed:<sup>158</sup>

<sup>153</sup> Justice and Law Reform Committee *Interim report on the Conveyancers Bill* (17 November 1998) [1996–1999] AJHR I.8A at 4.

<sup>154</sup> Officers of Parliament Committee *Code of practice for the provision of assistance by the Auditor-General to the House, select committees, and members of Parliament* (17 June 2016) [2014–2017] AJHR I.15C at 5–6; Officers of Parliament Committee *Code of practice for the provision of assistance by the Parliamentary Commissioner for the Environment to the House, select committees, and members of Parliament* (17 June 2016) [2014–2017] AJHR I.15D at 7–8.

<sup>155</sup> Justice and Law Reform Committee *Interim report on the Conveyancers Bill* (17 November 1998) [1996–1999] AJHR I.8A at 4.

<sup>156</sup> Trade in Endangered Species Amendment Bill (11–2) (commentary, 23 February 1998) at vii ([1996–1999] AJHR I.23 at 836).

<sup>157</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR 1.18A at 18.

<sup>158</sup> Legislation Advisory Committee *Guidelines on process and content of legislation* (2001) at 46. Note that this document has been superseded by the 2014 guidelines.

Parliamentary democracy is not simply the proposition that anything a majority decides must be always right and good. Rather it proceeds upon a presumption that when the majority vote for a law which constrains individuals or takes away any of their freedom of person or property it will only be for a good reason.

Attention by select committees to legislative quality may result in committees, in their consideration of bills, addressing wider constitutional and administrative law issues, along with the fundamental question of whether each piece of legislation is necessary and fit for purpose.<sup>159</sup> In undertaking such legislative scrutiny, committees should ensure that any departures from the Legislation Design and Advisory Committee's guidelines are justified.<sup>160</sup> The guidelines were designed to help departments prepare draft legislation before its introduction, but they are equally available to committees seeking subsequently to ensure legislation is easy to use, understandable, and accessible to those who are required to use it, that it integrates smoothly with the existing body of law, and that it achieves its underlying policy objective, but with proper respect for important legal principles.<sup>161</sup> Committee staff may draw departures from the guidelines to the committee's attention, so that the committee can ask departmental officials to demonstrate the justification for them.<sup>162</sup>

## **Bill of Rights Act**

Select committees must consider the relationship of the bill before them to the New Zealand Bill of Rights Act 1990. If the Attorney-General considered that a bill as introduced contained a provision inconsistent with the Bill of Rights Act, a report to this effect will have been made to the House and referred to a committee. The Clerk typically allocates such a report to the committee expected to consider the bill. The report is a separate item of business for the committee to consider, on which a response to the House is required, although it can be reported together with the bill. Committees are expected to receive a briefing on the Attorney-General's report.<sup>163</sup>

Committees must consider whether any proposed limitation of rights can be demonstrably justified in a free and democratic society, as required under the New Zealand Bill of Rights Act 1990.<sup>164</sup> They may have had inconsistencies with the rights and freedoms set out in the Act drawn to their attention by a report from the Attorney-General, or by submitters. In making a judgement as to whether a limitation is reasonable and can be justified, committees have to balance various public interests. In so doing committees will have available to them disclosure statements indicating whether departments have provided advice to the Attorney-General on whether any provision of a bill appears to limit any of the rights and freedoms affirmed in the Act. In addition, reports prepared by the Ministry of Justice for the Attorney-General that conclude there are no inconsistencies with the Bill of Rights are made available on the Ministry of Justice website. Committee staff will draw all such reports and any related submissions to the committee's attention, and may suggest the need for departmental officials to brief the committee on the issues and on any need for further legal advice.

The Attorney-General's view as to whether a bill is consistent with the Bill of Rights Act is not conclusive, and the House and a select committee are both free to come to a different view. Committees may ask the Attorney-General or the Attorney-General's advisers to reconsider their initial view in the light of

<sup>159</sup> Legislation Advisory Committee *Guidelines on process and content of legislation* (October 2014) at 4.

<sup>160</sup> Ibid.

<sup>161</sup> Ibid.

<sup>162</sup> Ibid, at 5.

<sup>163</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 20.

<sup>164</sup> New Zealand Bill of Rights Act 1990, s 5.

submissions to the committee.<sup>165</sup> Whether the invitation to reconsider an initial view is acted upon is for the Attorney-General to decide. Advisers may confirm their initial position in response to such a request.<sup>166</sup> Commonly, committees recommend amendments to the bill to reconcile the proposed legislation with the Bill of Rights Act where such issues are raised. However, sometimes a committee, while accepting that there is an inconsistency with the Bill of Rights Act, considers that the public interest justifies overriding a right or freedom given expression in the Act, and that legislation containing such a provision should be passed nonetheless.<sup>167</sup>

## Amendments

Select committees do not have, and have never had, the power to make amendments to bills; they have the power only to recommend amendments to the House.<sup>168</sup> While select committee amendments are included in a reprinted copy of the bill when the committee reports to the House, such amendments remain to be adopted (or not) by the House. Amendments recommended by a select committee are not adopted until the bill is read a second time by the House.<sup>169</sup> It follows that amendments proposed by a select committee to the title of a bill become effective at the time it is given a second reading. The new title is used to refer to the bill after that point.<sup>170</sup>

Committees are obliged to distinguish in their reports between those amendments adopted unanimously by the committee and those adopted by a majority of the committee.<sup>171</sup> Amendments must be distinguished in the report in this way because the House will later be asked specifically whether it agrees to the majority amendments in total.<sup>172</sup> It is unusual for amendments not to be agreed as a package at this point, as it is always open to the House to address the detail of committee amendments in the committee of the whole House stage.

### *Admissibility of amendments*

The chairperson of the select committee rules on the admissibility of amendments. Amendments that would be out of order in a committee of the whole House are equally out of order in a select committee.<sup>173</sup> An exception to this general position is that the financial veto rule does not apply to amendments proposed in a select committee. However, after a select committee has reported on a bill, the Government can apply its veto in respect of amendments recommended by the committee provided it does so before the amendments are adopted on the bill's second reading.<sup>174</sup>

Although they are only recommendations, amendments proposed by select committees must be relevant to the subject matter of the bill, be consistent with its principles and objects and otherwise conform to the Standing Orders and practices

<sup>165</sup> Chemical Weapons (Prohibition) Bill (139–2) (commentary, 7 May 1996) (*1996 reports of select committees* at 230); Evidence (Witness Anonymity) Amendment Bill (70–2) (commentary, 27 November 1997) at iv ([1996–1999] AJHR I.22 at 413).

<sup>166</sup> Civil Union Bill (149–2) (commentary, 29 November 2004) ([2002–2005] AJHR I.22C at 905).

<sup>167</sup> See, for example: Electronic Monitoring of Offenders Legislation Bill (18–2) (commentary, 20 November 2015) at 1–2; Crimes (Bail Reform) Bill (270–1) (report, 23 August 1999) at 2–3 ([1996–1999] AJHR I.24 at 546–547); Land Transport Bill (87–2) (commentary, 7 August 1998) at x ([1996–1999] AJHR I.23 at 853). For a further discussion of the House's consideration of whether limitation of rights in legislation is justified, see: Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 19–20.

<sup>168</sup> SO 291(1)(b).

<sup>169</sup> SO 300.

<sup>170</sup> (19 February 2014) 696 NZPD 16108 (Sullivan Birth Certificate Bill, renamed Sullivan Birth Registration Bill).

<sup>171</sup> SO 292(4).

<sup>172</sup> SO 298(1).

<sup>173</sup> See pp 436–443 for amendments that are inadmissible in the committee of the whole House.

<sup>174</sup> SO 329(1). For more information about the financial veto of select committee amendments, see below, p 424.

of the House.<sup>175</sup> This requirement for amendments to fit within the scope of the bill mirrors the limitation on amendments in a committee of the whole House.

A committee must be specifically authorised by the House to consider amendments that are outside the scope of a bill or are otherwise inadmissible.<sup>176</sup> Amendments proposed by a select committee that are inadmissible may be struck out of the bill by the Speaker before the bill is given its second reading.

An amendment that is the same in substance as an amendment already agreed to or defeated earlier in the calendar year may be moved again only by leave or if notice of it has been given.<sup>177</sup>

### ***Amendments adopted unanimously or by majority***

Once an amendment has been agreed to by the committee it is incorporated into the committee's report to the House. But committees are obliged to indicate in their report which amendments were adopted unanimously by the committee and which by a majority of the committee.<sup>178</sup> Amendments recommended by a majority of the committee must be specifically endorsed by the House.<sup>179</sup> They and any other amendments are deemed to be adopted when the bill is read a second time.<sup>180</sup> An amendment agreed in the committee on a voice vote is regarded as having been adopted unanimously, though that does not necessarily mean that all members supported it. Only if a member requires that the votes or abstentions of members present be recorded for inclusion in the committee's minutes is the amendment described as having been adopted by majority.<sup>181</sup> Only amendments to the bill adopted by majority are specified in this way in the report. The fact that the committee agreed to a provision standing part of the bill by a majority vote is not specially shown in the report, though the committee may choose to draw attention to this in its commentary. Where only an abstention is recorded on an amendment without any member actually voting against it, the amendment is still regarded as having been adopted by a majority.

## **Private bills and local bills**

### ***Consideration of private bills***

In passing private legislation, the House was formerly thought of as exercising a judicial as well as a legislative function.<sup>182</sup> This was especially the case when parties spoke in opposition to a measure before the committee considering the bill. However, the consideration of private bills is now merely a specialised form of legislation, rather than the House sitting in judgement over parties to a suit. More often than not there is only one party in any case. The committee on a private bill conducts its proceedings much as a select committee would on any other bill, although the promoter is more likely to be represented by counsel, which is not often the case with other committees. Reports are called for from interested Government departments and evidence heard from any other person who wishes to offer it.

In the case of a private bill, committees are enjoined to examine the preamble to the bill to determine whether the statements set out there as justifying the bill have been proved to their satisfaction.<sup>183</sup>

<sup>175</sup> SO 292(1).

<sup>176</sup> (2000) 588 NZPD 6679–6690 (Crimes Amendment Bill (No 6)).

<sup>177</sup> SO 207.

<sup>178</sup> SO 292(4).

<sup>179</sup> SO 298(1).

<sup>180</sup> SO 300.

<sup>181</sup> Under SO 213, members may require votes or abstentions to be recorded. See, for example: Search and Surveillance Bill (45–2) (commentary, 4 November 2010) ([2008–2011] AJHR I.22B at 1477).

<sup>182</sup> Mr Speaker, memorandum on proposed new Standing Orders on private bills (29 August 1870) [1870] AJHR A.30.

<sup>183</sup> SO 291(2).

### ***Advertised scope of local bills and private bills***

In addition, in the case of local bills and private bills, the committee may not propose any amendment that is outside the scope of the notices advertising the intention to introduce the bill.<sup>184</sup> (But a widely drawn notice does not expand the scope of a bill—the bill's scope is still confined to its provisions.) If a committee adds a clause or makes an amendment to a local or private bill that is not within the scope of the advertised objects of the bill, it exceeds its powers. Where such an amendment is perceived as being out of order before the bill is read a second time, it will be struck out of the bill by the Speaker (though the Standing Orders may be suspended to allow the clause or amendment to stand<sup>185</sup>). Alternatively, a bill may be referred back to the committee for it to amend its report and remove the offending clause or amendment.

### ***Consultation with promoters***

In the case of private bills and local bills it is the practice for committees to consult with the promoter of the bill about proposed amendments. Promoters do not have a right of veto over amendments to their bills, though a promoter may withdraw the bill if dissatisfied with the outcome of the committee's consideration of it.

### ***Local Legislation bills***

A committee considering a Local Legislation Bill is directed to consider whether, in its opinion, any clause in the bill should more properly have been the subject of a separate local bill.<sup>186</sup> In the case of a Local Legislation Bill any new clause that the committee sees fit to recommend adding to the bill (unless it is in substitution for, incidental to, or consequential upon an existing clause) must first have been provisionally approved by the Minister of Local Government.<sup>187</sup>

### ***Statutes Amendment bills***

A Statutes Amendment Bill consists entirely of amendments to other Acts of Parliament (see p 376) that are typically minor and non-controversial. Amendments to Statutes Amendment bills are by convention adopted unanimously to complement the rule that, in a committee of the whole House, any member can veto a clause to the bill.<sup>188</sup> In addition, in the case of proposed amendments to Acts not amended by the bill as originally introduced, the committee is likely to seek assurances that each party in the House not represented on the committee consents to the amendments being added to the bill.<sup>189</sup>

### ***Dividing a bill***

Select committees have power to divide a bill and report the resulting bills back to the House as separate bills. This power arises where the bill referred to the committee is drafted in parts or otherwise lends itself to division because it comprises more than one subject matter.<sup>190</sup>

When a select committee divides a bill, it may decide that it wishes to report only one or some of the newly separated bills to the House. It then retains the remaining bill or bills before it for further consideration.

<sup>184</sup> SO 292(2).

<sup>185</sup> See, for example: (1991) 512 NZPD 151–153 (Greymouth Harbour Board (Validation of Rates) Bill).

<sup>186</sup> SO 291(3).

<sup>187</sup> SOs, App C cl 23.

<sup>188</sup> SO 305(2).

<sup>189</sup> Statutes Amendment Bill (No 7) (334–A2) (commentary, 30 June 2000) at 2–3 ([1999–2002] AJHR I.22A at 604–605); Statutes Amendment Bill (97–2) (commentary, 8 June 2001) at 2 ([1999–2002] AJHR I.22B at 610).

<sup>190</sup> SO 294(1).

Each new bill must have an enacting formula, title and commencement provision, as must any bill introduced into the House. A bill that has been divided is reprinted as separate bills when it is reported to the House by the committee.<sup>191</sup>

## REPORTING ON BILLS

When a committee has heard all the evidence submitted to it, or all the evidence it is prepared to hear, it considers reports from its staff and advisers and draft amendments put before it and deliberates on the bill part by part or in any other way that it determines, adopting amendments to the bill's text as it sees fit. It also adopts a written text (the commentary) describing the process it followed and the conclusions that it has come to. These will constitute its final report to the House on the bill.

Before presenting its final report on the bill, the committee may have presented a number of interim or special reports on it.

### Time for report

All bills must be finally reported back to the House within a specified time. This must be a date that is certain and not a time fixed by reference to some uncertain event. This also applies to any extension to the report-back date. The House may instruct a select committee to report the bill to the House by a particular date.<sup>192</sup> Where no time for the committee to report back on a bill is fixed by the House, the Standing Orders impose a backstop reporting time of six months for the final report to be made.<sup>193</sup> The House can accord a longer reporting time than six months for a committee to report.<sup>194</sup>

The committee must adopt its final report on the bill and present it to the House before the deadline has passed, unless the committee has been granted an extension. It may make as many interim or special reports on the bill as it sees fit in the meantime, but these do not absolve the committee of the need to make a final report by the date required.

Committees have occasionally protested at the short time they have been given to report back on a bill,<sup>195</sup> and individual members often protest that not enough time has been allowed for a committee to do a thorough job of considering a bill. A time constraint imposed by the House is a major factor in the time allowed for the public to make submissions on the bill, and can have serious implications for legislative quality and the public's opinion of the process.<sup>196</sup> Because of such concerns, motions to severely truncate select committee consideration of bills were made debatable, in order to reduce the frequency of this practice.<sup>197</sup> Disputes over the time for report are matters for the Business Committee or, ultimately, the House to resolve.

The time for report starts to run from the date of the sitting day on which the committee nominated to consider the bill is agreed (which may not be the same as the actual calendar day). In the case of a bill that is to be considered by a committee yet to be set up, time starts to run from the date the committee is nominated even though this may be some time before the committee is actually established. If a bill is referred to one committee but subsequently is transferred to another, the six months' reporting time starts to run anew from the date of transfer.

<sup>191</sup> SO 267(2).

<sup>192</sup> SO 290.

<sup>193</sup> SO 295(1).

<sup>194</sup> (28 April 2009) 653 NZPD 2676 (Private Security Personnel and Private Investigators Bill).

<sup>195</sup> Immigration Amendment Bill (183–2) (commentary, 4 March 1999) at xii–xiii ([1996–1999] AJHR I.24 at 753–754).

<sup>196</sup> Standing Orders Committee Review of Standing Orders (27 September 2011) [2008–2011] AJHR I.18B at 40.

<sup>197</sup> Ibid, at 40–41.

Where a bill has been reinstated in a new Parliament, no time runs from the day after the date on which the previous Parliament was dissolved or expired to the date on which the bill was reinstated. In all cases if the time for reporting the bill would expire on a non-working day (when no report can be presented in any case) the bill is regarded as due for report on the next working day.<sup>198</sup>

If a committee has not presented its final report on a bill by the time fixed in the House's order referring the bill or by the expiry of the six months provided by the Standing Orders, the bill is automatically discharged from further consideration by the select committee and is set down as an order of the day for consideration at its next stage in the House on the third sitting day following its discharge from the committee.<sup>199</sup> Generally, this will mean that the bill is set down for second reading.

## Extension of time

Many bills receive an extension to the initial reporting deadline assigned to them. Often bills receive multiple extensions. It is always open to the House to change a reporting deadline (by extending or contracting it), either by instruction when the committee to consider the bill has been determined or by subsequently imposing one in place of the six months' deadline imposed by the Standing Orders. This may be done on motion with notice or, more commonly, by leave of the House. Following a general election the House has extended the deadline for reporting all bills.<sup>200</sup>

In addition, the Business Committee has power to extend reporting times for any bill.<sup>201</sup> The Business Committee cannot contract a reporting deadline. This is the most common way for a committee to obtain an extended deadline. Committees that conclude that they cannot meet a reporting deadline write to the Business Committee and seek its agreement to an extension. The Business Committee has indicated to all select committees that it will not approve extensions without having been informed of the views of the member in charge of the bill on the proposal. Therefore the committee's letter to the Business Committee either includes these views or is accompanied by a separate notification from that member setting them out. Failure to communicate them will invariably result in a decision on the extension application being deferred.

Usually, if the select committee and the member in charge are in agreement, the Business Committee will approve an extension, but occasionally, if it considers the extension sought to be unreasonably long or unrealistically short, it will substitute a date of its own. Where the select committee and the member differ over the extension, the Business Committee makes its own judgement of whether to grant one and, if so, for how long.

## Form of report

A select committee's final report on a bill conveys two things to the House.

- It sets out in the form of a narrative (called a "commentary") how the committee carried out its consideration of the bill and what its conclusions are regarding the passing of the bill and any amendments that might be made to it.
- If there are any recommended amendments, it indicates textually on a copy of the bill precisely what those proposed amendments are.

This form of reporting to the House was adopted following a Standing Orders Committee recommendation in 1995.<sup>202</sup> Previously select committee reports on

<sup>198</sup> SO 3(3).

<sup>199</sup> SO 295(3).

<sup>200</sup> Business Committee determination for 21 October 2014.

<sup>201</sup> SO 295(2).

<sup>202</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 44. See SOs 291(4) and 292.

bills had generally been confined to indicating textual amendments to bills without any supporting explanation of the reasons for the committees' conclusions. These reasons, insofar as they could be ascertained at all, appeared in the speeches of the members (especially the chairperson) when a report was debated in the House. Now select committee commentaries include extensive explanation of the committees' legislative work and discussion of the major policy and drafting issues that confronted them in the course of considering particular bills.

Subject to its complying with any particular Standing Orders requirements,<sup>203</sup> how each committee's commentary is drafted is a matter for it to decide. Commentaries often describe the differing views of members or parties on the issues that have been considered. Indeed as there is no convention of collective responsibility attaching to committees, there is no expectation that committees should present unanimous views. Committees have therefore canvassed the differing views of their membership in their reports.<sup>204</sup> Thus where a committee is divided on whether a bill should be passed, the majority opinions in favour of its passing have been described in the commentary party by party and then the minority opinions similarly set out party by party.<sup>205</sup>

Occasionally a committee may be evenly split on how to report a bill back to the House. In these circumstances the committee has reported the impasse and indicated that it was unable to make a recommendation on the future of the bill.<sup>206</sup> The committee, though split on the bill, may be able to agree to present a report describing the differing views of its members or of the parties represented on the committee. Committee reports have done this even though the committee itself could make no recommendations.<sup>207</sup>

The fact that a select committee report records split views can make it unreliable as an aid to determining Parliament's intention where a question of statutory interpretation arises,<sup>208</sup> though the majority's view has been taken to represent the parliamentary intention.<sup>209</sup>

## Reports on private bills

The committee's report on a private bill must indicate whether the statements in the bill's preamble have been proved to the committee's satisfaction.<sup>210</sup> If the objects of the bill could be attained otherwise than by legislation, the preamble must state why legislation is preferred.<sup>211</sup> This will be a crucial matter for the committee to address in deciding whether to recommend the bill's passage. The question of an alternative to legislation must be confronted in the committee's report.

The preamble may be proved to the committee's satisfaction even though the committee decides to amend it. Only if the amendment were fundamental in character would it be necessary for the committee to conclude that the preamble had not been proved. A finding that the preamble has not been proved does not automatically kill the bill, though it will obviously count against its passing.

<sup>203</sup> SO 291(4).

<sup>204</sup> Search and Surveillance Bill (45–2) (commentary, 4 November 2010) ([2008–2011] AJHR I.22B at 1477).

<sup>205</sup> Paid Parental Leave Bill (102–1) (report, 25 June 1999) at 16–21 ([1996–1999] AJHR I.24 at 795–800).

<sup>206</sup> Exclusive Economic Zone and Continental Shelf (Environmental Effects) Bill (321–2) (commentary, 15 May 2012) ([2011–2014] AJHR I.22A at 555); Local Government Act 2002 Amendment Bill (27–2) (commentary, 30 October 2012) ([2011–2014] AJHR I.22A at 605).

<sup>207</sup> Social Security (Conjugal Status) Amendment Bill (53–1) (report, 7 May 1998) ([1996–1999] AJHR I.23 at 765); Electoral (Integrity) Amendment Bill (3–1) (report, 17 April 2000) ([1999–2002] AJHR I.22A at 573).

<sup>208</sup> *Vela Fishing Ltd v Commissioner of Inland Revenue* [2001] 1 NZLR 437 (HC) at [129]–[131] (reversed on other grounds [2002] 1 NZLR 49 (CA)).

<sup>209</sup> As, for example, in *Norske Skog Tasman Ltd v Clarke* [2004] 3 NZLR 323 (CA) at [51] per Anderson P and William Young J.

<sup>210</sup> SO 291(2).

<sup>211</sup> SO 258.

## Suitability of using Local Legislation bills

The committee considering a Local Legislation Bill must report on the appropriateness of using the bill as the vehicle for the particular legislative changes being proposed. A Local Legislation Bill is an alternative to having several local bills, but if an amendment proposed for inclusion in it is particularly important it may be more appropriate for the amendment to be introduced as a separate local bill. The committee is required to address this and report specifically on it.<sup>212</sup> If the committee concludes that a clause of a Local Legislation Bill should more properly have been introduced as a local bill, it is likely to recommend the omission of that clause from the bill.

## Reports on associated topics

A committee can, in the same report, make a report on a bill that has been referred to it and on associated matters. That is a matter for the committee to decide. Conversely, a committee is not bound to bring reports on associated matters back to the House with a report on a bill. Bills are often reported back to the House along with linked petitions<sup>213</sup> or with Supplementary Order Papers relating to the bill that have been specially referred to the committee.<sup>214</sup> A committee has reported on a bill together with a related international treaty examination.<sup>215</sup> In each case it is up to the committee whether to present one or separate reports.

A committee cannot combine two bills into one. However, in reporting on a bill, a committee can include a commentary jointly addressing matters raised by another bill that is reported at the same time.<sup>216</sup> A committee's report on a bill may also include its response to an associated report by the Attorney-General on that bill's consistency with the New Zealand Bill of Rights Act.<sup>217</sup>

## PRESENTATION OF REPORTS

A select committee report on a bill is presented like any other select committee report, by delivering it to the Clerk on any working day or before 1 pm on any day on which the House sits.<sup>218</sup>

It is the duty of the chairperson to present the report to the House within a reasonable time of being directed to do so by the committee. This does not mean at once and a delay of up to a week in presenting a report is quite acceptable.<sup>219</sup> It is desirable in any case for the chairperson to refrain from presenting the report until the commentary has been printed and the bill reprinted to show the amendments that the committee has recommended. Ideally there should be no hiatus between presentation of the report and its availability for public dissemination in printed form, though this always depends upon the size of and amount of work to be done on the reprinted bill.<sup>220</sup> A delay in presentation by the chairperson to facilitate its reprinting before presentation of the report is therefore desirable.

<sup>212</sup> SO 291(3).

<sup>213</sup> See, for example: Sentencing and Parole Reform Bill (17–2) (commentary, 26 March 2010) ([2008–2011] AJHR I.22B at 1551); Human Rights Amendment Bill (No 2) (315–2) (commentary, 30 August 1999) at viii ([1996–1999] AJHR I.24 at 252).

<sup>214</sup> See, for example: (11 July 1989) [1987–1990] 2 JHR 1490 (Local Legislation Bill).

<sup>215</sup> Foreign Affairs, Defence and Trade Committee *New Zealand–China Free Trade Agreement Bill (210–1) and the Free Trade Agreement between the Government of New Zealand and the Government of the People's Republic of China* (30 June 2008) [2005–2008] AJHR I.22C.

<sup>216</sup> See, for example: Maraeroa A and B Blocks Claims Settlement Bill (9–2) and Maraeroa A and B Blocks Incorporation Bill (8–2) (commentary, 14 June 2012) ([2011–2014] AJHR I.22A at 679 and 689).

<sup>217</sup> See, for example: Parole (Extended Supervision Orders) Amendment Bill (195–2) (commentary, 5 November 2014) at 2–3.

<sup>218</sup> SO 249(1).

<sup>219</sup> (1995) 552 NZPD 10603 Tapsell (Hospitals Amendment Bill).

<sup>220</sup> (2002) 605 NZPD 2704 Hunt (Local Government Bill).

## REPRINTING OF BILLS

A bill must be reprinted to show the amendments recommended by a select committee and reprinted copies of it provided to the Clerk by the member in charge of the bill.<sup>221</sup> Bills are reprinted according to a standard style that indicates clearly on them any provisions that the committee has recommended be omitted from the bill and, conversely, provisions that the committee recommends for insertion in the bill. Occasionally this standard style is departed from in the interests of clarity. Thus, in one case where the amendments recommended by a committee were so extensive that it would have been almost impossible to illustrate them by showing omitted and inserted material, the bill was printed “clean” to show it in the form that the committee recommended that it proceed. The amendments proposed by the committee were listed separately in a schedule.<sup>222</sup> In another case where a bill had been split out of another bill and extensively amended, it was also printed clean but this time with the addition of a “finding chart” to enable the reader to find the equivalent clause (if one existed) in earlier versions of the larger bill.<sup>223</sup>

Though reporting back a bill with amendment always involves reprinting it, the Speaker may agree to dispense with this requirement if only minor textual amendments are involved.<sup>224</sup> Thus, when committees recommended only a change to the date shown in the title in one bill,<sup>225</sup> and the pluralising of a word in another,<sup>226</sup> the Speaker directed that the bills not be reprinted as this was not justifiable for such small amendments. Committees have occasionally reported a bill back without amendment but with a recommendation that the committee of the whole House make amendments to it because they were not considered important enough to warrant reprinting the bill, or the bill was expected to proceed through the House so quickly there would not be time to reprint it.<sup>227</sup>

A bill is not available for debate until copies of it, as reprinted, have been circulated to members.<sup>228</sup>

## SETTING BILL DOWN FOR SECOND READING

Once the committee’s final report on a bill has been presented, the bill is set down for second reading on the third sitting day following.<sup>229</sup> An adverse select committee report on a bill—indeed one that recommends that the bill not proceed—does not kill the bill at that point.<sup>230</sup> It is still set down for second reading.<sup>231</sup> It is for the House to determine its fate when it next considers the bill. The bill will be available for debate as a Government, Member’s or local and private order of the day depending upon its type. An interim or special report on a bill is also set down for consideration as an order of the day on the third sitting day following.<sup>232</sup> The bill, at this stage, stands on the Order Paper as an order of the day for second reading. The order in which Government bills are taken is largely in the hands of the Government. Members’, private and local bills are considered in the order prescribed by the Standing Orders. (See pp 196–197.)

<sup>221</sup> SO 267(2), (4)(a).

<sup>222</sup> Children and Young Persons Bill (97–2) (20 April 1989).

<sup>223</sup> Taxation Reform Bill (7–1) (20 March 1990).

<sup>224</sup> SO 267(2)(c).

<sup>225</sup> (1986) 472 NZPD 2850–2851 (New Zealand Mission Trust Board Empowering Bill).

<sup>226</sup> (1991) 517 NZPD 3148 (Invercargill Reserves Vesting and Empowering Bill).

<sup>227</sup> Commerce and Marketing Committee, report on the Tariff Bill (23 November 1988) [1987–1990] AJHR I.1 at 7.

<sup>228</sup> SO 267(4)(b); (2002) 605 NZPD 2704–2705 Hunt (Local Government Bill).

<sup>229</sup> SO 296(a).

<sup>230</sup> (1914) 170 NZPD 519 Lang.

<sup>231</sup> (1901) 118 NZPD 619 Guinness (Deputy Speaker).

<sup>232</sup> SO 296(b).

When the order of the day for a bill's second reading is reached it is possible for any member to move that it be discharged, and that the bill be referred back to a select committee for further consideration.<sup>233</sup> There is no amendment or debate on this question.<sup>234</sup> If a bill is referred back to a select committee in this way, any recommended amendments will not have been adopted and so will not have become part of the bill, though the committee will take account of the work that has already been done when it considers the bill anew.

## SECOND READING

The second reading of a bill is the stage at which the House is asked to adopt the bill before it in principle (with any amendments to it proposed by the select committee). While there may be changes to details after this stage, the House is being asked here to make a fundamental commitment as to the desirability of passing the bill at all.

When the order of the day for the second reading of a bill is reached, the Speaker calls upon the member in charge to move the motion “That the ... *Bill* be now read a second time”.<sup>235</sup> While one member may act for an absent member in moving the motion, a non-Minister cannot move a motion in respect of a Government bill. The debate is limited to 12 speeches, each of a maximum duration of 10 minutes.<sup>236</sup>

A much wider discussion on the bill is permitted at this stage than at any other, but members are still expected to discuss the main purpose and contents of the bill and matters reasonably related to it, and not to deal at length with matters not provided for in the bill.<sup>237</sup> While members should direct their attention to the bill as it is before them, they may indicate their intention to move amendments to the bill in the committee of the whole House, and it is legitimate for a member to give reasons for doing so. However, a detailed debate on proposed changes to the bill is not permissible.<sup>238</sup> Members proposing to move amendments to their own bills usually place such amendments on a Supplementary Order Paper for the information of members, which may be circulated at any time, even before the second reading.

If it is available at the time, a Supplementary Order Paper may be referred to in general terms during the second reading debate, but not discussed in detail.<sup>239</sup> However, where a Supplementary Order Paper is not only available but has itself been considered and reported on by a select committee, it can be discussed freely along with the bill.<sup>240</sup> Members should not refer to a Supplementary Order Paper that has not yet been circulated, beyond making passing reference to its existence.<sup>241</sup> The question of the admissibility of amendments that members intend to move is a matter for the Chairperson to deal with when the bill is considered in committee; it is not for the Speaker to rule on.<sup>242</sup>

Where the bill under debate is one amending an existing Act already in force (as most bills are), members may point out further amendments they think should be made to the principal Act, but they cannot begin a debate outside the scope of the question before the House.<sup>243</sup> The fact that a bill is an amending bill does not make everything in the principal Act relevant in the debate. Only those sections

<sup>233</sup> SO 74(1). See, for example: (2 July 2013) 691 NZPD 11424 (Food Bill).

<sup>234</sup> SO 74(2).

<sup>235</sup> SO 297.

<sup>236</sup> SOs, App A.

<sup>237</sup> (1936) 244 NZPD 837–838 Barnard (Primary Products Marketing Bill).

<sup>238</sup> (1920) 186 NZPD 517 Lang (Gaming Amendment Bill).

<sup>239</sup> (1922) 197 NZPD 187–188 Lang (Post and Telegraph Amendment Bill).

<sup>240</sup> (1983) 452 NZPD 2219–2220 Harrison (Transport Amendment Bill (No 4)).

<sup>241</sup> (1975) 398 NZPD 2175 Whitehead.

<sup>242</sup> (1991) 512 NZPD 273–274 Gray (Finance Bill); (2 August 2005) 627 NZPD 22279–22281 Robertson (Assistant Speaker) (Resource Management and Electricity Legislation Amendment Bill).

<sup>243</sup> (1924) 203 NZPD 752 Statham (Legislature Amendment Bill).

of it directly affected by the amending bill and any of its other sections of general effect, such as the interpretation section, may be referred to.

## AMENDMENTS ON SECOND READING

On the second reading of a bill members are asked to endorse the bill by giving it a second reading, but they may decide instead to defer a decision on it, or decide definitively that it should not proceed. Deferral or defeat can also be effected by amending the question for the bill's second reading.

The question for the second reading of the bill is open to amendment in a way that pertains to one of these objects. An amendment that merely seeks to add words to the motion does not do either of these things. Such an amendment would attach conditions to the second reading and leave the House's decision unclear.<sup>244</sup> An unequivocal decision must be reached if a bill is to be read a second time. Nor is it possible simply to move that the bill do not proceed.<sup>245</sup> If that is what members want, they should vote against the second reading.

An amendment cannot be moved at this stage to refer the bill to a select committee.<sup>246</sup> The Standing Orders provide appropriate procedures for the referral of a bill to a select committee and this cannot be done indirectly on the question for the second reading.<sup>247</sup> Neither can an amendment propose to refer a bill to another body that is outside the control of the House.<sup>248</sup>

### Amendments to defer second reading

A traditional deferral amendment is one to omit the word "now" and to add at the end of the question "this day three months", "this day six months", or any other specified time. The time must be specified and cannot be reckoned by reference to an uncertain event (such as "three months after the publication of the report of the royal commission to be set up"<sup>249</sup>). This type of amendment does not overtly defeat the bill, but it is intended to have the effect, if carried, of fatally postponing the second reading.

### Adverse or reasoned amendments

An amendment moved on the question for the second reading may put forward an abstract proposition relating to the bill—what is known as a reasoned amendment.<sup>250</sup> The proposition will be unfavourable to the bill receiving its second reading that day, but it must offer an alternative to the second reading. An amendment declining to give a bill a second reading until certain amendments had been made to it and the money saved expended in other ways was accepted, because it offered an alternative course of action to the second reading. If it had merely confined itself to suggesting the striking out of certain parts of the bill this would not have been in order, because the committee of the whole House could have done this later quite consistently with the bill being read a second time.<sup>251</sup> While the proposition put forward in a reasoned amendment is an abstract one, it must be closely related to the bill under consideration or it will be ruled out as not being relevant to the question. Thus an amendment to substitute for the question for the second reading the words "this

<sup>244</sup> (1994) 542 NZPD 3188 Tapsell (Appropriation Bill (No 2)).

<sup>245</sup> (2000) 582 NZPD 963 Hunt (Accident Insurance (Transitional Provisions) Bill).

<sup>246</sup> (1959) 320 NZPD 1625–1626, 1647 Macfarlane (Land Settlement Promotion Amendment Bill).

<sup>247</sup> The appropriate mechanism is to move that the order of the day for the second reading be discharged and the bill referred to a select committee: SO 74(1)(a) and (2) (see p 199 "Discharge on motion"). Examples include (24 March 2015) JHR 118–119 (Harmful Digital Communications Bill); (2 July 2013) [2011–2014] 2 JHR 543 (Food Bill).

<sup>248</sup> (1975) 397 NZPD 869 Whitehead (Hospitals Amendment Bill).

<sup>249</sup> (1975) 396 NZPD 821; (1975) 397 NZPD 900 Whitehead (Hospitals Amendment Bill).

<sup>250</sup> (1975) 397 NZPD 899–900 (Hospitals Amendment Bill); (13 May 2009) 654 NZPD 3247–3248 (Local Government (Auckland Reorganisation) Bill).

<sup>251</sup> (1886) 56 NZPD 186 O'Rorke (New Zealand Loan Bill).

House views with grave alarm the Government's proposal to embark on a course of uncontrolled inflation" was ruled out of order. The amendment neither offered an alternative to the second reading nor pertained to the motion.<sup>252</sup> Amendments that propose resolving a bill's proposition by way of referendum rather than legislation have also been accepted as reasoned amendments, because they too offer an alternative course of action to the second reading.<sup>253</sup>

### **Public affairs amendments**

An amendment concerned with public affairs, which is not required to be strictly relevant to the bill, may be moved to the questions for the second reading of an Imprest Supply Bill and the main Appropriation Bill.<sup>254</sup> This permits an amendment raising a question of confidence in the Government to be moved in the course of these debates. (See Chapter 8.)

If an amendment adverse to reading the bill a second time that day is carried, the order of the day is no longer available for debate on the next sitting day. This does not in itself formally kill the bill. All the House has decided is that it will not read the bill a second time on that day. The order of the day for the bill's second reading would be placed on the Order Paper below the line, showing that it is not available for debate until some later sitting of the House.

## **FINANCIAL VETO OF SELECT COMMITTEE AMENDMENTS**

Any amendments recommended to the House by a select committee are subject to financial veto by the Government on the ground that they may have more than a minor impact on the Government's fiscal aggregates.<sup>255</sup> (See pp 515–519 for the giving of financial veto certificates.) A financial veto regarding amendments recommended by a select committee must be given (if it is to be given at all) before the amendments are agreed to by the House.<sup>256</sup> Thus a financial veto certificate in relation to select committee amendments can be given at any time between the presentation of the report and the House taking a decision on the second reading of the bill, because this decision is the point at which the House is deemed to adopt select committee amendments.<sup>257</sup>

Select committee amendments that are the subject of a financial veto are omitted from the bill.<sup>258</sup> The bill is reprinted with them deleted. Such amendments cannot be moved again in the committee of the whole House.<sup>259</sup>

## **ADOPTION OF SELECT COMMITTEE AMENDMENTS**

The amendments recommended by the select committee in its report to the House are just that—recommendations. Unless the amendments are adopted by the House they do not become part of the bill that proceeds to its committee stage. At the second reading stage the House decides whether or not to adopt the amendments. This is a matter that the House alone decides as part of its internal proceedings. Whether the amendments recommended by a select committee are appropriate for inclusion in the bill is not a matter on which a court can intervene or express an opinion.<sup>260</sup>

A select committee in its report on a bill must distinguish between the amendments it is recommending with the unanimous agreement of its members

252 (1939) 256 NZPD 832 Barnard (Reserve Bank of New Zealand Amendment Bill).

253 (14 May 2009) 654 NZPD 3247–3248 (Local Government (Auckland Reorganisation) Bill); (13 March 2013) 688 NZPD 8543–8544 (Marriage (Definition of Marriage) Amendment Bill).

254 SOs 331(3) and 334(2).

255 SOs 326(1) and 329(1).

256 SO 329(1).

257 SO 300.

258 SO 329(1).

259 SO 329(3).

260 *Ram Dubey v Government of Madhya Bharat* [1952] AIR (Madhya Bharat) 57.

and those adopted by a majority vote of the committee.<sup>261</sup> This distinction reflects the two-stage decision that the House makes before the amendments are adopted.

At the conclusion of the debate on the second reading of a bill, either one or two questions are put to the House depending upon whether the committee recommended any amendments by majority. If there are no majority amendments the question for the bill's second reading is put and determined. If it is agreed to, the select committee amendments are regarded as having been adopted by the House.<sup>262</sup> But if there are majority amendments two questions are put. The first asks the House specifically whether it agrees to the majority amendments. There can be no amendment or debate on this question.<sup>263</sup> Following the determination of this question, the question for the bill's second reading is put.<sup>264</sup> If the House agrees to the majority amendments they, and any amendments recommended unanimously, are regarded as having been adopted by the House when the bill is read a second time.<sup>265</sup>

If the House does not agree with majority amendments but does give the bill a second reading, the bill is reprinted with the majority amendments removed.

## **SETTING BILL DOWN FOR COMMITTEE STAGE**

When the question for its second reading has been carried, the bill is ready to proceed to its next stage, which is consideration by a committee of the whole House. For this purpose it is set down for consideration in committee on the next sitting day.<sup>266</sup> This means that its committee stage becomes an order of the day. In the case of Government bills, the Government will determine when it is considered. Where practicable, the Government advises the Business Committee which bills it intends to be considered in committee in the following week, and it may include such advice in the Leader of the House's Thursday business statement. These committee stages are noted on the Order Paper.<sup>267</sup> Other bills stand on the Order Paper in the priority determined by the Standing Orders. (See pp 196–197.)

## **COMMITTEE STAGE—CONSIDERATION BY COMMITTEE OF THE WHOLE HOUSE**

### **Nature and purpose of committee stage**

Consideration of a bill by a committee of the whole House is known as the committee stage in the passing of a bill. The House goes into committee to decide whether the bill's provisions properly incorporate the principles or objects embodied in the bill when it received its second reading, and to consider and make relevant amendments.<sup>268</sup> Unlike a select committee, a committee of the whole House is not required to give its opinion on whether the bill should be passed.

Considering a bill in committee gives all members of the House an opportunity to participate, if they wish, in a more in-depth discussion of the bill and to move amendments to its text. Without the committee stage, only the handful of members who had served on the select committee considering the bill would have this opportunity. The less formal character of debate in committee allows more direct exchanges of views, particularly with the Minister or member in charge of the bill.

During the committee of the whole House stage, Ministers may propose amendments that may be required as a result of the House's adoption of amendments

<sup>261</sup> SO 292(4).

<sup>262</sup> SO 300.

<sup>263</sup> SO 298(1).

<sup>264</sup> SO 298(2).

<sup>265</sup> SO 300.

<sup>266</sup> SO 299.

<sup>267</sup> SO 301(3).

<sup>268</sup> SO 302(1).

recommended by a select committee or that otherwise reflect submissions to a select committee. Under MMP, the committee stage has taken on significance as the point in the legislative process at which the full proportionality of the House is brought to bear on the text of bills.<sup>269</sup> It is also the “final shot at getting it right”, the last opportunity to fine-tune the drafting of the bill.<sup>270</sup>

When a bill is passed under urgency without the benefit of select committee consideration, the committee of the whole House is the only real opportunity for detailed scrutiny. The price for bypassing the select committee process therefore is likely to be an extended committee of the whole House stage.<sup>271</sup>

The presumption is now that bills will be considered part by part rather than clause by clause, which results in broader discussion of the provisions of bills. There is a shift towards debating the major issues and the raising of alternative propositions in a public forum for the record. Part 1 of a bill usually includes a purpose provision, which allows the bill’s background and policy to be debated fairly widely, giving members who could not speak at the second reading an opportunity to participate in the debate. The final debate of the committee stage on the preliminary clauses allows for summing up. The consideration of amendments by way of alternative propositions rather than dealing with them clause by clause can avoid spending considerable time voting on many individual, minor amendments.<sup>272</sup>

By the time the bill reaches the committee of the whole House, provisions added by a select committee are an integral part of the bill, having been adopted by the House at the second reading. The select committee may also have recommended that certain provisions be deleted, so the bill may no longer include some of the clauses, parts or schedules it had when it was introduced. Therefore, by the time a bill reaches a committee of the whole House the numbering of its provisions may not be straightforward. The important thing, however, is that each provision is assigned a number or a number and letter that will identify it correctly and uniquely; the consecutive numbering of the bill can be tidied up when it is being prepared for the Royal assent.

## **Notice of committee stage**

To facilitate preparation for the committee stage, where practicable the Government advises the Business Committee which bills it intends to consider in committee in the House’s next sitting week.<sup>273</sup> While failure to give notice does not prevent the Government from taking a bill’s committee stage, there will be less opportunity for members to submit their amendments as coherent alternative propositions and have them published on the New Zealand legislation website and printed on a Supplementary Order Paper; and as a result less likelihood that the Government will benefit from the effective arrangement of committee stages by the Business Committee.

## **Making arrangements**

In 2011 the Standing Orders Committee responded to criticisms of the committee of the whole House stage by promoting constructive negotiations in the Business Committee about the arrangement of the House’s business in committee.<sup>274</sup> Having recommended more legislative scrutiny in select committees, where the

<sup>269</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 44.

<sup>270</sup> George Tanner QC “The Role of the Parliamentary Counsel Office in relation to Bills in front of Parliament” (6 July 2006) Legislation Advisory Committee and Wellington District Law Society Seminar paper, available from Legislation Design and Advisory Committee <[www.ldac.org.nz](http://www.ldac.org.nz)>, at [33].

<sup>271</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 46.

<sup>272</sup> Ibid at 44.

<sup>273</sup> SO 301(3).

<sup>274</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 44; SO 301.

less formal environment with advisers and parliamentary counsel present allows detailed attention to matters of legislative quality, the Standing Orders Committee acknowledged a shift in the focus of the committee of the whole House away from consideration in detail. It sought to reflect this change in the conduct of the committee stage and the increasing flexibility for the Business Committee to make arrangements.

The Business Committee may determine how a committee of the whole House will consider a bill and whether the committee's powers are to be extended or restricted in its consideration.<sup>275</sup> The committee of the whole House could be authorised by the Business Committee to consider out-of-scope amendments in a similar way to the conferral of authority through an instruction. (See p 428.) The Business Committee may determine whether consideration will be issues-based or proceed by single amendments, and also the grouping of parts in committee stages.<sup>276</sup> Two bills that are closely related can be taken together in committee for the purpose of debate (in technical terms, with the consideration of the first bill taken as a single question and extended to permit debate on the second bill, and then with consideration of the second bill limited so that its questions are put without debate).<sup>277</sup> A local bill or a private bill can be set down for committee stage by the Business Committee together with a Government bill.<sup>278</sup> The Business Committee can prescribe a deadline for the lodging of amendments to a bill, or a particular time at which questions will be put in committee.<sup>279</sup>

Such determinations may be made before or after a bill is introduced and may be varied by a further determination of the Business Committee, a decision of the committee of the whole House, an instruction, or the member in charge postponing his or her bill.<sup>280</sup> Pre-introductory consideration of the arrangements for a bill's committee stage, along with the variation of determinations where necessary following select committee consideration, for instance, should allow a bill to be drafted with a logical and accessible part structure without adding to the time taken in part-by-part consideration in the committee of the whole House.<sup>281</sup> The proposal of arrangements for the committee stage also fosters early consultation with party spokespeople.<sup>282</sup> Arrangements for the committee of the whole House can be innovative, and the Business Committee is encouraged to try new approaches.<sup>283</sup>

## **Dispensing with committee stage**

The Business Committee has the power to dispense with the committee stage of a bill and determine that it should proceed directly to its third reading. If it so determines, the order of the day is altered and the bill set down for third reading accordingly.<sup>284</sup> On occasion bills that are of a technical nature and would otherwise be considered for the omission of a committee stage must be committed solely for the purposes of being divided. To obviate this necessity, the Business Committee

<sup>275</sup> SO 301(1).

<sup>276</sup> See, for example: Business Committee determinations for 7 March 2012 and 18 October 2012 (Alcohol Reform Bill).

<sup>277</sup> Business Committee determinations for 9 March 2016 (Riccarton Racecourse Development Enabling Bill and the Riccarton Racecourse Bill).

<sup>278</sup> Ibid.

<sup>279</sup> Business Committee determinations for 19 September and 28 November 2012 (Alcohol Reform Bill).

<sup>280</sup> SO 301(2).

<sup>281</sup> For example: the Parliamentary Privilege Bill was amended by the Privileges Committee to include five rather than two parts as drafted at introduction. The bill was made available for consideration by the committee of the whole House in an extended sitting, with third reading to be taken forthwith. By leave, the bill was debated in the committee stage as one question. See Business Committee determination for 23 July 2014; (22 July 2014) 700 NZPD 19347; and (30 July 2014) 700 NZPD 19737, 19748.

<sup>282</sup> Standing Orders Committee Review of Standing Orders (27 September 2011) [2008–2011] AJHR I.18B at 45.

<sup>283</sup> Ibid at 9.

<sup>284</sup> SO 299. See, for example: Business Committee determinations for 21 March 2012 and 18 July 2012.

has been given the power to determine that a committee stage will not be held, and to instruct the Clerk to divide the bill in the way set out in a Supplementary Order Paper for the purpose.<sup>285</sup>

The Business Committee may make such a decision at any time between the order of the day for the committee stage being set down and the committee stage being held. Alternatively, the House itself may give leave to dispense with a committee stage and proceed immediately with the third reading of the bill. In the case of Imprest Supply bills and Appropriation bills dealing with Supplementary Estimates, no committee stage is held unless the Minister in charge of the bills requires one so that an amendment can be considered or, in the case of Supplementary Estimates, because a change to a vote has been recommended by a select committee.<sup>286</sup>

Revision bills and confirmation and validation bills also do not have a committee stage unless the Business Committee determines otherwise, the Minister in charge requires an amendment or amendments to be considered, or a member has lodged an amendment with the Clerk at least 24 hours before the House meets on the day on which the bill is read a second time.<sup>287</sup> These types of bills generally proceed directly from the second reading to the third reading stage. In the case of revision bills and confirmation and validation bills, the third reading takes place without debate.<sup>288</sup>

## Going into committee

As with the order of the day for the second reading of a Government bill, the time at which the order of the day for a bill's committal is reached is largely in the hands of the Government. Members', private and local bills are considered in the order prescribed by the Standing Orders. When the order of the day for going into committee on a bill is read, the Speaker leaves the Chair without any question being put and the House automatically resolves itself into committee.<sup>289</sup>

If a number of bills for committal stand consecutively on the Order Paper, the House usually goes into committee on all of them at the same time, depending on reasonable prospects of reaching the business in question.

## INSTRUCTIONS

The task of a committee of the whole House on a bill is defined in the Standing Orders. Such committees are specifically given the power to make amendments that are relevant to the subject matter of the bill, are consistent with the principles and objects of the bill and otherwise conform to the Standing Orders and practices of the House.<sup>290</sup> This power to make amendments defines the committee's major task on a bill. A committee cannot make an amendment that is not relevant to the bill before it or that the Standing Orders otherwise forbid it to make, unless it is specially authorised by the House to do so. The House gives such special power by means of an instruction, which is a resolution of the House agreed to before it goes into committee.<sup>291</sup>

As well as instructions relating to the subject matter of a bill, an instruction may relate to the procedure to be followed by the committee while it considers the bill, for example, as to the order or manner of considering the bill's provisions.

<sup>285</sup> SO 309(4); (12 March 2014) 697 NZPD 16652 (*Ngā Punawai o Te Tokotoru Claims Settlement Bill*).

<sup>286</sup> SOs 331(4) and 342(3).

<sup>287</sup> SOs 271(5) and 325(3).

<sup>288</sup> SOs 271(6) and 325(4).

<sup>289</sup> SO 170. This contrasts with the former position on the committal of a bill, where a motion was moved that the House "do resolve itself into a Committee of the Whole". The debate on this motion for going into committee was formerly a substantive stage in the passage of a bill on which the main debate took place. Now, where a bill is concerned, no debate is possible at this point; the House goes into committee automatically.

<sup>290</sup> SO 302(2).

<sup>291</sup> SO 176.

However, this is now more likely to arise from a Business Committee determination or by leave of the committee itself.<sup>292</sup> An unusual use of a procedural instruction was to direct the committee to take important decisions on the substance of the bill at the outset of the committee stage and to leave the detailed examination of the bill until after these decisions have been made, so that any amendments could be made in the light of the committee's "in principle" decisions.<sup>293</sup> This approach has the potential to simplify consideration of bills, since only amendments that implement or were consistent with those initial decisions could then be moved. But generally bills justifying this sort of treatment will involve conscience issues where members vote on an amendment by choosing between several alternatives.<sup>294</sup>

The Business Committee can determine how a committee of the whole House will consider a bill,<sup>295</sup> and may extend or restrict its powers.<sup>296</sup> Thus it could broaden the scope of possible amendments, as long as the proposed amendments were not foreign to the subject matter of the bill. Such Business Committee determinations are thus similar in effect to instructions by the House.

When an instruction has been given in respect of a particular bill, the instruction endures for any second or subsequent occasion on which the House resolves itself into committee to consider the same bill, and does not need to be moved again.

## **Restrictions on instructions**

While an instruction is designed to extend the committee's regular powers in respect of the way it can deal with a bill, it must not be completely foreign to the bill or it will not be a proper instruction.<sup>297</sup> This is particularly significant in the case of amendments. An instruction can be used to widen the scope for accepting amendments to admit some that would not otherwise be in order; it cannot be used to introduce a subject that is totally irrelevant to the bill.<sup>298</sup> Each bill (except for a specifically permitted omnibus bill) must relate to one subject area only.<sup>299</sup> It is not possible to confer power on the committee by way of instruction to introduce a new subject that should properly form the subject of a distinct measure. This rule is designed to prevent entirely new matters being tagged on to a bill with which they have no connection. In such a case the Standing Orders would need to be suspended.<sup>300</sup> Furthermore, the fact that a bill has progressed a significant distance through the legislative process must be borne in mind in considering the breadth of any instruction that might be moved. The House has given the bill a first and a second reading; the principle of the bill as it has progressed so far cannot be destroyed by introducing an amendment at the committee stage by way of an instruction.<sup>301</sup>

## **Moving of instructions**

A member may not move an instruction that is the same in substance as an instruction that was agreed to or defeated in the same calendar year.<sup>302</sup> (The general rules for moving and debating instructions are described in Chapter 19.)

<sup>292</sup> See, for example: Business Committee determination for 11 March 2015 (Remuneration Authority Amendment Bill).

<sup>293</sup> Sale of Liquor Amendment Bill (No 2) (211–2) (commentary, 5 July 1999) at i–iv ([1996–1999] AJHR I.24 at 471–474).

<sup>294</sup> (29 August 2012) 683 NZPD 4851 and Business Committee determination for 21 March 2012 (Alcohol Reform Bill).

<sup>295</sup> SO 301(1)(a); Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 44–45.

<sup>296</sup> SO 301(1)(b).

<sup>297</sup> (9 December 2010) 669 NZPD 16256–16257 Barker (Assistant Speaker); (1993) 534 NZPD 14421–14422 Gray (Taxation Reform Bill (No 2)).

<sup>298</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 558–559.

<sup>299</sup> SO 260(1).

<sup>300</sup> See, for example: (2001) 591 NZPD 8613 (Fisheries (Remedial Issues) Amendment Bill).

<sup>301</sup> (1931) 227 NZPD 437 Statham.

<sup>302</sup> SO 176(4).

## PROCEDURE IN COMMITTEE

### Speaking in committee

On most questions in committee on a bill, a member may speak on up to four occasions for not more than five minutes on each occasion.<sup>303</sup> In the broader debate associated with part by part consideration in the committee of the whole House, members, particularly the Minister or member in charge of a bill, may be allowed consecutive calls, but this is always at the discretion of the Chairperson. Multiple calls are designed to encourage exchanges between members and, most importantly, with the Minister or member in charge of the bill, who is not subject to any limitation on the number of speeches he or she may make. The Business Committee has arranged debates to facilitate such exchanges by reserving a particular number of calls for each Minister in the chair. With this goes an expectation that questions and issues raised by members in their calls will be addressed by the Minister. Interaction between the Minister and members is likely to result in a more informative debate.<sup>304</sup>

The Minister or member in charge of the bill sits at the Table on the right of the Chairperson. Departmental officials or other advisers sit behind the member in charge, on the seats to the right of the Speaker's Chair. Officials, while they may not come on to the floor of the House itself, can readily communicate with their Minister from this position while the committee stage is in progress. In the case of a Government bill, in the Minister's absence another Minister may act as Minister in charge, but this may draw protests from other members as an acting Minister is not likely to have the detailed knowledge of a bill's provisions required to respond to questions at the committee stage.<sup>305</sup>

### Delegation of functions

A committee of the whole House has no power to delegate or transfer its functions to other bodies or organisations. The committee cannot refer a provision or proposed amendment to a select committee, and such a motion, if moved in committee, will not be accepted by the Chairperson.<sup>306</sup> Similarly, the committee cannot refer a provision to the Government with a recommendation for amendment. The committee's job is to go through the bill and make its own decisions and it must discharge this task itself.<sup>307</sup> It cannot adjourn its own sitting, or the consideration of a bill, to a future sitting,<sup>308</sup> although it can report to the House what progress (or lack of progress) it has made and effectively end further consideration by the committee at that time.<sup>309</sup>

### Order of considering bill

Under the Standing Orders, if a bill is drafted in parts, the committee will consider it part by part.<sup>310</sup> In this case, the bill's provisions are considered in committee in the following order:<sup>311</sup>

- the preamble, if there is one
- the parts and other provisions that are not preliminary clauses
- the schedules, if any (debated together with relevant parts or clauses and then voted on separately)

<sup>303</sup> SOs, App A.

<sup>304</sup> (3 November 2015) 709 NZPD 7664 Mallard (Chairperson).

<sup>305</sup> (1990) 506 NZPD 915.

<sup>306</sup> (1973) 387 NZPD 4704 Bailey (Chairperson) (Land and Income Tax Amendment Bill).

<sup>307</sup> (1923) 201 NZPD 619 Statham (War Pensions Amendment Bill).

<sup>308</sup> SO 180.

<sup>309</sup> SO 181.

<sup>310</sup> SO 303(1), (2).

<sup>311</sup> SO 303(2).

- the preliminary clauses, that is, the title clause, commencement clause and, if applicable, principal Act clause.<sup>312</sup>

New parts to be inserted in the principal Act are not taken separately. They will be authorised by a clause in the bill, which will be considered along with the rest of the part containing the clause, not in a separate debate.<sup>313</sup> If the bill is not drafted in parts, the committee considers its provisions in sequence.<sup>314</sup>

The committee may be directed by the House by way of instruction or by a determination of the Business Committee to consider the bill in another way—such as dealing with issues of principle first—or to consider parts in a different sequence. Alternatively, the committee itself may decide to consider the bill's provisions otherwise than part by part.<sup>315</sup> Select committees in reporting a bill back to the House occasionally suggest that at the committee stage the bill's provisions be considered in a different order from that in which they are drafted.<sup>316</sup>

## **Debate**

Except where otherwise provided, the same rules for debate apply in committee as in the House.<sup>317</sup> The Chairperson begins the debate on each provision as it is reached, by proposing that the provision (preamble, part or clause, as the case may be) stand part of the bill.<sup>318</sup> In proposing the question on a provision, the Chairperson reads only its number.<sup>319</sup> The proposing of each provision by the Chairperson, without a motion from the floor that such provision stand part, is an exception to the general rules on the process of debate. In this case the motions are in effect deemed by the Standing Orders to be moved, and the Chairperson is required to frame the necessary questions accordingly. Other motions may be moved in committee (for example to move a closure or to report progress to the House), but the basic work to be transacted by the committee is as prescribed by the Standing Orders and requires no mover to spark it off.

Debate on each provision must be relevant to the provision and must be confined to it.<sup>320</sup> An amendment that is outside the scope of a bill does not permit the scope of debate on a provision to be widened.<sup>321</sup>

The debate terminates by the carrying of a closure motion or when no member wishes to speak. If no member seeks the call, the Chairperson puts the question on any amendments that have been lodged. Once the Chairperson has begun to do this there can be no further debate.<sup>322</sup>

## **Preamble**

If a bill does not have a preamble when it is introduced, one cannot be inserted by the committee of the whole House.<sup>323</sup> A preamble describes the circumstances that led to the bill's promotion; if there is to be one, it should be prepared before the bill is submitted to the House, not concocted after the fact. In practice, few bills (except private bills and Treaty settlement bills) have preambles.

<sup>312</sup> SO 3(1). A principal Act clause is one stating that the proposed Act amends a specified principal Act.

<sup>313</sup> (17 September 2003) 611 NZPD 8814 Hunt (Smoke-free Environments Amendment Bill).

<sup>314</sup> SO 303(3).

<sup>315</sup> SO 303(1)(b).

<sup>316</sup> Committee on the Sale of Liquor Bill, report (4 May 1989) [1987–1990] AJHR I.23A at 49; Sale of Liquor Amendment Bill (No. 2) (211–2) (commentary, 5 July 1999) at iii ([1996–1999] AJHR I.24 at 473).

<sup>317</sup> SO 173.

<sup>318</sup> SO 305(1).

<sup>319</sup> SO 304.

<sup>320</sup> (1924) 205 NZPD 728 Statham.

<sup>321</sup> (2 November 2004) 621 NZPD 16473 Robertson (Chairperson) (Parental Leave and Employment Protection Bill).

<sup>322</sup> (1994) 544 NZPD 4965–4966 Gerard (Chairman).

<sup>323</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 583.

## Part by part consideration

The question proposed by the Chairperson at the commencement of each part is “That Part 1 (etc) of the bill stand part”.<sup>324</sup>

Debate may range widely over each part. The Chairperson will permit a longer debate on a large part with numerous subparts than on a more confined part.<sup>325</sup>

Any schedule or schedules of the bill relating to the part are debated along with the part.<sup>326</sup> At the end of the committee’s consideration of all the parts, the questions on each schedule are then put separately but without any further debate.<sup>327</sup>

## Consideration clause by clause

If a bill is not drafted in parts, or if the committee is instructed by the House or the Business Committee to do so, or itself decides to do so, a committee considers the bill in sequence clause by clause.<sup>328</sup> The schedules of a bill are considered along with any clauses to which they relate.<sup>329</sup> It is a matter for the judgement of the Chairperson how long to permit for debate on each clause before accepting a closure motion.

## Schedules

The schedules are debated along with the parts or clauses to which they relate, though they are voted on separately.<sup>330</sup> They are subject to amendment on the same principles as the parts or clauses.

## Preliminary clauses

The Standing Orders require that every bill include separate title and commencement clauses.<sup>331</sup> These clauses, along with any principal Act clause, are known as the bill’s preliminary clauses.<sup>332</sup> It is the practice not to include these clauses in a distinct part of the bill. They usually form the first three clauses of the bill, and are taken after all other provisions have been dealt with, unless the bill is drafted without a part structure, because they relate to the bill as a whole. The preliminary clauses are debated together, but the question on each clause is put separately.<sup>333</sup> For bills drafted without a part structure, the Chairperson may allow a broader debate on the title clause, covering all the provisions of the bill, where the bill has not been to a select committee.<sup>334</sup>

In principle, the debate on the preliminary clauses is limited to the elements of the clauses and any amendments proposed to them.<sup>335</sup> The elements of the title clause, and thus the scope of the debate on it, are essentially limited to the bill’s name.<sup>336</sup> However, members are accorded some latitude when debating the preliminary clauses at the end of the committee stage to summarise and make concluding remarks about the issues that they have raised during the committee’s consideration of the bill.<sup>337</sup>

Although it is now usually considered towards the end of the committee stage, the title clause is still regarded as an important clause because, if the committee

<sup>324</sup> SO 305.

<sup>325</sup> (26 March 2003) 607 NZPD 4421 Hunt (Resource Management Amendment Bill (No 2)).

<sup>326</sup> SO 303(2)(c).

<sup>327</sup> SO 303(2)(d).

<sup>328</sup> SO 303(1)(a)–(c), (3)(a).

<sup>329</sup> SO 303(3)(b).

<sup>330</sup> SO 303(2)(c)–(d), (3)(b)–(c).

<sup>331</sup> SOs 255 and 256(1).

<sup>332</sup> SO 3(1).

<sup>333</sup> SO 303(2)(e).

<sup>334</sup> (9 December 2008) 651 NZPD 533 Barker (Chairperson).

<sup>335</sup> (1993) 534 NZPD 14901 Gray (Health and Disability Services Bill); (1997) 559 NZPD 1493 Braybrooke (Chairperson) (Taxation (Income Tax Rates) Bill).

<sup>336</sup> (1992) 531 NZPD 12129 Anderson (Deputy Chairman) (Local Legislation Bill).

<sup>337</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 63; (12 October 2004) 620 NZPD 16022 Hartley (Chairperson) (Electricity and Gas Industries Bill); (2 November 2004) 621 NZPD 16489 Robertson (Chairperson) (Parental Leave and Employment Protection Bill).

rejects it, this is an emphatic expression of the committee's opinion against the bill. In such a case the committee either reports progress or goes on with the next bill before it (if there is more than one bill before the committee). The committee, when it comes to report, merely reports the rejection of the title clause, and the bill is dropped from the Order Paper.<sup>338</sup>

## **Postponement of provision**

Subject to any direction by the House or any decision by the committee to the contrary, the member in charge of the bill has the right, as the bill is progressing through the committee, to require the postponement of consideration or further consideration of any provision of the bill.<sup>339</sup> (Thus any provision of the bill that is under consideration or is to be considered may be postponed.) The member is not confined to using this power for any particular reasons, and does not have to give any reasons for doing so. However, it has been acknowledged that it is in the interests of good order for some reasons to be given to the committee, either informally through the whips or by way of a short statement at the time the member raises a point of order to require the postponement.<sup>340</sup> The reasons given are not debatable. Any provision may be postponed by the member in charge in this way, including a new part offered by way of amendment by another member.<sup>341</sup>

The member postponing a provision can specify a point in the committee's proceedings at which consideration of that provision is to be resumed. Alternatively, when a provision has been postponed, the committee may return to it when it decides by resolution to do so. If the member does not specify when a postponed provision is to be resumed and the committee does not deal with this itself, a postponed part or clause is considered when all other remaining parts or clauses (as the case may be), other than the preliminary clauses, have been considered,<sup>342</sup> and a postponed preamble or schedule is considered when all other provisions of the bill have been dealt with.<sup>343</sup> A provision postponed while the House is sitting under urgency may be resumed during that same period of urgency.<sup>344</sup>

## **Transfer of a provision**

A provision may be transferred from one position in the bill to another.<sup>345</sup> While it may often be possible to effect a transfer by way of amendment, this may sometimes not be the case because of the operation of the same question rule. For this reason a transfer may be effected by a motion moved when the provision to be transferred, or the part in which it is located, is reached. Such a transfer motion may be shown along with other amendments on any Supplementary Order Paper circulated to members. A part, subpart, clause, subclause,<sup>346</sup> or schedule<sup>347</sup> may be transferred to a new position in the bill.

Where the committee considers a provision out of sequence, either by leave or at the behest of the member in charge, this does not transfer the provision to a different position in the bill. Only a specific order of the committee to transfer the provision effects such a change.

<sup>338</sup> (1927) 213 NZPD 1082–1083 (Legislature Amendment Bill (No 2)); (27 May 2009) 654 NZPD 3924 (Minimum Wage and Remuneration Amendment Bill).

<sup>339</sup> SO 303(1)(d).

<sup>340</sup> (2000) 586 NZPD 4546, 4548 Hunt.

<sup>341</sup> (2000) 586 NZPD 4546 Hunt; (16 May 2009) 654 NZPD 3681–3682 (Local Government (Auckland Reorganisation) Amendment Bill).

<sup>342</sup> SO 303(4)(a).

<sup>343</sup> SO 303(4)(b).

<sup>344</sup> (2000) 586 NZPD 4246 Hunt (Employment Relations Bill).

<sup>345</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 590.

<sup>346</sup> (24 March 1998) [1996–1999] 1 JHR 408 (Taxation (Remedial Provisions) Bill (No 2)).

<sup>347</sup> (5 May 1993) [1991–1993] 3 JHR 2766 (Privacy Bill).

## Division of a provision

A provision may be divided into two or more separate provisions on motion.<sup>348</sup> Such a motion is taken at the end of the debate on the provision concerned but ahead of any amendments to it.<sup>349</sup> The intention to move to divide a provision is shown as a proposed amendment on any Supplementary Order Paper circulated to members.

# AMENDMENTS

## Form of amendments

An amendment to a bill must be drafted with some precision; it is not an abstract motion. It is a form of words that may be embodied in law. An amendment must conform to legislative forms by referring solely to the provision before the committee (and not to the bill as a whole), and proposing to delete, insert or replace particular words. If a proposed amendment fails to do this it will not be accepted.<sup>350</sup>

A proposed amendment may be framed as an amendment to the preamble or to a clause, a part or a schedule, or to insert a wholly new clause, part or schedule in the bill. New provisions are considered in their numerical order in the bill.

A new provision to be inserted in the bill is distinguished by a letter after its number, being that of the immediately preceding provision. For example, an amendment proposing to introduce a new clause after clause 22 of a bill would be numbered 22A.

## Manner of lodging

A member may give notice of amendments he or she intends to move by lodging a written copy of them with the Clerk of the House, who then arranges for the amendments to be printed on a Supplementary Order Paper.<sup>351</sup> This is a formal House document for the purpose of publishing and circulating proposed amendments or motions, which is prepared in accordance with the Standing Orders. The parliamentary counsel responsible for drafting the bill arranges for the preparation of Supplementary Order Papers setting out ministerial amendments. The Office of the Clerk prepares Supplementary Order Papers containing members' amendments. A Supplementary Order Paper may include an explanatory note explaining the purport of the amendments on it, but it is not required.<sup>352</sup>

A Supplementary Order Paper is circulated to members, and published on the New Zealand legislation website<sup>353</sup> at a time decided upon by the Minister or member. Authority to circulate a Supplementary Order Paper must be given explicitly by the member; it cannot be assumed by the Clerk.<sup>354</sup>

When a member proposes amendments in writing without their being placed on a Supplementary Order Paper for circulation, six copies of the amendments must be handed to the Clerk at the Table.<sup>355</sup> These copies are then available for perusal by other members.

<sup>348</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 570.

<sup>349</sup> (2 August 1979) [1979] 1 JHR 156 (Electoral Amendment Bill); (28 March 1995) [1993–1996] 2 JHR 809 (Births, Deaths, and Marriages Registration Bill).

<sup>350</sup> (1974) 393 NZPD 3540 Bailey (Chairman) (New Zealand Superannuation Corporation Bill).

<sup>351</sup> SO 306.

<sup>352</sup> (2002) 602 NZPD 584–586 (Social Security (Personal Development and Employment) Amendment Bill); (2 August 2005) 627 NZPD 22279–22280 Robertson (Assistant Speaker) (Resource Management and Electricity Legislation Amendment Bill).

<sup>353</sup> <[www.legislation.govt.nz](http://www.legislation.govt.nz)>.

<sup>354</sup> (2000) 582 NZPD 1224–1225 Braybrooke (Chairperson).

<sup>355</sup> SO 307(2).

## Time for lodging

In general, there is no particular time at which proposed amendments must be lodged or circulated. They may be lodged at any time between the bill's introduction and the conclusion of the debate on the provision to be amended. Thus, Supplementary Order Papers have been circulated as early as the introduction of a bill, and are occasionally themselves referred to a select committee for consideration. Now that the Government gives notice wherever practicable of the bills it intends to consider in committee,<sup>356</sup> members have the time to prepare and lodge amendments. Once a closure motion on a question has been accepted by the Chairperson or the debate otherwise concludes, no further amendments may then be lodged (unless the closure motion is defeated and debate continues).

There are two time restrictions that members must comply with if their amendments are to be in order. In respect of any amendment that may have an impact on the Government's fiscal aggregates, members must give notice of the amendment by lodging it with the Clerk at least 24 hours before the House meets on the day on which the amendment is to be moved.<sup>357</sup> But this requirement only applies if the bill in respect of which the amendment is proposed is actually set down for its committee stage on that day.<sup>358</sup> It does not apply, for instance, to a bill introduced under urgency and passed through all its stages, or to a bill that is before the House but has not yet reached its committee stage and whose committee stage is expedited by urgency. In such cases members would not have had notice that the time limit for the circulation of amendments affecting the Government's fiscal aggregates was running against them.

The second time restriction relates to amendments to revision bills and confirmation and validation bills. If members have amendments to such bills, they must be circulated on a Supplementary Order Paper or lodged with the Clerk at least 24 hours before the House meets on the day on which these bills are read a second time, so that a committee stage can be held to consider the amendments.<sup>359</sup>

An amendment is lodged with the Clerk for the purposes of these rules when the member gives authority for it to be circulated and thus made public.<sup>360</sup> An amendment cannot be "lodged" with the Clerk for this purpose if it is to remain confidential. Authority to the Clerk to circulate an amendment can only be given when the amendment is in proper form. Circulation can be effected as a Supplementary Order Paper or in manuscript form.<sup>361</sup>

## Scheduling of amendments—grouping and selection

The Chairperson has the discretion to put a single question on a group of amendments that stand in the name of the same member and lend themselves to being grouped on account of their subject matter or because they form a single alternative proposition.<sup>362</sup> Where amendments are proposed that in the opinion of the Chairperson are the same in substance, the Chairperson may select amendments on which to put a question in order to test the will of the committee.<sup>363</sup>

Allowing Chairpersons to group amendments when putting questions is intended to encourage members to submit cohesive alternative propositions to be considered as whole packages; but this is very much dependent upon the Government giving notice of the bills to be considered in committee. The grouping and selection of amendments is at the option of the Chairperson, with the aim being to allow the effective consideration of a bill by the committee of the whole

<sup>356</sup> SO 301(3).

<sup>357</sup> SO 330(1).

<sup>358</sup> SO 330(3).

<sup>359</sup> SOs 271(5)(c) and 325(3)(b).

<sup>360</sup> (2000) 582 NZPD 1224–1225 Braybrooke (Chairperson).

<sup>361</sup> Ibid.

<sup>362</sup> SO 307(4).

<sup>363</sup> SO 307(5).

House. A failure by the Government to give notice of an intended committee stage, or the passing of a bill under urgency, is not conducive to such effective consideration and thus the Chairperson may be less inclined to exercise the option to group or select amendments.

A schedule of members' amendments (as grouped and selected by the Chairperson) is prepared by the Clerk and published by 2 pm on the day on which a bill is to be considered in committee. There is no requirement for amendments to be included on the schedule. Its purpose is to inform members of the amendments that are to be debated and the questions on which there may be votes. The published schedule also assists in the chairing of the debate by making the Chairperson and members aware of who has proposed amendments, particularly those that propose alternatives to the bill's provisions, and who might reasonably be seeking the call.

## **Proposing and debating amendments**

A member who has proposed amendments in writing is deemed to have moved those amendments when they are circulated to members, and therefore does not formally move them. Members may refer to any amendment on a Supplementary Order Paper or any amendment in writing that has been handed in to the Table,<sup>364</sup> as long as it is relevant to the provision then being debated. But they cannot speak on matters outside the scope of the part by the expedient of handing in an irrelevant amendment; the Chairperson still retains the right to maintain relevancy in debate. A similar rule applies to amendments to a clause when a bill is being considered clause by clause.

A member is not obliged to proceed with an amendment,<sup>365</sup> though an amendment cannot be withdrawn without leave after a closure motion has been accepted.<sup>366</sup>

## **ADMISSIBLE AMENDMENTS**

A committee of the whole House may make amendments to a bill if they are relevant to the subject matter of the bill, are consistent with the bill's principles and objects and otherwise conform to the Standing Orders and to the practices of the House.<sup>367</sup> The permitted range of amendments that a committee may make to a bill are explored below by considering the kinds of amendments that are inadmissible on grounds of relevancy, inconsistency, direct prohibition by Standing Orders or lack of conformity to practice.

## **INADMISSIBLE AMENDMENTS**

### **Amendments outside the scope of the bill**

An amendment that is not relevant to the bill is often described as being outside the scope of the bill. Such an amendment is inadmissible. The bill cannot be turned into something that it is not or that it did not start out as.<sup>368</sup>

Amendments outside the scope of the bill have been variously described as foreign to the bill,<sup>369</sup> outside its purview,<sup>370</sup> not within the leave to introduce the bill granted by the House,<sup>371</sup> or inconsistent with the principles or object agreed to at second reading.<sup>372</sup> The Standing Orders provide that a bill must relate to one

<sup>364</sup> SO 307(1).

<sup>365</sup> (1991) 518 NZPD 3677 Gray.

<sup>366</sup> (1986) 470 NZPD 1052 Terris (Chairperson).

<sup>367</sup> SO 302(2).

<sup>368</sup> (1997) 560 NZPD 1876 Kidd (Trade in Endangered Species Amendment Bill).

<sup>369</sup> (1892) 78 NZPD 537 Steward (Land and Income Assessment Bill).

<sup>370</sup> (1890) 69 NZPD 256 O'Rorke (Electoral Bill).

<sup>371</sup> (1873) 14 NZPD 595 Bell (Provincial Officers Disqualification Bill).

<sup>372</sup> (27 March 2013) 688 NZPD 9049 Roy (Chairperson) (Marriage (Definition of Marriage) Amendment Bill).

subject area only (except for those omnibus bills that are specifically permitted).<sup>373</sup> Any attempt to introduce a second subject area into a bill would inevitably be outside the bill's scope in any case.

When a bill is introduced it defines its own relevancy; that is, the boundary within which its details may be amended as a result of select committee proposals and by the committee of the whole House. A narrow view of the scope of a bill is not taken for the purpose of considering whether an amendment falls within it. If an amendment may be fairly associated with the clauses that are already in the bill, it is regarded as being within the scope of the bill.<sup>374</sup> The test for admissibility is confined to whether the amendment is relevant to the subject matter of the bill, not whether it introduces new policy.<sup>375</sup>

Examples of amendments ruled out of order as irrelevant to the subject matter of the bill have included an amendment to restrict liquor advertising when the bill dealt solely with the creation of a new type of liquor licence,<sup>376</sup> and an amendment requiring the Social Security Commission to comply with ministerial directions when the bill dealt only with the rules for the payment of benefits and their amounts.<sup>377</sup> In the latter case, an instruction was subsequently obtained from the House permitting the amendment to be made.<sup>378</sup>

In considering whether an amendment is within the scope of a bill, any purpose clause is considered relevant, but it is not conclusive.

An amendment that is foreign to the provision it seeks to amend is also out of order.<sup>379</sup> In such a case, if the amendment is within the scope of the bill, it can be proposed as an amendment to a more relevant provision or as a new provision.

## **Amendments to omnibus bills**

Omnibus bills are bills that deal with more than one defined subject area. They are generally prohibited by the Standing Orders,<sup>380</sup> though certain types of omnibus bills may be introduced.<sup>381</sup> Because of their scope, omnibus bills raise special issues as to the amendments permitted to be made to them.

In principle, the scope of an omnibus bill is defined by its contents when it is introduced, just like that of every other bill. However, the Standing Orders themselves prescribe the subject scope of certain kinds of omnibus bills: Finance bills, confirmation and validation bills, Local Legislation bills, Māori Purposes bills, Reserves and Other Lands Disposal bills, revision bills, Statutes Amendment bills and taxation bills.<sup>382</sup> (See Chapter 24.) Amendments to these bills are relevant if they fall within the scope of these bills as defined by the Standing Orders, even though their contents as introduced may be more limited.

Certain other omnibus bills are allowed by the Standing Orders. They are bills amending a number of Acts in order to implement a single broad policy, and bills amending a number of Acts in a similar way in each case.<sup>383</sup> Amendments to these types of omnibus bill are relevant if they conform to the pattern of amendments that the bills are effecting. Not everything in an Act being amended by such a bill is opened up for amendment. Only amendments relating to the interrelated programme implemented by the bill, or that are of a similar nature (as the case may be) may be proposed.

<sup>373</sup> SO 260(1).

<sup>374</sup> (1987) 485 NZPD 1825 Terris (Chairman) (Finance Bill).

<sup>375</sup> (2 August 2005) 627 NZPD 22281 Robertson (Assistant Speaker) (Resource Management and Electricity Legislation Amendment Bill).

<sup>376</sup> (24 November 1982) [1982] JHR 383–384 (Sale of Liquor Amendment Bill (No 2)).

<sup>377</sup> (15 December 1977) [1977] JHR 588–589 (Social Security Amendment Bill (No 2)).

<sup>378</sup> (16 December 1977) [1977] JHR 608.

<sup>379</sup> (1934) 239 NZPD 970 Smith (Chairman) (Customs Acts Amendment Bill).

<sup>380</sup> SO 260(1).

<sup>381</sup> SOs 262 and 263.

<sup>382</sup> SO 262(1).

<sup>383</sup> SO 263(a) and (b).

Omnibus bills that the Business Committee agrees may be introduced<sup>384</sup> are of their own kind. Their scope can only be judged by their precise contents.

Omnibus bills may propose amendments to a number of different Acts when they are introduced. This is intrinsic to their omnibus character, which is represented in particular by Statutes Amendment bills.

An amendment may be made to add a substantive amendment to an Act not amended by the omnibus bill as introduced, as long as it is within the subject matter, objects and principles of the bill.

### **Amendments of an omnibus nature**

Every bill must relate to a single subject area (except for permissible omnibus bills). No amendment that would introduce a second subject into a bill may be made. To do so would be to permit an amendment beyond the scope of the bill. In addition, no amendment can be made that would turn a bill that was not an omnibus bill at introduction into an omnibus bill. The assessment as to whether an omnibus bill is acceptable is made at introduction and not at subsequent stages.<sup>385</sup>

### **Amendments the same in substance as a previous amendment**

No amendment may be proposed that is the same in substance as an amendment that was agreed to or defeated in the committee of the whole House earlier in the same calendar year.<sup>386</sup> The rule does not apply to an amendment where the question on the amendment was never actually put to the committee, for example because it was withdrawn.<sup>387</sup>

The application of this rule received much attention during the committee stage of the Electoral Amendment Bill 1975. An amendment was moved proposing a number of electoral changes, including an amendment to one of the reserved provisions, which can be amended only by an affirmative vote of 75 per cent of the members of the House. The proposed amendment obtained a simple majority but not the support of 75 per cent of the members. It was declared lost. A further amendment was then moved resembling the first amendment in four out of five provisions but omitting the proposed change to the reserved provision. It was argued that this was substantially the same amendment as that which had already been negated by the committee.

The Speaker, in ruling, held that it had been wrong to declare the first amendment to have been lost; only that part of it relating to the reserved provision had been lost. But he also held that the second amendment was not the same in substance as the first. It could only be the same if it had the same effect as the first. It was not substantially the same merely because it contained four out of the five points included in the other. The important thing to consider was the effect of the words of the amendment, not their quantity, and the second amendment minus the critical proposed change to the reserved provision was a very different proposition from the first.<sup>388</sup> The effect of the amendment is what must be considered in deciding whether two amendments are substantially the same.

Where a select committee recommends amendments to a bill, their adoption or rejection by the House at the time the bill is read a second time does not preclude proposals for their further amendment in the committee of the whole House.

The Speaker has ruled that the “same in substance” rule allows the Chairperson to deal with a series of amendments to change a date, for instance. Further such amendments at the same place in the bill are not admissible when one such amendment has already been negated by the committee.<sup>389</sup> In 2011,

<sup>384</sup> SO 263(c).

<sup>385</sup> (30 March 2010) 661 NZPD 10159 Roy (Assistant Speaker).

<sup>386</sup> SO 264(b).

<sup>387</sup> (1976) 407 NZPD 3880 Jack (Sale of Liquor Amendment Bill (No 2)).

<sup>388</sup> (1975) 399 NZPD 3055 Whitehead.

<sup>389</sup> (23 February 2010) 660 NZPD 9252 Barker (Chairperson).

after consideration by the Standing Orders Committee, this led to a change in the Standing Orders to allow the Chairperson flexibility to select representative amendments in order to test the will of the committee.<sup>390</sup> If the committee votes down a representative selected amendment, the remaining “same in substance” amendments are ruled inadmissible.<sup>391</sup>

## **Amendments inconsistent with the bill or a previous decision of the committee**

The second reading is the time to debate the principles of the bill. Amendments in committee that attack the very principles already agreed to by the House at the second reading are not acceptable,<sup>392</sup> nor are amendments that conflict with the provisions of the bill.<sup>393</sup>

Thus in a bill to implement an agreement, amendments inconsistent with the agreement (which must be taken to have been endorsed in principle when the bill was read a second time) are not permitted.<sup>394</sup>

No amendment that conflicts with a decision already taken by the committee on a provision or an amendment can be accepted. An amendment that has been lost in one part of the bill cannot be proposed again on another. Furthermore, when the committee has agreed that a provision shall stand part of the bill, it cannot propose to make an amendment that is inconsistent with that provision later in its consideration of the bill.<sup>395</sup>

Further, an amendment, besides not being directly contrary to a previous decision of the committee, must also be consistent with the pattern of the bill as it has come before the committee. Thus, it was not in order to insert a clause of general application into a bill dealing with specific provisions applying to individual bodies.<sup>396</sup> Nor could a new part containing substantive amendments to an Act be added to a bill when amendments to that Act had already been dealt with in an earlier part of the bill.<sup>397</sup>

It is, however, not part of the Chairperson’s job to redraft a bill so that it is logically consistent. A bill as it comes before the committee may have contradictory provisions. That is for the committee to correct by amending the bill if it sees fit; it is not for the Chairperson to strike one of those provisions out of the bill. The Chairperson merely rules on the admissibility of amendments offered in committee, not on the sense or consistency of the bill as referred to the committee.

## **Amendments that are frivolous, vague or lacking form**

Amendments that are frivolous, vague or lack legislative form are not in order. An amendment must clearly specify where in the bill it is proposed to be made. Where an amendment to a commencement date is proposed, it must provide certainty about when the Act is to come into force.<sup>398</sup> An amendment that relies on an event of uncertain date, or one that may not take place, is not in order.<sup>399</sup> Furthermore, the Standing Orders set out the form of the commencement clause and other preliminary clauses. Amendments that are not consistent with these requirements, such as the

<sup>390</sup> SO 307(5); Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 45.

<sup>391</sup> (23 February 2010) 660 NZPD 9265 Smith; Malcolm Jack (ed) *Erskine May’s Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 409.

<sup>392</sup> (1992) 530 NZPD 11996 (Union Representatives Education Leave Act Repeal Bill); (28 October 2010) 668 NZPD 15038 (Employment Relations (Film Production Work) Amendment Bill).

<sup>393</sup> (1908) 144 NZPD 668 and 671–672 Guinness (Second Ballot Bill); (27 March 2013) 688 NZPD 9049 Roy (Chairperson) (Marriage (Definition of Marriage) Amendment Bill).

<sup>394</sup> Pitcairn Trials Bill (7–2) (commentary, 26 November 2002) ([2002–2005] AJHR I.22A at 169).

<sup>395</sup> (8 August 1974) [1974] 1 JHR 268; (9 August 1974) [1974] 1 JHR 315.

<sup>396</sup> (1987) 485 NZPD 1824 Terris (Chairman) (Finance Bill).

<sup>397</sup> (1991) 512 NZPD 354 (Finance Bill).

<sup>398</sup> See SOs 255 and 256.

<sup>399</sup> (14 March 2007) 637 NZPD 8028 Simich (Chairperson); (20 June 2012) 681 NZPD 3213 Robertson (Chairperson); (26 March 2013) 688 NZPD 8946 Roy (Chairperson).

addition of an expiry date to a commencement clause, are not in order.<sup>400</sup> An expiry must be provided for in a distinct clause, which cannot be a preliminary clause.<sup>401</sup>

An amendment to substitute the word “shall” for the word “may” in the title clause of a bill has been disallowed on the ground that it was frivolous. Normally the question of “shall” or “may” (the one being mandatory in connotation, the other permissive) would be a valid amendment, but not in the title clause, which merely fixes a method of citation.<sup>402</sup>

Any amendment that is proposed to the title of a bill must be a serious and objective description of its contents. An amendment that is merely designed to criticise the contents of the bill will not be accepted.<sup>403</sup> Thus amendments to the title of a pensions confirmation bill describing it as “betraying” senior citizens and to a tariffs bill describing it as breaking international agreements were not admissible.<sup>404</sup>

Amendments that do not offer any significant change in the meaning of a provision have been ruled out of order.<sup>405</sup> Such amendments simply seek to change the order of words in a particular clause or to substitute words with the same or very similar meaning.

An amendment that is too vague is not in order—for instance, an amendment providing that local authorities were to “have such resources as [would] enable them to engage adequate services … and to obtain and operate adequate technical facilities, plant, and equipment”.<sup>406</sup>

The subject matter of an amendment moved on the second reading of a bill may be proposed again in committee, provided that it is put into proper form and is not inconsistent with the principles or object of the bill agreed at the second reading.<sup>407</sup>

## Amendments to delete part

When a bill is being considered part by part, an amendment proposing to delete a part altogether is not an acceptable amendment. The proper course, if this is desired, is to vote against the question “That [the part] stand part” when it is proposed by the Chairperson.<sup>408</sup> However, it is usual to indicate on a Supplementary Order Paper that it is proposed to delete a part. Therefore, Supplementary Order Papers often show as a proposed amendment the deletion of a part. This is an amendment to the bill, although the mechanical process of deleting the part is not accomplished by an amendment, but by voting against the question that the part stand part. An amendment that is a direct negative of a part in the bill is equivalent to an amendment to delete it and is also out of order.<sup>409</sup>

In nearly all cases, bills are considered part by part, making an amendment to omit a clause within a particular part admissible, as its deletion would not be a direct negative of the part. However, there can be no amendment to omit the only substantive clauses in a part or the single substantive clause in a two-clause part.<sup>410</sup> But where clauses are being considered on their own, as the preliminary clauses

<sup>400</sup> (23 February 2010) 660 NZPD 9267–9268 Barker (Chairperson).

<sup>401</sup> SO 259.

<sup>402</sup> (1913) 167 NZPD 88 Lang (Legislature Amendment Bill).

<sup>403</sup> (2001) 597 NZPD 13703 Pettis (Chairperson) (Human Rights Amendment Bill); (2 September 2003) 611 NZPD 8269 Simich (Chairperson) (Immigration Amendment Bill); (23 February 2010) 660 NZPD 9247–9248 Barker (Chairperson).

<sup>404</sup> (1992) 532 NZPD 13128 Anderson (Deputy Chairman) (Subordinate Legislation Bill (No 2)); (2000) 583 NZPD 2324–2325 Braybrooke (Chairperson) (Tariff (Zero Duty Removal) Amendment Bill).

<sup>405</sup> (19 June 2012) 681 NZPD 3102–3103 Smith.

<sup>406</sup> (1974) 395 NZPD 5224 Hunt (Chairman) (Local Government Bill).

<sup>407</sup> (27 March 2013) 688 NZPD 9049 Roy (Chairperson) (Marriage (Definition of Marriage) Amendment Bill); (1880) 37 NZPD 578 O'Rorke (Property Assessment Bill).

<sup>408</sup> (1996) 555 NZPD 12438 Gerard (Chairperson) (Tax Reduction and Social Policy Bill); (1997) 562 NZPD 3518 Revell (Chairperson) (Social Welfare Reform Bill); (2002) 604 NZPD 1744 Robertson (Chairperson) (Climate Change Response Bill).

<sup>409</sup> See, for example: (2002) 604 NZPD 1744 Robertson (Chairperson); (9 December 2008) 651 NZPD 181 Roy (Chairperson); (1988) 490 NZPD 5638 (Finance Bill (No 3)).

<sup>410</sup> (1991) 518 NZPD 3664 (Finance Bill (No 2)).

are, or where the bill does not have a part structure, an amendment to delete a clause is out of order.<sup>411</sup>

### **Insertion of a preamble**

A preamble cannot be inserted into a bill by way of amendment if the bill as introduced did not have one.<sup>412</sup> A preamble describes the circumstances that led to the bill's promotion; if there is one, it should be prepared before the bill is submitted to the House, not created later. But an existing preamble may itself be amended.

### **Amendment of a purpose clause**

A purpose clause sets out the objects that the bill is intended to achieve. Any amendment to this clause is limited to helping to describe those objects, either by reflecting amendments made to other provisions of the bill as it has passed through the committee or by expressing better the original objects of the bill as it was introduced. Any proposed amendment to the purpose clause that is not linked in this way to the bill's provisions is out of order. The scope of a bill cannot be widened by the device of amending a purpose clause.

### **Amendments to deeds of settlement or agreements**

No amendment may be made to a deed of settlement or other agreement set out or referred to in a bill except to correct typographical errors or to reflect changes to the deed or agreement made by the parties themselves.<sup>413</sup> A committee of the House cannot, by way of amendment to a bill, impose an agreement on parties that they have not reached themselves.

Deeds of settlement commonly embody a settlement between the Crown and Māori of a claim under the Treaty of Waitangi (though they are not confined to this subject). The task of a committee considering a bill to give effect to a settlement is to consider whether the provisions of the bill in fact give proper effect to the negotiated agreement. The committee could, for example, make amendments to ensure that the bill's provisions work in a technical sense.<sup>414</sup>

It is always for the House to decide whether to give legislative sanction to such a settlement or agreement.

### **Amendments to bills implementing treaties**

Bills to incorporate international treaty obligations into domestic law often do so by including the text of the treaty in a schedule to the bill. No amendment may be made to the text of any international treaty or convention that is thus included in a bill except to correct errors in transcription.<sup>415</sup> Such text has its own integrity as recording the agreement between the states that are parties to it. An amendment of the treaty or convention could be made only by any procedure prescribed by the agreement itself. But the provisions of the bill giving effect to the agreement can be amended, because it is for the House to determine how or whether it gives legislative effect to international agreements.<sup>416</sup>

<sup>411</sup> (1998) 571 NZPD 12084 (Ngāi Tahu Claims Settlement Bill).

<sup>412</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 583.

<sup>413</sup> Ngati Ruanui Claims Settlement Bill (215–2) (commentary, 16 December 2002) at 1–2 ([2002–2005] AJHR I.22A at 395–396); Ngati Tama Claims Settlement Bill (44–2) (commentary, 10 November 2003) ([2002–2005] AJHR I.22B at 959); (19 November 2003) 613 NZPD 10180 Simich (Chairperson) (Ngati Tama Claims Settlement Bill); (3 May 2005) 625 NZPD 20204 Robertson (Chairperson) (Ngāti Tuwharetoa (Bay of Plenty) Claims Settlement Bill).

<sup>414</sup> Ngāi Tahu Claims Settlement Bill (111–2) (commentary, 19 August 1998) at iii ([1996–1999] AJHR I.23 at 624).

<sup>415</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 578; Foreign Affairs, Defence and Trade Committee *Inquiry into Parliament's Role in the international treaty process* (18 November 1997) [1996–1999] AJHR I.4A at 5.

<sup>416</sup> Audrey O'Brien and Marc Bosc *House of Commons Procedure and Practice* (2nd ed, House of Commons, Ottawa, 2009) (Canada) at 770.

## Select committee amendments subject to financial veto

Where a financial veto certificate has been given in respect of amendments recommended by a select committee, the amendments are omitted from the bill and the certificate also applies to prevent those amendments being moved again in the committee of the whole House.<sup>417</sup>

## Amendments having an impact on fiscal aggregates

Amendments that may have an impact on the Government's fiscal aggregates must be lodged with the Clerk at least 24 hours before the House meets on the day on which they are to be moved. Failure to give notice in time means that they are out of order.<sup>418</sup> (See pp 434–435.)

The onus is on a member wishing to avoid the impact of the rule, to give 24 hours' notice.<sup>419</sup> If there is any doubt about the amendment's effect or a possibility that it may have a fiscal impact, an amendment lodged within the 24-hour time-frame will be ruled out of order.<sup>420</sup> The Chairperson does not determine such a matter on a balance of probabilities; a possibility is sufficient. The Minister in charge of a bill often raises the issue on a point of order after receiving official advice, though it is finally for the Chairperson to rule.<sup>421</sup>

## Amendments subject to financial veto

An amendment that has been proposed may be the subject of a financial veto certificate before the question on the amendment is put.<sup>422</sup> (See pp 515–519 for the giving of financial veto certificates.) Such an amendment is out of order and no question is put on it,<sup>423</sup> though it may be debated along with the provision to which it relates. An amendment proposing a new part for which a financial veto certificate has been issued is out of order and no question is proposed on it. However, the issuing of the certificate may be debated later, in relation to other provisions of the bill.<sup>424</sup>

## Addition of provision fixing annual tax rates

A provision fixing annual tax rates can be in a stand-alone bill, or it can be part of a general taxation bill. But if such a provision is to be proposed to the House in a general taxation bill, it must be included in the bill as introduced. A matter of such constitutional import as the fixing of the annual rates of taxation cannot be added to the bill by way of amendment. (See Chapter 32.)

## Addition of new clauses to Local Legislation bills

No clause may be added to a Local Legislation Bill by the committee of the whole House unless the clause has been provisionally approved by the Minister of Local Government and reported on by a select committee.<sup>425</sup> A new clause proposed at the committee stage that has not been through these processes is out of order. But this does not prevent the substitution of a clause for a clause already in the bill, or the insertion of a clause incidental to or consequential on such a clause.<sup>426</sup>

---

<sup>417</sup> SO 329(3).

<sup>418</sup> SO 330(1).

<sup>419</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 63–64.

<sup>420</sup> (1998) 574 NZPD 14165–14166 Kidd (Accident Insurance Bill); (2000) 586 NZPD 4553 Hunt (Employment Relations Bill).

<sup>421</sup> (1998) 574 NZPD 14166 Kidd.

<sup>422</sup> SO 329(2).

<sup>423</sup> SO 329(2).

<sup>424</sup> (5 December 2007) 644 NZPD 13575 Simich (Chairperson).

<sup>425</sup> SOs, App C cl 23(1).

<sup>426</sup> SOs, App C cl 23(2).

## **Amendments outside the scope of local bill or private bill notices**

Local bills and private bills are advertised as being designed to effect stated objects, and people may be dissuaded from objecting to the passage of such a bill if they are satisfied with the advertised statement of objects. There is, therefore, a strict rule against a local bill or a private bill being amended while it is before the House in any way that is not within the scope of the notices advertising the intention to introduce the bill.<sup>427</sup> If such an amendment is not within the scope of the bill it would not be in order in any case, but the rule goes further than that and prohibits amendments relevant to the subject matter of the bill but outside the advertised notices. (But the converse is not the case. A widely worded notice does not extend the scope of the bill beyond the subject matter of its provisions.) This restriction can be removed only by a suspension of the Standing Orders.

Where a local or private bill deals with land, it cannot be amended to encompass other land outside of the legal description or the plan lodged for inspection along with the bill. But the bill can be amended to deal with land specified in the notices in a different way from that originally proposed.

## **Amendments that should be included in a local or private bill**

A Government bill or a Member's bill can amend a local or private Act in a way that is consequential on the general legislative change being effected in the bill. But apart from consequential amendments, amendments to a local Act or a private Act should be made by a local bill or a private bill respectively.<sup>428</sup> No amendment of a private Act or a local Act may be proposed to a Government bill or a Member's bill, unless it is consequential on the other provisions of that bill.

Furthermore, no amendment that would have to be promoted by way of private or local legislation may be made to a Government or Member's bill. Thus amendments to a bill to exempt specified establishments from the general smoke-free law should have been promoted in private bills since they were for the particular interest or benefit of a person or body of persons. They were out of order as amendments to a Government bill even though relevant to the subject matter of the bill.<sup>429</sup> (Amendments applying to all establishments of a particular type—generic amendments—were in order even though there were only a few such establishments.<sup>430</sup>)

## **PUTTING THE QUESTION**

### **Conclusion of the debate**

At the conclusion of the debate on the provision before the committee, the Chairperson puts the question on any amendments that have been circulated or handed in, and then on the question that that provision stand part of the bill.<sup>431</sup>

The debate may conclude naturally or following the carrying of a closure motion. In the case of a natural termination of debate, the Chairperson pauses to ascertain if any member is seeking the call. If not, the Chairperson begins to put the question. Once the Chairperson starts putting the questions on any amendments, there can be no further debate on the provision.<sup>432</sup> When the closure is carried or the Chairperson starts to put the questions on amendments, it is too late for an amendment on a Supplementary Order Paper or a manuscript amendment that

<sup>427</sup> SO 302(3).

<sup>428</sup> See, for example: (1907) 140 NZPD 59 Guinness (Costley Training Institution Act Amendment Bill); (1989) 504 NZPD 14723 Burke (Taxation Reform Bill (No 7)).

<sup>429</sup> (12 November 2003) 613 NZPD 9977 Hunt (Smoke-free Environments Amendment Bill).

<sup>430</sup> Ibid.

<sup>431</sup> SO 307(3).

<sup>432</sup> (13 May 2009) 654 NZPD 3382–3383 Smith; (1994) 544 NZPD 4965–4966 Gerard (Chairman).

has been handed in to the Table to be withdrawn by the member proposing it,<sup>433</sup> but it may be withdrawn by leave.<sup>434</sup>

### **Manner and order of putting amendments**

The member in charge of a bill has the right to have all amendments to a provision in his or her name put as one question.<sup>435</sup> Such amendments are dealt with after other amendments to the provision in question, unless the member in charge requests that they be dealt with first.<sup>436</sup>

#### **Grouping and selecting amendments**

The Chairperson has the discretion to group and select amendments. The discretion to group a member's amendments is an extension of the practice regarding the amendments of the member in charge, and it applies if the member's amendments lend themselves to being grouped on account of their content or subject matter or because they form a single alternative proposition. The grouping of such amendments seeks to ensure effective consideration of a matter by focusing debate on the issues that are important to members, and the development of coherent alternative propositions, rather than expenditure of time voting on many related amendments.

Where multiple similar amendments are proposed to a single provision, the Chairperson may select one or more indicative amendments on which to put a question to test the will of the committee.<sup>437</sup>

Apart from the special rights of the member in charge of a bill and the discretion of the Chairperson to group or select amendments, in principle, amendments should be dealt with in the order in which they would affect the provision concerned. But amendments can relate to the same place in a bill, and their texts can overlap. If this happens, an amendment from the member in charge (if it is not being taken together with other amendments from that member) is taken first.<sup>438</sup> If other members' amendments relate to the same place, they are taken in the order in which they were lodged with the Clerk.<sup>439</sup>

The order in which amendments are dealt with can be significant in that a later amendment inconsistent with an earlier amendment that has been agreed to or defeated will be out of order. (See pp 438–439.)

The Chairperson does not read out the full text of amendments when putting the question on them. Members are expected to avail themselves of copies of amendments and study them.<sup>440</sup> To assist members, the Office of the Clerk prepares a schedule listing the amendments that have been lodged on a given bill. The Chairperson will often give some description of the amendment by reference to its purport or its sponsor, so that members can follow which amendment they are being asked to vote on.

## **RESOLVING THE QUESTION**

The question that an amendment be agreed to or that a provision of the bill stand part is resolved in the same way as any other question—by voice vote, party vote or personal vote. To be adopted, an amendment must be agreed to by a majority of those voting. However, where the question is whether an existing provision (even as amended) stand part of the bill, the provision does stand part of the bill even

<sup>433</sup> (1986) 470 NZPD 1052 Terris (Chairman); (1994) 540 NZPD 1625 Gerard (Chairman).

<sup>434</sup> (1986) 470 NZPD 1052 Terris (Chairman).

<sup>435</sup> SO 308(1).

<sup>436</sup> SO 308(3).

<sup>437</sup> SO 307(4), (5). See also the discussion on p 437 on inadmissibility of amendments that are the same in substance.

<sup>438</sup> SO 308(2)(a).

<sup>439</sup> SO 308(2)(b).

<sup>440</sup> (1998) 573 NZPD 13565 Revell (Chairperson).

on a tie.<sup>441</sup> This is an exception to the general rule that on a tie the question is lost. If this rule were applied to the question that a provision stand part of the bill, the effect would be that the bill would be amended on a tied vote. Therefore the rule is set aside in this case.<sup>442</sup>

There are three sets of circumstances, as detailed below, in which a question is not determined by a simple majority of votes on a party vote or a personal vote, as the case may be, and where unanimous concurrence or a qualified majority must be obtained for the amendment to be agreed to or for the provision to stand part of the bill.

### **Clauses of a Statutes Amendment Bill**

In the case of a clause of a Statutes Amendment Bill (or of any bill divided from a Statutes Amendment Bill) the Chairperson, rather than putting a question, asks if there is any objection to the clause standing part. At this point any member may object to the clause standing part. If a member does so object, the clause is struck out of the bill.<sup>443</sup>

### **Reserved provisions**

The repeal or amendment of one of the reserved provisions of the electoral law can only be made if the proposal for repeal or amendment is passed by a majority of 75 per cent of all members of the House.<sup>444</sup> (See Chapter 3.) This does not apply to the repeal of a reserved provision in a consolidating bill if the provision is at the same time to be re-enacted without amendment and the re-enacted provision is itself to be entrenched.<sup>445</sup>

A proposal for the “amendment” of one of the reserved provisions is understood as including any provision extending or restricting the application of such a provision. It is not confined to an amendment making a textual change to a reserved provision. Such a proposal may be in a provision of the bill as originally introduced or as added to the bill following its consideration by a select committee. Alternatively, the proposal for amendment of a reserved provision may be in an amendment moved in the committee stage itself. In either case the proposal must be carried by the votes of 75 per cent of the members of the House, otherwise it is lost.

The requirement for a special majority cannot be used to defeat any part of the question before the committee other than a reserved provision. So if a proposed clause consists of subclauses, one of which amends a reserved provision, and the question “That the clause stand part of the bill” is carried but not by a majority of 75 per cent of the members of the House, the clause is not wholly lost. It stands part of the bill minus the subclause that amends the reserve provision.<sup>446</sup> The same rule applies to any amendment that includes a number of proposals, some of which amend reserved provisions and some of which do not. To avoid this problem arising, reserved provisions should be considered separately from other provisions wherever possible.<sup>447</sup>

A party vote or a personal vote that records 75 per cent of the members voting in favour is not necessary on every reserved provision. A question is decided in the first instance by a voice vote, and proceeds to a party vote or a personal vote only if there are members who do not acquiesce. A vote decided on the voices is deemed to be carried unanimously by the House, and no question arises as to the

<sup>441</sup> SO 305(1).

<sup>442</sup> Standing Orders Committee Review of the operation of the Standing Orders (2 September 1999) [1996–1999] AJHR I.18B at 26–27.

<sup>443</sup> SO 305(2).

<sup>444</sup> Electoral Act 1993, s 268(1).

<sup>445</sup> Electoral Act 1993, s 268(2).

<sup>446</sup> (1975) 399 NZPD 3056 Whitehead (Electoral Amendment Bill).

<sup>447</sup> Ibid.

numbers present.<sup>448</sup> Proposals to amend reserved provisions have been defeated even though they were supported by a simple majority vote of members.<sup>449</sup> There is only one instance of a reserved provision being amended by contested vote. It involved the repeal and replacement of the provision for the method of voting. The proposal was carried by a vote of 79 to 13, four votes more than the 75 per cent majority of votes required.<sup>450</sup>

## Proposals for entrenchment

The reserved provisions of the electoral law are themselves “entrenched” in law, in that they can be repealed or amended only if the proposal for repeal or amendment is supported by a 75 per cent majority of members (or alternatively carried at a poll of electors).

The reserved provisions are the only examples of provisions entrenched in law in this way, but proposals to entrench other subjects in legislation are made from time to time.<sup>451</sup> The House’s Standing Orders require that before a proposal for entrenchment may be adopted, the same level of support for the proposal must be demonstrated in the Parliament that is to adopt it as it proposes to require of any future Parliament that may wish to repeal or amend it.<sup>452</sup> Thus, a proposal that would require a 65 per cent majority for amendment must be agreed to by the House in the first place by a 65 per cent majority.<sup>453</sup>

This requirement for a qualified majority before a proposal for entrenchment may be carried applies to a provision in a bill or an amendment to a bill that it itself or any other provision can be amended or repealed only by a majority of more than 50 per cent plus one of all members.<sup>454</sup> A requirement for a qualified majority below this threshold does not require to be carried in any special way.

The rule applies during the committee stage of a bill. Any provision or amendment that proposes entrenchment in this way must itself be carried by not less than the majority that it proposes, otherwise it is lost. Before putting the question on such a proposal the Chairperson draws the committee’s attention to the fact that a qualified majority vote will be necessary for the proposal to pass.<sup>455</sup>

## DIVIDING A BILL

A committee of the whole House has inherent power to divide a bill into one or more separate bills and to report the bills back to the House separately. Until recently it has been very common for a bill to be divided at its committee stage, either because it was introduced as an omnibus bill or because the bill’s main provisions result in consequential amendments to other Acts and it is more intelligible to enact them as separate pieces of legislation. However, the online publication of legislation has improved access to the legislative history of provisions and the text of amendment Acts, so the practice is now not to divide most omnibus bills.<sup>456</sup> The following remarks apply to the few bills that are divided at committee stage.

<sup>448</sup> (1980) 433 NZPD 3513 Harrison (Electoral Amendment Bill).

<sup>449</sup> (1975) 399 NZPD 3056 Whitehead (Electoral Amendment Bill).

<sup>450</sup> (1995) 551 NZPD 10326–10327 (Electoral Reform Bill).

<sup>451</sup> See, for example: Flags, Anthems, Emblems and Names Protection Amendment Bill (14 March 1990), cl 3 and 4 (New Zealand flag and national anthem not to be altered except by a 65 per cent majority of members).

<sup>452</sup> SO 266(1).

<sup>453</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 57.

<sup>454</sup> SO 266(2).

<sup>455</sup> See, for example: (16 November 2004) 621 NZPD 17051 (Foreshore and Seabed Bill).

<sup>456</sup> For one of the first examples of this practice, see the Social Assistance (Portability to Cook Islands, Niue, and Tokelau) Bill (enacted as the Social Assistance (Portability to Cook Islands, Niue, and Tokelau) Act 2015). This was an omnibus bill amending the New Zealand Superannuation and Retirement Income Act 2001, the War Pensions Act 1954 (now repealed), and the Social Security Act 1964, but its purpose clause applied to the entire bill. Ultimately the bill was not divided, despite an initial drafting intention to do so.

The committee's power to divide a bill applies where a bill is drafted in parts or otherwise lends itself to division because it comprises more than one subject matter.<sup>457</sup> A Supplementary Order Paper notifying members of the intention to move for the bill's division must be circulated.<sup>458</sup> Almost invariably such a Supplementary Order Paper is prepared by the member in charge of the bill, but one could be prepared by any member. This "break-up" or "split-up" Supplementary Order Paper must be separate from any other Supplementary Order Paper notifying proposed amendments to the bill. It cannot include amendments to the bill's substantive provisions (including the substance of the commencement clause); it must be confined to showing how it is proposed to divide the bill, setting out the enacting formula and title and commencement clauses for each new bill that is proposed.<sup>459</sup>

Any break-up Supplementary Order Paper is taken at the very end of the committee stage when the bill has been fully considered by the committee.<sup>460</sup> The member who has circulated the Supplementary Order Paper moves that the bill be divided in the manner set out on the Supplementary Order Paper. This is a debatable motion and it is itself subject to amendment.<sup>461</sup> The debate is a narrow one, confined to whether the bill should be divided. It is not an opportunity to re-canvass the issues raised by the bill.<sup>462</sup>

If the motion to divide a bill is carried, the Chairperson will report the several bills into which the bill has been divided back to the House as separate bills.

In some cases it may be necessary to confer the power to divide a bill on the committee of the whole House. If the intention is that the committee should divide a bill that is not drafted in parts or one that concerns a single subject matter (as is required of all bills apart from omnibus bills), an instruction giving the committee power to divide is necessary. In the absence of such an instruction, it is not competent for the committee to divide a bill, even by leave, before the whole bill has been considered.

If a bill is divided following an instruction, circulation of a Supplementary Order Paper is not required (though it is usually still done); the member in charge of the bill moves a motion to divide the bill following consideration of the parts or clauses that are to form a separate bill.

## INTERRUPTION OF COMMITTEE STAGE

The committee stage of a bill may be interrupted by the time arriving for the committee to report progress before the adjournment of the House, or for an extension of a sitting of the House (9.55 pm on a Tuesday and a Wednesday, 5.55 pm on a Thursday),<sup>463</sup> or by a motion to report progress being carried. Any member may move that the committee report progress.<sup>464</sup> This motion can be moved only by a member who has been called to speak to the question before the committee. It cannot be moved on a point of order.<sup>465</sup> Such a motion is put forthwith without amendment or debate.<sup>466</sup> If carried, the motion concludes the committee's consideration of the bill on that day. A member may also move that the Chairperson obtain the Speaker's ruling on a matter of procedure. The question on this motion is also put forthwith without amendment or debate.<sup>467</sup> If

<sup>457</sup> SO 309(1).

<sup>458</sup> SO 309(1).

<sup>459</sup> SO 309(2).

<sup>460</sup> SO 309(3).

<sup>461</sup> (1993) 537 NZPD 17235 (Electoral Reform Bill).

<sup>462</sup> (2001) 595 NZPD 11929 Braybrooke (Chairperson) (New Zealand Superannuation Bill).

<sup>463</sup> SO 52(1).

<sup>464</sup> SO 181(1).

<sup>465</sup> (1985) 468 NZPD 8439–8441 Terris (Chairman).

<sup>466</sup> SO 181(3).

<sup>467</sup> SO 178.

carried, this motion temporarily interrupts the committee stage while the ruling is obtained.

Occasionally the Government moves to report progress in order to get on with other business on the Order Paper, or to precipitate the conclusion of a sitting under urgency. Where the House has gone into committee on several bills, an order to report progress on one of them does not dispose of them all, and the Chairperson is obliged to deal with the others before leaving the Chair.<sup>468</sup> However, when such a motion is carried the committee usually (but not always<sup>469</sup>) intends the Chairperson to leave the Chair and report progress on all bills before it, and it is not necessary for a motion to be put separately and carried in respect of each.

If it is desired to consider the bill later in the same sitting, the member in charge of the bill may move that the committee report progress and sit again “presently”.<sup>470</sup>

No other member may move to report progress in any way other than that prescribed in the Standing Orders.

The Chairperson has the authority to suspend proceedings temporarily in limited circumstances: grave disorder, in accordance with a decision of the House or a determination of the Business Committee, or in the event of an emergency.<sup>471</sup>

## **CONCLUSION OF COMMITTEE STAGE**

When all the provisions of a bill have been considered and any motion to divide the bill has been dealt with, the committee stage of the bill is at an end. The Chairperson informs the committee that the bill will be reported to the House with or without amendment, as the case may be, and, if the bill has been divided, states that the several bills will be reported. The Chairperson then leaves the Table preparatory to the Speaker resuming the Chair in the House. There is no question before the committee in these proceedings at the conclusion of a committee stage; the Chairperson merely informs the committee of what is occurring pursuant to the Standing Orders.

## **REPORT OF THE COMMITTEE**

### **Making the report**

When reporting, the Chairperson stands at the Speaker’s right. The report is a single report, which may relate to a mixture of completed and uncompleted bills. If consideration of a bill has been completed, the Chairperson reports it to the Speaker with or without amendment as the case may be. Where applicable, the Chairperson also reports that the bill has been divided into specified separate bills. On a bill that has not been fully considered, the Chairperson reports that the committee has made some progress or (if a bill was not reached at all) no progress.<sup>472</sup> The Chairperson then moves that the report be adopted.<sup>473</sup>

### **Adoption of report**

The Speaker puts the question that the report be adopted. There is no amendment or debate on this question.<sup>474</sup>

Once the report is adopted, the completed bills are set down for third reading. Those bills whose committee stages have commenced but not been completed are set down for further consideration in committee on the next sitting day. They are listed on the following day’s Order Paper as “Committee stage continued”.

<sup>468</sup> (1911) 156 NZPD 241–242 Guinness.

<sup>469</sup> See, for example: (15 December 1977) [1977] 1 JHR 589.

<sup>470</sup> SO 181(2); (1988) 495 NZPD 8634 Burke.

<sup>471</sup> SO 177.

<sup>472</sup> SO 182(2).

<sup>473</sup> SO 183.

<sup>474</sup> SO 183.

Those bills that were committed but not reached by the committee are set down for consideration in committee next sitting day.<sup>475</sup>

If the title of the bill has been amended, the amendment becomes effective from the moment the report is adopted by the House. Consequently, on the following day's Order Paper, where the bill appears for third reading, it will be referred to by its new title, which is used in all subsequent references to the bill.

In the unlikely event of the House refusing to adopt a report from the committee of the whole House, the order of the day for further consideration in committee would be retained, for the committee to report again on a subsequent sitting day.

## **RECOMMITTAL**

It may be desirable, after a bill has been considered in committee and before it is read a third time, to give the bill's detailed provisions further consideration. A defect or an oversight may be discovered in the bill that can be put right only by an amendment to one of its provisions; or the member in charge of the bill may wish to put forward further amendments to it. Amendments are not possible during the third reading of the bill but the House can order the bill's recommittal to a committee of the whole House for further consideration.

### **Moving for recommittal**

A motion for recommittal of a bill may be moved when the order of the day for third reading is called by the Clerk.<sup>476</sup> The motion may be a general recommittal motion, or it may limit the purpose of the recommittal in some way. Any member may move this motion. If more than one member wishes to move it, the Speaker usually gives priority to the member in charge of the bill.<sup>477</sup> In cases of competing motions between other members, the Speaker has preferred, in one example, the member who indicated that he wished to recommit the bill for a wider purpose than a competing member.<sup>478</sup> There can be only one such motion at each sitting at which a bill is reached, for the House will have taken a definite decision whether or not to recommit the bill on the first recommittal motion that is moved. If the motion is lost and the third reading is not completed that day, a further recommittal motion can be moved when the bill is next reached.<sup>479</sup> It can also be moved while the bill is being passed through all its stages under urgency. A motion to recommit a bill is not subject to amendment or debate.<sup>480</sup>

### **Effect of recommittal**

If a bill is simply recommitted, it is referred back to the committee of the whole House forthwith for further study as a whole, and the committee goes through it again fully, as already described, this time in its amended form resulting from its first committee consideration. The order for recommittal may, however, go on to prescribe the purposes for which the bill has been recommitted. If it does so, the committee carries out only those assigned tasks.<sup>481</sup> But recommittal must be for a purpose connected with the business of the committee. There cannot, for instance, be a recommittal to enable the Government to consider a matter; the recommittal must relate to the bill's examination by the committee.<sup>482</sup>

A bill may be recommitted for consideration of only one of its provisions or for consideration of specified amendments, such as those notified on a Supplementary

<sup>475</sup> SO 310.

<sup>476</sup> SO 311.

<sup>477</sup> (1994) 543 NZPD 3954 Tapsell (Maritime Transport Bill).

<sup>478</sup> (1986) 472 NZPD 2580–2581 Wall (Homosexual Law Reform Bill).

<sup>479</sup> Ibid, at 2581–2582.

<sup>480</sup> SO 311.

<sup>481</sup> (1913) 165 NZPD 789 Lang (Land Laws Amendment Bill).

<sup>482</sup> (1926) 211 NZPD 201 Statham (Education Amendment Bill).

Order Paper.<sup>483</sup> In such cases, the committee's work is confined to considering the provision or amendments referred to in the order for recommittal. The committee is not bound to accept any amendments referred to it for consideration; it can agree or disagree with them as it sees fit.<sup>484</sup> The committee can also reverse a decision it had taken when it previously considered the bill.<sup>485</sup> But it is not possible to recommit a bill in order to consider a new provision or other amendment that was ruled out of order by the Chairperson when the bill was first considered in committee;<sup>486</sup> such a recommittal would be futile. Nor can a bill be recommitted to consider an amendment outside the scope of the bill. If it is desired that the committee reconsider a bill for the purposes of considering amendments outside its scope, an instruction must first be given to the committee authorising it to do this.<sup>487</sup> Such an instruction (on recommittal) would require notice and is debatable.

Where a bill is recommitted for consideration of certain amendments, only those amendments (and any amendments to them) may be considered. In such a case, when the amendments to a part (or clause if the bill is not drafted in parts) have been disposed of, the question is put that that part as amended stand part. When the committee of the whole House has fully considered a bill on recommittal, the bill is reported back to the House and is set down for third reading on the next sitting day.

## SETTING BILL DOWN FOR THIRD READING

A bill fully considered by the committee of the whole House is set down for third reading on the next sitting day. The bill is reprinted if any amendments have been made in committee.<sup>488</sup> The bill is not reprinted if the third reading is taken immediately following the committee stage either because the Standing Orders provide for its third reading forthwith or because urgency has been taken for its entire passing or for its committee and third reading stages.<sup>489</sup> The third reading of a bill cannot be held until copies of the reprinted bill are available to members.<sup>490</sup> Leave has been given for a bill to proceed to its third reading without being reprinted (in the case of a bill of over 2,000 pages) where this was not regarded as necessary given the minor nature of the amendments and the cost involved.<sup>491</sup> The Speaker may dispense with the reprinting of a bill if the amendments are of a minor textual nature.<sup>492</sup> The bill stands on the Order Paper as an order of the day awaiting its third reading. The order in which Government bills are taken is largely a matter for the Government to determine. Members', private and local bills are considered in the order prescribed by the Standing Orders. There is no three-sitting-day stand-down period before the third reading can be held, as there is between the report of a select committee and the second reading of a bill.

### Referral to a select committee

When the order of the day for third reading is reached any member may move to have the order discharged and for the bill to be referred to a select committee for further consideration. There is no amendment or debate on this question.<sup>493</sup>

<sup>483</sup> (1898) 104 NZPD 565 O'Rorke (Old-age Pensions Bill); (8 August 2007) 641 NZPD 10953 (Weathertight Homes Resolution Services (Remedies) Amendment Bill).

<sup>484</sup> (1898) 102 NZPD 412 O'Rorke (Water-supply Bill).

<sup>485</sup> (1880) 37 NZPD 606 O'Rorke (Beer Duty Bill).

<sup>486</sup> (1909) 147 NZPD 606 Guinness.

<sup>487</sup> (8 August 2007) 641 NZPD 10938 (Weathertight Homes Resolution Services (Remedies) Amendment Bill).

<sup>488</sup> SO 267(2).

<sup>489</sup> SO 267(2)(a)–(b).

<sup>490</sup> SO 267(4)(b).

<sup>491</sup> (18 March 2004) 616 NZPD 11775 (Income Tax Bill).

<sup>492</sup> SO 267(2)(c).

<sup>493</sup> SO 74(1)(a), (2).

## BILLS REQUIRING CROWN CONSENT

Members' local or private bills that contain any provision affecting the rights or prerogatives of the Crown cannot be passed unless the Crown indicates its consent to the provision.<sup>494</sup> If any question arises, the Speaker determines whether a bill affects the rights or prerogatives of the Crown. The Clerk will consult Parliamentary Counsel before the consent of the Crown is sought.

This consent is communicated by way of a message from the Governor-General, which is announced to the House by the Speaker. The message can be given at any stage before the bill's passing but it must be given before the bill can be read a third time. The Crown's consent to a bill passing includes agreement to any amendments that may be made to it during its passage. A separate message is not required for the amendments. Amendments may be made to a bill that have the effect of converting the bill from one that would not otherwise require the Crown's agreement into one that does require it. Such amendments may be made before any message is announced; but, if the bill is to pass, a message must be forthcoming before the bill can be read a third time.

## FINANCIAL VETO OF BILLS AWAITING THIRD READING

A bill awaiting its third reading is subject to financial veto by the Government, on the ground that it would have more than a minor impact on the Government's fiscal aggregates if it became law.<sup>495</sup> (See pp 515–519 for the giving of financial veto certificates.) The financial veto may relate to the whole bill or to a particular provision or provisions.<sup>496</sup> To be effective, it must be given before the third reading debate commences.

If a financial veto certificate relates to the whole bill, the third reading debate may still be held, but at the conclusion of the debate the Speaker does not put any question on it and the bill will consequently lapse.<sup>497</sup> In the case of a financial veto certificate relating only to a particular provision or provisions, the bill may be amended (by being recommitted) to remove the provision or provisions objected to, in which case the bill proceeds normally. But, if it is not so amended, at the conclusion of the third reading debate no question is put on it and it lapses in the same way as if the financial veto certificate had applied to the whole bill.<sup>498</sup>

## THIRD READING

When the order of the day for the third reading of a bill is reached, the Speaker calls upon the member in charge to move the motion "That the ... Bill be now read a third time".<sup>499</sup> Another member may act for an absent member but only a Minister may act for an absent Minister in charge of a Government bill. The debate is limited to 12 speeches, each of a maximum duration of 10 minutes.<sup>500</sup>

The third reading debate is narrower in scope than the second reading debate. Members must confine themselves to the general principles of the bill as it has emerged from the committee of the whole House.<sup>501</sup> Members may discuss

<sup>494</sup> SO 313.

<sup>495</sup> SOs 326(1) and 328(1).

<sup>496</sup> SO 328(2).

<sup>497</sup> SO 328(3). See, for example: the Parental Leave and Employment Protection (6 Months' Paid Leave) Amendment Bill. A financial veto certificate was issued in respect of the bill (see: (16 June 2016) 715 NZPD 12075), and the third reading debate was held (see: Order Paper for 29 June 2016, and (29 June 2016) 715 NZPD 12296–12313). No question was put at the end of the third reading debate, and the bill was not on the Order Paper for the next sitting day; see: Order Paper for 30 June 2016.

<sup>498</sup> SO 328(3).

<sup>499</sup> SO 312(1).

<sup>500</sup> SOs, App A.

<sup>501</sup> (1961) 329 NZPD 3922–3923 Algie (Industrial Conciliation and Arbitration Bill).

amendments made to the bill by the committee and may allude to, but not discuss at length, amendments moved unsuccessfully in committee.<sup>502</sup> Amendments ruled out of order in committee by the Chairperson cannot be discussed.<sup>503</sup> Any other matter that arose during the committee stage and is relevant to the bill may be referred to. Although members may advance general arguments as to why the bill should or should not pass, they must confine themselves to matters covered in the bill,<sup>504</sup> and they may not go through the bill clause by clause giving detailed arguments on its contents.<sup>505</sup> The third reading debate is in the nature of a summing-up.

## **Amendments**

The question for the third reading is open to amendment in any way that is relevant to the motion, for example, by deferring the third reading or declining to agree to it for a specified reason. It is not permissible to move an amendment to refer the bill back to a select committee. If this is desired, it can be done by discharging the order of the day before the third reading debate commences.

## **Cognate bills**

Where a bill has been divided at the committee stage, the several bills emerging from it may, at the option of the member in charge, be taken together for the purposes of debate on their third readings.<sup>506</sup> This option is almost invariably exercised. The several bills are called on together for their third reading, the member in charge moves a single third reading motion and there is one debate instead of several. This option applies only to bills divided by the committee of the whole House, not to bills divided by a select committee (which often move through their subsequent stages quite independently of each other anyway). The option to take the third readings together applies to taking all of the several bills together. It is not an option to take some of them together and others separately, unless such a course of action is agreed to by the Business Committee.<sup>507</sup> If the option is not exercised the bills are all dealt with separately.

Although there is a single debate, the question for the third reading of each bill is put separately at the conclusion of the debate. However, the third readings are often dealt with as one question unless it is intimated to the Speaker that members want each bill or some of the bills to be voted on separately.

## **Third reading without debate**

Revision bills and confirmation and validation bills that have been set down for third reading following their second reading or committee stage (if any) are taken immediately without debate,<sup>508</sup> as are Imprest Supply bills.

## **PASSING OF THE BILL**

When the bill has been read a third time, it has been passed by the House.<sup>509</sup> Formerly a separate question was put after the third reading, asking the House to agree that the bill “do now pass”, but the passing of a bill is now held to occur when the House agrees to its third reading. The bill at that point is not yet law. It has been passed by one constituent of Parliament, the House of Representatives. It is now prepared by the Clerk of the House for submission for the Royal assent.

502 (1977) 415 NZPD 4136–4137 Harrison (Acting Speaker) (Human Rights Commission Bill).

503 (1960) 325 NZPD 3009 Macfarlane (Animals Protection Bill).

504 (1962) 333 NZPD 3422, 3429 Algie (State Services Bill).

505 (1950) 290 NZPD 1225 Oram (Tenancy Amendment Bill).

506 SO 312(2).

507 Business Committee determination for 5 March 2014 (bills divided from Te Tau Ihu Claims Settlement Bill).

508 SOs 271(6) and 325(4).

509 SO 314.

## CHAPTER 27

# Enactment and Publication of Acts

## ROYAL ASSENT

### Preparation of bill

When a bill (whether a Government, Member's, local or private bill) has been read a third time, the Clerk prepares it for submission to the Sovereign or the Governor-General for the Royal assent. The Royal assent to the measure is essential to transmute what, up to that point, is a proposal that has been agreed to by one branch of the legislature, into an Act of Parliament and therefore into law.

For this purpose, after the bill's third reading, the Clerk arranges for it to be reprinted in the form of an Act as it was passed by the House.<sup>1</sup> The reprinted document no longer shows how the bill was amended as it passed through the House. Material struck out during its passage is not shown at all; there is no indication in the text as to what has been added after the bill was introduced and what was in it originally. The bill is printed "fair", as it will read when it becomes an Act on receiving the Royal assent.

### Amendments and corrections

Verbal or formal amendments to the text may be made by the Clerk during the reprinting process.<sup>2</sup> The commonest example of such a formal amendment is the renumbering of the clauses of the bill if, as a result of amendment during its passage, it no longer reads consecutively. Any cross-references are corrected. Other clerical or typographical errors found in the bill may also be corrected at this stage.

A print of a bill that is to be presented for the Royal assent is always checked within the Office of the Clerk and the Parliamentary Counsel Office before proceeding further. It may also be checked by the department whose Minister took charge of its passage.

### Authentication of prints

The Clerk must authenticate two prints of the bill in its reprinted form.<sup>3</sup> (Occasionally a third print is authenticated if it is intended that the promoter of particular legislation should retain a copy of the bill with the Royal assent recorded on it.)

---

<sup>1</sup> SO 315.

<sup>2</sup> SO 316.

<sup>3</sup> SO 315.

The Clerk is charged by the House with presenting every bill that it has passed to the Sovereign or the Governor-General for the Royal assent.<sup>4</sup> But constitutional convention requires that in this, as in the exercise of the other constitutional and legal powers and duties of office, the Sovereign or the Governor-General acts only on the formal advice of a Government that is politically accountable to the House of Representatives. Therefore, after authenticating the two prints, the Clerk certifies that the bill has been passed by the House and is awaiting the Royal assent and delivers the bill to the Government for it to tender the formal advice to the Governor-General that the Royal assent should be given.

There are two steps in tendering this formal advice. First, the Attorney-General certifies to the Governor-General that, in the Attorney-General's opinion, the bill contains nothing that would mean that the Royal assent should be withheld. In the Attorney-General's absence, an Acting Attorney-General (if there is one) or the Solicitor-General gives the certification. Secondly, the copies of the bill are presented to the Prime Minister (or the most senior Minister available if the Prime Minister is absent from Wellington) for the Prime Minister to sign the formal advice to the Governor-General recommending that the Royal assent be given to the bill. Thus the legal act of assenting to the bill is the Sovereign's or the Governor-General's, but the political act of assent to a bill is the Prime Minister's, and the Prime Minister assumes political responsibility by formally tendering the advice on which the Crown acts.

### **Presentation of bill**

It was formerly the practice for the Governor to attend Parliament House in person on the final day of each session and, before proroguing Parliament, to grant the Royal assent to any bills presented for assent at the time. An Appropriation Bill was traditionally reserved to be presented for assent after all other bills. Since 1875 the Governor has not attended in person to prorogue Parliament or assent to bills, nor is an Appropriation Bill any longer reserved for assent last.<sup>5</sup> Nowadays, when the Attorney-General's certification has been obtained and the Prime Minister's advice has been tendered, the Clerk causes the two copies to be presented to the Governor-General at Government House for the Royal assent. Traditionally, the Clerk presents the first bill passed after a new Governor-General has assumed office in person to the Governor-General. Bills are presented for the Royal assent strictly in the order in which they were passed by the House. If the Administrator of the Government<sup>6</sup> is in office, the bill is submitted to the Administrator for the Royal assent.

### **Giving of the Royal assent**

A bill becomes law when the Sovereign or the Governor-General (or the Administrator) assents to it and signs it in token of such assent.<sup>7</sup>

The Governor-General completes the Royal assent to a bill by signing the two copies presented (and occasionally a third copy). Usually no particular formality is followed in the giving of the Royal assent. The Governor-General deals with bills submitted for the Royal assent in the same way as other State papers submitted for vice-regal attention. The bill becomes law immediately it is assented to by the Governor-General, but its provisions might not immediately take effect. This depends upon whether it provides for its own commencement. If it does, it takes effect accordingly. If it does not, it comes into effect on the day after it receives the Royal assent.<sup>8</sup>

---

<sup>4</sup> SO 315.

<sup>5</sup> (1958) 318 NZPD 1856.

<sup>6</sup> Cabinet Office *Cabinet Manual* 2008 at [1.17].

<sup>7</sup> Constitution Act 1986, s 16.

<sup>8</sup> Interpretation Act 1999, s 8.

The Sovereign has given the Royal assent in person. Her Majesty Queen Elizabeth II became the first Sovereign to do so on 12 January 1954 when she assented to the Judicature Amendment Act 1954. Her Majesty has since assented to other bills passed when she has been present in New Zealand.

## Refusal of the Royal assent

There is no longer explicit statutory recognition of a power to withhold the Royal assent, as there was in the previous law.<sup>9</sup> This was omitted in 1986 as unnecessary. It was felt that to re-enact it then (when New Zealand's constitutional rules were being restated in modern terms) might suggest that a personal discretion was vested in the Governor-General. But even with the omission of any express statement of the power to refuse to give the Royal assent, it remains the case that a bill does not become law until signed by the Governor-General in token of assent.<sup>10</sup>

A refusal to assent would be a remarkable—indeed a unique—event in New Zealand. No bill presented to a Governor or a Governor-General has ever been refused the Royal assent in New Zealand, although two Acts were subsequently disallowed by the Sovereign under a procedure that no longer exists.<sup>11</sup> In the United Kingdom, which has a comparable requirement for the Royal assent to be given to measures passed by the House of Lords and the House of Commons, the Royal assent has not been refused since 1707.<sup>12</sup> The constitutional principle that the Governor-General acts only on the advice of Ministers requires the Governor-General to accept that advice except in the most extraordinary circumstances.

## Errors in Acts

Errors made in the course of preparing bills for the Royal assent have led to bills being assented to in a different form from that in which they passed through the House. Such errors have included failure to include an amendment made to the bill as it was passing through the House;<sup>13</sup> a printing error resulting in an incorrect figure being subscribed; a renumbering error in a commencement clause resulting in incorrect commencement dates for two subparts;<sup>14</sup> and a failure to correct a cross-reference.<sup>15</sup> In these circumstances, further legislation has been passed to correct the error made in preparing the bill for the Royal assent.<sup>16</sup> Until corrected, the law has been treated as assented to by the Governor-General in the incorrectly prepared bills. In the case of the commencement clause error in the Gas Amendment Act 2004, the validity of the erroneous legislation was also specifically confirmed in the correcting legislation.<sup>17</sup>

There is only one known case of a corrected bill being resubmitted for Royal assent. A printing error caused two schedules in a bill submitted to and signed by the Administrator of the Government to be printed in portrait rather than landscape, with a consequent loss of text. Corrected copies of the schedules were resubmitted to the Administrator. The Administrator certified confirmation that they formed part of the assented bill. The date of assent remains the date of original signing.<sup>18</sup>

<sup>9</sup> New Zealand Constitution Act 1852 (UK), s 56.

<sup>10</sup> See RI Carter *Burrows and Carter—Statute Law in New Zealand* (5th ed, LexisNexis, Wellington, 2015) at 6–7.

<sup>11</sup> John E Martin “Refusal of Assent—A Hidden Element of Constitutional History in New Zealand” (2010) 41 *Victoria University of Wellington Law Review* 51 at 55; KJ Scott *The New Zealand Constitution* (Oxford University Press, Oxford, 1962) at 85.

<sup>12</sup> Geoffrey Marshall *Constitutional Conventions: The Rules and Forms of Political Accountability* (Clarendon Press, Oxford, 1984) at 22.

<sup>13</sup> (1872) 12 NZPD 18, 221–222 (Sharebrokers Bill).

<sup>14</sup> Gas Amendment Act 2004.

<sup>15</sup> Public Finance (State Sector Management) Bill, SOP 315 (2004) at 33.

<sup>16</sup> Sharebrokers Act Amendment Act 1872, s 2 (correcting an error in the Sharebrokers Act 1871); Electoral Amendment Act 1996, s 2 (correcting an error in the Electoral Amendment Act (No 2) 1995); Crown Entities Act 2004, s 201(1) (correcting an error in the Gas Amendment Act 2004).

<sup>17</sup> Crown Entities Act 2004, s 201(2).

<sup>18</sup> Appropriation (2007/08 Supplementary Estimates) Act 2008, schs 3 and 4.

Under the Legislation Act 2012 the Chief Parliamentary Counsel can now make limited editorial changes to reprints of legislation.<sup>19</sup> Such changes must be noted in the reprint.<sup>20</sup> In a recent example, a failure to correct a cross-reference in a bill for Royal assent was remedied using these powers, avoiding the need for correcting legislation.<sup>21</sup>

In Australia, the Governor-General has rescinded a purported assent to an Act that did not include all of the material agreed to by both houses of the legislature in the print submitted for the Royal assent.<sup>22</sup> However, given that under Australia's constitution the agreement of both houses is a requirement for enacting law, it may be that the bill as assented to was not a valid Act or at least not as regards the unagreed material. In these circumstances the rescission of the Royal assent would merely acknowledge an already existing invalidity. Indeed this could be seen as an example of a situation in which the Royal assent is purportedly given to an instrument that has not been passed by the legislature at all. Thus, also in Australia, where the Governor-General gave the Royal assent to a bill that had not been passed by one house of the legislature, the assent was cancelled when this was discovered.<sup>23</sup> It would seem that in such circumstances the assent would be a nullity and that this would also be the case in New Zealand.

## PROMULGATION OF ACTS

No special formalities are prescribed for promulgating the fact that the Royal assent has been given to a bill and that that bill is now an Act of Parliament. The Governor-General formerly advised the House by message of this fact and the message was read to the House by the Speaker, but this practice was discontinued in 1985.

After the Royal assent has been given, the Clerk of the House deposits one of the assented copies with the registrar of the High Court at Wellington. The other is retained at Parliament House and eventually transferred to Archives New Zealand.<sup>24</sup> It is not necessary for the text of an Act to be published in the *New Zealand Gazette*, although the fact that the Royal assent has been conferred is advised in the *Gazette*'s parliamentary notices section.

## PUBLICATION OF ACTS

Following assent, arrangements are made by the Office of the Clerk and the Parliamentary Counsel Office to make the Act publicly available as soon as possible. The taking of official action in reliance on legislation that has come into force but not been made available to the public will inevitably raise questions as to the validity of that action. Access to the law is regarded as an aspect of the rule of law.<sup>25</sup>

A number is inserted showing the order in which the Act received the Royal assent, a legislative history is added showing the dates on which the bill passed through its principal parliamentary stages and was assented to, and a note is made at the end of the Act showing which department is responsible for administering it. This note is intended to indicate which department would be concerned to initiate or promote an amendment to the legislation should one be contemplated. There is no such note to local or private Acts.

<sup>19</sup> Legislation Act 2012, s 25.

<sup>20</sup> Legislation Act 2012, s 27.

<sup>21</sup> Public Finance Amendment Act 2013, s 94, amending s 45M of the Public Finance Act 1989.

<sup>22</sup> (21 June 2001) PD HR (Aust) 28261.

<sup>23</sup> BC Wright (ed) *House of Representatives Practice* (6th ed, Department of the House of Representatives, Canberra, 2012) at 408.

<sup>24</sup> SO 317.

<sup>25</sup> *ZL v Secretary of State for the Home Department* [2003] EWCA Civ 25, [2003] 1 All ER 1062 at [25].

A copy of every Act must be published in electronic form as soon as practicable after it is enacted.<sup>26</sup> The Attorney-General may also give directions as to the form in which a copy of an Act of Parliament is to be printed.<sup>27</sup> The Chief Parliamentary Counsel is responsible for carrying out the final checking of copies of Acts and for authorising their publication.<sup>28</sup> The Governor-General may by Order in Council authorise or direct the Chief Parliamentary Counsel to arrange for the publication in printed form of any legislation or class of legislation.<sup>29</sup>

The Chief Parliamentary Counsel may issue electronic and printed official versions of legislation.<sup>30</sup> A printed version that is produced directly from an official electronic version is also an official version.<sup>31</sup> An official version of legislation, either as originally enacted, or as a reprint, is taken to set out correctly the text of the legislation. This presumption applies unless the contrary is shown.<sup>32</sup> All courts and persons acting judicially must take judicial notice of all Acts.<sup>33</sup>

These provisions lay down only a presumptive rule that the official version is the statute as passed by the House and given Royal assent.<sup>34</sup> If there were genuine doubt as to the authenticity of the Act or its contents, reference could be made to the copies signed by the Governor-General and held at Parliament House (or Archives New Zealand) and the High Court.

Electronic and loose copies of Acts are usually published within a week of the Royal assent being given. They carry a statement that they are published under the authority of the New Zealand Government.<sup>35</sup> Electronic versions must at all times be accessible, and available for downloading from an Internet site maintained by the New Zealand Government.<sup>36</sup> Official electronic versions of legislation must be made available free of charge.

Printed copies are sold on subscription and from retail outlets operated for the purpose under arrangements with the Crown. The Attorney-General has power to designate places where copies of Acts of Parliament are to be made available for purchase by members of the public,<sup>37</sup> and the Chief Parliamentary Counsel is required to make copies available for purchase there at a reasonable price.<sup>38</sup> But this does not prevent copies being offered for sale at any other place not so designated.<sup>39</sup>

No copyright subsists in Acts of Parliament,<sup>40</sup> so the official publication of legislation does not preclude publication by any other person.

## Reprints of Acts

Reprints of statutes are now published electronically within 15 working days of the amendment coming into force. The continuous compilation of legislation ensures that the official legislation website provides access to the Act in single-document form, and that it is current at the time it is accessed. The Chief Parliamentary Counsel's editorial powers have been enhanced in respect of reprints under the Legislation Act 2012.<sup>41</sup> These powers exist in addition to those for the preparation

<sup>26</sup> Legislation Act 2012, s 6(2).

<sup>27</sup> Legislation Act 2012, s 20(1)(a).

<sup>28</sup> Legislation Act 2012, s 6(1)(a).

<sup>29</sup> Legislation Act 2012, s 6(4).

<sup>30</sup> Legislation Act 2012, s 17(1).

<sup>31</sup> Legislation Act 2012, s 17(2).

<sup>32</sup> Legislation Act 2012, s 18.

<sup>33</sup> Legislation Act 2012, s 16.

<sup>34</sup> Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, 2014) at [16.5.2].

<sup>35</sup> Legislation Act 2012, s 6(6).

<sup>36</sup> <www.legislation.govt.nz>.

<sup>37</sup> Legislation Act 2012, s 7(1).

<sup>38</sup> Legislation Act 2012, s 8(1)–(2).

<sup>39</sup> Legislation Act 2012, s 7(2).

<sup>40</sup> Copyright Act 1994, s 27(1); Copyright Act Commencement Order 2000.

<sup>41</sup> Legislation Act 2012, ss 25 and 26.

of revision bills—bills that re-enact laws in up-to-date and accessible form without changing their effect.<sup>42</sup>

Reprints of printed copies of Acts of Parliament in force are made as occasion requires. These arrangements are made by the Chief Parliamentary Counsel subject to any directions from the Attorney-General.<sup>43</sup> When making such changes in an Act that has been reprinted, the reprint must indicate that the changes have been made and outline, in general terms, what the changes are.<sup>44</sup>

Comprehensive reprints of legislation in bound volumes were made in 1908 (the public law was completely repealed and re-enacted for the purpose), 1931 and 1957. Between 1979 and 2003 a progressive bound-volume reprint of Acts of general application was carried out, and eventually entirely replaced the 1957 reprint. Local and private Acts have not generally been included in any of these reprints.

---

<sup>42</sup> Legislation Act 2012, s 31. See p 375.

<sup>43</sup> Legislation Act 2012, ss 6(1)(c) and 20(1)(b).

<sup>44</sup> Legislation Act 2012, s 27.

# CHAPTER 28

# Delegated Legislation

Most of the legislation enacted each year is not made by Parliament directly. It is made by other people or bodies under powers delegated to them by Parliament. In this chapter, the term “delegated legislation” is used to describe all types of legislation made under powers delegated by Parliament. Such legislation is also often referred to as “subordinate legislation”. Legislation of this kind may take various forms, which are discussed in detail below.<sup>1</sup>

In contrast to the enactment of legislation by Parliament, there are no general procedures for ensuring that delegated legislation is subjected to public debate and scrutiny before it is made. However, some of the statutes that empower the making of delegated legislation require certain procedures to be followed before it is made. For example, there may be a requirement to consult entities uniquely affected by a regulation before it is made.<sup>2</sup> Statutes may also require a Minister to consult appropriately before recommending the making of certain regulations.<sup>3</sup>

Generally, neither Parliament nor the House plays any part in the actual making of delegated legislation. Parliament has played its part by passing the legislation conferring the power to make the delegated legislation. The exercise of this power is in the hands of another authority.

## MEANING OF DELEGATED LEGISLATION

Delegated legislation may take many forms. Standing Orders use the term “regulation” to describe delegated legislation, and define this as meaning any delegated legislation, including legislative instruments and disallowable instruments within the meaning of the Legislation Act 2012.<sup>4</sup> The word “regulation” is also defined in the Interpretation Act 1999 and captures the variety of instruments.<sup>5</sup>

In this chapter the term “regulations” is used primarily in respect of the activities of the Regulations Review Committee, as the definition of “regulations” in the Standing Orders governs the scope of the committee’s jurisdiction in respect of the scrutiny of delegated legislation.

---

<sup>1</sup> For further discussion of delegated, or subordinate, legislation, see Ross Carter, Jason McHerron and Ryan Malone *Subordinate Legislation in New Zealand* (LexisNexis, Wellington, 2013); and Ross Carter Burrows and Carter *Statute Law in New Zealand* (5th ed, LexisNexis, Wellington, 2015) at 14–17.

<sup>2</sup> See, for example: Financial Markets Conduct Act 2013, s 549 and Telecommunications Act 1991, s 69N(2).

<sup>3</sup> For example: Health and Safety at Work Act 2015, s 222(2) and Climate Change Response Act 2002, s 247.

<sup>4</sup> SO 3.

<sup>5</sup> See: Interpretation Act 1999, s 29.

The Legislation Act 2012 does not use the term “regulations”. Instead it introduced the term “disallowable instrument” to describe delegated legislation that must be presented to the House and can be disallowed by the House. Disallowable instruments are legislative instruments, instruments that are stated by their empowering Act to be disallowable and instruments that have significant legislative effect.<sup>6</sup> Legislative instruments used to be referred to as statutory regulations; most are made by Order in Council, and all are published in the annual series of legislative instruments.<sup>7</sup> Legislative instruments are almost always also disallowable instruments, but a few are specified by their empowering legislation not to be.<sup>8</sup>

A unique form of delegated legislation is confirmable instruments. These are instruments made under an empowering provision that specifies that instruments made under it lapse at a deadline unless earlier confirmed by an Act of Parliament. Empowering provisions that authorise the making of confirmable instruments are listed in Schedule 2 of the Legislation Act 2012.

The Regulations Review Committee examines disallowable instruments as a matter of course, but can examine any delegated legislation, regardless of whether or not it is a disallowable instrument.<sup>9</sup> It is for the committee to decide whether an instrument falls within its jurisdiction.<sup>10</sup>

## PARLIAMENTARY REVIEW OF DELEGATED LEGISLATION

The importance of delegated legislation, the limited opportunities for its prior scrutiny, and the negligible parliamentary role in relation to it led to an inquiry by a select committee in 1962. (The committee is known as the Algie Committee after its chairperson, Sir Ronald Algie.) In its report the committee recognised that in modern conditions the practice of delegating law-making powers is often necessary in the interests of efficient administration. The committee did not agree that delegated legislation was wholly or even substantially bad in itself; rather, it saw it as an inevitable and necessary aspect of parliamentary government.<sup>11</sup> This fundamental acceptance of the need for delegated legislation has not been challenged.

Nevertheless, although accepting a necessary role for delegated legislation, the committee felt that steps should be taken to guard against its objectionable features. One of these steps was the establishment of a select committee, the Statutes Revision Committee, with an express brief to report on regulations that it considered infringed certain criteria. The Statutes Revision Committee, however, was not a specialist delegated legislation committee. Throughout its life, its work was dominated by the consideration of primary legislation. The House invariably referred bills of a technical legal character (which tended to be criminal, company and courts legislation) to the committee for consideration, whereas between 1962 and 1985 it referred only 11 regulations to the committee.<sup>12</sup> So scrutiny of delegated legislation was a minor and, until the last few years of its existence, almost entirely neglected aspect of its work.

The increasing importance of delegated legislation and the apparent ineffectuality of parliamentary arrangements for dealing with it led to pressure from the

<sup>6</sup> See: Legislation Act 2012, s 38. Significant legislative effect is defined at s 39.

<sup>7</sup> Legislation Act 2012, s 4.

<sup>8</sup> See, for example: Remuneration Authority Act 1977, s 12B(9) and Members of Parliament (Remuneration and Services) Act 2013, s 17(3).

<sup>9</sup> SOs 3 and 318.

<sup>10</sup> Regulations Review Committee *Complaint regarding Fisheries (Declaration of New Stocks Subject to Quota Management System) Notice (No 2) 2002* (5 September 2003) [2002–2005] AJHR I.16C at 4 (committee decided a fisheries notice declaring stock subject to the quota management system was a regulation within the meaning of the Regulations (Disallowance) Act 1989).

<sup>11</sup> Delegated Legislation Committee, report (7 June 1962) [1962] AJHR I.18.

<sup>12</sup> Statutes Revision Committee *First report on delegated legislation* (14 June 1985) [1984–1985] AJHR I.5A at [4.2].

House for a more focused approach to it. In 1985, following a fresh look at possible arrangements,<sup>13</sup> the House decided to establish a select committee to concentrate on scrutinising delegated legislation. This committee is known as the Regulations Review Committee, and it is the cornerstone of parliamentary oversight of delegated legislation.

At the same time as a specialist delegated legislation committee was established in 1985, the subject select committees were given power to initiate their own inquiries. These committees can therefore examine delegated legislation falling within their terms of reference.<sup>14</sup> A subject select committee, rather than the Regulations Review Committee, is the appropriate medium for the examination of delegated legislation on policy grounds.

## REGULATIONS REVIEW COMMITTEE

The Regulations Review Committee is a committee that the House under its Standing Orders establishes at the commencement of each Parliament.<sup>15</sup> The committee examines all regulations and all provisions in bills before other committees that relate to regulations.<sup>16</sup> In addition, the committee may examine draft regulations referred to it by a Minister,<sup>17</sup> consider any matter relating to regulations on which it wishes to report to the House,<sup>18</sup> and investigate complaints made to it about the operation of regulations.<sup>19</sup>

The Regulations Review Committee was the first committee (in 1985) to be chaired by an Opposition member, and such a chairperson has now become an established convention.<sup>20</sup> The committee meets regularly each week when the House is sitting and occasionally during adjournments too. Its committee secretariat includes lawyers from the Office of the Clerk who provide the committee with independent legal advice to enable it to carry out its tasks effectively.

The committee has taken the consistent line that it must strive to act in a bipartisan way in scrutinising regulations on behalf of the House. The House's purpose in setting it up was to ensure that the technical scrutiny of regulations was not neglected by the House. The committee is concerned with how policy is implemented in regulations, but not with the merits of the policy. It is for the House and the subject select committees to address the policy aspects or merits of regulations. The committee therefore does not question the policy underlying the regulations that it scrutinises.<sup>21</sup>

The committee's role regarding the various aspects of parliamentary scrutiny of delegated legislation is examined in this chapter. (A digest of the committee's reports prepared under the auspices of the New Zealand Centre for Public Law is available on the Victoria University of Wellington website.<sup>22</sup>)

<sup>13</sup> Statutes Revision Committee *Orders of the House* (17 August 1984) [1984–1985] AJHR I.5 at 2.

<sup>14</sup> SO 189(2).

<sup>15</sup> SO 184(1)(b).

<sup>16</sup> SO 318(1), (3).

<sup>17</sup> SO 318(2).

<sup>18</sup> SO 318(4).

<sup>19</sup> SO 318(5).

<sup>20</sup> Regulations Review Committee *Inquiry into instruments deemed to be regulations—An examination of delegated legislation* (6 July 1999) [1996–1999] AJHR I.16R at 8.

<sup>21</sup> Statutes Revision Committee *First report on delegated legislation* (14 June 1985) [1984–1985] AJHR I.5A at [8.4]; Regulations Review Committee *Regulation making powers in legislation* (4 February 1987) [1986–1987] AJHR I.16A at [8.2]; Regulations Review Committee *Report on the activities of the committee from 28 November 1990 to 31 March 1992* (18 August 1992) [1991–1993] AJHR I.16E at 33; Regulations Review Committee *Inquiry into instruments deemed to be regulations—An examination of delegated legislation* (6 July 1999) [1996–1999] AJHR I.16R at 9; Regulations Review Committee *Investigation into the Land Transport (Driver Licensing and Driver Testing Fees) Regulations 1999 and the Land Transport (Driver Licensing) Rule 1999* (24 August 1999) [1996–1999] AJHR I.16T at 6.

<sup>22</sup> See <[www.victoria.ac.nz](http://www.victoria.ac.nz)> (under “Publications”).

## JUDICIAL REVIEW OF DELEGATED LEGISLATION

As delegated legislation involves Parliament conferring on another person or body legal power to make legislation, it is appropriate for the House to limit jealously the extent to which it gives such delegated authority, and to monitor its exercise closely. Since the reforms of 1985 the House has endeavoured to make parliamentary control of delegated legislation more effective. But there is another longer-standing method of reviewing delegated legislation—that exercised by the courts.

The courts do not question the validity of a duly enacted Act of Parliament. But delegated legislation can be subject to challenge in the courts on the ground of invalidity. As delegated legislation owes its existence to a statutory power, if its provisions exceed that power (that is, the delegated legislation is *ultra vires*) it is invalid, and of no lawful effect. Delegated legislation may also be invalid if a special procedure—for example, consultation with interested parties—is prescribed to be followed before its making and this procedure has not been observed.

The courts' powers to review delegated legislation to ensure that its making complies with the enabling Act may themselves be limited by Parliament. Provisions in Acts of Parliament that seek to inhibit the courts' power to rule on the validity of delegated legislation may operate directly by prohibiting a court from reviewing the validity of delegated legislation made under the Act, or indirectly by conferring the power to make delegated legislation in such broad and subjective terms that it is difficult to put meaningful bounds on the delegated authority. These legislative practices are now generally regarded as undesirable, and are matters to which the Regulations Review Committee has regard in its work.

## HUMAN RIGHTS REVIEW OF DELEGATED LEGISLATION

Delegated legislation that is alleged to offend against the anti-discrimination provisions of the New Zealand Bill of Rights Act 1990 may be made the subject of a complaint to the Human Rights Commission. If the complaint cannot be satisfactorily resolved by the commission, civil proceedings may be brought against the Attorney-General before the Human Rights Review Tribunal.<sup>23</sup>

The Human Rights Review Tribunal may issue a declaration that delegated legislation is inconsistent with the freedom from discrimination guaranteed by the New Zealand Bill of Rights Act.<sup>24</sup> If such a declaration is made, the Minister responsible for the administration of the delegated legislation must report to the House, bringing the declaration to its attention and advising of the Government's response to it.<sup>25</sup> Review of delegated legislation by the Human Rights Commission and the Human Rights Review Tribunal on anti-discrimination grounds may overlap with some of the grounds on which the Regulations Review Committee examines regulations. (See "Grounds for report to the House", p 480.)

## PRIMARY LEGISLATION AUTHORISING THE MAKING OF DELEGATED LEGISLATION

### Principles

Parliamentary control of delegated legislation begins with close consideration of the provision that delegates the power to make such legislation. This power is set out in primary legislation and is known as a regulation-making power or an empowering provision. A first question for the House and its committees to address when presented with a proposal to authorise the making of delegated legislation is thus whether the power is necessary and appropriate.

<sup>23</sup> Human Rights Act 1993, s 92B(1)(b).

<sup>24</sup> Human Rights Act 1993, s 92J.

<sup>25</sup> Human Rights Act 1993, s 92K.

The Algie Committee in 1962 established that making delegated legislation is not, in principle, objectionable. The Regulations Review Committee has set out its view of the circumstances in which delegated legislation may be appropriate. In the view of the committee, delegated legislation should be confined to matters of detail and the implementation of policy. It should not be the means of making policy. Specifically, the committee considered that primary, not delegated, legislation should be the means by which:<sup>26</sup>

- an agency is established and has its functions defined
- substantive personal rights are created
- powers of search and seizure are created
- imprisonable criminal offences are created.

These principles have not been specifically endorsed by the House and are not rules that bind those preparing primary legislation or committees considering bills. However, they provide a background against which proposals for delegated legislative powers can be judged in the course of the legislative process, and they are likely to inform the Regulations Review Committee's contribution to the process. They are also reflected in the Legislation Advisory Committee guidelines.<sup>27</sup>

## **Power of the Regulations Review Committee to report on legislative proposals**

In 1986 the Regulations Review Committee was given the power to report, on its own initiative, to any other committee on an empowering provision in a bill before that committee<sup>28</sup> and any matter relating to regulations.<sup>29</sup>

For this purpose the committee examines every bill that has received a first reading and been referred to a select committee. It makes its legal advisers available to subject committees to present and explain the reports and answer questions.<sup>30</sup> The committee thus assumes an advocacy role in the legislative process for the principles of delegated legislation that it has established.

As well as having the right to intervene in the legislative process, the committee is sometimes invited by other committees to comment on regulation-making powers either contained in a bill as introduced or to be introduced into the bill by way of amendment.<sup>31</sup> The committee has also been invited by another committee to comment on a regulation-making scheme in a proposed international treaty that was before the subject committee.<sup>32</sup> The committee has recommended that all committees seek its advice on any new regulation-making powers they are considering recommending for insertion into a bill, and on any significant changes that a committee is considering recommending to a regulation-making power in a bill.<sup>33</sup>

26 Regulations Review Committee *Inquiry into principles determining whether delegated legislation is given the status of regulations* (30 June 2004) [2002–2005] AJHR I.16E at 25.

27 Legislation Advisory Committee *Guidelines 2014* at [13.1].

28 (19 November 1986) [1986–1987] JHR 436.

29 SO 318(3).

30 Regulations Review Committee *Activities of the Regulations Review Committee during 2003* (15 June 2004) [2002–2005] AJHR I.16D at 19.

31 Border Security Bill (53–2) (commentary, 10 March 2004) at 31–32 ([2002–2005] AJHR I.22C at 513–514) and *Regulations Review Committee Activities of the Regulations Review Committee during 2003* (15 June 2004) [2002–2005] AJHR I.16D at 26; Health (Screening Programmes) Amendment Bill (214–2) (commentary, 22 September 2003) at 7 ([2002–2005] AJHR I.22B at 575) and *Regulations Review Committee Activities of the Regulations Review Committee during 2003* (15 June 2004) [2002–2005] AJHR I.16D at 23.

32 Health Committee *International treaty examination of the agreement between the Government of New Zealand and the Government of Australia for the establishment of a joint scheme for the regulation of therapeutic products* (18 June 2004) [2002–2005] AJHR I.22C at 699 and App B.

33 *Regulations Review Committee Investigation into the Road User Charges (Transitional Exemption for Certain Farmers' Vehicles) Regulations 2013* (SR 2013/10) (12 August 2013) at 2 ([2011–2014] AJHR I.22B at 1118).

The committee's reports to other committees are summarised or noted in its periodic reports to the House, known as activities reports.

### **Outcomes of committee reports**

The committee's reports to subject select committees on regulation-making powers are merely recommendations. It is for the subject committees to decide whether to adopt them and recommend amendments to the bills to reflect them. Subject select committees may come to a different conclusion from the Regulations Review Committee on a regulation-making provision; though the Regulations Review Committee may ask the committee to reconsider the matter,<sup>34</sup> and has shown some persistence in pursuing issues with Ministers even after its recommendations have been initially rejected by the committees to which they were directed.<sup>35</sup> Ultimately, whether to amend a regulation-making provision is a matter for the judgement of the House. The ability of the Regulations Review Committee to focus committees' attention on regulation-making powers allows it to raise questions about the propriety of delegated legislation that may not otherwise arise, and has led to a number of changes to legislation passed by the House.<sup>36</sup>

### **Regulation-making provisions**

In 1962, the Algie Committee recommended that the precise limits of the law-making power conferred by Parliament should be set out as clearly as possible in the empowering provision. Following this recommendation, a new standard formula for provisions authorising the making of regulations was adopted on the initiative of the Chief Law Draftsman (now Chief Parliamentary Counsel). The formula was designed to conform to the committee's ideal of a provision that set out the precise limits of the law-making power and left intact the courts' power to review the validity of regulations made under it.

From time to time the Regulations Review Committee expresses its views on the drafting style of regulation-making powers.<sup>37</sup> The committee examines bills to determine whether the delegation of Parliament's law-making power is appropriate and clearly defined and represents good legislative practice. Although the committee's examination is not confined to the scrutiny grounds set out in the Standing Orders,<sup>38</sup> those grounds provide a useful test: would delegated legislation made under the empowering provision under review potentially transgress any of the grounds? The committee's examination also considers whether regulation-making powers infringe well-established principles applying to delegated legislation, such as those set out in guidelines issued by the Legislation Advisory Committee. Legislative proposals that provide for matters of policy and substance to be enacted by delegated legislation, for an Act itself to be amended, suspended or overridden by delegated legislation (a "Henry VIII" clause; see below), or for law-making powers to be delegated without provision for adequate scrutiny and control of the instrument exercising those powers, are all matters likely to receive attention from the committee.<sup>39</sup>

<sup>34</sup> Regulations Review Committee *Activities of the Committee from 1 April 1992 to 23 September 1993* (30 September 1993) [1991–1993] AJHR I.16L at [124].

<sup>35</sup> Regulations Review Committee *Activities of the Regulations Review Committee during 2000* (28 March 2002) [1999–2002] AJHR I.16I at 38; *Regulations Review Committee Activities of the Regulations Review Committee during 2001* (6 May 2002) [1999–2002] AJHR I.16J at 34, 40–41.

<sup>36</sup> In the first half of 2014, it recommended amendments to 16 bills. Of the six bills that were enacted, five incorporated at least some of the recommendations made by the Regulations Review Committee.

<sup>37</sup> *Regulations Review Committee Activities of the Regulations Review Committee during 2000* (28 March 2002) [1999–2002] AJHR I.16I at 34; *Regulations Review Committee Investigation into unpresented deemed regulations* (9 August 2006) [2005–2008] AJHR I.16E at 5.

<sup>38</sup> SO 319(2).

<sup>39</sup> *Regulations Review Committee Activities of the Regulations Review Committee in 2014* (8 August 2014) [2011–2014] AJHR I.16I at 14; *Regulations Review Committee Activities of the Regulations Review Committee in 2004* (20 April 2005) [2002–2005] AJHR I.16I at 18.

Each year, the committee raises concerns about a significant number of regulation-making powers. The grounds on which it has done so have been various. In some cases the committee has been concerned about the process by which powers created by the empowering provision would be exercised. Where the exercise of powers would not be by Order in Council and the committee considered that it should be, it recommended accordingly.<sup>40</sup> On another occasion the committee considered that the regulations to be made under the empowering provision should be subject to express confirmation by Parliament, given their importance (the fixing of levies).<sup>41</sup> Amongst other things, the committee has objected to empowering provisions that would have:

- allowed an Order in Council to override provisions of an Act<sup>42</sup>
- applied the provisions of one Act to another “with modifications”<sup>43</sup>
- had a retrospective effect<sup>44</sup>
- allowed a Government to use regulations to manage the application of an Act throughout its five-year lifetime<sup>45</sup>
- reduced the jurisdiction of the courts to determine the validity of any regulations made under it.<sup>46</sup>

Any of these elements in regulations would constitute grounds for the committee to draw them to the House’s attention.<sup>47</sup>

## **Delegated legislation changing primary legislation**

Parliament may delegate the power to amend, suspend, override or even repeal primary legislation via delegated legislation. Such a regulation-making provision is commonly called a “Henry VIII” clause. It has been said that this designation derives from Henry VIII’s association with autocratic government, specifically because in 1539 Parliament gave him extensive power to amend statutes by proclamation. However, its aptness has been doubted, since Henry VIII ruled (1509 to 1547) well before the concept of parliamentary sovereignty was established.<sup>48</sup> Such provisions are in any case much older than his reign.<sup>49</sup>

The transfer of power from the legislature to the executive that a Henry VIII clause entails has been treated with suspicion as possibly constitutionally inappropriate.<sup>50</sup> The Regulations Review Committee has agreed with the view of the 1932 *Report of the Committee on Ministers’ Powers* (the Donoughmore Committee) that such powers should be avoided unless demonstrably essential, and has recommended that they be used only in exceptional circumstances.<sup>51</sup> It

40 Regulations Review Committee *Report on the activities of the Committee in 1988 and 1989* (28 June 1990) [1990] AJHR I.16A at [5.11] and [5.14].

41 Regulations Review Committee *Activities of the Committee from 1 April 1992 to 23 September 1993* (30 September 1993) [1991–1993] AJHR I.16L at [17].

42 Regulations Review Committee *Report on the activities of the Committee in 1988 and 1989* (28 June 1990) [1990] AJHR I.16A at [5.4].

43 Regulations Review Committee *Report on the activities of the Committee from 28 November 1990 to 31 March 1992* (18 August 1992) [1991–1993] AJHR I.16E at [4.4].

44 Regulations Review Committee *Activities of the Committee from 1 April 1992 to 23 September 1993* (30 September 1993) [1991–1993] AJHR I.16L at [57]; Regulations Review Committee *Activities of the Regulations Review Committee in 2013* (27 June 2014) [2011–2014] AJHR I.16F at 28–29.

45 Regulations Review Committee *Activities of the Regulations Review Committee in 2013* (27 June 2014) [2011–2014] AJHR I.16F at 25–26.

46 Regulations Review Committee *Activities of the Regulations Review Committee in 2014* (8 August 2014) [2011–2014] AJHR I.16I at 17–18.

47 SO 319(2)(c), (f), (g).

48 *Thoburn v Sunderland City Council* [2002] EWHC 195 (Admin), [2003] QB 151 at [13] per Laws LJ.

49 Cecil Thomas Carr *Concerning English Administrative Law* (Oxford University Press, Oxford, 1941) at 41 (quoting examples from 1383 and 1388).

50 *Thoburn v Sunderland City Council* [2002] EWHC 195 (Admin), [2003] QB 151 at [13] per Laws LJ.

51 Regulations Review Committee *Inquiry into Resource Management (Transitional) Regulations 1994* (15 June 1995) [1993–1996] AJHR I.16C at 10; for the Donoughmore Committee, see the report of the Committee on Ministers’ Powers (UK) [1932] CMD 4060 at 61; Regulations Review Committee *Regulation making powers in legislation* (4 February 1987) [1986–1987] AJHR I.16A at [4.1].

has accepted that in the case of transitional provisions in legislation, a Henry VIII clause may be justified to deal with unforeseen contingencies arising during the implementation of a complex reform measure. It has been especially critical of the use of a Henry VIII clause to override legislative amendments made subsequent to the enactment of the clause.<sup>52</sup> It has also considered in detail a special type of Henry VIII clause that allows statutory provisions to be overridden for the purposes of implementing international treaties.<sup>53</sup> (See p 692.) It has continued to pay close attention to regulation-making powers allowing the making of regulations that can amend or override primary legislation during a specified transitional period.<sup>54</sup>

## Other matters

The Regulations Review Committee has indicated that it will pay particular attention to regulation-making provisions authorising the making of disallowable instruments that are not legislative instruments (previously referred to as “deemed regulations”). Disallowable instruments that are not also legislative instruments are not generally drafted by the Parliamentary Counsel Office and are not published in the Legislative Instrument series. They are, however, generally required to be presented to the House.<sup>55</sup> The committee has recommended that the provision empowering the making of this type of instrument expressly state both that it is a disallowable instrument and that it is required to be presented to the House.<sup>56</sup>

A further practice that the committee indicated it would pay attention to is the incorporation of material into regulations by reference. Incorporation by reference is a drafting technique that gives legal effect to provisions set out in a document without actually repeating the provisions or the content of the document in the text of the delegated legislation itself. This can cause difficulty accessing the law if the document is not readily available. The committee indicated that it intended to scrutinise as a matter of course provisions in bills authorising this practice, and to ask departments to demonstrate how regulations that incorporate material by reference comply with the best-practice guidelines issued by the former Legislation Advisory Committee.<sup>57</sup> The committee has accepted that there may be circumstances in which such best practice cannot be complied with because of copyright restrictions.<sup>58</sup> The Legislation Act 2012 establishes a regime that applies to most instruments incorporating material by reference, except where the parent Act expressly provides to the contrary. The regime includes consultation and accessibility requirements, and specifies the effect of amendments to material incorporated by reference.<sup>59</sup>

The committee has also held a special inquiry into a general final paragraph that is commonly included in empowering provisions, to the effect that regulations may be made “for such other matters as are contemplated by or necessary for giving full effect to this Act”, which is known as a catch-all provision. The committee satisfied itself that such a provision was acceptable and that its effect was truly limited to subsidiary and incidental matters.<sup>60</sup>

<sup>52</sup> Regulations Review Committee *Inquiry into the Resource Management (Transitional) Regulations 1994* (15 June 1995) [1993–1996] AJHR I.16C at 10.

<sup>53</sup> Regulations Review Committee *Inquiry into regulation-making powers that authorise international treaties to override any provisions of New Zealand enactments* (12 March 2002) [1999–2002] AJHR I.16H.

<sup>54</sup> Regulations Review Committee *Regulation-making powers that authorise transitional regulations to override primary legislation* (15 July 2014) [2011–2014] AJHR I.16J.

<sup>55</sup> Legislation Act 2012, s 41.

<sup>56</sup> Regulations Review Committee *Inquiry into the oversight of disallowable instruments that are not legislative instruments* (July 2014) [2011–2014] AJHR I.16H.

<sup>57</sup> Regulations Review Committee *Inquiry into material incorporated by reference* (12 July 2004) [2002–2005] AJHR I.16G.

<sup>58</sup> Legislation (Incorporation by Reference) Bill (250–1) (report, 31 March 2005) at 2 ([2002–2005] AJHR I.22D at 452).

<sup>59</sup> Legislation Act 2012, ss 48–57.

<sup>60</sup> Regulations Review Committee *Inquiry into the drafting of empowering provisions in bills* (12 July 1990) [1990] AJHR I.16.

## PREPARATION OF DELEGATED LEGISLATION

### Drafting

Legislative instruments<sup>61</sup> are drafted in the Parliamentary Counsel Office. Some 40 per cent of the drafting resources of the office may at any time be committed to drafting delegated legislation rather than primary legislation.<sup>62</sup> Although most of the delegated legislation drafted by the office consists of legislative instruments, it also drafts other instruments, including proclamations and some notices.

Items of delegated legislation that are not legislative instruments are generally not drafted in the Parliamentary Counsel Office. Indeed, one of the principal criticisms of such legislation (along with the difficulty of accessing them) is the variable and often defective quality of their drafting. These instruments are usually drafted by the department or agency responsible for making them.

### Consideration of draft delegated legislation

It is unusual for the House to have the opportunity to consider delegated legislation before it has been promulgated, but occasionally, when the House has a bill before it, the Minister presents a draft of delegated legislation proposed to be made under powers to be conferred by the bill. This has been done with sets of draft regulations in the transport sector while the bills concerned were being passed through the House. In one case, proposed amendments to the bill would have enabled new regulations relating to seat belts and child restraints to be made, and a draft of the regulations proposed to be made under the powers sought was appended to the Supplementary Order Paper setting out these amendments. The Supplementary Order Paper was referred to the select committee considering the bill, and the committee also examined the draft regulations.<sup>63</sup> In another case, draft regulations were referred by motion in the House to the select committee then considering a bill to introduce a graduated licensing system, and were considered by the committee along with the bill.<sup>64</sup>

### Referral of draft regulations to the Regulations Review Committee

While formal referral by the House of draft regulations to select committees is rare, there is provision under the Standing Orders for the responsible Minister to refer draft regulations to the Regulations Review Committee for its consideration.<sup>65</sup> Until 2008, this was a significant area of work for the committee, which had on average 15 sets of draft regulations referred to it each year from 1999 to 2008.<sup>66</sup> Since 2009, Ministers have made little use of this provision: the committee has had

---

<sup>61</sup> As defined by the Legislation Act 2012, s 4.

<sup>62</sup> Information provided by the Parliamentary Counsel Office, 9 September 2014.

<sup>63</sup> Statutes Revision Committee Report on Supplementary Order Paper No. 2, relating to the Transport Amendment Bill (No 4): Seat belts and child restraints (14 September 1983) [1983] AJHR I.5A.

<sup>64</sup> (18 March 1987) [1986–1987] JHR 682 (Transport (Law Reform) Bill).

<sup>65</sup> SO 318(2).

<sup>66</sup> See activities reports of the Regulations Review Committee (excluding figures for 2002, for which no data is available): *Activities of the Regulations Review Committee during 2001* (6 May 2002) [1999–2002] AJHR I.16J at 32; *Activities of the Regulations Review Committee during 2003* (15 June 2004) [2002–2005] AJHR I.16D at 16–19; *Activities of the Regulations Review Committee in 2004* (20 April 2005) [2002–2005] AJHR I.16I at App F; *Activities of the Regulations Review Committee in 2005* (47th Parliament) (2 August 2005) [2002–2005] AJHR I.16N at App F; *Activities of the Regulations Review Committee in 2006* (7 March 2007) [2005–2008] AJHR I.16G at App F; *Activities of the Regulations Review Committee in 2007* (28 February 2008) [2005–2008] AJHR I.16M at App F; *Activities of the Regulations Review Committee in 2006* (7 March 2007) [2005–2008] AJHR I.16G at App F; *Activities of the Regulations Review Committee in 2008* (30 September 2008) [2005–2008] AJHR I.16R at App F.

only three sets of draft regulations referred to it, and none since 2011.<sup>67</sup> The bulk of the draft regulations considered by the committee were land transport, maritime transport and civil aviation rules, which the Minister of Transport referred to the committee from 1998 until 2011.<sup>68</sup>

Where a Minister has referred draft regulations to the committee, the committee has generally confined itself to a briefing from officials of the department concerned and has not held extended hearings. The committee regards its relationship with the referring Minister as an advisory one; for this reason, if the draft of the regulations referred to it has not yet been publicly released, it has considered it appropriate to hear evidence from affected parties in private.<sup>69</sup>

The committee examines draft regulations in the same way as it examines regulations once they have been made and, following its general practice in scrutiny work, it does not comment on policy aspects of the draft regulations.<sup>70</sup> (See “Examination of delegated legislation”, p 479.) Once its examination is concluded, the committee reports formally to the Minister on the draft regulations, and subsequently to the House in its periodic reports on its activities. In its reports to ministers, the committee has raised issues including the unlawful delegation of a law-making power,<sup>71</sup> the adequacy of a consultation process,<sup>72</sup> and the unclear relationship between rules and the accompanying appendices.<sup>73</sup> The fact that the committee has examined regulations in draft does not preclude a further review of them when they are made.<sup>74</sup> Indeed, the committee is likely to monitor whether any changes it has suggested have been made to the final regulations.

The committee may also take the initiative, inviting a Minister to refer draft regulations that it has learnt about,<sup>75</sup> perhaps after being alerted by the receipt of a complaint.<sup>76</sup> It may choose not to conduct a detailed scrutiny of draft regulations if there is too little time to do so satisfactorily, reserving such examination for when the regulations are made.<sup>77</sup> The committee has conveyed its views on draft regulations to the select committee that was considering a bill under which the regulations were to be made.<sup>78</sup> Where it has reported adversely on regulations, it has sometimes invited a Minister to refer any replacement regulations to it in draft. For example, following criticism about fees regulations for identity services and

<sup>67</sup> See activities reports of the Regulations Review Committee: *Activities of the Regulations Review Committee in 2009* (26 February 2010) [2008–2011] AJHR I.16E at App F; *Activities of the Regulations Review Committee in 2010* (15 March 2011) [2008–2011] AJHR I.16J at 14; *Activities of the Regulations Review Committee in 2011* (5 October 2011) [2008–2011] AJHR I.16O at 13; *Activities of the Regulations Review Committee in 2012* (19 March 2014) [2011–2014] AJHR I.16E; *Activities of the Regulations Review Committee in 2013* (27 June 2014) [2011–2014] AJHR I.16F; *Activities of the Regulations Review Committee in 2014* (8 August 2014) [2011–2014] AJHR I.16I.

<sup>68</sup> Regulations Review Committee *Activities of the Regulations Review Committee during 2001* (6 May 2002) [1999–2002] AJHR I.16J at 32.

<sup>69</sup> Regulations Review Committee *Activities of the Regulations Review Committee during 1999* (8 October 1999) [1996–1999] AJHR I.16X at 35.

<sup>70</sup> Ibid, at 42.

<sup>71</sup> Regulations Review Committee *Activities of the Regulations Review Committee in 2006* (7 March 2007) [2005–2008] AJHR I.16G at 10; *Regulations Review Committee Activities of the Regulations Review Committee in 2007* (28 February 2008) [2005–2008] AJHR I.16M at 8.

<sup>72</sup> Regulations Review Committee *Activities of the Regulations Review Committee in 2005* (2 August 2005) [2002–2005] AJHR I.16N at 12.

<sup>73</sup> Regulations Review Committee *Activities of the Regulations Review Committee in 2008* (30 September 2008) [2005–2008] AJHR I.16R at 11.

<sup>74</sup> Regulations Review Committee *Activities of the Regulations Review Committee during 1999* (8 October 1999) [1996–1999] AJHR I.16X at 35.

<sup>75</sup> Regulations Review Committee *Report on the activities of the Committee in 1988 and 1989* (28 June 1990) [1990] AJHR I.16A at [4].

<sup>76</sup> Regulations Review Committee *Activities of the Regulations Review Committee during 1999* (8 October 1999) [1996–1999] AJHR I.16X at 40–41.

<sup>77</sup> Regulations Review Committee *Activities of the Regulations Review Committee during 2001* (6 May 2002) [1999–2002] AJHR I.16J at 32.

<sup>78</sup> Regulations Review Committee *Activities of the Committee from 1 April 1992 to 23 September 1993* (30 September 1993) [1991–1993] AJHR I.16L at [244]–[249] (Health and Safety in Employment (Management of Substances Hazardous to Health) Regulations).

codes of animal welfare, draft new regulations were referred to the committee for consideration.<sup>79</sup>

## PUBLICATION OF DELEGATED LEGISLATION

The publication requirements for delegated legislation vary depending on the type of delegated legislation.

### Legislative instruments

Legislative instruments must be notified in the *Gazette* and published in an official series.<sup>80</sup> The annual series of legislative instruments, known as the LI series, is produced by the Parliamentary Counsel Office in accordance with its obligations under the Legislation Act 2012.<sup>81</sup> There has been an annual series of delegated legislation, previously called the statutory regulations (or SR) series, since 1936.<sup>82</sup> The SR series became the LI series as a result of the Legislation Act 2012. Legislative instruments are required to be numbered for citation purposes.<sup>83</sup> The Chief Parliamentary Counsel arranges for reprints of legislative instruments, incorporating any amendments to them that have been adopted since they were first made.<sup>84</sup> Any legislative instruments drafted outside the Parliamentary Counsel Office that are required to be published in the official series must be forwarded to the Chief Parliamentary Counsel immediately after they are made, so that that officer may arrange for their printing and publication.<sup>85</sup> Instruments that are not legislative instruments may be published in the official series if the Attorney-General or the Chief Parliamentary Counsel so directs.<sup>86</sup> These requirements are designed to ensure that legislative instruments are published promptly in an easily accessible form.

### Disallowable instruments that are not legislative instruments

Disallowable instruments that are not legislative instruments are usually required by the relevant empowering provision to be notified in the *Gazette* and published by the agency responsible for making them.<sup>87</sup> They are generally available on the agency's website, and may be available via a link from the website publishing official New Zealand legislation.<sup>88</sup> Disallowable instruments that are not legislative instruments are not generally submitted to the high-level internal governmental processes of endorsement by the Cabinet and at a meeting of the Executive Council, drafted in the Parliamentary Counsel Office, or subject to the publication requirements for legislative instruments described above.

In 1999, an inquiry by the Regulations Review Committee found that although instruments of this type (then known as deemed regulations) were subject to scrutiny by the committee, they could be difficult to "keep track of", and varied in the quality of their drafting.<sup>89</sup> In general, the committee considered that they suffered from inappropriate formats and lack of consultation and accessibility.<sup>90</sup> The committee therefore recommended that such instruments be authorised

<sup>79</sup> Regulations Review Committee *Activities of the Regulations Review Committee during 2003* (15 June 2004) [2002–2005] AJHR I.16D at 16–18.

<sup>80</sup> Legislation Act 2012, ss 6, 11 and 12.

<sup>81</sup> Legislation Act 2012, ss 6 and 11.

<sup>82</sup> See Regulations Act 1936, s 3 and Acts and Regulations Publication Act 1989, s 11.

<sup>83</sup> Legislation Act 2012, s 11.

<sup>84</sup> Legislation Act 2012, s 6(1)(c) and (5).

<sup>85</sup> Legislation Act 2012, ss 6(1)(b), 10 and 11(1).

<sup>86</sup> Legislation Act 2012, s 14.

<sup>87</sup> See, for example, Biosecurity Act 1993, s 57; Accident Compensation Act 2001, s 44; Food Act 2014, s 398.

<sup>88</sup> <[www.legislation.govt.nz](http://www.legislation.govt.nz)>.

<sup>89</sup> Regulations Review Committee *Inquiry into instruments deemed to be regulations—An examination of delegated legislation* (6 July 1999) [1996–1999] AJHR I.16R at 36.

<sup>90</sup> Regulations Review Committee *Activities of the Regulations Review Committee during 2000* (28 March 2002) [1999–2002] AJHR I.16I at 19–20.

only in specified circumstances that justified an exception to the traditional form of regulation, and that in any event they should be subject to explicit Cabinet endorsement. Furthermore, the committee considered that certain subjects (for example, taxation and criminal offences) because of their importance should never be dealt with by these instruments.<sup>91</sup>

Because of the issues raised by the committee in 1999, the Parliamentary Counsel Office maintains a list of these instruments, labelled “Other Instruments”, on its website, on the basis of advice from the authorities making them.<sup>92</sup> The Parliamentary Counsel Office is also now required to advise the departments and agencies drafting these instruments in order to help them to follow good drafting practice.<sup>93</sup>

In 2014, the committee re-examined the issues regarding these instruments<sup>94</sup> and again found problems with their drafting, and with their notification, presentation to the House and publication.<sup>95</sup> The committee recommended the establishment of a register of delegated legislation, similar to the Australian Federal Register of Legislative Instruments, and a requirement to register all delegated legislation.<sup>96</sup> In its response to the committee, the Government recognised significant concern about access to these instruments, and said that it had directed the Parliamentary Counsel Office to explore amending the Legislation Act 2012 to provide for the development of a register.<sup>97</sup>

## PRESENTATION OF DELEGATED LEGISLATION TO THE HOUSE

The Legislation Act 2012 requires all legislative instruments and most disallowable instruments to be presented to the House not later than the 16th sitting day after the day on which they are made.<sup>98</sup> This is a general requirement, but if specific provisions of other Acts require presentation to the House within a shorter time (or allow a longer timeframe), such provisions prevail over the general provision.<sup>99</sup>

In general, whether any failure to comply with a statutory requirement invalidates the process of which the requirement is part depends upon the view the courts take of the consequences of non-compliance in the statutory context.<sup>100</sup> Factors identified by the court as relevant considerations include the degree and seriousness of the non-compliance, the potential consequences of the non-compliance, and whether prejudice has or is likely to have occurred.<sup>101</sup> This test (formulated in respect of a statutory notice to an individual) has been applied by the court to test the validity of a particular regulation presented to the House out of time. In the circumstances of the particular case, it was held that failure to present the regulations to the House within 16 sitting days did not invalidate them.<sup>102</sup>

The requirement to present legislative and disallowable instruments to the House applies only once an instrument has been made; it is not a step in making the instrument in the first place. Although there is a general practice of not bringing

<sup>91</sup> Regulations Review Committee *Inquiry into instruments deemed to be regulations—An examination of delegated legislation* (6 July 1999) [1996–1999] AJHR I.16R at 14, 16–17.

<sup>92</sup> <[www.legislation.govt.nz](http://www.legislation.govt.nz)>. See the “Browse” and “Advanced search” functions.

<sup>93</sup> Legislation Act 2012, s 59(1)(g).

<sup>94</sup> Regulations Review Committee *Inquiry into oversight of disallowable instruments that are not legislative instruments* (11 July 2014) [2011–2014] AJHR I.16H.

<sup>95</sup> Ibid, at 7.

<sup>96</sup> Ibid, at 11.

<sup>97</sup> Government response to report of Regulations Review Committee on “Inquiry into the oversight of disallowable instruments that are not legislative instruments” (9 December 2014) [2014–2017] AJHR J.1 at 3.

<sup>98</sup> Legislation Act 2012, s 41.

<sup>99</sup> For example, the Epidemic Preparedness Act 2006, s 16.

<sup>100</sup> *Wang v Minister of Internal Affairs* [1998] 1 NZLR 309 (HC) at 318; *Tannadyce Investments Ltd v Commissioner of Inland Revenue* [2011] NZSC 158, [2012] 2 NZLR 153 at [74]–[75].

<sup>101</sup> *Wang v Minister of Internal Affairs* [1998] 1 NZLR 309 (HC) at 318; see also *Tannadyce Investments Ltd v Commissioner of Inland Revenue* [2011] NZSC 158, [2012] 2 NZLR 153 at [75].

<sup>102</sup> *Haliburton v Broadcasting Commission* [1999] NZAR 233 (HC) at 240.

legislative instruments into force until 28 days after they have been made, this practice is often departed from without any question being raised about the legal effect of such instruments before their presentation to the House.<sup>103</sup> Therefore, the view has generally been taken that presentation is a means of ensuring some publicity is given to a legislative or disallowable instrument that has already been made, rather than an essential step in making the instrument or in ensuring its validity or continuing validity; but this requirement has been described as a “feeble safeguard” given the large number of documents presented to the House.<sup>104</sup> Where the Regulations Review Committee has noted that legislative or disallowable instruments have been presented out of time, its comments have been limited to expressing its concern that the failure to present the instruments might mean that they were not brought to its attention.<sup>105</sup> It is also clear that the House’s power to disallow disallowable instruments is not dependent upon their having been presented to it in the first place.<sup>106</sup>

Regardless of the legal effect of failure to present legislative and disallowable instruments to the House within the statutory time limit, failure to do so will attract criticism from the Regulations Review Committee.<sup>107</sup>

## **PARLIAMENTARY INVOLVEMENT IN MAKING DELEGATED LEGISLATION**

Several procedures involve the House in considering delegated legislation. They are discussed below.

### **Consultation with the House**

Statute may require consultation with the House of Representatives before a legal power can be exercised. Regarding delegated legislation, there is provision for consultation with the House and committees of the House before regulations may be made relating to the reporting standards to be observed by departments, certain organisations and Offices of Parliament.

Before any regulations may be made prescribing the non-financial reporting standards for departments, certain organisations or Offices of Parliament and the form in which reported information must be presented to the House, the Minister of Finance must submit such regulations to the Speaker in draft.<sup>108</sup> The Speaker presents the draft regulations to the House as soon as reasonably practicable.<sup>109</sup> After considering any comments of the Speaker or any committee of the House that considered the draft regulations, the Minister may amend the regulations as he or she sees fit.<sup>110</sup> The regulations may then be made. (See Chapter 34.) In the case of regulations relating to Offices of Parliament, the regulations may be made only after they have been approved by resolution of the House.<sup>111</sup>

### **Validation of delegated legislation by statute**

The validation of a regulation by an Act of Parliament can cure any defect in the regulation or in the way the regulation was made that would otherwise have led to

<sup>103</sup> Cabinet Office *Cabinet Manual* 2008 at [7.91]–[7.94].

<sup>104</sup> AJI Campbell “Laying and Delegated Legislation” [1983] *Public Law* 43; Cecil Thomas Carr *Concerning English Administrative Law* (Oxford University Press, Oxford, 1941) at 58.

<sup>105</sup> Regulations Review Committee *Investigation into six codes deemed to be codes of welfare under the Animal Welfare Act 1999* (1 August 2000) [1999–2002] AJHR I.16B at 12–13; Regulations Review Committee *Activities of the Regulations Review Committee during 2000* (28 March 2002) [1999–2002] AJHR I.16I at 28.

<sup>106</sup> Legislation Act 2012, s 42(1).

<sup>107</sup> Regulations Review Committee *Activities of the Regulations Review Committee during 2000* (28 March 2002) [1999–2002] AJHR I.16I at 19–20.

<sup>108</sup> Public Finance Act 1989, s 82(1)–(2).

<sup>109</sup> Public Finance Act 1989, s 82(3).

<sup>110</sup> Public Finance Act 1989, s 82(4).

<sup>111</sup> Public Finance Act 1989, s 82(5).

the regulation being regarded as invalid.<sup>112</sup> Effectively, in validating a regulation, Parliament ratifies and adopts what has been done. The result is the same as if Parliament had itself made the regulation in primary legislation.<sup>113</sup>

Parliament occasionally passes other legislation that validates regulations about whose legality there is a serious doubt.<sup>114</sup> The Regulations Review Committee has expressed concern at the retrospective validation of regulations that were made in breach of statutory consultation requirements. The committee examines critically the reasons given for proposing such validating legislation. It considers that consultation procedures prescribed by statute should be strictly complied with.<sup>115</sup>

## **Confirmation of delegated legislation by statute**

A number of statutes empower the making of delegated legislation that lapses at a particular date unless earlier confirmed by an Act of Parliament. Such legislation is referred to as “confirmable instruments”, a term defined by the Legislation Act 2012.<sup>116</sup> An annual Subordinate Legislation (Confirmation and Validation) Bill is introduced to ensure that confirmable instruments are appropriately confirmed each year.<sup>117</sup> Where the purpose of a bill is limited to the confirmation and validation of regulations that would otherwise lapse, the House has adopted a streamlined procedure that gives as much time as possible to select committee consideration, on the basis that this is the more effective means of scrutinising this type of legislation.<sup>118</sup> There is no debate on the bill’s first or third reading, and the House does not resolve itself into committee unless an amendment to the bill is proposed.<sup>119</sup> There are no particular types of delegated legislation that must be made subject to this confirmation procedure. However, the Regulations Review Committee has suggested that four categories of regulation should be considered especially suitable for statutory confirmation:<sup>120</sup>

- emergency regulations
- regulations imposing a financial charge in the nature of a tax
- regulations amending the empowering Act or another Act (Henry VIII clauses)
- regulations dealing with issues of policy under the authority of a broad empowering provision.

The fact of proposed regulations falling within one of these categories should prompt a preliminary inquiry as to whether delegated legislation is appropriate at all, since it suggests that the subject matter of the regulations may be important enough for enactment in primary legislation. If a regulation-making power is appropriate, it is a matter of judgement whether statutory confirmation should be employed in any particular case. For instance, it may not be appropriate to require confirmation in every case where regulations merely alter the details in a schedule to an Act. But where such alterations are not limited to minor corrections

<sup>112</sup> *Turners & Growers Export Ltd v Moyle* HC Wellington CP720/88, 15 December 1988 at 68–70, 72.

<sup>113</sup> *Boscawen Properties Ltd v Governor-General* HC Auckland M.555/93, 10 December 1993 at 6.

<sup>114</sup> For example: Primary Products Marketing (Regulations Confirmation) Act 1988, s 3; Subordinate Legislation (Validation) Act 1997; Subordinate Legislation (Confirmation and Validation) Act 1997, s 9.

<sup>115</sup> *Regulations Review Committee Activities of the Regulations Review Committee during 1997* (7 April 1998) [1996–1999] AJHR I.16G at 28–29.

<sup>116</sup> Legislation Act 2012, s 47B.

<sup>117</sup> Where delegated legislation must be confirmed urgently, it may be that there will be more than one confirmation bill in any particular year.

<sup>118</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 23.

<sup>119</sup> SO 325.

<sup>120</sup> *Regulations Review Committee Regulation making powers in legislation* (4 February 1987) [1986–1987] AJHR I.16A at [8.1]; *Regulations Review Committee Inquiry into the principles determining whether delegated legislation is given the status of regulations* (30 June 2004) [2002–2005] AJHR I.16E at 27.

or updating, primary legislation or regulations subject to confirmation will be appropriate.<sup>121</sup>

Historically, the time for which regulations that are subject to confirmation may run before lapsing or expiring depends on the precise provisions set out in the statute under which they are made. However, from 1 January 2016 a new framework for confirmable instruments was established by the Legislation (Confirmable Instruments) Amendment Act 2015. This Act, which inserted a new subpart 1A into Part 3 of the Legislation Act 2012, replaced the existing confirmation provisions in over 30 statutes with a single standard set of provisions.<sup>122</sup> Associated amendments were made to existing statutes to cross-refer to the standard provisions and to set out standard explanatory note requirements for a confirmable instrument.<sup>123</sup>

Confirmation is the House's opportunity to consider the policy that lies behind the regulations to be confirmed. It is not an exercise confined to examining regulations for conflict with delegated legislation principles. Once read a first time, a confirmation and validation bill stands referred to the Regulations Review Committee.<sup>124</sup> The streamlined House processes allow time for the committee to consider seeking the views of the appropriate subject select committees on the regulations' policy and drafting.<sup>125</sup>

## **Delegated legislation made by the House**

Parliament usually delegates legislative powers to the Governor-General or Ministers, but it is perfectly competent for such powers to be delegated to the House itself and in one instance this has been done. It is provided in statute that the House may make rules for the guidance of the Ombudsmen in the exercise of their functions.<sup>126</sup> Such rules are made by resolution of the House, and are printed and published as if they were legislative instruments.<sup>127</sup> The House has made two sets of rules under this power, in 1962 and in 1989,<sup>128</sup> both relating to the publication of reports by the Ombudsmen.

## **Amendment of disallowable instruments by the House**

The House has a general statutory power, by resolution, to amend any disallowable instrument or to revoke and substitute any disallowable instrument.<sup>129</sup> Such amendments or substituted disallowable instruments are advised to the Chief Parliamentary Counsel by the Clerk of the House, and are printed and published in the same way as a legislative instrument.<sup>130</sup> They come into force on the later of any commencement date expressed in them or the 28th day after a notice advising of the revocation or amendment has been published.<sup>131</sup> Any member may give notice of motion to amend or substitute a disallowable instrument. Such a notice stands referred to a select committee, to be allocated by the Clerk.<sup>132</sup> A notice for amendment of a disallowable instrument is subject to financial veto by the Government if the amendment or revocation would have more than a minor impact on the Government's fiscal aggregates.<sup>133</sup>

<sup>121</sup> *Regulations Review Committee Activities of the Regulations Review Committee during 2001* (6 May 2002) [1999–2002] AJHR I.16J at 35.

<sup>122</sup> Legislation Act 2012, ss 47A–47I and sch 2.

<sup>123</sup> Legislation (Confirmable Instruments) Amendment Act 2015, sch 3.

<sup>124</sup> SO 325.

<sup>125</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 22–23.

<sup>126</sup> Ombudsmen Act 1975, s 15(1).

<sup>127</sup> Ombudsmen Act 1975, s 15(3).

<sup>128</sup> (28 November 1962) [1962] JHR 345–346 (Ombudsman's Rules 1962); (9 March 1989) [1987–1990] 2 JHR 1150–1151 (Ombudsmen Rules 1989).

<sup>129</sup> Legislation Act 2012, s 46(1).

<sup>130</sup> Legislation Act 2012, s 47.

<sup>131</sup> Legislation Act 2012, s 46(2).

<sup>132</sup> SO 323(1).

<sup>133</sup> SO 326(1) and (3).

This amendment and substitution power gives the House a general authority to make disallowable instruments, but only in amendment of or substitution for disallowable instruments that have already been made and not as an initiator of disallowable instruments in its own right. Any amended or substituted disallowable instruments made by the House must themselves, as delegated legislation, be within the terms of the empowering provision authorising the making of the instrument in the first place. The House has exercised this power only once, in 2008, when it resolved to revoke a clause of a notice relating to the scope of practice of enrolled nurses and to substitute it with a new clause.<sup>134</sup>

## **Approval of delegated legislation by affirmative resolution of the House**

Statute prevents certain types of regulations from coming into force unless the House approves them or approves the Order in Council for their commencement. Effectively, the House is asked to approve the making of the regulations. This is known as the “affirmative resolution procedure”, because unless the House positively approves the regulations they will never come into effect. (The affirmative resolution procedure has also been applied to instruments that are not disallowable instruments, such as instructions on the non-financial reporting standards of Offices of Parliament.<sup>135</sup>)

The affirmative resolution procedure was first introduced in respect of Orders in Council amending the lists of controlled drugs set out in the schedules of the Misuse of Drugs Act 1975. Where a substance is listed as a controlled drug, criminal penalties apply to its supply or possession, depending upon its classification in those schedules. Substances are classified according to their risk of harm.<sup>136</sup> The need for a “fast-track” response to rapid developments in the illicit drug market, with the consequent need to include new substances in the schedules and reclassify others, led to the development of the affirmative resolution procedure whereby the schedules can be amended by Order in Council, but only following explicit parliamentary endorsement.<sup>137</sup> A similar procedure has been devised for altering the amount of a controlled drug in a person’s possession that automatically raises a presumption that the drug is possessed for the purposes of supply.<sup>138</sup> The procedure has since been extended to other regulations.<sup>139</sup>

Typically, regulations subject to the affirmative resolution procedure can come into force in accordance with a commencement order only after the regulations have been approved by resolution of the House.<sup>140</sup> Such regulations lapse if a motion to approve the commencement order is defeated or if no commencement order is approved within one year.<sup>141</sup> In the case of regulations prescribing the publication and non-financial reporting standards for Offices of Parliament, the House must be consulted on the regulations in draft first and they may be made only after they have been approved by resolution of the House.<sup>142</sup>

<sup>134</sup> (23 September 2008) 650 NZPD 19223. The resolution was made in accordance with s 9(1) of the Regulations (Disallowance) Act 1989, which was repealed in August 2013 and replaced by s 46 of the Legislation Act 2012. The provision revoked and substituted was cl 4 of the Notice of Scopes of Practice and Related Qualifications Prescribed by the Nursing Council of New Zealand, dated 18 August 2004 and published on 15 September 2004 on pages 2958–2960 of a supplement to the *New Zealand Gazette*.

<sup>135</sup> Public Finance Act 1989, s 82(1) and (2).

<sup>136</sup> Misuse of Drugs Act 1975, s 3A.

<sup>137</sup> Misuse of Drugs Amendment Bill (No 4) (325–2) (commentary, 26 June 2000) at 2–5 ([1999–2002] AJHR I.22A at 531–534).

<sup>138</sup> Misuse of Drugs Act 1975, s 4(1B).

<sup>139</sup> Dog Control Act 1996, s 78B (breeds or types of dog that may not be imported and must be muzzled); Public Finance Act 1989, s 82(5) (publication of information and non-financial reporting standards for Offices of Parliament).

<sup>140</sup> See, for example: Misuse of Drugs Act 1975, ss 4(2) and 4A(1)–(2).

<sup>141</sup> See, for example: Misuse of Drugs Act 1975, s 4A(4).

<sup>142</sup> Public Finance Act 1989, s 82.

The House has supplemented these statutory procedures by making its own rules for dealing with a motion to approve a regulation or other instrument. A notice of motion to approve a regulation or proposed regulation under any statute stands referred to a select committee for examination. The Clerk allocates the notice to the most appropriate committee.<sup>143</sup> (A notice of motion may be given while any statutory waiting time is running. The select committee's examination of the commencement order and the statutory waiting time may run simultaneously.) The committee must report back to the House on the notice of motion no later than 28 days after it was lodged.<sup>144</sup> It is for the committee to determine the depth of its examination (in particular, whether it hears public submissions). Inevitably its examination of the order must be carried out swiftly, otherwise the intent of the legislation to provide a fast-track amendment process would be defeated.

The House's rules prevent any motion to approve a regulation or proposed regulation being moved until the committee has reported back on the notice of motion or 28 days have elapsed since the notice was given, whichever is the earlier.<sup>145</sup> During this time the notice of motion appears on the Order Paper with a note indicating that it cannot be dealt with until one of those events has occurred. When the committee does report on the notice, its report is set down for consideration together with the notice of motion.<sup>146</sup> If the committee reports back within 28 days the motion can be moved and dealt with at any time thereafter; and if, for whatever reason, the committee fails to carry out its obligation to report within 28 days the motion can be moved in the absence of such a report.

The Health Committee in its consideration of controlled drugs orders has adopted a practice of requesting a briefing from the Expert Advisory Committee on Drugs both before an order is made classifying a drug and after a notice of motion has been lodged. The committee itself also undertakes further consultation or examination if it considers it necessary.<sup>147</sup> Evidence from officials of other departments involved in the process may also be heard.<sup>148</sup> The committee scrutinises the process followed by the Expert Advisory Committee in making the recommendations that led to the proposal to classify the drug.<sup>149</sup>

Where, in any case, the House is given power to approve the making of regulations, the House's approval of them does not exempt the regulations concerned from judicial scrutiny as to whether they were made within the powers conferred by the empowering legislation.<sup>150</sup> It has been said that if regulations have been approved by the House it will be more difficult to persuade a court to intervene on the grounds that the regulations are vitiated by being unreasonable.<sup>151</sup> On the other hand, judges may differ in the weight that they give to the fact that a regulation has received the prior approval of the House.<sup>152</sup>

As the initial applications of the affirmative resolution procedure involved Henry VIII clauses, the dangers of its proliferation for this purpose led the Regulations Review Committee to inquire into the principles regarding its use. The committee, in an interim report, expressed concern at the use of the procedure

<sup>143</sup> SO 322(1).

<sup>144</sup> SO 322(2).

<sup>145</sup> SO 322(3).

<sup>146</sup> SO 250(1)(d).

<sup>147</sup> Health Committee *Misuse of Drugs (Classification of Fantasy) Order 2001* [1999–2002] AJHR I.22C at 510–516.

<sup>148</sup> Health Committee *Report on the Notice of Motion on the Misuse of Drugs (Changes to Controlled Drugs) Order 2005 and Misuse of Drugs (Presumption of Supply—Amphetamine) Order 2005* (6 July 2005) at 2 ([2002–2005] AJHR I.22D at 540).

<sup>149</sup> Ibid, at 3 ([2002–2005] AJHR I.22D at 541).

<sup>150</sup> *Hoffman-La Roche v Secretary of State for Trade and Industry* [1975] AC 295 (HL) at 341, 349, 354, 365 and 372.

<sup>151</sup> *Nottinghamshire County Council v Secretary of State for the Environment* [1986] 1 AC 240 (HL).

<sup>152</sup> See, for example, *Miah v Secretary of State for Work and Pensions* [2003] EWCA Civ 1111, [2003]

<sup>4</sup> All ER 702 at [34] per Ward LJ (“complete cynicism about the adequacy of parliamentary scrutiny of subordinate legislation of this kind”).

to amend primary legislation by way of delegated legislation in areas that dealt with significant policy matters.<sup>153</sup> It has also protested at proposals to extend the procedure into new areas, though the subject select committee considering the matter may take a different view.<sup>154</sup> In its final report on the procedure, the committee concluded that the affirmative resolution procedure should not be used in conjunction with provisions that allow the amendment of primary legislation by delegated legislation. It considered that the procedure is appropriately used to approve regulations that specifically regulate the administration and governance of Offices of Parliament and parliamentary agencies, because the procedure provides parliamentary scrutiny, which helps to preserve the necessary independence from the executive in making such regulations.<sup>155</sup>

## Disallowance of disallowable instruments by the House

The House has a general power to disallow any disallowable instrument or provisions of a disallowable instrument by resolution.<sup>156</sup> (Though it may not disallow amendments to disallowable instruments or substituted disallowable instruments that it has made itself.<sup>157</sup>) This power is not limited by time. The House does not have to exercise its general disallowance power within any particular time after the instrument in question has been made. When the House resolves to disallow a disallowable instrument or provision of such an instrument, the instrument or provision ceases to have effect on the day the disallowance resolution is passed or on a later date specified in the resolution itself.<sup>158</sup> The disallowance of a disallowable instrument or provision of a disallowable instrument has the same effect as if the instrument had been revoked.<sup>159</sup> Thus it does not affect the validity of anything already done or any existing rights. Generally, the revocation of a disallowable instrument or a provision of one does not revive any legislation that was repealed or revoked by that instrument.<sup>160</sup> But as regards disallowance, the rule is different. Where the disallowable instrument or provision of a disallowable instrument that is disallowed itself amended, repealed or revoked any Act or instrument, that Act or instrument is restored to force with effect from the time when the disallowed provisions cease to have effect.<sup>161</sup> Any disallowance resolution is printed and published as if it were a legislative instrument.<sup>162</sup>

Any member may give notice of motion to disallow a disallowable instrument or provision of a disallowable instrument. The procedures for such a notice differ depending on whether the member giving notice is a member of the Regulations Review Committee. If the member giving the notice is not a member of the Regulations Review Committee, the notice stands referred to a select committee allocated by the Clerk.<sup>163</sup> If the notice is given by a member of the Regulations Review Committee, it is retained on the Order Paper until dealt with by the House.<sup>164</sup> Since the former Regulations (Disallowance) Act 1989 came into force in December 1989,<sup>165</sup> notices of motion to disallow regulations have been given

<sup>153</sup> *Regulations Review Committee Interim report on the inquiry into the affirmative resolution procedure* (12 July 2004) [2002–2005] AJHR I.16F at [29].

<sup>154</sup> Misuse of Drugs Amendment Bill (No 3) (186–2) (commentary, 23 May 2005) at 5, 11–12 ([2002–2005] AJHR I.22D at 507, 513–514).

<sup>155</sup> *Regulations Review Committee Inquiry into the affirmative resolution procedure* (30 May 2007) [2005–2008] AJHR I.16I at 11.

<sup>156</sup> Legislation Act 2012, s 42(1).

<sup>157</sup> Legislation Act 2012, s 42(3).

<sup>158</sup> Legislation Act 2012, s 42(2).

<sup>159</sup> Legislation Act 2012, s 44.

<sup>160</sup> Interpretation Act 1999, s 17.

<sup>161</sup> Legislation Act 2012, s 45.

<sup>162</sup> Legislation Act 2012, s 47(5).

<sup>163</sup> SO 323(1).

<sup>164</sup> SO 321.

<sup>165</sup> The Regulations (Disallowance) Act 1989 was repealed and replaced by the Legislation Act 2012, which effectively reinstated the disallowance provisions contained in the earlier Act.

on eight occasions, each time by a current member of the Regulations Review Committee.<sup>166</sup> Of these notices, one was withdrawn,<sup>167</sup> three were debated in the House and not agreed to,<sup>168</sup> two lapsed when Parliament was dissolved,<sup>169</sup> one was withdrawn, then given again in a modified form before being debated in the House and not agreed to,<sup>170</sup> and one regulation was automatically disallowed. (See “Automatic disallowance of regulations”, below.) The House has simultaneously debated four motions to disallow regulations on two occasions.<sup>171</sup>

A motion to disallow a disallowable instrument or provision of a disallowable instrument, if passed, would have force of law by virtue of the statute under which it is made. Such a motion is therefore subject to financial veto by the Government.<sup>172</sup> If the Government considers that the proposed disallowance would have more than a minor impact on the Government’s fiscal aggregates it may issue a financial veto certificate at any time before the motion is moved.<sup>173</sup> (See pp 515–519 for the issuing of financial veto certificates.) The consequence of the issuing of a financial veto certificate is that the motion is out of order and no question is put on it, although it can still be moved and debated.<sup>174</sup> The House’s general power to disallow disallowable instruments may be abrogated or limited in a particular case. Orders in Council amending the controlled drugs list (which are subject to parliamentary approval before they can come into force) are not subject to disallowance.<sup>175</sup> Orders in Council to enable the creation of the National War Memorial Park (Pukeahu) in Wellington had to be disallowed only within 12 sitting days after being presented to the House.<sup>176</sup>

## Automatic disallowance of regulations

In one case there is provision for the automatic disallowance of a disallowable instrument or provision of a disallowable instrument. While any member of Parliament may give a notice of motion to disallow an instrument or provision, there is no guarantee that this notice (or any other notice) will be considered by the House.

In order to give members a real opportunity to utilise the disallowance power, it is therefore provided in the Legislation Act 2012 that any notice of motion to disallow a disallowable instrument or provision of one that is given by a member of the Regulations Review Committee and is not dealt with by the House automatically takes effect on the expiration of the 21st sitting day after it was given.<sup>177</sup> Only a member of the committee at the time notice is given, including a

<sup>166</sup> In all, 18 notices of motion to disallow regulations have been given.

<sup>167</sup> Notice of motion given on 16 April 2013 to disallow Road User Charges (Transitional Exemption for Certain Farmers’ Vehicles) Regulations 2013.

<sup>168</sup> Notice of motion given on 9 September 1998 to disallow Disputes Tribunals Amendment Rules 1998 (not agreed to: (11 November 1998) 573 NZPD 13104–13119); notices of motion given on 8 and 13 November 2001 to disallow Court of Appeal Fees Regulations 2001, High Court Fees Regulations 2001, District Courts Fees Regulations 2001 and reg 5 of the District Courts Fees Amendment Regulations (No 3) 2001 (not agreed to: (21 February 2002) 598 NZPD 14573–14599); notice of motion given on 5 August 2010 to disallow New Zealand (Mandatory Fortification of Bread with Folic Acid) Amendment Food Standard 2009 (not agreed to: (12 October 2010) 667 NZPD 14343–14357).

<sup>169</sup> Notice of motion given on 4 September 1990 to disallow Civil Aviation Charges Regulations 1990; notice of motion given on 13 July 1999 to disallow New Zealand Food Standard 1996, Amendment No 11.

<sup>170</sup> Notices of motion given on 15 February 2011 and 15 March 2011 to disallow Plumbers, Gasfitters and Drainlayers Board (Plumbing Registration and Licensing) Notice 2010, Plumbers, Gasfitters and Drainlayers Board (Gasfitting Registration and Licensing) Notice 2010, Plumbers, Gasfitters and Drainlayers Board (Drainlayers Registration and Licensing) Notice 2010, and Plumbers, Gasfitters and Drainlayers Board (Fees) Notice 2010 (second motion not agreed to: (12 May 2011) 672 NZPD 18648–18655).

<sup>171</sup> (12 May 2011) 672 NZPD 18648–18655; (2002) 598 NZPD 14573–14599.

<sup>172</sup> SO 326(1) and (3); Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 62.

<sup>173</sup> SO 328(4).

<sup>174</sup> SO 328(4).

<sup>175</sup> Misuse of Drugs Act 1975, s 4(3).

<sup>176</sup> National War Memorial Park (Pukeahu) Empowering Act 2012, ss 33 and 36.

<sup>177</sup> Legislation Act 2012, s 43(1)–(2).

full non-voting member of the committee, can give a notice subject to the statutory automatic disallowance procedure. A replacement or temporary member or a member made a non-voting member for a particular inquiry cannot give a notice that entails automatic disallowance.

Unless the member withdraws such a notice, the House must attend to it and dispose of it within 21 sitting days of the notice being given. The obvious way to dispose of such a notice is to debate the motion and vote on it at the end of the debate. But a financial veto certificate also disposes of the notice of motion. Where a financial veto certificate is given before the motion for disallowance is moved, no question is put on the motion at the conclusion of the debate, and the motion is ruled out of order without a vote.<sup>178</sup> At that point the motion has been dealt with by the House. Otherwise a notice of motion that is not disposed of after 21 sitting days takes effect according to its terms. If Parliament is dissolved or expires before this period has fully run, the notice of motion lapses.<sup>179</sup> (In this case a new notice could be given in the next session of Parliament and the 21 sitting days would begin to run anew from that point.) As business does not lapse on the prorogation of Parliament, a notice given in one session will continue to run in the new session.<sup>180</sup>

To ensure that the House is aware that time is running towards automatic disallowance of a disallowable instrument or a provision of such an instrument, the Standing Orders provide that a notice of motion for disallowance given by a member of the Regulations Review Committee does not lapse and is not to be removed from the Order Paper until dealt with by the House.<sup>181</sup>

A disallowance that occurs automatically on the expiration of 21 sitting days takes effect at that precise time or on any later date specified in the notice of motion for disallowance.<sup>182</sup> An automatic disallowance notice is printed and published as if it were a regulation.<sup>183</sup> There has been one instance of the automatic disallowance of regulations in New Zealand. Regulations 5(3), 5(4), and 8 of the Road User Charges (Transitional Matters) Regulations 2012 were disallowed at the close of 27 February 2013. This followed an adverse report of the Regulations Review Committee, recommending that these three regulations be disallowed on the basis that they contravened two of the grounds set out in Standing Order 319(2).<sup>184</sup> The committee chair gave a notice of motion, moving that the three regulations be disallowed, shortly after the committee reported to the House.

At the expiry of 21 sitting days, the notice of motion had not been dealt with, and regulations 5(3), 5(4) and 8 were therefore disallowed.<sup>185</sup> However, regulation 8 was effectively immediately reinstated, by way of an Order in Council made a few days prior.<sup>186</sup> The result was that regulation 8 never ceased to have effect. The Regulations Review Committee subsequently reported to the House on the Order in Council that reinstated regulation 8. The committee described disallowance of a regulation as both unusual and of constitutional significance, and considered it unfortunate that the Government had found itself in a position where it considered that a disallowed regulation needed to be immediately reinstated. The committee encouraged the member lodging a disallowance motion and the minister responsible for the regulations in question to discuss the issues underlying the motion and to seek agreement on an appropriate way to proceed.<sup>187</sup>

<sup>178</sup> SO 328(4).

<sup>179</sup> Legislation Act 2012, s 43(1)(b)(iii).

<sup>180</sup> Constitution Act 1986, s 20(1)(a).

<sup>181</sup> SO 321.

<sup>182</sup> Legislation Act 2012, s 43(3).

<sup>183</sup> Legislation Act 2012, s 47(5).

<sup>184</sup> *Regulations Review Committee Investigation into the Road User Charges (Transitional Matters) Regulations 2012 (SR 2012/145)* (13 November 2012) [2011–2014] AJHR I.22A.

<sup>185</sup> (1 March 2013) 25 *New Zealand Gazette* 667.

<sup>186</sup> *Road User Charges (Transitional Exemption for Certain Farmers' Vehicles) Regulations 2013*.

<sup>187</sup> *Regulations Review Committee Investigation into the Road User Charges (Transitional Exemption for Certain Farmers' Vehicles) Regulations 2013 (SR 2013/10)* (12 August 2013) at 11 ([2011–2014] AJHR I.22B at 1127).

The power to initiate the automatic disallowance procedure that is vested in each member of the Regulations Review Committee does not depend upon the disallowable instrument or provision of a disallowable instrument concerned having been the subject of an adverse report from the committee. Nevertheless, a practice has developed of its members acting consistently with the conventions attaching to that committee before initiating such a procedure.

## COMPLAINTS RECEIVED BY THE REGULATIONS REVIEW COMMITTEE

The Standing Orders recognise that the Regulations Review Committee may receive complaints from people or organisations aggrieved at the operation of a regulation (as defined in Standing Order 3).<sup>188</sup> Any such complaint received by the committee must be placed on the agenda for its next meeting for the committee to decide whether, on the face of it, the complaint relates to one of the grounds on which the committee may draw a regulation to the attention of the House.<sup>189</sup> The committee must, unless it unanimously decides not to proceed with the complaint, give the complainant an opportunity to address the committee on the regulation.<sup>190</sup> In practice, the committee undertakes some initial investigation of complaints to establish if there is a case to answer before formally resolving whether to proceed with a more substantive inquiry.<sup>191</sup> If, following its initial consideration, the committee considers that a complaint raises a *prima facie* case on one of the grounds for drawing a regulation to the House's attention, this is regarded as requiring a formal inquiry.<sup>192</sup>

It is obvious that a complaint has to relate to a regulation in force. But a complaint about a regulation that had not yet been made was still regarded as useful in focusing the committee's attention on it when it was eventually promulgated.<sup>193</sup> The volume of complaints received by the committee varies. The main reasons that complaints are not pursued by the committee are that they relate to policy issues, or relate to an instrument that is not a regulation as defined.<sup>194</sup>

## EXAMINATION OF DELEGATED LEGISLATION

All regulations (as defined in Standing Order 3) are examined by the Regulations Review Committee.<sup>195</sup> But this was never intended to lead to a process of public hearings and submissions in all cases. Instead, the committee has the discretion to decide how it goes about discharging its responsibilities to the House.<sup>196</sup> The committee and its staff regularly peruse new disallowable instruments. Delegated legislation that is not disallowable is rarely considered by the committee unless

<sup>188</sup> See: *Making a complaint to the Regulations Review Committee*, available at <[www.parliament.nz](http://www.parliament.nz)>, for information on how to make a complaint.

<sup>189</sup> SO 320(1).

<sup>190</sup> SO 320(2).

<sup>191</sup> *Regulations Review Committee Report on the activities of the Committee in 1990* (4 September 1990) [1990] AJHR I.16 at 26; *Regulations Review Committee Activities of the Committee from 1 April 1992 to 23 September 1993* (30 September 1993) [1991–1993] AJHR I.16L at [195]; *Regulations Review Committee Activities of the Regulations Review Committee during 1999* (8 October 1999) [1996–1999] AJHR I.16X at 62; *Regulations Review Committee Eighth Australasian and Pacific Conference on Delegated Legislation and Fifth Australasian and Pacific Conference on the Scrutiny of Bills* (12 March 2003) [2002–2005] AJHR I.16A at 10–11.

<sup>192</sup> David Caygill “Functions and Powers of Parliamentary Committees” (paper presented to Electoral and Administrative Law Commission Seminar, Brisbane, 1 May 1992) at [4.6].

<sup>193</sup> *Regulations Review Committee Inquiry into the Civil Aviation Charges Regulations 1990* (4 September 1990) [1990] AJHR I.16B at [4.1].

<sup>194</sup> *Regulations Review Committee Activities of the Regulations Review Committee during 1999* (8 October 1999) [1996–1999] AJHR I.16X at 62.

<sup>195</sup> SO 318(1).

<sup>196</sup> Statutes Revision Committee *First report on delegated legislation* (14 June 1985) [1984–1985] AJHR I.5A at [6.5].

it is the subject of a complaint. If the committee has any concerns or wants more information about a regulation, details are sought from the relevant Minister, department or other organisation after consulting any regulatory impact statement relating to the regulation. Such inquiries may lead the committee to seek further written information and may occasionally result in a substantial inquiry involving the hearing of evidence and a report to the House.<sup>197</sup> In the course of 2013, a total of 462 legislative instruments were examined in this way.<sup>198</sup> Only one of these regulations was the subject of a separate report to the House.<sup>199</sup>

This process may also serve to direct attention to a number of regulations raising related issues that can be considered and reported on together.<sup>200</sup> The comprehensive check on regulations carried out by the committee, supplemented by issues drawn to the committee's attention by complaints, alerts it to particular regulatory issues that require closer scrutiny.

Once the committee decides to embark on an investigation, the fact that a regulation is revoked during the committee's consideration of it does not put an end to the committee's inquiry. The committee is obliged to consider whether to draw the House's attention to the regulation before it, and this duty can be discharged although the regulation is no longer in force. Revocation is relevant to the practical question of whether in fact the House's attention needs to be drawn to the regulation, but it does not obviate the question being asked at all.<sup>201</sup> But if a regulation is revoked before the committee resolves to conduct an investigation into it and the matter objected to is not included in new regulations, the matter is outside the committee's jurisdiction.<sup>202</sup>

## GROUNDS FOR REPORT TO THE HOUSE

In carrying out its work of examining regulations (however they may have come to its attention) the Regulations Review Committee assesses regulations against nine criteria set out in the Standing Orders. A regulation is not necessarily bad because it raises concern in respect of one of these criteria. But if it does so, the committee must consider whether to draw the special attention of the House to the regulation because of its non-compliance.<sup>203</sup> The committee has a discretion as to whether it should draw the House's attention to a regulation, even if it finds one of the grounds established. There may be good reasons for not drawing the House's attention to a regulation—for example, if this would have no practical effect whatever—and the committee must always consider this.<sup>204</sup>

Since its establishment in 1985, the committee has made reports to the House informing it of its activities over a period (annually since 1994). In this way the committee tends to inform the House of its consideration of all regulations raising

<sup>197</sup> *Regulations Review Committee Report on the activities of the Committee during 1987* (23 June 1988) [1987–1990] AJHR I.16A at [5.3]; *Regulations Review Committee Inquiry into Airport Authority By-laws Approval Orders* (16 August 1990) [1990] AJHR I.16 at [6]; *Regulations Review Committee Activities of the Committee from 1 April 1992 to 23 September 1993* (30 September 1993) [1991–1993] AJHR I.16L at [153]; *Regulations Review Committee Activities of the Regulations Review Committee during 1999* (8 October 1999) [1996–1999] AJHR I.16X at 7; *Regulations Review Committee Activities of the Regulations Review Committee during 2003* (15 June 2004) [2002–2005] AJHR I.16D at 26.

<sup>198</sup> *Regulations Review Committee Activities of the Regulations Review Committee in 2013* (27 June 2014) [2011–2014] AJHR I.16F at 7.

<sup>199</sup> *Regulations Review Committee Investigation into the Marine and Coastal Area (Takutai Moana) Reclamation Fees Regulations 2012* (SR 2012/363) (30 September 2013) [2011–2014] AJHR I.22B.

<sup>200</sup> *Regulations Review Committee Inquiry into Airport Authority By-laws Approval Orders* (16 August 1990) [1990] AJHR I.16 at [3.2].

<sup>201</sup> *Statutes Revision Committee Remuneration (New Zealand Forest Products) Regulations 1980* (9 July 1980) [1980] AJHR I.5 at [2].

<sup>202</sup> *Regulations Review Committee Report on the activities of the Committee from 28 November 1990 to 31 March 1992* (18 August 1992) [1991–1993] AJHR I.16E at 37.

<sup>203</sup> SO 319(1).

<sup>204</sup> *Statutes Revision Committee Remuneration (New Zealand Forest Products) Regulations 1980* (9 July 1980) [1980] AJHR I.5 at [2]–[3].

issues that it needed to consider, even if the special attention of the House did not need to be drawn to them individually. A separate report drawing the House's special attention to a regulation is reserved for the few that raise very significant issues.<sup>205</sup>

One thing that the committee does not purport to determine is whether the regulation is outside the legal authority delegated by Parliament—that is, if the regulation is ultra vires. Such a question is for the courts, not the House, to determine.<sup>206</sup> Indeed, the committee's grounds for examining a regulation are wider than those of a court.<sup>207</sup> From this it follows that while a court may have upheld the legality of a regulation, the committee is not precluded from inquiring further into it and examining its essential fairness.<sup>208</sup> Nor is the committee concerned with how a regulation is being administered by a Government department,<sup>209</sup> though the Ombudsmen or another committee may be interested in any question of maladministration. However, if a regulation is being applied inconsistently or unfairly this may suggest that there is a defect in the regulation on which there may be grounds for the committee to report.

There are nine grounds on which the committee may draw the special attention of the House to a regulation.<sup>210</sup> The grounds are each discussed below. The grounds are also discussed in greater detail in a digest of the committee's reports.<sup>211</sup>

### *The regulation is not in accordance with the general objects and intentions of the statute under which it is made*

This ground comes closest to raising questions of ultra vires. Applying this ground to regulations involves construing the objects of the legislation authorising the making of the regulations in question. Thus, the committee took the view that the legislation under which the Reserve Bank was created was intended to constitute a central bank that advised the Government on and implemented monetary policy. It was not the object of the Act to authorise the bank to engage in trading activities and so, the committee concluded, the House's attention should be drawn to regulations that authorised such activities.<sup>212</sup> The committee has also considered the objects of an empowering Act when construing the meaning of a term that was used, but not defined, in it. The Act set down minimum standards for animal welfare, and permitted departure from them only in "exceptional circumstances". The committee considered that an animal welfare code that permitted departure from these minimum standards extended the meaning of exceptional circumstances too far, because it did not provide for the code to be reviewed until four years after it was issued, and did not fix a date for phasing out the non-compliant cages that it permitted to be used.<sup>213</sup>

<sup>205</sup> For example: Regulations Review Committee *Investigation into the Marine and Coastal Area (Takutai Moana) Reclamation Fees Regulations 2012* (SR 2012/363) (30 September 2013) [2011–2014] AJHR I.22B; *Investigation into the Road User Charges (Transitional Matters) Regulations 2012* (SR 2012/145) (13 November 2012) [2011–2014] AJHR I.22A; *Investigation into the Copyright (New Technologies) Amendment Act 2008 Commencement Amendment Order (No 2) 2009* (SR 2009/51) (15 February 2010) [2008–2011] AJHR I.22B.

<sup>206</sup> Statutes Revision Committee *First report on delegated legislation* (14 June 1985) [1984–1985] AJHR I.5A at [8.4].

<sup>207</sup> Regulations Review Committee *Inquiry into instruments deemed to be regulations—An examination of delegated legislation* (6 July 1999) [1996–1999] AJHR I.16R at 9; Regulations Review Committee *Activities of the Regulations Review Committee during 2000* (28 March 2002) [1999–2002] AJHR I.16I at 9.

<sup>208</sup> Regulations Review Committee *Inquiry into the Geothermal Energy Regulations 1961* (30 June 1987) [1986–1987] AJHR I.16 at [4.1]–[4.2].

<sup>209</sup> Regulations Review Committee *Complaint relating to Meat (Residues) Regulations 1996* (6 March 2001) [1999–2002] AJHR I.16C at 7.

<sup>210</sup> SO 319(2)(a)–(i).

<sup>211</sup> See <[www.victoria.ac.nz](http://www.victoria.ac.nz)> (under "Publications").

<sup>212</sup> Regulations Review Committee *Inquiry into the Reserve Bank of New Zealand Order 1988* (13 December 1988) [1987–1990] AJHR I.16 at [3]–[7].

<sup>213</sup> Regulations Review Committee *Final report on complaint about Animal Welfare (Layer Hens) Code of Welfare 2005* (9 May 2006) [2005–2008] AJHR I.16A at 16.

A particular concern of the committee has been regulations that impose fees. The committee takes pains to establish that a fee is clearly contemplated in the empowering legislation and that the fee is reasonable. The committee has put forward the view that a fee may be fixed so high that it defeats the purposes of the Act and so is not in accordance with its objects and intentions. In the absence of clear statutory authority, if the fee charged is greater than cost recovery for the service provided, there is a rebuttable presumption that Parliament could not have intended the holder of the delegated legislative power to be able to impose what is in effect a tax.<sup>214</sup> This is especially the case where the “service” provided is effectively a monopoly.<sup>215</sup> (See also Chapter 32.) The committee considered that access to justice was among the general objects and intentions of statutes empowering the making of regulations that set civil court fees. Access to justice was so fundamental that a move to use fees to ration access would, in its view, require explicit legislative authority. Regulations were inappropriate instruments for implementing such a policy.<sup>216</sup>

In another case the absence of any adequate risk assessment before health labelling requirements were imposed on certain food products led the committee to conclude that the statutory preconditions to such labelling were not satisfied. Acknowledging that the Minister had a discretion to impose such requirements, the committee insisted that there must be some evidence to justify them.<sup>217</sup> The committee has also found that a formula prescribed by regulations for determining a raw milk price, despite being intended to function so as to support the objects and intentions of the empowering Act, was in fact open to manipulation to an extent that undermined the objects and intentions of the Act and could not be said to be in accordance with them.<sup>218</sup>

Finally, powers to vary the commencement date of various provisions of an Act may provoke attention on this ground, if provisions of the Act that might be considered an integral part of the legislative package are not brought into force with the main body of the Act. In this case it may be considered that to bring into force parts of an Act with the omission of important provisions is to use the regulation-making power in a way that is not in accordance with the general objects and intentions of the Act.<sup>219</sup>

### *The regulation trespasses unduly on personal rights and liberties*

This ground involves a two-part consideration: first, whether the regulations trespass against personal rights and liberties; and, secondly, if any such trespass is “undue”.<sup>220</sup>

Trespass on personal rights has been found to be particularly applicable to regulations that affect the way people can earn their living, for example, in cases where restrictions are placed on commercial enterprises. All laws in some respects inhibit freedom of action. Therefore, the fact that freedom is limited is not sufficient of itself to bring a regulation within this ground of complaint. The limitation must

<sup>214</sup> For example: *Regulations Review Committee Complaint regarding the Midwifery (Fees) Notice 2005* (28 March 2007) [2005–2008] AJHR I.16H at 15.

<sup>215</sup> *Regulations Review Committee Inquiry into the Civil Aviation Charges Regulations 1990* (4 September 1990) [1990] AJHR I.16B at [9.1].

<sup>216</sup> *Regulations Review Committee Investigation and complaint about civil court fees regulations 2004* (18 February 2005) [2002–2005] AJHR I.16H at 32–33.

<sup>217</sup> *Regulations Review Committee Complaint relating to the New Zealand Food Standard 1996, Amendment No 11* (2 July 1999) [1996–1999] AJHR I.16Q at 11.

<sup>218</sup> *Regulations Review Committee Complaint regarding the Dairy Industry Restructuring (Raw Milk) Regulations 2001* (22 August 2007) [2005–2008] AJHR I.16K at 10–12.

<sup>219</sup> *Regulations Review Committee Investigation into the Local Electoral Act Commencement Order 2001 and the commencement of legislation by Order in Council* (17 June 2002) [1999–2002] AJHR I.16L at 11, 15.

<sup>220</sup> *Regulations Review Committee Complaints relating to the Sharemilking Agreements Order 2001* (30 October 2001) [1999–2002] AJHR I.16G at 8.

be balanced against the policy that is being furthered.<sup>221</sup> In order to do this, the committee has examined in some detail the technicalities of the subject matter of the regulations. When regulations totally prohibited the commercial taking of rock lobster by diving or hand picking, the committee considered the purpose of the ban—the preservation of stocks—and weighed this against the infringement of rock lobster fishers' right to earn a living. It concluded on the evidence that a total ban went further than was necessary to protect stocks and so did trespass unduly on personal rights and liberties. The committee suggested a closed season on taking rock lobster.<sup>222</sup> This suggestion was subsequently implemented by the Government.

The reference to regulations trespassing “unduly” on personal rights and liberties has been interpreted to imply that there must be a serious infringement of personal rights or liberties before the regulation can be seen as objectionable. In the case of civil aviation fee regulations, the committee concluded that it could not be suggested that there should be no fee at all. There was no evidence that the fee levels reflected inefficiencies on the part of the ministry, and such cross-subsidies between different kinds of flying as were apparent were justifiable. The committee therefore found no breach in that case.<sup>223</sup> But court fees regulations may more readily be regarded as unduly trespassing on personal rights and liberties, since access to justice is a fundamental right. The committee has concluded that if court fees are set at a level that discourages potential litigants, without mechanisms such as legal aid, concession rates, and fee waivers being available to a large section of court users, then there would be an undue trespass on personal rights and liberties.<sup>224</sup>

A relevant factor in whether regulations unduly trespass on personal rights and liberties is the policy of the Act under which the regulations are made. It may be the express policy of the legislation to place restrictions on personal rights and liberties. If so, regulations that do nothing other than faithfully implement that policy are unlikely to be found to offend.<sup>225</sup>

### *The regulation appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made*

If the empowering Act itself expressly contemplates what the regulations do, then it is very difficult to take the view that the powers conferred have been used in an unusual or unexpected way.

In the case of regulations made under the Canterbury Earthquake Recovery Act 2011 that amended the Building Act 2004, the committee described the legislative power delegated by the 2011 Act as extremely broad and wide ranging.<sup>226</sup> The committee found that Parliament, in passing the 2011 Act, clearly authorised the making of regulations to provide for significant modifications to primary legislation, and that regulations modifying the Building Act could therefore not be said to be an unusual or unexpected use of the delegated legislative power. The committee considered, however, that, had the modifications made by the regulations continued, there would have been a strong argument that the order had become an unusual or unexpected use of the delegated legislative power, because the empowering provision explicitly tied the exercise of the delegated power to the

<sup>221</sup> Statutes Revision Committee *Report on the Economic Stabilisation (Conservation of Petroleum) Regulations (No 2)* 1979 (10 July 1979) [1979] AJHR I.5. See (10 July 1979) [1979] JHR 118; (1979) 423 NZPD 1375, 1379 and 1382.

<sup>222</sup> (3 June 1977) [1977] JHR 57.

<sup>223</sup> Regulations Review Committee *Inquiry into the Civil Aviation Regulations 1953, Amendment No 30* (5 October 1989) [1987–1990] AJHR I.16 at [7.3]–[7.8].

<sup>224</sup> Regulations Review Committee *Investigation and complaint about civil court fees regulations 2004* (18 February 2004) [2002–2005] AJHR I.16H at 32–33.

<sup>225</sup> Regulations Review Committee *Complaints relating to the Sharemilking Agreements Order 2001* (30 October 2001) [1999–2002] AJHR I.16G at 8–9.

<sup>226</sup> Canterbury Earthquake Recovery Act 2011, s 71.

purposes of the 2011 Act. The regulations would arguably have ceased to be in accordance with the purposes of the Act as soon as the regulations were no longer supporting the recovery of the local community from the impacts of the Canterbury earthquakes.<sup>227</sup> However, in the case of regulations made under the Education Act 1989, the committee found that while the empowering provision authorised the making of the regulations, where those regulations directly thwarted the intention of another provision of the Act they could still fall foul of this ground.<sup>228</sup> In this case, the impugned regulations made it impossible for an offence to be committed under a provision of the Act. The committee considered that Parliament could not have intended to delegate a power to make regulations that would effectively contradict the explicit effect of the empowering legislation.<sup>229</sup>

In the case of the regulations authorising the making of tertiary legislation that set requirements for the grant of pilots' licences, the principal Act specifically authorised such stipulations to be made by tertiary legislation. Regardless of the committee's views on the desirability of such matters being dealt with under sub-delegated powers, it could not be said that the regulations were open to objection on this ground. The committee did find, however, that in regulations dealing with people's livelihood it would expect to find provision for appeals against refusals to grant or renew licences, and that the absence of such provision was an unexpected use of the power.<sup>230</sup> On the other hand, if the empowering Act does not explicitly provide for the matter that is the subject of the regulations, the committee may take the view that the regulations make an unusual or unexpected use of the power. The committee found that it was unusual or unexpected to use a power to set fees and charges to implement an accreditation system for surveyors, as the empowering provision made no reference to such a system.<sup>231</sup>

Where the empowering Act is drafted in very broad terms, it may be difficult to conclude that something has been included in regulations made under it that could not have been reasonably contemplated. For this reason the Statutes Revision Committee did not find a carless-days scheme and a weekend petrol sales ban to be unexpected or unusual uses of the powers conferred by the Act under which they were introduced. The breadth of the provisions in the Act led the committee to conclude that Parliament had intended to authorise the making of regulations going well beyond matters of administration.<sup>232</sup> This type of enactment, however, is very much the exception, otherwise the committee's scrutiny on this ground would be futile. Conversely, the breadth of the provision in a regulation can lead to the conclusion that it does make an unexpected use of the power. So regulations imposing fees for survey services on persons who did not receive those services fell foul of this ground.<sup>233</sup>

The motivation behind the making of the regulations will often be an important consideration. When regulations were made principally because of a desire to conform to Australian food-labelling standards, and this was not an object specified in the legislation, they were held to make an unexpected

<sup>227</sup> Regulations Review Committee *Complaint regarding the Canterbury Earthquake (Building Act) Order 2011* (SR 2011/311) (24 April 2014) [2011–2014] AJHR I.16B at 11–12.

<sup>228</sup> Regulations Review Committee *Complaint regarding the New Zealand Teachers Council (Conduct) Rules 2004* (SR 2004/143) (12 August 2013) [2011–2014] AJHR I.22B.

<sup>229</sup> Ibid, at 12 ([2011–2014] AJHR I.22B at 1144).

<sup>230</sup> Statutes Revision Committee *Civil Aviation Regulations 1953, Amendment No 22* (SR 1979/18) (24 July 1980) [1980] AJHR I.5 at [9]–[10].

<sup>231</sup> Regulations Review Committee *Complaints relating to Survey (Departmental Fees and Charges) Regulations 1998 and Survey Regulations 1998* (10 April 2001) [1999–2002] AJHR I.16D at 9.

<sup>232</sup> Statutes Revision Committee *Report on the Economic Stabilisation (Conservation of Petroleum) Regulations (No 2)* 1979 (10 July 1979) [1979] AJHR I.5. See (10 July 1979) [1979] JHR 118; (1979) 423 NZPD 1377.

<sup>233</sup> Regulations Review Committee *Investigation into the Land Transfer Amendment Regulations 1998 and the Survey (Departmental Fees and Charges) Regulations 1998* (14 June 1999) [1996–1999] AJHR I.16O at 10.

use of the power.<sup>234</sup> Another important consideration for the committee will be any explanation or justification given to the House for the regulation-making provision in the first place. Any use of the power that departs from such a reason or justification is *prima facie* unexpected. So, when the explanatory note to a bill justified a power to bring legislation into force on different dates on the ground that regulations to implement the Act had to be drafted, it was an unexpected use of the power to exempt a section from being brought into force because doubts had arisen as to its legal effectiveness.<sup>235</sup>

The committee also found this ground to be triggered when a statutory board made regulations imposing a fee that was effectively an industry-wide levy. The purpose of charging the fee was to fund the cost of bringing prosecutions in the industry regulated by the board; and despite the fact that the legislation required the board to institute prosecutions where appropriate, the committee considered it an unexpected use of the legislative power delegated by Parliament.<sup>236</sup> Parliament ultimately legislated to validate the fees that had been charged by the board from 1 April 2007, and amended the empowering legislation to authorise the board to impose a levy for disciplinary and prosecution purposes.<sup>237</sup>

***The regulation unduly makes the rights and liberties of persons dependent upon administrative decisions that are not subject to review on their merits by a judicial or other independent tribunal***

This ground principally relates to regulations conferring decision-making power on officials or bodies without making provision for a right of appeal or other review of the decision. Decisions taken under statutory powers are always subject to review by the courts to ensure that the statutory powers have been properly used, in the sense of being exercised within the express or implied terms of the statute. Judicial review can lead to an extensive and probing review of the original decision. But it does not permit the court to substitute its opinion on the merits of the decision for that of the person delegated the statutory power to make the decision. For this reason judicial review is not necessarily an adequate alternative to conferring a right of appeal on which the merits of the decision can be re-examined. The committee will therefore look closely at regulations that do not include provisions for appeal against administrative decisions taken under them.<sup>238</sup> The committee has recommended that regulations relating to domestic violence programmes should include an appeal process, to ensure that decisions made by approval panels were subject to independent analysis on their merits, particularly decisions to remove approvals.<sup>239</sup> It has also recommended review of what it considered a lack of provision in the Legal Services Act 2011 for merits review of a decision to decline out-of-time payment to a provider following a grant of legal aid.<sup>240</sup> The Act was subsequently amended to provide for merits review.<sup>241</sup>

---

<sup>234</sup> Regulations Review Committee *Complaint relating to the New Zealand Food Standard 1996, Amendment No 11* (2 July 1999) [1996–1999] AJHR I.16Q at 12–13.

<sup>235</sup> Regulations Review Committee *Investigation into the Local Electoral Act Commencement Order 2001 and the commencement of legislation by Order in Council* (17 June 2002) [1999–2002] AJHR I.16L at 9, 15.

<sup>236</sup> Regulations Review Committee *Complaints about two notices made by the Plumbers, Gasfitters, and Drainlayers Board relating to an offences fee* (30 September 2013) at 6 ([2011–2014] AJHR I.22B at 1162).

<sup>237</sup> Plumbers, Gasfitters, and Drainlayers Amendment Act 2013.

<sup>238</sup> Regulations Review Committee *Inquiry into the Marine Mammals Protection Regulations 1990* (15 August 1991) [1991–1993] AJHR I.16C at [7.7]; Regulations Review Committee *Complaint relating to the Domestic Violence (Programmes) Regulations 1996* (8 August 2001) [1999–2002] AJHR I.16E at 6–8.

<sup>239</sup> Regulations Review Committee *Complaint relating to the Domestic Violence (Programmes) Regulations 1996* (8 August 2001) [1999–2002] AJHR I.16E at 6.

<sup>240</sup> Regulations Review Committee *Complaint regarding the Legal Services Regulations 2011 (SR 2011/144)* (1 June 2012) at 6 ([2011–2014] AJHR I.22A at 794).

<sup>241</sup> Legal Services Amendment Act 2013, ss 16 and 17 (see Legal Services Act 2011, ss 51(1A) and 52(3A)).

The distinctive aspect of this ground, then, is that the committee looks for what is not in the regulations rather than for what is present.

***The regulation excludes the jurisdiction of the courts without explicit authorisation in the empowering statute***

Provisions in legislation ousting the jurisdiction of the courts to review action taken under the legislation (privative clauses) are no longer common, not least because they have been found to be an ineffective means of excluding the courts' jurisdiction. They are even less likely to be found in regulations. But regulations that do not expressly oust the jurisdiction of the courts may nevertheless have this effect or tendency in practice, and this has attracted the committee's attention. Thus in one instance the committee reported on the timing of regulations concerning payments for kiwifruit and the effect that they would have on proceedings then before a court.<sup>242</sup> The committee has rejected an argument that this ground of review would apply if increased court fees created a potential barrier to access to the courts.<sup>243</sup>

***The regulation contains matter more appropriate for parliamentary enactment***

This ground is relied on wherever the importance of the matter in the regulations suggests to the committee that it should have been enacted in primary legislation. The committee takes a pre-emptive approach regarding this ground by subjecting proposed Henry VIII clauses to particular scrutiny when reporting to other committees on regulation-making provisions.

Regulations amending legislation, though authorised (as they must have been) by the empowering provision under which they are made, will still be scrutinised carefully by the committee. Such regulations may be justified, for example, where the legislation to be amended consists of a list of bodies in a schedule that needs to be updated constantly as new entities are created and others abolished. The committee has found that a set of regulations that prescribed an additional factor for assessing the benefit of overseas investments in sensitive land effectively amended primary legislation, but stopped short of finding this ground to be made out. The committee said, however, that the regulations included matters that could be argued to be more suitable for parliamentary enactment. The regulation-making power authorised the making of regulations to add factors to a list, already prescribed in the primary legislation, of matters that ministers had to consider in decision-making.<sup>244</sup>

An area of particular concern to the committee on this ground was producer board regulations. Various producer board Acts conferred wide powers to make delegated legislation to regulate primary industries. But the committee baulked at the breadth of the rearrangements effected by regulation, taking the view that it was more appropriate for such sweeping changes to be introduced by primary legislation.<sup>245</sup>

The committee found this ground to be triggered where Parliament had generally provided for a particular matter in primary legislation but had, in one case, been silent on the matter. In the case of regulations requiring a particular disciplinary tribunal to hold its proceedings in private unless an order to the

<sup>242</sup> Regulations Review Committee *Inquiry into the Kiwifruit Marketing Regulations 1977, Amendment No 10* (8 July 1993) [1991–1993] AJHR I.16I at [49]–[57].

<sup>243</sup> Regulations Review Committee *Investigation and complaints relating to civil court fees regulations* (17 June 2002) [1999–2002] AJHR I.16M at 21.

<sup>244</sup> Regulations Review Committee *Complaint regarding the Overseas Amendment Investment Regulations 2008* (30 September 2008) [2005–2008] AJHR I.16P at 12–13 and 16.

<sup>245</sup> Regulations Review Committee *Inquiry into the appropriateness of establishing the Kiwifruit Marketing Board through regulations* (24 November 1988) [1987–1990] AJHR I.16 at [4.1]–[4.4]; Regulations Review Committee *Activities of the Regulations Review Committee during 1999* (8 October 1999) [1996–1999] AJHR I.16X at 57–58.

contrary was made under the regulations, the committee observed that Parliament had required the proceedings of comparable disciplinary tribunals to be public, including an explicit requirement to that effect in the primary legislation. On this basis, the committee concluded that the extent to which the disciplinary tribunal's proceedings were to be public was a matter more appropriate for parliamentary enactment, and noted that the principle of open justice was a matter of fundamental importance.<sup>246</sup>

The committee has found that this ground could not be made out where Parliament clearly intended that a delegated legislative power could be used to make regulations dealing with matters of substantive policy of a kind that Parliament itself would ordinarily legislate for. The Canterbury Earthquake Recovery Act 2011 authorised the making of regulations granting exemptions from, modifying, or extending any provisions of a list of Acts of Parliament, despite the fact that the decision to alter an Act of Parliament in such a way is one that Parliament ordinarily guards for itself.<sup>247</sup> The committee considered that this ground could not be made out because, although the regulations did contain matters more appropriate for parliamentary enactment, they did so with the clear authorisation of Parliament itself.<sup>248</sup>

The regulation is retrospective where this is not expressly authorised by the empowering statute.

In one case where this ground was considered, the committee held that a regulation that amended existing sharemilking agreements was not retrospective, since the alterations it effected took effect from the date the regulation was made. The fact that the regulation altered the legal context in which agreements that had been negotiated would be played out was not sufficient to engage this ground. Furthermore, the statute clearly authorised retrospectivity in this case.<sup>249</sup>

In another case, the committee found that a notice made by the Nursing Council of New Zealand retrospectively altered the title of a group of second-level nurses who had begun training or graduated during a specified period. The Act under which the notice was made did not expressly authorise the notice to have such retrospective effect. The committee recommended that the Nursing Council amend the notice to remove the unauthorised retrospective effect.<sup>250</sup> The House subsequently resolved to revoke the clause of the notice that had retrospective effect and substitute a new clause for it.<sup>251</sup> (See “Amendment of disallowable instruments by the House”, p 473.)

The committee has found that a regulation had the effect of indirectly imposing a retrospective fee, and this was clearly not authorised by the empowering statute. The regulation specified a confirmation procedure, which the committee accepted was intended to prevent the regulations having a retrospective effect. However, the committee considered that the overall effect of the regulation was to require applicants to pay a fee that had not been set at the time it became payable under the empowering Act—in other words, at the time they lodged their applications, before the regulations were made. The committee found that the regulation was indirectly retrospective because of the confirmation procedure’s inconsistency with the scheme of the Act, and expressed concern that the regulation established

<sup>246</sup> Regulations Review Committee *Complaint regarding the New Zealand Teachers Council (Conduct) Rules 2004* (SR 2004/143) (12 August 2013) at 13–14 ([2011–2014] AJHR I.22B at 1145–1146).

<sup>247</sup> Canterbury Earthquake Recovery Act 2011, s 71.

<sup>248</sup> Regulations Review Committee *Complaint regarding the Canterbury Earthquake (Building Act) Order 2011* (SR 2011/311) (24 April 2014) [2011–2014] AJHR I.16B at 12.

<sup>249</sup> Regulations Review Committee *Complaints relating to the Sharemilking Agreements Order 2001* (30 October 2001) [1999–2002] AJHR I.16G at 11–12.

<sup>250</sup> Regulations Review Committee *Complaint regarding Notice of Scopes of Practice and Related Qualifications Prescribed by the Nursing Council of New Zealand* (3 July 2007) [2005–2008] AJHR I.16J at 12–14.

<sup>251</sup> (23 September 2008) 650 NZPD 19223.

an undesirable precedent of a regulatory mechanism that was specifically designed to avoid the retrospective application of prescribed fees.<sup>252</sup>

### ***The regulation was not made in compliance with particular notice and consultation procedures prescribed by statute***

A regulation made without compliance with prescribed notice and consultation procedures may be subject to legal proceedings before a court. It is not the committee's function to determine whether the Act's requirements in these respects have been complied with. But the committee may assume that consultation is required, even if there is legal doubt about this, and then proceed to judge whether it considers such consultation as took place was adequate. In assessing this ground, the committee has referred to legal standards: that the party consulted must be adequately informed so as to be able to make an intelligent or useful response; and that the consultor, while entitled to have a working plan in mind, must keep an open mind and be ready to change the plan and even start afresh.<sup>253</sup> But the committee may make its own value judgement as to whether, in the circumstances, the consultation that did take place was adequate, regardless of whether it was legally sufficient.<sup>254</sup>

The committee has made particular recommendations for the principles for carrying out effective consultation to be followed before making delegated legislation (in that case, deemed regulations as they were then called). The Government responded that it would ask the Legislation Advisory Committee to consider these principles and produce guidance for consultation regarding regulation-making generally.<sup>255</sup>

### ***For any other reason concerning its form or purport, the regulation calls for elucidation***

"Purport" is taken to mean the literal meaning of the words used in the regulation, rather than its practical effect, which, in so far as it can be considered, would fall under one of the earlier grounds. The committee has stated that this ground is intended to cover situations where the language used in the regulations is ambiguous or so complicated as to be unclear.<sup>256</sup> If the public is expected to comply with regulations, it is reasonable to expect them to be drafted in plain, unambiguous language and for their format to help comprehension.<sup>257</sup> This ground could also be invoked if there is a defect apparent on the face of the regulations that needs to be corrected.<sup>258</sup> But findings of substantive unreasonableness are not appropriate under this ground of review.

Thus, the committee drew the House's attention to regulations it considered should have included a clear statement of their scope and purpose, and should have specified the criteria to be applied in exercising a discretion to grant permits

<sup>252</sup> Regulations Review Committee *Investigation into the Marine and Coastal Area (Takutai Moana) Reclamation Fees Regulations 2012* (SR 2012/363) (30 September 2013) at 8–9 ([2011–2014] AJHR I.22B at 1174–1175).

<sup>253</sup> Regulations Review Committee *Complaint relating to the New Zealand Food Standard 1996, Amendment No 11* (2 July 1999) [1996–1999] AJHR I.16Q at 14; Regulations Review Committee *Investigation into the Biosecurity (Ruminant Protein) Regulations 1999* (1 August 2000) [1999–2002] AJHR I.16A at 20–21.

<sup>254</sup> Regulations Review Committee *Complaints relating to the Accident Rehabilitation and Compensation Insurance (Social Rehabilitation) Regulations 1992* (15 June 1993) [1991–1993] AJHR I.16H at [34]–[47].

<sup>255</sup> Regulations Review Committee *Inquiry into instruments deemed to be regulations—An examination of delegated legislation* (6 July 1999) [1996–1999] AJHR I.16R; Government response to report of Regulations Review Committee on "Inquiry into instruments deemed to be regulations—An examination of delegated legislation" (5 October 1999) [1996–1999] AJHR A.5.

<sup>256</sup> Regulations Review Committee *Complaint relating to Land Transport Rule 32012—Vehicle Standards (Glazing)* (1 September 1998) [1996–1999] AJHR I.16K at 14–15; Regulations Review Committee *Complaint regarding Land Transport Rule: Vehicle Equipment 2004 (Rule 32017)* (16 May 2005) [2002–2005] AJHR I.16K at 11.

<sup>257</sup> Regulations Review Committee *Activities of the Regulations Review Committee during 1999* (8 October 1999) [1996–1999] AJHR I.16X at 23.

<sup>258</sup> (27 July 1977) [1977] JHR 145.

to operators to transport people to view marine mammals.<sup>259</sup> It also upheld a complaint about rules imposing standards of vehicle window glazing, because it considered sections of the rules to be confusing and ambiguous.<sup>260</sup> It has described the meaning of wording in an animal welfare code as needing clarification, and recommended that the authority responsible for recommending the issuing of the code consult on revised wording to amend the code.<sup>261</sup>

On this ground, the committee also raised the question of the relationship between a particular regulation and the New Zealand Bill of Rights Act 1990, where the regulation might have had the effect of inhibiting an application for judicial review.<sup>262</sup>

## OTHER MATTERS RELATING TO DELEGATED LEGISLATION

In addition to its brief to examine regulations, draft regulations and regulation-making provisions in bills, the committee is empowered to bring any matter relating to regulations to the notice of the House.<sup>263</sup>

This general authority has allowed the committee to conduct inquiries falling outside the other powers it possesses. Significant exercises of this general power have included a general examination of regulation-making provisions when its consideration of individual provisions suggested that this was a desirable project. Among the subjects of important general reports it has made to the House are the following:

- the use of empowering provisions to override primary legislation (Henry VIII clauses)<sup>264</sup>
- instruments deemed to be regulations<sup>265</sup>
- the constitutional principles to apply when Parliament empowers the Crown to charge fees by regulation<sup>266</sup>
- delays in bringing Acts of Parliament into force by Order in Council<sup>267</sup>
- the principles to be employed in determining when delegated legislation should be given the status of regulations<sup>268</sup>
- the incorporation of material into regulations by reference<sup>269</sup>
- affirmative resolution procedures<sup>270</sup>
- the oversight of disallowable instruments that are not also legislative instruments.<sup>271</sup>

<sup>259</sup> Regulations Review Committee *Inquiry into the Marine Mammals Protection Regulations 1990* (15 August 1991) [1991–1993] AJHR I.16C at [5.9], [6.9] and [9.2].

<sup>260</sup> Regulations Review Committee *Complaint relating to Land Transport Rule 32012—Vehicle Standards (Glazing)* (1 September 1998) [1996–1999] AJHR I.16K at 15.

<sup>261</sup> Regulations Review Committee *Final report on complaint about Animal Welfare (Layer Hens) Code of Welfare 2005* (9 May 2006) [2005–2008] AJHR I.16A at 17 and 19.

<sup>262</sup> Regulations Review Committee *Activities of the Committee from 1 April 1992 to 23 September 1993* (30 September 1993) [1991–1993] AJHR I.16L at [162].

<sup>263</sup> SO 318(4).

<sup>264</sup> Regulations Review Committee *Inquiry into the Resource Management (Transitional) Regulations 1994* (15 June 1995) [1993–1996] AJHR I.16C.

<sup>265</sup> Regulations Review Committee *Inquiry into instruments deemed to be regulations—An examination of delegated legislation* (6 July 1999) [1996–1999] AJHR I.16R.

<sup>266</sup> Regulations Review Committee *Inquiry into the constitutional principles to apply when Parliament empowers the Crown to charge fees by regulation* (25 July 1989) [1987–1990] AJHR I.16C.

<sup>267</sup> Regulations Review Committee *Investigation into the commencement of legislation by Order in Council* (23 August 1996) [1993–1996] AJHR I.16K; Regulations Review Committee *Investigation into the Local Electoral Act Commencement Order 2001 and the commencement of legislation by Order in Council* (17 June 2002) [1999–2002] AJHR I.16L.

<sup>268</sup> Regulations Review Committee *Inquiry into the principles determining whether delegated legislation is given the status of regulations* (30 June 2004) [2002–2005] AJHR I.16E.

<sup>269</sup> Regulations Review Committee *Inquiry into material incorporated by reference* (12 July 2004) [2002–2005] AJHR I.16G.

<sup>270</sup> Regulations Review Committee *Inquiry into affirmative resolution procedures* (30 May 2007) [2005–2008] AJHR I.16I.

<sup>271</sup> Regulations Review Committee *Inquiry into the oversight of disallowable instruments that are not legislative instruments* (11 July 2014) [2011–2014] AJHR I.16H.

The report on fee charging was used by the Controller and Auditor-General as a reference point in a review of revenue collected by departments from third parties.<sup>272</sup>

This wide power has also allowed the committee to follow up inquiries it has already conducted, and to report to the House what amendments have been made to regulations to meet concerns expressed by the committee in earlier reports.

## REPORTS

The Regulations Review Committee is unusual in that it formally reports to the Minister who referred draft regulations to it for consideration, and to select committees about provisions in bills before them, as well as to the House. However, in practice, the committee includes in its periodic reports to the House summaries of its reports to Ministers and other select committees, so that all of its work is eventually recorded and reported on to the House.

Reports from the committee are presented in the same way as other select committee reports. The committee's reports are set down as Members' orders of the day.<sup>273</sup> Like other select committee reports set down for consideration, there is little chance of its reports being debated, and the order of the day is discharged 15 sitting days after the Government's response to it is presented (if it requires a response) and 15 sitting days after being placed on the Order Paper in other cases.<sup>274</sup>

## GOVERNMENT RESPONSE

As with reports from other committees, the Government is obliged to present a response on recommendations addressed to it in a Regulations Review Committee report within 60 working days of the report being presented.<sup>275</sup>

The committee has sometimes taken issue with a response that did not adequately address the matters contained in its report. It wrote to the Minister concerned expressing its dissatisfaction with a Government response,<sup>276</sup> and on occasions has launched further inquiries because of the inadequacy of responses to earlier recommendations. Following the committee's inquiry into geothermal energy regulations, it protested that the Government response totally failed to address the issues it had raised.<sup>277</sup> Where the Government's response to a report on Reserve Bank regulations had been presented out of time, the committee reported that this delay had effectively circumvented the work of the committee, since in the meantime legislation had been introduced dealing with the point in issue. The committee also considered that the response had misunderstood the committee's concerns and was in any event inadequate.<sup>278</sup> The committee also issued a report following up the Government's response to its report on Henry VIII clauses, reiterating and elaborating on its views in respect of two of its recommendations that had been rejected by the Government.<sup>279</sup>

<sup>272</sup> Controller and Auditor-General *Third report for 1995* (12 October 1995) [1993–1996] AJHR B.29[95c] at 43–50.

<sup>273</sup> SO 250(3).

<sup>274</sup> SO 74(4).

<sup>275</sup> SO 252(1).

<sup>276</sup> *Regulations Review Committee Report on the activities of the Committee from 28 November 1990 to 31 March 1992* (18 August 1992) [1991–1993] AJHR I.16E at [8.1].

<sup>277</sup> *Regulations Review Committee Report on the Government's response to the Committee's inquiry into the Geothermal Energy Regulations 1961* (8 October 1987) [1987–1990] AJHR I.16 at [5.1]–[5.7].

<sup>278</sup> *Regulations Review Committee Inquiry into the Reserve Bank of New Zealand Order 1988* (13 December 1988) [1987–1990] AJHR I.16.

<sup>279</sup> *Regulations Review Committee, report on the Government's response to inquiry of the Regulations Review Committee into the Resource Management (Transitional) Regulations 1994* (6 June 1996) [1993–1996] AJHR I.16G.

## CHAPTER 29

# Inquiries

### POWER TO INQUIRE

The House of Representatives enjoys the power to inquire into any matter that it considers needs investigation in the public interest. While the Parliament of New Zealand is solely a legislative body, the House of Representatives is not exclusively legislative in its functions, it is also inquisitorial. The House does use inquiries extensively as an aid to carrying out its legislative function (through select committees hearing evidence). But a power to inquire existing independently of its legislative functions is recognised by the law as inherent in the House's nature as a representative and responsible legislature. As well as being inherent, it is also affirmed by statute as belonging to the House, since it was a power possessed and exercised by the United Kingdom House of Commons on 1 January 1865 (as it still is), and it is therefore confirmed as attaching also to the House of Representatives as a legal power.<sup>1</sup>

The House of Commons, its members, and other legislatures tracing their privileges to a similar root, have been called variously the “grand (or great) inquest (or council) of the nation” and the “general inquisitors of the realm”, phrases from the writings of the great 17th-century lawyer Sir Edward Coke that express this general power to initiate inquiries into matters that members of Parliament deem worthy of their attention.<sup>2</sup> In Australia, the question has been raised of whether the power to inquire is limited to use only in aid of the legislative functions of that Parliament (which are themselves circumscribed by the Australian Constitution). However, it has been judicially acknowledged that even though the Commonwealth Parliament's legislative functions are constitutionally limited, there are no limits to the range of matters that may be relevant to its debates and other workings.<sup>3</sup> Furthermore, the fact that a legislature cannot validly pass legislation on a subject (and may thus be wasting its time in debating it at all) is no reason for judicial intervention to prevent the legislature considering the subject.<sup>4</sup> Thus, even a legislature with limited legislative functions may possess unlimited power to inquire, or at least power that exceeds its legislative competence, though its ability to exercise coercive powers in aid of such inquiries may be inhibited. In principle,

<sup>1</sup> Parliamentary Privilege Act, s 8(1).

<sup>2</sup> See, for example: *Morris v Burdett* (1813) 2 M & S 212 at 220 per Blanc J; *Stockdale v Hansard* (1839) 9 A & E 1 (QB) at 115; *Howard v Gossett* (1845) 10 QB 359 at 405; *Wason v Walter* (1868) LR 4 QB 73 at 89 per Cockburn CJ; *Egan v Willis* [1998] HCA 71, (1998) 195 CLR 424 at [102] per McHugh J; *Canada (House of Commons) v Vaid* 2005 SGC 30, [2005] 1 SCR 667 at [20].

<sup>3</sup> *Australian Capital Television Pty Ltd v Commonwealth of Australia* (1992) 177 CLR 106 at 142.

<sup>4</sup> *Rediffusion (Hong Kong) Ltd v Attorney-General of Hong Kong* [1970] AC 1136 (PC).

the power to inquire possessed by the House of Representatives in New Zealand, as a House of a Parliament whose legislative powers are not legally or constitutionally limited at all, is unlimited. However, that power and, more pertinently, the way it is exercised are potentially subject to restraint by any legislation applying to it.

## The nature of parliamentary inquiries

The principal mode of proceeding of a legislature is debate among its own members. A parliamentary inquiry, on the other hand, is generally understood to involve witnesses from outside the House giving evidence to members on the subject under consideration and being questioned by members in elaboration of their evidence. The main distinction between a debate and an inquiry is that the former is confined to members of Parliament expressing their views on a proposition (a motion), while the latter involves the gathering of information on a subject with a view to influencing future debate among members and may (and today usually does) involve non-members of Parliament participating in the proceedings.

## FORM OF INQUIRY

### House

While it is possible for the House to carry out an inquiry itself, it is an unwieldy body for this purpose and it is unusual for it to do so. The last occasion on which an examination of a witness at the bar of the House occurred was on 17 July 1896, when the President of the Bank of New Zealand was examined on his refusal to answer questions put to him at a select committee inquiry into the bank.<sup>5</sup> More usually the House delegates its inquiry function to a committee.

If it is proposed that a witness be heard at the bar of the House, the House must agree to this on a motion with notice. The motion may order that a summons be issued, and must appoint the time at which the examination is to be held. At the appointed time the witness is escorted to a position just inside the bar of the House by the Serjeant-at-Arms. Witnesses may be offered seats during the hearing.

The examination of a witness at the bar is conducted by the Speaker with the approval of the House.<sup>6</sup> The witness may be permitted to address the House first, in person or by way of counsel. Whether or not the witness addresses the House, the Speaker, and any member through the Speaker, may put questions to the witness.<sup>7</sup> In the examination of the President of the Bank of New Zealand, the Speaker himself put such formal questions to the witness as were suggested in the report of the select committee that led to the examination at the bar. Members were then permitted to send questions up to the Speaker, in writing, and the Speaker put them directly to the witness. At the end of the examination the witness was permitted to address the House.<sup>8</sup> In all cases the Speaker is the judge of the relevancy of the questions proposed to be asked of a witness.

### Committees of the whole House

Committees of the whole House have also been employed to examine witnesses. The first examination of witnesses in a committee of the whole House in New Zealand was conducted in 1860 as part of an inquiry into the outbreak of war in Taranaki.<sup>9</sup> However, the same objections apply to the practicality of a committee of the whole House as an effective means of examining witnesses as apply to the House itself. Consequently, the examination of witnesses by committees of the whole House has also practically fallen into disuse.

<sup>5</sup> (1896) 93 NZPD 268–271, 288–336.

<sup>6</sup> SO 158(1).

<sup>7</sup> SO 158(2).

<sup>8</sup> (1896) 93 NZPD 301.

<sup>9</sup> (1858–1860) NZPD 284–306.

Where an examination is held before a committee of the whole House, it is carried out at the bar of the House in the same way as it would have been before the House. The examination of a witness is conducted by the Chairperson, with the committee's approval.<sup>10</sup> The Chairperson, and members through the Chairperson, may put questions to the witness.<sup>11</sup>

## Select committees

The House of Commons, from the early 14th century at least, has established smaller committees of members to consider issues in detail. The matters thus considered were often bills, but also included inquiries into other subjects. In 1341 a committee was established to investigate how the proceeds of a tax had been used, an early example of a public accounts inquiry.<sup>12</sup> While it is likely that most of these early committees were confined to members deliberating among themselves, many of them would have heard evidence from non-members, especially those inquiring into cases of disputed elections and breaches of privilege. Certainly by the reign of Queen Elizabeth (1558–1603) committees were regarded as indispensable parliamentary tools for gathering information.<sup>13</sup>

In 1985 major changes to the select committee system gave the subject select committees the power to initiate inquiries themselves into most aspects of the activities of Government departments and related organisations. In 1995 this power was broadened from an exclusive focus on the scrutiny of public bodies to allow them to initiate inquiries into any matter relating to the subject area allocated to the committee.<sup>14</sup> The House's 13 subject select committees are now authorised by the Standing Orders to inquire into any matters that fall within their defined subject areas.<sup>15</sup> A subject select committee may also seek the permission of the House to inquire into matters outside its subject areas.<sup>16</sup> In the case of other select committees, their ability to carry out inquiries is governed by the terms of the Standing Orders or the resolutions under which they are established. A committee such as the Privileges Committee, for example, can consider and report only on a matter referred to it by the House,<sup>17</sup> while the Regulations Review Committee has considerable discretion as to the inquiries it may carry out in relation to delegated legislation.<sup>18</sup>

In its non-legislative exercise, the inquiry function of subject select committees has evolved into two forms: formal inquiries, and briefings.<sup>19</sup> For formal inquiries committees usually prepare their own written terms of reference, advertise for and examine witnesses, seek advice from independent sources and prepare a report to the House. Briefings provide the opportunity for members to inform themselves about an issue of interest or concern. While they do not usually have formal terms of reference and do not always result in a report to the House, committees have used briefings, or series of briefings, to decide whether to launch an inquiry into a matter. Select committees, in their legislative, financial, treaties, petitions and general inquiry modes, are the House's principal vehicles for carrying out inquiries.

(See Chapter 22 for the conduct of the examination of witnesses before select committees.)

<sup>10</sup> SO 174(1).

<sup>11</sup> SO 174(2).

<sup>12</sup> Josef Redlich *The Procedure of the House of Commons* (Archibald Constable & Co Ltd, London, 1908) vol 2 at 205.

<sup>13</sup> Ibid.

<sup>14</sup> Standing Orders Committee *First report (Part I)* (16 July 1985) [1984–1985] AJHR I.14 at 32–35; Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 40; Education and Science Committee *Review inquiries of public tertiary education institutions* (3 July 2001) [1999–2002] AJHR I.2A, App D.

<sup>15</sup> SO 189(2).

<sup>16</sup> Māori Affairs Committee *Special report seeking authority to inquire into the determinants of wellbeing for Pacific children* (14 July 2011) [2008–2011] AJHR I.22C.

<sup>17</sup> SO 401(1).

<sup>18</sup> SO 318.

<sup>19</sup> SO 189(2).

## POWERS IN CARRYING OUT INQUIRIES

### Power to obtain evidence

Most parliamentary inquiries are carried out by select committees. The effective performance of this task depends upon the willingness of people in the community to share their knowledge and expertise with the committee, so that the committee can make its recommendations to the House after a full consideration of the facts. Most people are willing to assist committees and it is extremely rare for a committee to meet with non-cooperation from a prospective witness. Arrangements are therefore normally made informally for witnesses to attend a committee and for documents to be produced to it. However, powers exist for the House to deal with situations where witnesses are unwilling to provide the evidence that the House considers is needed by a committee. (See Chapter 46, section on “Disobedience to the rules or orders of the House”.)

The power of the House to inquire into anything that it sees fit has long been held to imply a concomitant power of compulsion to obtain information necessary to carry out an inquiry. These powers—the power to inquire and the power to obtain evidence coercively—have often been regarded as synonymous. However, the House of Commons never claimed a privilege to administer an oath in aid of its inquiry power; and it is not always the case that a body with a power to inquire also possesses a power to order production of evidence. It is preferable, therefore, to regard these as separate powers. The power to secure evidence by requiring the attendance of witnesses and the production of documents is viewed as supporting the power to inquire, and is usually (but not always) co-extensive with it.<sup>20</sup> And while the power to obtain evidence may be co-extensive with the power to inquire, the likelihood that its coercive exercise will involve intrusion into the rights of persons to security of person and property means that greater safeguards need to be built into the way it is exercised by the House than are needed regarding the decision to hold an inquiry in the first place. The New Zealand Bill of Rights Act 1990 is binding on the House<sup>21</sup> and controls any coercive exercise of the power to obtain evidence. Persons against whom the power is exercised have the right to be free from unreasonable search and seizure.<sup>22</sup>

### *Summoning witnesses and documents*

The power to summon witnesses and order the production of documents is not limited in its application to public servants, Government bodies, or other public agencies. It extends to ordering individuals, corporate and private bodies to appear before the House or a committee to give evidence, and to produce to a committee documents in their possession that are relevant to the inquiry being prosecuted.<sup>23</sup> The House determines the procedures it will employ for exercising its powers to summon witnesses and obtain documents. Such procedures are the mode of exercising a privilege (power) that the House possesses; they are not the creation of a privilege itself.<sup>24</sup> The House may exercise the power to summon witnesses and produce documents by ordering a person to attend at the bar of the House or at a committee for examination, or to produce papers and records in the person's possession to the House or a committee.<sup>25</sup> A motion for such an order requires notice. An order that papers and records be produced to the House is known as an “order for a return”. The power to order returns is confined to papers of a public

<sup>20</sup> *Howard v Gossett* (1845) 10 QB 359 at 391, 405; *Egan v Willis* (1996) 40 NSWLR 650 (CA), especially per Mahoney P at 677–681.

<sup>21</sup> New Zealand Bill of Rights Act 1990, s 3(a).

<sup>22</sup> New Zealand Bill of Rights Act 1990, s 21.

<sup>23</sup> *Aboriginal Legal Service v State of Western Australia* (1993) 9 WAR 297 (SC) at 314–315.

<sup>24</sup> *Harendranath Barua v Dev Kanta Barua* [1958] AIR (Assam) 160.

<sup>25</sup> SOs 156 and 196.

or official character,<sup>26</sup> but does not run to requiring research or the production of new documents. The practice of the House ordering returns has largely fallen into disuse. (See pp 615–616.)

### **Persons, papers and records**

The House may delegate to a committee the power to order witnesses to appear or documents to be produced.<sup>27</sup> Such a delegated power is known as the power to send for “persons, papers and records”.<sup>28</sup> In 1640 the House of Commons delegated this power to all committees of the whole House.<sup>29</sup> In New Zealand, the House did not at first grant its committees the power to send for persons, papers and records. Indeed, committees were expected to apply to the House for permission even to examine witnesses at all, much less to coerce them by requiring their attendance. It is not clear, however, whether committeees actually refused to hear evidence from witnesses who were willing to appear voluntarily before them. Committees seeking power to send for persons, papers and records had to make special application to the House.<sup>30</sup> Gradually, the House relaxed this position and often conferred the power to send for persons, papers and records in the order establishing a particular committee.

In 1929 the House in its Standing Orders conferred on all select committees the power to send for persons, papers and records, and this remained the position until 1999. It is thought that there was only one attempt to exercise the power last century, in 1996.<sup>31</sup> In 1999 the House explicitly recognised that use of the power to send for persons, papers and records might constitute a serious infringement of civil liberties,<sup>32</sup> and acknowledged that the power must be exercised in a way consistent with the right not to be subjected to an unreasonable search or seizure.<sup>33</sup> The House adopted new procedures to govern its exercise, which were designed to ensure that the power was not used lightly. It has resolved that the power should be used only as a last resort in a case where the evidence is vitally necessary to the inquiry being carried out.<sup>34</sup> The procedures that now regulate the exercise of the power are the House’s means of ensuring that it is used in a lawful manner.

### **Committees with power to send for persons, papers and records**

Select committees do not have the power to send for persons, papers and records unless this power is specifically delegated to them. The House may confer the power on committees when they are established or after their establishment. The Privileges Committee is the only committee to which this power has been delegated since the change in procedure in 1999. The delegation was made under the Standing Orders<sup>35</sup> in recognition of the committee’s quasi-judicial status. All other committees wishing to send for persons, papers and records must do so under the authority of the House.

26 Malcolm Jack (ed) *Erskine May’s Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 133–134; *Egan v Willis* (1996) 40 NSWLR 650 (CA) at 663 per Gleeson CJ.

27 See, for example: *Attorney General (Canada) v MacPhee* 2003 PESCTD 6, 221 Nfld & PEIR 164 at [41], [42] (a legislature functions through its committees).

28 Malcolm Jack (ed) *Erskine May’s Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 133–134, 818–819.

29 Josef Redlich *The Procedure of the House of Commons* (Archibald Constable & Co Ltd, London, 1908) vol 2 at 207.

30 *Standing Rules and Orders of the House of Representatives*, No 78 (adopted 9 June 1854); see, for example: (1854–1855) NZPD 118.

31 Standing Orders Committee Review of the operation of the Standing Orders (2 September 1999) [1996–1999] AJHR I.18B at 16.

32 Standing Orders Committee Review of the operation of the Standing Orders (2 September 1999) [1996–1999] AJHR I.18B at 16–17.

33 New Zealand Bill of Rights Act 1990, s 21.

34 Standing Orders Committee Review of the operation of the Standing Orders (2 September 1999) [1996–1999] AJHR I.18B at 16–17.

35 SO 401(2).

Where a committee has the power to send for persons, papers and records, it may on its own authority direct that any person be summoned to attend before it and be examined as a witness before the committee. It may direct that any person be summoned to produce papers and records in his or her possession, custody or control that are relevant to the committee's proceedings,<sup>36</sup> including papers in the possession of private bodies and individuals.<sup>37</sup> The chairperson of the committee is the judge of the relevancy of the papers and records to the committee's proceedings.

The House has established procedures to be followed if individuals object to the use of the power to send for persons, papers and records. If a summons for papers is directed to a Minister of the Crown, the Minister may refuse to disclose the document on the ground that it is a confidential State document.<sup>38</sup> In such a case, and in any other case in which a person fails or refuses to produce documents, the committee may report the matter to the House for it to deal with.<sup>39</sup> If a Minister refuses to produce a document, the House may, on receiving the committee's report, order it to be produced in a way that preserves its confidentiality (for example, by ordering that it be produced in secret).<sup>40</sup> A Minister's refusal to produce a document to a committee is not itself a contempt, but if the Minister refuses to comply with an order of the House for production, that refusal could be treated as a contempt. Where a committee reports the failure of any other person to comply with a summons for production of documents, the House may treat the non-compliance as itself a contempt.<sup>41</sup> Alternatively, the House may give the person concerned a further opportunity to produce the document by ordering its production itself.

The power to send for persons, papers and records must be exercised in accordance with the general law. A select committee that possesses the power could not order the production of a document that could not be ordered to be produced by the House.<sup>42</sup> A statutory secrecy provision that applies against the House, for example, would apply also against a committee.

Furthermore, a committee having the power to send for persons, papers and records is nevertheless not entitled to summon members of Parliament to attend before it. Members may only be requested by a committee to attend before it, although any failure to do so may be reported to the House for its information.<sup>43</sup> Ultimately, only the House can order a member to attend and give evidence to a committee.<sup>44</sup>

### ***Committees not having power to send for persons, papers and records***

The Privileges Committee is the only select committee to have been delegated the power to send for persons, papers and records. For all other committees, coercive powers to summon witnesses and obtain evidence can be exercised by the House itself on behalf of the committee. A committee may, by way of a special report, draw a reluctant witness to the House's attention and request the House to issue a summons ordering the witness's appearance or the production of documents. It is for the House to decide whether or not to make such an order.

The House has delegated to the Speaker the exercise of the power to send for persons, papers and records. A select committee may apply to the Speaker for

<sup>36</sup> SO 196(1).

<sup>37</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 133–134, 818–819.

<sup>38</sup> (1909) 148 NZPD 30 Guinness.

<sup>39</sup> *Ibid*, at 31.

<sup>40</sup> *Ibid*, at 30.

<sup>41</sup> (1992) 528 NZPD 10626–10631.

<sup>42</sup> (1875) 19 NZPD 94 Bell.

<sup>43</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 820–821.

<sup>44</sup> Standing Orders Committee Review of Standing Orders (11 December 2003) [2002–2005] AJHR I.18B at 36.

the issue of a summons to order the appearance of a witness or the production of papers and records in a person's possession or custody.<sup>45</sup> The delegation to the Speaker is circumscribed and does not authorise the coercion of members. Only the House itself can order a member to appear before a committee.

The Speaker will entertain an application for the issue of a summons only if it is made by the full committee. A subcommittee that the committee has formed will not be issued a summons, even in respect of the production of evidence to the subcommittee. The Speaker may agree to the issue of a summons if the Speaker is satisfied that this is necessary in all the circumstances (including its relevance to the committee's inquiry), and that the committee has taken all reasonable steps to obtain the evidence, papers or records concerned. The Speaker will not issue a summons if the material sought by the committee is subject to a statutory secrecy provision that applies to the House. The existence of a statutory secrecy provision that is not expressed to apply to the House is nevertheless a relevant factor for the Speaker to consider in dealing with an application.<sup>46</sup> If the Speaker is satisfied that the summons is necessary and that the committee has taken all reasonable steps to obtain the evidence, a summons will be issued and served upon the person concerned.<sup>47</sup> The application and reply to and from the Speaker are dealt with in correspondence between the committee and the Speaker.

In agreeing to a summons, the Speaker must exercise care to avoid any unnecessary impositions on witnesses. Thus, the Speaker has refused to order a person to provide multiple copies of evidence in their possession. It was held to be unreasonable to require the witness to provide more than a single copy of the evidence to the committee.<sup>48</sup>

### ***Issue of summons***

The House acts through and by the Speaker in many of its actions. The Speaker is responsible for signing any order addressed to a person by the House, any order made by a committee with the power to send for persons, papers and records, and any order the Speaker makes upon the application of a committee to require a witness's attendance or the production of evidence. The Speaker is also responsible for directing how such an order is to be served.<sup>49</sup>

The Serjeant-at-Arms normally serves any order that the Speaker issues. A summons may be issued to anyone present in New Zealand regardless of their nationality, but not to someone overseas and thus outside the jurisdiction of the Parliament of New Zealand.<sup>50</sup> A summons issued by the Speaker pursuant to an order of the House or at the behest of a committee must set out the time and place at which the person concerned must comply with it.<sup>51</sup> An order of the House may require the person to whom it is addressed to deliver documents in his or her possession to a specified official, such as the Clerk of the House.<sup>52</sup> A summons addressed to a witness who is in prison may direct the manager of the prison to bring the prisoner in custody before the committee, as and when required. While committees may examine witnesses at their residences, the consent of the House should be obtained before a committee proceeds to examine a witness in prison.<sup>53</sup>

45 SO 197(1).

46 Standing Orders Committee Review of Standing Orders (11 December 2003) [2002–2005] AJHR I.18B at 31.

47 SO 197(2).

48 Justice and Electoral Committee Inquiry into matters relating to the visit of the President of China to New Zealand in 1999 (12 December 2000) [1999–2002] AJHR I.7A, App D.

49 SOs 156(2)(b), 196(2)(b) and 197(3)(b).

50 Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 896.

51 SOs 156(2)(a), 196(2)(a) and 197(3)(a).

52 *Aboriginal Legal Service v State of Western Australia* (1993) 9 WAR 297 (SC) at 306.

53 (1892) 78 NZPD 607 Steward.

## Power to punish

The House possesses an inherent power to punish for contempt. The power to punish conduct that obstructs or impedes its functions or challenges its authority is the ultimate safeguard of the power to inquire. The penal power of the House is considered essential to uphold and protect its role as “grand inquest of the nation”.<sup>54</sup> The powers of the House can also be used in more facilitative ways, to bring witnesses or physical evidence before the House or a committee, rather than to punish for a past failure to attend before them. The House might order, for example, that someone be taken into custody and brought to the bar of the House to give evidence. The power to issue such orders is subsumed within the concept of the House’s power to “punish” but the exercise of it might not be strictly punitive.

(See Chapter 46 for the types of conduct that may be punished for contempt and Chapter 47 for the types of punishment open to the House.)

## Oaths

The House and any committee of the House (including a committee of the whole House) has the legal power to administer an oath by any witness giving evidence before it,<sup>55</sup> although witnesses may choose to make an affirmation instead of taking an oath.<sup>56</sup> The power to examine on oath dates from 1865 when it was specifically enacted into law. The committees of the House of Commons did not gain the power to examine on oath until 1871. Before 1865, neither the House nor its committees enjoyed any general statutory power to examine witnesses on oath, although particular committees had been specifically given the power.<sup>57</sup>

The House possesses an inherent power to require a person to give evidence on oath. This is distinct from the statutory power to administer an oath referred to above. Where a person appears to be examined at the bar of the House, the House may order, on motion without notice, that the person take an oath or make an affirmation,<sup>58</sup> which the Clerk of the House administers.<sup>59</sup> A committee of the whole House has no power delegated to it by the House to order a person to take an oath when being examined before it (although a witness could do so voluntarily). The House would need to confer the power in any particular case where the power was desired, by way of an instruction to the committee.

The House has given select committees a general authority to direct any person to take an oath or make an affirmation before giving evidence to them.<sup>60</sup> The House might treat a refusal to take an oath or make an affirmation as a contempt. But a select committee cannot compel a member of Parliament to take an oath or make an affirmation (although a member can agree to do so voluntarily). Only the House can exercise coercive powers over members.<sup>61</sup>

An oath or affirmation before a select committee is administered by the clerk of the committee.<sup>62</sup> In all cases, the oath takes the same form as the oath of a witness before a court: that is, a promise to tell the truth in the evidence to be given to the House or committee. A person examined on oath before the House or a committee who wilfully gives false evidence is guilty of the offence of perjury, which carries a maximum punishment of seven years’ imprisonment.<sup>63</sup> In a prosecution for perjury, a court may examine, and adjudge the accuracy of, evidence given to

<sup>54</sup> *Stockdale v Hansard* (1839) 9 A & E 1 (QB) at 115.

<sup>55</sup> Parliamentary Privilege Act 2014, s 24.

<sup>56</sup> Oaths and Declarations Act 1957, s 4.

<sup>57</sup> Audit Act 1858, s 19 (Audit Committee); Private Bills Evidence Act 1860, s 2 (committees on private bills).

<sup>58</sup> SO 157(1).

<sup>59</sup> SO 157(2).

<sup>60</sup> SO 230(1).

<sup>61</sup> Foreign Affairs, Defence and Trade Committee *Inquiry into the appointment process for the Director of the Centre for Strategic Studies* (29 September 1999) [1996–1999] AJHR I.4F at 4, 5.

<sup>62</sup> SO 230(2).

<sup>63</sup> Parliamentary Privilege Act 2014, s 24; Crimes Act 1961, ss 108 and 109.

the House or a committee. This forms a statutory exception to the principle that proceedings in Parliament cannot be examined before a court.<sup>64</sup>

## PROTECTIONS FOR WITNESSES

### Evidence protected

No action, civil or criminal, can be taken against a witness in respect of evidence given to the House or one of its committees. The position of witnesses is no different from that of members in respect of words spoken in parliamentary proceedings.<sup>65</sup> It does not matter whether the witness appears voluntarily or is summoned to appear before the House or a committee; the protection applies in either case.

By statute, witnesses examined under oath before the House or a committee enjoy the same protection at law from having their testimony impeached as witnesses testifying under oath in the High Court.<sup>66</sup> Such evidence is absolutely privileged and cannot be used to support legal proceedings, civil or criminal. The only exception would be a prosecution for perjury in respect of evidence a witness had given.

While no liability (apart from for perjury) can arise out of evidence given to the House or a committee, the extent to which parliamentary evidence may be used in legal proceedings to support or refute a cause of action arising out of events occurring outside the House is now addressed in the Parliamentary Privilege Act 2014. The Act allows for the use of proceedings to ascertain the meaning of an enactment and to establish, without questioning, historical events or other facts.<sup>67</sup> (This issue is discussed on pp 739–740.)

Evidence given to a committee may not itself be admissible in legal proceedings, but it may alert the authorities or another party to a matter that is considered to warrant further investigation.<sup>68</sup> Further inquiries might expose the potential criminal or civil liability of a witness. But the facts supporting the charge or legal action must be proved independently of the parliamentary proceedings, without impeaching or questioning those proceedings.<sup>69</sup> No select committee can grant a witness immunity from potential liability arising from follow-up investigations prompted by parliamentary testimony.<sup>70</sup> Neither can the House, short of passing legislation, grant such immunity. Furthermore, the exercise of the Attorney-General's power to enter a stay of a criminal prosecution<sup>71</sup> would not prevent a civil action from proceeding.

Witnesses testifying before select committees may claim the privilege against self-incrimination. However, Crown organisations are in a different position. Such organisations are subject to criminal liability under building and health and safety legislation, and cannot claim the privilege as a ground for refusing to supply information to a committee.<sup>72</sup> However, the organisation's testimony to a parliamentary committee could not itself be used against it in legal proceedings. Any criminal liability would need to be established independently of the committee's proceedings.

<sup>64</sup> *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PG) at 10; Parliamentary Privilege Act 2014, s 9.

<sup>65</sup> Bill of Rights 1688 (Eng), art 9; *Goffin v Donnelly* (1881) 6 QBD 307; *R v Wainscot* [1899] 1 WALR 77 (SC); *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC).

<sup>66</sup> Parliamentary Privilege Act 2014, s 25.

<sup>67</sup> Parliamentary Privilege Act 2014, ss 11, 13 and 15.

<sup>68</sup> Privileges Committee, final report on question of privilege on the action taken by TVNZ in relation to its chief executive (17 October 2006) [2005–2008] AJHR I.17B at 5–6.

<sup>69</sup> Bill of Rights 1688 (Eng), art 9. See House of Commons (UK) Select Committee on the Official Secrets Act [1938–1939] HC 101 at [16].

<sup>70</sup> Finance and Expenditure Committee *Interim report on the Income Tax Bill* (22 November 1994) [1993–1996] AJHR I.3C; Philip A Joseph “Report to the Standing Orders Committee on Natural Justice” in Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A, App F at [8.14].

<sup>71</sup> Criminal Procedure Act 2011, s 176.

<sup>72</sup> Crown Organisations (Criminal Liability) Act 2002, s 10(1)(d)(ii).

Committees have several options where they believe or suspect that incriminating evidence might be received. They may hear the evidence in private or in secret,<sup>73</sup> or take preventive action to block or limit any dissemination of the incriminating material. But committees must treat the privilege against self-incrimination with due respect. Where a witness objected to answering a question on the ground of self-incrimination, the committee might properly resolve to excuse the witness from answering the question.

It is for the committees themselves to decide whether, in any particular case, they should attempt to protect witnesses from the consequences of their conduct coming to public attention. A witness may be more open with a committee if it agrees to take preventive measures to protect the witness. Both the courts and parliamentary committees have encountered difficulty knowing how far they should go to protect witnesses. Evidence given in court or before a select committee can set in train a process of discovery that may effectively render the witness liable in respect of his or her testimony.<sup>74</sup> On the other hand, it is not the function of a court or a parliamentary committee to protect a witness from public embarrassment, or the risk of prosecution arising from the witness's conduct outside the court or committee.<sup>75</sup> Both courts and parliamentary committees must judge where the balance of interest lies in deciding how to conduct their proceedings.

## **Interfering with witnesses**

It is a contempt of the House to intimidate, prevent or hinder a witness from giving evidence, or giving evidence in full, to the House or a committee.<sup>76</sup> The House is also concerned to protect witnesses against any adverse consequences being visited on them, as a result of their evidence to the House or a committee. Anyone assaulting, threatening or disadvantaging a person on account of parliamentary evidence that he or she has given may be held to be in contempt (in addition to any criminal or civil liability that they may thereby incur).<sup>77</sup> For example, a committee investigated a potential contempt when it received notice that a witness might have been penalised commercially as a result of evidence he had given to the committee.<sup>78</sup>

The Standing Orders give the House guidance in deciding whether conduct against a witness amounts to a contempt. The House will be guided by the conduct of the witness participating in parliamentary proceedings, and the nature of the action taken against him or her as a result of the witness's testimony.<sup>79</sup> Following an employee's appearance before a select committee, the House imposed a fine on the employer and ordered the employer to make a formal written apology to the House for the punitive actions it took against the employee.<sup>80</sup> However, the House exercises discretion in determining appropriate responses to retaliatory action. For example, the house will be loath to protect a person who acts irresponsibly in their parliamentary evidence and makes extravagant or unjustifiable assertions; such a witness cannot expect to be defended by the House if it leads to action outside the House. The law preventing the calling into question of the witness's evidence would still operate, but the House may take no affirmative action to protect the witness by using its power to punish for contempt.<sup>81</sup> In an extreme case, the House

<sup>73</sup> SOs 218 and 219.

<sup>74</sup> *Rank Film Distributors Ltd v Video Information Centre* [1982] AC 380 (HL) at 443.

<sup>75</sup> *Trustor AB v Smallbone* [2000] 1 All ER 811 (CA) at 821.

<sup>76</sup> SO 410(u).

<sup>77</sup> SO 410(x).

<sup>78</sup> "Privilege investigation" *The New Zealand Herald* (16 March 1991); Privileges Committee, report on matter of privilege referred on 10 April 1991 (31 March 1992) [1991–1993] AJHR I.15.

<sup>79</sup> SO 409(2); Privileges Committee, final report on question of privilege on the action taken by TVNZ in relation to its chief executive (17 October 2006) [2005–2008] AJHR I.17B at 5–6.

<sup>80</sup> Privileges Committee, interim report on question of privilege on the action taken by TVNZ in relation to its chief executive (6 April 2006) [2005–2008] AJHR I.17A at 3.

<sup>81</sup> Privileges Committee, final report on question of privilege on the action taken by TVNZ in relation to its chief executive (17 October 2006) [2005–2008] AJHR I.17B at 6.

may instruct counsel to intervene in legal proceedings to assist a witness whose conduct before a parliamentary committee is brought into issue.<sup>82</sup>

## Natural justice

The New Zealand Bill of Rights Act 1990 applies to acts done by the legislative branch of government.<sup>83</sup> This means that the House and its committees are under distinct legal obligations in respect of how they carry on their proceedings.<sup>84</sup> The right of every person to the observance of the principles of natural justice has particular application to the House and its committees. The right applies whenever a tribunal or public authority has the power to make a determination regarding a person's legal interests, including matters affecting livelihood or reputation.<sup>85</sup> The House has accordingly adopted procedures designed to give expression to these principles in a parliamentary context.<sup>86</sup> They go beyond giving procedural protections to witnesses, and apply to any person whose reputation may be affected by parliamentary proceedings.

The adoption of the new Standing Orders in 1996 introduced several due process protections for persons or witnesses who may be adversely affected by parliamentary proceedings. Persons who have been impugned in debate in the House may apply for a right of response, and the circumstances in which a person may be held to be in contempt are clearly defined. (See Chapters 38 and 46.) In select committees, a number of procedures provide protections for witnesses testifying before them. Persons must be informed of allegations against them, and have access to any information about themselves held by committees; they have the right to reply to allegations made against them, to be represented by counsel and to comment on any adverse findings in a draft report before a committee reports to the House. The rule against bias or predetermination also applies if a committee is inquiring into allegations of a criminal nature. (These procedural protections are discussed in Chapters 21, 22 and 23.)

The Standing Orders Committee that recommended these procedures emphasised that it is solely for the House to decide how to apply them to its own proceedings. Their application takes place in a parliamentary not a judicial environment, and they are always subject to the privileges of the House. In particular, it is for members to judge how much evidence to hear on a policy issue and to make up their own minds on it. The specific bias and allegation rules are concerned to protect individual reputation only, not to exclude members on the basis of their expressed political positions.<sup>87</sup>

## LIMITATIONS ON THE POWER TO INQUIRE OR OBTAIN EVIDENCE

The power of the House to inquire is in principle untrammelled but there are potential limitations on its exercise that must be considered. Potential limitations also constrain the ability of the House to obtain all of the evidence that it requires. These, too, must be considered.

---

<sup>82</sup> See, for example: (20 February 1991) 143 PD (Senate) (Aust) at 913–914, 966.

<sup>83</sup> New Zealand Bill of Rights Act 1990, s 3(a).

<sup>84</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 79; see also: Philip A Joseph “Report to the Standing Orders Committee on Natural Justice” App F at [1.3].

<sup>85</sup> New Zealand Bill of Rights Act 1990, s 27(1).

<sup>86</sup> See: SOs 200(2), 228, 232–238, 403, 405 and 408.

<sup>87</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 80.

## Statutory prohibition or inhibition

A statute might prohibit the House from conducting a specific inquiry or a certain type of inquiry. It would be an extraordinary step (akin to a legislative manner and form provision) for Parliament effectively to prohibit itself from conducting an inquiry. It is more likely that statutory provisions will regulate the way an inquiry should be conducted, rather than prevent an inquiry being conducted at all.<sup>88</sup> Even then, a clear statutory intent is required for the House's powers to be formally limited.<sup>89</sup> Inquiries into criminal wrongdoing or involving statutory secrecy provisions require particular consideration.

The House and its committees always have the right to inquire into agencies that are accountable to Parliament. However, it must use this authority judiciously, or risk bringing Parliament into disrepute. Parliamentary processes should not be used to encourage witnesses to disclose information when other more appropriate mechanisms exist.<sup>90</sup> The Protected Disclosures Act 2000, for example, established a comprehensive "whistle-blowing" regime for bringing matters of public importance to public attention.

### *Inquiries into criminal wrongdoing*

The House and its committees are not precluded by law from inquiring into criminal conduct or matters that might reveal evidence of crime. However, there would be a potential breach of the New Zealand Bill of Rights Act 1990 if a person had been charged with a particular offence and a parliamentary inquiry was commenced into his or her culpability.<sup>91</sup> Such an inquiry could be regarded as unlawful and beyond the power of any committee established by the House. In addition, the House has forbidden any select committee, without its express authority, from inquiring into or making findings in respect of allegations of crime by named or identifiable persons.<sup>92</sup> This prohibition applies even when no charges are pending or laid. The prohibition might apply to an item of business referred to the committee (such as a petition),<sup>93</sup> as well as to an inquiry initiated by the committee. But it is not taken to prevent a committee, within its terms of reference, from inquiring into and making findings of a general nature as to alleged criminal wrongdoing by persons who are not named or otherwise identifiable.<sup>94</sup> Similarly, committees are not prevented from inquiring into whether it is appropriate for particular persons to hold certain positions on public bodies because they may have thereby committed statutory offences.<sup>95</sup> Nevertheless, before embarking upon any inquiry with criminal implications, select committees should take into account wider considerations of policy and fairness that might make it inadvisable for them to become involved. A committee might elect not to undertake an inquiry if, for example, police inquiries had been commenced.<sup>96</sup>

<sup>88</sup> See: Education and Science Committee *Review inquiries of public tertiary education institutions* (3 July 2001) [1999–2000] AJHR I.2A as to whether parliamentary inquiries into tertiary education institutions were prohibited by law.

<sup>89</sup> *Aboriginal Legal Service v State of Western Australia* (1993) 9 WAR 297 (SC) at 304.

<sup>90</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004; Privileges Committee, final report on question of privilege on the action taken by TVNZ in relation to its chief executive (17 October 2006) [2005–2008] AJHR I.17B at 6.

<sup>91</sup> Philip A Joseph "Report to the Standing Orders Committee on Natural Justice" in Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A, App F at [3.13] (citing New Zealand Bill of Rights Act 1990, s 25(a)).

<sup>92</sup> SO 199(1).

<sup>93</sup> Health Committee Petition 2002/111 of Deborah Coddington and 19 others (26 May 2004) [2002–2005] AJHR I.22C at 691.

<sup>94</sup> SO 199(2); see, for example: Public Expenditure Committee *Report on pillaging* (18 May 1978) [1978] AJHR I.12B (inquiry into pillaging on wharves).

<sup>95</sup> Internal Affairs and Local Government Committee *Inquiry into the New Zealand Fire Service Commission* (14 December 1998) [1996–1999] AJHR I.7B at 7.

<sup>96</sup> Patricia M Leopold "The Power of the House of Commons to Question Private Individuals" [1992] *Public Law* 541.

### **Secrecy provisions**

Several statutes stipulate that information provided to an official or body for the purposes of carrying out duties under the legislation may not be disclosed, except in limited circumstances. In some cases, officials may be required to take an oath pledging to maintain the confidentiality of information that comes into their possession, except insofar as disclosure is necessary for the purposes of carrying out their duties. The question has arisen of whether these secrecy provisions apply so as to prevent the House or a committee requesting or ordering the production of such information, and so as to give the witness or potential witness good legal grounds for withholding it in the face of such a request or demand.

No single definitive answer can be given owing to the various nature of the provisions involved.<sup>97</sup> Some provisions appear to be absolute in their prohibition of disclosure,<sup>98</sup> others permit disclosure to any person with a proper interest in receiving the information;<sup>99</sup> and others combine the secrecy provision with a power to disclose for the purposes of carrying out the provisions of an Act (which may be taken to be implicit even in the absence of an express power).<sup>100</sup> A statutory secrecy provision expressly addressed to the House is binding, and qualifies the House's general power to obtain information. In such a case, it would be unlawful for the information to be disclosed to the House or a committee, or for the House to use its coercive powers to obtain the information. However, the House's powers of obtaining information will not be taken lightly to be displaced. Statutory secrecy provisions do not normally deal expressly with their relationship to parliamentary inquiries, and such provisions must be read in the context of the House's legal power and constitutional function of conducting inquiries and obtaining evidence. The House will jealously guard its power to request and obtain information where a statutory secrecy provision does not clearly state that it is intended to apply to the House and its committees. To qualify the House's power, a secrecy provision must apply to the House expressly or by necessary implication. A reasonable implication is not a necessary implication.<sup>101</sup> A necessary implication must flow from the express language of the statute, not from what it would have been reasonable for Parliament to have included in the statute had it stopped to think about it: "A necessary implication is a matter of express language and logic, not interpretation."<sup>102</sup> A necessary implication would be made out if disclosure of information in the course of a parliamentary inquiry would undercut the parliamentary purpose and render the secrecy provision worthless.

Legal advice should be sought before a witness responds to a committee's information request where a statutory secrecy provision is involved.<sup>103</sup> Given the variety of formulae to be found in legislation, it has been recommended that Parliament adopt a standard-form secrecy provision that makes it clear it is not intended to apply against a select committee request for information. It was also recommended that the House spell out in its own procedures the interests that would justify a select committee ordering disclosure of information to it.<sup>104</sup>

<sup>97</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 31.

<sup>98</sup> For example: Fire Service Act 1975, s 51B (fire service levies).

<sup>99</sup> For example: Serious Fraud Office Act 1990, s 36(2)(e).

<sup>100</sup> For example: Tax Administration Act 1994, s 81(3).

<sup>101</sup> *R (Morgan Grenfell & Co Ltd) v Special Commissioner of Income Tax* [2002] UKHL 21, [2003] 1 AC 563 at [45].

<sup>102</sup> *R (Morgan Grenfell & Co Ltd) v Special Commissioner of Income Tax* [2002] UKHL 21, [2003] 1 AC 563 at [45].

<sup>103</sup> State Services Commission *Officials and Select Committees—Guidelines* (August 2007, revised July 2008) at [30]; Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 31.

<sup>104</sup> Philip A Joseph "Report to the Standing Orders Committee on Natural Justice" in Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A, App F at [9.12]–[9.14].

No standard-form secrecy provision has yet been devised. However, the House has adopted procedures to ensure that a committee's information request is justified in the circumstances. All select committees (with the exception of the Privileges Committee) must make application to the Speaker to exercise the power to send for persons, papers and records.<sup>105</sup> The Speaker must be satisfied that it is necessary for such information to be formally demanded,<sup>106</sup> and will pay particular regard to the existence of a statutory secrecy provision.<sup>107</sup>

In the main, committees and witnesses will work through these issues themselves on the basis of what is strictly necessary for the purposes of the inquiry. Although committees may not be legally bound by a statutory secrecy provision, they will be expected to have regard to the values the secrecy legislation is intended to promote, and will endeavour to exercise their powers consistently with those values. Thus, in some circumstances, information may be provided in secret or with sensitive details removed.<sup>108</sup> One committee that sought sensitive information established protocols with the holder of the information to define the conditions under which the committee's adviser would inspect the information and the use to which it might be put.<sup>109</sup> Moreover, the committee chairperson controls the relevancy of proceedings and can always guide members and witnesses away from raising matters that might cause difficulties with a secrecy provision.<sup>110</sup> In most cases, the committee's actual practices may be the best means of resolving any conflicting interests when committees access information to which an element of statutory confidentiality attaches.

## Charges against members

The Standing Orders prohibit select committees from inquiring into or making findings about the private conduct of any member, unless the House specifically directs them to do so.<sup>111</sup> Of necessity, the Privileges Committee is not subject to this restriction, as questions of privilege referred to it will often implicate members, leading to just such inquiries. If any other committee receives information (by way of an allegation or otherwise) suggesting reprehensible conduct on the part of a member, the committee may not inquire into the information or allegation without the House's authority. It must, however, inform the member concerned of the information or allegation and give the member an opportunity to reply to it.<sup>112</sup> If it is proposed that a committee be authorised to inquire into a member's conduct, the appropriate course is to give notice of motion to that effect.<sup>113</sup>

## Self-incrimination

There is no general privilege allowing witnesses to refuse to answer questions put by the House or a committee on the ground that to do so may incriminate them.<sup>114</sup> With Crown organisations, statute specifically excludes any such privilege.<sup>115</sup> However, where there was a risk of self-incrimination, a witness would be entitled

<sup>105</sup> SO 197(1). The Privileges Committee is the only select committee that has been delegated the power under the Standing Orders to send for persons, papers and records. See: SO 401(2).

<sup>106</sup> SO 197(2).

<sup>107</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 31.

<sup>108</sup> Foreign Affairs and Defence Committee *Financial procedures at RNZAF Ohakea* (10 November 1994) [1993–1996] AJHR I.4A.

<sup>109</sup> Primary Production Committee *Inquiry into the administration and management of the scampi fishery* (2 December 2003) [2002–2005] AJHR I.11A at 183.

<sup>110</sup> Finance and Expenditure Committee *Inquiry into the powers and operations of the Inland Revenue Department* (13 October 1999) [1996–1999] AJHR I.3I at 10.

<sup>111</sup> SO 200(1).

<sup>112</sup> SO 200(2).

<sup>113</sup> (2000) 587 NZPD 5366–5367 Hunt.

<sup>114</sup> In the United States referred to colloquially as “taking the Fifth Amendment” since it derives from the Fifth Amendment to the Constitution.

<sup>115</sup> Crown Organisations (Criminal Liability) Act 2002, s 10(1)(d)(ii).

to seek to be excused from answering, or to seek to reply in private or in secret. It is for the committee to decide whether or not to grant such a request.

## Intelligence and security agencies

The New Zealand Security Intelligence Service and the Government Communications Security Bureau are subject to the oversight of the Intelligence and Security Committee. This committee is not established by the House but rather by legislation passed by Parliament.<sup>116</sup> Nevertheless, the committee's proceedings are deemed to be parliamentary proceedings, and the committee operates much as other select committees do.<sup>117</sup> Under its enabling statute, the committee has the power to consider any bill or other matter relating to any intelligence and security agency that is referred to it by the House.<sup>118</sup> The House, by sessional order, enlists the committee into its procedures by requiring it to conduct the annual review of each agency and examine the Estimates and Supplementary Estimates relating to them; to examine any bill or other matter relating to either agency that may be referred to it; and to deal with any petitions relating to either agency that may be allocated to it by the Clerk. While the legislation has not removed the House's power to inquire into the agencies, the House has directed that no select committee shall examine or inquire into their activities.<sup>119</sup> This prohibition operates, not by law, but by order of the House. Intelligence and security matters are not within the terms of reference of any subject select committee.<sup>120</sup>

## Official information requests

Members of Parliament are among the principal users of the Official Information Act to request official information held by a Minister or a department. However, requests for information made by the House, committees or members in the course of parliamentary proceedings are not made under the Act. Rather, the lodging of questions for answer in the House or the requesting of information in the course of a select committee inquiry is an information request made under the inherent inquiry power of the House. This power long pre-dated the Official Information Act 1982, being inherent in the nature of a legislature. If these were official information requests, the statutory grounds for withholding information set out in the Act would supersede and limit the House's coercive powers to obtain whatever information it deems necessary to carry out its inquiries. Question time in the House, for example, would be subject to the statutory limitations of the Act and to oversight by the Ombudsmen. Although a clearly expressed legislative provision can abrogate the privileges of the House, the official information legislation shows no such intention. The Act is at pains to preserve the privileges of the House, including its inherent power to obtain information, by permitting information to be withheld if to release it would constitute a contempt of the House.<sup>121</sup>

Consequently, the firm view of the House and its committees is that a request for information made by a parliamentary body of the House or one of its committees is not an official information request. It is for the House or the committee to judge whether the information should be made available to it, not the person or agency to whom the request is made.<sup>122</sup> In 2006 the Privileges Committee recognised that most boards discharge their responsibilities to Parliament adequately, but warned

<sup>116</sup> Intelligence and Security Committee Act 1996.

<sup>117</sup> Intelligence and Security Committee Act 1996, s 16.

<sup>118</sup> Intelligence and Security Committee Act 1996, s 6(1)(b).

<sup>119</sup> (2000) 582 NZPD 1265–1275, 1378–1384 Hunt; (2002) 604 NZPD 1897–1909.

<sup>120</sup> See, for example: (18 February 2015) 703 NZPD 1707–1725.

<sup>121</sup> Official Information Act 1982, ss 18(c)(ii) and 52(1).

<sup>122</sup> See, for example: Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 31; Commerce Committee *Briefing on Television New Zealand's accountability to Parliament* (15 October 2004) [2002–2005] AJHR I.22C at 56–57; Privileges Committee, interim report on question of privilege on the action taken by TVNZ in relation to its chief executive (6 April 2006) [2005–2008] AJHR I.17A at 8–9.

that any shortcomings in discharging them would come at a cost. The committee left those who serve on the boards or in management of public organisations in no doubt that Parliament will treat with utmost seriousness any behaviour that impedes the proper process of accountability to the elected representatives of the people.

The State Services Commission acknowledges that the Official Information Act 1982 does not formally constrain the powers of the House, and instructs officials never to refuse to provide information to select committees on the ground that the legislation permits this.<sup>123</sup> But, it points out, the statute sets out an accepted set of interests that may warrant the protection of information, which can be raised with a committee before responding to its information requests.<sup>124</sup> An Australian Senate committee has also acknowledged that good reasons for withholding information under that country's freedom of information legislation may be persuasive reasons for not providing documents to a parliamentary committee.<sup>125</sup> (See pp 333–336 for objections to answering questions.)

In replying to questions, Ministers have occasionally cited the grounds set out in the Official Information Act 1982 for withholding information as an explanation for not providing all of the information sought in the question.<sup>126</sup> Such replies draw on political rather than legal judgement. But it is axiomatic that if information would be available for disclosure under the Official Information Act 1982, it should be given to the House or a committee in response to its request. To do less would be to treat the House or the committee contemptuously. A committee has expressed surprise, for example, that Cabinet papers supplied to other persons were not provided to it when the papers were relevant to the issues it was examining.<sup>127</sup> Ministers and officials should be careful that, in using the legislation by analogy, they do not attempt to apply stricter disclosure standards to the House and committees than would be applied to the public generally.

In the United Kingdom, a court has held that it was correct for the Information Commissioner to refuse to treat a parliamentary question as a valid request under the relevant freedom of information legislation. A review would challenge the correctness of the Minister's answer and such a challenge could not be the subject of a judicial challenge. It was also wrong for parties to proceedings and for the Information Commissioner to rely on a parliamentary committee's opinion, as that could lead to disputing or questioning of the committee's views, which would be a breach of parliamentary privilege.<sup>128</sup> (See Chapter 45.)

In all cases the relationship between the House and the bodies subject to its scrutiny (principally Government departments) is a constitutional one that does not rest on the Official Information Act 1982. Ultimately, the House's ability to obtain the information it requires rests on political will rather than legal principle.<sup>129</sup>

## **Other suggested legal inhibitions**

The question has been raised whether any other legal principles can be invoked to resist an order of the House for the production of a document.<sup>130</sup> The power to order a return, for example, being confined to a document of a public or official character, might raise a claim of public interest immunity against production

<sup>123</sup> State Services Commission *Officials and Select Committees—Guidelines* (August 2007, revised July 2008) at [28].

<sup>124</sup> Ibid.

<sup>125</sup> Senate (Aust) Procedure Committee, *Third report of 1992* [1992] 510.

<sup>126</sup> See, for example: Reply to question 13061 (2001) (49 NZPD Supp 2838).

<sup>127</sup> Civil Aviation Amendment Bill (No 2) (104–2) (commentary, 29 June 2001) at 4 ([1999–2002] AJHR I.22B at 1352).

<sup>128</sup> *Office of Government Commerce v Information Commissioner* (Attorney-General intervening) [2008] EWHC 737 (Admin), [2010] QB 98.

<sup>129</sup> Public Finance (State Sector Management) Bill (99–2) (commentary, 6 September 2004) at 8 ([2002–2005] AJHR I.22C at 238).

<sup>130</sup> *Egan v Willis* (1996) 40 NSWLR 650 (CA) at 693 per Priestley JA.

of the document.<sup>131</sup> "Public interest immunity" is a rule of evidence protecting State documents from production in legal proceedings on the ground that this would be injurious to the public interest.<sup>132</sup> Assuming public interest immunity is available as a legal ground for resisting an order for a return, it has been said that the legislature must deal with such a claim on the same principles a court would apply in litigation that was before it. The legislature would be under the same duty as a court to balance the conflicting public interests between the legislature's desire to access the material and the executive's desire to maintain its confidentiality.<sup>133</sup> Nevertheless, there are difficulties with this approach, which has been vigorously contested.<sup>134</sup> In particular, it is difficult to see how the duty to balance the contesting interests could be enforced. Proceedings in Parliament are absolutely privileged and cannot be questioned in any court or place outside of Parliament.<sup>135</sup>

One view is that public-interest immunity as a rule of evidence is confined to legal proceedings where disputes as to its operation can be determined by courts. This would rule out its application to parliamentary inquiries as a matter of law, although the public interest that it promotes of maintaining the confidentiality of State documents may be a relevant consideration for the House, the Speaker or a committee to take into account when making information demands. A majority of the New South Wales Court of Appeal upheld this view in the only case to have addressed this issue.<sup>136</sup>

A claim that production of evidence to a committee would be contrary to the public interest should always be considered seriously. Nevertheless, it does seem unnecessary to complicate the judgement to be made by the House or committee with concepts drawn from the legal doctrine of public-interest immunity. In New Zealand, it has never been claimed that this doctrine applies as a matter of law to demands by the House for State documents. Neither the House nor its committees are precluded from taking executive claims to secrecy seriously and formulating criteria for judging them; but these judgements are the legislature's to make in the exercise of its privileges. They are not applications of the public-interest-immunity doctrine. That view has been expressly upheld in legal proceedings in Australia. The court rejected the argument that legal professional privilege operates to limit a legislature's power to order production of a document.<sup>137</sup> However, the House has acknowledged that a legal opinion is the property of the person who commissioned it, and that a select committee cannot expect the opinion to be furnished to it without the consent of the owner.<sup>138</sup>

Public-interest immunity and legal professional privilege are grounds on which it has been suggested that the production of documents demanded by the House might be lawfully resisted. Further grounds might include individual privacy and the right to maintain confidentiality, although these grounds have never been claimed or conceded in New Zealand.<sup>139</sup> That said, the committees often take into account the need for individual privacy in conducting their proceedings. They will often, for example, take evidence in secret to protect individual privacy or to maintain confidentiality. It should be a matter for the judgement of the committee whether it agrees to an objection to produce evidence on either of these grounds.

<sup>131</sup> *Egan v Willis* (1996) 40 NSWLR 650 (CA) at 663 per Gleeson CJ.

<sup>132</sup> See Philip A Joseph *Constitutional and Administrative Law* (4th ed, Brookers Ltd, Wellington, 2014) at [18.4.2].

<sup>133</sup> *Egan v Chadwick* [1999] NSWCA 176, (1999) 46 NSWLR 563 at [142] per Priestley JA.

<sup>134</sup> *Egan v Chadwick* [1999] NSWCA 176, (1999) 46 NSWLR 563 at [154] per Meagher J.

<sup>135</sup> Bill of Rights 1688 (Eng), art 9.

<sup>136</sup> *Egan v Chadwick* [1999] NSWCA 176, (1999) 46 NSWLR 563 per Spigelman CJ and Meagher J.

<sup>137</sup> *Egan v Chadwick* [1999] NSWCA 176, (1999) 46 NSWLR 563.

<sup>138</sup> Standing Orders Committee Review of Standing Orders (11 December 2003) [2002–2005] AJHR I.18B at 31.

<sup>139</sup> *Egan v Willis* [1998] HCA 71, (1998) 195 CLR 424 at [161] per Kirby J.

## PARTICULAR TYPES OF INQUIRY

### Removal of office-holders

A number of State office-holders may only be removed from office (before their statutory term expires) at the behest of the House of Representatives, by the House presenting an address to the Sovereign or the Governor-General seeking their removal. The office-holders who may be removed from office in this way are:

- a judge of the High Court (which includes all judges of the Supreme Court and the Court of Appeal)<sup>140</sup>
- a judge of the Employment Court<sup>141</sup>
- an Ombudsman<sup>142</sup>
- the Controller and Auditor-General and the Deputy Controller and Auditor-General<sup>143</sup>
- the Parliamentary Commissioner for the Environment<sup>144</sup>
- the Clerk of the House of Representatives and the Deputy Clerk<sup>145</sup>
- a member of the Independent Police Conduct Authority who is not a judge<sup>146</sup>
- a member of the Abortion Supervisory Committee<sup>147</sup>
- a member of the Electoral Commission who is not a judge<sup>148</sup>
- the Judicial Conduct Commissioner.<sup>149</sup>

In all of these cases, the House may initiate the request for the removal of the office-holder only on stated grounds.

Thus, for a High Court judge the address may be moved only on the grounds of the judge's misbehaviour or incapacity to discharge the functions of the judge's office.<sup>150</sup> It seems that an address that sets out no grounds of complaint against a judge, reasons for removal or other justification would not be sufficient to justify the Crown removing the judge.<sup>151</sup> Furthermore, no judge may be removed from office unless a Judicial Conduct Panel has first reported to the Attorney-General the opinion that consideration of the removal of the judge is justified.<sup>152</sup> If a Judicial Conduct Panel does so report, the Attorney-General is obliged to consider whether to take steps to initiate the judge's removal by an address,<sup>153</sup> though if a judge has been convicted of a criminal offence punishable by two years' imprisonment or more, steps for removal may be initiated even without a panel recommendation.<sup>154</sup>

It is axiomatic that before proceeding to adopt an address for removal of an office-holder, the House or somebody responsible directly to the House will have carried out an inquiry to ascertain whether grounds exist and should be invoked for the House to request the removal of the office-holder in question. (In the case of a judge, a Judicial Conduct Panel will have made such a report.) This in turn will require the House to follow appropriate procedures guaranteeing a fair and efficient process before it decides to adopt an address requesting the office-holder's removal. No process for the removal of a judge or other statutory office-holder has ever been put in train by the House and there are no standing procedures for this

<sup>140</sup> Constitution Act 1986, s 23.

<sup>141</sup> Employment Relations Act 2000, s 204.

<sup>142</sup> Ombudsmen Act 1975, s 6(1).

<sup>143</sup> Public Audit Act 2001, sch 3, cl 4.

<sup>144</sup> Environment Act 1986, s 7(1).

<sup>145</sup> Clerk of the House of Representatives Act 1988, s 11(2).

<sup>146</sup> Independent Police Conduct Authority Act 1988, s 6(3).

<sup>147</sup> Contraception, Sterilisation, and Abortion Act 1977, s 11(3).

<sup>148</sup> Electoral Act 1993, s 4G(3).

<sup>149</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, sch 2, cl 3.

<sup>150</sup> Constitution Act 1986, s 23.

<sup>151</sup> AJ Hannan *The Life of Chief Justice Way* (Angus and Robertson, Sydney, 1960) at 52–57 (Crown declined to act on an address in South Australia on this ground).

<sup>152</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 33(2).

<sup>153</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 33(1).

<sup>154</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, ss 34(1), 34(2)(b).

purpose. Overseas Parliaments have referred proposals for removal for inquiry by an outside statutory body (under general legislative authority or under ad hoc legislation) or have referred such proposals to a parliamentary committee for inquiry. Invariably the office-holder concerned is also permitted to address the House itself before a decision is taken.

Although the House has never proceeded on a motion to remove a judge or other office-holder, charges or allegations have been made from time to time, attracting some parliamentary response. It is a rule of the House that the conduct of a judge can only be raised before it by way of a notice of motion, and not incidentally in the course of a debate.<sup>155</sup> If the notice of motion is to be accepted for consideration, any such charge must also raise a strong *prima facie* case of conduct that would induce the House to address the Crown for the judge's removal.<sup>156</sup> For example, to criticise a judge on the ground that he or she has committed errors, even gross errors, does not amount to raising allegations of misbehaviour that would justify removal.<sup>157</sup> On the other hand, a judge consistently making errors could demonstrate incapacity for the office. The House has referred allegations made against a judge to a committee for inquiry and report.<sup>158</sup>

## **Membership of the House**

Until 1880 the House was, by statute, the sole judge of disputes as to the outcome of parliamentary elections. Disputed election petitions were tried by committees of the House. This function is now discharged by the High Court. However, questions can still arise from time to time as to whether a vacancy has occurred as a result of a sitting member becoming disqualified or otherwise ceasing to be a member. While the House no longer itself determines if a vacancy has arisen, its opinion on the matter, after inquiry by a committee, may be highly persuasive.<sup>159</sup> In 1897 when a question arose over the bankruptcy of a member (bankruptcy then being a disqualification), Parliament passed legislation providing for a special inquiry by the Court of Appeal to be held into the matter rather than the House making its own inquiry.<sup>160</sup> In 1997 when a question arose as to whether a member had effectively resigned her seat, the matter was inquired into by the Privileges Committee as a question of privilege.<sup>161</sup> In 2003 the Privileges Committee conducted an inquiry into whether a member had incurred a disqualification by applying for a foreign nationality.<sup>162</sup>

Inquiries of this kind are possible if the Speaker considers that there is a real doubt as to membership;<sup>163</sup> otherwise the Speaker acts on his or her own initiative. In all cases it is the Speaker who invokes the procedures for filling any vacancy.<sup>164</sup> There is no longer any requirement for a direction from the House in the matter.

## **Statutory inquiries**

Occasionally legislation ordains that a select committee inquiry be held. It is doubtful whether there is any legal means of enforcing such a provision, since its execution depends entirely on decisions taken in the course of parliamentary proceedings, which it is unlawful for any court to review. Nevertheless, the House

<sup>155</sup> (1901) 119 NZPD 199 Guinness (Deputy Speaker).

<sup>156</sup> (1874) 16 NZPD 112 Bell.

<sup>157</sup> *Daphtry v Gupta* [1971] AIR (SC) 1132 at [68].

<sup>158</sup> (11 August 1874) [1874] JHR 99; (21 August 1874) [1874] JHR 146 (Ward Chapman inquiry report—no substance to allegations found).

<sup>159</sup> (6 August 2003) 610 NZPD 7749 Hunt.

<sup>160</sup> Awarua Seat Inquiry Act 1897.

<sup>161</sup> Privileges Committee, report on question of privilege relating to status of Alamein Kopu as a member of Parliament (25 September 1997) [1996–1999] AJHR I.15B.

<sup>162</sup> Privileges Committee *Question of privilege relating to the application of section 55(1)(c) of the Electoral Act 1993 to Hon Harry Duynhoven* (6 August 2003) [2002–2005] AJHR I.17C.

<sup>163</sup> *Ibid.*, at 5.

<sup>164</sup> Electoral Act 1993, ss 129(1) and 134(1).

is bound by a statutory obligation, just as it is bound by any other provision of the law, and the Speaker must attempt to see that such obligations are complied with.<sup>165</sup>

Statutes have provided for an inquiry into the application of the Official Information Act 1982 to State enterprises,<sup>166</sup> for a review of the MMP electoral system,<sup>167</sup> and a continuing requirement for a five-yearly review of the charter of Radio New Zealand.<sup>168</sup> (The first review of Radio New Zealand's charter was discharged in 2001 by the Commerce Committee under its general inquiry powers.<sup>169</sup>) The House was required to establish a select committee as soon as practicable after 1 December 2004 to examine provisions of legislation designed to implement New Zealand's obligations under a United Nations Security Council resolution on terrorism. The committee was to report back to the House by 1 December 2005, as to whether the provisions should be retained, repealed or amended.<sup>170</sup>

In establishing a committee to carry out a statutory inquiry the House may also require the committee to carry out a wider (but not a narrower) inquiry than that required by the statute.

---

<sup>165</sup> (1989) 497 NZPD 10262–10263 Burke.

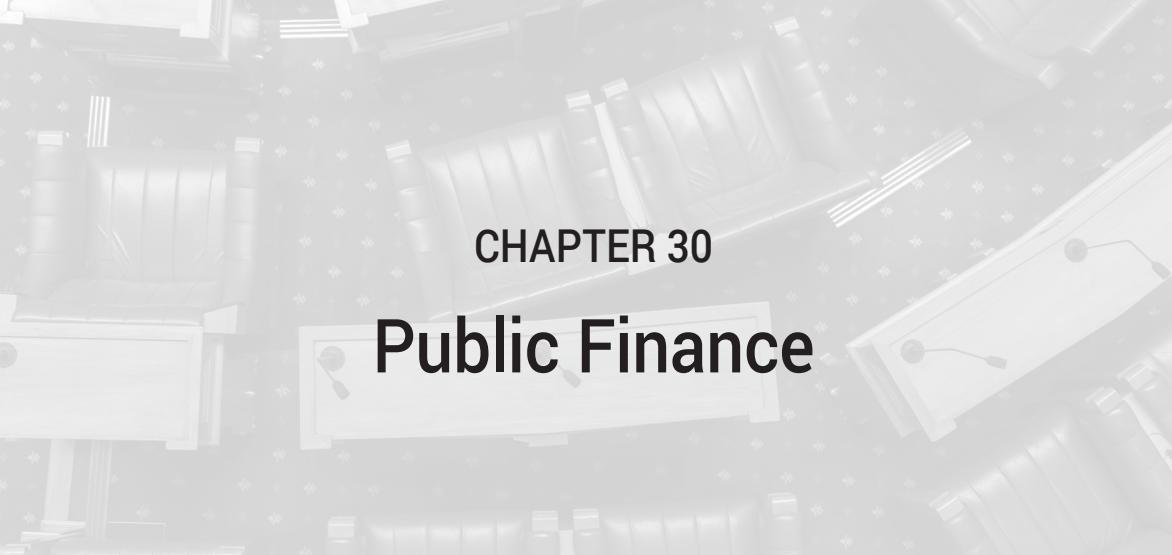
<sup>166</sup> State-Owned Enterprises Act 1986, s 31; State-Owned Enterprises (Ombudsmen and Official Information Acts) Committee, report (27 March 1990) [1990] AJHR I.22A.

<sup>167</sup> Electoral Act 1993, s 264; MMP Review Committee *Inquiry into the review of MMP* (8 August 2001) [1999–2002] AJHR I.23A.

<sup>168</sup> Radio New Zealand Act 1995, s 7(4).

<sup>169</sup> Commerce Committee *Review of the Radio New Zealand charter* (21 December 2001) [1999–2002] AJHR I.1B.

<sup>170</sup> Terrorism Suppression Act 2002, s 70(2), (3) (repealed); (10 February 2005) 623 NZPD 18557–18566; Foreign Affairs, Defence and Trade Committee *Review of the Terrorism Suppression Act 2002* (1 December 2005) [2005–2008] AJHR I.4A.



# CHAPTER 30

## Public Finance

Control of public finance has historically been at the heart of Parliament's constitutional pre-eminence. In England, government expanded from being virtually the prerogative of a King, funded out of the King's personal wealth, into a State function funded by public exactions. With this expansion came a need to broaden the tax base from its largely feudal origins. Thus there grew a dependence by the King and the King's Ministers, who were charged with carrying on the government, on Parliament, the body representing the subjects who contributed the funds now needed for effective government. Parliamentary sanction was recognised as a legal prerequisite to taxation being levied. The consent of taxpayers, at least in a representative capacity, was a practical necessity if civil strife was to be avoided and tax productively raised.

Furthermore, Parliament began to restrict what the proceeds of taxation could be spent on, by directing or appropriating that it be used only for particular ends (some of the earliest appropriations of taxation by the English Parliament were for wars with the Scots, for example). From the time of the restoration of the Crown in 1660, appropriating supplies to limited purposes defined by Parliament itself became the common practice. Parliament then started to demand to see the Royal accounts to satisfy itself that supplies appropriated to one purpose had not been used for another. Thus, public audit began to develop.<sup>1</sup> By the mid-19th century a comprehensive system of parliamentary control of public finance had developed. When representative government was established in New Zealand this parliamentary control was reflected in the system of public finance that was established in the colony.

### THE PUBLIC FINANCE PRINCIPLES

The fundamental public finance principles in New Zealand law are that taxation may be levied and public money may be expended only under parliamentary authority.<sup>2</sup> The rules for the receipt and payment of and accounting for public funds derive from these principles of parliamentary authorisation.

Public finance could be seen in simplified terms as requiring all money received by or on behalf of the Crown (taxes, fees, rents, interest and so on) to be paid into a giant fund (formerly referred to as the Consolidated Fund) and all payments

---

1 See Henry Hallam *The Constitutional History of England* (5th ed, William S Hein, Buffalo, New York, 1989) vol 2 at 117–121.

2 Bill of Rights 1688 (Eng), art 4 and Constitution Act 1986, s 22(a) (taxation); Constitution Act 1986, s 22(c) and Public Finance Act 1989, s 5 (spending public money).

authorised to be made by the Crown (salaries, benefits, subsidies and so on) to be disbursed from this fund. Until 1989, the New Zealand system worked very much like this, with the qualification that there was more than one fund and that some departments could retain and reuse some of their receipts without paying them into the fund. Each year Parliament authorised the Government through its departments to spend so much on various categories of expenditure such as salaries, operating costs, travel, and so on. The payments made in accordance with these authorities were drawn by the Treasury on moneys held in accounts at the Reserve Bank. While under some limited delegations small payments were made locally by departments, most payments were made centrally by the Treasury.

This system changed radically with the financial management reforms introduced in 1989. Parliament no longer simply authorised the expenditure of public money to purchase the resources used by departments. Parliament began to authorise the Government to purchase particular goods or services (called outputs) from its departments and from third parties. In a few cases this authorisation is for the net cost of producing the output, taking into account any revenue the department expects to make in the course of producing it. Parliament also specifically authorises the Government to meet expenses associated with paying benefits, with borrowing and with capital expenditure, and to incur certain other expenses. (See Chapter 31.)

The outputs supplied by departments and third parties are designed to contribute to outcomes that are desired by the Government. An outcome represents some state or condition that the Government, as the promoter of expenditure proposals, wishes to bring about or further. Information presented with the Budget must explain concisely what is intended to be achieved with each appropriation, or in the case of multi-category appropriations, each category, and how performance will be assessed.<sup>3</sup>

From a parliamentary point of view, the long-standing constitutional rule prohibiting the expenditure of public money without Parliament's authorisation is no longer adequate. The introduction of accrual accounting for the public sector means that income and expenditure are recorded in the public accounts in the time period to which each transaction relates, and not necessarily when money is actually paid or received. Furthermore, the cost of an asset is spread across its estimated lifetime by depreciation rather than being fully recognised in the public accounts when it is acquired. Departments do not merely spend public money in cash terms. They also incur expenses, which must be recognised in their accounts, with financial consequences that must be recorded as assets and liabilities in balance sheets. Consequently, the public finance legislation now goes further than merely prohibiting the spending of money without parliamentary approval, requiring such approval before a department may incur expenses or capital expenditure.<sup>4</sup>

## BORROWING

Parliamentary control of the Crown's ability to borrow has historically been less developed than its control over taxation and spending. English Parliaments were concerned to prevent the monarch raising revenue by forcing "loans" on citizens. They were less interested in trying to control the Crown's power to borrow in general, perhaps on the basis that the Crown would effectively need parliamentary authority for a loan anyway if it was to have the means of servicing it. The general power of the Crown to borrow money is now, in New Zealand, a statutory one. It is unlawful for the Crown to borrow or for any person to lend money to the Crown except as authorised by legislation.<sup>5</sup>

---

<sup>3</sup> Public Finance Act 1989, ss 15A and 15C.

<sup>4</sup> Public Finance Act 1989, s 4(1).

<sup>5</sup> Constitution Act 1986, s 22(b); Public Finance Act 1989, s 46.

In fact the Crown has, by statute, been given comprehensive general borrowing powers and powers to give security for such loans.<sup>6</sup> There is no prescribed limit to the amount of money the Crown may borrow in any financial year.<sup>7</sup> This legislative framework for the raising of loans means that there is no longer any special parliamentary involvement with the raising of individual loans and the House's involvement in debt management is minimal.<sup>8</sup> However, the Auditor-General makes a regular practice of commenting in detail on central government debt as revealed in the various financial statements prepared by the Government, which stand referred to the Finance and Expenditure Committee when presented to the House.<sup>9</sup> The Finance and Expenditure Committee can, if it wishes, probe further in this area.

Payment of principal, interest and other financing expenses on any loan is appropriated under permanent legislative authority.<sup>10</sup> No annual appropriation is required, although such payments are revealed in the Estimates and in the Government's annual financial statements.

The House's authority is required for the issue of one type of security. State enterprises, if authorised by the House by resolution, may issue equity bonds, which are deemed to be ordinary shares but carry no voting rights.<sup>11</sup> No such authority has so far been given by the House.

## FINANCIAL YEAR

In England, the Crown's ever-growing need for finance led to the more frequent holding of Parliaments. This eventually resulted in a system of annual funding of government activity based on annual meetings of Parliament. New Zealand adopted an annual basis for its public accounts as soon as it obtained representative government, though there is no inherent necessity for adopting an annually-based system for public finance<sup>12</sup>—it is always a matter of legislative choice.

At first, the financial year ran from 1 July to 30 June. This was altered to 1 April to 31 March in 1879. The financial year reverted to running from 1 July to 30 June in 1989. (There was a transitional quarter from 1 April to 30 June 1989 to bridge the gap between the different periods.)

## CROWN BANK ACCOUNTS

The Crown (through the Treasury) operates Crown Bank Accounts.<sup>13</sup> A number of bank accounts may be opened and operated on behalf of the Crown; they are known collectively as Crown Bank Accounts. (Indeed, legislation may require a bank account to be opened for a particular purpose as a Crown Bank Account.<sup>14</sup>) In December 2015 the Crown held around 160 bank accounts (excluding foreign currency accounts) with Westpac Banking Corporation, the Government's principal provider of financial transactions.

With Treasury approval, Government departments may open their own departmental bank accounts.<sup>15</sup> These accounts must be set up with the bank that

<sup>6</sup> Public Finance Act 1989, ss 47–65D and 65ZH.

<sup>7</sup> Controller and Auditor-General, report on public accounts (26 June 1979) [1979] AJHR B.1 [Pt.II] at 71.

<sup>8</sup> ML Longdin-Prisk “Setting Legal Limits to Government Borrowing” (1986) 12 *New Zealand Universities Law Review* 160.

<sup>9</sup> Controller and Auditor-General, report on audit of the Crown and Government departments (17 October 1991) [1991–1993] AJHR B.1 [Pt.II] at 68–77.

<sup>10</sup> Public Finance Act 1989, ss 6(c), 60 and 65ZH.

<sup>11</sup> State-Owned Enterprises Act 1986, s 12.

<sup>12</sup> *New South Wales v Commonwealth* (1908) 7 CLR 179 at 190 per Griffith CJ.

<sup>13</sup> Public Finance Act 1989, s 65R.

<sup>14</sup> For example: New Zealand Superannuation and Retirement Income Act 2001, s 39(1).

<sup>15</sup> Public Finance Act 1989, s 65S.

is the Crown's principal transaction service provider unless the Treasury agrees to exempt a particular departmental account from this requirement.<sup>16</sup>

The Minister of Finance specifies the terms and conditions under which a Crown Bank Account is operated and either the Minister or the Treasury may give directions as to how a departmental bank account is to be operated.<sup>17</sup> All public money must be lodged in a Crown Bank Account or a departmental bank account.<sup>18</sup> Money may be paid out of a Crown Bank Account only pursuant to an appropriation, but money may be transferred between Crown Bank Accounts and departmental bank accounts without any appropriation being involved.<sup>19</sup> This system allows the centralised management of cash held by the Government.

The Minister of Finance may close or suspend the operation of a Crown Bank Account or a departmental bank account,<sup>20</sup> except one required to be established by legislation. The Treasury's approval is specifically required before a department may close a departmental bank account.<sup>21</sup>

## FINANCIAL RESPONSIBILITY OF THE CROWN

Parliament's consent to the expenditure of public money is often known as the granting of supply. The need for regular (annual) authorisation from Parliament for the expenditure of public money and the endorsement of tax rates is the single most important determinant of the House's sitting pattern. The financial business to be transacted by the House ensures that Parliament meets at least annually, and defines the last day in each year (30 June) by which this meeting must take place. It also provides fixed points throughout the year by which certain business must be attended to. The question of whether sufficient financial authorisation exists to carry on government is always a matter on which the Governor-General is entitled to seek assurances from a Prime Minister before acceding to a request from the Prime Minister to dissolve Parliament for a general election. Indeed, a dissolution has been refused because supply had not been voted.<sup>22</sup>

The Crown has the duty to take the initiative in financial matters by presenting its proposals for public expenditure to the House of Representatives, at least annually. This is a statutory duty.<sup>23</sup> But it is also a political duty. The Crown is charged with carrying on the government of the country. If the Crown's responsible advisers (its Ministers) could not take the initiative in financial matters because they did not have the confidence of the House, the continuance of the ministry in office would immediately come into question. At this point the House's financial procedures would become a matter of high constitutional significance. They are always so potentially.

The financial responsibility of the Crown is reflected in the House's internal rules permitting the Government to exercise a veto over legislative proposals that would have more than a minor impact on its fiscal aggregates if they were to become law.<sup>24</sup> Underlying this rule is the principle that those in office, and thus accepting responsibility for the Government's policies of economic and financial management, should not have fiscal decisions foisted upon them. The House of Representatives' alternative, if it wishes to change an important aspect of a Government's policy that those in office will themselves not change, is to change

<sup>16</sup> *Treasury Instructions 2015* (30 July 2015) at [6.6.2].

<sup>17</sup> Public Finance Act 1989, ss 65R(2) and 65T(1).

<sup>18</sup> Public Finance Act 1989, s 65U.

<sup>19</sup> Public Finance Act 1989, s 65V.

<sup>20</sup> Public Finance Act 1989, s 65W(3).

<sup>21</sup> *Treasury Instructions 2015* (30 July 2015) at [6.6.3].

<sup>22</sup> Memoranda respecting a dissolution of Parliament (8 December 1877) [1877] AJHR A.7; Despatches from the Governor to the Secretary of State (2 October 1878) [1878] AJHR A.1 at 3–4.

<sup>23</sup> Public Finance Act 1989, ss 12 and 13.

<sup>24</sup> SO 326.

the Government, not to attempt to force Ministers to carry out, and thus accept responsibility for, fiscal policies with which they do not agree.

Although a Government cannot have fiscal policies foisted upon it, legislation (first introduced in 1994<sup>25</sup>) prescribes that Governments must pursue their policy objectives in accordance with the principles of responsible fiscal management. These principles include reducing public debt to prudent levels and maintaining it there; achieving and maintaining satisfactory levels of net worth; managing the Government's fiscal risks prudently; formulating revenue policy that has regard to efficiency and fairness, including the predictability and stability of tax rates; having regard to the interaction between fiscal policy and monetary policy and the likely impact on present and future generations when formulating fiscal strategy; and ensuring the Crown's resources are managed effectively and efficiently.<sup>26</sup> The Minister of Finance is required to articulate the Government's fiscal policy and to specify how its objectives accord (or not) with the principles of responsible fiscal management. These principles are not mandatory, they are statutory guidelines.<sup>27</sup> No legal sanctions are prescribed to deal with a failure to comply with them. Nevertheless, departures from them are expected to be temporary and must be fully explained by the Minister of Finance.<sup>28</sup> Thus, public opinion becomes the chief means of ensuring compliance with the principles.

The way in which the Crown must conduct financial transactions and the reporting required of it are set out in considerable detail in the Public Finance Act 1989. This legislation recognises the central role of the Treasury in managing the Government's financial business and in ensuring that financial statements are prepared and properly reflect that business. Finally, the Public Audit Act 2001 provides for the audit of the financial statements and accounts of all public sector entities by the Controller and Auditor-General.

## GOVERNMENT'S FINANCIAL VETO

The House reflects the principle of the Crown's financial responsibility in the procedure known as the Government's financial veto, which has replaced a number of procedural rules under which only the Crown could initiate proposals for public expenditure.

The Government's financial veto was introduced in 1996. It resulted from dissatisfaction with the operation of the House's previous appropriation rule, whereby bills or amendments involving an appropriation of public money were ruled out of order by the Speaker or Chairpersons at various stages of the legislative process. It was felt that this rule operated capriciously, protecting some expenditure proposals but not others and having no application at all regarding revenue. Where it did operate, it could operate too harshly, preventing members moving proposals that even incidentally involved the smallest amount of expenditure. The appropriation rule thus did not in any event protect the Crown's overall financial position, and was a source of frustration in relation to worthwhile projects involving small amounts of expenditure.<sup>29</sup>

The Standing Orders Committee, which recommended the procedure of financial veto, recognised that the Government of the day is responsible for the Crown's financial performance and position, and that the Government needs to have control over the fiscal aggregates that determine its performance and

<sup>25</sup> Fiscal Responsibility Act 1994 (repealed in 2004 and incorporated into the Public Finance Act 1989 as Part 2).

<sup>26</sup> Public Finance Act 1989, s 26G(1).

<sup>27</sup> Fiscal Responsibility Bill (281–2) (commentary, 26 May 1994) ([1993–1996] AJHR I.3A).

<sup>28</sup> Public Finance Act 1989, s 26G(2).

<sup>29</sup> Standing Orders Committee Review of Standing Orders (13 December 1995) [1993–1996] AJHR I.18A at 61.

position.<sup>30</sup> The financial veto procedure is designed to reconcile this principle of fiscal responsibility with the desire of individual members to promote policies that involve some expenditure.

### **Application of financial veto**

The financial veto procedure permits members to promote any proposals regardless of their fiscal implications, but gives the Government a right to veto such proposals if, in its view, they would have more than a minor impact on its fiscal aggregates if they became law.<sup>31</sup> It applies equally to proposals with revenue implications and those with expenditure implications.

The financial veto procedure applies to bills, amendments and motions. It also applies to proposals to change a vote in an Appropriation Bill. In the latter case, the Government may veto any proposed change that it judges would have more than a minor impact on the composition of the vote.<sup>32</sup>

In respect of bills, the financial veto procedure applies only when a bill is awaiting its third reading,<sup>33</sup> because only at this stage is the bill in its final form.<sup>34</sup> This does not prevent the Government indicating earlier in the legislative process which provisions of a bill would cause it to exercise the financial veto, so that the House can remove or modify them if it chooses before the bill reaches its third reading.

Amendments are subject to financial veto at two points. Amendments recommended by a select committee may be vetoed before they are agreed to by the House on the bill's second reading.<sup>35</sup> There can be no financial veto of amendments proposed in a select committee itself. Otherwise, amendments can be vetoed when they are proposed, and before they are agreed to, in the committee of the whole House.<sup>36</sup>

There are two types of motion that are subject to the financial veto. Any motion that, if passed as a resolution of the House, would have the force of law is subject to a financial veto.<sup>37</sup> Resolutions of the House do not have the force of law unless they are given such force by statute. Only certain resolutions of the House relating to statutory regulations have legal effect—for example, those disallowing, amending or substituting regulations.<sup>38</sup> The second type of motion that is subject to a financial veto is a motion to change a vote in an Appropriation Bill.<sup>39</sup> A financial veto may be applied to motions of these types before they are passed.

### **The Government's fiscal aggregates**

A financial veto may be applied only to a proposal that the Government considers to have more than a minor impact on the Government's fiscal aggregates.

The term "fiscal aggregates" is defined as the Government's intentions for fiscal policy, in particular, for the following:<sup>40</sup>

- total operating expenses
- total operating revenues
- the balance between total operating expenses and total operating revenues
- total debt
- total net worth.

<sup>30</sup> Ibid.

<sup>31</sup> SO 326.

<sup>32</sup> SO 326(2).

<sup>33</sup> SO 328(1).

<sup>34</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 64.

<sup>35</sup> SO 329(1).

<sup>36</sup> SO 329(2).

<sup>37</sup> SO 326(3).

<sup>38</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 62; Legislation Act 2012, ss 42 and 46.

<sup>39</sup> SO 326(2).

<sup>40</sup> SO 3(1).

In contradistinction to the former appropriation rule, the financial veto procedure applies to changes in revenue as well as to changes in expenditure. Consequently, the House's previous rules imposing restrictions on members proposing increases in taxation have been abolished. The effects of proposals for tax changes are considered in applying the financial veto procedure.

The Standing Orders do not specify in dollar terms what "more than a minor" impact on the fiscal aggregates means. This is a matter for the Government of the day to determine in the light of the circumstances of the time.<sup>41</sup> The Standing Orders Committee instanced bills or amendments whose main objective was not expenditure, but which would incidentally involve some implementation or administrative costs and small fiscally neutral transfers between votes, as falling into the category of having only minor impacts.<sup>42</sup>

Governments are expected to apply the procedure reasonably, although the ultimate judgement on whether to invoke it is theirs. Governments can take account of the cumulative effect of previous initiatives and current or proposed initiatives in deciding whether to exercise the veto.<sup>43</sup> This means that the same proposal may be appraised differently at different times depending upon the overall fiscal situation.

## **The decision to invoke financial veto**

How the Government comes to the decision to invoke the financial veto is a matter for it. The Cabinet has issued instructions for the process to be followed by Ministers and officials in determining whether to invoke the procedure.<sup>44</sup>

The Minister of Finance and the Minister's office are designated as the primary points of co-ordination for the Government's exercise of the financial veto. All Ministers' offices and departments are enjoined to monitor House and select committee developments that affect their Minister's portfolio or vote and that may affect the Government's fiscal aggregates or vote composition. They must alert the Minister of Finance's office as early as possible to any such developments or initiatives. The Treasury is responsible for co-ordinating advice to Ministers on the likely cost range of each non-ministerial parliamentary initiative that is proposed. The decision whether to exercise the financial veto is made in the first instance jointly by the Minister of Finance and the Minister whose portfolio or vote is affected by the initiative.<sup>45</sup> Use of the procedure has in fact been relatively restrained, as Governments have generally sought to muster the numbers to vote down proposals with financial implications in preference to vetoing them.<sup>46</sup>

Any proposed amendment to a bill before a committee of the whole House that may have an impact on the Government's fiscal aggregates and any proposed change to a vote must, under the Standing Orders, be notified at least 24 hours in advance by being lodged with the Clerk. If 24 hours' notice is not given, such an amendment is automatically ruled out of order regardless of its fiscal impact.<sup>47</sup> This provision for 24 hours' notice is designed to allow the Government some time to consider the likely fiscal impact of a proposed amendment or change to a vote. Otherwise an amendment might be moved without any notice at all, rendering

<sup>41</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 62.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid, at 62–63.

<sup>44</sup> Cabinet Office *Cabinet Manual 2008* at [7.123–7.125]; Cabinet Office Circular "The Financial Veto and 24 Hour Rule" (8 March 2007) CO 07/2; Finance and Expenditure Committee 1996/97 *Financial review of the Treasury* (12 November 1997) [1996–1999] AJHR I.20B at 286.

<sup>45</sup> Cabinet Office Circular "The Financial Veto and 24 Hour Rule" (8 March 2007) CO 07/2 at [29].

<sup>46</sup> For example: the Government threatened to exercise the financial veto in relation to the Parental Leave and Employment Protection (Six Months' Paid Leave) Amendment Bill; see "English firm on vetoing bill" *The New Zealand Herald* (18 October 2012); (20 February 2014) 696 NZPD 16190; (8 May 2014) 698 NZPD 17689–17690. The financial veto power was not exercised, however, and the bill did not pass its third reading following a tied vote: see (25 February 2015) 703 NZPD 1930–1956.

<sup>47</sup> SO 330(1), (2).

appraisal of its effects on the fiscal aggregates difficult, if not impossible.<sup>48</sup> If there is any doubt about whether a proposed amendment may have a fiscal impact on the Government's fiscal aggregates and 24 hours' notice has not been given, the amendment is out of order.<sup>49</sup>

The requirement to lodge proposals with 24 hours' notice does not apply to an amendment to a bill that is set down for consideration in committee of the whole House on the same day it receives its second reading; or to a motion to change a vote, where the proposed change was recommended in the report of the select committee that examined the vote.<sup>50</sup>

## **Exercise of the financial veto**

The financial veto is exercised by the Government certifying that it does not concur in a bill, amendment or motion because, in its view, the bill, amendment or motion would have more than a minor impact on its fiscal aggregates or on the composition of the vote.<sup>51</sup> The certificate is given in the name of the Government and is signed by a Minister of the Crown, who takes responsibility for it. Which Minister signs a certificate is a matter for the Government to decide.<sup>52</sup> Generally, it is signed by the Minister of Finance. Where there are several amendments to the same bill or proposed changes to the same vote, a single certificate can be issued in respect of the amendments or changes.<sup>53</sup>

In the case of an amendment proposed at the committee stage of a bill, the certificate cannot relate to part of the amendment; it may relate only to the entire amendment, as an amendment can only ever be wholly in order or out of order.<sup>54</sup> In the case of a certificate relating to amendments recommended by a select committee, any certificate may relate to any or all of the amendments recommended.<sup>55</sup> In the case of a bill awaiting third reading, the certificate can be given in respect of the bill as a whole or in respect of a particular provision or provisions of the bill.<sup>56</sup> A certificate confined to a particular provision does not itself remove the provision from the bill, but it is open to the House to remove the provision to which the Government objects, by recommitting the bill. The bill cannot be passed as long as that provision remains part of the bill and the bill remains subject to the certificate.<sup>57</sup>

A financial veto certificate must state with some particularity the nature of the claimed impact on the fiscal aggregates or on the composition of the vote, and why the Government does not concur in the bill, amendment or motion to which it relates.<sup>58</sup>

Provided that the certificate complies with formal requirements by setting out with some particularity the fiscal impact, the Speaker or Chairperson will not permit the Government's judgement to be contradicted on a point of order. The Government, not the Chair, determines whether a proposal would have more than a minor impact on the Government's fiscal aggregates. But this does not prevent the Government's judgement being challenged by way of debate. The certificate is open to debate when the bill, amendment or motion to which it relates is next

<sup>48</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 63.

<sup>49</sup> Ibid, at 63–64; (1998) 574 NZPD 14166 Kidd; (2000) 583 NZPD 2339 Pettis (Chairperson); (2000) 586 NZPD 4553 Hunt.

<sup>50</sup> SO 330(2), (3).

<sup>51</sup> SO 326(1), (2).

<sup>52</sup> (2000) 583 NZPD 2062 Hunt.

<sup>53</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 64.

<sup>54</sup> (15 May 2009) 654 NZPD 3433 Chauvel (Temporary Chairperson).

<sup>55</sup> SO 329(1).

<sup>56</sup> SO 328(2).

<sup>57</sup> SO 328(3).

<sup>58</sup> SO 327(1), (2).

considered by the House.<sup>59</sup> A financial veto certificate is not invalidated simply because it contains a typographical error such as an incorrect Standing Order reference.<sup>60</sup>

## **Delivery of the certificate**

A financial veto certificate is given by delivering it to the Clerk.<sup>61</sup> It is effective at that point. It is announced to the House or the committee of the whole House by the Speaker or Chairperson as soon as reasonably practicable. In the case of a certificate relating to select committee amendments to a bill, to a bill awaiting third reading or to a motion of which notice has been given, the Speaker announces it forthwith, regardless of when the bill or motion is likely to be debated. The vetoing of a bill is reflected in the bill's listing on the Order Paper. In the case of amendments to a bill or changes to a vote, the Chairperson announces a financial veto certificate at the outset of the consideration of the clause or part to which it relates if a certificate has been received by the Chairperson by that time or, if one is received thereafter, as soon as this happens.

A financial veto certificate may be withdrawn at any time by the Government so informing the Clerk in writing.<sup>62</sup>

## **Effect of a financial veto certificate**

A financial veto certificate prevents the bill, amendment or motion to which it relates being passed.

In the case of a bill, no question for its third reading can be put if a financial veto certificate has been issued in respect of it or if one has been issued in respect of a provision that remains in the bill.<sup>63</sup> But the third reading debate may still be held. Once the third reading debate is completed, a vetoed bill is discharged from the Order Paper, as no further transaction in the House is possible for the bill under the Standing Orders.<sup>64</sup>

In the case of select committee amendments, the amendments are omitted from the bill and cannot be again moved during the committee stage.<sup>65</sup> But the effect of the certificate may be discussed during the second reading debate on the bill.

In the case of a certificate relating to amendments at the committee stage, the amendments are out of order and no question is put on them,<sup>66</sup> though they can be debated during consideration of the clause or part to which they relate. Where a financial veto certificate relates to a new clause or a new part that has not yet been reached, the new clause or new part is out of order and there is no debate on it. If a financial veto certificate relating to a new clause or a new part is lodged while debate on that new clause or new part is under way, the new clause or new part is out of order and debate on it terminates at that point.

In the case of a motion, including a motion for a change to a vote, the motion may be debated but no question is put on it at the end of the debate and it is ruled out of order.<sup>67</sup>

The issue of a financial veto certificate does not preclude the Speaker or Chairperson ruling on the acceptability of a motion or amendment on general procedural

59 SO 327(4).

60 (18 July 2012) 681 NZPD 3655 Robertson (Chairperson).

61 SO 327(3).

62 SO 327(5).

63 SO 328(3).

64 See, for example: the Parental Leave and Employment Protection (6 Months' Paid Leave)

Amendment Bill. A financial veto certificate was issued in respect of the bill (see (16 June 2016) 715 NZPD 12075); and the third reading debate was held (see Order Paper for 29 June 2016, and (29 June 2016) 715 NZPD 12296–12313). No question was put at the end of the third reading debate, and the bill was not on the Order Paper for the next sitting day; see: Order Paper for 30 June 2016.

65 SO 329(1), (3).

66 SO 329(2).

67 SO 328(4).

grounds. If a motion or amendment is out of order in any case, it may not be moved or debated. In these circumstances any financial veto certificate that has been issued is supererogatory. The fact that a certificate that is not needed has been issued does not permit a debate to take place that is prohibited on other grounds.

## FINANCE AND EXPENDITURE COMMITTEE

The Finance and Expenditure Committee plays a central role in the House's financial procedures.

The House has consistently appointed finance committees throughout its history, though they have generally been responsible for holding departments and agencies accountable for the expenditure of public money rather than playing a leading role in giving that authority in the first place. Thus, the House had an Audit Committee from 1858 to 1867 and a Public Accounts Committee from 1871 to 1962. In 1962 a new committee, the Public Expenditure Committee, took over the Public Accounts Committee's duties of investigating past governmental expenditure and financial transactions, and combined it with the role of examining the current year's Estimates prior to the House making its annual appropriations. The other select committees were involved in this process by the committee referring individual votes to them for examination.

The Finance and Expenditure Committee was first established in 1985 and took over the appropriation co-ordinating functions of the Public Expenditure Committee. At the same time, it was intended that much of the accountability work that had been carried out exclusively by the Public Expenditure Committee would be shared with the other subject select committees. Further Standing Orders changes in 1992, when the House's procedures were overhauled to take account of the financial management reforms effected in 1989, have emphasised that, while the Finance and Expenditure Committee is pre-eminent in the financial work carried out by select committees, the other committees too have important responsibilities to fulfil in this respect within their own subject areas.

The Finance and Expenditure Committee is established at the commencement of each Parliament. In the 51st Parliament it had 11 members drawn from five parties in the House. Its basic subject area of competence is audit of the Government's and departments' financial statements, Government finance, revenue and taxation.<sup>68</sup> Departments and institutions within its remit with obvious importance regarding economic policy and financial management include the Treasury and the Reserve Bank of New Zealand.

But the Finance and Expenditure Committee's leading role in the House's financial procedures does not depend on its subject area remit. It results from the fact that the committee is the linchpin for the carrying out by all committees of their examinations of Estimates (the proposed annual appropriations) and their annual reviews of the past year's performance and current operations of departments, Offices of Parliament, Crown entities, public organisations and State enterprises. Following the introduction of the Budget or an Appropriation Bill proposing supplementary appropriations, the Estimates or Supplementary Estimates in question stand referred to the Finance and Expenditure Committee. The committee then refers votes to the other select committees or retains them itself for examination, as it sees fit; it can also separate individual appropriations from a vote and allocate them to different committees.<sup>69</sup> The committee is not restricted to its own subject area in the votes that it decides to retain and may retain a vote dealing with another subject area if it wishes.

The Finance and Expenditure Committee is specifically required to make a report on the budget policy statement, the fiscal strategy report and the economic

---

<sup>68</sup> SO 188.

<sup>69</sup> SOs 337 and 341.

and fiscal update, the statement on the long-term fiscal position, the investment statement, and the annual financial statements of the Government.<sup>70</sup> Half-year economic and fiscal updates are also referred to the committee.<sup>71</sup> It may report on these updates, but does not have to. In addition, soon after 1 July each year, the committee must allocate to the other committees or retain for itself the task of conducting an annual review of the performance in the previous year and current operations of each department, Office of Parliament, Crown entity, public organisation and State enterprise.<sup>72</sup> Again, the committee is unrestricted as to which entities it decides to examine itself and which to allocate elsewhere. The Standing Orders Committee has encouraged the Finance and Expenditure Committee to use its power to group votes and annual reviews by sector or by theme to focus committee consideration and avoid debate being overwhelmed by a plethora of reports. The Standing Orders Committee considered this sort of grouping to be the best way to deal with the allocation of standalone reports on appropriations,<sup>73</sup> which provide information on performance against appropriations. (See p 579.)

As well as allocating Estimates and departments for review, the committee takes a lead on how those tasks are discharged by committees. It issues all departments with a standard questionnaire on their Estimates. This questionnaire suggests what information committees might seek from departments as a basis for carrying out their examinations. Carrying on a convention of its predecessor, the Public Expenditure Committee, the committee expects to be informed of proposed changes to the presentation of financial information, particularly the Estimates, before they are implemented. Failure on the part of the Minister of Finance to consult the committee on such changes has led to criticism from the committee.<sup>74</sup>

The Minister of Finance is now required by statute to consult the House before changing the format or content of information presented to the House with an Appropriation Bill.<sup>75</sup> Such proposals for change are referred to the Finance and Expenditure Committee, which co-ordinates the House's response to them.<sup>76</sup> The committee performs a similar role regarding proposals to prescribe non-financial reporting standards for Ministers, departments and other organisations.<sup>77</sup>

In addition to its role at the centre of the House's financial procedures, the committee considers bills, petitions, treaties and other matters referred to it by the House.<sup>78</sup> The committee invariably holds a full public hearing, involving the Governor of the Reserve Bank, on each quarterly monetary policy statement and half-yearly financial stability report issued by the bank. Most tax legislation is referred to the committee, and this can be a heavy burden. Any financial management legislation is inevitably referred to the committee. The committee made major reports on the 1989 public finance legislation (and on important amendments to it, most recently in 2013), on the legislation reconstituting the Reserve Bank, and on the fiscal responsibility legislation.<sup>79</sup> It has also made reports

<sup>70</sup> SOs 332(2), 336(2), (3) and (4), and 345(1).

<sup>71</sup> SO 336(1)(c).

<sup>72</sup> SO 344(1).

<sup>73</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 26.

<sup>74</sup> Finance and Expenditure Committee, report on 1988/89 Estimates (Vote National Provident Fund) (21 September 1988) [1987–1990] AJHR I.19A at 221–222.

<sup>75</sup> Public Finance Act 1989, s 18.

<sup>76</sup> Standing Orders Committee *Review of Standing Orders* (23 June 2005) [2002–2005], AJHR I.18C at 8–9.

<sup>77</sup> Ibid, at 10.

<sup>78</sup> SO 189(1).

<sup>79</sup> Public Finance Bill (139–2) (commentary, 23 May 1989) ([1987–1990] AJHR I.4C); Public Finance Amendment Bill (No 3) (178–2) (commentary, 17 November 1992) ([1991–1993] AJHR I.4C); Reserve Bank of New Zealand Bill (158–2) (commentary, 12 December 1989) ([1987–1990] AJHR I.4E); Fiscal Responsibility Bill (281–2) (commentary, 26 May 1994) ([1993–1996] AJHR I.3A); Public Finance (State Sector Management) Bill (99–2) (commentary, 6 September 2004) at 1 ([2002–2005] AJHR I.22C at 231); Public Finance (Fiscal Responsibility) Amendment Bill (54–2) (commentary, 13 May 2013) ([2011–2014] AJHR I.22B); State Sector and Public Finance Reform Bill (55–2) (commentary, 23 May 2013) ([2011–2014] AJHR I.22B).

on other financial management issues, such as reporting by the Crown and its subentities,<sup>80</sup> and on the format and layout of the Crown's financial statements.<sup>81</sup> In 1989, on referral from the House, it conducted a seminal inquiry into the Officers of Parliament;<sup>82</sup> in 1998 it followed this up with an inquiry into the legislation applying to the Audit Office.<sup>83</sup>

Reports of the Auditor-General stand referred to the Finance and Expenditure Committee for consideration and report to the House.<sup>84</sup> While the committee will invariably consider the Auditor-General's reports on the audit of the Government's financial statements and the results of departmental audits itself,<sup>85</sup> it has the power to refer such reports to other committees if the report is primarily within their terms of reference rather than its own.

## FINANCIAL SCRUTINY EVOLVES

In 2013, amendments were made to the Public Finance Act 1989 concerning the information that is required to be presented to Parliament on State sector spending and performance, as part of improving financial flexibility and performance through innovation. The changes emphasise reporting the achievement of results and the measures to be used to do so. They continue the general move from input and output reporting and planning, to reporting on results.

The changes to the Public Finance Act came into force on 1 July 2014 for the 2014/15 financial year. New rules have been added to the Standing Orders for committee and House consideration of the Government's long-term fiscal position and investments reports. The Standing Orders Committee, anticipating the effect of the reporting changes on financial scrutiny, suggested a reasonably flexible approach, and noted that further amendments to the Standing Orders may be needed.<sup>86</sup> The committee increased the time allowed for some scrutiny debates, and recognised the challenge of ensuring that the many reports of committees are adequately reflected in debate; it suggested grouping reporting by sectors or themes to focus consideration by the House and committees.<sup>87</sup> The Business Committee has used its power to arrange committee of the whole House consideration to trial combined annual review debates organised by sector and a themed Estimates debate.

On the revenue side, the framework for subordinate legislation established in the Legislation Act 2012,<sup>88</sup> along with the House's new rules for the consideration of affirmative and negative resolutions and the annual confirmation of subordinate legislation,<sup>89</sup> provide an opportunity to develop more systematic scrutiny of revenue-empowering provisions in legislation, and more regular and rigorous committee scrutiny of revenue initiatives on an annual confirmation basis.

<sup>80</sup> Finance and Expenditure Committee, report on reporting by the Crown and its subentities (23 July 1991) [1991–1993] AJHR I.4A.

<sup>81</sup> Finance and Expenditure Committee, report on format and layout of Financial Statements of the Government of New Zealand (19 March 1992) [1991–1993] AJHR I.4B.

<sup>82</sup> Finance and Expenditure Committee, report on Officers of Parliament (21 March 1989) [1987–1990] AJHR I.4B.

<sup>83</sup> Finance and Expenditure Committee *Inquiry into Audit Office legislation* (9 April 1998) [1996–1999] AJHR I.3E.

<sup>84</sup> SO 396.

<sup>85</sup> See: Controller and Auditor-General *Central government: results of the 2014/15 audits* (8 December 2015) NZPP B.29[15r].

<sup>86</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 26.

<sup>87</sup> Ibid, at 26–27, 28–29.

<sup>88</sup> Legislation Act 2012, pt 3.

<sup>89</sup> SOs 322, 323 and 325.

# CHAPTER 31

## Appropriations and Authorisations

### LEGAL AUTHORITY AND FINANCIAL AUTHORITY

There are two aspects to any governmental action involving the expenditure of public money—that is, to the incurring of expenses or of capital expenditure.

The first aspect is the legal authority of the Government or its agents to take the proposed action (in respect of which the expenditure or expenses are to be incurred) at all. This legal authority may be an inherent legal power possessed by the Government, it may be one conferred by statute, or it may be a combination of both.

The second aspect is the authority to expend public money for the purpose of performing the action, should this be required. Ministers do not have authority to make payments out of public funds, even for activities that may otherwise be lawful, without parliamentary authority.<sup>1</sup> A payment made out of public funds without parliamentary authority is unlawful. Authority to expend public money can be obtained only by Parliament making an appropriation for the proposed action or otherwise authorising the payment. An appropriation is a legislative provision that permits amounts of expenses or capital expenditure to be incurred for activities that fall within the defined scope of the provision. A financial authority for public money to be expended may be given separately rather than through an appropriation. Principally this is done by means of a grant of imprest supply. However, such an authority lacks the specificity and accountability attendant on an appropriation. Therefore it is of temporary effect and is required to be absorbed into the regular appropriation process.<sup>2</sup>

Thus, whatever the derivation of the Government's legal authority to perform an action, that authority is distinct from the appropriation enabling it to discharge financial liabilities arising from the action.<sup>3</sup> The concepts of legal authority and appropriation can be explicitly linked if the provision of an appropriation is made a necessary legal condition of the activity in question;<sup>4</sup> for example, where a Government contract was made "subject to" an appropriation being made by Parliament,<sup>5</sup> and where a subsidy was made payable out of moneys standing in a particular account and insufficient funds had been appropriated to the account.<sup>6</sup>

<sup>1</sup> Public Finance Act 1989, s 5; *R (Khan) v Secretary of State for Health* [2003] EWCA Civ 1129, [2004] 1 WLR 971 at [91].

<sup>2</sup> Public Finance Act 1989, s 4A.

<sup>3</sup> *Victoria v Commonwealth* (1975) 134 CLR 338 at 396.

<sup>4</sup> *Commonwealth v Colonial Ammunition Co Ltd* (1924) 34 CLR 198 at 224–225.

<sup>5</sup> *Churchward v R* (1865) LR 1 QB 173.

<sup>6</sup> *Desailly v Brunker* (1888) 9 LR NSW (L) 536.

But even in such a case, there is still a conceptual distinction between the enabling authority and the spending authority, though the former may be defined by reference to the latter. However, defining the legal power to do something by reference to the financial authority to effect it is comparatively rare.

Sometimes the same statute provides, in separate sections, the legal authority for both the activity and the appropriation. This type of appropriation is known as “permanent legislative authority”. More often the statute conferring the legal authority on the Government to undertake certain activity does not make the appropriation itself, but contains a section contemplating the subsequent appropriation by Parliament (through its annual appropriations) that is necessary to discharge the financial obligations arising from the activity. In this case the need for an annual appropriation is made clear explicitly in the legislation, but the effect is the same even if the statute is silent on the matter; an annual appropriation is still necessary to give any financial authorisation necessary to carry out the activity.

In any case where “expenses” are incurred under the authority of an appropriation, this means expenses measured in accounting, not necessarily legal, terms.<sup>7</sup> However, any expenses incurred may well constitute legal liabilities too. Indeed the fact that a legal liability exists may be an important element in determining, in accounting terms, whether there is an expense needing to be recognised in the Crown’s accounts, and thus requiring an appropriation.

## EFFECT OF AN APPROPRIATION

An appropriation has only a limited effect. It is facilitative; it allows the Crown to incur expenditure or satisfy a financial obligation that could not otherwise be incurred or satisfied. But while an appropriation enables the Government to spend public money and discharge its financial commitments, it does not require the Government to take these actions. An appropriation imposes no general duty on the Government to exercise the spending power thus granted,<sup>8</sup> nor does it in itself confer a contractual right to receive a payment.<sup>9</sup> A direction from Parliament requiring something actually to be done is effected separately from the appropriation process.<sup>10</sup>

An appropriation does not enable the Crown, a department or anyone else to do something they are not otherwise legally authorised to do; the existence of an appropriation does not make lawful something that is unlawful.<sup>11</sup> Thus, the fact that appropriations had been made in respect of certain departmental activities did not authorise the department to undertake those activities when they were not within the department’s functions as defined in its parent legislation. The Auditor-General consequently refused to sanction expenditure on them, even though there was an appropriation for them.<sup>12</sup> Nor does the fact that Parliament has appropriated funds for a particular purpose render disbursements pursuant to that appropriation immune from judicial review. The presumption is that Parliament in appropriating funds intends that they be used in a manner that complies with the legal principles developed by the courts to apply to anyone exercising a public power.<sup>13</sup>

<sup>7</sup> Public Finance Act 1989, s 2(1).

<sup>8</sup> *Archives and Records Association of New Zealand v Blakeley* [2000] 1 NZLR 607 (CA) at [70] and [79].

<sup>9</sup> *New South Wales v Commonwealth* (1908) 7 CLR 179 at 190 per Griffith CJ.

<sup>10</sup> *R v Colonial Treasurer* (1878) 4 NZ Jur (NS) 47 (SC); *Awatere Road Board v Colonial Treasurer* (1887) 5 NZLR SC 372.

<sup>11</sup> *Brown v West* (1990) 169 CLR 195; *R v Secretary of State for the Home Department, ex parte Fire Brigades Union* [1995] 2 AC 513 at 554 per Lord Browne-Wilkinson; *Anning v Minister of Education* HC Wellington CP122/00, 26 April 2002.

<sup>12</sup> Controller and Auditor-General, audit of the Crown and Government departments (11 December 1990) [1990] AJHR B.1 [Pt.II] at 18–22. The department’s actions were validated by the Ministry of Agriculture and Fisheries Amendment Act 1990, s 2(6), (7).

<sup>13</sup> *R v Criminal Injuries Compensation Board, ex parte P* [1995] 1 All ER 870 (CA) at 883.

It also follows from the requirement for an appropriation to be made before public money can be expended that the fact that a statute has imposed an obligation on the Crown or its agents to pay money (for example, to pay benefits) does not in itself authorise that payment unless an appropriation for it has been made. For this reason statute now makes a standing appropriation allowing Crown liabilities to be settled.<sup>14</sup> But even apart from this provision, the Crown is not excused from legal liabilities arising from statute, contract or otherwise, merely because no appropriation has been made to satisfy them. Judgment could still be entered against the Crown in these circumstances.<sup>15</sup> Nevertheless, parliamentary control of public expenditure was formerly thought to be important, since an appropriation was specially required to satisfy a judgment debt where no other legal appropriation for it existed.<sup>16</sup> In theory Parliament could have repudiated liability by refusing to provide an appropriation to satisfy the judgment.<sup>17</sup> Now, however, it is provided that a judgment debt entered against the Crown following legal proceedings is sufficient authority for payment to be made even where Parliament has made no specific appropriation for the purpose. That is, the debt is subject to a standing appropriation under permanent legislative authority.<sup>18</sup>

## PAYMENT OF PUBLIC MONEY

Money may only be paid out of a Crown Bank Account or a departmental bank account in accordance with an appropriation or other statutory authority.<sup>19</sup> Formerly there was a requirement for periodic certification from the Auditor-General before funds could be released. This was repealed in 2004 as largely symbolic in an accrual accounting context and offering little practical check on public expenditure.<sup>20</sup>

The Treasury is required to report continuously to the Auditor-General on all actual expenses and capital expenditure incurred (whether under an appropriation or other authority) and to relate this expenditure to the amounts of authorised expenditure.<sup>21</sup> The Auditor-General may direct the Minister of Finance, the Treasury or a department, as the case may be, to stop payments out of a Crown Bank Account or a departmental bank account that the Auditor-General considers to be unlawful.<sup>22</sup> If the Auditor-General considers that expenditure has been incurred that was not lawful or was in excess of legal authority, the Auditor-General may direct the Minister concerned to report this opinion to the House within 20 working days. But the Minister may also set out in the report any contrary opinion on the Minister's part about the legality of the expenditure.<sup>23</sup> The Auditor-General has exercised the power to direct a Minister to report to the House on one occasion.<sup>24</sup> The Auditor-General, in auditing public accounts, also checks for

<sup>14</sup> Public Finance Act 1989, s 6(d).

<sup>15</sup> *New South Wales v Bardolph* (1934) 52 CLR 455.

<sup>16</sup> Crown Suits Act 1908, s 32.

<sup>17</sup> *Rayner v R* [1930] NZLR 441 (CA) at 457–458.

<sup>18</sup> Crown Proceedings Act 1950, s 24(3). But see also: Law Commission *The Crown in court: a review of the Crown Proceedings Act and national security information in proceedings* (NZLC R135, 2015) (in particular, see the commission's draft Crown Civil Proceedings Bill in Chapter 4 at 49–50; clause 24 does not retain the permanent legislative authority).

<sup>19</sup> Public Finance Act 1989, s 65V(1).

<sup>20</sup> Public Finance (State Sector Management) Bill (99–2) (commentary, 6 September 2004) at 16 ([2002–2005] AJHR I.22C at 246); Controller and Auditor-General *Central government: results of the 2003–04 audits* (30 March 2005) NZPP B.29[05a] at [5.1]–[5.35].

<sup>21</sup> Public Finance Act 1989, s 65Y.

<sup>22</sup> Public Finance Act 1989, s 65ZA.

<sup>23</sup> Public Finance Act 1989, s 65Z.

<sup>24</sup> Controller and Auditor-General *Advertising expenditure incurred by the Parliamentary Service in the three months before the 2005 General Election* (12 October 2006) NZPP B.29[06c] at [6.8]–[6.17]; Report of the Minister responsible for Vote Parliamentary Service (12 October 2006) NZPP A.15.

See also: Controller and Auditor-General *Central government: results of the 2005/06 audits* (5 April 2007) B.29[07a] NZPP at [6.117].

assurances that an entity has operated within the scope of an appropriation. In practice, this audit of appropriations or other authorities is the most important way in which the Auditor-General examines whether funds have been properly applied or committed.

In exercising these “controller” functions, the Auditor-General is not concerned only with the existence of an appropriation or authority; the Auditor-General is also concerned to establish that the purpose to which any money to be paid from the Crown Bank Account is to be put is itself lawful. Where the proposed use of public money is not itself lawful, the Auditor-General may exercise the power to forbid payment, notwithstanding the existence of an appropriation.<sup>25</sup>

The Auditor-General’s opinion as to the validity of expenditure is not conclusive should the expenditure be subsequently challenged as not having been authorised.<sup>26</sup> If Parliament fails to pass detailed appropriations early in the financial year, this can seriously compromise the Auditor-General’s ability to carry out the controller function.<sup>27</sup> The House’s financial procedures are now designed to ensure that detailed appropriations are made early enough in the financial year to prevent this occurring. A lack of specification for appropriations effected by way of imprest supply can undermine the effectiveness of the Auditor-General’s role, though this is ameliorated by the requirement since 2005 for continuous reporting to the Auditor-General on all expenses incurred.<sup>28</sup>

## DURATION OF APPROPRIATIONS

### Permanent

Parliament is not limited to a particular period in specifying the duration of an appropriation. In respect of some matters, the Act that provides for the activity itself goes on to authorise an appropriation for the purpose of the activity for an indefinite period. Expenditure of such a kind, permanent legislative authority, does not lapse (though the appropriation provision may, of course, be repealed). The exact proportion of total Government expenditure that is permanently appropriated in this way varies each year. In the 2013/14 financial year it was 14.5 per cent; in the 2014/15 financial year it was 15.1 per cent.<sup>29</sup> Permanent appropriations are not new. The New Zealand Constitution Act 1852 (UK) provided for defraying certain expenses without the necessity of seeking an annual appropriation from Parliament. The expenses covered in this way included the salaries of the Governor and the judges, and the cost of collecting State revenues.

Judges’ salaries are an example of expenditure for which there is permanent legislative authority.<sup>30</sup> The putting of the authority to pay judicial salaries on a permanent basis rather than leaving them to be voted annually is of high symbolic importance, as it demonstrates the independence of the judiciary from financial pressures. Parliament could, of course, repeal the section of the Act that makes judicial salaries a permanent charge on public funds, but to do that it must take a highly visible (and probably controversial) positive legislative action, rather than merely omitting an item from the annual Estimates. Other expenditure made under permanent legislative authority includes the salaries and allowances of Ministers and other members of Parliament,<sup>31</sup> the salaries of the Ombudsmen, the Controller and Auditor-General and the Deputy Controller and Auditor-

<sup>25</sup> Controller and Auditor-General, audit of the Crown and Government departments (11 December 1990) [1990] AJHR B.1 [Pt.II] at 18–22.

<sup>26</sup> *Auckland Harbour Board v The King* [1924] AC 318 (PC).

<sup>27</sup> Controller and Auditor-General, audit of the Crown and Government departments (17 October 1991) [1990–1991] AJHR B.1 [Pt.II] at 16–17.

<sup>28</sup> Public Finance Act 1989, s 65Y.

<sup>29</sup> Information supplied by the Parliamentary Library, February 2016.

<sup>30</sup> Judicature Act 1908, s 9A.

<sup>31</sup> Members of Parliament (Remuneration and Services) Act 2013, s 8(4).

General,<sup>32</sup> the Government subsidy to various superannuation schemes<sup>33</sup> and the repayment and the servicing of debt.<sup>34</sup> Debt is payable under permanent legislative authority as an assurance to those from whom the Government borrows that the sums required to discharge its liabilities will automatically be forthcoming each year. But the fact that permanent legislative authority for an appropriation exists does not preclude Parliament making additional appropriations for the same activity on an annual basis if it sees fit.

While there may be good reasons for permanent appropriations in particular cases, in general permanent appropriations are disapproved of as reducing Parliament's annual control of public expenditure. All expenditure under permanent legislative authority must be reported to the House along with the annual Estimates documents presented with the main Appropriation Bill.<sup>35</sup>

## **Annual**

The standard appropriations are annual appropriations limited to the financial year to which the Appropriation Act under which they are made relates. They lapse at the end of that year.<sup>36</sup> These annual appropriations include money already spent and expenses already incurred in that year under interim authorisations.<sup>37</sup> An Appropriation Act passed near the start of the financial year enacts the main appropriations, but usually a set of supplementary appropriations relating to the financial year is made before the year closes. Most Government expenditure is appropriated annually in these ways.

## **Multi-year**

Rather than appropriations being made annually or for an indefinite period, appropriations can be expressed to apply for a defined period covering a number of years. In the early years of responsible government there were two years (1857 and 1859) in which Parliament did not meet, and for these periods, in the expectation of a long gap before Parliament would sit again, supply was voted for more than 12 months. For a few years afterwards there was no automatic assumption that Parliament would meet every year and a section was inserted in the annual Appropriation Act allowing the Act's conditional extension for up to a further year if Parliament had not met sooner. The practice of including such a section in the Appropriation Acts ceased in 1865.

There is a provision in the public finance legislation contemplating the possibility that Parliament might make appropriations for more than one year—that is, a multi-year appropriation.<sup>38</sup> It is always open to Parliament in making an appropriation to express it as applying for any number of years. In that sense a provision contemplating multi-year appropriations is of no legal significance. But it does acknowledge the existence of a new standard type of appropriation that may last for up to five years.<sup>39</sup> Almost all multi-year appropriations have a specified commencement and expiration date; however, Budget 2014 introduced nine multi-year appropriations under Vote Parliamentary Service where the period of the appropriation was the "Term of the 51st Parliament".

The first multi-year appropriation was made in the 1994/95 financial year to provide for the settlement of claims under the Treaty of Waitangi over the following five years. In the next year this multi-year appropriation was extended by a year.<sup>40</sup>

<sup>32</sup> Ombudsmen Act 1975, s 9(1); Public Audit Act 2001, sch 3, cl 5.

<sup>33</sup> Government Superannuation Fund Act 1956, s 95.

<sup>34</sup> Public Finance Act 1989, ss 6(c), 60 and 65ZH.

<sup>35</sup> Public Finance Act 1989, ss 14(2), 15A(1)(c).

<sup>36</sup> Public Finance Act 1989, s 10(1).

<sup>37</sup> *Archives and Records Association of New Zealand v Blakeley* [2000] 1 NZLR 607 (CA) at [72].

<sup>38</sup> Public Finance Act 1989, s 10(2).

<sup>39</sup> Public Finance Act 1989, s 10(3).

<sup>40</sup> Appropriation (1994/95 Supplementary Estimates) Act 1995, s 7 and Second Schedule; Appropriation (1995/96 Supplementary Estimates) Act 1996, s 7 and Third Schedule.

The use of multi-year appropriations has increased significantly in recent years. The 2008 Budget included 20 multi-year appropriations; this increased to 46 such appropriations in Budget 2015. Because of concern that multi-year appropriations are not subject to annual parliamentary scrutiny, a select committee has sought the Auditor-General's clarification of such a proposed appropriation and assurances that the risks to the Crown of the appropriation proving insufficient towards the end of the period were minimal.<sup>41</sup>

Akin to multi-year appropriations, although made outside the normal appropriation process, are funding agreements between the Minister of Finance and the Governor of the Reserve Bank concerning the income of the bank that may be applied in meeting its expenditure. These agreements are usually for five-year periods and are not effective unless ratified by a resolution of the House.<sup>42</sup>

## INTERIM AUTHORISATIONS

Parliament could decide before the financial year commences upon the amounts to be appropriated for the coming year and appropriate them accordingly, so that from 1 July the expenditure of public money could proceed on a settled basis. In practice, it has not been found possible to settle all the matters relating to a financial year before the year begins, and Parliament does not finish making the basic financial provision for the current year until some months of it have elapsed. Indeed, until 1985 it was uncommon for parliamentary sessions even to commence before the beginning of a new financial year (then commencing on 1 April), making it impossible to provide for public expenditure prospectively on an annual basis. Even when Parliament did meet some time before the financial year commenced, it showed no inclination to alter the usual cycle of financial business by making detailed appropriations prospectively.

In these circumstances an interim or temporary spending authority, called imprest supply, is used to confer authority to incur expenditures up to a specified limit<sup>43</sup> from 1 July (when the previous year's annual appropriations lapse) until new annual appropriations are made. In practice, other interim spending authorities may be necessary during the financial year. They authorise expenses and capital expenditure separately from and ahead of any annual appropriations that are made.<sup>44</sup> Imprest supply is a distinct and separate spending authority from the appropriations made by the Appropriation Acts or other legislation.<sup>45</sup> Occasionally interim authority to incur such expenditures in advance of an Appropriation Act may be given by legislation other than imprest supply.<sup>46</sup>

An Appropriation Act supersedes any Imprest Supply Acts applying to the financial year. The first Imprest Supply Act for each year contains provision for the sections authorising imprest supply to be repealed when the main Appropriation Act for the year comes into force. The second and any subsequent Imprest Supply Acts for the year will also include repeal provisions, usually for repeal at the close of 30 June of the financial year in question. Their interim authority is superseded by the final Appropriation Act for the financial year.<sup>47</sup> Imprest Supply Acts anticipate their temporary nature by expressly referring to the interim authorities that they make being charged in the manner to be set out in an Appropriation

<sup>41</sup> Government Administration Committee, report on 2001/02 Estimates (Vote State Services) (13 July 2001) [1999–2002] AJHR I.19B at 535–536.

<sup>42</sup> Reserve Bank of New Zealand Act 1989, s 161(2); see, for example: (4 June 2015) 706 NZPD 4346–4355.

<sup>43</sup> Justice and Law Reform Committee, report on 1995/96 Estimates (Vote Courts and Vote Corrections) (29 September 1995) [1993–1996] AJHR I.19C at 41–42, 126–127 (insufficient imprest supply voted to cover the capital contributions needed for a transfer of assets between departments).

<sup>44</sup> *Archives and Records Association of New Zealand v Blakeley* [2000] 1 NZLR 607 (CA) at [71].

<sup>45</sup> *Archives and Records Association of New Zealand v Blakeley* [2000] 1 NZLR 607 (CA) at [77] and [78].

<sup>46</sup> See, for example: New Zealand Public Health and Disability Act 2000, s 113 (setting up of district health boards).

<sup>47</sup> Appropriation (2014/15 Supplementary Estimates) Act 2015, ss 6(6)(a) and 8(4)(a).

Act.<sup>48</sup> In this way they have been described as making “fictional” appropriations.<sup>49</sup> They then either expire or are spent when an Appropriation Act is passed. If no Appropriation Act were to be passed, the Imprest Supply Acts for the year would operate as distinct authorisations for expenses to be incurred and money to be paid on the bases set out in those Acts.<sup>50</sup>

An Imprest Supply Act does not specify in detail how the authorisations that it makes are to be exercised; it confers a general authority to spend up to a specified amount. This lack of information as to how the authority granted under imprest supply is to be used has been criticised by the Auditor-General as the constitutional equivalent of a blank cheque.<sup>51</sup>

However, no legal authority is unfettered. The Auditor-General’s ability to question the lawfulness of the objects of expenditure incurred under imprest supply is unimpaired; an Imprest Supply Act, like an Appropriation Act, does not authorise expenditure that it is not otherwise lawful for the Government or its agencies to incur. Furthermore, there may be extrinsic evidence of the purposes of the imprest supply authorisations that can be taken as factors in the legal definition of the scope of the authority given by an Imprest Supply Act. Thus the explanatory note to the bill may set out how the authorisations are to be charged;<sup>52</sup> and there must be a distinct Cabinet decision authorising the use of imprest supply for each particular purpose.

The Treasury’s obligation to report continuously during the financial year on actual expenses and capital expenditure incurred includes any incurred under the authority of imprest supply.<sup>53</sup> The Auditor-General is entitled to insist on a Cabinet decision being produced as authority for funds to be devoted to particular expenditure under the authority of an Imprest Supply Act. In this way the Government takes explicit responsibility for the way it uses imprest supply.

## TYPES OF APPROPRIATION

Seven types of appropriation are contemplated for the annual appropriations made by Parliament.<sup>54</sup> Separate appropriations must be made for each category of expenses or capital expenditure falling into each of these types. The appropriations are set out in detail in the Estimates and other supporting information presented to the House in respect of each Appropriation Bill.<sup>55</sup> An appropriation made by any other Act is managed and accounted for in the same way as these types of appropriation.<sup>56</sup> Within each type of appropriation there are a number of separate appropriations. Each particular appropriation is limited in its scope, and can be applied only to activities falling within the scope as defined.<sup>57</sup>

The seven types of appropriation are:

- appropriations for output expenses
- appropriations for benefits or other unrequited expenses
- appropriations for borrowing expenses
- appropriations for other expenses
- appropriations for capital expenditure

<sup>48</sup> For example: Imprest Supply (First for 2015/16) Act 2015, s 8.

<sup>49</sup> *Archives and Records Association of New Zealand v Blakeley* [2000] 1 NZLR 607 (CA) at [77].

<sup>50</sup> *New South Wales v Bardolph* (1934) 52 CLR 455 at 479 per Evatt J; *Archives and Records Association of New Zealand v Blakeley* [2000] 1 NZLR 607 (CA) at [78].

<sup>51</sup> Controller and Auditor-General *Third report for 1999* (29 June 1999) [1996–1999] AJHR B.29 [99c] at 87.

<sup>52</sup> See, for example: Imprest Supply (Third for 2001/02) Bill (168–1) (explanatory note, 4 December 2001) (funding a capital injection into Air New Zealand Ltd).

<sup>53</sup> Public Finance Act 1989, s 65Y.

<sup>54</sup> Public Finance Act 1989, s 7A.

<sup>55</sup> Public Finance Act 1989, ss 14–15F.

<sup>56</sup> Public Finance Act 1989, s 11(2).

<sup>57</sup> Public Finance Act 1989, s 9(1). For guidance in writing scope statements for appropriations, see: Treasury “A Guide to Appropriations” (November 2013) at 11–12.

- appropriations for expenses and capital expenditure to be incurred by an intelligence and security department
- multi-category appropriations.

The first four of these types of appropriation relate solely to operating expenditure.

## **Appropriations for output expenses**

These are the payments for the cost of producing the goods and services that a department or third party is to supply to the Government to contribute to realising the Government's desired outcomes. They consist of policy advice, regulatory functions, inspection and administrative services and generally the "core" activities of Government. They are organised into discrete groupings of similar products, called classes of outputs. An output expense appropriation covers a single class of outputs. The output may itself be supplied by a Government department or a non-departmental source.<sup>58</sup>

### **Departmental outputs**

How the Government decides what outputs it wishes departments to supply is a matter for it to determine. From 1993/94 to 2002/03, Ministers entered into annual purchase agreements with chief executives of their departments. These agreements specified the individual outputs the department was to supply, defined the standards against which the department's performance in delivering the outputs was to be judged and specified the costs involved. While called agreements, they were not legally binding contracts, as both parties to them (the Minister and the departments) were elements of the same entity—the Crown;<sup>59</sup> but they could form an element of a legally binding direction by the Minister to the chief executive.<sup>60</sup>

From the 2003/04 financial year onward, purchase agreements were replaced by outputs plans setting out detailed information about the service performance intentions of departments and linking these services explicitly with the outcomes set out in the department's longer-term statement of intent. They are still regarded as an agreement between the Minister and the chief executive and thus an accountability document for the purpose of assessing the department's performance against the Government's expectations; but there is less emphasis in output plans than there was in purchase agreements on the contractual nature of the relationship, and more on the Government's strategic goals, which the department is expected to contribute towards achieving.

While output plans may still be produced when Ministers require them, they have largely been replaced by the Treasury's requirement for departments to provide concise explanations for appropriations and reportable outputs in terms of what is intended to be achieved and how performance will be assessed, in the Estimates documentation and in their statements of strategic intentions and performance expectations.<sup>61</sup>

### **Non-departmental outputs**

Besides outputs supplied by departments, the Government may obtain services from other organisations, for which appropriations are made. The extent to which it does so will depend to some degree upon the organisation of the public sector—and in particular the extent to which services are delivered by public

<sup>58</sup> Public Finance Act 1989, s 7A(2).

<sup>59</sup> *Director-General of Social Welfare v Disputes Tribunal* (1999) 12 PRNZ 642 (HC).

<sup>60</sup> For example: under the Defence Act 1990, s 25(2)—see Douglas White QC and Graham Ansell, report to the State Services Commissioner on review of the performance of the Defence Force (20 December 2001) at [18].

<sup>61</sup> See: Treasury "Appropriations and Reportable Outputs" (2013); and "What's changing in the Public Finance Act? Start-of-year and end-of-year reporting and statements of intent" (July 2013) <[www.treasury.govt.nz](http://www.treasury.govt.nz)>.

service departments as distinct from Crown entities. A shift of appropriations from outputs supplied by departments to outputs supplied by non-departmental sources, particularly Crown entities (which have been described as forming a “second tier” of Government agencies), has been remarked.<sup>62</sup> Some of these organisations the Government may effectively control—as it does certain (but by no means all) Crown entities, for example—while others are entirely independent of the Government.

Crown entities must also prepare statements of intent setting out their medium-term intentions, and statements of performance expectations on an annual basis, which together provide an accountability base.<sup>63</sup> There may also be a purchase agreement between the Minister and the provider specifying the outputs to be supplied. The management of such purchase agreements is often undertaken by the Minister’s department on the Minister’s behalf. Purchase agreements entered into between a Minister and a Crown entity may have legal force, unlike those between a Minister and a department.<sup>64</sup> Where outputs are supplied by a non-departmental entity that is not required by legislation to report to the House on its service performance (most Crown entities are now required to do so), the Minister responsible for the appropriation must report end-of-year performance information on what has been achieved with the appropriation.<sup>65</sup>

### **Appropriations for benefits or related expenses**

These appropriations consist of transfer payments that do not require the recipient to provide any goods or services (outputs) in return. They consist mainly of benefits (such as social welfare benefits) paid to people who have a legal entitlement to them. They also include any discretionary grants that are disbursed.

### **Appropriations for borrowing expenses**

These appropriations consist of payments of interest or other financing expenses in respect of any loan or public security.

### **Appropriations for other expenses**

Appropriations for other expenses include those incurred by a department other than in the production of a good or service—for example, the costs of restructuring, or losses incurred in selling or disposing of departmental assets at below market value. They include expenses incurred by the Crown (other than by a department) in the disposal or extinguishment of a Crown asset at less than fair market value, such as land or resources transferred in settlement of a claim under the Treaty of Waitangi.<sup>66</sup> However, if a Crown asset had no market value when sold or extinguished, any loss does not require an appropriation.<sup>67</sup> Grants to non-Governmental organisations to develop their capacity rather than to produce deliverable outputs also fall under this category. Overseas development aid is appropriated under this type of appropriation. Other ex gratia payments and gifts may be appropriated under the other expenses category too.

---

<sup>62</sup> Government Administration Committee, report on 1995/96 financial review of State Services Commission (21 April 1997) [1996–1999] AJHR I.20A at 301.

<sup>63</sup> Crown Entities Act 2004, ss 138, 139, 149B and 149C.

<sup>64</sup> Government Administration Committee, report on 1997/98 Estimates (Vote Pacific Island Affairs) (1 August 1997) [1996–1999] AJHR I.19A at 233.

<sup>65</sup> Public Finance Act 1989, s 15C(2)(b), (3).

<sup>66</sup> See, for example: Appropriation (1995/96 Supplementary Estimates) Act 1996, s 9 (gift of pouāmu to Ngāi Tahu).

<sup>67</sup> Controller and Auditor-General *Third report for 1995* (12 October 1995) [1993–1996] AJHR B.29[95c] at 76.

## Appropriations for capital expenditure and capital injection authorisations

Capital expenditure means the cost of assets acquired or developed (including tangible, intangible, or financial assets and any ownership interest in entities, but excluding inventories).<sup>68</sup> Departments (except for intelligence and security departments) can fund routine capital expenditure from their balance sheet without any further appropriation.<sup>69</sup> Departments may incur capital expenditure from the proceeds of the sale of departmental assets or from disposing of their own working capital. If a department or Office of Parliament seeks an increase in its balance sheet, a capital injection must be authorised, and information on the purpose, nature, and amount of the injection is included in the information supporting the Estimates.<sup>70</sup> Capital injections may also be authorised on an interim basis under an Imprest Supply Act.<sup>71</sup>

All capital expenditure on non-departmental assets and all equity or loan finance contributed by the Crown to non-departmental bodies or other persons is appropriated under this head. Thus payments to provide for the purchase or development of capital assets (but not inventories) to be held as non-departmental assets are appropriated as capital expenditure. Such assets (for example, State highways and national parks) are regarded as part of the Crown estate but do not contribute to the production of outputs by a department. Any loan made by the Crown to another person or to the Government of another country requires a capital expenditure appropriation.<sup>72</sup>

## Appropriations for expenses and capital expenditure to be incurred by an intelligence and security department

All of the above types of appropriations for expenses and capital expenditure are aggregated into a single appropriation for each intelligence and security department.

## Multi-category appropriations

Multi-category appropriations consist of two or more categories of spending within a single appropriation. The categories of spending must be of the output expense, other expense, or non-departmental capital expenditure appropriation types.<sup>73</sup> The expenditure in a multi-category appropriation must all contribute to a single overarching purpose.<sup>74</sup> The Minister of Finance must approve the creation of a multi-category appropriation.<sup>75</sup>

These appropriations form a structure that affords a degree of flexibility to the funding of various activities, with a focus on achieving specific results. In approving such an appropriation, the House agrees to the total amount of the multi-category appropriation, and the scope of each of the various categories of spending within the appropriation is defined. In addition, the budget documentation will indicate the amount of spending to be targeted to each category of spending; however, the appropriation Minister can shift appropriated funding between categories within the appropriation the better to achieve the desired outcome, without a need for Parliament to approve the shift in resources.

<sup>68</sup> Public Finance Act 1989, s 2(1).

<sup>69</sup> Public Finance Act 1989, s 24(1).

<sup>70</sup> Public Finance Act 1989, ss 12A and 15E.

<sup>71</sup> Public Finance Act 1989, s 12B.

<sup>72</sup> Public Finance Act 1989, s 65P.

<sup>73</sup> Public Finance Act 1989, s 7A(1)(g).

<sup>74</sup> Public Finance Act 1989, s 7B(b).

<sup>75</sup> Public Finance Act 1989, s 7B(a).

## AGGREGATIONS OF APPROPRIATIONS

Although Parliament makes hundreds of individual appropriations in the Appropriation Acts, it is convenient for these appropriations to be grouped for the purposes of administration and presentation. For this reason appropriations are grouped into votes. Each vote includes appropriations that are the responsibility of a designated Minister or Ministers, and it is administered by one department (the appropriation administrator), though a department may administer more than one vote.<sup>76</sup> In order to facilitate collaboration between departments, departments other than the appropriation administrator can incur expenses against appropriations for departmental expenses or multi-category appropriations; this must be done under the direction of the appropriation Minister or with the agreement of the appropriation administrator.<sup>77</sup>

In the case of the Offices of Parliament, the Office of the Clerk and the Parliamentary Service, the Minister responsible for the votes administered respectively by them is the Speaker.<sup>78</sup> Select committees, in their examination of the Estimates, may seek explanations of the need for the creation of a particular vote.<sup>79</sup>

## TRANSFERRING APPROPRIATIONS

Though appropriations for different classes of outputs are separate appropriations, transfers of amounts appropriated from one class of outputs to another class within the same vote can be made by Order in Council.<sup>80</sup> This procedure is used to deal with a small number of matters arising at the end of the financial year. They are usually confined to matters recognised after the Supplementary Estimates have been prepared.<sup>81</sup>

The amount transferred by Order in Council cannot increase an appropriation for a class of outputs by more than five per cent in any year, and the total amount appropriated for all classes of outputs in a vote must be the same. Only one transfer to another class of outputs can be made under this power in any one year.<sup>82</sup> The Order in Council transferring appropriations between classes of outputs must be made before the end of the financial year.<sup>83</sup> A clause confirming such an Order in Council must be included in an Appropriation Bill introduced in the next financial year.<sup>84</sup> This bill is usually called the Appropriation (Confirmation and Validation) Bill. However, a transfer of an appropriation by Order in Council is valid whether or not confirming legislation is introduced or enacted.<sup>85</sup>

## LENDING

Except as expressly authorised by any Act, the Crown must not lend money to a person or organisation.<sup>86</sup> The Minister of Finance may lend money if it appears to him or her necessary or expedient in the public interest to do so, and may lend money to a foreign Government for the purposes of economic development or

<sup>76</sup> Public Finance Act 1989, s 2(1).

<sup>77</sup> Public Finance Act 1989, s 7C(2)(c).

<sup>78</sup> Public Finance Act 1989, ss 2(1) and 7C(3), (4).

<sup>79</sup> See: Government Administration Committee, report on 2001/02 Estimates (Vote State Services) (13 July 2001) [1999–2002] AJHR I.19B at 535–536.

<sup>80</sup> Public Finance Act 1989, s 26A.

<sup>81</sup> *Archives and Records Association of New Zealand v Blakeley* [2000] 1 NZLR 607 (CA) at [81].

<sup>82</sup> Public Finance Act 1989, s 26A(1).

<sup>83</sup> See, for example: Public Finance (Transfers Between Outputs) Order 2015.

<sup>84</sup> Public Finance Act 1989, s 26A(2).

<sup>85</sup> *Archives and Records Association of New Zealand v Blakeley* [2000] 1 NZLR 607 (CA) at [80].

<sup>86</sup> Public Finance Act 1989, s 65K.

otherwise to assist the inhabitants of that country.<sup>87</sup> Any such loans must be made from a capital expenditure appropriation or under other statutory authority.<sup>88</sup>

## **EMERGENCY EXPENSES AND CAPITAL EXPENDITURE AND CAPITAL INJECTIONS**

Expenses and capital expenditure may be incurred to deal with emergencies. The Minister of Finance may approve the incurring of expenses or capital expenditure when any state of emergency or civil defence emergency is declared or any other situation arises that affects the public health or safety of New Zealand or any part of it, and which the Government declares to be an emergency.<sup>89</sup> Public money may then be spent in accordance with the approval even though it has not been appropriated.<sup>90</sup> In the case of an emergency or disaster, capital injections may also be approved by the Minister of Finance without being authorised by an Appropriation Act, but a statement about such injections must be included in the Government's annual financial statements and an Appropriation Bill.<sup>91</sup> Provisions to incur expenses or capital expenditure were used in 2010/11 immediately after the Christchurch earthquake of February 2011.<sup>92</sup>

There is no requirement for the emergency to have arisen after the passing of the Appropriation Acts, nor is there any limit on the amount that might be expended under this section (until 1953 there was a limit on the amount that could be expended in any year). The Minister may approve emergency expenses or capital expenditure even where Parliament has appropriated money for the same purpose. All emergency expenses and expenditure must be included in the annual financial statements of the Government and in the following year's Appropriation Bill for confirmation by Parliament though this does not affect the validity of such expenditure.<sup>93</sup>

## **APPROVAL OF EXCESS EXPENSES AND CAPITAL EXPENDITURE**

After Parliament has passed the Appropriation Acts for the current financial year, it may become apparent that, notwithstanding the Supplementary Estimates, the amounts appropriated are insufficient to cover expenditure under a particular appropriation. The Minister of Finance has authority to approve the incurring of expenses or capital expenditure in respect of any appropriation in the last three months of the year in these circumstances. The Minister's approval must be given during the financial year or within three months of its end.<sup>94</sup>

The amounts the Minister may approve under this provision in any financial year must not exceed \$10,000 or more than two per cent of the total amount appropriated for that appropriation, whichever is the greater.<sup>95</sup>

All such expenses or capital expenditure must be included in an Appropriation (Confirmation and Validation) Bill for confirmation by Parliament (though its validity does not depend on confirmation).<sup>96</sup> A statement of such excess expenses or expenditure must also be included in the annual financial statements of the

<sup>87</sup> Public Finance Act 1989, ss 65L and 65M.

<sup>88</sup> Public Finance Act 1989, s 65P.

<sup>89</sup> Public Finance Act 1989, s 25(1), (2).

<sup>90</sup> Public Finance Act 1989, s 25(4).

<sup>91</sup> Public Finance Act 1989, s 25A.

<sup>92</sup> Financial Statements of the Government of New Zealand (11 October 2011) NZPP B.11 at 175.

<sup>93</sup> Public Finance Act 1989, s 25(5).

<sup>94</sup> Public Finance Act 1989, s 26B(1), (2).

<sup>95</sup> Public Finance Act 1989, s 26B(2).

<sup>96</sup> Public Finance Act 1989, s 26B(4), (5).

Government and in the annual report of the department administering the vote concerned.<sup>97</sup>

## UNAPPROPRIATED OR UNAUTHORISED EXPENSES AND CAPITAL EXPENDITURE

It is unlawful for expenses or capital expenditure to be incurred without appropriation or other authority from Parliament.<sup>98</sup>

Wherever any such expenses or expenditure are incurred, any person or persons responsible may themselves incur liability for the illegality. However, where the illegality was perpetrated in good faith (and not, for instance, dishonestly), it is likely that Parliament will wish to regularise the position, remove any legal liability arising, obviate recovery action being initiated in respect of any unauthorised payments that have been made, and provide for obligations that have been entered into to be satisfied out of lawfully appropriated funds.

Therefore, an Appropriation (Confirmation and Validation) Bill (or other legislation) may seek to validate such expenses or expenditure.<sup>99</sup> Where validation of unappropriated expenses is sought by means of an Appropriation Bill, the Minister of Finance must present a report to the House setting out the amount of each category of expenses or capital expenditure so incurred and an explanation from the Minister responsible for them.<sup>100</sup> A statement of such unappropriated or unauthorised expenses must also be included in the annual financial statements of the Government and in the annual report of the department administering the relevant vote.<sup>101</sup>

Unless and until validated by Parliament, unappropriated or unauthorised expenses and capital expenditure remain unlawful.

---

<sup>97</sup> Public Finance Act 1989, s 26D.

<sup>98</sup> Public Finance Act 1989, ss 4(1) and 26C(1).

<sup>99</sup> See, for example: Appropriation (Parliamentary Expenditure Validation) Act 2006, s 5 (validating expenditure under Vote Parliamentary Service that may have been outside the scope or purpose of an appropriation or other enactment; see also: discussion under “Payment of public money” p 525 and footnote 24); Appropriation (1997/98 Financial Review) Act 1999, s 7 (validating an unquantified portion of expenses incurred in providing business capability improvement grants outside the scope of the appropriation for such grants).

<sup>100</sup> Public Finance Act 1989, s 26C(2).

<sup>101</sup> Public Finance Act 1989, s 26D.

## CHAPTER 32

# Revenue

Today there are relatively few specific parliamentary rules about revenue or taxation, but it is illegal for the Crown to levy money on its subjects without parliamentary authority.<sup>1</sup> Parliament's main role in the raising of revenue thus lies in approving the mechanisms to do so, by passing primary or empowering legislation and annual confirming legislation, and undertaking regular scrutiny of the Government's fiscal position. Also, parliamentary initiatives that would have more than a minor impact on the Government's fiscal aggregates if passed into law may be subject to the Government's financial veto.

The money available to the Government to finance spending falls into three categories: revenue, borrowings, and, in the age of accrual accounting, capital gains minus losses. These categories are accounted for separately in the Government's financial statements.

Revenue is the income earned by the Government reporting entity, as defined in the Public Finance Act 1989. For the purposes of financial reporting, the Government reporting entity is a wider concept than the Crown. The Crown is defined in the Act as consisting of departments and Offices of Parliament. The Government reporting entity includes the Crown thus defined, and also State enterprises and Schedule 5 mixed-ownership model companies, Crown entities, Schedule 4 organisations and Schedule 4A companies, the Reserve Bank, and any other entity that is required to be included by generally accepted accounting practice.<sup>2</sup>

Only money received by the Crown as defined in the Act is categorised as public money; the revenue earned by State enterprises and Crown entities is not.

This chapter sets out the sources of revenue, describes Parliament's involvement in scrutinising and authorising revenue initiatives, and explains how revenue must be accounted for to the House.

## SOURCES OF REVENUE

Revenue derives from a number of sources. Taxation, which includes income tax and goods and services tax, as well as excise and other duties, is the largest source. Together with ACC levies, other levies, and certain miscellaneous items such as child support payments, taxation constitutes the sovereign revenue of the

<sup>1</sup> Bill of Rights 1688 (Eng), art 4; Constitution Act 1986, s 22(a).

<sup>2</sup> For a full list of the entities included in the Government reporting entity in 2015, see: Financial Statements of the Government of New Zealand (14 October 2015) NZPP B.11 at 44–46.

Government. The second broad category is revenue earned through operations, including proceeds from the provision of goods and services, interest and dividends, and sundry items such as royalties and rental income.

There is special parliamentary involvement regarding some of these sources of revenue. This is discussed below in terms of taxes, customs and excise duties, levies and other sources of revenue.

## TAXATION

Taxation must be authorised by Parliament, either directly in primary legislation or by regulations authorised by primary legislation. The courts may give effect to this constitutional principle by requiring taxes exacted under an unlawful demand to be returned to the taxpayer.<sup>3</sup> The prohibition on taxation without parliamentary authority applies to direct taxes such as income tax and to indirect taxes such as goods and services tax and customs and excise duties. The Regulations Review Committee has endorsed an Australian court's definition of a tax as any levy that is compulsory, for public purposes, and is legally enforceable.<sup>4</sup>

### Income tax

Income tax was introduced in New Zealand on 1 April 1892.<sup>5</sup> It is the biggest source of revenue available to the Government, accounting for nearly half of all Government revenue. The liability to pay income tax is fixed permanently by legislation. However, the rates of income tax are not fixed permanently; they are required to be fixed annually.<sup>6</sup>

The income tax year runs from 1 April to 31 March.<sup>7</sup> This means that Parliament must pass legislation confirming the income tax rates that are to apply before the tax year commences on 1 April each year. In practice it often does so in legislation passed in the calendar year preceding the ending of the income tax year.

Any clause, provision, or group of clauses or provisions that sets or confirms rates of income tax is termed an annual taxing provision. An annual taxing provision either fixes the rates of income tax by confirming the rates already in force, or fixes new rates by reference to a new schedule of tax rates that is to be substituted in the Income Tax Act 2007. The annual taxing provision itself, however, never includes the actual tables or figures of income tax rates. It legislates by reference to rates set out elsewhere.

When a committee of the whole House considers a bill that includes an annual taxing provision, the committee must consider this provision as a separately debatable question.<sup>8</sup> The Standing Orders Committee has held that the annual taxing provision is so important that the committee of the whole House should not have the power to avert its separate consideration. The separate debate could be dispensed with only by way of an instruction from the House to the committee.<sup>9</sup>

Since 1987 the practice has been to fix income tax rates by including a clause in an Income Tax Amendment Bill or in general taxation bills that are to be passed during the course of the year. But a clause fixing tax rates must be in such a bill

<sup>3</sup> *Woolwich Equitable Building Society v Inland Revenue Commissioners* [1993] AC 70 (HL) at 172 per Lord Goff of Chieveley.

<sup>4</sup> Regulations Review Committee, report on constitutional principles to apply when Parliament empowers the Crown to charge fees by regulation (25 July 1989) [1987–1990] AJHR I.16C at [6.9]; Regulations Review Committee *Investigation and complaints relating to civil court fees regulations* (17 June 2002) [1999–2002] AJHR I.16M at 20; *Air Caledonie International v Commonwealth of Australia* (1988) 165 CLR 462.

<sup>5</sup> Land and Income Assessment Act 1891.

<sup>6</sup> Income Tax Act 2007, s BB 1.

<sup>7</sup> Income Tax Act 2007, s YA 1 (definition of tax year).

<sup>8</sup> SO 343.

<sup>9</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 50.

when it is introduced; it cannot be added to it by way of amendment.<sup>10</sup> The practice now is for such a bill's title to alert members to the fact that the bill includes an annual taxing provision, and for the provision to form a separate part.<sup>11</sup>

The principle of an annual provision fixing rates of taxation is an important constitutional one. The particular part of any tax bill that sets the annual rates of income tax is treated as a matter of confidence.<sup>12</sup> A proposal was announced in the 1979 Budget that income tax rates be subject to reduction by Order in Council; it aroused strong opposition on constitutional grounds and was not proceeded with.<sup>13</sup> Even changing tax rules by regulation, with the consequent implications for tax liability, is looked at critically if it appears that Parliament is being asked to authorise the variation of tax by regulation.<sup>14</sup> The requirement for tax rates to be fixed annually, failing which there can be no assessment and liability to pay tax, is an extra assurance that Parliament will be called upon to meet every year.

## Goods and services tax

Goods and services tax (GST) was introduced on 1 October 1986. It is charged (at the rate of 15 per cent) on the supply of goods and services in New Zealand.<sup>15</sup> It is not an excise duty, because it is levied at the point of sale or supply. No special parliamentary procedure is prescribed for the levying of GST. However, the rate is set in primary legislation and may be varied only by amending the Goods and Services Tax Act 1985.<sup>16</sup>

While GST is payable by the Crown,<sup>17</sup> no specific appropriation for the payment is required. General authority exists for the payment of GST in relation to the expenses or capital expenditure incurred in accordance with an appropriation or other spending authority.<sup>18</sup>

## Customs and excise duties

Customs and excise duties were initially the largest source of Government revenue, accounting for 90 per cent of tax receipts and 69 per cent of total revenue in 1875–1876.<sup>19</sup> They now account for only about five per cent of Crown revenue.<sup>20</sup>

### Customs duties

Customs duties are taxes levied on goods imported into New Zealand. The House has power to alter such duties by resolution. Generally, a resolution passed by a House of a legislature does not of itself alter the law,<sup>21</sup> but a statute can delegate legislative power to the House of Representatives to be exercised by the passing of a resolution. For many years this has been done in New Zealand in respect of customs duties. Provisional legal force is conferred on a resolution passed by the House for an alteration in the customs tariff,<sup>22</sup> allowing changes to be made in rates

<sup>10</sup> The Income Tax (Annual) Bill 1991 was introduced and passed separately for this reason.

<sup>11</sup> Taxation (Annual Rates for 2015–16, Research and Development, and Remedial Matters) Bill; Income Tax Act 2007, sch 1.

<sup>12</sup> (1998) 573 NZPD 13199–13200, 13209; (1 December 2004) 622 NZPD 17369 (Taxation (Annual Rates, Venture Capital and Miscellaneous Provisions) Bill).

<sup>13</sup> Controller and Auditor-General, report for the year ended 31 March 1980 (29 May 1980) [1980] AJHR B.1 [Pt.III] at 7; Hugh Templeton *All Honourable Men: Inside the Muldoon Cabinet 1975–1984* (Auckland University Press, Auckland, 1995) at 121–122.

<sup>14</sup> Taxation (Base Maintenance and Miscellaneous Provisions) Bill (231–2) (commentary, 25 May 2005) at 4–5 ([2002–2005] AJHR I.22D at 222–223).

<sup>15</sup> Goods and Services Tax Act 1985, s 8.

<sup>16</sup> Goods and Services Tax Act 1985, s 8(1); Taxation (Budget Measures) Act 2010, s 45 (rate of GST increased to 15 per cent).

<sup>17</sup> Goods and Services Tax Act 1985, s 7.

<sup>18</sup> Public Finance Act 1989, s 6(b).

<sup>19</sup> AH McLintock (ed) *An Encyclopaedia of New Zealand* (Government Printer, Wellington, 1966) vol 1 at 661.

<sup>20</sup> Financial Statements of the Government of New Zealand (21 October 2014) NZPP B.11 at 51.

<sup>21</sup> *Bowles v Bank of England* [1913] 1 Ch 57.

<sup>22</sup> Tariff Act 1988, s 12(1).

of duty with immediate effect, and thus avoiding the delay that would otherwise occur while amending legislation was passed. Any motion for an alteration in the customs tariff is subject to the Government's financial veto.<sup>23</sup>

Whenever the House resolves to amend the customs tariff, no person may commence a legal action against the Crown, a Minister or any other person to whom powers have been delegated regarding action to enforce the tariff as amended by the House's resolution. This legal protection subsists only until the end of the session in which the resolution was passed, by which time legislation must be passed to validate it. In the absence of such legislation, it then ceases to have effect.<sup>24</sup>

Such resolutions are not common now. Governments prefer to make such changes by passing a bill through all its stages at one sitting rather than effecting the changes in two bites, by a resolution and the subsequent passage of a confirming bill through the House. The last occasion on which such resolutions were passed was in 1970 when additional duties were imposed on tobacco and cigars imported into New Zealand.<sup>25</sup> The bill that ratified and revoked the resolutions was passed one month later, giving permanent effect to the amendments to the tariff.<sup>26</sup>

Although it is now uncommon, alterations to the customs tariff may also be made by Order in Council. Such alterations are disallowable instruments, but not legislative instruments, and must be presented to the House under section 41 of the Legislation Act 2012.<sup>27</sup> They are also confirmable instruments. As such, they are revoked in the following year under the timing requirements of the Legislation Act 2012, unless confirmed by legislation passed within the required time. An order made during the first half of a year is revoked at the middle of the next year, and an order made during the second half of a year is revoked at the end of the next year, unless it is confirmed.<sup>28</sup>

In the case of other customs orders that are not required to be validated and confirmed by legislation, the House may resolve that the order be revoked or varied, and if it does so, the revocation or variation has legal effect, and any excess duty collected under the order must be refunded.<sup>29</sup> A motion to revoke or vary a customs order is subject to the Government's financial veto.<sup>30</sup> Where such a motion is lodged, under the House's negative resolution procedures, it stands referred to a select committee for examination and report to the House within 10 sitting days.<sup>31</sup> If a select committee recommends that the motion be passed, the motion is set down for consideration in place of the next general debate.<sup>32</sup>

### ***Excise duties***

Excise duties are taxes levied on goods within New Zealand at some point before their final sale or supply to consumers. The principal goods on which excise duties are currently levied are alcohol, tobacco and fuels, including motor spirit, liquefied petroleum gas and compressed natural gas. Because of their importance, changes of substance are most likely to be made by way of primary legislation, often among measures associated with the Budget.<sup>33</sup>

Orders in Council may also be used to impose excise duty or excise-equivalent duties, or to alter the rates of such duties. These orders are confirmable instruments and are revoked in the following year under the timing requirements of the

<sup>23</sup> SO 326(1), (3).

<sup>24</sup> Tariff Act 1988, s 12(1).

<sup>25</sup> (27 October 1970) [1970] JHR at 343–347.

<sup>26</sup> Customs Amendment Act 1970.

<sup>27</sup> Tariff Act 1988, s 9C.

<sup>28</sup> Tariff Act 1988, s 11; Legislation Act 2012, ss 47B and 47C.

<sup>29</sup> Tariff Act 1988, s 11A.

<sup>30</sup> SO 326(3).

<sup>31</sup> SO 323(1), (2).

<sup>32</sup> SO 323(4).

<sup>33</sup> Customs and Excise (Budget Measures—Motor Spirits) Amendment Act 2013.

Legislation Act 2012, unless confirmed by legislation passed within the required time.<sup>34</sup> The vehicle for confirmation is usually the annual Subordinate Legislation (Confirmation and Validation) Bill.

Confirmation and validation bills stand referred to the Regulations Review Committee, without debate on their first reading.<sup>35</sup> This procedure, introduced in 2014, is intended to facilitate the early referral of such bills, to allow time for proper select committee consideration of instruments that require annual confirmation. This may involve consultation with other committees if policy issues arise.<sup>36</sup>

The House may also resolve to revoke or vary excise orders. If it does so, the order is thereby revoked or varied and any excess duty that has been collected must be refunded.<sup>37</sup> A motion to revoke or vary an excise duty is subject to the Government's financial veto and the House's negative resolution procedures.<sup>38</sup>

## Levies

The Government charges a wide range of levies to specific industries and groups for specified purposes. Their authority is statutory and they are generally set by way of Order in Council. Orders in Council effecting levies may be titled either "orders" or "regulations". Almost all levies are disallowable instruments, either by virtue of being legislative instruments, or by way of having a significant legislative effect.<sup>39</sup> Some empowering provisions also explicitly state that levy instruments created under them are disallowable, although the absence of words to that effect does not affect an instrument's qualification as a disallowable instrument by way of the characteristics specified. Disallowable instruments must be presented to the House no later than the 16th sitting day after the day on which they are made,<sup>40</sup> and may be disallowed by the House.<sup>41</sup>

Many levy orders are also confirmable instruments and are revoked in the following year under the timing requirements of the Legislation Act 2012, unless confirmed by legislation passed within the required time.<sup>42</sup> Like excise orders, they are normally confirmed in the annual Subordinate Legislation (Confirmation and Validation) Bill.

Such levies include agricultural compound levies,<sup>43</sup> animal product levies,<sup>44</sup> aviation levies,<sup>45</sup> biosecurity levies,<sup>46</sup> energy resource levies,<sup>47</sup> the fire service levy,<sup>48</sup> food safety levies,<sup>49</sup> forestry levies,<sup>50</sup> national animal identification and tracing levies,<sup>51</sup> the problem gambling levy,<sup>52</sup> the waste minimisation levy,<sup>53</sup> and wine levies.<sup>54</sup>

### *Accident Compensation Corporation levies*

An important category of levy is that of Accident Compensation Corporation

<sup>34</sup> Legislation Act 2012, s 47(c).

<sup>35</sup> SO 325(2).

<sup>36</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 22.

<sup>37</sup> Customs and Excise Act 1996, s 80A; Legislation Act 2012, ss 47B and 47C.

<sup>38</sup> SOs 323 and 326(3).

<sup>39</sup> Legislation Act 2012, ss 4, 38 and 39. See Chapter 29 on disallowable instruments.

<sup>40</sup> Legislation Act 2012, s 41.

<sup>41</sup> SO 321; Legislation Act 2012, s 43.

<sup>42</sup> Legislation Act 2012, s 47(c).

<sup>43</sup> Agricultural Compounds and Veterinary Medicines Act 1997, s 81E.

<sup>44</sup> Animal Products Act 1999, s 118.

<sup>45</sup> Civil Aviation Act 1990, s 42A.

<sup>46</sup> Biosecurity Act 1993, ss 100L, 100ZB, and 137.

<sup>47</sup> Energy Resources Levy Act 1976, s 4; Energy (Fuels, Levies, and References) Act 1989, ss 22–24.

<sup>48</sup> Fire Service Act, s 48.

<sup>49</sup> Food Act 2014, s 203.

<sup>50</sup> Forests Act 1949, s 67ZM.

<sup>51</sup> National Animal Identification and Tracing Act 2012, s 62.

<sup>52</sup> Gambling Act 2003, s 319.

<sup>53</sup> Waste Minimisation Act 2008, s 26.

<sup>54</sup> Wine Act 2003, s 89.

(ACC) levies. ACC levies are payable by employers, employees, the self-employed, and vehicle owners to finance entitlements under the Accident Compensation Act 2001 regarding work, motor vehicle and other injuries. A funding policy statement, which addresses annual levy changes, is issued for consultation by the Minister. In setting levies, ACC is required to consult levy payers before making any recommendation to the Minister.<sup>55</sup> It must also prepare and publish a report regarding the rates of levies prescribed.<sup>56</sup> Levies are set by regulation.<sup>57</sup> Such regulations stand referred to the Regulations Review Committee for scrutiny and are disallowable instruments.<sup>58</sup> They are not, however, confirmable instruments.

## OTHER REVENUE SOURCES

Revenue can come from a number of other sources. First, it may come from fees and charges for goods and services the Government is obliged to provide, such as issuing passports or driver's licences or registering births or marriages.

Public sector entities charging such fees must have statutory authority to do so.<sup>59</sup> The fee must be set at no more than the amount necessary to cover costs unless the entity is expressly authorised by statute to do otherwise.<sup>60</sup> Setting a fee that recovers more than the cost of providing the service could be seen as a tax and would, in that case, breach the constitutional principle that parliamentary authority is required to impose a tax (as discussed above). Not only must the power to charge be authorised by the legislation under which any regulations are made,<sup>61</sup> but the actual charge imposed must also be reasonable in relation to the duty performed.

There can be a fine line between an authorised charge for a governmental service and an unlawful levy of money. The issue of whether the Crown or a department is seeking to impose a lawful charge to recover costs, or to impose an unlawful tax is most likely to arise when a charge is imposed by delegated legislation for the performance of a public duty. Any such regulations are invariably subject to close parliamentary scrutiny to ensure the charges are authorised and justifiable.

Both the Auditor-General and the Treasury have issued guidelines for setting such fees. The Treasury guidelines are directed at charges for services for which the Government is a monopoly supplier, in that alternative sources of supply do not exist or have not been discovered. Such fees are intended to promote efficiency and equity, and to satisfy fiscal considerations.<sup>62</sup> However, there is acknowledged difficulty of applying these guidelines when fees are set below full cost-recovery rates for services with a significant public-good component. These difficulties are well exemplified by the setting of court fees. The fees charged do not relate directly to the cost of the services provided, and the public good of access to justice must be taken into account when setting fees.<sup>63</sup> Any fee raising such issues will be subjected to close scrutiny.

Secondly, revenue arises from penalties and fines. For example, 10 per cent of the amount of every fine payable to a local authority as a result of a prosecution brought by the authority must be credited to a Crown Bank Account or a departmental bank account.<sup>64</sup> Statutory authority is required before a penalty or

<sup>55</sup> Accident Compensation Act 2001, s 331.

<sup>56</sup> Accident Compensation Act 2001, s 331.

<sup>57</sup> Accident Compensation Act 2001, s 329.

<sup>58</sup> Legislation Act 2012, ss 39 and 43; SO 321.

<sup>59</sup> *Waikato Regional Airport Ltd v Attorney-General* [2003] UKPC 50, [2004] 3 NZLR 1.

<sup>60</sup> Controller and Auditor-General *Charging fees for public sector goods and services* (26 June 2008) at 5; *Regulations Review Committee Complaints about two notices made by the Plumbers, Gasfitters, and Drainlayers Board relating to an offences fee* (30 September 2013) at 8 ([2011–2014] AJHR I.22B at 1164); Treasury *Guidelines for setting charges in the public sector* (17 December 2002) at 15.

<sup>61</sup> *Brocklebank v R* [1924] 1 KB 647.

<sup>62</sup> Treasury *Guidelines for setting charges in the public sector* (17 December 2002) at 3.

<sup>63</sup> *Regulations Review Committee Investigation and complaints relating to civil court fees regulations* (17 June 2002) [1999–2002] AJHR I.16M at 16 and App E.

<sup>64</sup> Public Finance Act 1989, s 73; Building Act 2004, s 389(2).

a fine may be imposed, and the penalty or fine must be levied in accordance with the terms of the authority.

Thirdly, revenue is derived from fees and charges for the sale of goods and the provision of services that an entity is not required to provide, such as publications and translation services. No particular parliamentary authority is required for the Crown and departments to earn such income. The Crown is entitled to contract to provide goods or services that it has no public duty to provide, which the recipient chooses to accept on terms that include payment.<sup>65</sup> Currently, State enterprises generate over four-fifths of the Government reporting entity's revenue from the sale of goods and services.<sup>66</sup>

Finally, the Crown may earn revenue from other miscellaneous sources and activities, such as interest, dividends, royalties, and rental income. Other sources of such revenue include unclaimed trust money, unclaimed money in departmental and other bank accounts, and surpluses of the Public Trust paid to the Crown.<sup>67</sup>

## ACCOUNTING FOR AND REPORTING REVENUE

All public money must be lodged in a Crown Bank Account or in a departmental bank account.<sup>68</sup> In line with accrual accounting principles, revenue from taxation is recognised wherever possible as public money in the public accounts at the time the obligation to pay the tax arises—that is, when the income on which tax is payable is earned or when the good or service is consumed.<sup>69</sup> Certain sources of public money are required to be lodged in a dedicated part of a Crown Bank Account as a separate fund.<sup>70</sup> Departmental bank accounts receive disbursements from a Crown Bank Account to meet the costs of supplying their outputs. The revenue received from the supply of services by a department or the proceeds from the sale of its capital assets is paid into a departmental bank account.<sup>71</sup> All investment income received by the Government must be paid into a Crown Bank Account.<sup>72</sup> Income received by a Crown entity must be held in a bank account established by the entity.<sup>73</sup>

Revenue must be accounted for by the Government as a component of the annual and monthly financial statements that the Government is obliged to prepare and publish.<sup>74</sup> The Finance and Expenditure Committee is required to report on the annual financial statements within one week of the first sitting of the House each year,<sup>75</sup> although this reporting date may be extended by the Business Committee.<sup>76</sup>

The Minister of Finance must report annually to the House in the fiscal strategy report on the Government's long-term objectives for fiscal policy, including those for operating revenues, and on how these objectives accord with the principles of responsible fiscal management.<sup>77</sup> At least at four-year intervals, a statement on the long-term fiscal position must be produced.<sup>78</sup> An annual economic and fiscal update must be made to the House, as well as a half-year update. The annual update

<sup>65</sup> *China Navigation Co v Attorney-General* [1932] 2 KB 197.

<sup>66</sup> Financial Statements of the Government of New Zealand (21 October 2014) NZPP B.11 at 36.

<sup>67</sup> Public Finance Act 1989, ss 70 and 74; Public Trust Act 2001, s 43.

<sup>68</sup> Public Finance Act 1989, s 65U(1).

<sup>69</sup> Financial Statements of the Government of New Zealand (21 October 2014) NZPP B.11 at 40.

<sup>70</sup> See, for example: Land Transport Management Act 2003, ss 6 and 10(2) (land transport revenue forms the national land transport fund).

<sup>71</sup> Public Finance Act, s 65U(2)(b), (c).

<sup>72</sup> Public Finance Act, s 65I(3).

<sup>73</sup> Crown Entities Act 2004, s 158.

<sup>74</sup> Public Finance Act 1989, ss 27 and 31A.

<sup>75</sup> SO 345(1).

<sup>76</sup> SO 248.

<sup>77</sup> Public Finance Act 1989, ss 26I–26L.

<sup>78</sup> Public Finance Act 1989, s 26N.

must include fiscal forecasts and a statement of tax policy changes.<sup>79</sup> Government decisions having a material effect on such forecasts must be disclosed to the fullest extent practicable. These reports stand referred to the Finance and Expenditure Committee for examination.<sup>80</sup> The committee must report to the House on the fiscal strategy report and the economic and fiscal update within two months of the delivery of the Budget.<sup>81</sup> The committee must report on the statement of long-term fiscal position within six months of its presentation to the House.<sup>82</sup> An investment statement must also be presented to the House at least every four years to provide transparency around the Crown's finances.<sup>83</sup> The investment statement also stands referred to the Finance and Expenditure Committee and the committee must report on it within two months.<sup>84</sup> The committee's reports on the long-term fiscal position and the investment statement are debated in place of the first general debate following the presentation of the reports.<sup>85</sup>

---

79 Public Finance Act 1989, ss 26O, 26Q, 26R and 26U.

80 SO 336(1).

81 SO 336(2).

82 SO 336(3).

83 Public Finance Act 1989, s 26NA.

84 SO 336(1)(e), (4).

85 SO 336(5).

## CHAPTER 33

# The Process of Supply

The financial year runs from 1 July to the following 30 June. Supply—the appropriation or authorisation by Parliament of the sums of money required to carry on the government of the country—is made for a specified financial year. Some of this supply is established on a permanently recurring basis under permanent legislative authority, but the greater part needs to be authorised on an annual basis through the House’s supply procedures. The process of granting supply involves the House taking action before, during and after the financial year to which the appropriations relate. So in any financial year the House is dealing with residual supply issues relating to the previous financial year, supply issues relating to the current financial year and preparatory supply issues relating to the forthcoming financial year.

## OUTLINE OF THE SUPPLY PROCESS

In outline, the supply process involves consideration of the Government’s budget strategy for the coming year; an interim supply authority being given before the financial year opens; presentation, examination and approval of the Government’s Budget and main Estimates of expenditure; further temporary supply authorities being granted, approval of any Supplementary Estimates presented by the Government; and, after the year ends, confirmation or validation of any unappropriated expenses or capital expenditure that were incurred.

The timetable for these processes as they relate to a particular financial year is set out below.

### Before the financial year commences

August–September	Government’s Budget preparations begin
November–December	The Treasury’s <i>Economic and Fiscal Update</i> published (contains forecasts on which Budget decisions will be based)
December–March	<i>Budget Policy Statement</i> presented (sets out the Government’s Budget strategy)
May onwards	<i>Budget and Estimates of Appropriations</i> presented (Government’s main economic and fiscal policy proposals)
June	<i>Imprest supply</i> approved (interim spending authority to apply from 1 July)

## During the financial year

July–September	<i>Budget and Estimates of Appropriations</i> approved. Further <i>imprest supply</i> approved.
May–June	<i>Supplementary Estimates of Appropriations</i> presented and approved (additions and variations to the main Estimates approvals)

## After the financial year ends

February–March	Excess expenditure, or other expenditure not approved in the Estimates or Supplementary Estimates, confirmed or validated.
----------------	--

(This is the standard timeframe for the process of supply, but it is always liable to disruption by a dissolution of Parliament.)

This timetable means that parliamentary consideration and authorisation of the supply required for each financial year commences before that particular financial year opens and does not conclude until well after that financial year has ended, thus occupying a period of 18 months or more. This chapter examines the procedures employed to discharge the tasks involved in the process of supply. The House's confirmation or validation of excess expenditure or other unappropriated expenditure is integrated with the procedures under which the Crown and departments report to the House on their financial and operational performance. (See Chapters 34 and 35, where Crown and departmental reporting is dealt with in detail.)

## BUDGET PREPARATIONS

The Budget is the collective name for a compendium of economic and fiscal measures announced annually by the Minister of Finance. It is a process rather than an event or a document, involving the making of decisions, the preparation of documentation relating to the decisions, and its release on "Budget day". In so far as a single event signifies the Budget, it is the Budget statement delivered to the House by the Minister in moving the second reading of the main Appropriation Bill,<sup>1</sup> in which the principal components of the Budget are described.

The preparation of a Budget before its presentation to the House is almost exclusively a matter for the executive rather than the legislature. Rarely has the House itself been actively involved in making the public expenditure decisions involved in Budget planning, as distinct from endorsing Budget proposals.<sup>2</sup> Few statutory or Standing Orders obligations impinge on the process that a Government follows in deciding what proposals are to be included in a Budget and in the executive's proposals for public expenditure, which the Government presents to the legislature. Only in respect of the Offices of Parliament is the House involved in devising estimates of expenditure itself. Statute imposes some obligations regarding the conveying of a Government's intentions to the House (for example, in the Budget Policy Statement) but the process followed in preparing a Budget is largely an internal matter for the Government to determine. Thus it is recorded that as late as 1935 it was rare for the Treasury even to report on Ministers' spending proposals, which were usually put before the Cabinet ad hoc and informally.<sup>3</sup> The arrangements followed by modern Governments have become increasingly sophisticated, and take account of the overall economic and fiscal implications of individual spending proposals. The outline that follows

<sup>1</sup> Public Finance Act 1989, s 2(1).

<sup>2</sup> Though see, for example: (1931) 229 NZPD 468 and Michael Bassett *Coates of Kaipara* (Auckland University Press, Auckland, 1995) at 167–168 (special economy committee set up to adjust public expenditure).

<sup>3</sup> Michael Bassett and Michael King *Tomorrow Comes the Song: A Life of Peter Fraser* (Penguin Books (NZ), Auckland, 2000) at 159.

represents the process recently employed, and includes the few extant statutory or House procedural requirements.<sup>4</sup>

## **Strategic phase**

Formal preparations for a Budget begin as early as August in the preceding year, when Ministers start to consider the objectives of the Budget's strategy. For this purpose, planning proceeds on the basis of objectives for the next three years. The Cabinet ultimately determines (usually by November) the relative importance of the outcomes the Government wishes to achieve, and agrees on what is to be included in the next Budget.

### **Half Year Economic and Fiscal Update**

An Economic and Fiscal Update must be published in the November–December period (unless a pre-election update has been published in the last three months of the year). This update is required to contain economic and fiscal forecasts for the current and the next two financial years, but customarily includes such forecasts for the next four financial years.<sup>5</sup> This information is critical to the preparation of the Budget. The update stands referred to the Finance and Expenditure Committee,<sup>6</sup> though the committee is not obliged to report on it.

### **Budget Policy Statement**

Decisions taken during the strategic phase are embodied in a Budget Policy Statement (which has been a statutory obligation since 1994), which the Minister of Finance must issue by 31 March each financial year if Parliament is in session (which, unless an election is called at that time, it almost invariably will be).<sup>7</sup> This means that, if the statement is ready, it can be released at the same time as the Half Year Economic and Fiscal Update is published. The Budget Policy Statement specifies the overarching policy goals that will guide the Government's Budget decisions, the policy areas the Government will focus on, and how the Budget will accord with the short-term intentions referred to in the most recent Fiscal Strategy Report.<sup>8</sup>

The Budget Policy Statement stands referred to the Finance and Expenditure Committee.<sup>9</sup> The committee must report to the House on it within 40 working days of its presentation to the House.<sup>10</sup> The Minister of Finance, if requested, is expected to attend the committee for the purposes of its examination of the statement.<sup>11</sup> It is the invariable practice for this examination to be recorded and transcribed.

In place of the first general debate scheduled after the committee's report on the statement has been presented, a dedicated debate considering the statement and the report is held. The chairperson of the Finance and Expenditure Committee (or, in the chairperson's absence, some other member of the committee) begins the debate.<sup>12</sup> There may be 12 speeches of up to 10 minutes each,<sup>13</sup> in contrast to the usual one-hour general debate. But the debate is not a full Budget debate. Members must speak relevantly to the statement and the committee's report on it.<sup>14</sup>

<sup>4</sup> This summary is drawn from *Putting It Together: An Explanatory Guide to New Zealand's State Sector Financial Management System* (15 September 2011) published by the Treasury (note, however, that due to the 2013 amendments to the Public Finance Act 1989, the State Sector Act 1988 and the Crown Entities Act 2004, this document is under review).

<sup>5</sup> Public Finance Act 1989, s 26S.

<sup>6</sup> SO 336(1)(c).

<sup>7</sup> Public Finance Act 1989, s 26M(1).

<sup>8</sup> Public Finance Act 1989, s 26M(2).

<sup>9</sup> SO 332(1).

<sup>10</sup> SO 332(2).

<sup>11</sup> SO 332(3).

<sup>12</sup> SO 332(4).

<sup>13</sup> SOs, App A.

<sup>14</sup> (1995) 547 NZPD 6714 Gerard (Deputy Speaker).

The objective of issuing a Budget Policy Statement is to make transparent the bases on which Governments make their Budget decisions. This purpose is undermined when new initiatives with important fiscal impacts are introduced late in the financial year, by way of the Supplementary Estimates. This can happen, for example, where the Government changes after a Budget has been delivered.<sup>15</sup>

## **Strategic intentions**

Until 2014 departments were required to prepare annual statements of intent setting out their operating intentions into the future. They provided information on the nature and scope of the department's functions, and on what it planned to achieve in the next three years in terms of the Government's intended outcomes.

The changes made in 2013 to the Public Finance Act 1989 now require departments to provide information on their strategic intentions for the forthcoming year and the next three financial years, consistently with the policy and performance expectations of the Government, as part of a longer-term Budget planning cycle.<sup>16</sup> The information must be provided to Ministers at least once in every three-year period and must be published and presented to the House.<sup>17</sup> The strategic intentions must set out the objectives the department intends to achieve or contribute to the achievement of, and provide information to:<sup>18</sup>

- explain the nature and scope of the department's functions and intended operations
- identify any departmental agencies hosted by the department
- explain how the department intends to manage its functions and operations to carry out its strategic intentions
- cover other matters relating to departmental capability and that may be specified by the Minister.

The strategic intentions provide background for the consideration of the annual appropriations. The requirement to produce regular information on their strategic intentions applies also to Offices of Parliament, each office being required to have regard to any matters specified by the Speaker.<sup>19</sup>

Crown entities and State enterprises are still obliged to prepare and publish statements of intent. (See Chapter 34.)

## **Preparation of the Estimates**

Priorities specified in the Budget strategy guide Ministers and departments in the preparation of submissions on matters to be included in the Budget. This involves preparing draft departmental budgets for the next three years, supplemented by concise explanations of what each appropriation is intended to achieve and how performance against this intention will be assessed.

Ministers and departments also prepare submissions on new policy initiatives that they wish to see included in the Budget that will have an impact on revenue and expense levels. These policy proposals are considered by the Cabinet for consistency with the Government's overall strategy, particularly as set out in the Budget Policy Statement.

In preparing the Estimates, the levels of expenditure so far on existing outputs and activities funded from each vote are updated. These levels (or "baselines") are agreed for the current and the next four financial years, giving the Government and departments some assurance about the expenditure for which they will be funded over a five-year period. Baseline updates take place twice each year, typically in

<sup>15</sup> Controller and Auditor-General *Central government: results of the 1999/2000 audits* (20 December 2000) NZPP B.29[00c] at [3.710].

<sup>16</sup> Public Finance Act 1989, s 38.

<sup>17</sup> Public Finance Act 1989, ss 38(4)(a) and 39.

<sup>18</sup> Public Finance Act 1989, s 40.

<sup>19</sup> Public Finance Act 1980, ss 40 and 45F.

March (before the Estimates and the Budget Economic and Fiscal Update) and October (before the Half Year Economic and Fiscal Update). The baseline levels can be changed if Cabinet approves, but this will be done only in defined circumstances—for example, if forecasts suggest that demand-driven expenditure is likely to change significantly. Failure to carry out a baseline update of a vote before preparing the Estimates increases the likelihood that alterations to that vote will be needed later in the financial year through Supplementary Estimates. In these circumstances the main Estimates are less reliable as an indication of likely expenditure. This is considered an unsatisfactory basis on which to present Estimates to the House.<sup>20</sup>

The decisions made as a result of these activities are consolidated into the Estimates and the ancillary information to be presented to the House at the time of the Budget.

## **Format of the Estimates**

The form in which the Estimates are prepared results partly from the information that statute requires to be included in them. But, subject to these requirements, their format is largely in the hands of the Minister of Finance as the Minister responsible for their preparation and presentation to the House.

It has been the practice for the Treasury to discuss significant changes to the format of the Estimates with the Finance and Expenditure Committee in advance of their adoption. (See p 521.) There is now also a statutory duty of consultation with the House over changes to the format of the Estimates (including Supplementary Estimates) and the supporting information that must accompany each Appropriation Bill. The Minister must submit any proposed change to the Speaker, who presents it to the House.<sup>21</sup> The proposal is referred to the Finance and Expenditure Committee, which disseminates it to the other subject select committees and co-ordinates their responses. The Finance and Expenditure Committee then communicates its own views on the proposal and those of the other committees directly to the Minister.<sup>22</sup>

The Minister, in finalising any changes to the format of the Estimates, must take into account any comments made by the Speaker and the select committees.<sup>23</sup>

For the 2008 to 2013 Budgets, a single volume of Estimates was published with supporting information divided into 10 volumes by sector. Since the 2014 Budget, the Estimates and key supporting information have been published as 10 separate publications. The 10 sectors currently distinguished are the Economic Development and Infrastructure Sector; the Education Sector; the Environment Sector; the External Sector; the Finance and Government Administration Sector; the Health Sector; the Justice Sector; the Māori, Other Populations and Cultural Sector; the Primary Sector; and the Social Development and Housing Sector.

## **Funding for Offices of Parliament**

The Officers of Parliament are subject to a special process for the pre-Budget approval of appropriations for their offices. It involves a parliamentary committee determining their budgets before their Estimates are formally presented to the House.

The Officers of Parliament must submit to the House each year an estimate of expenses and capital expenditure to be incurred by their offices, together with a description of the classes of outputs to be produced, the revenue to be earned and other financial information.<sup>24</sup> In the case of the Auditor-General this information

<sup>20</sup> Justice and Law Reform Committee, report on 1997/98 Estimates (Vote Police) (22 August 1997) [1996–1999] AJHR I.19A at 247.

<sup>21</sup> Public Finance Act 1989, s 18(1), (2)(a).

<sup>22</sup> Standing Orders Committee *Review of Standing Orders* (23 June 2005) [2002–2005] AJHR I.18C at 8–9.

<sup>23</sup> Public Finance Act 1989, s 18(2)(b).

<sup>24</sup> Public Finance Act 1989, s 26E(1).

is incorporated in the draft annual plan prepared for submission to the House.<sup>25</sup> The information is forwarded directly to the Officers of Parliament Committee. It is the committee's duty to recommend to the House an estimate of the expenditure of each Office of Parliament for inclusion in a vote in an Appropriation Bill.<sup>26</sup> For this purpose the committee hears evidence from the officers themselves, and calls for comment from officials of the Treasury. In determining what Estimates to recommend, the committee is mindful of the criteria used by the Cabinet in considering departmental budget submissions.<sup>27</sup> Once it has decided on its recommendations, the committee reports to the House.

The House, in turn, recommends to the Governor-General, by way of an address, the Estimates that are to be included for the Offices of Parliament in the Appropriation Bill to be presented to the House for that year.<sup>28</sup> The House is not bound to follow the Officers of Parliament Committee's recommendations in making its recommendations for inclusion in the Appropriation Bill, but it invariably does so. Similarly, the Crown is not legally bound to include the recommended amounts in the Appropriation Bill, although it is an established convention that it will do so since Ministers have been a party to the address from the House recommending those amounts in the first place. On one occasion when the amount for an Office of Parliament included in an Appropriation Bill differed from that recommended by the House, the Officers of Parliament Committee drew the discrepancy to the attention of the Prime Minister and the Minister of Finance, expressing its concern at the variation. The Ministers assured the committee that it was the result of an administrative error, and that there was no intention to infringe the rights of the House.<sup>29</sup>

Any alteration during the course of the financial year to the Estimates so approved is subject to a similar procedure of recommendation by the Officers of Parliament Committee<sup>30</sup> and commendation by the House to the Governor-General by way of address.<sup>31</sup> Such altered Estimates are included in the Appropriation Bill setting out the Supplementary Estimates of expenditure.

The appropriations for outputs supplied by the Offices of Parliament are included in separate votes administered respectively by the offices. The Speaker rather than a Minister is responsible for these votes.<sup>32</sup> Each vote is examined by a subject select committee in the Estimates examination, in the same way as any other vote.

## Budget secrecy

A constitutional convention of secrecy has been acknowledged to protect Budget-related information from being required to be disclosed during the preparation phase of the coming Budget. The three-year cycle that has been adopted for expenditure projections may extend this convention of secrecy over an even longer period.<sup>33</sup> Certainly, any premature disclosure of the Budget has important political implications, though it is not a question of privilege.<sup>34</sup> A British Chancellor of the Exchequer resigned after he personally disclosed the contents of the Budget to a journalist before delivering the Budget statement in the House.<sup>35</sup> In New Zealand

<sup>25</sup> Public Audit Act 2001, s 36.

<sup>26</sup> SO 395(1)(a).

<sup>27</sup> Officers of Parliament Committee, report on alterations to the 1999/2000 appropriations and 2000/01 draft budgets for Vote Audit, Vote Ombudsmen and Vote Parliamentary Commissioner for the Environment (5 April 2000) [1999–2002] AJHR I.22A at 834–835.

<sup>28</sup> Public Finance Act 1989, s 26E(3), (4).

<sup>29</sup> Officers of Parliament Committee, special report on alterations to the 1991/92 appropriations for Vote Audit (4 June 1992) [1991–1993] AJHR I.21 at 36–45.

<sup>30</sup> SO 395(1)(a).

<sup>31</sup> Public Finance Act 1989, s 26E(6).

<sup>32</sup> Public Finance Act 1989, ss 2(1) and 7C(4).

<sup>33</sup> *Ombudsman Quarterly Review* (December 2001); Official Information Act 1982, s 9(2)(f).

<sup>34</sup> (1977) 412 NZPD 1587 Jack.

<sup>35</sup> Hugh Dalton *High Tide and After: Memoirs 1945–1960* (Frederick Muller, London, 1962) at 276–286.

the premature release of copies of the 1986 Budget (an error that the Minister did not make personally) led the Minister to offer his resignation. It was not accepted.<sup>36</sup> In 1977, allegations that Budget decisions had been disclosed to journalists before their presentation to the House resulted in a select committee inquiry being held. The committee could not determine whether a leak had occurred.<sup>37</sup> An individual department's forecast report has been inadvertently released before the Budget, drawing strong criticism from the select committee examining the relevant vote.<sup>38</sup>

Although secrecy is accepted as applying to the preparation of a Budget, an assessment of any request for Budget information still has to be made as to whether its disclosure would prejudice the Budget's effective preparation, and whether any countervailing public-interest considerations favour disclosure.<sup>39</sup> In general, however, the firm constitutional practice of Budget decisions being announced first in the House (subject to an embargoed Budget briefing or "lock-up" earlier that day) supports the constitutional convention that Budget decisions and information closely related to them are protected from disclosure until this announcement.

It is now standard practice for the Government to release papers that it considered in developing the Budget approximately a month after Budget day.

## FIRST IMPREST SUPPLY BILL

To start spending money or incurring expenses or capital expenditure in a new financial year, the Government must obtain express parliamentary approval in the form of legislation before the year in question opens. The Government's final demands for supply for the new financial year will not have been approved by the House by this time and, indeed, may not yet have been framed. Therefore, the Government asks for a general interim authority to spend public money and to incur expenses and capital expenditure. The request for interim authority is included in an Imprest Supply Bill.

The moneys to be spent and the expenses and capital expenditure to be incurred under the authority of an Imprest Supply Act are charged in the way subsequently specified in the Estimates, which will show how the total financial authorities voted to the Government (including those under imprest supply) are to be used. In the meantime the expenses and capital expenditure are charged as if such an Act had been passed.<sup>40</sup>

The Imprest Supply Act gives the Government financial authority for the new financial year. How long this authority lasts depends upon the amount the House grants, the rate at which the Government uses it, and the time it takes the House to pass an Appropriation Act making appropriations for the year. The first Appropriation Act for the year is passed within three months of the delivery of the Budget.<sup>41</sup> Therefore the first Imprest Supply Bill is designed to give at least sufficient supply from 1 July (the opening of the financial year) to the end of this period.

### Introduction and passing

An Imprest Supply Bill is subject to specially prescribed procedures for its introduction and passing, which differ from those for other Government bills.<sup>42</sup> In the first place, it may be introduced at any time during a sitting except during the course of a debate.<sup>43</sup>

<sup>36</sup> (1986) 473 NZPD 3776–3778.

<sup>37</sup> (3 August 1977) [1977] JHR 157.

<sup>38</sup> Government Administration Committee, report on 1996/97 Estimates (Vote Youth Affairs) (22 July 1996) [1993–1996] AJHR I.19D at 332.

<sup>39</sup> *Ombudsmen Quarterly Review* (December 2001).

<sup>40</sup> *Archives and Records Association of New Zealand v Blakeley* [2000] 1 NZLR 607 (CA) at [75] and [77].

<sup>41</sup> SO 340(1).

<sup>42</sup> SO 270.

<sup>43</sup> SO 284.

Secondly, an Imprest Supply Bill is usually, but does not have to be, taken through all its stages at one sitting. The Standing Orders provide that this may be done, and urgency is not necessary to permit it.<sup>44</sup> But a sitting is not automatically extended for the passing of an Imprest Supply Bill, so if there is not enough time remaining in the sitting day to pass the bill (two hours), it is necessary to take urgency so that the sitting can be extended, otherwise passage of the bill will be interrupted and resumed on a future day. Whether urgency is taken or not, an Imprest Supply Bill does not stand referred to a select committee.<sup>45</sup>

Following the bill's introduction, it is read a first time without any amendment or debate.<sup>46</sup> The Minister in charge of the bill (who may be, but is not necessarily, the Minister of Finance) then moves the second reading. As in the Address in Reply and Budget debates, in practice there are virtually no limitations to this debate on the grounds of relevancy. The question for the second reading is open to amendment in the same way as other public bills and also to a "public affairs" amendment, by means of which a question of confidence in the Government can be raised.<sup>47</sup>

Each member may speak for up to 10 minutes on the second reading or on any amendment to that question, and the total debate is limited to two hours.<sup>48</sup>

The subsequent proceedings on the bill are then telescoped. The House does not resolve itself into committee except in the unlikely event that the Minister in charge of the bill wishes to propose amendments to it.<sup>49</sup> If this is the case, the House resolves itself into a committee of the whole House automatically. Where a committee stage is held, only the Minister's amendments (and any amendments to them) are considered. When amendments to a part or schedule have been disposed of, the question is put that that part or schedule as amended stand part.

It is extremely rare for an Imprest Supply Bill to be amended. In the normal course, the House passes over the committee stage altogether and proceeds to the third reading, the question on which is put without any amendment or debate.<sup>50</sup>

The debate on the second reading of an Imprest Supply Bill may be taken together with the second reading of the Appropriation Bill dealing with the Supplementary Estimates.<sup>51</sup> It has become common practice for these two second readings to be taken together in a combined two-hour debate. In practice, this allows the first Imprest Supply Bill for the new financial year to be debated along with the Supplementary Estimates for the current year, as both bills need to be dealt with by 30 June.

## THE BUDGET

The Budget statement is the Minister of Finance's speech in moving the second reading of the main Appropriation Bill.

The Budget statement has, since 1996, been delivered at 2 pm on a Thursday. (It was formerly delivered at 7.30 pm, after the financial markets had closed.) The time for delivery of the statement is prescribed in the Standing Orders.<sup>52</sup> The Budget must, by law, be delivered within one month of the opening of the financial year—that is, by 31 July—unless the House specifically resolves to the contrary.<sup>53</sup> In fact the Budget has tended to be introduced much earlier than this statutory deadline; indeed it is normally introduced before the financial year to which it

<sup>44</sup> SO 331(1).

<sup>45</sup> SO 288(2).

<sup>46</sup> SO 331(2).

<sup>47</sup> SO 331(3).

<sup>48</sup> SOs, App A.

<sup>49</sup> SO 331(4).

<sup>50</sup> SO 331(5).

<sup>51</sup> SO 342(2).

<sup>52</sup> SO 333(1).

<sup>53</sup> Public Finance Act 1989, s 12.

relates has opened. Since the commencement of the financial year was shifted from 1 April to 1 July in 1989, the earliest Budget was delivered on 14 May in 1998 and the latest on 27 July in 1989. Governments tend to aim to present their Budgets to the House during May.

## The main Appropriation Bill

The main or first Appropriation Bill of each financial year contains the Government's comprehensive annual appropriation proposals. As with any Appropriation Bill, special procedures apply to its passing.<sup>54</sup> In particular, its second reading debate gives rise to the Budget debate, and its committee stage gives rise to the Estimates debate.

The main Appropriation Bill is introduced on a Thursday after the announcement of the presentation of any petitions, papers and select committee reports and of the introduction of any other bills. The day of the Budget and thus of the introduction of the main Appropriation Bill must be notified in advance to the House by the Government.<sup>55</sup> This is usually done formally by means of the Leader of the House's weekly business statement, though the Leader is likely to have previously advised the Business Committee. It is also common for the Budget date to be publicly announced months in advance by the Minister of Finance, often at the Finance and Expenditure Committee's hearing on the Budget Policy Statement.

The bill's introduction is announced by the Clerk and then the Minister moves that it be read a first time. There is no amendment or debate on this question.<sup>56</sup> At this point the Minister traditionally gives copies of the Budget statement to the Speaker, the Prime Minister, the Leader of the Opposition, other party leaders, the Clerk and the Hansard staff seated in the Chamber. Only one copy of the statement is given to each recipient.<sup>57</sup>

## Budget papers

Before delivering the Budget statement, the Minister presents to the House a copy of the statement, the annual Estimates and other supporting information,<sup>58</sup> a Fiscal Strategy Report,<sup>59</sup> and an Economic and Fiscal Update.<sup>60</sup>

The *Fiscal Strategy Report* states the Government's long-term objectives for fiscal policy. It must explain how those objectives accord with the principles of responsible fiscal management. If the Government intends to pay less than the required annual capital contribution to the New Zealand Superannuation Fund, it must state this and the reasons for doing so in this report.<sup>61</sup>

The *Economic and Fiscal Update* makes economic and fiscal forecasts for the financial year to which the Appropriation Bill relates and the two following years (although in practice the forecasts are for the financial year to which the Appropriation Bill relates and the three following years). It must include the annual capital contributions that are to be made to the New Zealand Superannuation Fund in those years.<sup>62</sup>

The *Fiscal Strategy Report* and the *Economic and Fiscal Update* stand referred to the Finance and Expenditure Committee,<sup>63</sup> which must report on them to the House within two months of the delivery of the Budget.<sup>64</sup> The Finance and Expenditure Committee's practice is to examine the Minister on the fiscal

<sup>54</sup> SO 270.

<sup>55</sup> SO 333(1).

<sup>56</sup> SO 333(2).

<sup>57</sup> (1992) 526 NZPD 9717 Gray.

<sup>58</sup> Public Finance Act 1989, s 13(1), (2); SO 335.

<sup>59</sup> Public Finance Act 1989, s 26I; SO 335.

<sup>60</sup> Public Finance Act 1989, s 26O; SO 335.

<sup>61</sup> New Zealand Superannuation and Retirement Income Act 2001, s 44.

<sup>62</sup> New Zealand Superannuation and Retirement Income Act 2001, s 42(2), (3).

<sup>63</sup> SO 336(1)(a), (b).

<sup>64</sup> SO 336(2).

documents and to combine this examination with its consideration of the vote administered by the Treasury. In this way it considers the economic and fiscal outlook together with the economic advice provided by the Treasury during the financial year, and reports to the House accordingly.<sup>65</sup>

These documents and reports are available for debate on the third reading of the Appropriation Bill.<sup>66</sup>

## Budget statement

The House proceeds immediately to the second reading of the bill.<sup>67</sup>

The Minister moves the second reading of the Appropriation Bill and in speaking to that motion delivers the Budget statement.<sup>68</sup> This is not like any other second reading speech. It is the delivery of a prepared statement. Consequently, there is a strong convention against interjections because it is impossible for the Minister to reply to them. Similar courtesies of restraint are expected to be accorded the leaders of other parties who speak immediately after the Minister.<sup>69</sup>

In the speech the Minister reviews the international economic outlook, the performance of the New Zealand economy and the effectiveness of the Government's policies over the past year, and sets out the Government's proposed economic and fiscal measures to deal with the situation of the country as assessed. The Budget, therefore, obviously includes a number of announcements of economic and fiscal policy. But it may also include announcements falling into the category of social policy changes. Among the more dramatic Budget announcements are the introduction or announcement of a new tax and, on one occasion, the revaluation of the currency,<sup>70</sup> but there are few such announcements in modern Budgets. Many of the proposed measures may be announced only in outline in the Budget statement. Details of the proposed changes are then given in statements released by the responsible Ministers shortly after the statement has been delivered, and in due course legislation may need to be introduced to give effect to them. The Budget is concerned with much more than the expenditure proposals set out in the Estimates and embodied in the main Appropriation Bill; it is concerned with the whole range of the Government's financial, economic and social policies.

In delivering the Budget statement the Minister is unrestricted as to the length of the speech.<sup>71</sup> A Budget occasionally has a sobriquet applied to it by which it subsequently becomes known—as in the “black Budget” (1958) and the “mother of all Budgets” (1991).

## The Budget debate

The Budget debate opens with the Leader of the Opposition or the official Opposition's finance spokesperson speaking in response to the statement. Party leaders, in order of party size, are entitled to be called to speak first in the debate, so the Leader of the Opposition is followed by the Prime Minister and other party leaders.

The leaders of parties with six or more members are entitled to speak for up to 20 minutes. All other members are limited to 10 minutes.<sup>72</sup> Thus if the Opposition's finance spokesperson speaks first in the debate, he or she is limited to a 10-minute call, and the Leader of the Opposition takes the 20-minute call later in the debate. The debate takes precedence over all other Government orders of the day until

<sup>65</sup> Finance and Expenditure Committee, *Fiscal Strategy Report, Budget Economic and Fiscal Update 2000 and 2000/01 Estimates (Vote Finance)* (14 August 2000) [1999–2002] AJHR I.22A at 293.

<sup>66</sup> SO 340(2).

<sup>67</sup> SO 333(2).

<sup>68</sup> SO 333(3).

<sup>69</sup> (2000) 584 NZPD 2852–2853 Hunt.

<sup>70</sup> Keith Sinclair *Walter Nash* (Auckland University Press, Auckland, 1976) at 272–273.

<sup>71</sup> SOs, App A.

<sup>72</sup> SOs, App A.

it is completed.<sup>73</sup> While the debate must appear as the first Government order of the day on the Order Paper, this does not prevent it being adjourned after it is reached and other business transacted.<sup>74</sup> The total time allowed for the debate, excluding the Budget statement itself, is 15 hours.<sup>75</sup> This means that the debate ought to conclude by the end of the week following the delivery of the Budget if it is not otherwise adjourned. No Wednesday general debate is held while the Budget debate is in progress.<sup>76</sup>

As with an Imprest Supply Bill, an amendment relating to public affairs may be moved on the question for the second reading of the main Appropriation Bill.<sup>77</sup> This gives the Opposition parties an opportunity to move a widely framed amendment attacking the Government's policies. It also gives an opportunity for an express "no-confidence" motion to be moved. An amendment relating to public affairs does not need to be strictly relevant to the motion for the second reading of the bill. As relevancy is not a consideration regarding this type of amendment, an amendment is always treated as involving consideration and decision of the main question.

The Budget debate is unusual in that the Minister of Finance has a right to speak in reply to the debate for up to 10 minutes.<sup>78</sup> The Speaker therefore interrupts the debate 10 minutes before the 15 hours have expired and calls the Minister in reply. Only the Minister of Finance can exercise this right of reply; no other Minister may speak in reply. The Minister is not obliged to use this right. If the Minister of Finance were not present in the Chamber to exercise this right of reply, the Speaker would let the debate run until its conclusion.

Defeat of the main Appropriation Bill and therefore of the Budget would be a matter of extreme constitutional and political significance. It has even been suggested that the failure to pass an Appropriation Bill would cause all imprest supply authority to lapse unconditionally.<sup>79</sup> While this may not be the effect in law of the defeat of a Budget,<sup>80</sup> it indicates how important such an event would be considered. If an amendment expressly declaring no confidence in the Government were carried or the question for the second reading of the bill were defeated, a lack of confidence in the Government would have been demonstrated.

## THE MAIN ESTIMATES

Estimates must be prepared for the main Appropriation Bill.<sup>81</sup> The Estimates describe and support the appropriation proposals that the bill contains.<sup>82</sup> They specify the votes to which each appropriation relates, the Minister responsible for each appropriation in a vote, the department that administers it, and the type, amount, scope and (if a multi-year appropriation is involved) the period of the appropriation. The Estimates must also state the single overarching purpose of any multi-category appropriations, and the amount of any capital injections authorised to be made to a department (other than an intelligence and security department) for the financial year to which the Estimates relate.<sup>83</sup> (A Minister responsible for an appropriation in a vote may be a different Minister from the Minister responsible for the department administering the vote.) The Estimates may also set out other kinds of information about the appropriations.<sup>84</sup> The information in the Estimates

<sup>73</sup> SO 334(1).

<sup>74</sup> (16 August 1990) [1990] JHR 538.

<sup>75</sup> SOs, App A.

<sup>76</sup> SO 392(3).

<sup>77</sup> SO 334(2).

<sup>78</sup> SOs, App A.

<sup>79</sup> Garfield Barwick *A Radical Tory* (The Federation Press, Sydney, 1995) at 296–297.

<sup>80</sup> See, for example: *New South Wales v Bardolph* (1934) 52 CLR 455 at 479; *Archives and Records Association of New Zealand v Blakeley* [2000] 1 NZLR 607 (CA) at [78].

<sup>81</sup> Public Finance Act 1989, s 13(1).

<sup>82</sup> Public Finance Act 1989, s 2(1).

<sup>83</sup> Public Finance Act 1989, s 14(1), (3).

<sup>84</sup> Public Finance Act 1989, s 14(4).

helps to determine the extent of the activities that may be lawfully funded out of the appropriations that Parliament makes.<sup>85</sup> In the case of the Budget and the main Appropriation Bill, the Estimates (*Estimates of Appropriations for the Government of New Zealand*), known as the main Estimates, are presented to the House by the Minister before or immediately after the Budget statement has been delivered.<sup>86</sup>

Along with the Estimates the Minister must present information supporting the main Appropriation Bill. This information gives additional information about what is intended to be achieved with each appropriation and how performance will be assessed, and includes more comparative and forecast information about the proposed expenses and capital expenditure.<sup>87</sup>

In its schedules the Appropriation Bill specifies the title, type, amount and period for all appropriations, including multi-year appropriations. The only dimension of an appropriation not specified directly in the Appropriation Bill is its scope, which is cross-referenced to the Estimates by the expression “scope shown in the (Supplementary) Estimates”, and is defined in the interpretation clause of each Appropriation Bill.<sup>88</sup>

The appropriations for the Offices of Parliament are included in the Appropriation Bill and in the Estimates, according to the address made by the House commanding them to the Governor-General. (See pp 548–549.)

## **Examination of the main Estimates**

The task of carrying out an examination of the main Estimates in detail falls to the House’s select committees. An Appropriation Bill is not itself referred to a select committee, but the Estimates are referred for scrutiny. The Estimates stand referred to the Finance and Expenditure Committee immediately following the delivery of the Budget.<sup>89</sup>

### ***Allocation of votes and appropriations***

It is the task of the Finance and Expenditure Committee to examine a vote itself or to allocate it to one of the other subject committees for examination<sup>90</sup>—that is, to one of the 13 select committees with subject area jurisdictions.<sup>91</sup> In recognition of the fact that different Ministers may be responsible for different appropriations in a vote and that appropriations may be made for different types of expenditure, the Finance and Expenditure Committee is empowered to divide a vote for the purposes of Estimates examination. Thus it may decide to allocate only some of the appropriations in a vote to another committee for examination.<sup>92</sup> For example, during the consideration of the 2015/16 Estimates, the Finance and Expenditure Committee separated specific science and innovation appropriations out from Vote Business, Science and Innovation; the science and innovation appropriations were allocated to the Education and Science Committee, while the remainder of the Vote was allocated to the Commerce Committee.

In determining what to allocate and to which committees, the Finance and Expenditure Committee is guided by its own workload, the significance of particular votes for the overall financial management of the Government and the subject areas of responsibility of the other committees. The committee is not obliged to consult the other committees about the allocations it makes, though other committees have asked for an opportunity to comment when it is proposed

<sup>85</sup> Controller and Auditor-General *Third report for 1999* (29 June 1999) [1996–1999] AJHR B.29[99c] at [5.010].

<sup>86</sup> Public Finance Act 1989, s 13(1).

<sup>87</sup> Public Finance Act 1989, ss 15–15F.

<sup>88</sup> See, for example: Appropriation (2015/16 Estimates) Act 2015, s 5.

<sup>89</sup> SO 337(1).

<sup>90</sup> SO 337(2).

<sup>91</sup> SOs 188 and 189.

<sup>92</sup> SO 337(2)(c).

to withhold from them a vote falling within their subject area.<sup>93</sup> The votes allocated include those relating to Offices of Parliament, which will have been subject to pre-Budget approval by the Officers of Parliament Committee. In the 2015/16 financial year, the Finance and Expenditure Committee examined four votes itself and allocated 39 votes to other committees for examination.

The Finance and Expenditure Committee resolves upon the allocations as soon as practicable after the Budget is delivered. It issues letters to all the committees formally advising them of its decisions.

### **Standard Estimates questionnaire**

As a routine preliminary action, the Finance and Expenditure Committee draws up a standard Estimates questionnaire, which it forwards to vote Ministers as the initial step in the Estimates examinations. Such a questionnaire was first used in 1991, when the Estimates examination was separated from the review of financial performance (now annual review). The committee receives advice on the form of the questionnaire from the Auditor-General.<sup>94</sup> The questionnaire focuses on the vote rather than departmental matters (which will be examined as part of the annual review). It seeks information at a high level, to supplement that contained in the Estimates and supporting information presented with the Budget. It asks about critical issues affecting the vote and significant changes affecting appropriations within it, and for an elaboration on the mechanisms for evaluating the effect of the funded outputs on outcomes. It may seek to elicit matters that Ministers may be asked to elaborate on at the oral examination of the vote, or to help the committee target its examination. It is designed not to be burdensome.<sup>95</sup>

Committees to which votes are allocated are free to supplement the standard questionnaire with questions of their own devising, but they tend to follow it as the basis for their examinations.

Some six weeks before Budget day, the Finance and Expenditure Committee sends the standard questionnaire to Ministers in respect of each vote containing appropriations for which they are responsible, requesting them to respond to the committee immediately after the delivery of the Budget statement—that is, before the vote's examination. In addition to the questionnaire, other written questions on the Estimates may be sent to the Minister or the department by the committee that is to examine the vote, before the oral hearings on it. Such questions must be adopted by the committee in order to be transmitted for prior departmental response; individual members of the committee cannot send questions directly to the Minister or the department and make them part of the formal Estimates process.<sup>96</sup>

### **Other Estimates documentation**

The Estimates questionnaire has requested copies of purchase agreements with Ministers and departmental output plans, but these are not strict requirements, having been largely replaced from 2014 by statements of strategic intentions, four-year Budget plans, and the Estimates and their supporting information. The supporting information for each vote includes actual, comparative and projected expenses and capital expenditure data, and for each appropriation a concise explanation of what it is intended to achieve and how performance will be

<sup>93</sup> See, for example: Commerce Committee, report on 2000/01 Estimates (Vote Commerce) (14 August 2000) [1999–2000] AJHR I.19A at 102.

<sup>94</sup> Officers of Parliament Committee *Code of practice for the provision of assistance by the Auditor-General to select committees and members of Parliament* (6 May 2002) [1999–2002] AJHR I.15A at [4.1]–[4.3].

<sup>95</sup> Finance and Expenditure Committee, report on the Standard Estimates Questionnaire 2005/06 (7 April 2005) [2002–2005] AJHR I.22D at 190.

<sup>96</sup> Justice and Law Reform Committee, report on 1988/89 Estimates (Vote Justice) (23 August 1988) [1987–1990] AJHR I.19A at 188.

assessed.<sup>97</sup> Whether committees find these sources adequate for their scrutiny is something that they will consider and may report upon.

### **Officials and briefing**

Officials from the Office of the Auditor-General and committee staff are available to assist committees with their examinations of the Estimates. The Auditor-General consults the Finance and Expenditure Committee each year to determine the general nature and extent of the assistance the office will provide on Estimates examinations. Unless specific alternative arrangements are made, the assistance given to committees is as discussed with the Finance and Expenditure Committee and in accordance with the protocol in force for such assistance. The Auditor-General's assistance to each committee can extend to help in determining questions for each examination, reviewing evidence and compiling the report.<sup>98</sup> Unlike the advice provided for the annual reviews, it cannot be based on reporting for the recently completed audit, because the Estimates look forward to spending plans in the forthcoming financial year. Committee staff will work closely with the Office of the Auditor-General to facilitate the committee's requirements and co-ordinate the delivery of advice. Before the oral examination commences, the committee will receive a written briefing from the office on the vote it is to examine, and may also have an oral briefing on the vote. These briefings will endeavour to draw the committee's attention to any unusual or unexplained features in the appropriations. Briefings constitute advice to the committee and are confidential to the committee until it reports, unless the committee decides to reveal their contents to the Minister or department concerned to assist with the examination. An official from the Office of the Auditor-General may also be present during the committee's examination to assist the committee with any technical issues that may arise.

Other officials may also be appointed to assist the committee. For example, the office of the Parliamentary Commissioner for the Environment may act as an adviser to committees on votes dealing with conservation and the environment.<sup>99</sup>

### **Hearings**

Oral hearings will be scheduled as soon as practicable after Budget day. They may even start while the Budget debate is in progress.

Estimates hearings are conducted in public, like the hearing of evidence on any other matter. A committee may, by leave, decide to hear some of the evidence in private, for instance if commercially sensitive information is to be disclosed.<sup>100</sup>

Formerly Estimates examinations were almost exclusively directed to officials, with Ministers appearing only rarely. Now, to reflect the fact that appropriations are made to Ministers, the Minister(s) responsible for appropriations in the vote under examination is expected to attend and front the oral examination by the committee. However, the Minister will be accompanied by the chief executive of the department concerned, and other officials who will also participate in the examination as required. Indeed, the fact that a chief executive did not appear even when the Minister did has drawn complaint from a committee.<sup>101</sup>

An area of possible difficulty is the question of responsibility for appropriations for classes of outputs to be supplied by other entities than the department being

<sup>97</sup> Public Finance Act 1989, ss 15, 15A, 15B and 15C.

<sup>98</sup> Officers of Parliament Committee *Code of practice for the provision of assistance by the Auditor-General to select committees and members of Parliament* (6 May 2002) [1999–2002] AJHR I.15A at [4.1]–[5.11].

<sup>99</sup> See: Planning and Development Committee, report on 1996/97 Estimates (Vote Conservation) (19 July 1996) [1993–1996] AJHR I.19D at 32.

<sup>100</sup> Government Administration Committee, report on 1988/89 Estimates (Vote Capital and Participation in Crown and Other Organisations) (7 September 1988) [1987–1990] AJHR I.19A at 47.

<sup>101</sup> Commerce Committee, report on 2000/01 Estimates (Vote Commerce) (14 August 2000) [1999–2002] AJHR I.19A at 101.

examined. Chief executives of departments are responsible for a number of matters, including the financial management of, and reporting on, appropriations for non-departmental expenses and non-departmental capital expenditure administered by the department, and advising the responsible appropriation Minister on the efficiency and effectiveness of expenditure under those appropriations.<sup>102</sup> So that the Estimates examination is not stymied when a vote includes payments to Crown entities for non-departmental outputs, representatives of the Crown entity concerned may be invited to participate in the examination. (As comparatively few outputs are purchased from State enterprises the examination rarely involves them.)

As well as asking questions orally of the officials appearing before the committee, committee members may ask the officials to prepare detailed information in writing on matters that arise from the questioning. Indeed, in some cases this may be the only practicable means by which a reply can be given. These written replies to matters raised at the examination are delivered to committee members within a reasonable time after the conclusion of the examination.

Given the time constraints on the Estimates examination, allowing responses to be given later in writing as a condition of the committee processing the vote referred to it is a convenient mode of proceeding for all concerned. It is then incumbent on departments to provide the follow-up responses to members, preferably in time for the committee to consider the information before reporting to the House, or at least in time for the Estimates debate in the House, though this is not obligatory.<sup>103</sup>

### **Reports on votes**

The Finance and Expenditure Committee and the other select committees examine the various votes to determine whether to recommend to the House that the appropriations in the vote be accepted.<sup>104</sup> The task of actually passing the Estimates will fall to the committee of the whole House. At the conclusion of its examination of a vote, the select committee resolves whether to recommend the acceptance of the appropriations in the vote and draws up a report on it to the House. The committee may recommend that the House make changes to the appropriations in the vote.<sup>105</sup> But the amounts set out in the Estimates do not change as a direct result of select committee scrutiny.

Committees are required to report back to the House within two months of the delivery of the Budget.<sup>106</sup> (The House has extended this time when consideration of the Estimates was disrupted by an early election, and the Business Committee also now has the authority to do so.<sup>107</sup>) A committee has recommended that a vote be referred back to it where information that it had sought was not available by the time that it was obliged to report. The House subsequently referred the vote back to the committee for further examination.<sup>108</sup> A committee may report on a number of votes in the same report. These reports are expected to be concise, summarising the material provided in response to the written questionnaire and other significant written replies, and supplemented by material elicited during the oral examination.<sup>109</sup> A report on Estimates is presented to the Clerk in the same way as any other select committee report.

---

102 Public Finance Act 1989, s 35.

103 (1979) 424 NZPD 1831–1832 Harrison.

104 SO 338(1)(a).

105 SO 338(1)(b).

106 SO 338(2).

107 SO 248; (2002) 602 NZPD 308–309.

108 Local Government and Environment Committee, report on 2000/01 Estimates (Vote Conservation) (14 August 2000) [1999–2002] AJHR I.19A at 39–40; (2000) 586 NZPD 4895.

109 Standing Orders Committee *First report* (19 July 1985) [1984–1985] AJHR I.14 at 26.

## Intelligence and security departments

Intelligence and security departments (the New Zealand Security Intelligence Service and the Government Communications Security Bureau) are in a special position regarding their Estimates. The statutory Intelligence and Security Committee may consider any matter in relation to an agency referred to it by the House.<sup>110</sup> Accordingly, votes relating to these departments are, by sessional resolutions of the House, examined by the Intelligence and Security Committee and are not subject to examination by a select committee.<sup>111</sup>

The committee's reports on its Estimates examinations are presented to the House and dealt with as if they were select committee reports.

## The Estimates debate

The committee stage of the Appropriation Bill, the stage at which the main Estimates are passed, is known as the Estimates debate. The Estimates debate is the House's consideration of the appropriations being sought by the Government in the votes set out in the main Appropriation Bill.<sup>112</sup>

The committee of the whole House may consider each vote listed in the schedules to the bill along with the elaboration of the vote in the main Estimates and supporting information. The Minister responsible for the appropriations in the vote sits at the Table on the Chairperson's right, and deals with questions that arise during the discussion. The Minister is assisted by officials who are seated in the Chamber on seats to the right of the Speaker's Chair. One of the factors that set the Appropriation Bill apart from other Government bills is that more than one Minister is answerable for its contents. The Minister of Finance is the Minister in charge of the bill, but as its provisions cover the whole gamut of Government activity, the House requires every Minister to be potentially answerable to it for the spending to be undertaken from appropriations for which that Minister has responsibility. Eleven hours are allocated to the Estimates debate.<sup>113</sup>

### *Committee stage of the main Appropriation Bill*

The order in which the committee of the whole House transacts its business when considering an Appropriation Bill is different from the order of business in committee on other bills. The committee stage is entirely devoted to the Estimates debate rather than to a consideration of the clauses and schedules of the bill. At the end of the total time permitted for the debate, any remaining votes, the provisions of the bill, and any amendments will be put as one question without further debate.<sup>114</sup>

The Government has the right to select any day except members' Wednesdays for the Estimates debate. On such a day the Appropriation Bill is set down for consideration in committee.<sup>115</sup> The Government can also determine which votes are available for consideration each day and how long in total is to be spent on the Estimates debate each day. A note setting out this information must be printed on each day's Order Paper.<sup>116</sup>

### *Scheduling of the Estimates debate*

Examination by a select committee and report by it on a vote is a prerequisite for that vote to be available for consideration during the Estimates debate.<sup>117</sup> As committees have two months from the Budget to make their reports on votes

<sup>110</sup> Intelligence and Security Committee Act 1996, s 6(1)(b).

<sup>111</sup> See, for example: (20 March 2012) 678 NZPD 1089–1094; (11 March 2009) 652 NZPD 1861–1867.

<sup>112</sup> SO 339(1).

<sup>113</sup> SOs, App A.

<sup>114</sup> SO 339(4).

<sup>115</sup> SO 350(1).

<sup>116</sup> SO 350(2).

<sup>117</sup> (1979) 424 NZPD 1831–1832 Harrison.

referred to them, the maximum time that a Government has to wait after the Budget before scheduling an Estimates debate is two months. To accommodate 11 hours of debate, the Estimates debate will occupy part of two or three sitting days. It has not been regarded as obligatory for written material called for by the select committee during its examination of a vote to have been delivered into the hands of members before the Estimates debate on that vote is held.<sup>118</sup> But where the committee has accepted a vote on the basis of an assurance that further material will be provided to members in time for the debate in the House, it is incumbent on Ministers and departments to ensure that such an assurance is honoured. Estimates debates scheduled for votes have been postponed when it has been realised that written material asked for during the select committee examination has not been made available.

The Government's determination of which votes are available for debate is also dependent on the availability of Ministers. As one Minister is often responsible for appropriations in more than one vote, an attempt will be made to have all votes containing appropriations for which a Minister is responsible available for debate on the same occasion. A vote can be scheduled for the Estimates debate while an acting Minister is in charge of the department.<sup>119</sup> The Speaker is responsible for votes relating to the Auditor-General, the Office of the Clerk of the House of Representatives, the Office of the Ombudsmen, the Parliamentary Commissioner for the Environment and the Parliamentary Service.<sup>120</sup> While the Government determines which votes are available each day and how long in total is to be spent on them, the Business Committee determines the order in which they are to be considered and how long will be spent on each vote.<sup>121</sup>

### ***Consideration of the votes***

As each vote is reached, the Chairperson proposes the question "That Vote ... stand part of the schedule".<sup>122</sup> The Minister responsible for appropriations in a vote under discussion must, if present in the Chamber, sit at the Table on the Chairperson's right.<sup>123</sup> But another Minister may act for the responsible Minister in the latter's absence. However, as the scheduling of the debate is in the Government's hands, the responsible Minister is expected to attend the debate as part of the House's accountability process.<sup>124</sup> Where another Minister has responsibility for aspects of a vote, he or she may also participate in the Estimates debate from the Table. Members are entitled to make up to two five-minute speeches on each vote. The Minister at the Table is not limited in the number of calls he or she may take. But the Minister is not normally allowed more than two consecutive calls (it is, in fact, entirely up to the Chairperson whether the Minister is allowed even this number consecutively).<sup>125</sup> In practice, the whips' agreement on speeches in the Estimates debate will determine how many contributions are made by members on each vote.

### ***Relevancy***

Until 1972 the debate on the Estimates was subject to a most important restriction: reference to policy was not allowed. This restriction was not imposed by a Standing Order; it was a rule developed by successive Chairpersons (supported by Speakers) exercising their inherent power to rule on relevancy in debate. In 1972 the Standing Orders Committee recommended that references to policy should be permitted

<sup>118</sup> Ibid.

<sup>119</sup> (1970) 367 NZPD 2059 Allen (Chairman); (1978) 418 NZPD 1336 Harrison.

<sup>120</sup> Public Finance Act 1989, ss 2(1) and 7C(3), (4).

<sup>121</sup> SO 350(3).

<sup>122</sup> SO 339(2).

<sup>123</sup> (1988) 492 NZPD 7118 Burke.

<sup>124</sup> (2001) 594 NZPD 10825, 10829–10830 Braybrooke (Chairperson).

<sup>125</sup> SOs, App A.

at any time in debate on the Estimates.<sup>126</sup> This recommendation was immediately adopted by the Chairperson at the time, and the discussion of policy as it relates to the vote under consideration has since then been freely permitted.<sup>127</sup> The debate, which was previously directed principally to examining the administration and expenditure of each department, became one in which Government policy may be debated; the 1979 Standing Orders Committee remarked that this had “changed the whole character of the Estimates debate”.<sup>128</sup>

The 1985 Standing Orders Committee adopted the following statement of the scope of the debate.<sup>129</sup>

The normal rules of debate apply to consideration of the estimates; the main principle is that debate should be relevant to the matter which is contained in the estimate currently under discussion. On a main estimate it is in order to discuss the general policy which lies behind the demand for that particular sum of money ... The purpose ... is not to permit discussions of general policy ... but to focus attention on the need to grant, reduce or refuse to grant particular items of expenditure.

The Estimates debate is confined to the current spending plans as contained in the Budget papers, and must relate to a matter for which an appropriation is proposed in the Estimates. It is no longer a vehicle for scrutinising and debating past performance; that is the purpose of the annual review debate.<sup>130</sup>

The rule of relevancy, that debate must be confined to the items in the vote under discussion, can be difficult to apply to departments with control functions that extend over other areas of Government, particularly the Treasury and the Office of the Auditor-General. All ministerial spending proposals that are made to Cabinet are reported on by the Treasury, and the Treasury's functions in respect of the control of public expenditure and the formulation of economic policy can involve it intimately in the work of all other departments. This detailed involvement may be discussed when another department's vote is being considered, but not on the vote relating to the Treasury. The Minister on this vote can be asked general questions, and there can be a general debate on policies with which the Treasury has been involved, but specific questioning on another department's activities must be directed to the Minister for that department.<sup>131</sup> Similarly, issues relating to the policies and administration of a department must be raised when the vote relating to that department is being debated and not during debate on Vote Audit, even if such matters are referred to in an Auditor-General's report.<sup>132</sup>

### ***Changes to the vote***

During the Estimates debate on a vote any member may move to change a specified appropriation within the vote by a particular amount.<sup>133</sup> This is not an amendment to the question then before the committee; it is an independent motion moved during the course of the consideration of that question, though it is a proposed amendment to an appropriation within the vote, and if it is carried it takes effect accordingly.

Traditionally, proposals to change a vote have taken the form of motions to reduce the vote as a means of expressing displeasure in the Minister or the

<sup>126</sup> Standing Orders Committee, report (8 June 1972) [1972] AJHR I.19 at 11.

<sup>127</sup> (1972) 379 NZPD 1400 Harrison (Chairman).

<sup>128</sup> Standing Orders Committee *Final report* (7 November 1979) [1979] AJHR I.14 at 10.

<sup>129</sup> Standing Orders Committee *First report* (19 July 1985) [1984–1985] AJHR I.14 at 24–25.

<sup>130</sup> (1993) 537 NZPD 17435 Anderson (Deputy Chairman); 1993 538 NZPD 18105–18106, 18161 Anderson (Deputy Chairman); (1996) 556 NZPD 13745 Gerard (Chairperson); (22 July 2003) 610 NZPD 7149 Robertson (Chairperson).

<sup>131</sup> (1970) 367 NZPD 2581 Allen (Chairman).

<sup>132</sup> (1972) 379 NZPD 1531–1537 Harrison (Chairman).

<sup>133</sup> SO 339(3).

department concerned. Token reductions of votes have been made from time to time.<sup>134</sup> The Government has itself agreed to or initiated the reduction of a vote.<sup>135</sup> Occasionally the select committee that has reported on the vote will recommend or indicate that it contemplated recommending a change in the vote.<sup>136</sup>

A motion to change a vote is debated along with the original question, that the vote stand part, as if it were an amendment, and it uses part of any overall time allocated for debate on that vote. If a closure motion is moved and accepted it relates to the original question; and if it is agreed, the question will be put on both the motion to change the vote and the original question on the vote.<sup>137</sup>

While most proposals for changes to a vote take the form of a reduction, they can (since 1996) also take the form of an increase. Any proposal for a change is subject to the Government's financial veto. (See pp 515–519.) If the financial veto is exercised in respect of a proposal to change a vote, the proposed change may be debated but no question is put on it at the end of the debate and it is ruled out of order.<sup>138</sup> A motion to change a vote is out of order if 24 hours' notice of it has not been given before the House meets on the day it is to be moved. But if the select committee has recommended the proposed change, notice is not required.<sup>139</sup>

A proposal to change a vote must specify the sum by which an appropriation in the vote is to be altered. Furthermore, since each output expense (or other type of appropriation) within a vote is a separate appropriation, a motion to change a vote must specify which output expense (or other type of appropriation) is to bear the reduction.<sup>140</sup>

When moving to change a vote, members often wish to give reasons for the proposal. Such reasons are not part of the motion and are not stated by the Chairperson or recorded in the *Journals*.<sup>141</sup> But, provided they are relevant to the vote under discussion, they may be added by the mover and can be debated. A member cannot open up a discussion on a matter outside the limits of the vote by adducing wide-ranging reasons for a change. The Chairperson does not state the reasons advanced by a member moving a change to the vote, and does not usually comment on them; but if they could lead to discussion straying outside the vote before the committee, the Chairperson might require the member to restate them more narrowly. For this reason a general statement of no confidence in the Government would not be acceptable as a reason for a reduction in a vote, but a statement of no confidence in the Minister then at the Table would be.

If a change to a vote is made, the Minister of Finance will present to the House an addendum to the Estimates to reflect it. This is so that the Estimates documents accord with the legal appropriations that are made by Parliament through the Appropriation Acts. As the Estimates are an elaboration of those appropriations, it is critically important that there be no suggestion that they differ from the appropriations actually made by Parliament.

### *Adjusting Estimates*

Occasionally the Government itself will initiate changes to the votes and will prepare a Supplementary Order Paper to amend the Appropriation Bill.

Where there are proposed amendments to the appropriations in the bill, they must be preceded by the tabling of further Estimates adjusting the main Estimates. In the case of proposals to adjust Estimates relating to an Office of Parliament, the

<sup>134</sup> KJ Scott *The New Zealand Constitution* (Oxford University Press, Oxford, 1962) at 56–57.

<sup>135</sup> (1890) 69 NZPD 919.

<sup>136</sup> See, for example: Education and Science Committee, report on 2010/11 Estimates (Vote Education and Vote Education Review Office) (2 July 2010) at 4 ([2008–2011] AJHR I.19B at 136).

<sup>137</sup> (1991) 520 NZPD 5203–5204 Gray.

<sup>138</sup> SO 329(2).

<sup>139</sup> SO 330(1), (2).

<sup>140</sup> (1991) 514 NZPD 1743 Anderson (Deputy Chairman).

<sup>141</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 69.

proposal must first have been examined by the Officers of Parliament Committee and commended to the Governor-General by way of an address from the House.

Adjusting of Estimates may be examined by the Finance and Expenditure Committee. It is up to the committee as to whether it combines examinations of the main estimate with an adjusting estimate or reports separately on each. If it has already reported on the main estimate, a second, separate report on the adjusting estimate will be necessary.

### ***Termination of the Estimates debate***

At the conclusion of the 11 hours allotted for consideration of the Estimates, there are likely to be votes that have not yet been passed by the committee. The Standing Orders provide that in this case any remaining votes, together with the provisions of the bill and any amendments to the bill proposed by the Minister on a Supplementary Order Paper, are to be proposed by the Chairperson as one question and this question is to be decided immediately, without amendment or debate.<sup>142</sup> There is no provision for dealing with amendments from other members that have not been proposed within the 11 hours allowed for the debate.

### ***Organising the Estimates debate***

In its 2014 review of Standing Orders, the Standing Orders Committee noted that recent amendments to the Public Finance Act 1989 had improved financial flexibility and performance reporting, and acknowledged that it is difficult to ensure that the many reports of committees are adequately reflected in financial scrutiny debates.

In response to these comments, the Business Committee used its powers to arrange debate in the committee of the whole House to trial a new approach to the Estimates debate for the Appropriation (2015/16 Estimates) Bill, based on that used for the annual review debate earlier in 2015, where entities were grouped by themes and debated together.<sup>143</sup> (See Chapter 35.) The Estimates debate was divided into 10 separate debates relating to the 10 sectors distinguished in the Estimates of Appropriations. Each sector debate was led off by the chairperson of a select committee with a relevant subject area. Calls in the debate were divided into primary and supplementary calls, and allocated to parties on the same basis as oral questions are allocated (that is, proportionally without including Ministers). Primary calls were allocated for each sector debate while the supplementary calls were taken by parties as they saw fit during the debates. At the end of each sector debate the committee voted on one question, that all of the relevant votes in the sector stand part. At the conclusion of the 11 hours for the Estimates debate, the provisions of the main Appropriation Bill were put as one question. This sectoral approach to the Estimates debate allowed for a wider discussion of the Government's spending intentions for the whole sector, and of connections between the policies covered by multiple votes and the Government's goals for the sector.

## **PASSING OF THE MAIN APPROPRIATION BILL**

The third reading of the main Appropriation Bill granting comprehensive annual appropriations must be completed within three months of the delivery of the Budget.<sup>144</sup> (This time limit has been extended when an early election dislocated examination of the Estimates by committees.<sup>145</sup>) Effectively, given that the Budget must have been delivered by 31 July, this means the bill will be passed at the latest by 31 October, four months into the financial year. In practice, it has tended to be

---

<sup>142</sup> SO 339(4).

<sup>143</sup> SOs 301 and 350; Business Committee determination for 3 June 2015.

<sup>144</sup> SO 340(1).

<sup>145</sup> (2002) 602 NZPD 308–309.

passed much sooner. This is a big improvement on the situation that obtained until the 1990/91 financial year; in the absence of a Standing Orders requirement, the main Appropriation Bill tended not to be passed until shortly before the end of the financial year to which it related.<sup>146</sup>

The normal rules of relevancy apply to the third reading debate. It is solely an expenditure bill, not a taxation bill, and a detailed discussion of economic policy is not permitted.<sup>147</sup> The debate may, however, include reference to the content of the Fiscal Strategy Report and the Economic and Fiscal Update (presented at the time of the Budget) and the Finance and Expenditure Committee's report on these documents.<sup>148</sup> The question for the third reading is open to amendment, but not to an amendment that would postpone the third reading beyond three months of the Budget, which would contravene the Standing Orders. The debate may not exceed three hours and members can speak for up to 10 minutes each.<sup>149</sup> The debate may be taken together with the second reading of an Imprest Supply Bill,<sup>150</sup> and it is the invariable practice to do so.

## SECOND AND SUBSEQUENT IMPREST SUPPLY BILLS

When the main Appropriation Bill has been passed, the appropriation authority conferred by the first Imprest Supply Act is repealed.<sup>151</sup> The Government now has its principal, detailed appropriations as set out in the main Appropriation Act and the Estimates. However, there will still be at least eight months of the financial year to run. Supplementary Estimates adding to and adjusting the appropriations that have already been made will be presented later in the financial year. But, in order to give the Government a general authority to deal with expenditure relating to the current year that may have arisen since the main Estimates were prepared and before the presentation of the Supplementary Estimates, a second Imprest Supply Act is enacted immediately after the main Appropriation Act.

This second tranche of imprest supply is passed in tandem with the third reading of the Appropriation Bill. For this purpose the debate on its second reading may be taken together with the third reading of that bill.<sup>152</sup> The rules for the introduction and passing of the second Imprest Supply Bill are identical with those for the first bill. (See pp 550–551.) However, as the third reading of the Appropriation Bill is a three-hour debate, this is a longer debate than the debates on other Imprest Supply Bills. This second imprest supply authority is repealed when the House enacts the Appropriation Act incorporating the Supplementary Estimates.<sup>153</sup>

Normally there are two grants of imprest supply each financial year: the first given before the financial year opens, which is repealed by the passing of the main Appropriation Act, and the second given in association with that Act and repealed at the time of the Supplementary Estimates. But if an unexpected need for further spending authority arises before the Supplementary Estimates, a third Imprest Supply Bill will be necessary.<sup>154</sup> The rules for the introduction and passing of such a bill are identical with those for other Imprest Supply bills, but as there is no Appropriation Bill with which it can be linked for the purposes of debate, it is debated as a stand-alone piece of legislation with a two-hour time limit for the debate.

<sup>146</sup> Controller and Auditor-General, audit of the Crown and Government departments (11 December 1990) [1990–1991] AJHR B.1[Pt.II] at 12–13; Controller and Auditor-General, audit of the Crown and Government departments (17 October 1991) [1991–1993] AJHR B.1[Pt.II] at 16–17.

<sup>147</sup> (1979) 427 NZPD 4287–4299 Harrison.

<sup>148</sup> SO 340(2).

<sup>149</sup> SOs, App A.

<sup>150</sup> SO 340(3).

<sup>151</sup> Imprest Supply (First for 2015/16) Act 2015, s 3.

<sup>152</sup> SO 340(3).

<sup>153</sup> Imprest Supply (Second for 2015/16) Act 2015, s 3.

<sup>154</sup> See, for example: Imprest Supply (Third for 2001/02) Act 2001 (capital injection for Air New Zealand).

## SUPPLEMENTARY APPROPRIATIONS

The main Appropriation Act, appropriating the amounts set out in the main Estimates, is the Government's chief financial authority for the year. However, the main Estimates are presented to the House before or shortly after the start of the financial year and are passed within four months of its opening. During and after this time the Government may decide that the sums it has requested to be voted to it in the main Estimates need to be altered. It is now generally expected that there will be a need for supplementary appropriations by the end of the financial year. Indeed, this may be contemplated in the main Estimates.<sup>155</sup> Normally Supplementary Estimates do not have much overall fiscal impact, but if the Government changes between the delivery of the Budget and the presentation of the Supplementary Estimates, the expenditure initiatives authorised by the Supplementary Estimates can be very large. In considering Supplementary Estimates, select committees expect to have drawn to their attention changes in governmental priorities from those reflected in the main Estimates, as distinct from merely technical adjustments.<sup>156</sup>

Supplementary appropriations are made by way of an Appropriation Bill introduced on the same day that Supplementary Estimates are presented to the House, which in practice is on Budget day.<sup>157</sup>

### Supplementary Estimates

Supplementary Estimates must be prepared for each Appropriation Bill that seeks supplementary appropriations. They set out how the amounts proposed to be appropriated are to be charged to each vote. For appropriations that were not in the main Estimates, Supplementary Estimates are required to supply full details and supporting information; for appropriations for which supporting information was provided with the main Estimates, only any changes to that information need be given.<sup>158</sup> The Auditor-General has in the past criticised some of the information given with the Supplementary Estimates as not describing clearly and understandably the purposes of and reasons for the changes proposed to the main Estimates.<sup>159</sup>

Just as the main Estimates are an elaboration of the main Appropriation Bill, the Supplementary Estimates are an elaboration of the Appropriation Bill to which they relate.

### Introduction of Appropriation Bill

Supplementary Estimates are presented to the House on the day that an Appropriation Bill containing Supplementary Estimates is to be introduced. The bill may be introduced at any time as long as it does not interrupt a debate.<sup>160</sup> Alternatively, it may be introduced in the same way as any other bill. Although not invariable, the practice has been to introduce the supplementary Appropriation Bill on the same day as the Budget for the next financial year (that is, in May or June). There is no debate on the first reading of the bill.<sup>161</sup>

<sup>155</sup> Estimates of annual appropriations and departmental budgets (24 July 1990) [1987–1990] AJHR B.7 at 356.

<sup>156</sup> Local Government and Environment Committee, report on 2000/01 Supplementary Estimates (Vote Conservation) (21 June 2001) [1999–2002] AJHR I.22B at 1087; Māori Affairs Committee, report on 2000/01 Supplementary Estimates (Vote Māori Affairs) (21 June 2001) [1999–2002] AJHR I.22B at 1219.

<sup>157</sup> Public Finance Act 1989, s 16.

<sup>158</sup> Public Finance Act 1989, ss 17–17B.

<sup>159</sup> Controller and Auditor-General *Central government: results of the 2000/01 audits* (14 December 2001) NZPP B.29[01b] at [8.4].

<sup>160</sup> SO 284.

<sup>161</sup> SO 342(1).

## Examination of Supplementary Estimates

No Appropriation Bill is referred to a select committee,<sup>162</sup> but any Supplementary Estimates relating to the bill stand referred to the Finance and Expenditure Committee after the bill's introduction.<sup>163</sup> The committee can examine a vote in the Supplementary Estimates itself or refer it to any other subject select committee for examination.<sup>164</sup> It cannot divide a vote for examination in the Supplementary Estimates as it can for the examination of the main Estimates. Any Supplementary Estimates for the two votes administered by the intelligence and security departments are examined by the Intelligence and Security Committee.

Although no report time is prescribed, in practice the Supplementary Estimates examination is even more time-confined than the Estimates examination because the bill has to be passed by the end of the financial year on 30 June. For this reason the Finance and Expenditure Committee in recent years has not used its power to refer Supplementary Estimates to other committees. (Supplementary Estimates were last referred to other committees for the 2000/01 year.) The Finance and Expenditure Committee usually carries out the examination itself, relying on Treasury officials to explain the supplementary appropriations and requiring the appearance before the committee of officials from other departments where necessary.<sup>165</sup>

Any committee involved in examining Supplementary Estimates resolves whether to recommend to the House the appropriations in the vote before it. Committees may also recommend changes to the votes.<sup>166</sup>

## Further Supplementary Estimates

Just as the main Appropriation Bill may be amended by the presentation of adjusting Estimates, an Appropriation Bill containing supplementary appropriations may be amended by the presentation of further Supplementary Estimates. (The amendments to the bill are set out on a Supplementary Order Paper in the name of the Minister.) Indeed, a succession of further Supplementary Estimates may be presented.<sup>167</sup> Further Supplementary Estimates stand referred to the Finance and Expenditure Committee; it could refer them to another committee but, in practice, is likely to deal with them itself. An alternative to amending the Appropriation Bill is to introduce another Appropriation Bill and present Supplementary Estimates in respect of it.

## Supplementary Estimates debate

An Appropriation Bill containing Supplementary Estimates remains on the Order Paper until the Supplementary Estimates and any further Supplementary Estimates related to it have been reported to the House. When they have been reported to the House the Supplementary Estimates debate can be held.

The debate on the Supplementary Estimates in the House occurs on the second reading of the bill. Two hours are allowed for this debate, in which each member can speak for up to 10 minutes.<sup>168</sup>

The debate must be relevant to the bill's provisions and deal with the appropriations that the Government seeks to supplement or vary; it is not another Budget debate. As it is the winding-up debate of the financial year, it may include an overview of the policies for which the Government has sought appropriations

<sup>162</sup> SO 288(2).

<sup>163</sup> SO 341(1).

<sup>164</sup> SO 341(1).

<sup>165</sup> Finance and Expenditure Committee, reports on final Supplementary Estimates and additional final Supplementary Estimates of annual appropriations and departmental budgets (21 June 1990) [1987–1990] AJHR I.19 at 73, 79.

<sup>166</sup> SO 341(2).

<sup>167</sup> (1990) 508 NZPD 2384.

<sup>168</sup> SOs, App A.

in the financial year, and of the Government's financial position at the end of the year.<sup>169</sup> There can be no "public affairs" amendment moved on the second reading of this bill. But the second reading of an Appropriation Bill containing the Supplementary Estimates may be taken together with an Imprest Supply Bill.<sup>170</sup> It is the invariable practice to combine this debate with the debate on the first Imprest Supply Bill for the following year, which is likely to be ready for introduction at this time. A public affairs amendment can be moved on the second reading of an Imprest Supply Bill.<sup>171</sup>

### **Passing of Appropriation Bill**

After the second reading of the bill the House proceeds immediately to its third reading unless the Minister wishes to propose amendments to the bill or a select committee has recommended a change to a vote and the change has not itself been the subject of a financial veto.<sup>172</sup> In either case a committee stage is held, in which only the Minister's amendments (and any amendments to them) or the amendment to the appropriation recommended by the committee, as the case may be, are considered. When amendments to a part or schedule have been disposed of, the question is put that that part or schedule as amended stand part.

There is no debate on the third reading and no opportunity to move any amendment to the question.<sup>173</sup>

## **CONFIRMATION OR VALIDATION OF EXPENSES, CAPITAL EXPENDITURE AND CAPITAL INJECTIONS**

Permanent legislative authority and the Appropriation Acts passed before the end of the financial year to which they relate, together with any transfers of appropriations made by Order in Council,<sup>174</sup> constitute the final appropriations and authorisations for a particular year. But some of those appropriations or authorisations contemplate that they are partly provisional in that they must be reported to the House and steps taken to seek parliamentary confirmation of them.

Emergency expenses or capital expenditure incurred under a state of emergency or civil defence emergency, or capital injections to a department, must be included in an Appropriation Bill for confirmation by Parliament.<sup>175</sup> Expenses or capital expenditure approved by the Minister of Finance in excess of existing appropriations must be included in an Appropriation Bill for the next financial year, for confirmation by Parliament.<sup>176</sup> In the case of Orders in Council transferring appropriations within a vote, a clause confirming the transfers must be included in an Appropriation Bill for the next financial year.<sup>177</sup> (See p 533.) In no case is parliamentary validation of such expenses or capital expenditure required, since the statute under which it is incurred provides legal authority for it. Thus the provision requiring the Government to seek confirmation of expenditure acknowledges that this does not affect the validity of the expenditure, of any Order in Council, or of any transfer.<sup>178</sup> But the requirement at least to seek subsequent parliamentary confirmation ensures that the House is apprised of the spending authority used by the Government under these provisions.

<sup>169</sup> (1992) 526 NZPD 9061 Gerard (Acting Speaker).

<sup>170</sup> SO 342(2).

<sup>171</sup> SO 331(3).

<sup>172</sup> SO 342(3).

<sup>173</sup> SO 342(4).

<sup>174</sup> Public Finance Act 1989, s 26A.

<sup>175</sup> Public Finance Act 1989, s 25(5).

<sup>176</sup> Public Finance Act 1989, s 26B(4).

<sup>177</sup> Public Finance Act 1989, s 26A(2).

<sup>178</sup> Public Finance Act 1989, ss 25(6), 26A(3) and 26B(5); *Archives and Records Association of New Zealand v Blakeley* [2000] 1 NZLR 607 (CA) at [80].

It is possible that expenses or capital expenditure may have been incurred without any appropriation or legal authority at all. If so, unlawful expenditure has been incurred and, if the illegality is to be remedied, parliamentary validation must be sought. (See Chapter 31.)

For all of these matters an Appropriation (Confirmation and Validation) Bill may be used as the legislative vehicle. An Appropriation (Confirmation and Validation) Bill is concerned solely with confirming or validating expenditure incurred in the previous financial year.<sup>179</sup> (The procedures for considering an Appropriation (Confirmation and Validation) Bill are described in Chapter 35.) From time to time unlawful expenditure may also be validated by a Finance Bill<sup>180</sup> or other legislation.<sup>181</sup>

---

<sup>179</sup> SO 346(1).

<sup>180</sup> See, for example: Finance Act 1976, s 2.

<sup>181</sup> See, for example: Education Standards Act 2001, s 84 (capital accommodation grants); Appropriation (Parliamentary Expenditure Validation) Act 2006, s 5 (Parliamentary Service expenditure).

# CHAPTER 34

# Reporting and Audit

The spending of public funds by public entities gives rise to reporting obligations. They require every entity that expends such funds to make a report on the operational and financial consequences of its work, and to submit to audit. Public reporting and public audit are among the means by which the State sector accounts for its operations, first internally and then externally, to an auditor, to the House of Representatives and, through the House, to the public.

The Government, departments, Offices of Parliament, Crown entities, State enterprises and other publicly owned organisations and companies produce reports for transmission to the House each year. Their reporting obligations may be discharged in a single annual report or, for example in the case of the Government, in a number of reports over the course of the year. The reports present information on financial and operational performance. Generally, a reporting entity is obliged to present financial statements that conform to legally prescribed standards, while the way it reports on operational performance is largely at its own discretion. Reporting requirements are an essential tool for holding an entity accountable for its actions and performance. But it is only one such tool, and is supplemented by independent assessments made as a result of auditing and reviewing the entity.

## TYPES OF REPORTING ENTITY

The precise accountability obligations of an entity depend upon its status and the specific terms of any statute applying to it.

Six broad types of entity are required to report to the House on their financial and operational activities: the Government itself, Government departments (including departmental agencies), Offices of Parliament, Crown entities, State enterprises and mixed-ownership model companies, and some other miscellaneous organisations and companies. Apart from the miscellaneous organisations, common financial reporting models apply to each of the types of entities.

This chapter describes the various reporting and audit obligations obtaining in the State sector. (Chapter 35 describes how the House considers the results of this reporting and auditing in the process of annual review.)

### Government

The Government is defined as a separate reporting entity in New Zealand law. For this purpose the “Government reporting entity” is the Sovereign in right of New Zealand, and the legislative, executive and judicial branches of the Government

of New Zealand;<sup>1</sup> in a broad sense, central government (that is, it does not include local government). (See p 536 for a more detailed description of the Government reporting entity.)

## Departments

The principal administrative units into which the executive branch of government is divided are known as departments of State. These are bodies staffed by public servants, funded by appropriations made by Parliament and under the political direction of a Minister (the portfolio Minister), who in turn answers to the House for the department's activities. Departments are the core of the public sector. The detailed organisation of each Government into departments is essentially a matter for the Prime Minister to determine. While there remain some departments that are created by statute,<sup>2</sup> strictly speaking this is unnecessary.<sup>3</sup> The practice today is to create and abolish departments under the Crown's prerogative or common law powers rather than by statute. However, some departments are expressly listed in legislation (particularly in the State Sector Act 1988), so administrative reorganisations usually entail consequential legislative amendments to these references. In many cases these amendments can be effected by Order in Council and do not require primary legislation.<sup>4</sup>

Relatively few departments actually have the word "department" in their titles. Many are known as ministries. Others, such as the Treasury, include neither "department" nor "ministry" in their titles. These differences in nomenclature have no legal significance. Three departments (the Treasury, the State Services Commission and the Department of the Prime Minister and Cabinet) have co-ordinating functions in respect of all departments. They are often called the "central agencies". The official who heads each department is known as its "chief executive", though the chief executives of certain departments may (by convention or by law) have another title in addition. For example, the chief executive of the Treasury is known as the Secretary to the Treasury.

The functions and powers of each department are determined by a mixture of legal provisions (statutory and common law) and political and administrative decisions taken by the Government. In particular, statutes such as the State Sector Act 1988 and the Public Finance Act 1989 impose an overall framework of powers and accountability responsibilities on departments.

The definition of "department" is set out in the Public Finance Act.<sup>5</sup> It includes the departments that are listed in Schedule 1 of the State Sector Act 1988—the departments of the New Zealand Public Service.<sup>6</sup> But there are other departments or instruments of the Government that are not part of the public service—for example, the New Zealand Defence Force and the New Zealand Police. They are also subject to the departmental reporting requirements of the Public Finance Act. In addition, the Office of the Clerk and the Parliamentary Service are deemed to be departments for the purposes of the Public Finance Act. An Office of Parliament is not a department.<sup>7</sup>

Each department has a "responsible Minister"<sup>8</sup> who is accountable for the financial performance of the department. This is reflected in the Estimates. The Prime Minister determines which Ministers perform these roles for Government departments. The responsible Minister does not need to be the pertinent portfolio

<sup>1</sup> Public Finance Act 1989, s 2(1).

<sup>2</sup> For example: Conservation Act 1987, s 5 (Department of Conservation).

<sup>3</sup> Legislation Design and Advisory Committee, guidelines on process and content of legislation (October 2014) at 69–70.

<sup>4</sup> State Sector Act 1988, s 30A.

<sup>5</sup> Public Finance Act 1989, s 2(1).

<sup>6</sup> State Sector Act 1988, ss 27 and 27A.

<sup>7</sup> Public Finance Act 1989, s 2(1).

<sup>8</sup> Public Finance Act 1989, s 2(1).

Minister, but will usually be. For the Office of the Clerk and the Parliamentary Service, the Speaker is the responsible Minister.<sup>9</sup>

### **Departmental agencies**

Changes made to the State Sector Act 1988 and the Public Finance Act 1989 in 2013 allow the formation of a departmental agency as a unit within a host department. The agency remains operationally separate from the host department, however. The activities to be undertaken by a departmental agency must be clearly defined and accounted for separately from those of the host department. A departmental agency has its own chief executive, who is directly responsible to the relevant Minister (not necessarily the same Minister as that responsible for the host department) for the agency's activities.

Departmental agencies fall within the definition of "department" in the State Sector Act 1988 and the Public Finance Act 1989. They are required to present annual reports on their operational performance, but do not report separately on their financial performance. This information is reported in the financial statements of each agency's host department.

The Canterbury Earthquake Recovery Authority was the first departmental agency. The authority had been a stand-alone department, but from 1 February 2015 it became a departmental agency within the Department of the Prime Minister and Cabinet.<sup>10</sup> It was disestablished on 19 April 2016.<sup>11</sup>

### **Offices of Parliament**

The Offices of Parliament are the Parliamentary Commissioner for the Environment, the Office of the Ombudsmen, and the Controller and Auditor-General.<sup>12</sup> The Speaker is the responsible Minister for,<sup>13</sup> and is therefore responsible for the financial performance of, each Office of Parliament. (But the Speaker is not responsible for the performance of the statutory duties imposed on each Officer of Parliament.) (See Chapter 7 for a discussion of Offices of Parliament.)

### **Crown entities**

Crown entities were first created as a financial reporting model in 1989 (they were then known as Crown agencies). In the 1990s, a Crown entity was any body that was legally separate from the Crown, but was owned or controlled by the Crown and was not a State enterprise. By 2002 almost 100 types of body were described as Crown entities, some of them (such as district health boards, boards of school trustees and reserves boards) comprising many individual Crown entities, making some 3,000 individual entities in total. As legislation created new bodies or abolished old ones, the number of Crown entities altered accordingly. Their heterogeneity, and the fact that no common governance principles applied to them (except for the purposes of financial reporting), led in 1998 to the commencement of a review of the principles underlying the roles and structures of Crown entities. This review culminated in the Crown Entities Act 2004, which was designed to provide a consistent framework for the establishment, governance and operation of Crown entities and to clarify their accountability relationships.<sup>14</sup>

Crown entities fall into five main categories.<sup>15</sup>

- Statutory entities are bodies corporate established under legislation. They are listed in a schedule to the Crown Entities Act.<sup>16</sup> Statutory entities in

<sup>9</sup> Public Finance Act 1989, s 2(1).

<sup>10</sup> State Sector Act 1988, s 27A and sch 1A.

<sup>11</sup> Greater Christchurch Regeneration Act 2016, sch 8, Part 2.

<sup>12</sup> Public Finance Act 1989, s 2(1).

<sup>13</sup> Public Finance Act 1989, s 2(1).

<sup>14</sup> Crown Entities Act 2004, s 3.

<sup>15</sup> Crown Entities Act 2004, s 7(1).

<sup>16</sup> Crown Entities Act 2004, sch 1.

turn are of three types, depending upon the degree of control that may be exercised by the Government over their policy.

- Crown agents must give effect to Government policy when directed to do so by the responsible Minister. Bodies of this type include the Accident Compensation Corporation, district health boards, and the New Zealand Transport Agency.
- Autonomous Crown entities must have regard to Government policy when directed to do so by the Minister, but cannot be required to give effect to it. The Arts Council of New Zealand Toi Aotearoa, Guardians of New Zealand Superannuation and the New Zealand Symphony Orchestra are entities of this kind.
- Independent Crown entities are generally entirely independent of Government policy and often perform quasi-judicial regulatory functions. They include, among others, the Broadcasting Standards Authority, the Commerce Commission, the Electoral Commission, the Human Rights Commission and the Law Commission.
- The second category of Crown entities consists of Crown entity companies. These companies are incorporated under the companies legislation and are wholly owned by the Crown. They are listed in the Act.<sup>17</sup>
- The third category is Crown entity subsidiaries—companies controlled by a Crown entity. They are not listed comprehensively in the legislation.
- The fourth and fifth categories are respectively school boards of trustees and tertiary education institutions (universities, colleges of education, polytechnics, special colleges and wānanga). Only some of the governance rules set out in the Crown Entities Act apply to these last two categories of Crown entity.<sup>18</sup>

In respect of statutory entities, Crown entity companies and Crown entity subsidiaries, the provisions of the Crown Entities Act, as supplemented or expressly modified by any other legislation applying to them (such as a parent Act), govern their activities.<sup>19</sup> If there is any conflict between the legislation establishing an entity and the Crown Entities Act, the latter prevails.<sup>20</sup> Thus a common legislative structure now prescribes the basic governance of Crown entities and their general financial reporting.

For the purposes of annual review, the Standing Orders define a Crown entity as an entity named or described in Schedule 1 or 2 of the Crown Entities Act 2004 (which includes the five categories described above), any Crown entity subsidiaries, and any entities named in Schedule 4A of the Public Finance Act 1989.<sup>21</sup> Schedule 4A companies are non-listed companies in which the Crown is the majority or sole shareholder. The Public Finance Act applies various sections of the Crown Entities Act to these companies, including the reporting requirements.

### ***Ministerial responsibility***

The responsible Minister for a Crown entity is the Minister who is given express responsibility by any Act, or who is appointed by the Governor-General by warrant to have responsibility, or who is otherwise assigned responsibility by the Prime Minister. Essentially, responsibility is a matter for the Prime Minister to determine in allocating portfolios. But in the case of a Crown entity company, the Minister of Finance and any other shareholding Minister are statutorily declared to be the responsible Ministers.<sup>22</sup>

---

<sup>17</sup> Crown Entities Act 2004, sch 2.

<sup>18</sup> Crown Entities Act 2004, ss 5 and 6.

<sup>19</sup> Crown Entities Act 2004, s 4(1).

<sup>20</sup> Crown Entities Act 2004, s 4(2).

<sup>21</sup> SO 3(1).

<sup>22</sup> Crown Entities Act 2004, s 10(1).

Responsible Ministers have a number of uniform duties and powers in respect of reporting by Crown entities. In respect of some Crown entities the Minister is expressed to be statutorily responsible to the House for the performance of the functions conferred on the Minister under the legislation.<sup>23</sup> But the precise legal powers and responsibilities (if any) of the Minister for a particular Crown entity depend upon the terms of the legislation or other instrument under which the entity was created. The categorisation of Crown entities according to their different obligations regarding Government policy sought to resolve ambiguities in this area. The State Services Commission has issued guidance for Ministers on their interactions with statutory Crown entities.<sup>24</sup>

The Government has the right to direct Crown entities, through the Minister of State Services and the Minister of Finance acting jointly, to comply with specified requirements so as to support a whole of government approach to a particular area.<sup>25</sup> These directions, known as “whole of government directions”, may be intended to improve public services, secure economies or efficiencies, develop expertise and capability, ensure business continuity, or manage risks to the Government’s financial position.<sup>26</sup> Directions may be given to one or more categories of Crown entity (all statutory entities, all Crown entity companies or all school boards of trustees, for example), to one or more types of statutory entity (for example, all Crown agents), or to groups of at least three Crown entities with at least one significant characteristic in common that is pertinent to the direction.<sup>27</sup> Directions may not be given to Crown entity subsidiaries.<sup>28</sup> For example, a whole of government direction might be given requiring all Crown entities to comply with e-government requirements. Before giving a direction, Ministers must first consult the entities to be affected by it, and must present it to the House after it is given.<sup>29</sup>

Once presented to the House, a direction stands referred to the Finance and Expenditure Committee,<sup>30</sup> which decides, on the basis of its own and the other select committees’ terms of reference, whether to consider it itself or refer it to another committee.<sup>31</sup> The Finance and Expenditure Committee or any other committee to which the direction is referred must report on it to the House no later than 12 sitting days after it has been referred.<sup>32</sup>

A whole of government direction does not require the approval or endorsement of the House. It comes into force 15 sitting days after it is presented to the House unless the House resolves within that time to disapply it.<sup>33</sup> Crown entities are obliged to give effect to a whole of government direction as soon as it comes into force.<sup>34</sup>

Regardless of the Minister’s legal responsibilities in any particular case, the Minister’s responsibility to answer questions in the House in respect of Crown entities is clear, although, as there are with State enterprises, there will always be complaints about how forthcoming Ministers have been in particular cases.

## State enterprises

State enterprises came into existence on 1 April 1987. They are popularly referred to as State-owned enterprises or SOEs, although the State-Owned Enterprises Act 1986 itself refers to these entities as State enterprises from section 2 onwards.<sup>35</sup>

<sup>23</sup> See, for example: Crown Research Institutes Act 1992, s 6(1); Southland Electricity Act 1993, s 5.

<sup>24</sup> State Services Commission *Statutory Crown entities: a guide for Ministers* (June 2014).

<sup>25</sup> Crown Entities Act 2004, s 107(1).

<sup>26</sup> Crown Entities Act 2004, s 107(1).

<sup>27</sup> Crown Entities Act 2004, s 107(2).

<sup>28</sup> Crown Entities Act 2004, s 107(3).

<sup>29</sup> Crown Entities Act 2004, s 108.

<sup>30</sup> SO 393(1).

<sup>31</sup> SO 393(2).

<sup>32</sup> SO 393(3).

<sup>33</sup> Crown Entities Act 2004, s 109.

<sup>34</sup> Crown Entities Act 2004, s 110.

<sup>35</sup> State-Owned Enterprises Act 1986, s 2.

Originally 14 organisations were made subject to the State enterprises regime. They were designed to take over a large proportion of the Government's trading activities, which had hitherto been run by Government departments, ad hoc corporations or other bodies. The concept of a State enterprise represents a standard-model public trading organisation, which may be registered as a company under the companies legislation,<sup>36</sup> and can undertake the State activities that Governments wish to corporatise. The governmental activities corporatised in this way in 1987 included airlines, airways, banking, coal mining and supply, electricity generation and supply, forestry, postal services, property services, shipping, telecommunications and tourism. There have been considerable changes in the kinds of State trading activities undertaken since then; many of the original State enterprises have been privatised and removed from Government ownership entirely, and new entities made State enterprises.

At 30 June 2015, State enterprises held total assets of \$56 billion, or approximately 20.2 per cent of all Crown assets.<sup>37</sup>

The principal objective of every State enterprise is stated to be:<sup>38</sup>

- ... to operate as a successful business and, to this end, to be—
- (a) as profitable and efficient as comparable businesses that are not owned by the Crown; and
- (b) a good employer; and
- (c) an organisation that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these when able to do so.

State enterprises, as public entities established by statute that take decisions that may affect the rights and liabilities of private individuals, are in principle amenable to judicial review.<sup>39</sup> However, the courts have consistently held that the overriding consideration for a State enterprise is to act as a commercial entity; in pursuing the principal objective of operating a successful business, State enterprises must have regard to the other three criteria. But in the absence of fraud, corruption or bad faith on the part of a State enterprise justifying judicial review, the relationship between a State enterprise and its customers is similar to that between a commercial entity and its customers.<sup>40</sup>

As a commercial enterprise, a State enterprise is subject to receivership, and in 2001 a receiver was appointed for the first time in respect of a State enterprise.<sup>41</sup> More recently, in September 2013 the Government placed Learning Media Limited in liquidation.<sup>42</sup> There is no Government guarantee for State enterprises.<sup>43</sup> But State enterprises, as public entities, are subject to the jurisdiction of the Ombudsmen and to official information disclosure, and they are audited by the Auditor-General.

The rules of a State enterprise that is a registered company are found in its constitution. If the State enterprise is not a registered company, the rules of the State enterprise are any documents comparable to the constitution of a company.<sup>44</sup>

<sup>36</sup> State-Owned Enterprises Act 1986, s 30.

<sup>37</sup> Financial Statements of the Government of New Zealand (14 October 2015) B.11 at 40.

<sup>38</sup> State-Owned Enterprises Act 1986, s 4(1).

<sup>39</sup> *Mercury Energy Ltd v Electricity Corporation of New Zealand Ltd* [1994] 2 NZLR 385 (PC).

<sup>40</sup> *Mercury Energy Ltd v Electricity Corporation of New Zealand Ltd* [1994] 2 NZLR 385 (PC); *Auckland Electric Power Board v Electricity Corporation of New Zealand Ltd* [1994] 1 NZLR 551 (CA).

<sup>41</sup> Finance and Expenditure Committee, report on 2001/02 Estimates (Vote State-Owned Enterprises) (23 July 2001) [1999–2002] AJHR I.19B at 450 (Terralink NZ Limited).

<sup>42</sup> Hon Bill English, Minister of Finance, and Hon Hekia Parata, Minister of Education “School resources to continue after wind down” (media release, 4 September 2013); see also (12 December 2013) 167 *New Zealand Gazette* 4523 at 4533.

<sup>43</sup> Finance and Expenditure Committee, report on 2002/03 Estimates (Vote State-Owned Enterprises) (17 October 2002) [2002–2005] AJHR I.19A at 337–338; Public Finance Act 1989, s 49.

<sup>44</sup> State-Owned Enterprises Act 1986, s 2.

The rules (and any changes to them) must be presented to the House within 12 sitting days of their adoption.<sup>45</sup> A State enterprise's statement of corporate intent is drawn up in consultation with the shareholding Ministers, and the statements relating to the current and next two years must be presented to the House within 12 sitting days of being delivered to the responsible Minister.<sup>46</sup> The shareholding Ministers may, by written notice, require the board of a State enterprise to include in or omit from a statement of corporate intent matters relating to the objectives and policies to be followed by the enterprise. Whenever any such direction has been given, a copy of it must also be presented to the House within 12 sitting days.<sup>47</sup> Such statements have been described as essentially internal constitutional documents designed to ensure accountability to the shareholding Minister, rather than external constraints on their operations.<sup>48</sup> Contracts for the transfer of State assets to a State enterprise must be presented to the House within 12 sitting days of being entered into.<sup>49</sup>

### ***Ministerial responsibility***

The Minister of Finance and the Minister responsible for each State enterprise are together the shareholding Ministers for that enterprise.<sup>50</sup> Different Ministers may be made responsible for different State enterprises. Invariably a Minister for State Owned Enterprises is appointed to be responsible for State enterprises not specifically assigned to any other Minister.

The shareholding Ministers are responsible to the House for the performance of the functions given to them by the State-Owned Enterprises Act 1986 or the rules of the State enterprise.<sup>51</sup> There are examples in other legislation of statutory recognition of a Minister's responsibility to the House, but it is questionable whether such a provision is useful. The statute does not make Ministers responsible to the House for all of the activities of a State enterprise, only for the limited range of functions that are conferred on Ministers. The statutory provision could therefore be used as a means of denying responsibility entirely for activities of State enterprises that do not fall within its terms. In fact, Ministers have not denied such a responsibility to the House, in the sense that they have accepted the responsibility to answer to the House for activities for which they, strictly, have no legal responsibility.

Principally, this exercise of ministerial responsibility to answer to the House arises regarding questions addressed to Ministers about the actions of State enterprises. Questions about the activities of State enterprises have not been challenged as outside ministerial responsibility, and have been accepted consistently ever since State enterprises were created.<sup>52</sup> The fact that a Minister does not have legal control over a certain action does not mean that the Minister has no responsibility to answer to the House for it.<sup>53</sup> Questions to Ministers about the activities of State enterprises are in order even when they fall outside the Ministers' legal responsibilities.

### ***Mixed-ownership model companies and publicly listed companies***

Two other types of relevant entities are mixed-ownership model companies, and publicly listed companies in which the Government has a controlling interest. The mixed-ownership model was developed to allow the Government to reduce its ownership of certain State enterprises while retaining and protecting its controlling

45 State-Owned Enterprises Act 1986, s 17(1).

46 State-Owned Enterprises Act 1986, ss 14 and 17(2)(a).

47 State-Owned Enterprises Act 1986, s 13.

48 *Transpower New Zealand Ltd v Meridian Energy Ltd* [2001] 3 NZLR 700 (HC) at [67].

49 State-Owned Enterprises Act 1986, s 23(2).

50 State-Owned Enterprises Act 1986, s 2.

51 State-Owned Enterprises Act 1986, s 6.

52 (1987) 483 NZPD 617–618 Burke.

53 (1990) 509 NZPD 2705–2706 Burke.

interests. Such companies are subject to statutory controls on their ownership, as well as certain provisions of the State-Owned Enterprises Act 1986. However, mixed-ownership model companies are subject to the accountability provisions in the Companies Act 1993 and the Financial Markets Conduct Act 2013, rather than those of the State-Owned Enterprises Act 1986. Both mixed-ownership model companies and publicly listed companies in which the Government has a controlling interest are public entities for the purposes of the Public Audit Act 2001.<sup>54</sup>

The first instance of a publicly listed company in which the Government has a controlling interest arose in 2002, when the Government recapitalised the publicly listed Air New Zealand Limited and acquired an 85 per cent shareholding in the company. The ownership percentage has since been reduced, but the Crown still holds a majority interest.

The mixed-ownership model was introduced in 2012 by way of legislation amending the Public Finance Act 1989.<sup>55</sup> There are three mixed-ownership model companies, each of which was formerly a State enterprise: Mighty River Power Limited, Meridian Energy Limited, and Genesis Energy Limited. They are listed in Schedule 5 of the Public Finance Act and are subject to Part 5A of the Act. The Crown may not reduce its holdings in these companies below 51 per cent, and no person other than the Crown may hold more than 10 per cent of the shares or voting rights in any one mixed-ownership model company.<sup>56</sup> The Minister of Finance and the Minister for State Owned Enterprises are accountable to the House for these companies. The companies are not subject to the Official Information Act, but the Government's policy decisions as majority owner remain subject to the Act.

Since 2003, the House has consistently resolved that Air New Zealand Limited be considered a public organisation for the purposes of Standing Orders, so that it can be subject to annual review.<sup>57</sup> This has also been done for the mixed-ownership model companies.<sup>58</sup>

## Other organisations and companies

There are organisations and companies that are not departments, Offices of Parliament, Crown entities or State enterprises, but are nevertheless required to prepare reports on their activities, which are submitted to Parliament.

A handful of organisations and companies that are not defined as Crown entities under the Crown Entities Act 2004 are nevertheless subject to some of the financial reporting and controlling provisions of the Act. They are specified in two schedules to the Public Finance Act, and are subsequently referred to as Schedule 4 organisations and Schedule 4A companies.<sup>59</sup> The Crown entity provisions that apply to these organisations and companies may vary from one to another. Schedule 4 organisations may be required to prepare or be exempted from preparing a statement of intent, annual report, or statement of performance. They may also be subject to the provisions regarding the acquisition of securities, borrowing, giving guarantees and engaging in derivatives transactions.<sup>60</sup> They are not defined as Crown entities for the purposes of the Standing Orders, and are not subject to the annual review procedures, although they are public entities for the purposes of audit.<sup>61</sup> Schedule 4A companies, which are non-listed companies in which the Crown is the majority or sole shareholder, are subject to most of the governance and accountability provisions (including reporting requirements) that

<sup>54</sup> Public Audit Act 2001, s 5(1)(c), (f) and sch 1.

<sup>55</sup> Public Finance Act 1989, pt 5A.

<sup>56</sup> Public Finance Act 1989, ss 45R and 45S and sch 5.

<sup>57</sup> (2 December 2003) 614 NZPD 10330–10336; (24 November 2005) 628 NZPD 470; (16 December 2008) 651 NZPD 1039; (1 March 2012) 677 NZPD 761; (21 October 2014) 701 NZPD 25.

<sup>58</sup> (26 September 2013) 693 NZPD 13790–13803; (6 March 2014) 696 NZPD 16421–16433; (22 July 2014)

700 NZPD 19271–19281.

<sup>59</sup> Public Finance Act 1989, schs 4 and 4A.

<sup>60</sup> Public Finance Act 1989, ss 45M and 45N and sch 4.

<sup>61</sup> Public Audit Act 2001, s 5(1)(c), sch 1.

apply to Crown entity companies.<sup>62</sup> For the purposes of the Standing Orders they are considered to be Crown entities.

The Reserve Bank of New Zealand and the Abortion Supervisory Committee are unique organisations. The Reserve Bank was specifically excluded from the reporting regime adopted for Crown entities when that was devised.<sup>63</sup> The bank has its own specific reporting obligations.<sup>64</sup> The Abortion Supervisory Committee reports directly to the House on its activities<sup>65</sup> although it is not classified as a Crown entity.

The House has, by resolution, consistently ordered that its annual review procedures should apply equally to the Reserve Bank and the Abortion Supervisory Committee as to departments, Offices of Parliament, Crown entities and State enterprises.<sup>66</sup>

Many other organisations are statutorily obliged to report to a Minister so that he or she can present the report to the House. These organisations may not be publicly owned (they are often owned by their members) or administer public money (though they may have received some public funding). In these cases the requirement to report to the House is seen as a useful means of disseminating information about the organisation's activities, rather than as an aspect of public accountability.

## REPORTING STANDARDS

### Financial reporting

Financial statements must be prepared in accordance with “generally accepted accounting practice” (known as “GAAP”). This means any applicable financial reporting standards approved by the External Reporting Board or, regarding matters for which no provision is made in such reporting standards, an authoritative notice issued by the board.<sup>67</sup> Reporting standards, authoritative notices, and any amendments or revocations must be issued only after consultation has been undertaken on them.<sup>68</sup> Any such issuances are to be presented to the House, and may be disallowed.<sup>69</sup> The Auditor-General has supported the changes made to financial reporting standards in 2013, particularly those that allow many public entities to report in a way that reflects their size and scale.<sup>70</sup>

### Non-financial reporting

In the case of departments, statute prescribes the types of information that must be included in each department’s annual report. Information that is necessary for an informed assessment of the department’s performance during the year in review must be presented. This includes an assessment of the department’s operations, an assessment of the department’s progress in relation to its strategic intentions, and information about the department’s management of its organisational health and capability, as well as any other information on any other matters the department is required, has undertaken, or wishes to report on.<sup>71</sup> Offices of Parliament must prepare similar reports.<sup>72</sup>

<sup>62</sup> Public Finance Act 1989, s 45OA and sch 4A.

<sup>63</sup> Finance and Expenditure Committee, report on inquiry into reporting by the Crown and its subentities to the House (23 July 1991) [1991–1993] AJHR I.4A at [5.7].

<sup>64</sup> Reserve Bank of New Zealand Act 1989, s 163.

<sup>65</sup> Contraception, Sterilisation, and Abortion Act 1977, s 39.

<sup>66</sup> (1999) 581 NZPD 37; (2002) 602 NZPD 237.

<sup>67</sup> Public Finance Act 1989, s 2(1); Financial Reporting Act 2013, ss 8 and 12.

<sup>68</sup> Financial Reporting Act 2013, s 22.

<sup>69</sup> Financial Reporting Act 2013, s 25.

<sup>70</sup> Controller and Auditor-General *Reflections from our audits: our future needs—is the public sector ready?* (27 May 2014) NZPP B.29[14e] at 12.

<sup>71</sup> Public Finance Act 1989, s 45.

<sup>72</sup> Public Finance Act 1989, s 45F.

The legislative obligation on departments to report on these aspects of their operations does not specify exactly the form that such reports must take. However, regulations may be made or the Minister of Finance may issue instructions to departments, departmental agencies, Offices of Parliament, organisations named in Schedule 4 of the Public Finance Act and companies named in Schedule 4A of the Act as to the non-financial reporting standards that they must apply and the form in which the information must be presented to the House.<sup>73</sup> Before any such instructions are issued or regulations made, the Minister must provide a draft of the instructions or regulations to the Speaker. The Speaker presents the draft to the House and it is considered by the Finance and Expenditure Committee (in the case of departments and other organisations) or the Officers of Parliament Committee (in the case of Officers of Parliament). The respective committees are responsible for co-ordinating comment on the proposals from other committees and communicating this to the Minister.<sup>74</sup> The Minister must consider any comments received from the Speaker or any committee before the instructions are issued or the regulations are made.<sup>75</sup> Any such instructions are disallowable instruments, but not legislative instruments.<sup>76</sup>

In addition, in the case of regulations or instructions applying to Offices of Parliament, the regulations or instructions can be made or issued only after having been approved by resolution of the House.<sup>77</sup> For this purpose a notice of motion to approve the regulations or instructions stands referred to a select committee (likely to be the Officers of Parliament Committee).<sup>78</sup> The committee must report on the notice no later than the first working day 28 days after it is referred.<sup>79</sup> The motion to approve the regulations or instructions may not be moved until the report has been made or 28 days have elapsed, whichever is earlier.<sup>80</sup>

While the form of departments' non-financial reporting is largely at each department's discretion, Treasury has issued guidance on the preparation of annual reports and performance reporting on appropriations.<sup>81</sup>

Crown entities are also required to prepare annual reports in accordance with statutorily prescribed standards, whether of a general nature<sup>82</sup> or in their own parent Acts. In addition, the Minister of Finance may prescribe non-financial reporting standards for Crown entities (except for school boards of trustees and tertiary education institutions). These instructions may be made in respect of Crown entities generally or certain categories or types of Crown entities.<sup>83</sup> However, before issuing an instruction to Crown entities on non-financial reporting standards, the Minister must submit the instruction in draft to the Speaker. The Speaker presents it to the House and it is referred to the Finance and Expenditure Committee. That committee co-ordinates comment on it from other select committees and communicates it to the Minister.<sup>84</sup> The Minister may issue the instruction only after considering any comments on the draft received from the Speaker or any committees that considered it.<sup>85</sup> The Minister may amend the draft before issuing it, in the light of these comments. Any such instructions are disallowable instruments, but not legislative instruments.<sup>86</sup>

<sup>73</sup> Public Finance Act 1989, ss 80A, 81 and 82.

<sup>74</sup> Standing Orders Committee *Review of Standing Orders* (23 June 2005) [2002–2005] AJHRI.18Cat 41–42.

<sup>75</sup> Public Finance Act 1989, s 82(4).

<sup>76</sup> Public Finance Act 1989, s 80A(6).

<sup>77</sup> Public Finance Act 1989, s 82(2)–(5).

<sup>78</sup> SO 322(1).

<sup>79</sup> SO 322(2).

<sup>80</sup> SO 322(3).

<sup>81</sup> Treasury *Year end reporting: departmental annual reports and reporting against appropriations* (June 2015) at 22.

<sup>82</sup> Crown Entities Act 2004, ss 150–155.

<sup>83</sup> Crown Entities Act 2004, s 174(1), (2).

<sup>84</sup> Standing Orders Committee *Review of Standing Orders* (23 June 2005) [2002–2005] AJHRI.18Cat 11, 42.

<sup>85</sup> Crown Entities Act 2004, s 175.

<sup>86</sup> Crown Entities Act 2004, s 174(5).

### ***Performance reporting on appropriations***

The 2013 changes to the Public Finance Act 1989 increased the emphasis on reporting performance information on appropriations. There is now a statutory requirement to set specific measures at the start of the financial year against which the effectiveness of the appropriated spending can be tested at the end of the year. The information supports the Estimates, which for each appropriation must provide details of what is intended to be achieved with the spending and how performance of the spending will be assessed, and specify who will be the performance reporter providing the achievement information, and the document in which this will be presented to the House. For multi-category appropriations,<sup>87</sup> this information must be provided for each category as well as for the appropriation as a whole.<sup>88</sup> These requirements represent an evolution from reporting on outputs obtained from spending to reporting on results achieved. They also reflect select committees' long-standing expectation that departments will report on what has been achieved with appropriations, using measurable indicators of performance.

At the end of the financial year, performance information must be prepared that includes an assessment of what was achieved with the appropriation in the past year, using the previously specified measures, and a comparison of the actual expenses or capital expenditure for the appropriation with the amounts that were forecast or appropriated in the Estimates for the year.<sup>89</sup> Because different entities may be best placed to report on different spending, departments, departmental agencies, Offices of Parliament, or Crown entities can all act as performance reporter for appropriations. For multi-category appropriations, the department administering the appropriation must provide the performance information, while the Minister responsible for the appropriation must provide the performance information for non-departmental appropriations where resources are provided to a person or entity that cannot be a performance reporter.

There is no prescribed way of presenting this information. The supporting information in the Estimates must specify which documents will include reports on the performance of each appropriation. This leaves flexibility to present this performance information in the best way for the particular appropriation. This information might be included in an annual report, a sector report, a stand-alone report, or presented in some other document.

The Minister of Finance may grant exemptions from the requirement to provide end-of-year performance information for a departmental appropriation that relates solely to outputs provided to other departments, or about a non-departmental appropriation if the performance information is otherwise available to the House or is unlikely to be informative given the nature of the expenditure, or if the amount of the appropriation is small.<sup>90</sup>

## **FINANCIAL STATEMENTS OF THE GOVERNMENT**

The Treasury is responsible for preparing the annual financial statements of the Government of New Zealand at the end of each financial year.<sup>91</sup> These are combined financial statements, presenting a picture of the Government as a single reporting entity that includes the legislative, executive and judicial branches of government. The statements show the net worth of the Government and allow changes in that net worth over time to be traced. The statements consolidate the revenues, expenses, assets and liabilities of all departments (including the activities they undertake on behalf of the Crown, such as making benefit payments),

<sup>87</sup> Public Finance Act 1989, s 7A(1)(g). See Chapter 31.

<sup>88</sup> Public Finance Act 1989, ss 15A and 15C(1).

<sup>89</sup> Public Finance Act 1989, s 19C(1).

<sup>90</sup> Public Finance Act 1989, s 15D.

<sup>91</sup> Public Finance Act 1989, s 27.

Offices of Parliament and the Reserve Bank. Since the 2003/04 financial year, new financial reporting standards have also required them to consolidate the revenues, expenses, assets and liabilities of Crown entities and State enterprises instead of just combining their net results.<sup>92</sup>

The Treasury must forward the annual financial statements to the Auditor-General by the end of August.<sup>93</sup> The Auditor-General must provide an audit report on the statements within 30 days of receiving them.<sup>94</sup> The annual financial statements are accompanied by a statement of responsibility signed by the Minister of Finance and the Secretary to the Treasury. This attests to the Minister's responsibility for the integrity of the statements and the Treasury's responsibility for establishing and maintaining a set of internal controls to ensure the statements can be used with confidence as to their accuracy.<sup>95</sup>

The audit report on the annual financial statements is generally issued on the date when the Minister and the Secretary to the Treasury sign the statement of responsibility. The audit report is therefore published along with the financial statements.<sup>96</sup>

The annual financial statements and the audit opinion must be presented to the House by the Minister not later than 10 working days after they are returned to the Treasury by the Auditor-General.<sup>97</sup> The Finance and Expenditure Committee is required to examine and report to the House on the Government's annual financial statements. The Standing Orders require this to be done within one week of the first sitting day in each year.<sup>98</sup> However, this has been extended in recent years by the Business Committee in arranging the annual review debate.<sup>99</sup>

A set of monthly financial statements must also be prepared, for all but the first two months and the last month in each financial year. They give less detailed information than the annual statements and are not formally audited.<sup>100</sup>

## DEPARTMENTAL REPORTING

Departments and Offices of Parliament are obliged to present information on their strategic intentions, as well as reports on their financial and operational activities.

### Departmental strategic intentions

Departments and Offices of Parliament must regularly prepare information on their strategic intentions, outlining the objectives that they intend to achieve or contribute to over the next four years.<sup>101</sup> The information must cover the nature and scope of the department's or office's functions and operations, and explain how they will be managed to ensure it meets its strategic intentions. Departments and offices are expected to specify the challenges they face, in terms of external factors, such as the international, national and sectoral outlook, and internal factors, such as their capability in terms of staff and other resources. They must also set out and explain any matters that their responsible Minister wishes to include in order to explain the department's strategic intentions and capability.<sup>102</sup>

<sup>92</sup> Government Budget Policy Statement and December Economic and Fiscal Update (19 December 2002) NZPP B.1 & B.6 at 101–102.

<sup>93</sup> Public Finance Act 1989, s 30(1).

<sup>94</sup> Public Finance Act 1989, s 30(2)(b).

<sup>95</sup> Public Finance Act 1989, s 29.

<sup>96</sup> See, for example: Financial Statements of the Government of New Zealand (14 October 2015) NZPP B.11 at 27–30; Controller and Auditor-General *Central government: results of the 2014/15 audits* (8 December 2015) NZPP B.29 [15r] at 12.

<sup>97</sup> Public Finance Act 1989, s 31(2).

<sup>98</sup> SO 345(1).

<sup>99</sup> See Chapter 35, "Annual review debate".

<sup>100</sup> Public Finance Act 1989, s 31A.

<sup>101</sup> Public Finance Act 1989, ss 38–41.

<sup>102</sup> Public Finance Act 1989, s 40(d)(ii).

When the requirement to prepare information on strategic intentions was introduced, departments were initially required to provide a “statement of intent” every year, and these statements were presented to the House as information supporting the Budget. However, after amendments to the Public Finance Act 1989 in 2013, this information is required only once every three years, unless there is a significant change in a department’s or office’s functions or the responsible Minister requires new information.<sup>103</sup> In addition, the information is now presented either as a stand-alone document or in the same document as the entity’s annual report, rather than as a Budget document. This was intended to move away from a compliance approach, and encourage departments to focus more strategically on the role of the entity when preparing the information.

## **Financial reporting**

The chief executive of a department is responsible to the responsible Minister for the financial management, financial performance, and financial sustainability of the department, and for complying with any financial reporting requirements.<sup>104</sup> The chief executive must sign and include in the department’s annual report a statement of responsibility for, among other things, the preparation and accuracy of the department’s financial statements.<sup>105</sup>

Departments and Offices of Parliament must also prepare annual financial statements setting out their financial positions at the end of each financial year. These statements contain the information that is consolidated into the Government’s annual financial statements. They must be prepared in accordance with generally accepted accounting practice. They must specifically include any information or explanations needed to reflect the department’s financial operations and financial position, and the department’s forecast financial statements prepared at the beginning of the year, for comparison with the actual financial statements.<sup>106</sup>

The annual financial statements are audited by the Auditor-General. An audit report on each statement must be issued within three months of the end of the financial year.<sup>107</sup>

Since 2014, departments and Offices of Parliament have been required to include in their annual reports statements of expenses and capital expenditure, separate from their financial statements. These statements must include statements on any unappropriated expenses or capital expenditure that has been incurred. They must also include, for each appropriation administered by the department, details of the document in which the end-of-year performance information for the appropriation for the previous financial year (if required) is presented to the House of Representatives.<sup>108</sup>

## **Operational reporting**

All departments of the public service and departmental agencies are under a general obligation to give to their Ministers an annual report on their operations.<sup>109</sup> Departments may also be required by specific legislation to prepare reports on their operations or particular aspects of them. These reporting obligations can be discharged in the same report.<sup>110</sup> All such reports are presented to the House by the Minister. The Speaker presents the reports on the operations of the Office of the Clerk, the Parliamentary Service and each Officer of Parliament to the House.

<sup>103</sup> Public Finance Act 1989, s 38(4).

<sup>104</sup> Public Finance Act 1989, ss 34 and 36.

<sup>105</sup> Public Finance Act 1989, s 45C.

<sup>106</sup> Public Finance Act 1989, s 45B.

<sup>107</sup> Public Finance Act 1989, s 45D.

<sup>108</sup> Public Finance Act 1989, s 45A.

<sup>109</sup> Public Finance Act 1989, ss 43(1) and 43A(1).

<sup>110</sup> Public Finance Act 1989, ss 43(3) and 43A(3).

The annual reports stand referred to the select committee that has been allocated the task of carrying out the annual review in each instance.<sup>111</sup>

## NON-DEPARTMENTAL REPORTING

### Crown entities

Crown entities are obliged to present statements of intent and performance expectations, as well as reports on their financial and operational activities.

#### *Statements of intent and performance expectations*

Crown entities are obliged to prepare a statement of intent at least once every three years, or at the request of their responsible Minister.<sup>112</sup> The statement must relate to the forthcoming year and at least the three following financial years.<sup>113</sup> These statements are intended to enable the Crown to participate in the process of setting the entity's strategic intentions and medium-term undertakings, set these out for the House, and provide a base against which the entity's performance can be assessed.<sup>114</sup> To these ends each statement must set out the strategic objectives that the entity intends to achieve or contribute to, as well as explaining the entity's functions and operations and how they will be managed to meet its strategic intentions, performance measures for assessing its operations, and how it intends to perform and manage the tasks that it undertakes.<sup>115</sup> A responsible Minister is entitled to participate in the drawing up of a statement of intent by specifying its form, commenting on drafts of the statement and directing the entity to amend provisions of the draft.<sup>116</sup> These processes can delay the finalising of a statement until any differences between the Minister and the entity have been resolved.<sup>117</sup>

Crown entities are also required each year to produce a statement of performance expectations, specifying the classes of outputs to be produced in the next financial year, and to explain what each class of output is intended to achieve, its expected revenue and expenses, and how its performance will be assessed.<sup>118</sup> Classes of outputs can be exempted by the Minister of Finance from this reporting requirement if they are not material to the statement or will be adequately reported on to the House by another party, or if the exemption would not compromise the Crown entity's performance accountability.<sup>119</sup> Forecast financial statements for the next financial years are also included in the statement of performance expectations.<sup>120</sup> For Crown entity groups, a statement of performance expectations is usually only required for the group as a whole, although the Minister of Finance can require the parent or subsidiary to provide separate additional reporting.

In preparing the statement of performance expectations, the Crown entity must send a draft to the Minister for comment. The Minister may also agree with the entity on the inclusion in the statement of information additional to the legislative requirements, and may specify the form of disclosure of any information in the statement.<sup>121</sup> After the final statement is provided, the Minister can direct the Crown entity to amend provisions in the statement, and the Crown entity may choose to amend its own statement.<sup>122</sup>

The final statement of intent and final statement of performance expectations

<sup>111</sup> SO 344(2).

<sup>112</sup> Crown Entities Act 2004, ss 139(3) and 139A.

<sup>113</sup> Crown Entities Act 2004, s 139(2).

<sup>114</sup> Crown Entities Act 2004, s 138.

<sup>115</sup> Crown Entities Act 2004, s 141.

<sup>116</sup> Crown Entities Act 2004, ss 145–148.

<sup>117</sup> See, for example: “TVNZ delays financial forecasts” *The Independent* (2 February 2005).

<sup>118</sup> Crown Entities Act 2004, s 149E.

<sup>119</sup> Crown Entities Act 2004, s 149F.

<sup>120</sup> Crown Entities Act 2004, s 149G.

<sup>121</sup> Crown Entities Act 2004, ss 149H and 149I.

<sup>122</sup> Crown Entities Act 2004, ss 149J and 149K.

must be presented to the House by the Minister, either in the same document as the entity's annual report, or in any other document presented before the annual report. The statements must also be published on the entity's website as soon as practicable after they are provided to the Minister, even if they have not yet been presented to the House.<sup>123</sup>

### ***Financial reporting***

All Crown entities are required to prepare financial statements at the end of each year setting out a range of financial information.<sup>124</sup> These statements must be forwarded to the Auditor-General for audit within 90 days of the end of the financial year.<sup>125</sup> Schedule 4A companies are also covered by these requirements,<sup>126</sup> despite not being Crown entities in terms of the Act. However, they are considered so for the purposes of the Standing Orders,<sup>127</sup> and are also public entities for the purposes of audit.<sup>128</sup>

The Auditor-General is required to issue an audit opinion on all of their financial statements within four months of the end of the financial year.<sup>129</sup> The annual financial statements of each entity are included in the entity's annual report, which is presented to the House by the responsible Minister and is subject to annual review by the House.

The interests of the Government in Crown entities, Schedule 4 organisations and 4A companies are included in the Government's financial statements.<sup>130</sup>

### **State enterprises**

The State-Owned Enterprises Act 1986 requires each State enterprise to present to the House, through the responsible Minister, a number of documents on the future plans and past performance of the enterprise.

Within three months of the end of each financial year, the board of a State enterprise must give a report to its shareholding Ministers on the operations of the enterprise and its subsidiaries and also deliver to them audited financial statements for the year.<sup>131</sup> This report is expected to provide clear comparisons of the State enterprise's performance with its statement of corporate intent.<sup>132</sup> The annual report is presented to the House. The report of the operations of the State enterprise must include the value of any dividends payable to the Crown for the financial year. State enterprises are also required to give shareholding Ministers half-yearly reports on their operations.<sup>133</sup>

The mixed-ownership model companies, set out in Schedule 5 to the Public Finance Act 1989, are subject to the accountability provisions in the Companies Act 1993 and the Financial Markets Conduct Act 2013, rather than the State-Owned Enterprises Act. But because they are controlled by the Crown they are included in the Government's financial statements. They are public entities under the Public Audit Act 2001 and are therefore subject to audit by the Auditor-General, along with any New Zealand-based subsidiaries.

The House has resolved that the mixed-ownership model companies be considered public organisations and therefore subject to an annual review of

<sup>123</sup> Crown Entities Act 2004, s 149(1), (3) and (4).

<sup>124</sup> Crown Entities Act 2004, s 154.

<sup>125</sup> Crown Entities Act 2004, s 156(1).

<sup>126</sup> Public Finance Act 1989, s 45OA.

<sup>127</sup> SO 3(1).

<sup>128</sup> Public Audit Act 2001, sch 1.

<sup>129</sup> Crown Entities Act 2004, s 156(2).

<sup>130</sup> Public Finance Act 1989, s 27(3)(a).

<sup>131</sup> State-Owned Enterprises Act 1986, s 15.

<sup>132</sup> Transport and Environment Committee, report on 1996/97 financial review of Airways Corporation of New Zealand Limited (6 April 1998) [1996–1999] AJHR I.21B at 23.

<sup>133</sup> State-Owned Enterprises Act 1986, s 16.

their performance and current operations, under the Standing Orders.<sup>134</sup> Their annual reports are therefore presented to the House, and stand referred to a select committee allocated by the Finance and Expenditure Committee.<sup>135</sup>

## Other organisations and companies

All organisations listed in Schedule 4 of the Public Finance Act 1989 must prepare annual financial statements. Whether a Schedule 4 organisation is required to produce statements of intent and performance expectations or an annual report is specified in the schedule.<sup>136</sup> Schedule 4 organisations are also public entities for audit purposes, but only four of them are required to produce annual reports. They are not subject to annual review unless the House specifically orders them to be.

All companies listed in Schedule 4A of the Public Finance Act 1989 are subject to the reporting obligations that apply to Crown entity companies, as set out in the Crown Entities Act 2004.<sup>137</sup>

The board of directors of the Reserve Bank must prepare a report each year setting out the board's assessment of the performance of the bank and the Governor. The report stands referred to the House.<sup>138</sup> The Reserve Bank is also required to make an annual report to the Minister on its operations. This stands referred to the House too.<sup>139</sup> The Abortion Supervisory Committee is required to make an annual report to the House.<sup>140</sup> This report is forwarded to the Speaker, who presents it to the House.

## AUDIT

The Auditor-General is by statute the auditor of every public entity.<sup>141</sup> The latter term includes the Government itself,<sup>142</sup> and a very wide range of entities set out in Schedules 1 and 2 of the Public Audit Act, including all departments, Crown entities, Schedule 4 organisations and Schedule 4A companies, State enterprises and mixed-ownership model companies.<sup>143</sup> It also includes a number of other entities not falling into these general categories, such as the Office of the Clerk, the Parliamentary Counsel Office, the Parliamentary Service and the Reserve Bank of New Zealand.<sup>144</sup> The House may also appoint the Auditor-General to be the auditor of the other Offices of Parliament.<sup>145</sup> The House appoints, on the recommendation of the Officers of Parliament Committee, an independent auditor for a three-year term to audit the Auditor-General.<sup>146</sup> State enterprises may, after consultation with the Auditor-General, appoint a qualified person to be an additional auditor of the enterprise or of a subsidiary of the enterprise. Such an appointment must also be approved by the responsible Minister.<sup>147</sup>

At least once every three years, the Auditor-General must publish, by way of a report to the House, the auditing standards that he or she applies or intends to

<sup>134</sup> (21 October 2014) 701 NZPD 25.

<sup>135</sup> SO 344.

<sup>136</sup> Public Finance Act 1989, s 45M and sch 4.

<sup>137</sup> Public Finance Act 1989, s 45OA; Crown Entities Act 2004, ss 136–157A.

<sup>138</sup> Reserve Bank of New Zealand Act 1989, s 53A(1), (3).

<sup>139</sup> Reserve Bank of New Zealand Act 1989, s 163(1), (3).

<sup>140</sup> Contraception, Sterilisation, and Abortion Act 1977, s 39.

<sup>141</sup> Public Audit Act 2001, s 14(1).

<sup>142</sup> Public Finance Act 1989, s 29B.

<sup>143</sup> Public Audit Act 2001, sch 1.

<sup>144</sup> Public Audit Act 2001, sch 2.

<sup>145</sup> Public Finance Act 1989, s 45F(1); (2001) 596 NZPD 12580; Officers of Parliament Committee  
*Recommendation of auditors to audit the financial statements of the Offices of Parliament*  
(18 October 2001) [1999–2002] AJHR I.22B at 1232–1234.

<sup>146</sup> Public Audit Act 2001, s 38(1); SO 395(1)(b). See, for example: (3 December 2015) 710 NZPD 8555;  
(11 December 2012) 686 NZPD 7408–7409.

<sup>147</sup> State-Owned Enterprises Act 1986, s 19(2).

apply to the conduct of audits and inquiries.<sup>148</sup> Currently the Auditor-General's auditing standards incorporate (but are not limited to) the auditing standards issued by the External Reporting Board.

The Auditor-General is required to audit the information that a public entity is required to have audited.<sup>149</sup> What information an entity is required to have audited is determined by statute, or the founding documents of the entity. It may include the entity's annual financial statements and annual performance information (for example a statement of performance prepared by a Crown entity). In addition, the Auditor-General may audit information an entity is not required to have audited, with the agreement of that entity.<sup>150</sup> Preparing and auditing financial statements are distinct tasks, the former performed by the reporting entity and the latter by the Auditor-General.

Audits are carried out by the Auditor-General or by auditors appointed by the Auditor-General.<sup>151</sup> These auditors may be staff of the Auditor-General from Audit New Zealand, which is a separate business unit within the Auditor-General's office, or suitably qualified private-sector auditors (both known collectively as "appointed auditors"). The Auditor-General and the appointed auditors must act independently in the performance of the Auditor-General's functions, duties, and powers.<sup>152</sup> The Auditor-General has the power to obtain information, to take evidence on oath and to inspect bank accounts, for the purposes of the Auditor-General's functions, powers and duties, including carrying out an audit.<sup>153</sup> The Auditor-General may authorise the appointed auditors to exercise these powers, apart from the power to take evidence on oath.<sup>154</sup> The chief executive and the governing body of the entity being audited are under an obligation to ensure that the Auditor-General has access to relevant documents at all times.<sup>155</sup> The Auditor-General has a discretion to disclose information received in the course of an audit, as he or she considers is appropriate in the exercise of his or her functions, duties or powers.<sup>156</sup> The Auditor-General is not subject to the Official Information Act.

The Auditor-General must report to the House at least once each year on matters arising from the performance of the Auditor-General's functions, and may report also to the Government, select committees and other persons as he or she sees fit.<sup>157</sup>

## **Audits of financial statements and performance information**

Audits aim to obtain all the information and explanations necessary to provide reasonable assurance that an entity's financial statements and performance information are fairly presented.

The audit opinion is published along with the entity's financial statements and other audited information. In forming the opinion the Auditor-General assesses if the information presented in the financial statements is supported by sufficient and appropriate evidence, and evaluates the overall adequacy of the information presented. The opinion may be modified where in the auditor's opinion the financial statements or other information being audited are not fairly presented or where the auditor has been unable to obtain sufficient and appropriate audit evidence. For example where a material transaction shown in the financial statements has been recorded in a way that does not comply with generally accepted accounting

<sup>148</sup> Public Audit Act 2001, s 23; Controller and Auditor-General *The Auditor-General's auditing standards* (18 March 2014) NZPP B.28(AS).

<sup>149</sup> Public Audit Act 2001, s 15

<sup>150</sup> Public Audit Act 2001, s 17

<sup>151</sup> Public Audit Act 2001, s 32.

<sup>152</sup> Public Audit Act 2001, s 9.

<sup>153</sup> Public Audit Act 2001, ss 25, 26 and 27.

<sup>154</sup> Public Audit Act 2001, s 34.

<sup>155</sup> Public Audit Act 2001, s 24.

<sup>156</sup> Public Audit Act 2001, s 30.

<sup>157</sup> Public Audit Act 2001, ss 20 and 21.

practice, this may result in the audit opinion being qualified, if it means that the financial statements are not fairly presented.

The Auditor-General may also (without qualifying the audit opinion) draw readers' attention to a matter that is considered to be significant to the readers' understanding of the audited information.

## Performance audits and inquiries

The Auditor-General may audit the performance of public entities.<sup>158</sup> Such audits may examine whether the entity is operating effectively and efficiently, for example, by inquiring whether its outputs are produced as efficiently as possible at the least cost to public funds and whether they are delivering their anticipated benefits. In this regard if an entity is required to adhere to a policy, the audit examination is confined to establishing how effectively and efficiently the activities are being carried out consistently with that policy.<sup>159</sup> Thus the Auditor-General must accept the policy as a given in evaluating the entity's performance. But this constraint on performance audits applies to policies imposed on the entity by statute, by the Government or by a local authority. It does not apply where the policy is set by the entity itself being audited.

The Auditor-General cannot carry out a performance audit examining whether the Reserve Bank or any registered bank is carrying out its activities efficiently and effectively;<sup>160</sup> the Minister of Finance is empowered to initiate an assessment of the Reserve Bank's performance.<sup>161</sup>

Performance audit is an increasingly important aspect of public audit work and is seen as a way to improve organisational performance. The Auditor-General's annual plan usually identifies possible subjects for such audits. The draft plan is presented to the House for comment before being finalised.

Finally, the Auditor-General is empowered to inquire into how a public entity uses public resources, even outside the annual audit of the entity.<sup>162</sup> This power is typically used for investigating high-profile allegations of impropriety or poor governance or management involving public entities or public money. Such inquiries are sometimes initiated at the request of select committees or individual members of Parliament.<sup>163</sup> This type of work is not a feature of the mandate of Auditors-General in most other jurisdictions.

## Parliamentary and ministerial reporting

When the Auditor-General reports annually on the results of the audits of public entities or where the Auditor-General reports to the House on a performance audit or an inquiry, the reports are presented to the House by the Speaker and stand referred to the Finance and Expenditure Committee for consideration. The committee may consider the report itself or refer it to another committee with whose terms of reference it is more closely related.<sup>164</sup> This is an important mechanism for eliciting the Government's response to such reports. When presented to the House, the committee reports are set down for consideration as members' orders of the day and may be selected by the Business Committee for debate.<sup>165</sup>

<sup>158</sup> Public Audit Act 2001, s 16(1).

<sup>159</sup> Public Audit Act 2001, s 16(4).

<sup>160</sup> Public Audit Act 2001, s 16(3).

<sup>161</sup> Reserve Bank of New Zealand Act 1989, s 167; Public Audit Bill (9–2) (commentary, 17 October 2000) at 6–7 ([1999–2002] AJHR I.22A at 321–322).

<sup>162</sup> Public Audit Act 2001, s 18.

<sup>163</sup> See, for example: Controller and Auditor-General, report on certain matters arising from allegations of impropriety at Transend Worldwide Limited (16 December 2002); Controller and Auditor-General, report on inquiry into public funding of organisations associated with Donna Awatere Huata MP (5 November 2003); Controller and Auditor-General *Inquiry into decision by Hon Shane Jones to grant citizenship to Mr Yang Liu* (8 March 2013).

<sup>164</sup> SO 396.

<sup>165</sup> SO 250(4).

The Auditor-General's appointed auditors provide advice to select committees on the results of their audits of the financial and, where audited, non-financial information of the entities that they have audited. They may also provide advice on matters such as the financial and non-financial management systems used by entities.

Each year, the Auditor-General provides responsible Ministers with reports summarising the results of the audits of the significant entities for which the Ministers are responsible. These entities include State enterprises, mixed-ownership model companies and other publicly listed entities. Particular care is taken to ensure that confidential information relating to publicly listed entities, or information that if publicly known may affect the entity's share price, is not inadvertently disclosed to the market through these reports. The practice is for these entities to be given opportunity to consider such reports for factual accuracy and to confirm that they do not contain any market-sensitive information that may not be publicly disclosed.<sup>166</sup>

## PUBLICATION OF REPORTS

The annual reports, financial statements, and the end-of-year performance information on appropriations prepared by the Government, departments, Offices of Parliament, Crown entities, State enterprises and other organisations and companies are submitted to the appropriate Minister, who is responsible for presenting them to the House within the prescribed deadlines—within 15 working days after the audit report is provided by the Auditor-General for departments and Offices of Parliament,<sup>167</sup> within five working days of receipt by the Minister in the case of Crown entities,<sup>168</sup> and within 12 sitting days of receipt in the case of State enterprises.<sup>169</sup> If Parliament is not in session, in the case of departments, Offices of Parliament, and Crown entities, the Minister must present the annual report as soon as possible after the commencement of the next session of Parliament.<sup>170</sup> In the case of State enterprises, the Minister must have the report published within a given time and have a note inserted in the *Gazette* advising the public where copies of it may be obtained.<sup>171</sup> Failure on the part of a reporting entity to prepare its report in accordance with the deadlines may attract parliamentary criticism, not least because the lack of a report to the House will hold up the House's work of annual review.<sup>172</sup> The Office of the Clerk, the Parliamentary Service, Offices of Parliament and the Abortion Supervisory Committee submit their reports to the Speaker, who presents them to the House. Most, but not all, are published by order of the House as parliamentary papers (State enterprises' and mixed-ownership model companies' reports, for example, are not parliamentary papers). Individual reporting entities are responsible for publishing their reports and making them available to the public. Electronic publication is not, on its own, regarded as satisfying the statutory requirement to publish copies of the annual report.

In the case of financial statements of reserves boards, the Minister of Conservation forwards copies of the statements to each member of Parliament in

<sup>166</sup> Controller and Auditor-General *State-owned enterprises: results of the 2012/13 audits* (30 July 2014) NZPP B.29[14h] at 48.

<sup>167</sup> Public Finance Act 1989, s 44(2)(a).

<sup>168</sup> Crown Entities Act 2004, s 150(3).

<sup>169</sup> State-Owned Enterprises Act 1986, s 17(2).

<sup>170</sup> Public Finance Act 1989, s 44(2), (3); Crown Entities Act 2004, s 150(3).

<sup>171</sup> State-Owned Enterprises Act 1986, s 17(2A).

<sup>172</sup> Social Services Committee, report on 1990/91 financial review of the Ministry of Pacific Island Affairs (19 March 1992) [1991–1993] AJHR I.23B at 157–158; Health Committee, report on 1997/98 financial review of the Health Research Council of New Zealand (10 June 1999) [1996–1999] AJHR I.21C at 233; Health Committee 1998/99 financial review of Health Care Hawke's Bay Limited (31 March 2000) [1999–2002] AJHR I.21A at 177.

respect of boards managed in that member's electoral district.<sup>173</sup> Copies must be sent no later than a month after the date on which the Auditor-General provides an audit report on the financial statements. The annual report of the Department of Conservation must include information on the financial performance of reserves boards.<sup>174</sup> The Minister of Education must make available to a member of Parliament any annual financial statement of a school board of trustees, within one month of receiving a request from the member.<sup>175</sup> The Minister of Education must also prepare and present to the House an annual report on the performance of the schools sector, which includes information on the supply of outputs by that sector.<sup>176</sup>

---

<sup>173</sup> Public Finance Act 1989, s 45O(1), (2).

<sup>174</sup> Public Finance Act 1989, s 45O(4).

<sup>175</sup> Education Act 1989, s 87C.

<sup>176</sup> Education Act 1989, s 87B.

# CHAPTER 35

# Financial Scrutiny

## MONITORING AND CONTROL OF PUBLIC ENTITIES

### Departments

The financial management provisions in the Public Finance Act 1989 devolve financial authority to departments and Offices of Parliament. These entities operate their own bank accounts and are responsible for making payments on their own authority rather than through the Treasury. But departments still represent central government, and they are subject to detailed requirements as to the financial information and reports they must provide to the Treasury and, in particular, as to the accounting policies and practices that they must follow in their handling of public money, as signalled through Treasury instructions and regulations.<sup>1</sup> The Treasury, the State Services Commission and the Department of the Prime Minister and Cabinet are the central agencies that lead the co-ordinating and monitoring of the policies and practices of departments, under the political direction of the Cabinet. End-of-year performance information<sup>2</sup> may also inform an annual review of the performance of chief executives by the State Services Commissioner.

### Non-departmental performance

Outside the departmental structure, the entities performing public functions are more heterogeneous. The internal governmental processes for monitoring their performance are therefore more various. The decision on how to monitor such entities is essentially one for the Government to make. Following changes made to public sector management in 2013, the Crown Entities Act 2004 now provides for the role of Monitor to assist the responsible Minister.<sup>3</sup>

The Treasury monitors commercial assets owned by the Crown through a Commercial Operations Advisory Board, which was established to improve commercial analysis and advice. Whereas the Crown Ownership Monitoring Unit used to monitor all public entities on a quarterly cycle, Treasury now conducts strategic reviews of major entities on a rolling basis.<sup>4</sup>

---

<sup>1</sup> Public Finance Act 1989, ss 26Z, 29A and 79–81.

<sup>2</sup> See: Public Finance Act 1989, s 15C for an explanation of what is to be included in end-of-year performance information.

<sup>3</sup> Crown Entities Act 2004, s 27A.

<sup>4</sup> Finance and Expenditure Committee, report on 2013/14 annual review of Treasury (26 March 2015) at 3 ([2014–2017] AJHR I.20A at 233).

In respect of non-departmental performance, chief executives of Government departments are responsible for:<sup>5</sup>

- (a) the financial management of, and financial reporting on, appropriations for non-departmental expenses and non-departmental capital expenditure administered by the department; and
- (b) advising the appropriation Minister on the efficiency and effectiveness of expenditure under those appropriations; and
- (c) the financial management of, and financial reporting on, assets, liabilities, and revenue managed by the department on behalf of the Crown; and
- (d) advising the Minister responsible for those assets, liabilities, and revenue on their performance.

However, through arrangements with Ministers who have responsibilities for Crown entities, State enterprises or other organisations, departments may also be required to monitor the performance of these organisations and provide advice to their Ministers on them.<sup>6</sup>

Thus, a department is likely to provide advice on appointments to Crown entities within the purview of votes administered by the department, and to report regularly to Ministers on their funding and overall performance.<sup>7</sup> Departments that are discharging a monitoring role (as provided for under the Crown Entities Act) are expected to be proactive in this regard and to require regular reporting from the entity concerned. They should be aware of issues affecting the entities for which they have a responsibility and monitor their activities so as to enable their Ministers to carry out their responsibilities actively and on the basis of good information.<sup>8</sup> In conducting annual reviews on behalf of the House, committees are likely to probe the way departments are monitoring the performance of Crown entities in their sector.<sup>9</sup>

## **PARLIAMENTARY ACCOUNTABILITY**

Parliamentary accountability for departments, Offices of Parliament, Crown entities, State enterprises and other organisations can arise in a number of ways. The most obvious is through parliamentary questions, oral and written, which can be put to the responsible Minister. Even though there may be no legal responsibility for the actions of the entity concerned, a general political responsibility falls on the responsible Minister as the parliamentary mouthpiece through which the entity answers to the House. The performance of a department or other entity can also be the subject of debate on legislation relating to it, the weekly general debate, any urgent debate that the Speaker may accept, the debate on the annual Estimates, or occasionally a special debate.<sup>10</sup> Select committees may receive petitions touching on entities' work, and have a general power within their areas of subject competence to initiate inquiries into the performance and actions of public sector entities.

5 Public Finance Act 1989, s 35.

6 Crown Entities Act 2004, ss 27A and 88A.

7 Commerce Committee, report on 2000/01 Estimates (Vote Commerce) (14 August 2000) [1999–2002] AJHR I.19A at 101.

8 Government Administration Committee 2001/02 *financial review of the Department of Internal Affairs* (23 December 2002) at 5 ([2002–2005] AJHR I.20A at 223).

9 Māori Affairs Committee 2003/04 *financial review of the Ministry of Māori Development* (4 February 2005) at 5–6 ([2002–2005] AJHR I.20C at 291–292); Māori Affairs Committee 2012/13 *financial review of the Ministry of Māori Development and non-departmental appropriations for Vote Māori Affairs* (19 December 2013) at 3 ([2011–2014] AJHR I.20C at 181); Finance and Expenditure Committee, report on 2009/10 *financial review of the Treasury* (10 December 2010) at 36 ([2008–2011] AJHR I.20C at 400).

10 For example: (1999) 576 NZPD 15799–15812 (report of the Ombudsmen).

Although by these means the House and select committees can monitor the actions of public sector entities and hold them accountable, there is also a special accountability procedure known as annual review (called a “financial review” before the 51st Parliament). It was devised to form the parliamentary counterpart to the financial and operational reporting by these entities, and to guarantee that some parliamentary attention is paid to them annually. Annual reviews consist of examinations of the entities by select committees (focused, but not exclusively, on their reporting documentation) and debates in the House.

## GOVERNMENT'S FINANCIAL STATEMENTS

The Finance and Expenditure Committee is required to report to the House on the annual financial statements of the Government as at the end of the previous financial year.<sup>11</sup> These statements will have been presented to the House and thus become available to the committee about three months after the financial year ends. The committee must present its report within one week of the first day on which the House sits in the new year.<sup>12</sup> This first sitting is usually on a Tuesday in February.<sup>13</sup> The deadline for reporting may be extended by the Business Committee.<sup>14</sup>

The Minister of Finance and the Secretary of the Treasury are the principal witnesses before the committee in its examination of the Government's financial statements. The committee's report forms one of the bases for the committee stage of the Appropriation (Confirmation and Validation) Bill.<sup>15</sup> In 2015, the Business Committee allocated 10 hours to the annual review debate and determined that two hours would be set aside for debating the Government's financial position as reflected in the report of the Finance and Expenditure Committee. There is nothing to prevent the committee reporting to the House on the Government's financial statements before the Appropriation (Confirmation and Validation) Bill is introduced.

## ANNUAL REVIEW

The Finance and Expenditure Committee leads the co-ordination of the House's annual review process. The purpose of carrying out a review is to determine whether the entity concerned has performed as promised—whether its actual performance, in supplying services and in managing its balance sheet and other assets, is consistent with its forecast performance.<sup>16</sup> It also involves considering how the entity is currently performing.

Annual review involves a review by select committees of the annual reports, financial statements, and end-of-year performance information on appropriations of departments, Offices of Parliament, Crown entities, State enterprises and any other public organisation that the House resolves to make subject to the review procedures. For the 51st Parliament, the House resolved to extend these procedures to the Reserve Bank of New Zealand, the Abortion Supervisory Committee, Air New Zealand Ltd, Genesis Energy Ltd, Meridian Energy Ltd, and Mighty River Power Ltd.<sup>17</sup> Where an entity is not subject to the annual review procedure, committees can still use their general inquiry powers to examine the matters regarding the entity that would be considered in an annual review. For example, every second year since 2010, the Māori Affairs Committee has conducted

<sup>11</sup> SO 345(1).

<sup>12</sup> SO 345(1).

<sup>13</sup> SO 81(3).

<sup>14</sup> SO 248.

<sup>15</sup> SO 347(1)(a).

<sup>16</sup> (1996) 553 NZPD 11530 Hilt (Chairperson).

<sup>17</sup> (21 October 2014) 701 NZPD 25.

inquiries to review the financial performance and current operations of the Māori Trustee and the Māori Television Service, two entities that would otherwise not be reviewable.<sup>18</sup> The Standing Orders provisions for a debate on annual reviews do not apply to such reviews.

## Allocation of reviews

The Finance and Expenditure Committee is required to allocate to the subject select committees (or retain for itself) the task of conducting an annual review of the performance in the previous year and of the current operations of each individual department (and departmental agency), Office of Parliament, Crown entity (and Public Finance Act Schedule 4A company), State enterprise and public organisation.<sup>19</sup> It may do this as soon after the commencement of the financial year as it thinks fit.

As with the allocation of Estimates, a select committee may express a view on whether it is the most appropriate choice to review a particular entity.<sup>20</sup> But the matter is ultimately for the Finance and Expenditure Committee to determine.

Because departmental agencies are defined as departments and produce their own annual reports, they are subject to annual review. However, as their annual reports address only operational performance, while any financial performance information is included in the host department's financial statements, the Standing Orders Committee decided that their annual reviews should be grouped—that is, undertaken and reported on jointly with those of their respective host departments, to reduce the sheer volume of reports from committees. It is for the Finance and Expenditure Committee to consider any such groupings of reviews in making its allocation of annual reviews.<sup>21</sup>

For the 2014/15 financial year, the Finance and Expenditure Committee retained 15 organisations for review itself and allocated 145 organisations to the other committees for review.

## Preliminary information gathering

The annual review formally begins when the annual report of the department or entity is presented.<sup>22</sup> The annual report, strategic intentions or statement of intent and performance expectations, and end-of-year performance information of the department or entity concerned are the basic materials on which each committee's work proceeds (though a review has proceeded even though the annual report had not yet been presented to the House).<sup>23</sup>

Formerly, these reporting documents were supplemented for departments by a standard questionnaire drawn up by the Finance and Expenditure Committee and invariably used by the other committees in their reviews. However, the standard questionnaire was discontinued in 1997 on the understanding that departments would provide the information previously sought in the questionnaire (key result

<sup>18</sup> See, for example: Māori Affairs Committee *Inquiry into the financial performance and current operations of the Māori Trustee for the financial year ending 31 March 2010* (11 May 2011) [2008–2011] AJHR I.22C; *Inquiry into the financial performance and current operations of the Māori Trustee for the financial year ending 31 March 2012* (23 May 2013) [2011–2014] AJHR I.22B; *Inquiry into the financial performance and current operations of the Māori Television Service for the financial year ending 30 June 2010* (8 April 2011) [2008–2011] AJHR I.22C; *Inquiry into the financial performance and current operations of the Māori Television Service for the financial year ending 30 June 2012* (23 May 2013) [2011–2014] AJHR I.22B.

<sup>19</sup> SO 344(1).

<sup>20</sup> Justice and Law Reform Committee *1995/96 financial review of the Abortion Supervisory Committee* (13 June 1997) [1996–1999] AJHR I.21A at 12.

<sup>21</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 28–29.

<sup>22</sup> SO 344(2).

<sup>23</sup> Health Committee, report on 2001/02 financial review of Auckland District Health Board (12 June 2003) at 9 ([2002–2005] AJHR I.21A at 60).

areas, measurable milestones, expenditure variances, and so on.) in their annual reports.<sup>24</sup> Nevertheless, each committee may devise and issue its own questionnaire to an entity that is to undergo review.<sup>25</sup>

Although a standard questionnaire is no longer issued, committees often ask an entity to provide more information on its operations, either before oral examination by the committee commences or after it has concluded. Committees have criticised entities for failing to respond to such questions, and for the quality of the responses received.<sup>26</sup> Only questions forwarded to the department or entity with the committee's authority are formally part of the review. Questions sent to the entity by members without being submitted first to the committee are not part of the review; they are merely individual information requests.

After gathering such preliminary information, including the answers to questions that the committee requires, and before any oral examination of the entity, the committee receives a briefing from the Office of the Auditor-General on the entity's financial performance. Committee staff may provide supporting analysis of issues outstanding from previous reviews and matters of current concern to the committee. The Auditor-General provides a written brief on each entity unless directed otherwise by the committee concerned. The Office of the Auditor-General officials may also remain present throughout the hearing of evidence to assist the committee at any point. Other advisers may also be appointed.<sup>27</sup>

## **Examination**

It is entirely over to committees how they conduct the reviews that are entrusted to them. Because of the large number of reviews recurring each year (approximately 160 entities to be dealt with by the 13 subject select committees), it is not possible to conduct in-depth reviews of each one, each year. Indeed, the annual review is not necessarily the place for an in-depth examination of an entity, since it operates within strict timeframes and is focused on recent performance. But issues that emerge in the course of an annual review may be addressed subsequently by the committee utilising its inquiry powers. Annual review is not intended to replace the committee's inquiry powers as regards public sector scrutiny, though work previously undertaken through the inquiry function may be absorbed into it.<sup>28</sup>

Many annual reviews are completed on the basic documentation and the audit briefing, without the need for an oral examination or follow-up by written questioning. Where an oral examination of a department is held, it is focused on the chief executive and senior officials. Unlike the Estimates, for which a Minister is responsible, the chief executive of a department is primarily responsible for answering to the committee for the performance of the department in fulfilling its objectives. Even in reviews of non-departmental entities the focus is on the performance of the entity, and the responsibility for this lies with its board and the management. However, Ministers have attended select committee examinations when critical questions of the governance of the entity and the respective roles of the Minister and the board were in issue, for example when a board chairperson was removed several days before the hearing.<sup>29</sup> Exceptionally, committees may

24 Finance and Expenditure Committee *Inquiry into departmental reporting to Parliament* (28 November 1997) [1996–1999] AJHR I.3C at 4.

25 Primary Production Committee *2001/02 financial review of Quotable Value New Zealand Limited* (13 December 2002) at 6 ([2002–2005] AJHR I.21A at 365).

26 Education and Science Committee *1999/2000 financial review of Early Childhood Development* (6 April 2001) [1999–2002] AJHR I.21B at 81; Education and Science Committee *1999/2000 financial review of Specialist Education Services Board* (4 May 2001) [1999–2002] AJHR I.21B at 462.

27 See, for example: Parliamentary Commissioner for the Environment, annual report (14 October 2004) NZPP C.12 at 40 (commissioner acted as adviser for review of two departments).

28 Standing Orders Committee *A new financial procedure for the House of Representatives* (20 August 1991) [1991–1993] AJHR I.18A at [18].

29 Commerce Committee *1997/1998 financial review of New Zealand Tourism Board* (19 May 1999) [1996–1999] AJHR I.21C at 366; Transport and Industrial Relations Committee *2007/08 financial review of the Accident Compensation Corporation* (4 May 2009) at 2 ([2008–2011] AJHR I.21A at 14).

hear from other witnesses, for example when justice sector organisations were invited to make submissions on the review of the Ministry of Justice.<sup>30</sup> Normally, the time constraints under which committees conduct annual reviews preclude this, but any follow-up inquiry will inevitably open up the opportunity for other groups to give their views. A committee may also combine an annual review with any other related business before it (such as a petition on a matter related to the entity's area of responsibility).<sup>31</sup>

As annual review is generally concerned with entities in the public sector rather than with companies listed on the stock exchange, usually no issues regarding the insider-trading legislation arise. (Questions of commercial confidentiality do sometimes arise.) However, the annual review procedure can be extended to a public organisation that is also a listed company (such as with mixed-ownership model companies and Air New Zealand Ltd). In such an instance (the review of Air New Zealand Ltd), the committee conducting the review organised its proceedings so as to avoid infringing the insider-trading provisions.<sup>32</sup>

As a result of the examination, the department or entity may be asked (or may itself ask) to respond in writing to questions put to it. If there is an expectation of response before the committee reports, the department or entity will face criticism if it fails to do so.<sup>33</sup> Indeed, the report may be delayed in consequence. Committees may also criticise in their reports the quality of responses that they feel are inadequate.<sup>34</sup>

## REPORTS ON ANNUAL REVIEWS

### Time for report

Following the committee's consideration of the documentation, its receipt of an audit briefing, and any oral examination of the chief executive, the committee reports the results of the review to the House.

Reports on departments and Offices of Parliament must be made within one week of the first sitting day in each year.<sup>35</sup> This is likely to be in February. So committees have some four to five months from the presentation of the annual report to complete their work. But this period includes the Christmas/New Year break. Every three years it also includes the time at which a general election is likely to be held. The House usually therefore extends the time allowed for reporting.<sup>36</sup>

For reviews of Crown entities, State enterprises and the public organisations that have been made subject to review, committees have six months to conduct the review from the date the entity's annual report is presented to the House.<sup>37</sup> The financial year of Crown entities is generally 1 July to 30 June.<sup>38</sup> The financial year of State enterprises and mixed-ownership model companies is not statutorily prescribed and varies with entities' own rules. Nevertheless, most annual reports are presented in the second half of the year, and it is at that point that the six-month reporting time limit begins to run.

<sup>30</sup> Justice and Electoral Committee *1999/2000 financial review of the Ministry of Justice* (15 December 2000) [1999–2002] AJHR I.20B at 180.

<sup>31</sup> Justice and Electoral Committee, report on 2002/03 financial review of the Abortion Supervisory Committee and petition 2002/74 (5 March 2004) at 1 ([2002–2005] AJHR I.21B at 11).

<sup>32</sup> Finance and Expenditure Committee *2003/04 financial review of Air New Zealand Limited* (16 December 2004) at 3 ([2002–2005] AJHR I.21C at 35).

<sup>33</sup> Foreign Affairs, Defence and Trade Committee *2003/04 financial review of the Ministry of Defence and the New Zealand Defence Force* (4 February 2005) at 7 ([2002–2005] AJHR I.20C at 113); Health Committee *2003/04 financial review of the Wairarapa District Health Board* (5 May 2005) at 2 ([2002–2005] AJHR I.21C at 462).

<sup>34</sup> Local Government and Environment Committee *2003/04 financial review of the Ministry for the Environment* (6 December 2004) at 7 ([2002–2005] AJHR I.20C at 157).

<sup>35</sup> SO 345(2).

<sup>36</sup> (1999) 581 NZPD 37 (to 6 April); (2001) 597 NZPD 14074 (to 22 February).

<sup>37</sup> SO 345(3).

<sup>38</sup> Crown Entities Act 2004, s 136(1).

For the 2014/15 round of annual reviews, the Business Committee determined that all annual reviews were to be reported by the same deadline, thus extending the timeframe for reviews of departments and Offices of Parliament, but reducing it for reviews of Crown entities, State enterprises and public organisations.<sup>39</sup>

If a committee fails to report in time, its obligation to report is not discharged immediately. (This contrasts with a failure to report on a bill in time, where the bill is automatically discharged from the committee.<sup>40</sup>) The obligation to report still remains. However, a committee cannot remain indefinitely in breach of an obligation to report. The House or the Business Committee may therefore regularise the position by granting an extension of time.<sup>41</sup> In the absence of such an extension, the Speaker determines when the committee must report. If it fails then to do so in time, its task is at an end. The Speaker has ordered a committee that had failed to report in time on its review of a Crown entity to present its report by the end of the current week.<sup>42</sup>

## Nature of the report

Committees make a mixture of narrative and formal reports on the results of their annual reviews. Where they do not feel it necessary to prepare a detailed narrative report, they present pro forma reports, merely recording the fact that they have carried out an annual review of the department and that they have nothing to draw to the attention of the House. Usually these are cases where no oral examination was held. This does not mean that the process was not of value. Constant monitoring of the activities of departments was one of the main aims of the select committee structure when it was introduced in 1985. Annual review ensures that there is at least an annual interchange between a committee and the departments it is to monitor, superficial though it may be in some cases. If there are no apparent matters of concern to report, committees have pragmatically decided that they do not need to write a detailed report each time to explain this. On the other hand, the annual review may reveal matters of concern that the committee considers should be followed up in other ways, such as by the use of the committee's inquiry powers or by requesting the Auditor-General to investigate.<sup>43</sup>

Failure to make any statutory report in good time will inevitably be commented on, as will non-compliance with other reporting requirements, such as that of reporting on equal employment opportunity initiatives,<sup>44</sup> and that of giving reasons for any unappropriated expenditure.<sup>45</sup> The discretionary contents of an annual report will also be commented on, such as any failure to give a breakdown of expenses or a clear explanation of how funds have been expended,<sup>46</sup> or any lack of detail about an agency's business streams.<sup>47</sup> The omission of a narrative from a department's report (though it technically followed the State Service Commission's reporting guidelines) was criticised by a committee as diminishing the report's

<sup>39</sup> Business Committee determination for 23 September 2015.

<sup>40</sup> SO 295(3).

<sup>41</sup> SO 248. See, for example: (24 March 2004) 616 NZPD 11907 (House granted committee an extension of time to report on an entity).

<sup>42</sup> (1999) 577 NZPD 16437 Kidd.

<sup>43</sup> See, for example: Controller and Auditor-General *New Zealand Trade and Enterprise: administration of the Visiting Investor Programme* (7 December 2004) (initiated on the request of the Commerce Committee).

<sup>44</sup> Foreign Affairs and Defence Committee, report on 1991/92 financial review of the Ministry of Defence (25 March 1993) [1991–1993] AJHR I.23A at 54.

<sup>45</sup> Social Services Committee, report on 1990/91 financial review of the Department of Social Welfare (24 March 1992) [1991–1993] AJHR I.23B at 196.

<sup>46</sup> Commerce Committee *2000/01 financial review of New Zealand Tourism Board* (10 May 2002) [1999–2002] AJHR I.21C at 347–348.

<sup>47</sup> Primary Production Committee *2001/02 financial review of Quotable Value New Zealand Limited* (13 December 2002) at 2 ([2002–2005] AJHR I.21A at 361).

usefulness, and its reinstatement was recommended.<sup>48</sup> Errors of fact in the annual report are also likely to attract comment.

The examining committee will focus on any illegality revealed in the materials before it. Thus, a department that was in breach of the law by writing off a debt without ministerial approval was criticised in the committee's report on the review of that department.<sup>49</sup>

Where a committee has detected an error in an annual review report subsequent to its presentation, it has presented a special report to correct the error.<sup>50</sup>

## APPROPRIATION (CONFIRMATION AND VALIDATION) BILL

The House's vehicle for considering the results of the investigations into the financial performance of the Government and Government departments conducted by select committees is the passing of the annual Appropriation (Confirmation and Validation) Bill (previously known as the Appropriation (Financial Review) Bill).

The Appropriation (Confirmation and Validation) Bill is a Government bill whose provisions deal exclusively with the confirmation or validation of expenditure incurred in any previous financial year.<sup>51</sup> These provisions concern financial matters that occurred in a previous year that are required by law to be included in an Appropriation Bill in the succeeding year: the confirming of transfers between classes of outputs that have been made by Orders in Council;<sup>52</sup> the confirming of excess expenses or capital expenditure approved by the Minister of Finance;<sup>53</sup> and the confirming of emergency expenses, capital expenditure and capital injections approved by the Minister of Finance.<sup>54</sup> The bill may also include provisions validating illegal expenses or capital expenditure incurred in a previous financial year.<sup>55</sup>

### Introduction, first reading and second reading

The Appropriation (Confirmation and Validation) Bill must be introduced before the end of March.<sup>56</sup> It is, in fact, usually introduced before Christmas. There is no amendment or debate on the bill's first reading.<sup>57</sup>

Like any Appropriation Bill, the bill is not referred to a select committee after its first reading.<sup>58</sup> It is set down as a Government order of the day for a formal second reading. There is no amendment or debate on the second reading of the bill.<sup>59</sup>

### Annual review debate

The committee stage of the bill is the annual review debate. This is the House's opportunity to debate the Government's financial position as reflected in the Finance and Expenditure Committee's report on the Government's financial

<sup>48</sup> Labour Committee, report on 1990/91 financial review of the Department of Labour (24 March 1992) [1991–1993] AJHR I.23B at 134–135.

<sup>49</sup> Social Services Committee, report on 1991/92 financial review of the Department of Social Welfare (18 March 1993) [1991–1993] AJHR I.23A at 191.

<sup>50</sup> Commerce Committee, special report in relation to the 1998/99 financial review of Television New Zealand Limited (24 May 2000) [1999–2002] AJHR I.21A at 486; Foreign Affairs, Defence and Trade Committee *Special report on the 2003/04 financial review of New Zealand Trade and Enterprise* (6 May 2005) [2002–2005] AJHR I.22D at 407; Primary Production Committee *Special report on the 2013/14 annual review of Crown Irrigation Investments Limited* (1 May 2015) [2014–2017] AJHR I.21A.

<sup>51</sup> SO 346(1).

<sup>52</sup> Public Finance Act 1989, s 26A.

<sup>53</sup> Public Finance Act 1989, s 26B.

<sup>54</sup> Public Finance Act 1989, ss 25 and 25A.

<sup>55</sup> See, for example: Appropriation (Financial Review) Act 1993, s 3; Appropriation (1997/98 Financial Review) Act 1999, s 7.

<sup>56</sup> SO 347(5).

<sup>57</sup> SO 346(2).

<sup>58</sup> SO 288(2).

<sup>59</sup> SO 346(2).

statements, and to debate the previous year's performance and current operations of departments and Offices of Parliament.<sup>60</sup>

The annual review debate must be held by 31 March,<sup>61</sup> by which time the select committees' reports on their annual reviews of departments and Offices of Parliament will all have been presented. When committees have been given a substantial extension of their reporting time on annual reviews, the House has also extended the time within which the annual review debate may be held.<sup>62</sup>

The Government is entitled to select any day (other than a Members' Wednesday) for the annual review debate,<sup>63</sup> and to decide which annual reviews are available for debate on that day and how long is to be spent on the debate.<sup>64</sup> This information must be included on the Order Paper.<sup>65</sup>

Four hours in total is allowed for the annual review debate. The Minister responsible for the department or Office of Parliament may make multiple speeches of five minutes each but not normally more than two speeches consecutively. Other members may make two speeches of five minutes each on each annual review.<sup>66</sup> In practice, the Business Committee<sup>67</sup> or the whips are likely to work out a suitable allocation of time among the parties from the overall time available for the debate, and the order in which particular annual reviews will be considered.

At the commencement of the annual review debate (subject to any determination by the Business Committee or leave of the committee to the contrary), the committee considers the report of the Finance and Expenditure Committee on the annual financial statements of the Government.<sup>68</sup> It then turns to consider the annual reviews nominated by the Government for consideration that day.<sup>69</sup>

When the four hours for the debate have elapsed, the provisions of the bill and any amendments from the Minister in charge of the bill that are notified on a Supplementary Order Paper are put as one question without debate.<sup>70</sup> No other amendments to the bill are permitted.<sup>71</sup>

## **Passing of the bill**

When the report of the committee on the bill has been adopted, the bill is set down for third reading forthwith.<sup>72</sup> There is no amendment or debate on the question for the third reading.<sup>73</sup>

## **DEBATE ON CROWN ENTITIES, PUBLIC ORGANISATIONS, AND STATE ENTERPRISES**

The reports of committees on their annual reviews of Crown entities, public organisations, and State enterprises are not debatable when presented to the House. But a debate of three hours during the course of each financial year is provided for, for the House to consider the performance and current operations of Crown entities, State enterprises and other public organisations.

The Government selects the day for such a debate to be held (it may extend over more than one day).<sup>74</sup>

<sup>60</sup> SO 347(1).

<sup>61</sup> SO 347(5).

<sup>62</sup> (2000) 582 NZPD 948 (extended to 2 May).

<sup>63</sup> SO 350(1).

<sup>64</sup> SO 350(2).

<sup>65</sup> SO 350(2).

<sup>66</sup> SOs, App A.

<sup>67</sup> SO 350(3).

<sup>68</sup> SO 347(2).

<sup>69</sup> SO 347(3).

<sup>70</sup> SO 347(4).

<sup>71</sup> SO 347(4).

<sup>72</sup> SO 348(1).

<sup>73</sup> SO 348(2).

<sup>74</sup> SO 350(1).

The day selected may not be a Wednesday on which Members' orders of the day take precedence.<sup>75</sup> The Government also decides which annual reviews are available for debate and how long in total (up to the maximum time for the debate) is to be spent on it that day. This information is advised on the Order Paper.<sup>76</sup> The Business Committee may determine the order in which annual reviews are to be considered and how long is to be spent on each.<sup>77</sup>

The debate is usually held in the period from April to June, as annual review reports will have been presented by then. However, because reporting is a continuous process there will always be some entities' reports outstanding whatever date is chosen for the debate.<sup>78</sup> Leave has been given to debate an entity's performance even though the report relating to it had not yet been presented.<sup>79</sup>

On the day selected, the debate is set down as a Government order of the day for the consideration in committee of the performance in the previous year and the current operations of Crown entities, public organisations and State enterprises.<sup>80</sup> A Minister is nominated by the Government to take charge of the order of the day. The Speaker has an obligation to ensure that the Government allows time in the Government orders of the day for such a debate, and if necessary will interrupt other business on the final sitting day in the financial year.<sup>81</sup>

The debate does not have to be the first order of the day. When the order of the day for the debate is reached, the House resolves itself into committee to consider the annual reviews available for consideration.<sup>82</sup> Each member may speak on each review twice, for five minutes each time. The Minister responsible for an entity is allowed multiple five-minute speeches but not normally more than two consecutive speeches. The overall length of the debate is limited to three hours.<sup>83</sup>

A question is proposed on each annual review as it is raised, that the select committee's report on it be noted.<sup>84</sup> The debate covers both performance in the previous financial year and the entity's current operations. The history of the entity before the period covered by its annual report is outside the scope of the debate.<sup>85</sup> The annual report of the entity, its statement of intent and other documents presented in respect of the current and previous years can be referred to and used in the debate.<sup>86</sup> The responsibilities of the shareholding Minister for a State enterprise are within the scope of the debate and members can attack the Minister in that capacity, but not other aspects of the Minister's performance.<sup>87</sup>

## ORGANISING THE ANNUAL REVIEW DEBATES

In its 2014 review of the Standing Orders, the Standing Orders Committee suggested a reasonably flexible approach to financial scrutiny, because the 2013 changes to the Public Finance Act had not come into force until 1 July 2014.<sup>88</sup> In 2015, the House trialled a new approach to the annual review debate, as determined by the Business Committee. The annual review debate was combined with the debate on the annual reviews of Crown entities, public organisations and State enterprises, to form one long debate (scheduled to be completed before Budget day) in which the 2014/15 annual reviews of all reviewable entities of any type could be debated. The

<sup>75</sup> SO 350(1).

<sup>76</sup> SO 350(2).

<sup>77</sup> SO 350(3).

<sup>78</sup> (25 May 2004) 617 NZPD 13236 Hunt.

<sup>79</sup> Ibid.

<sup>80</sup> SO 349(1).

<sup>81</sup> (1995) 548 NZPD 7863–7864 Tapsell.

<sup>82</sup> SO 349(2).

<sup>83</sup> SOs, App A.

<sup>84</sup> SO 349(3).

<sup>85</sup> (1992) 525 NZPD 8603 Gerard (Chairperson).

<sup>86</sup> (1993) 533 NZPD 13510–13511 Gerard (Chairperson).

<sup>87</sup> Ibid, at 13522, 13655 Gerard (Chairperson).

<sup>88</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 26.

amount of time allocated for this debate was also extended beyond the combined length of the two debates provided for in the Standing Orders.

A themed approach was adopted for organising the debate. The House first held a two-hour debate on the Government's financial statements, allowing the House to consider the Government's overall management of the economy. The House then had a total of seven hours dedicated to seven debates, each focused on a specified theme: services for citizens, services for business, infrastructure, justice, natural resources, primary industries, and internal affairs and Government relationships. All the entities that were subject to an annual review were assigned to at least one theme. Members were then free to debate the performance of all entities deemed to be relevant to the theme. The question put for each of the seven debates was that "the reports of committees relevant to [the theme being debated] be noted."

The themed debates did not have individual time limits; the main constraint on the length of each themed debate was the overall time limit for the entire annual review debate. The first call in each themed debate was taken by the chairperson of a relevant select committee, and the remaining calls in the annual review debate were allocated to parties on the proportional basis used for oral questions, excluding Ministers, giving parties in Opposition about four calls in each themed debate. The Minister nominated by the Government to take charge was allowed three calls in each debate to encourage the answering of questions raised. The remaining time was allocated on the same proportional basis as supplementary calls, for parties to use during the themed debates as they saw fit.

The advantage of this approach was that it ensured the debate was focused not only on how well a particular entity was operating, but on how all of the entities operating in a particular area functioned individually and collectively. It also more closely reflected the realities of Government spending, where various entities operate and interact in the same area. So the debate allowed the House to assess more fully the effectiveness of spending within such an area in achieving the desired outcomes.

This may become the permanent approach to the annual reviews debate, as it stands or modified, or the House may revert to the previous two-debate single-entity structure for considering annual reviews. For the debate on the 2014/15 annual reviews, which took place early in 2016, the Business Committee determined a similar approach, with the entities grouped into the 10 sectors used for the Estimates debate, rather than by theme.<sup>89</sup>

---

89 Business Committee determination for 23 September 2015.

## CHAPTER 36

# Petitions

### PETITIONING PARLIAMENT

The earliest legislative acts of the English Parliament were often transacted by the Commons petitioning the King that a certain amendment be made to the law, but petitions as a source of legislation soon disappeared from the picture, apart from the field of private legislation. In New Zealand, the only vestige of the petition's former role in legislating was formerly to be found in the field of private bills, which were initiated in the House by the presentation of a petition from the promoter of the bill. However, following changes to Standing Orders in 2011, a petition is no longer required to introduce a private bill. In 1993 Parliament passed legislation permitting the presentation of petitions seeking the holding of referendums.<sup>1</sup> These statutory petitions are the subject of their own special rules. (See Chapter 40.)

The vast majority of petitions addressed to the House relate to public policy issues and private grievances of various kinds. From its first meeting in 1854, the House, continuing an ancient right exercised in England, has admitted petitions seeking redress for an almost unlimited range of real or supposed wrongs done to petitioners, advocating amendments to the law or changes in Government policy, or seeking public inquiries into unsatisfactory situations. By petitioning the House, the citizen can express his or her opinion on a subject of concern and address it in a public way to the country's legislators. The act of petitioning may or may not have any practical consequences, but it ensures that the petitioner's concerns are heard and given some consideration by those in authority.

The number of petitions presented to the House increased during the 19th century to a peak in 1906. It then declined consistently until the mid-1980s, at which point the number of petitions presented to the House rose significantly. However, there has been another substantial decline since that time; during the 50th Parliament, only 127 petitions were received.

These trends in the number of petitions presented to the House mask changes in the way citizens have used the petitions procedure. In earlier days, the overwhelming majority of petitions emanated from single petitioners with their own particular grievances. While petitions from individuals seeking relief for a personal injustice are still common, they no longer predominate. Petitions now tend to relate to public issues, and are typically promoted to demonstrate the strength of public feeling on an issue in the country at large or in a local community.

---

<sup>1</sup> Citizens Initiated Referenda Act 1993.

The large increase in the number of petitions in the mid-1980s related to a trend in the category of petitions concerning general public issues. Rather than promoting a single petition with a large number of signatures appended to it to demonstrate its degree of support, those responsible for organising petitions often encouraged the submission of many separate petitions on the same subject, with only a few signatures to each one. Thus, for instance, in 1989 two campaigns objecting to legislation then before the House attracted more than 600 and 900 similarly worded petitions respectively.<sup>2</sup> However, this practice has lessened in recent years, resulting in a substantial reduction in the number of petitions received. Technology has also had an impact. The ease and immediacy of the electronic media has rendered hard-copy petitions outmoded and the method of collecting signatures and submitting petitions in need of change.

A further reason for petitioning the House is to demonstrate before applying to an international body that the petitioner has exhausted all of his or her domestic remedies. One select committee has noted that the promoters of a petition had little interest in the parliamentary outcome of their petition other than to prove to the United Nations committee on human rights that they had sought relief domestically before applying to it. The committee expressed concern at the right to petition the House being used in this way.<sup>3</sup>

The right of the citizen to petition the House is considered to be so important that when Parliament creates legal remedies it may make it clear in the pertinent legislation that these remedies are not intended to qualify the ability to petition the House or to restrict the jurisdiction of any committee set up to consider such a petition.<sup>4</sup> Conversely, a body set up outside the House to provide an avenue of redress may be expressly excluded from taking account of the citizen's right to petition the House in deciding whether to exercise its own powers in respect of the matter. So, for example, the Independent Police Conduct Authority cannot decide not to pursue a complaint on the ground that the complainant could petition the House.<sup>5</sup>

## PROMOTION AND CIRCULATION OF PETITION

A petition is usually initiated by a concerned individual or group of individuals who, having drafted the petition, sign it themselves and circulate it among other members of the public inviting them to subscribe to it. There is no requirement for a petition to have multiple signatories; a petition of a sole individual is valid. A corporation may petition the House, as may an unincorporated association, provided the association is adequately identified as a collective entity. Petitions that do not adequately identify an entity, such as, for example, a petition from teachers at a certain school or employees from a certain workplace, are not acceptable. They would have to be submitted in the name of an individual on behalf of the other persons involved.<sup>6</sup>

The circulation of a petition among the public for the purpose of gathering signatures to it before its presentation in the House is not a proceeding in Parliament and the absolute protection from legal liability attaching to parliamentary

<sup>2</sup> (29 November 1989) [1987–1990] 2 JHR 2058–2072, (5 December 1989) [1987–1990] 2 JHR 2094–2107; Planning and Development Committee, report on Radiocommunications Bill and related petitions (5 December 1989) [1987–1990] AJHR I.11 at 6–26; and Social Services Committee, report on Contraception, Sterilisation, and Abortion Amendment Bill and related petitions (29 November 1989) [1987–1990] AJHR I.13 at 6–29.

<sup>3</sup> Justice and Law Reform Committee, report on the petition of Banks and Banks-Foster (6 September 1999) [1996–1999] AJHR I.24 at 564.

<sup>4</sup> See, for example: Treaty of Waitangi Act 1975, s 9; Citizens Initiated Referenda Act 1993, s 59.

<sup>5</sup> Independent Police Conduct Authority Act 1988, s 18(1)(b)(v). See also: Privacy Act 1993, s 71(1)(g); Health and Disability Commissioner Act 1994, s 38(2)(e).

<sup>6</sup> (1991) 513 NZPD 1001 Gray.

proceedings does not apply.<sup>7</sup> The delivery of the petition to a member for presentation to the House, its presentation, and its subsequent publication in the ordinary course of parliamentary proceedings are so protected.<sup>8</sup>

Publication of defamatory material in a petition, other than in the course of parliamentary proceedings (for example, by delivering it to a member for presentation to the House), is not protected by parliamentary privilege. Nevertheless, given the significance of the long-standing right to petition the House (with its numerous statutory acknowledgements), it is possible that publication to a member and to the public for the purposes of gathering signatures would be accorded qualified immunity from civil or criminal liability. If so, it would be protected from legal liability if such publication was not predominantly actuated by ill will or in bad faith.<sup>9</sup>

No authenticated records are kept of the number of adherents to each petition, because individual signatures to a petition are not checked for authenticity and duplication. However, probably the largest petition ever presented to the House was that presented on 24 September 1985 objecting to the passage of the Homosexual Law Reform Bill.<sup>10</sup> Three similarly worded petitions were presented that day, the largest claiming more than half a million signatures. Other petitions that have attracted a great deal of attention include those in favour of women's suffrage presented in 1893 (this petition was close to 300 yards long),<sup>11</sup> a petition seeking prohibition of the sale of alcohol presented in 1918 and signed by about one-fifth of the total population at that time,<sup>12</sup> and a petition against the raising of the level of Lake Manapouri in 1970 that led to extensive select committee hearings.<sup>13</sup>

It is increasingly common for signatures to be collected electronically, often through a generic petitions website or a website specifically dedicated to the petition. As signatures must be of a prescribed form and signed by the petitioner's own hand,<sup>14</sup> electronic signatures are not acceptable. If signatures are collected electronically, a petition (often signed by a single individual) may be lodged recording the request and asking that the House note the number of electronic signatures collected in support of the petition. Copies of the electronic signatures may be provided with the petition as evidence. The Standing Orders Committee in the 50th Parliament noted that an electronic petition system would improve the accessibility of the petitions process. It did not recommend any changes to specifically allow e-petitions, but proposed an investigation into how the process for submitting a petition could be made more accessible.<sup>15</sup>

## FORM OF PETITION

A petition must conform to a number of rules designed to ensure that the document is in fact intended for presentation to the House, is authentic, and is generally in a fit state to be received by the House.<sup>16</sup>

Petitions must be addressed to the House of Representatives (or to "Parliament").<sup>17</sup> This is self-evident. A written statement addressed to the world at large is not a petition to the House, nor is a document addressed to the Governor-

<sup>7</sup> Senate (Aust) Committee of Privileges *The circulation of petitions (11th report)* [1988]; Legislative Council (WA) Select Committee of Privilege, report concerning petition of Brian Easton [1992].

<sup>8</sup> *Lake v King* (1667) 1 Saund 131 (KB).

<sup>9</sup> Parliamentary Privilege Act 2014, ss 18 and 20.

<sup>10</sup> (24 September 1985) [1984–1985] JHR 797.

<sup>11</sup> (28 July 1893) [1893] JHR (Schedule of Petitions Presented) at xvii; John E Martin *The House—New Zealand's House of Representatives 1854–2004* (Dunmore Press Ltd, Palmerston North, 2004) at 113.

<sup>12</sup> (30 October 1918) [1918] JHR (Schedule of Petitions Presented) at xix.

<sup>13</sup> (26 May 1970) [1970] JHR (Schedule of Petitions Presented) at 583.

<sup>14</sup> SO 364.

<sup>15</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18 at 30.

<sup>16</sup> A booklet describing the rules, *Petitioning the House of Representatives*, is available from the New Zealand Parliament website.

<sup>17</sup> SO 361.

General or to a Minister of the Crown. For a petition to be received by the House it must indicate in its heading that it is intended for the House.<sup>18</sup>

Petitions must be in writing. A petition written partly in braille has been accepted. A person signs a petition personally on a page setting out the petition request.

If the original wording of a petition is amended, the question immediately arises of whether the people signing the petition did so on the basis of its original wording or the altered wording. If the alteration is not significant, this will not be a material consideration. However, if the alteration is significant, those signing before the alteration was made will have agreed to a different proposition and cannot automatically be regarded as agreeing with the petition in its altered form. Thus the circumstances in which any alteration to the wording of a petition came to be made needs to be noted and explained by whoever is promoting the petition. Any signatories to a petition before it was altered in any material particular should be invited to re-sign the petition, otherwise their signatures must be disregarded.

## **Request for action**

A petition is not a statement in the abstract. Its whole purpose is to seek some relief for wrongs suffered, some amendment to the law or some change in Government policy. In short, a petition seeks action. Thus, it is fundamental that a petition must ask the House to take some action regarding its subject matter.<sup>19</sup> It may be that the petition consists of no more than this request. This is sufficient. There are no rules requiring petitioners to set out at length the grounds on which relief is claimed, but they must claim relief of some description. The request is, therefore, an essential ingredient in a petition, for this is the means by which the petitioner tells the House what he or she wants it to do in response to the grievance. A petition without a request for action is irregular and will not be received.

## **Signatures**

There must be one person, sometimes known as the principal or chief petitioner, who takes responsibility for attending to the formal requirements involved in petitioning the House. The name and address of the principal petitioner must be entered on the petition. Communications about the petition may be addressed to the principal petitioner.<sup>20</sup>

The text of a petition may be so long that the petition itself cannot be confined to one sheet of paper leaving space for signatures. It may therefore run on to additional sheets.

Anyone subscribing to a petition must sign personally, except in the case of incapacity. A person signing on behalf of an incapacitated person should state this fact alongside the signature.<sup>21</sup> Petitions from corporations are signed by a duly authorised officer of the corporation. If the corporation is incorporated outside New Zealand, an authorised attorney may sign.<sup>22</sup>

Other than the principal petitioner, persons subscribing to a petition do not need to add their addresses, though they often do.

Continuation pages of signatures sometimes give rise to problems of authentication. Signatures may be written upon the petition or pages annexed to the petition (though they may not be transferred to them).<sup>23</sup> Any pages annexed to the petition must at least have the request inscribed on them in full. The fact that a page containing signatures is annexed to the petition at the time of its presentation to the House does not in itself indicate that it was so annexed at the time those

18 (1907) 140 NZPD 385 Guinness.

19 SO 361.

20 SO 363.

21 SO 364.

22 SO 366.

23 SO 365.

signatures were collected. Unless the page is itself headed with the terms of the petition, or at least the request, there is no indication that those who signed on that page were subscribing the petition at all. Continuation pages of signatures on blank sheets of paper are therefore not acceptable. On the other hand, signatures on the reverse side of a page headed with the request will be accepted.

### **Language of petitions**

Petitions must be in the English language or Te Reo Māori.<sup>24</sup> The Speaker may order that petitions presented to the House be translated and printed in another language.<sup>25</sup> Although petitions must be in English or Te Reo Māori, that does not prevent promoters including a version in another language with the petition that they present.

## **CONTENTS OF PETITION**

Petitions are required to be couched in respectful and moderate language.<sup>26</sup> Just as members' speeches must be free of unparliamentary language, so must the words of petitioners who are seeking to play a part in the proceedings of the House.

Petitions must not contain irrelevant statements.<sup>27</sup> The grounds on which relief is claimed need not be set out in the petition, but many petitioners set forth the grounds for relief nevertheless, at varying lengths. If these grounds are set out too fully, there comes a point at which the petitioner is in effect giving evidence on his or her own petition in the petition itself. Evidence supporting the petition should be reserved for the select committee that hears the petition; it is irrelevant to the petition itself. It is also irrelevant to refer in the petition to any matter for which relief is not being claimed in the request for action. The petition may only set out the grounds for the request. Reference to unconnected matters can invalidate the whole petition.

## **CERTAIN PETITIONS NOT ACCEPTED**

Apart from the rules on the form that a petition must take, there are certain types of petition that the House will not accept.

### **House's jurisdiction**

There is an infinite variety of subjects on which petitions are presented, requesting (as they must) the House to take some action to ameliorate a problem. The receipt of such petitions by the House depends upon its competence to take action on the matter of complaint. As Parliament's legislative competence within New Zealand is untrammelled, there is no problem with this requirement as far as petitions seeking action within New Zealand are concerned. Petitions with the motive of reversing Government policy can be received, for it is always open to Parliament to legislate for such a change. However, where action is requested to be taken outside New Zealand, different considerations apply.

Where the action called for outside New Zealand is merely an expression of New Zealand's foreign policy, petitions may clearly be addressed to such a matter. On the other hand, a petition calling for changes to the domestic law of a foreign State would not seek relief on a matter within the competence of the New Zealand Parliament and it is doubtful whether such a petition could be received. There have been no New Zealand examples of petitions being considered on such grounds. In the United Kingdom, petitions from abroad have been received, provided

---

<sup>24</sup> SO 362.

<sup>25</sup> SO 375.

<sup>26</sup> SO 367(1).

<sup>27</sup> SO 367(2).

that, in accordance with established constitutional conventions, the subject of complaint relates to the action of British, rather than foreign, authorities.<sup>28</sup> Similar considerations would apply to New Zealand's relations with foreign States and with those States with which it has a constitutional relationship (the Cook Islands, Niue and Tokelau).

Petitions may be received from persons outside New Zealand. Indeed the Standing Orders contemplate that a petition may be received from a foreign corporation.<sup>29</sup> At the time of the passage of the Western Samoa (Citizenship) Bill 1982, a petition against the bill was presented on behalf of persons resident in Western Samoa<sup>30</sup> and the question of its receivability was considered. Most of the petitioners were, in fact, New Zealand citizens. However, regardless of whether they were New Zealand citizens, the petition, it was concluded, was receivable in any case as it related to a matter (New Zealand citizenship) manifestly within the legislative competence of the New Zealand Parliament. A petition on the same subject some 20 years later sought to reverse the legislation.<sup>31</sup> Provided the subject of the petition is within the legislative competence of the New Zealand Parliament, the nationality or place of residence of the petitioners is irrelevant.

## Petitioners with legal remedies

A petition on a matter for which the petitioner has not exhausted legal remedies is not permitted.<sup>32</sup>

This rule is directed at persons with specific statutory rights to appeal or seek a review of the particular matter that is the subject of their complaint. A refusal of a resource consent by a local authority, for example, or an assessment to tax by the Commissioner of Inland Revenue gives the aggrieved citizen a statutory route to follow in each instance to challenge the decision. This must be utilised before a petition to the House should be considered. Not until all such appeal or review rights have been exhausted can a petition be received on a subject. Most appeal or review rights have time limits within which the appeal or review must be brought. The Standing Order barring petitions applies only where such rights are still alive. A potential litigant who sleeps on these rights and allows the time limit to expire without invoking them no longer has such rights and is therefore not debarred by the Standing Orders from petitioning the House. However, he or she will undoubtedly have weakened the case for relief by acting in such a way, for the House is likely to be unsympathetic towards a petitioner who failed to use the appeal or review procedures without good reason.

Almost all administrative decisions can now be challenged by an application for judicial review. This is a general procedure, not a right of review of a particular proceeding. Nor does it involve a rehearing of the matter on its merits. It is concerned with the legality, rather than the merits, of the decision—for example, whether correct procedures were followed or whether improper factors were taken into account in reaching the decision. The fact that a petitioner could possibly apply to the High Court under these procedures does not preclude a petition to the House.<sup>33</sup> Nor does the Standing Order requiring petitioners to have exhausted their legal remedies require a petitioner or other person to embark on litigation of a speculative nature, such as a civil action for damages or other relief, before a petition may be received. Only where Parliament has prescribed a specific avenue for addressing the petitioner's complaint in legislation is the rule on remedies engaged.

<sup>28</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 486–487.

<sup>29</sup> SO 366.

<sup>30</sup> (9 September 1982) [1982] JHR 190.

<sup>31</sup> Government Administration Committee Petition of Dr George Paterson Barton Vaitoa Sa and 100,000 others (20 May 2004) [2002–2005] AJHR I.5C.

<sup>32</sup> SO 371(a).

<sup>33</sup> (1989) 499 NZPD 11081–11082 Burke.

If a legal remedy exists for the subject matter of the petition, the fact that the person possessing the right to invoke that remedy is not the petitioner is irrelevant. The petition will still not be in order. Thus a person with a legal remedy cannot have the matter raised in a petition by the expedient of someone else petitioning the House on their behalf.

The opportunity to make a submission to a select committee on a bill is not a legal remedy at all (although it may be regarded as a political remedy). Consequently, it is possible to present a petition relating to a bill before the House even though the petitioner could have made a submission on the bill.<sup>34</sup>

Finally, Parliament in creating alternative legal remedies has occasionally expressly saved the right to petition the House.<sup>35</sup> In such a case the statutory remedy does not preclude a petition on that matter, even though it has not been pursued by a petitioner with the statutory right to do so.

### **Petitions on matters within the Ombudsmen's jurisdiction**

Petitions from persons who have not sought the Ombudsmen's assistance where the subject matter of the petition is within the competence of the Ombudsmen are not in order.<sup>36</sup>

This prohibition was introduced in 1967, five years after the office of the Ombudsman was created. It was clear that that office would deal with many complaints similar to those coming before the House by way of petition. Indeed, the creation of an Ombudsman could be a factor in the continuing decline in the number of petitions with a sole petitioner seeking redress of a private grievance. The intention of a formal rule requiring petitioners to try the Ombudsmen first if their petitions could be dealt with by that office is not to deny in all circumstances the citizen's right to petition the House but merely to require that the statutory machinery that has been specially erected for the resolution of such problems is tried first. Conversely, the right to petition the House is not a ground on which the Ombudsmen can refuse to investigate a complaint.<sup>37</sup>

### **Petitions on a matter already dealt with**

It is not in order to re-petition the House on a subject that has already been dealt with by an earlier petition, unless substantial and material new evidence has become available since the earlier petition was considered.<sup>38</sup> This rule applies only to earlier petitions presented during the term of the current Parliament. Matters dealt with in a previous Parliament can be revisited by way of petition.

A petition that has been finally considered by the House cannot be reopened in the absence of compelling evidence. Furthermore, such evidence must be new; it must not be evidence that was available when the petition was first heard but which the petitioner or the petitioner's advisers decided not to use. A claim that new evidence exists must be substantiated to the Speaker's satisfaction before a similar petition is allowed to proceed.

The rule preventing the presentation of a second petition on the same subject operates only where the first petition has been finally dealt with by the House. Thus, if a petition is withdrawn without a report on its merits having been made, or an earlier petition is still before a select committee and has not yet been reported to the House, a subsequent petition with the same subject matter is not prohibited.

---

<sup>34</sup> (1989) 502 NZPD 13500 Burke.

<sup>35</sup> See, for example: Treaty of Waitangi Act 1975, s 9 (claims to the Waitangi Tribunal).

<sup>36</sup> SO 371(b).

<sup>37</sup> Ombudsmen Act 1975, s 17(1)(a).

<sup>38</sup> SO 371(c).

## Petitions relating to judges

There are restrictions on petitions relating to judges. A petition cannot contain a reflection on the conduct of a judge.<sup>39</sup> Such reflections would not be permitted in the course of debate and cannot be introduced into the House in the form of a petition. Where a person has a concern about the conduct of a judge, their first resort must be to make a complaint to the Judicial Conduct Commissioner.<sup>40</sup> Where the House does have a role in the removal of a judge (in the case of High Court judges) the appropriate method of initiating such a procedure is by giving notice of motion, not by petition; and a petition calling for the removal of a High Court judge from that office, or another office that the judge holds by reason of being a High Court judge, is not in order.<sup>41</sup>

## PRESENTATION OF PETITIONS

### Members' responsibilities

Petitions are presented to the House by members. No member is under a legal duty to present a petition, even one from a constituent of the member.<sup>42</sup> Nor does the House oblige a member to present a petition.<sup>43</sup>

Members are enjoined to take care that a petition they are asked to present complies with the Standing Orders.<sup>44</sup> Members cannot divest themselves of the initial responsibility of scrutinising petitions. If they feel any doubt as to the authenticity of signatures, for instance, they would be abusing the confidence reposed in them by the House were they to go ahead and present the petition.<sup>45</sup> Nevertheless, members are not required to check, and vouch for, the authenticity of every signature on a petition.<sup>46</sup> In practice, most members consult the Office of the Clerk for advice on whether the petition is in order.

It was formerly a rule that petitions were presented by the member for the electorate in which the petitioner or principal petitioner resided or had his or her headquarters.<sup>47</sup> Given that only about half the House is composed of electorate members, this is no longer the case. Petitioners can ask any member to present a petition on their behalf. If a petition is sent directly to the Clerk, the Clerk approaches the local electorate member to present it.

The fact that a member presents a petition does not signify that the member agrees with it. A member may not present a petition from himself or herself, or a petition to which he or she is a signatory.<sup>48</sup> The presenting member must certify that he or she is presenting it.<sup>49</sup> It was formerly customary that the Speaker did not present petitions, but this custom related to a time when the member presented the petition physically in the House. As this is no longer the case, the Speaker presents petitions like any other member.

### Scrutiny of petitions

Petitions are often forwarded directly by petitioners to the Office of the Clerk, in draft, before the petitioners commence to promote them and when they have been completed. Other petitions may be given to members at various stages of their promotion. The members forward them to the Office of the Clerk. All petitions received by the Clerk are perused for compliance with the Standing Orders relating

<sup>39</sup> (1912) 161 NZPD 401–402 Guinness.

<sup>40</sup> Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004, s 11.

<sup>41</sup> (1957) 313 NZPD 1818–1819, 1863–1864 Oram.

<sup>42</sup> *Chaffers v Goldsmid* [1894] 1 QB 186.

<sup>43</sup> (1983) 451 NZPD 925 Harrison; (1989) 502 NZPD 13500–13501 Burke.

<sup>44</sup> SO 368(1).

<sup>45</sup> (1889) 66 NZPD 271 O'Rorke.

<sup>46</sup> (1983) 451 NZPD 924–925 Harrison.

<sup>47</sup> (1991) 516 NZPD 2494 Gray.

<sup>48</sup> SO 368(2).

<sup>49</sup> SO 368(1).

to the form and type of petitions that may be received. If a petition does not fully comply with these rules it may be possible for the petitioner to correct any defect, and an effort is made to find a way to do this. In the case of a petition from an individual or few persons, this may mean the petitioner creating a new petition that complies with the rules. In the case of a defective petition with a substantial number of signatures attached to it, it may not be practicable for the petitioner to contact the signatories again and get them to sign a new petition. Often, in such a case, a new petition is created referring to the fact that that number of persons had signed a defective petition on the subject. A similar approach is taken where signatures have been collected for an online petition that could not otherwise be accepted.

In these ways most of the potential irregularities relating to petitions can be dealt with before their formal delivery to the Clerk for presentation to the House.

### **Method of presentation**

A petition is presented by being formally delivered to the Clerk by a member. This may be done on any working day, or no later than 1 pm on a sitting day.<sup>50</sup> If the House is sitting under urgency no petitions may be presented until it adjourns. However, when the House rises after sitting under urgency, petitions may be presented up to 1 pm on that day if the House sits again that day, or during the remainder of the day otherwise.

### **Acceptance of petitions**

Most questions relating to the acceptability of petitions are resolved during the interactive process of scrutinising petitions, which involves petitioners, members and the Office of the Clerk. Any petition the Clerk considers to be irregular is not accepted for presentation to the House and is returned to the member concerned.

Ultimately, the Speaker is the judge of whether a petition is acceptable. A petition may be ruled out of order by the Speaker even after it has been formally presented to the House. Indeed the select committee that examines a petition may comment on its acceptability,<sup>51</sup> and invite the Speaker to reconsider whether it complies with the Standing Orders, but no select committee may itself refuse to accept a petition.

### **Announcement of presentation**

A list is compiled of petitions presented since the House last sat and that appear to be in order, which is read out to the House by the Clerk at the time for the announcement of the presentation of petitions (part of the first item of business each day).<sup>52</sup> For this purpose petitions with the same or similar requests are consolidated, with only the names of the principal petitioner of each petition and the subject matter of the request being read out. A note confirming each petition's presentation with a précis of the request is made available on the Parliament website.

## **REFERRAL TO A SELECT COMMITTEE**

A petition that is in order and has been presented stands referred to a select committee immediately. For this purpose it is allocated by the Clerk to the most appropriate select committee for consideration and report.<sup>53</sup> From that point, the petition is in the possession of the committee.

<sup>50</sup> SO 369(1).

<sup>51</sup> Justice and Electoral Committee Petition 2002/47 of Gray Eatwell (18 December 2003) [2002–2005] AJHR I.22B at 771.

<sup>52</sup> SO 369(2).

<sup>53</sup> SO 370.

The House no longer has a specialist select committee to consider petitions. Until 1962 the House had two such committees, one dealing with petitions prepared by petitioners whose surnames began with the letters A to L, and the other for those from petitioners with surnames beginning M to Z. From 1962 to 1985 there was one Petitions Committee, although petitions could be referred to other committees too. In practice this committee had about half of the petitions referred to it.

Special committees established solely to examine a petition are rare. The last occasion on which a special select committee was set up to consider a petition was for the Lake Manapouri petition in 1970. If a special select committee is to be set up to consider a petition, this must be done on motion in the House; it is beyond the powers of the Clerk. The Clerk may only refer petitions to committees that have already been established. Subject to this constraint, all select committees may have petitions referred to them unless their terms of reference specifically preclude this.

The Clerk will allocate a petition to the committee whose terms of reference relate most closely to the issue raised by the petition, without regard to whether it is politically appropriate or expedient for that committee to consider it. Any related business (such as a bill) that a committee has before it is a valid consideration in deciding which committee to refer a petition to. However, it is not appropriate to anticipate or speculate on business that might be referred to a committee in the future in deciding which committee to refer a petition to.

Given the common recent practice of petitions being addressed in support of or opposition to legislation before the House, it is usual to refer such a petition to the committee considering the bill, so that it can be dealt with at the same time as the committee considers the bill. The House has ordered that the Clerk must allocate any petition relating to the New Zealand Security Intelligence Service or the Government Communications Security Bureau to the statutory Intelligence and Security Committee.<sup>54</sup>

A committee cannot refuse jurisdiction on a petition that has been referred to it, but it can recommend to the House that a petition be re-referred to another committee that it considers to be more appropriate to examine the petition.<sup>55</sup> A petition can be transferred by a committee to another committee if the other committee agrees to accept it. A committee has refused to accept the transfer to it of a petition before another committee.<sup>56</sup>

## CONSIDERATION BY SELECT COMMITTEE

Once a petition has been referred to a particular select committee it is delivered into the custody of the clerk of that committee.

### Form of committee's consideration

The committee is required to deal with the petition and report it back to the House, but the extent of the consideration to be given to it is entirely over to the committee. A committee will typically follow certain well-established steps when it commences its consideration of a petition.

All Government departments that are considered to have some official interest in the subject matter of the petition would usually be sent a copy of its request and asked to make a submission on it for the benefit of the committee. A department approached in this way may decide it would be more appropriate for another department to respond to the committee.<sup>57</sup>

<sup>54</sup> (18 February 2015) [2014–2017] JHR 90–92.

<sup>55</sup> Government Administration Committee *Petition 2002/121 of Denise Allen Powell and 522 others* (27 August 2004) [2002–2005] AJHR I.22C at 614–615.

<sup>56</sup> Ibid, at 614.

<sup>57</sup> Finance and Expenditure Committee, report on petition recommending removal of excise tax on diesel fuel oil (1 June 1989) [1987–1990] AJHR I.4D at 4.

There is a presumption that the principal petitioner will be asked if he or she wishes to tender any written evidence in support of the petition or, if the petition itself already sets out the grounds fully, whether he or she wishes to add any written comments. Informal deadlines are set for the receipt of these written submissions. Committees may decide not to invite written submissions if they are dealing with a large number of petitions.<sup>58</sup>

If the committee decides to hear evidence on the petition, a time is fixed for the hearing. The petitioner and the department may be shown copies of each other's submissions (if any) before the hearing if the committee decides to follow this course. The petitioner or principal petitioner, the member who presented the petition and the Government departments involved are formally advised of the date and time of the hearing, and each department involved is asked to nominate an officer to attend. With the majority of petitions the receipt of evidence is confined to these persons or bodies. In the normal course no attempt is made to seek submissions more widely, although committees may accept submissions from persons or organisations not directly concerned with the petition.

However, on occasion committees will go further in gathering evidence on petitions. In 1970 the public was specifically invited to submit evidence to the select committee considering the petition opposing the raising of the level of Lake Manapouri.<sup>59</sup> A select committee that had before it several petitions against the closures of post offices combined them for the purposes of its consideration and conducted an inquiry into the effects of post office closures on rural localities, travelling to those places to hear evidence.<sup>60</sup> Another committee considering a petition seeking restrictions on liquor advertising received 54 written submissions on it and heard oral evidence from 10 parties.<sup>61</sup> A committee has engaged a specialist adviser to assist it with its consideration of a petition.<sup>62</sup> One committee, in addition to inviting submissions from certain individuals, also received submissions from people in a relevant community, and heard evidence in Wellington by a simultaneous video link to multiple locations inside and outside New Zealand.<sup>63</sup> The general rules applying to select committees, such as that forbidding a committee from inquiring into a specific allegation of crime, apply to any select committee during consideration of a petition.<sup>64</sup>

The rural post offices inquiry was a case in which the receipt of a number of petitions on a particular subject sparked off a wider inquiry than is normal with petitions. Consideration of petitions by select committees can inform and affect the performance of committees in their other roles of carrying out inquiries and annual reviews and of considering Estimates.

Committees have an express statutory power to refer a petition, or any matter to which a petition refers, to an Ombudsman for report.<sup>65</sup> In such a case, the Ombudsman is required to investigate the matter referred (so far as it is within the Ombudsman's jurisdiction) and to report back to the committee. Committees have made sparing use of their powers under this provision. A committee may

<sup>58</sup> Standing Orders Committee *Report of the Standing Orders Committee* (July 2014) [2011–2014] AJHR I.18A at 32.

<sup>59</sup> (1970) 370 NZPD 4930–4931.

<sup>60</sup> Communications and Road Safety Committee, interim report on effect of Post Office closures on rural communities (8 December 1988) [1987–1990] AJHR I.2B; and Communications and Road Safety Committee, report on effect of Post Office closures on rural communities (16 May 1989) [1987–1990] AJHR I.2C.

<sup>61</sup> Commerce and Marketing Committee *Alcohol Advertising in New Zealand* (16 June 1988) [1987–1990] AJHR I.1A.

<sup>62</sup> Commerce Committee Petition 2002/6 of John Andrew Dickson (20 June 2003) [2002–2005] AJHR I.22B at 38.

<sup>63</sup> Government Administration Committee Petition of Dr George Paterson Barton Vaitoa Sa and 100,000 others (20 May 2004) [2002–2005] AJHR I.5C.

<sup>64</sup> Health Committee Petition 2002/111 of Deborah Coddington and 19 others (26 May 2004) [2002–2005] AJHR I.22C at 691.

<sup>65</sup> Ombudsmen Act 1975, s 13(4).

also request the Parliamentary Commissioner for the Environment to report to it on any petition before the committee the outcome of which may have a significant effect on the environment.<sup>66</sup>

## Procedure before the committee

At the hearing before the committee, the member who presented the petition may introduce the petitioner to the committee but does not usually play any other part in the hearing. Whether a member who has signed a petition takes part in the committee's consideration of it is a matter for him or her to decide. The committee cannot exclude the member, but the member may voluntarily stand aside.<sup>67</sup> The committee receives oral evidence from the petitioner and if necessary from the Government departments concerned. This supplements any written evidence already supplied. After an address from the petitioner (witness), members of the committee, in turn, question the petitioner on the matter before them, like other witnesses before select committees. Any departmental witnesses who give evidence are treated similarly. A petitioner or principal petitioner may be accompanied by associates who may also comment or answer questions at the invitation of the committee.

In the case of petitions relating to a bill before the committee, consideration of the petition is not differentiated from consideration of the bill. The petition is akin to evidence on the bill and is treated as such by the committee. If a petitioner wants to make a personal appearance in such a case, a hearing may be arranged in the same way as for any other witness.

Following the hearing of evidence, the committee considers and deliberates on the petition. (In some cases a committee may invite a witness to remain to assist it during its consideration of the petition.) Deliberation, in which the committee determines the terms in which it will report back to the House on the petition, is the final stage in the committee's examination of the petition. Whether the committee proceeds to deliberate immediately is entirely over to the committee itself. Where the issues are complex, deliberation may be postponed. At the conclusion of the committee's deliberation, a report is adopted for presentation to the House.

## REPORT

There is no prescribed form to which a report on a petition must conform. It is a matter for the committee to determine. In fact, most reports on petitions are presented in a similar form to reports on any other inquiries that the committee concerned may carry out. It has previously been common for committees to report petitions to the House with a pro forma report that does not substantively address the petition subject matter, but committees are now expected to include reasoning in their reports.<sup>68</sup>

A committee may report on more than one petition in the same report, but only if the petitions are associated with each other—for instance, because they are identical or relate to the same issue.

It is the practice to make a single report on a bill and on any petitions relating to that bill that have been referred to the committee. Thus, in 1989, in respect of the Radiocommunications Bill and the Contraception, Sterilisation, and Abortion Amendment Bill, the reports on those bills also included the committees' reports

---

<sup>66</sup> Environment Act 1986, s 16(1)(d).

<sup>67</sup> See: "Dalziel pulls out of Ellis probe" *The Press* (11 March 2004); Justice and Electoral Committee, report on petitions 2002/55 and 2002/70 (8 August 2005) [2002–2005] AJHR I.22D at 644.

<sup>68</sup> Standing Orders Committee Report of the Standing Orders Committee (July 2014) [2011–2014] AJHR I.18A at 32.

on, respectively, 604 and 956 petitions relating to the bills.<sup>69</sup> Petitions about the latter bill were still being received as it was reported back to the House, and the Speaker warned members that further petitions would not be in order, as the House had finally dealt with petitions on the bill in receiving the committee's report on the first 956 petitions lodged on it.<sup>70</sup> Committees may also deal with petitions, and report on them, along with other related business.<sup>71</sup> A select committee's judgement on a petition, applying political criteria to it, may be different from that of a court on the same subject, applying legal criteria to it.<sup>72</sup>

The report is presented in the same way as any other select committee report, by delivery to the Clerk on any working day but no later than 1 pm on a day on which the House sits.<sup>73</sup> Its presentation is announced to the House by the Clerk at its next sitting along with any other select committee reports presented that day.<sup>74</sup>

Reports on petitions are not set down for consideration by the House on any particular day and specific debates on them are rarely held. The Business Committee has power to direct that a report on a petition be set down for consideration as a Members' order of the day.<sup>75</sup>

## LAPSE OF PETITIONS

There are always petitions that have been referred to select committees but, because of lack of time, are not considered and reported back to the House by the end of the parliamentary session. At the conclusion of a Parliament all business before the House or its committees lapses or dies.<sup>76</sup> Such business can be reinstated in the next Parliament.

Where a petition lapses and is not reinstated, a second petition with the same subject matter can be presented to a subsequent Parliament.

## RESPONSES TO RECOMMENDATIONS

Following the presentation of a report on a petition from a select committee, the clerk of the committee advises the petitioner or the principal petitioner of the nature of the committee's report.

Until 1967 no further parliamentary action was required. The committees' reports were (and still are) binding on no one, and no one was required to answer for whether they were to be actioned. In 1967, however, a Standing Order was adopted requiring the Government to report to the House on what action, if any, it had taken to implement recommendations made to it on petitions. This requirement for a Government response has now been absorbed into the general rule that the Government must, not more than 60 working days after a select committee report, report to the House responding to recommendations in the report directed to it.<sup>77</sup> This also applies to reports on petitions.

Whenever a select committee presents a report on a petition that includes

<sup>69</sup> (29 November 1989) [1987–1990] 2 JHR 2058–2072, (5 December 1989) [1987–1990] 2 JHR 2094–2107; Planning and Development Committee, report on Radiocommunications Bill and related petitions (5 December 1989) [1987–1990] AJHR I.11 at 6–26; and Social Services Committee, report on Contraception, Sterilisation, and Abortion Amendment Bill and related petitions (29 November 1989) [1987–1990] AJHR I.13 at 629.

<sup>70</sup> (1989) 503 NZPD 13870–13871 Burke.

<sup>71</sup> Justice and Electoral Committee, report on 2002/03 financial review of the Abortion Supervisory Committee and related petition (5 March 2004) [2002–2005] AJHR I.21B at 11.

<sup>72</sup> Contrast, for example, Transport Committee, report on the petition of Federated Farmers of New Zealand (17 December 1992) [1991–1993] AJHR I.26A, with *Federated Farmers of New Zealand (Inc) v New Zealand Post Ltd* HC Wellington CP661/92, 1 December 1992.

<sup>73</sup> SO 249(1).

<sup>74</sup> SO 249(3).

<sup>75</sup> SO 250(2).

<sup>76</sup> Constitution Act 1986, s 20(1)(b).

<sup>77</sup> SO 252(1).

recommendations addressed to the Government, the Office of the Clerk sends a copy of the report to the Cabinet Office. The Cabinet Office then co-ordinates a consideration of the committee's report within the Government. This involves the appropriate Minister preparing a response to the recommendations for endorsement by the appropriate Cabinet committee and then by Cabinet.

Once a response has been agreed upon, the Minister in question communicates it directly to the petitioner and presents it to the House.<sup>78</sup> Such responses are published as parliamentary papers in the Appendices to the Journals of the House. While only the Government is obliged to respond to recommendations in a committee's report on a petition, in one instance a local authority that took action following a report on a petition invited the committee to review the actions it had taken. The committee accepted the invitation and used its power to initiate an inquiry to do so.<sup>79</sup>

In exceptional cases, a favourable recommendation from a committee on a petition can be the catalyst for the Government to agree to law changes or the paying of compensation to the petitioner.<sup>80</sup>

## RECORDS OF PETITIONS

Petitions are held in the custody of the Clerk once they have been reported back to the House by the select committee to which they were referred. As House records they are subject to the same custody regime as any other records. (See p 86.) However, petitions often include the names and addresses of individuals. Therefore, general access to such personal information attached to a petition is not accorded even after a petition has been reported to the House.<sup>81</sup>

---

<sup>78</sup> Cabinet Office *Cabinet Manual 2008* at [7.108]–[7.111].

<sup>79</sup> Local Government and Environment Committee, report on inquiry into response of Manukau City Council (9 August 2001) [1999–2002] AJHR I.22B at 1106–1121.

<sup>80</sup> See, for example: “Former soldier to get compensation” *The Dominion* (22 February 1997) (\$20,000 compensation paid following a committee's recommendation).

<sup>81</sup> Office of the Clerk “Access to petitions” (policy approved by the Speaker, 15 June 1988).

## CHAPTER 37

# Papers

In the Chamber of the House, in front of the Speaker’s Chair, there is a large Table at which the Clerk of the House sits when the Speaker is in the Chair, and from which the Chairperson presides when the House resolves itself into a committee of the whole House. The numerous documents presented to the House in the course of each session by Ministers and the Speaker on behalf of Government departments, public agencies and other organisations are physically laid on this Table (in a receptacle that was a gift from the Legislative Assembly of Western Samoa in 1955). They remain there until the end of the year. The documents that have been presented to the House are available for inspection by members, but the importance of presenting a document is figurative rather than physical. It is what the process of presenting a document to the House may lead to, through its publication and wider circulation and through action by the House itself, that is important. Some statutes speak of documents being “laid” before the House, rather than “presented” to it. In modern parliamentary practice there is no difference between laying a document before the House and presenting it to the House.<sup>1</sup> The current preference is generally to refer to “presenting” a document to the House. A more colloquial term, with the same meaning, is “tabling” it.

The House’s collective term for the various documents presented to it is “papers”. They include the annual reports of Government departments, and the annual reports and financial statements of many other organisations created by Act of Parliament. They also include regulations made by the Governor-General or any Minister of the Crown under the authority of an Act of Parliament; indeed, this is the largest single category of papers presented to the House. Finally, papers include miscellaneous letters, typescripts and photocopies of documents presented by members with the House’s permission during the course of debates or other proceedings in the House.

## REQUIREMENTS TO PRESENT PAPERS

### Statute

The requirement to present a paper to the House most commonly arises from a statutory obligation.

All legislative instruments and all disallowable instruments must be presented to the House not more than 16 sitting days after the day on which they are made.<sup>2</sup>

<sup>1</sup> *R v Immigration Appeal Tribunal, ex parte Joyles* [1972] 3 All ER 213 (QB).

<sup>2</sup> Legislation Act 2012, s 41.

The annual reports of all departments must be presented to the House,<sup>3</sup> as must the annual reports of all State enterprises<sup>4</sup> and most Crown entities.<sup>5</sup> In addition, other organisations falling outside these general categories, such as the Offices of Parliament, are required by legislation applying particularly to them to present an annual report to the House.

But statutory requirements to present papers are not by any means confined to annual reports. Statutes require many other types of document to be laid before the House. They include ministerial directions and notices,<sup>6</sup> information on departments' and Crown entities' strategic intentions<sup>7</sup> and the Government's annual financial statements.<sup>8</sup> During the course of each year, Ministers present over 1,200 papers to the House. Some 500 of these are delegated legislation; the remainder are annual reports and miscellaneous documents, including notices and statements that statutes require to be presented.

In most cases of departmental and other annual reports required by statute to be presented to the House, the statute requires the report to be made in the first instance to the responsible Minister. Often the statute imposes a time limit for the submission of the report to the Minister. It may be expressly provided that the same Minister to whom the report is made must present it to the House, but usually it is merely understood that this will be done. In any event, one Minister (if that Minister is a member of the Executive Council) may usually act for another in the exercise of statutory powers.<sup>9</sup>

The statute may also require presentation to be made to the House as soon as practicable or within a specified time after the Minister's receipt of the report.<sup>10</sup> The Public Finance Act 1989 requires that information on departmental strategic intentions not be presented in the three-month period before the Minister delivers the Budget.<sup>11</sup>

There are a few statutory officers or bodies with a close parliamentary connection who, under the statutes governing them, report directly to the House without the mediation of a Minister. These reports are presented by the Speaker. The reports falling into this category are those of the Office of the Clerk, the Parliamentary Service Commission, the Parliamentary Service, the Ombudsmen, the Controller and Auditor-General, the Parliamentary Commissioner for the Environment and the Abortion Supervisory Committee.

## **Command**

The Governor-General may command any Minister to present a report to the House. Before the statutory obligation to present an annual report was extended to all departments, it was traditional for some departments to be commanded to present an annual report. The only reports presented by command of the Governor-General now are the reports of royal commissions or commissions of inquiry.

## **Orders for returns**

The House may order a paper of a public or official nature<sup>12</sup> that is in the possession of another person to be produced to it. Disobedience of such an order could be

3 Public Finance Act 1989, s 44(1).

4 State-Owned Enterprises Act 1986, s 17(2)(b).

5 Crown Entities Act 2004, s 150.

6 See, for example: Social Security Act 1964, s 5(2) (duty to present binding Ministerial directions).

7 Public Finance Act 1989, s 39(4) (departments); Crown Entities Act 2004, s 149(3) (Crown entities); State-Owned Enterprises Act 1986, s 17(2)(a) (State enterprises).

8 Public Finance Act 1989, s 31(2).

9 Constitution Act 1986, s 7.

10 See, for example: the Public Finance Act 1989, s 44(2)(a) (departmental annual reports must be presented within 15 working days).

11 Public Finance Act 1989, s 39(2).

12 *Egan v Willis* (1996) 40 NSWLR 650 (CA) at 663 per Gleeson CJ.

treated as contempt of the House. A paper produced in response to an order is known as a return. A number of returns were ordered by the House up to 1961, but since then the practice has fallen into disuse, as information formerly obtained from the Government in this form can be more conveniently elicited by way of a question in the House, from the departmental and other reports presented by Ministers or by way of an official information request. The House's power to order certain returns may be delegated to a select committee as the power to send for persons, papers and records.

Notice must be given of a motion for a return. Such a notice is set down as a Government or Members' order of the day depending upon whether it was given by a Minister or a non-Minister. Where the document that the House desires to have produced is in the hands of the Governor-General, its production is sought by means of an address.

### **Other orders requiring presentation**

The Standing Orders in one instance require the Government to produce and then present a report to the House rather than to present a document that already exists. The Government, within 60 working days of a select committee report being made to the House, must present a paper responding to any recommendations in the report that are directed to it.<sup>13</sup> (In another instance, the Standing Orders acknowledge that the Government will present certain types of international treaties to the House.<sup>14</sup>)

## **VOLUNTARILY PRESENTING PAPERS**

During a sitting any member, including a Minister, may seek leave to table a document.<sup>15</sup> This is done by raising a point of order. Members (except for the Speaker) do not have a right to table a document during a sitting of the House; they always require the leave of the House, and it is entirely up to members whether they object and thereby deny permission for a document to be tabled.<sup>16</sup>

The Speaker has reminded members that seeking leave to table a document is not an occasion for making a debating point; it is an opportunity to produce for the House a document (such as a letter) that other members may not have seen. Therefore, members should not seek leave to table a document readily available as part of the House's proceedings, in legislation, from Government websites, or from the websites of newspapers and broadcasters. Availability on the internet does not of itself prevent leave being given to table a document, as the sheer volume of material may limit its effective availability.<sup>17</sup>

A document tabled must be from an authentic source and not the member's own views of facts or a document annotated to support their views. Tabling of documents prepared by members or by parties' research units is not envisaged.<sup>18</sup> The Standing Orders Committee has provided guidance on what constitutes a document in this context. It is considered to be a piece of text, or text and graphics. It is usually printed on paper, but could also be conveyed in electronic form, depending on the circumstances.<sup>19</sup>

A member wishing to table a document must seek leave for himself or herself. A member cannot seek leave for another member to table a document.<sup>20</sup> It is a convention that where leave is sought during question time, this is done at the end

<sup>13</sup> SO 252(1).

<sup>14</sup> SO 397.

<sup>15</sup> (1982) 443 NZPD 328 Harrison; (1992) 531 NZPD 12297 Gray.

<sup>16</sup> (1978) 417 NZPD 811; (1992) 531 NZPD 12297 Gray.

<sup>17</sup> (1996) 554 NZPD 11689 Tapsell; (19 February 2013) 687 NZPD 7919 Carter.

<sup>18</sup> (10 February 2011) 670 NZPD 16680 Smith.

<sup>19</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B.

<sup>20</sup> (1990) 506 NZPD 1291 Burke; (1990) 510 NZPD 3491–3492 Burke.

of the time for supplementary questions related to the particular question.<sup>21</sup> In seeking leave a member must identify the source of the document, say when it was published or produced, and inform the House of its nature.<sup>22</sup> This must be done briefly, but accurately, so that members know precisely to what they are being asked to agree.<sup>23</sup> Subject to control of the length of the point of order by the Speaker, members are entitled to seek clarification of the leave that they are being asked to give and this can involve obtaining assurances about the document's contents.<sup>24</sup> A member giving such an assurance must be careful to do so accurately, to avoid any implication that the member intended to mislead the House.

If leave is given for a document to be tabled, the member who sought leave must table the document by the end of the sitting day.<sup>25</sup> In tabling a document a member must be careful to deliver to the Clerk only the document in respect of which leave was granted. The Clerk will refuse to accept a document that is apparently outside the terms of the leave. If a member deliberately attempted to table a document that was different from the leave granted, a contempt would be committed.<sup>26</sup> A document cannot be manufactured after leave has been granted.<sup>27</sup>

Ministers generally present papers that they are statutorily bound to present, but they may also present other papers that they have no obligation to present, such as policy proposals set out in documents commonly referred to as white papers or green papers. Such papers may be tabled by leave or presented to the House by the Minister in the normal way.<sup>28</sup> Whether Ministers present papers in respect of which there is no statutory obligation is a matter for them to decide. But it is expected that important documents will be presented as a matter of course.<sup>29</sup>

## METHOD OF PRESENTATION

### General

The Speaker or a Minister presents a paper to the House by delivering it to the Clerk on any working day or on a sitting day before 1 pm.<sup>30</sup> If the House is sitting under urgency, no papers may be presented until it adjourns. But when the House rises after sitting under urgency, papers may be presented up to 1 pm on that day if the House sits again the same day, or during the remainder of the day otherwise.

The Minister's office ensures that sufficient printed copies of each paper for distribution to members are delivered to the Bills Office. The Clerk reads out the titles of any parliamentary papers presented to the House at the time for the announcement of the presentation of papers, which is part of the House's first item of daily business.<sup>31</sup>

In the case of regulations, the Government arranges for bundles of regulations to be forwarded at intervals to the Clerk of the House for a record to be made of their presentation to the House.

### Speaker

As well as presenting papers in the general way described above, the Speaker may and often does present papers to the House.<sup>32</sup> Following the reading by the Clerk of the list of papers that are to be published under the authority of the House, the

<sup>21</sup> (8 April 2008) 646 NZPD 15412 Wilson; (10 February 2009) 652 NZPD 1059 Smith.

<sup>22</sup> (5 May 2015) 705 NZPD 3131 Carter.

<sup>23</sup> (1998) 573 NZPD 13062 Revell (Deputy Speaker); (20 May 2003) 608 NZPD 5837 Hunt.

<sup>24</sup> (1999) 575 NZPD 14854 Kidd.

<sup>25</sup> SO 377(2); (18 February 2009) 652 NZPD 1401 Smith.

<sup>26</sup> (1999) 575 NZPD 14854 Kidd; (22 October 2009) 658 NZPD 7371 Smith.

<sup>27</sup> (18 February 2009) 652 NZPD 1402 Smith.

<sup>28</sup> SO 372(1).

<sup>29</sup> (2000) 587 NZPD 5673 Hunt.

<sup>30</sup> SO 372(1).

<sup>31</sup> SOs 373(2) and 66(1).

<sup>32</sup> SO 372(2).

Speaker may announce to the House any papers that he or she wishes to present. This is the way the Speaker presents reports from the Officers of Parliament. Such papers are published under the authority of the House.

## **Prime Minister's statement**

The Prime Minister is required to present the Prime Minister's statement in the House. The statement is published under the authority of the House.<sup>33</sup>

## **Budget papers and Estimates**

Because of the special confidential nature of Budget papers, the Minister, after delivering the Budget or introducing an Appropriation Bill, may present a paper relating to the Budget or the bill at that point in the sitting or at any earlier time on the same day.<sup>34</sup>

## **Deemed presentation**

In the case of a number of documents emanating from the Reserve Bank, statute provides that such papers "stand" referred to the House, thus effectively deeming them to have been presented without any further action.<sup>35</sup>

## **Official document quoted by a Minister**

A Minister (or a Parliamentary Under-Secretary to the Minister whose measure is under discussion<sup>36</sup>) who quotes from a document relating to public affairs must table that document if requested to do so by any member.<sup>37</sup>

When a member wants the Minister who quotes from an official document to table it, the proper time to require this is at the time the quotation is made. The member who requires the document to be tabled should therefore raise a point of order immediately, and not wait until the conclusion of the Minister's speech.<sup>38</sup> The Minister should comply with the requirement to table it as soon as it is made.<sup>39</sup>

If a Minister quotes from a copy of a document, then the copy is required to be presented to the House, not the original. Where a Minister has only an extract from an official document and quotes from the extract, only the extract is required to be tabled. There can never be any question of a Minister having to go away and procure an original or a complete document for tabling; all that is required to be tabled is what the Minister physically possesses in the Chamber when the quotation is made.<sup>40</sup> When a Minister quotes from a page in an official document there is an obligation to table that page if so requested, but there is no obligation to table the entire book or publication of which it is part.<sup>41</sup>

The document must be an official document: that is, a formal piece of writing connected with the Government of the country, or which has passed between officers of the Government and Ministers, between one officer and another,<sup>42</sup> or between the Government and other persons.<sup>43</sup> It must emanate from within the Government. So when a member of the public wrote a letter to a Minister about a bill before the House and the Minister quoted from the letter, the Minister was not obliged to table it as it was not an official document.<sup>44</sup> A Minister's personal

<sup>33</sup> SO 354(3).

<sup>34</sup> SO 335.

<sup>35</sup> Reserve Bank of New Zealand Act 1989, ss 15(3) (policy statements), 53A(3) (performance of the bank and the Governor), 162E (final statement of intent) and 163(3) (annual report).

<sup>36</sup> (1971) 374 NZPD 3007 Jack.

<sup>37</sup> SO 376.

<sup>38</sup> (1951) 295 NZPD 89 Oram.

<sup>39</sup> (1980) 429 NZPD 573 Harrison.

<sup>40</sup> (1979) 422 NZPD 397 Harrison; (1998) 570 NZPD 11042 Kidd.

<sup>41</sup> (9 February 1999) 224 PD HR (Aust) 2193–2194.

<sup>42</sup> (1901) 119 NZPD 1017–1018 Guinness (Deputy Speaker).

<sup>43</sup> (1970) 365 NZPD 669 Jack.

<sup>44</sup> (1968) 358 NZPD 3294–3295 Jack.

note of discussions that have taken place is not an official document, for an official document must convey a message or memorandum from one person to another.<sup>45</sup> A Minister's notes used to answer questions are similarly not an official document.<sup>46</sup> An official's note of such discussions that is passed on to the Minister would however be an official document. If there is any doubt, the Speaker asks the Minister if the document that has been quoted from is an official document and accepts the Minister's reply.<sup>47</sup>

A Minister does not have to produce the document if he or she states that it is of a confidential nature.<sup>48</sup> The Speaker accepts without demur a Minister's assurance that a document is confidential, though the fact that the Minister has quoted from it suggests that it can safely be made public, and this makes it difficult for a Minister to resist a demand for its tabling.

Once an official document has been tabled, any member may see it.<sup>49</sup> Even though a Minister declines to table a document by reason of its confidentiality, the Minister may make it available privately to the member who asked for it.<sup>50</sup>

Members other than Ministers who quote from a document are under no obligation to table that document.<sup>51</sup>

## RECORD OF PRESENTATION

All papers presented to the House by the Speaker or by Ministers are recorded by the Clerk in the Journals. The notation shows the title of the paper, and the shoulder number under which the paper is classified in the case of a parliamentary paper. A similar record is made of papers tabled by leave or official documents quoted by Ministers and tabled under the Standing Orders. These are also retained in the Clerk's possession as part of the records of the House and can be seen by any member.

## PUBLICATION OF PAPERS

In the first years of parliamentary government in New Zealand, most papers presented to the House were not presented in printed form. The House would order the most important of the papers presented to it to be printed for the information of members and the public. The consequent delay in having a paper printed after its presentation to the House was irksome, and a committee of the House recommended that the Government have important documents that it intended to present to the House printed before the House met so that printed copies would be available immediately on presentation.<sup>52</sup>

Today, virtually every paper that is presented to the House is already in printed form. To reflect this fact, the House no longer orders papers presented to it to be "printed". The Speaker designates certain papers presented by Ministers or the Speaker as parliamentary papers.<sup>53</sup> Such papers are published under the authority of the House, with the administrative and legal consequences that authority confers.<sup>54</sup> It is also House practice to publish under the authority of the House those papers deemed to be presented under the Reserve Bank Act 1989 that meet the criteria for parliamentary papers.<sup>55</sup>

<sup>45</sup> (1973) 388 NZPD 5101 Whitehead.

<sup>46</sup> (18 March 2010) 661 NZPD 9617 Smith.

<sup>47</sup> (1970) 365 NZPD 669 Jack.

<sup>48</sup> SO 376.

<sup>49</sup> (1893) 79 NZPD 183–184.

<sup>50</sup> (1968) 358 NZPD 3607–3608.

<sup>51</sup> (3 December 2003) 614 NZPD 10372 Hunt.

<sup>52</sup> (3 August 1858) [1858] 1 JHR 148.

<sup>53</sup> SO 373(1).

<sup>54</sup> Parliamentary Privilege Act 2014, ss 17 and 20, discussed at p 730.

<sup>55</sup> Reserve Bank of New Zealand Act 1989, ss 162E (final statement of intent) and 163(3) (annual report).

## Parliamentary papers

Papers presented that are required for, or to communicate, the proceedings of the House are designated parliamentary papers and are published under the authority of the House. They include papers that are referred to select committees, for instance, but do not include regulations, the publication of which, like that of Acts, is the responsibility of the Chief Parliamentary Counsel under the authority of the Government and subject to direction from the Attorney-General.<sup>56</sup> Parliamentary papers are subject to the control and direction of the Speaker regarding their printing and publication.

The House may also resolve that papers be published under its authority. This has been done where a member has tabled documents by leave and wishes to distribute the documents more widely under the protections provided by publication under the authority of the House.<sup>57</sup> The Speaker may also direct that any paper presented to the House be translated into and printed in another language.<sup>58</sup>

The Office of the Clerk periodically publishes information on the Parliament website on the administrative arrangements to be followed in preparing and presenting papers to the House.

From 1856 to 1999 parliamentary papers were bound in the Appendix to the Journal for the session in which they were presented. These volumes are a most valuable source for official reports that may not be preserved in a readily available form elsewhere. However, the sessional nature of the publication led to delays in its availability as sessions ceased to be confined to one year and came to extend to two or three. Therefore, from the start of the 46th Parliament in December 1999 to the end of 2014, most parliamentary papers were published annually in a series known as *Parliamentary Papers*. The annual publication of parliamentary papers has now been replaced with publication of the full text of parliamentary papers on the parliamentary website on the day the papers are presented.

## Classification of parliamentary papers

From the first production of the Appendix to the Journal in 1856, the parliamentary papers were grouped into broad subject divisions. This was done by assigning to each paper a “shoulder number” of a letter prefix followed by a numeral, printed on the top right-hand corner of the outside cover of the paper. The letter indicates the subject group (Finance, Communications, and so on) and the number identifies the particular paper within the group. A paper may also have a letter suffix following the numeral if it is closely related to another major paper in the series.

This style of classification remains in use today for the *Parliamentary Papers* series. The current class descriptions are as follows:<sup>59</sup>

- A. Political and Foreign Affairs: foreign and defence policy and conferences, constitutional matters
- B. Finance, Revenue, etc.: financial and economic policy including Budget, government expenditure and debt, revenue collection, government banks, insurance, superannuation funds, building and friendly societies, etc.
- C. Environment and Primary Production: the development and protection of land resources, primary industries
- D. Energy and Works: power—electricity and gas; public works, conservation and use of water and soil

<sup>56</sup> Legislation Act 2012, s 6.

<sup>57</sup> (18 February 2014) 696 NZPD 15974–15976 (papers presented by leave by Hon Shane Jones); (1994) 540 NZPD 1568, and *Papers presented, by leave, to the House of Representatives by the member for Tauranga, the Honourable Winston Peters, on 16 March 1994* (8 June 1994) [1993–1996] AJHR A.6 (also known as the “wine-box documents”); SO 373(4).

<sup>58</sup> SO 375.

<sup>59</sup> [1973] AJHR, Introduction; see also JO Wilson “New Zealand parliamentary papers—changes in shoulder numbers” (1974) 37(3) *New Zealand Libraries* 131.

- E. Welfare and Justice: education, social welfare, pensions, justice, prisons, liquor licensing and trusts, health, Māori and Pacific Island affairs
- F. Communications: posts, broadcasting, and transport by sea, land and air
- G. General: culture, trade, industry research, labour and employment, defence, police, etc.
- H. Commissions, Royal Commissions: reports of commissions and committees of inquiry
- I. Select committees
- J. House papers.

Since December 1999 the sessional Appendix to the Journals has consisted solely of select committee reports (the “I” papers) together with other papers closely related to the operations of the House—such as Government responses to select committee recommendations and the Attorney-General’s reports under the New Zealand Bill of Rights Act (the “J” papers).

### **Errors in parliamentary papers**

Occasionally, a report that has been presented to the House and published under the authority of the House is found to contain an error. No alterations can be made in a parliamentary paper without the House’s sanction after it has been presented.<sup>60</sup> If the error is serious enough, an erratum slip may be prepared. The erratum slip must itself be presented to the House and published under its authority to make it part of the paper already presented to the House.

### **Non-parliamentary papers**

Many papers presented to the House are not published under the authority of the House. These are thus non-parliamentary papers, and typically consist of papers presented for the information of the House, rather than for use in, or reporting on, proceedings of the House. The only official copy possessed by the House of a non-parliamentary paper is the copy physically presented to it. The printing and publication of such a paper is not subject to the Speaker’s control.<sup>61</sup> The department or agency responsible for any paper makes its own arrangements for general publication and public supply.

### **Preparation and printing**

The Speaker determines the standard page format and style of parliamentary papers. The Office of the Clerk advises departments and other reporting entities of these requirements and publishes this information on the Parliament website. The reporting entity provides the Office of the Clerk with hard copies for parliamentary use and an electronic copy of parliamentary papers for publication on the Parliament website.

The Office of the Clerk allocates the shoulder numbers for parliamentary papers. Most of them are the same from year to year for any particular paper, although as a result of recent legislation, a new body may be required to present a report that is a parliamentary paper to the House, thus necessitating the allocation of a new shoulder number. Alternatively, an existing body may be abolished and the shoulder number formerly attached to its reports may become vacant. As papers are already in print when presented to the House, shoulder numbers are allocated in anticipation of presentation. The fact that a report bears a shoulder number does not make it a parliamentary paper until it has been designated as such and published under the authority of the House.

---

<sup>60</sup> Public Accounts Committee Report on alteration in the Public Works Statement 1892 (6 September 1893) [1893] AJHR I.6B at ii.

<sup>61</sup> (1970) 369 NZPD 4468 Jack.

An obligation (statutory or otherwise) to present a report to the House is regarded as implying that the report should not be publicly disclosed before it is made available to the House. In exceptional cases the statute may provide that the report cannot be released before it is presented to the House.<sup>62</sup> The improper interception and publication of such a report or the breaking of an embargo with the same effect could be treated by the House as a contempt,<sup>63</sup> but the House is unlikely to do this unless there are other aggravating features.<sup>64</sup>

As reports can now be presented to the House on any working day (which excludes only weekends, public holidays and the period 25 December to 15 January), the need to present the report to the House first is unlikely to hold up its general release. However, while Parliament is dissolved, has expired or is in recess, it is not possible to present a paper. To avoid the public release of reports being unduly delayed during such a period, there is provision for a number of reports to be published in advance of their presentation to the House if Parliament is not in session when they must otherwise be presented.<sup>65</sup> The reporting entity concerned is responsible for ensuring that this is done. The reports must then be presented to the House as soon as the next session of Parliament commences.

Where there is no obligation to present a report to the House (for example, regarding most royal commission reports), the report or the contents of the report can be published before being presented.<sup>66</sup>

## **LEGAL STATUS OF PAPERS PRESENTED TO THE HOUSE**

### **Parliamentary papers and other authorised communications**

At common law it is no defence to an action for defamation that the statements complained of were published by order of the House.<sup>67</sup> There are however statutory protections. In 1856 the General Assembly enacted legislation to confer protection on such publications, following closely the provisions of the Parliamentary Papers Act 1840 (UK).<sup>68</sup>

These statutory protections were continued in an amended form in the Legislature Amendment Act 1992. This Act applied the protections to any “report, paper, votes, or proceedings published by order or under the authority of the House of Representatives”, and to the publication of any copy of any such publication.<sup>69</sup> The Act’s provisions were reviewed by the Privileges Committee in 2009, and again in 2013.<sup>70</sup> The committee found that the statutory protections were not sufficient to cover all forms of communication of the proceedings of the House and of related documents, and so the 1992 Act’s provisions were replaced with wider provisions in the Parliamentary Privilege Act 2014.

The Parliamentary Privilege Act 2014 extends the statutory protections to the communication, under the House’s or a committee’s authority, of proceedings in Parliament, or of a document relating to proceedings in Parliament. The Act also provides protection for the communication of a copy of an “authorised parliamentary communication”: that is, any document relating to proceedings in

<sup>62</sup> See, for example: Conservation Act 1987, s 6C(4).

<sup>63</sup> (1977) 412 NZPD 1587 Jack.

<sup>64</sup> Standing Orders Committee *On the law of privilege and related matters* (12 December 1989) [1987–1990] AJHR I.18B at [19]–[21].

<sup>65</sup> Public Finance Act 1989, ss 31(3) (Government’s annual financial statements) and 44(4) (departmental annual reports); Crown Entities Act 2004, s 150(4) (Crown entities’ annual reports); State-Owned Enterprises Act 1986, s 17(2A).

<sup>66</sup> (1905) 132 NZPD 593 Guinness.

<sup>67</sup> *Stockdale v Hansard* (1839) 112 ER 1112 (QB).

<sup>68</sup> Privileges Act 1856.

<sup>69</sup> Legislature Amendment Act 1992, s 2.

<sup>70</sup> Privileges Committee *Question of privilege relating to the exercise of the privilege of freedom of speech by members in the context of court orders* (28 May 2009) [2008–2011] AJHR I.17A; Privileges Committee *Question of privilege concerning the defamation action Attorney-General and Gow v Leigh* (11 June 2013) [2011–2014] AJHR I.17A.

Parliament and communicated under the House's or a committee's authority.<sup>71</sup> The terms "proceedings in Parliament", "document", and "communication" are defined widely by the Act, and extend in a flexible and durable technology-neutral way to information (including audio or audio-visual data) however it is recorded and transmitted.<sup>72</sup> The statutory protections apply to parliamentary papers (documents presented to the House and published under its authority), as well as to such parliamentary publications published under the authority of the House as select committee reports, the *Journals*, *Hansard* and Order Papers. Persons such as officers of the House communicating under the authority of the House proceedings or a document relating to them, and persons who, although not acting under its direct authority, communicate a copy of an "authorised parliamentary communication" (that is, a document relating to proceedings in Parliament and communicated under the House's or a committee's authority) are entitled to have a court or tribunal stay any legal action before them against such persons in respect of that communication.

The stay jurisdiction is exercised by the Speaker of the House. A stay of proceedings in respect of the communication, under the House's or a committee's authority, of proceedings or of a document relating to them is obtained by lodging with the court or tribunal a certificate signed by the Speaker, stating that the person communicated the proceedings or the document relating to them under the authority of the House or a committee. A stay of proceedings may also be obtained for the communication of a copy of an authorised parliamentary communication.<sup>73</sup> This is deemed to dispose of the action finally.<sup>74</sup> These stay provisions apply in respect of any legal proceedings, civil or criminal. They extend protection to the distribution and reproduction of documents communicated under the authority of the House or of a committee, including documents circulated in the course of parliamentary business, for example, to members of Parliament.

There are parallel statutory provisions conferring absolute privilege in defamation for parliamentary statements and publications. Absolute privilege applies to proceedings in Parliament and live broadcasts of them. It also applies to the publication, by or under the authority of the House, of any document; and the publication, by or under the authority of the House, or under the authority of any enactment, of an official or authorised report of proceedings in Parliament (as defined in section 10 of the Parliamentary Privilege Act 2014).<sup>75</sup> Absolute privilege in defamation also extends to the publication of a correct copy of any such document or report.<sup>76</sup>

The Parliamentary Privilege Act 2014 also provides a qualified immunity from any civil or criminal liability. The qualified immunity protects a delayed communication (for example, a delayed broadcast or webcast) to the public, by any communicator, of proceedings in Parliament, if the communication is not made under the authority of the House or of a committee. The qualified immunity also protects the communication of a fair and accurate report of proceedings in Parliament, and the communication of a fair and accurate extract from, or summary of, specified authorised parliamentary communications. The qualified immunity therefore applies to the publication of a fair and accurate report on, or extract from or summary of, a parliamentary paper communicated under the House's authority. Qualified immunity is not available if the plaintiff or prosecutor proves that the

<sup>71</sup> Parliamentary Privilege Act 2014, s 17.

<sup>72</sup> Parliamentary Privilege Act 2014, ss 5(1) and 10; Debra Angus "Legislating for Parliamentary Privilege: The New Zealand Parliamentary Privilege Act 2014" (2015) 83 *The Table* 8 at 15.

<sup>73</sup> Parliamentary Privilege Act 2014, s 17(1).

<sup>74</sup> Parliamentary Privilege Act 2014, s 17(6).

<sup>75</sup> Defamation Act 1992, s 13(1), (2), and (3)(a) and (c). *Hansard* is no longer published under the authority of an enactment. The Legislature Act 1908, s 253A (enacted in 1992) was repealed, and not replaced, by the Parliamentary Privilege Act 2014. See now, however, SO 9 (published official report of proceedings).

<sup>76</sup> Defamation Act 1992, s 13(3)(d).

defendant communicator abused the occasion of communication (for example, by acting in bad faith or with a predominant motive of ill will).<sup>77</sup>

Neither the Parliamentary Privilege Act 2014 nor the Defamation Act 1992 protects expressly publications without the House's or a committee's authority. Where documents (for example, annual reports or reports of royal commissions) are published before their presentation to the House, they are not at the time published by order or under the authority of the House. Consequently, the statutory protections against legal liability would not appear to apply to protect any publication of a document before the document is presented to and published under the authority of the House.<sup>78</sup>

Communication under the authority of the House protects against any legal action brought in respect of publication of the document or publication of copies of it. However, this does not amount to a prohibition on all or any examination of the contents of such a document in legal proceedings. The contents of a report or other document prepared outside Parliament may be examined in legal proceedings in which they are relevant, even where their publication has taken place under the authority of the House. Nor does publication of a report under the authority of the House immunise a body outside Parliament from judicial review based on actions taken in the course of preparing that report.<sup>79</sup> The protection afforded by the Parliamentary Privilege Act 2014 is directed to the legal consequences following from publication only. It has a narrower scope of operation than the protection of proceedings in Parliament by the Bill of Rights 1688. (See Chapter 45.)

## Non-parliamentary papers

Papers presented to the House but not published under its authority are in a different position. The presentation of a paper to the House does not give it any particular legal protection if it is used or circulated outside parliamentary proceedings.<sup>80</sup> This applies even to papers presented to the House pursuant to a statutory obligation. It has been held that there was no defence to an action in defamation where a report presented to the legislature under a statutory obligation had been published outside the House. The publication of the report would have been protected only if the legislature had ordered its publication. The presentation of the report and what was said in the legislature at the time of presentation are absolutely protected under the general principles of parliamentary immunity. However, the contents of the report (not being a report emanating from the legislature or published under the authority of the House) are not protected in respect of general use.<sup>81</sup>

Presentation of a paper to the House is communication of it to all members of Parliament. The Clerk will make it available to members as of right and normally to other interested people too, such as members of the Press Gallery. But if the document contains material that it would be unlawful to publish, the Clerk may restrict access to members only. In these circumstances requests for access to the material are referred to the member who presented it.<sup>82</sup>

Members, in presenting a document, are not required to give any personal warranty about its contents. Nevertheless, the Speaker and the Clerk are entitled to take such steps as they consider proper to ensure that in handling the document they do not break the law.<sup>83</sup> So access to documents that were subject to a court order protecting their confidentiality was on one occasion denied (other than to

<sup>77</sup> Parliamentary Privilege Act 2014, s 18.

<sup>78</sup> See: *Isaacs & Sons Ltd v Cook* [1925] 2 KB 391 at 400 where the court expressly reserved any decision on that point.

<sup>79</sup> *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564.

<sup>80</sup> (1994) 539 NZPD 470 Tapsell; (1997) 558 NZPD 718 Kidd; (1997) 563 NZPD 4019–4020 Kidd.

<sup>81</sup> *Bruton v Estate Agents Licensing Authority* [1996] 2 VR 274 (SC).

<sup>82</sup> (18 February 2014) 696 NZPD 15975 Carter; (1994) 539 NZPD 470 Tapsell.

<sup>83</sup> (18 February 2014) 696 NZPD 15975 Carter; (1994) 540 NZPD 1029 Tapsell.

members) until such time as the House ordered their publication.<sup>84</sup> On another occasion, a tape had been presented to the House and the Speaker became aware that it might disclose the contents of a conversation in breach of the Crimes Act 1961. He informed the House that requests from non-members for access to the tape would be referred to the member who presented it.<sup>85</sup> Similarly, requests from non-members for access to a letter tabled by a member containing potentially defamatory statements were referred to the member who presented it.<sup>86</sup>

Where members or any other people have access to documents presented to the House but not published under its authority (for example, by it, or by its order), the use of material from those documents outside parliamentary proceedings is at the members' or other people's risk. Neither parliamentary privilege nor the Parliamentary Privilege Act 2014 confers any protection from legal liability. The Speaker has circulated information to members and the press advising them of this position.<sup>87</sup>

## PURPOSE OF PRESENTING PAPERS

The main purpose of presenting papers is to make them known to the world in the most public way possible. Requirements in enactments that specified regulations and reports be presented to the House undoubtedly help to draw them to the attention of members and of others who observe and report on parliamentary proceedings.<sup>88</sup> The aim of the reporting requirement has occasionally been made explicit in the legislation providing for presentation. Under the Education Act 1989, a copy of a document executing a transfer of Crown assets to an educational institution must be presented to the House, and such presentation is itself deemed to be notice to any third party.<sup>89</sup> The formal promulgation of papers in the House is to be encouraged, but the sheer volume of the papers makes it difficult for members and others to absorb their significance.

Direct consequences in terms of the House's own procedures flow from the presentation of papers. Instruments that are presented as papers facilitate the following parliamentary actions: regulations that have been tabled thus become available for scrutiny by the Regulations Review Committee;<sup>90</sup> the annual reports presented by departments, Offices of Parliament, Crown entities, State enterprises and other public organisations are available to select committees for carrying out review of their operations;<sup>91</sup> reports of Offices of Parliament,<sup>92</sup> whole of government directions,<sup>93</sup> Bill of Rights reports,<sup>94</sup> and specified civil defence emergency management documents<sup>95</sup> stand referred to select committees for consideration; and certain economic and fiscal reports stand referred to the Finance and Expenditure Committee.<sup>96</sup> In these and many other ways, the papers presented to the House contribute directly to the work that it and its committees carry out.

<sup>84</sup> (1994) 539 NZPD 470 Tapsell; and *Papers presented, by leave, to the House of Representatives by the member for Tauranga, the Honourable Winston Peters, on 16 March 1994* (8 June 1994) [1993–1996] A.6 (also known as the “wine-box documents”).

<sup>85</sup> (1997) 558 NZPD 718 Kidd.

<sup>86</sup> (18 February 2014) 696 NZPD 15975 Carter.

<sup>87</sup> (1997) 563 NZPD 4019–4020 Kidd.

<sup>88</sup> See, for example: Legislation Act 2012, s 41.

<sup>89</sup> Education Act 1989, s 206(5)(c). See also Crown Research Institutes Act 1992, s 26(2)(c), Southland Electricity Act 1993, s 18(2)(c), and New Zealand Antarctic Institute Act 1996, s 12(3)(b).

<sup>90</sup> SOs 3(1) (definition of “regulations”) and 318(1).

<sup>91</sup> SOs 344(2) and 345(3).

<sup>92</sup> SO 396.

<sup>93</sup> SO 393.

<sup>94</sup> SO 265(5).

<sup>95</sup> SO 394.

<sup>96</sup> SO 336.

## CHAPTER 38

# Responses to Adverse References

Members enjoy absolute protection from liability for things that they may say in debate.<sup>1</sup> This freedom of speech enables members to speak out in Parliament in the public interest without fear of legal repercussions. Although this is an essential adjunct of parliamentary democracy, persons (both individuals and other entities) outside the House who are strongly criticised in parliamentary debate have naturally felt aggrieved that the normal avenues of legal redress (such as an action for defamation) are not available to them to vindicate their reputations. Nor, until 1996, did the House have a specific procedure for allowing such persons to put their side of the story, although it was always open to an aggrieved person to petition the House over the matter.

The House is obliged under the New Zealand Bill of Rights Act 1990 to observe the principles of natural justice whenever its proceedings may be adverse to a person's interests.<sup>2</sup> In 1995, in order to fulfil this obligation, the House adopted a set of Standing Orders allowing anyone who is the subject of an attack that affects them adversely to apply to the Speaker to have their response to the attack entered in the parliamentary record.<sup>3</sup> This procedure recognises that the rights of individuals are important even though they are not ranked ahead of the public interest in the legislature's ability to exercise its powers freely.<sup>4</sup>

The procedure for applications for response is similar, though not identical, to one pioneered by the Australian Senate<sup>5</sup> and subsequently adopted in a number of Commonwealth legislatures. The responses procedure does not constitute a right of reply. It allows a person a right to apply to the Speaker for a response to be entered in the parliamentary record.<sup>6</sup> It does not guarantee that a response will be entered at all, or entered in the precise form that the applicant might wish. In each case, it is for the Speaker to judge whether it is appropriate that a response be made and if so the final form of the response.

1 See pp 722–723 regarding the privilege of freedom of speech.

2 New Zealand Bill of Rights Act 1990, ss 3(a) and 27(1).

3 Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 79–82. These Standing Orders were adopted with effect from 20 February 1996.

4 Privileges Committee *Question of privilege concerning the defamation action Attorney-General and Gow v Leigh* (11 June 2013) [2011–2014] AJHR I.17A at 22, 30–31, with reference to *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC).

5 (25 February 1988) [1987–1988] Journals of the Senate (Aust) 534–536 (Parliamentary Privilege Resolution 5, Protection of persons referred to in the Senate). See Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [11.12.1].

6 Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 81.

## ADVERSE REFERENCES

For the Standing Orders on responses to apply, a reference must be made in the House to a person that is capable of adversely affecting the person in some way or of otherwise damaging their reputation. In making an application to the Speaker for a response to be entered in the record, the applicant must claim to have been adversely affected or to have suffered damage to reputation as a result of the reference, and the Speaker must take into account the extent to which the reference is capable of doing so in determining whether to allow the response.<sup>7</sup> The procedure is not a means for persons outside the House to correct matters of fact or engage in the parliamentary debate. Anyone is at liberty to use news or social media channels for these purposes. It is an individual form of redress, not an official form of refutation. It exists to provide a means to redress reputational or other damage suffered as a result of parliamentary comment for which there would otherwise be no satisfactory avenue.

## THE OCCASION OF THE REFERENCE

The most obvious occasion on which an adverse reference may be made to a person outside the House is in the course of a debate. The House has some rules controlling such references, but they depend upon the judgement of the member making the reference. (See Chapter 16.) Persons may also be referred to in a motion or in the course of a question. In each case the House requires that a person be referred to in these contexts only if this is necessary to render the motion or question intelligible.<sup>8</sup>

While a reference to a person in the course of a debate or in a motion or a question may be in order, if it is sufficiently damaging to their reputation or other interests it may nevertheless be the subject of an application for a response.

The procedure is thus open to any person who is not a member and has been referred to in the House.<sup>9</sup> This does not necessarily mean that the reference must have been reported in *Hansard*, though if it is not the Speaker will need to be satisfied of the authenticity of the claimed adverse reference.<sup>10</sup> In the Australian Senate this has been taken to extend to references by senators speaking or otherwise using the procedures of the Senate, for example by tabling material. Thus the right to apply for a response has been applied in respect of an adverse reference in a paper tabled in the Senate.<sup>11</sup>

The Speaker has indicated to an applicant that a response could be made to a reference in a reply to a question for written answer.<sup>12</sup> The procedure is available only for adverse references in the House, not in select committees. Adverse references made at or to a select committee are the subject of their own response procedures. (See Chapters 22 and 23.)

## APPLICANT

The right to apply for a response is conferred on any “person” who is not a member of Parliament.<sup>13</sup> This includes any organisation,<sup>14</sup> such as, for example, a corporation.<sup>15</sup>

<sup>7</sup> SOs 159(1)(a) and 160(2)(b).

<sup>8</sup> SOs 101(2)(b) and 380(1)(a).

<sup>9</sup> SO 159(1).

<sup>10</sup> Response (11 September 2008) [2005–2008] AJHR J.3 at 2.

<sup>11</sup> Senate (Aust) Committee of Privileges [2010] 145 at [1.4]–[1.5].

<sup>12</sup> The application, which was made in 1997, subsequently was withdrawn.

<sup>13</sup> SO 159(1).

<sup>14</sup> SO 3(1), definition of **person**.

<sup>15</sup> (1997) 558 NZPD 706 Kidd.

A person cannot apply on behalf of another person, except in the case of an authorised officer applying on behalf of an organisation, or a counsel for a client.<sup>16</sup>

In Australia it has been accepted that a person who is not a resident can apply under the equivalent procedures; the protection is not confined to citizens or residents.<sup>17</sup> In Queensland, where a reference is made in the Legislative Assembly to a person in an official capacity, an application in that capacity will be accepted. Otherwise an application must be made in a private capacity and not submitted on departmental letterhead.<sup>18</sup>

Normally, the person making the application will have been named in the House. But the person need not actually be named, if he or she has been referred to in a way that makes the person readily identifiable.<sup>19</sup> But if no person is readily identifiable from the reference, a person cannot supply the identification by identifying himself or herself. The Speaker may consider a claim that the applicant is readily identifiable among a limited group of persons.

## APPLICATION TO THE SPEAKER

An application for a response must be made to the Speaker in writing within three months of the reference being made.<sup>20</sup> This is a strict time limit; the Speaker has no authority to extend it. An application may be made after the end of a term of Parliament, as the House is always in existence and its statutory obligation to observe the principles of natural justice is therefore continuous.<sup>21</sup> In this case, the period between the dissolution or expiration of the Parliament and the opening of the new Parliament is not counted when the Speaker is calculating the three-month time limit.

In the application, the applicant must expressly claim to have been adversely affected by the reference or to have suffered damage to his or her reputation as a result of it. The application must also include a draft of the response that the applicant requests to be incorporated in the parliamentary record.<sup>22</sup>

Every application must specify the particular words of the reference that is the subject of the proposed response. If the precise wording of the reference cannot be established, the Speaker cannot consider whether a response is “strictly relevant to the reference that was made”.<sup>23</sup> An application may deal with more than one adverse reference. In one case a response dealt with 31 claimed references.<sup>24</sup> Furthermore, a single application may be made from more than one applicant if each of them is named or identifiable from the reference, or if they are linked by more than one adverse reference.<sup>25</sup>

## CONFERRAL BY THE SPEAKER

The Speaker may confer with the member who made the reference to which the application relates.<sup>26</sup> Indeed, it is the invariable practice of the Speaker to refer any application to the member concerned for comment as soon as it is received,<sup>27</sup>

---

<sup>16</sup> The Speaker may seek assurance that an individual has authority to make the application. Response (8 November 2006) [2005–2008] AJHR J.3 at 2.

<sup>17</sup> Senate (Aust) Committee of Privileges [1997] 65.

<sup>18</sup> Legislative Assembly (Qld) Members’ Ethics and Parliamentary Privileges Committee [1998] 18 at [4.0].

<sup>19</sup> SO 159(1).

<sup>20</sup> SO 159.

<sup>21</sup> Constitution Act 1986, s 10(3); New Zealand Bill of Rights Act 1990, s 27(1); Response (20 March 2012) [2011–2014] AJHR J.3.

<sup>22</sup> SO 159(1).

<sup>23</sup> SO 159(3).

<sup>24</sup> Response (23 February 1999) [1996–1999] AJHR A.12.

<sup>25</sup> Response (2 August 2005) [2002–2005] AJHR A.12.

<sup>26</sup> SO 160(2)(a).

<sup>27</sup> (1997) 558 NZPD 706 Kidd.

although a member who has ceased to be a member since making the reference is not necessarily consulted.<sup>28</sup>

The reason for consulting the member is to allow the member to examine whether the application complies with the Standing Orders and to comment on the form of the proposed response, for example, its succinctness and relevance. It is not to allow the member to make submissions as to the accuracy of the reference.<sup>29</sup> The Speaker is not concerned with its accuracy in any case. While the Speaker takes account of relevant comments from the member who made the reference, and these comments may influence the form of the response that the Speaker allows, the comments themselves are not included in the response. The response is the applicant's response, not the member's comments on it.<sup>30</sup> However, the Speaker has permitted the inclusion in a response of an apology from the member concerned.<sup>31</sup>

The Speaker may also correspond with the applicant while considering the application, to elucidate it and discuss any amendment to the form of the response that the Speaker wishes to see made.<sup>32</sup>

## SPEAKER'S DETERMINATION

The Speaker determines whether in all the circumstances of the case a response should be incorporated in the parliamentary record.<sup>33</sup> The Speaker does not consider or judge the truth of the member's initial reference, nor of any response to it.<sup>34</sup> In either case any deliberate attempt to mislead the House (either directly or through the Speaker) could be treated as a contempt.

The Speaker considers whether the adverse reference is sufficiently serious to be capable of adversely affecting the applicant or damaging his or her reputation and thus warranting a response at all.<sup>35</sup> There is no expectation that every adverse comment in the House would lead to a response being incorporated in the parliamentary record. The application of the rules of natural justice should take account of the public interest in freedom of expression in the House and robustness of debate.<sup>36</sup>

If the applicant has claimed an adverse effect without stating the nature of the damage caused, the Speaker may consider whether the ordinary meaning that could be taken from the words used in the reference appears on the face of it to be damaging. The fact that a person finds a statement about themselves offensive does not of itself justify a response, but an offensive reference to a person's private affairs may have a significant adverse effect. A reference may result in a response if it alleges illegal activity, impropriety, or improper motives or influence. A general reflection expressing a member's opinion about a person's character, without an imputation of impropriety, may be an insufficient basis for a response. Involvement or participation in a political process or support for a political party is not of itself improper, unless a person's office or business carries a requirement for political impartiality.

When considering the extent to which a reference is capable of adversely affecting the applicant, the Speaker has applied a higher threshold to an organisation than would apply to an individual. Moreover, an organisation that is a Government

<sup>28</sup> Response (20 March 2012) [2011–2014] 16 AJHR J.3 at 2.

<sup>29</sup> (1997) 558 NZPD 706 Kidd.

<sup>30</sup> Ibid.

<sup>31</sup> Response (14 March 2001) [1999–2002] AJHR A.12.

<sup>32</sup> SO 160(2)(a).

<sup>33</sup> SO 160(1).

<sup>34</sup> SO 160(3).

<sup>35</sup> SO 160(2)(b).

<sup>36</sup> Philip A Joseph "Report to the Standing Orders Committee on Natural Justice" at 17, reproduced in Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 222.

department or agency can be expected to withstand a higher level of criticism than can a private organisation, as an aspect of its accountability to Parliament.

In considering all the circumstances of the case, the Speaker may have regard to the wider context in which the reference was made. Events outside the House may be relevant when the Speaker is weighing the adverse impact of the reference.<sup>37</sup> The nature of reports about the reference in news media may also be taken into account. In addition, the Speaker will consider the extent to which the injurious impact of the reference has already been addressed by subsequent contributions in the House.

If the Speaker decides that no response should be entered in the parliamentary record, the Speaker must inform the applicant accordingly.<sup>38</sup> In such a case there is nothing to prevent any member on a suitable parliamentary occasion (such as the general debate) expressing the applicant's dissatisfaction at the original reference and defending that person's reputation. Nor does a rejection by the Speaker preclude a petition on the subject.<sup>39</sup> But it would not be in order to criticise the Speaker's decision on the application.

Since the procedure commenced in 1996, 28 responses have been incorporated in the parliamentary record. Applications from 15 people have been declined or withdrawn.<sup>40</sup>

## FORM OF THE RESPONSE

If the Speaker agrees that a response should be entered in the record, its form must still be settled. Where an attack on an individual's reputation is related to his or her official capacity, the response may be made in that capacity. But if an attack has nothing to do with an office the person holds, a response in that capacity would not be permitted.

In determining the final form of a response the Speaker will take account of comments received from the member who made the reference.<sup>41</sup> The form of the response will depend to a large extent upon the initial attack. It must bear some relationship in length to the original reference. While it will often necessarily be longer than the attack, it must not be disproportionately so.<sup>42</sup> Material sent to the Speaker to support or authenticate a draft response is not included in the response itself unless it is necessary and strictly relevant. The purpose of forwarding such material is to support a response's being accepted for presentation, not to form part of the text of the response.

The Speaker cannot put words into the mouth of the applicant. The response must always be that of the person applying to make it. But the Speaker can refuse to allow a response to be presented unless it is amended to satisfy any objections to it that he or she has raised.<sup>43</sup> In practice, the Speaker provides a draft response that meets the requirements and follows the general form in which responses are incorporated, for the applicant to consider.

<sup>37</sup> For example: an application was accepted when the applicant and the member were rival candidates in an imminent local election. Response to reference (16 September 2010) [2008–2011] AJHRJ.3.

<sup>38</sup> SO 161.

<sup>39</sup> (1997) 561 NZPD 2532–2533 Kidd.

<sup>40</sup> Number of responses and declined or withdrawn applications given as at the end of the 50th Parliament (14 August 2014). Reasons for declining applications have included the following: application not made within three months of the reference; applicant not readily identifiable as the person referred to; particular words of the reference not identified; application related to matters not part of parliamentary proceedings; response seeking to participate in debate or to correct or dispute facts without claiming adverse effect; adverse reference not sufficiently serious to warrant a response; reference was free expression of the member's opinion.

<sup>41</sup> (1997) 558 NZPD 706 Kidd.

<sup>42</sup> Ibid.

<sup>43</sup> SO 162(2).

## PRESENTATION TO THE HOUSE

A response as approved by the Speaker is printed as a parliamentary paper and presented to the House by the Speaker at the time for presentation of papers. The response is published under the authority of the House and becomes part of its permanent record.<sup>44</sup> Responses are thus proceedings in Parliament communicated with the House's authority, for the purposes of the Parliamentary Privilege Act 2014.<sup>45</sup> A practice has developed for the response to be linked on the Parliament website to the *Hansard* transcript of the adverse reference in question.

Normally, on presenting a response the Speaker makes no statement to the House. The response speaks for itself. However, the Speaker may make additional remarks if there is something that he or she considers should be conveyed to the House.<sup>46</sup> The Speaker has taken the occasion to inform the House of significant procedural or interpretative issues that have arisen in the course of considering the particular application for response being presented. The fact that a response has been presented does not mean that members have to agree with it, nor does it preclude members commenting on the response on any suitable occasion. That is a matter for their judgement.<sup>47</sup>

---

<sup>44</sup> SO 162(1).

<sup>45</sup> SO 3(4); Parliamentary Privilege Act 2014, ss 5(1), 10(2)(d), 17 and 20.

<sup>46</sup> (1997) 561 NZPD 2532 Kidd.

<sup>47</sup> (20 October 2004) 621 NZPD 16302 Hunt.

## CHAPTER 39

# Questions

“Is it in contemplation by the Government to make any provision for reimbursing or compensating in land expenses incurred by families in bringing domestic servants to the Colony?” This question, addressed by Mr Hart to Mr Weld (a member of the Executive Council) on 22 June 1854, was the first question asked in the House of Representatives.<sup>1</sup> (The Government would give no undertaking on the matter.) Eighteen more questions were asked of Ministers that session in a procedure that was then entirely unrecognised by the Standing Orders and, indeed, was not clearly distinguishable from the ordinary motion procedure—questions at first being regarded as a form of motion. The practice ceased entirely the following year when there was no ministerial representation in the House. With the advent of responsible government in 1856, oral questions to Ministers were revived. As well as questions answered orally in the House, since 1903 it has been possible to lodge questions for written answer.<sup>2</sup> The practice has thus grown from such humble beginnings into a most important parliamentary industry, with nearly 41,000 questions answered during the course of the 50th Parliament.<sup>3</sup>

Nowadays, on each sitting day, Ministers can be observed fielding questions from members on widely diverse subjects. The question period offers members an opportunity to put potentially embarrassing questions to the Government and obliges the Government to respond publicly to them. The importance attached to questions is indicated by the fact that a question period is set aside for them in the House each day. During this period members address questions to Ministers, and Ministers, having had previous notice of such questions, give replies that may then be tested by further (supplementary) questions. Ministers have to answer supplementary questions to the best of their ability, drawing on their own knowledge of the subject and any supplementary information on it that their departments may have provided in anticipation of the original question being followed up. Unlike the practice in certain other legislatures, no questions are asked without previous notice of the question having been given to the person (usually a Minister) who is to answer it. The period of notice required varies depending on whether the questioner wants an oral or a written answer, and what type of oral question is being addressed.

1 (1854–1855) NZPD 121.

2 John E Martin *The House—New Zealand’s House of Representatives 1854–2004* (Dunmore Press, Palmerston North, 2004) at 121.

3 (31 July 2014) 700 NZPD 19791.

Questions are usually addressed to Ministers, but oral questions may be addressed to other members in certain circumstances. There are, however, many fewer questions to other members each year. Of the total number of questions answered each year, there are invariably more written questions than oral questions. For example, 38,297 written questions were lodged in 2011–2014, compared with 2,813 oral questions.<sup>4</sup>

## TYPES OF QUESTIONS

Questions may be oral questions to be answered in the House, or written questions to which the reply is published electronically.

An oral question to a Minister may be either an ordinary oral question (the category includes a supplementary question) or an urgent question. Oral questions are lodged during the morning of the day on which they are to be answered. Urgent questions can be lodged at any time up to the end of the question period, but they must meet a stringent urgency test to be admitted. Oral questions can be asked of non-Ministers, and there is no restriction on the number that may be lodged. There are no urgent questions to non-Ministers. A written question (which may be asked of a Minister or a non-Minister) is lodged electronically. The addressee has six working days to reply to it.

## NOTICE OF QUESTIONS

The idea for a question in the House may originate in many ways. A news report, a constituent's query, a chance remark by an acquaintance, an orchestrated campaign to gather information on Government actions (often following an official information request)—any of these may spark off a question. The point at which an idea for a question becomes a part of the proceedings of the House is when notice of the question is given to the Clerk of the House. There is no provision for the lodging of a joint question. Each question must come from a single member.<sup>5</sup> Any member of the House, including a Minister,<sup>6</sup> can lodge a question, except a member suspended from the service of the House. Questions can be directed to any Minister. There is no roster of Ministers specifying particular days on which questions can be addressed to them. Nor is there any special period set aside for questions to the Prime Minister.<sup>7</sup>

### Notice of oral questions

Members must give notice in writing of an oral question. The member submits a question on a form provided by the Clerk, signs it and delivers it to the Clerk between 10.00 and 10.30 am on a sitting day.<sup>8</sup> Only 12 questions to Ministers may be lodged each day.<sup>9</sup> Occasionally, fewer than 12 are lodged if a party does not utilise its allocation.

### Notice of urgent questions

To lodge an urgent question, a member must furnish a copy of the question marked “urgent question” to the Clerk, and a copy to the Minister to whom the question is addressed.<sup>10</sup> It is the member’s responsibility to have these two copies delivered within a reasonable time of each other, and a question cannot be asked, even if it is

<sup>4</sup> Ibid.

<sup>5</sup> (1969) 362 NZPD 1999–2000 Jack.

<sup>6</sup> (1988) 495 NZPD 8604 Burke.

<sup>7</sup> See Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 73–74.

<sup>8</sup> SO 381(1).

<sup>9</sup> SO 381(2).

<sup>10</sup> SO 388(1).

accepted as being urgent, if a copy has been submitted to the Clerk but not to the Minister.<sup>11</sup>

### **Notice of written questions**

For written questions, a system of electronic lodging and processing has been used since February 2003. Notices of questions for written answer may be lodged only in electronic form.<sup>12</sup> For this purpose members use a secured template system to communicate their written questions to the Office of the Clerk, affixing an electronic signature to authenticate the question.

The Speaker may authorise the lodging of written questions in hard copy form in exceptional circumstances, for example, if there were a failure of the electronic system.<sup>13</sup>

### **Signing notices of questions**

Every question must be signed by the member originating it or by another member on that member's behalf should he or she be unavailable.<sup>14</sup> The Speaker relies on the integrity of members in these circumstances as to whether they have given authority for questions to be lodged in their names.<sup>15</sup>

Notice of written questions must be signed by way of an electronic signature, by the originating member or by another member on the member's behalf.<sup>16</sup> The electronic signature takes the form of a timed and dated stamp identifying the user logged on to the system. It is not a replica signature. Only authorised users have log-on access to the system. It is not possible to lodge a notice unless the signature is affixed.

Electronic signatures may only be applied by members or under their direction. How members give authority for their signatures to be affixed is a matter for them. They may entrust staff with affixing electronic signatures to questions in their names.<sup>17</sup>

It would be a contempt for any other person to attempt to mislead the House by impersonating a member by using his or her electronic signature.<sup>18</sup>

### **Party co-ordination**

The parliamentary parties appoint members or staff to oversee the lodging of questions by their members; all oral and some written questions pass through their hands before being submitted to the Clerk. This allows each party to co-ordinate its approach to question time to ensure the questions the party considers important get priority. Party co-ordination is essential in respect of oral questions to Ministers, since the 12 questions allowed each day are allocated on a party basis. There are consequently no restrictions on how many questions may be lodged in the name of the same member provided the party has more than one question slot available to it. It is for each party to decide how it utilises the question slots allocated to it each day.

11 (11 August 2011) 674 NZPD 20564 Smith.

12 SO 382(3)(a).

13 SO 382(5).

14 (1973) 384 NZPD 2628 Whitehead.

15 (1994) 542 NZPD 2945–2946 Tapsell.

16 SO 382(3)(b).

17 (5 May 2004) 617 NZPD 12621 Hunt.

18 Standing Orders Committee *Interim report on review of Standing Orders: the publication of legislation and parliamentary information* (16 December 2002) [2002–2005] AJHR I.18A at 8.

## TIME FOR LODGING NOTICES OF QUESTIONS

### Oral questions

What are now referred to as oral questions were first devised in 1986. Before 1986 all questions for oral answer were lodged two or more days in advance. Between 1986 and 1995 a mixture of questions lodged two days in advance and questions lodged on the same day were permitted (the latter were called “questions of the day”). Since 1996 all oral questions have been lodged in the course of the morning of the day on which they are to be answered.

Notice of an oral question may be given between 10 am and 10.30 am on the day the question is to be asked.<sup>19</sup> When a sitting of the House is extended by urgency into a subsequent calendar day and the next sitting day is lost, there is no question time and so no oral questions. Notices of oral questions are often lodged during the morning of such a day just in case the House rises before 1 pm that day, and a new sitting day should allow the questions to be asked. And where oral questions are lodged for answer on a day that does not eventuate as a sitting day because urgency extends the previous sitting of the House or the House decides to adjourn for a period, the lodged questions are lost altogether. They can, however, be resubmitted by members, and the roster for questions that would have applied, had the day not been lost, is carried forward to the next sitting day. However, these scenarios are less likely now that the Business Committee may determine that oral questions may be taken at any time during a sitting that is extended by urgency.<sup>20</sup>

### Urgent questions

There is no prescribed time by which an urgent question has to be submitted in order to be considered for answer at the next sitting of the House, though it would have to be lodged before the end of question time to be considered for answer at that sitting. Urgent questions have in fact been handed in at the Table during question time itself, and some have been accepted in these circumstances.<sup>21</sup> However, the longer the member’s delay in submitting a question once he or she is in possession of the facts on which it is based, the less likely the Speaker is to be persuaded that it is in fact urgent.<sup>22</sup>

### Written questions

Notices of written questions may be given by 10.30 am on any working day during a session of Parliament.<sup>23</sup> (The Speaker may extend this time in exceptional circumstances, such as a failure of the electronic system for lodging questions.<sup>24</sup>) A working day includes any day on which the House is sitting under urgency. But notices may not be given after the last day on which the House sits each year or before the first sitting day in the new year.<sup>25</sup> There is no limit to the number of written questions that may be lodged on a single day, nor is there a limit to the number that may be lodged by an individual member on any one day, but the Business Committee has asked members to show restraint and the Standing Orders Committee reviews the overall volume of questions lodged from time to time.<sup>26</sup>

Written questions may only be lodged in electronic form<sup>27</sup> and must be signed by way of an electronic signature by the member or by another member on the

<sup>19</sup> SO 381(1)(b).

<sup>20</sup> SO 59(2); Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHRI.18A.

<sup>21</sup> (2000) 588 NZPD 6108 Hunt; (28 March 2013) 688 NZPD 9055 Carter.

<sup>22</sup> (1983) 454 NZPD 3750 Harrison.

<sup>23</sup> SO 382(1).

<sup>24</sup> SO 382(5).

<sup>25</sup> SO 382(2).

<sup>26</sup> Standing Orders Committee *Interim report on review of Standing Orders: the publication of legislation and parliamentary information* (16 December 2002) [2002–2005] AJHR I.18A at 8.

<sup>27</sup> SO 382(3)(a).

member's behalf.<sup>28</sup> How the electronic signature is affixed is a matter for the member to decide, as long as the member has authorised it. It does not have to be affixed by the member personally.<sup>29</sup>

## PROCESSING OF NOTICES

### Checking

Once lodged with the Clerk, all questions are checked for compliance with the Standing Orders. If a question is not in order as lodged, it is returned to the member concerned, or it may be accepted subject to amendment or authentication of a statement or quotation contained in it. Issues relating to the acceptability of a question can be raised with the Clerk at any time up to the commencement of question time.<sup>30</sup> They may lead to changes in the text of questions being made after their initial acceptance. The acceptability of a question can be challenged at any time up to its being asked in the House.<sup>31</sup> For instance, circumstances may change after it is initially accepted, or further information may become available indicating that it is in fact out of order.

Questions are not ruled out of order because they are ungrammatical.<sup>32</sup> Editing changes to questions (which can be made only by the Office of the Clerk and with the agreement of the member and Minister) are not made lightly, and relate only to questions of grammar or style, as for the editing of debates.<sup>33</sup> Where a Minister transfers a question to another Minister, any consequential changes can be made to the text of the question.<sup>34</sup>

### Publication

When all notices of oral questions for a particular day have been lodged and checked, Ministers' offices are advised and copies of the questions are distributed to them through Ministers' boxes in the Bills Office. The text of oral questions is published on the Parliament website at about 11.30 am, though questions are subject to amendment if doubts about their wording arise subsequently.<sup>35</sup>

A list of each day's oral questions is printed and distributed in the Chamber for that day. The text of the question as it appears on that paper is the official text to be answered in the House. Any change or discrepancy between that paper and any earlier electronic version (including that published on the Parliament website) is irrelevant.<sup>36</sup>

Written questions are distributed electronically to the Ministers to whom they are addressed shortly after they have been accepted, and then published electronically on the same day as they are received.<sup>37</sup>

Notices of urgent questions, because of the circumstances of their lodging, are not published at all.

## ALLOCATION OF QUESTIONS

Until 1996 the order in which oral questions were listed for answer depended upon a set of conventions designed to ensure equity for all sections of the House. Questions from different parties were intermixed so as to give all parties some regular prominence in the order in which they stood. This was especially

<sup>28</sup> SO 382(3)(b).

<sup>29</sup> (5 May 2004) 617 NZPD 12621 Hunt.

<sup>30</sup> (5 March 2003) 606 NZPD 3975 Hunt.

<sup>31</sup> (1997) 562 NZPD 3705 Kidd.

<sup>32</sup> (1975) 397 NZPD 1353 Whitehead.

<sup>33</sup> (1973) 384 NZPD 2625 Whitehead.

<sup>34</sup> (1998) 566 NZPD 7091 Kidd.

<sup>35</sup> *Ibid.*, at 3975–3976.

<sup>36</sup> (1996) 555 NZPD 12748–12749 Tapsell; (5 March 2003) 606 NZPD 3975–3976 Hunt.

<sup>37</sup> SO 382(3)(c)(i).

important as questions not reached on the day were answered in writing. Now all 12 oral questions are answered each day, and the Standing Orders provide for the Business Committee to determine the allocation and rotation of questions.<sup>38</sup>

The allocation of questions among the parties must be made on a basis proportional to party membership in the House.<sup>39</sup> However, for this purpose members who hold executive office (Ministers, Associate Ministers and Parliamentary Under-Secretaries) are excluded from the calculation of the number of questions available to Government parties.<sup>40</sup> That calculation having been made, the Business Committee approves a proportional allocation of question slots to parties and their rotation between parties and any independent members. These arrangements are prepared by the Office of the Clerk, for a cycle that will roughly equate to the annual sitting period.

An attempt is made to alternate between questions from Government party members and Opposition party members. Depending upon their size, each party will have an opportunity to lead off question time, and will also have to take its fair share of less prominent positions in the questions order. The Clerk advises members of the allocation of question slots before each sitting period commences.

Parties are at total liberty to exchange slots with other parties or to surrender a slot to another party.<sup>41</sup> These arrangements are made privately between the parties, with advice to the Clerk when a question is lodged in a different sequence from that on the roster prepared under the Business Committee's authority.

## TRANSFER OF QUESTION FROM ORAL TO WRITTEN

It is entirely over to the member who lodges a question whether to seek an oral or a written reply to it.<sup>42</sup> However, questions that require a long or technical reply or masses of statistical data are more suited to written answer. When it becomes apparent after an oral question has been submitted that the answer is likely to be longer or more complex than usual, the Minister answering the question may advise the Speaker accordingly and seek his or her indulgence. An oral question may also be transferred to a written question in such circumstances by leave of the House, but it must be the member who lodged the question (or a member acting on that member's behalf) who seeks such leave when the question is called. If leave is granted, the question is treated in every respect as if it had been submitted originally as a written question.

Alternatively, a member may ask the question in the House and then have the reply, by leave, delivered in writing. This is different from the situation in which the question is not asked orally in the House at all but is forestalled by being transferred for written answer. A reply to an oral question that has been asked may be delivered in writing, but this does not alter the question's status as an oral question and it continues to be treated accordingly in all respects.

## CONTENT OF QUESTIONS

The House has a number of rules on the content of questions. They have been considerably relaxed in recent years and have become much less prescriptive. Nevertheless, rules on content are designed to give a formal structure to the process of asking questions. Most of these rules are also reflected in the rules for the contents of answers to questions. The rules on content apply equally to all questions, including supplementary questions asked to oral questions. However,

<sup>38</sup> SO 381(2).

<sup>39</sup> SO 381(2).

<sup>40</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 75.

<sup>41</sup> Ibid.

<sup>42</sup> (1975) 401 NZPD 4715 Hunt (Acting Speaker).

the nature of the process of asking supplementary questions makes them more difficult to enforce.<sup>43</sup>

## **Conciseness**

Questions must be concise.<sup>44</sup> This is an important consideration with oral questions, where the Speaker must endeavour to get through all the questions on the Order Paper without allowing question time to run on unduly. There is a working rule that a member may not include more than two legs to an oral question.<sup>45</sup> However, the requirement for a question to be concise does not necessarily mean that it must be short. It means rather that it must be “spare” and not contain any material not strictly necessary to the bare asking of the question. The application of the other rules relating to content, particularly those about the factual content, of questions, also helps foster conciseness.

## **Statements of facts and names of persons**

Questions must not contain statements of facts and names of persons unless they are strictly necessary to render the question intelligible and can be authenticated.<sup>46</sup> Individuals should not be named in questions unless there is a need for the disclosure of the person’s name. Questions designed to injure a named individual without any compensating need to disclose the name will not be accepted.<sup>47</sup> While members may be strongly critical in debate of persons outside the House, care must be taken if members wish to include such reflections in their questions.<sup>48</sup> If it is necessary to name an individual, only relevant descriptive adjectives can be applied to that person (for example, identifying an office he or she holds).

The most common way to import factual statements into questions is by way of quotation. The practice of members including in a question a quote from a source such as a press release, *Hansard* or an official report is a long-standing and accepted one.<sup>49</sup> However, members are under two obligations if they use a quotation or make any other statement in a question. First, the quotation or statement must be truly necessary to the question being asked and, second, the member must provide authentication of it. Whether the statement or quotation is necessary will depend upon the terms of the question itself.

A particular kind of factual material that will be tested rigorously before it will be allowed in a question is any statement that reveals facts that have been suppressed by an order of a New Zealand court.<sup>50</sup> In exercising the discretion to allow the use of such material, the Speaker has to balance the privilege of freedom of speech against the public interest in upholding the judicial decision to suppress the matter. The Speaker also takes into account the relationship of mutual restraint between the legislature and the judiciary and the risk of prejudice to a matter before the courts.<sup>51</sup> A member would need to convince the Speaker that the public interest impelled the disregarding of the order to permit a question that infringed a court order.<sup>52</sup>

It is a contempt to knowingly make reference to a matter suppressed by a court order in any proceedings of the House contrary to the Standing Orders.<sup>53</sup>

<sup>43</sup> (1985) 462 NZPD 4549 Wall.

<sup>44</sup> SO 380(1).

<sup>45</sup> (1997) 559 NZPD 1194 Kidd; (1998) 567 NZPD 7887–7888.

<sup>46</sup> SO 380(1)(a).

<sup>47</sup> (1986) 470 NZPD 1261 Wall.

<sup>48</sup> (11 March 2009) 652 NZPD 1825 Smith.

<sup>49</sup> (1970) 369 NZPD 4078 Jack.

<sup>50</sup> SO 115(1).

<sup>51</sup> SO 115(3).

<sup>52</sup> (1988) 490 NZPD 5257 Terris (Acting Speaker).

<sup>53</sup> SO 410(y).

## Authentication

Members are not asked to verify the underlying truth of a quotation if they employ one,<sup>54</sup> but they must ensure that they are quoting accurately<sup>55</sup> and, if paraphrasing, that the paraphrase is a fair one.<sup>56</sup> However, if a statement is attributed to a member in a question and that member denies having made it, the member's word must be accepted and the question reconsidered.<sup>57</sup> Such a denial can be made on a point of order; it does not have to be made by way of a personal explanation.<sup>58</sup> Where the denial is raised on a point of order in the House, the Speaker may allow the question to be rephrased, but where the question is entirely based on an incorrect statement, the Speaker cannot allow it to proceed.<sup>59</sup> A question quoting another member that is challenged by that member can be resubmitted on a future day after having been authenticated, but it cannot be authenticated on the floor of the House.<sup>60</sup>

Apart from direct quotations, authentication of factual content in a question is also required as a matter of course in respect of paraphrases of statements or reports referred to in the question, the name of any person mentioned in it, and figures or numbers set out in the question. Factual material falling outside these areas does not have to be authenticated when lodging a question. The responsibility for citing facts accurately in a question devolves on the member lodging it.<sup>61</sup> But where any doubt arises, statements of fact included in a question must be authenticated.<sup>62</sup>

If a Minister notices a factual inaccuracy in a question, it should be referred back immediately to the member concerned through the Clerk's office. If the member cannot prove the accuracy of the question at this point the question must be rephrased or it will be disallowed. Whether a question is out of order as inaccurate depends upon the degree of inaccuracy. If it is patently inaccurate and the inaccuracy spoils the whole purpose of the question, it should be ruled out, but it is not necessarily out of order because it contains some inaccuracy.<sup>63</sup>

A member's duty to authenticate a statement or quotation is a duty owed to the Speaker, whose job it is to ensure that the Standing Orders have been complied with. It is not a duty owed to the House as such. A member is under no obligation to reveal sources to the House or to the Minister to whom the question is addressed by including such references in the question; indeed, such inclusion is discouraged as unnecessarily lengthening the question. But members using direct quotations are required to authenticate them to the Speaker as a condition of having their questions accepted.<sup>64</sup> Where a quotation is used, members must provide, on lodging their question, a copy of the material from which they are quoting.<sup>65</sup> A copy is not passed on to the Minister concerned as a matter of practice, although this may be done if the member consents.<sup>66</sup>

## Expressions

Certain classes of expressions or figures of speech are not permitted in questions:<sup>67</sup>

- arguments
- inferences
- imputations

54 (1966) 348 NZPD 2464 Algie.

55 (1951) 295 NZPD 156–159 Oram.

56 (1969) 362 NZPD 2076 Jack.

57 (2001) 596 NZPD 13100 Hunt.

58 *Ibid.*

59 (1963) 336 NZPD 1430–1431 Algie; (1998) 571 NZPD 11847 Kidd.

60 (1989) 499 NZPD 11335–11336 Burke.

61 (1995) 549 NZPD 8277 Tapsell.

62 (1975) 397 NZPD 1114 Whitehead.

63 (1975) 396 NZPD 538 Whitehead; (1999) 580 NZPD 19507 Kidd.

64 (1995) 549 NZPD 8277 Tapsell.

65 (1977) 414 NZPD 3489 Harrison (Acting Speaker).

66 (1979) 425 NZPD 2786 Harrison.

67 SO 380(1)(b).

- epithets
- ironical expressions
- expressions of opinion.

Questions are naturally interrogatory in nature, and thus not a vehicle for a member to argue a point. This can be done in a speech. Arguments are therefore not permitted in questions. Nor are inferences or imputations. A member cannot hint at something (whether disreputable or not) in the text of a question. The member must come out and say what is meant, and then the question can be judged on the grounds of necessity, accuracy and authenticity. Questions must not contain epithets (they are in any case unnecessary, and only tend to lengthen a question) or ironical expressions, though, of course, the best of the latter may escape detection. Such expressions could also be disallowed as not being necessary to render the question intelligible.

Questions must not contain expressions of opinion. The ban on a member injecting his or her own opinions into a question is intended to keep the member on the straight and narrow path of asking a question rather than indulging in debate on the issue. (Though the fact that the House does not wish to hear the opinion of a member asking a question does not imply that it does not wish to hear the opinion of the member answering it.)

### **Unparliamentary language**

Standing Orders prohibit certain references in questions on similar grounds to those prohibited in debate. Discreditable references to the House or to any member of the House, or any offensive or unparliamentary expressions, are not permitted.<sup>68</sup> The rules against unparliamentary language in debate also apply to questions. A member's personal explanation cannot be referred to or challenged in a question any more than it can be referred to or challenged in debate.

### **Seeking an opinion**

Questions may seek an expression of opinion from the member to whom they are addressed, provided that that member has responsibility for the matter about which the opinion is sought.<sup>69</sup> But a question may not seek a legal opinion.<sup>70</sup> A Minister is not a source of legal advice for members through the question process. Members are not prohibited from asking Ministers under what legal powers they or their departments are acting or purporting to act in particular cases. Such questions do not seek a legal explanation and justification of the action taken; they seek the Minister's or the department's perception of its lawful authority for taking that action, and presumably in all cases one does exist. Indeed the rule of law requires that it do so.<sup>71</sup> A question may also ask what policy or intent a particular law or legal power seeks to achieve.

### **Repeating a question**

There is no rule against repeating an oral question. If members wish to use their limited allocation of questions to re-ask a question, they are entitled to do so.

But with regard to written questions there is no limit on the number of questions that may be lodged. Consequently a rule against repeating the substance of a question already answered or disallowed in the same calendar year was introduced along with the introduction of the system of electronic lodging of

---

<sup>68</sup> SO 380(1)(c).

<sup>69</sup> (1997) 558 NZPD 278 Kidd.

<sup>70</sup> SO 380(2).

<sup>71</sup> See Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [7.6.1].

written questions.<sup>72</sup> This is intended to put some constraint on the unnecessary lodging of questions for written answer.<sup>73</sup>

## Select committee and court proceedings

Finally, questions cannot refer to proceedings before select committees that are not open to the public (until the committee reports), a case pending adjudication by a court,<sup>74</sup> or matters suppressed by order of a New Zealand court.<sup>75</sup> In respect of matters before a court, a question is not permitted about a case from the time proceedings are filed with the court or a prosecution is brought until the case is finally disposed of. (See pp 233–236 for the sub judice rule.)

## URGENT QUESTIONS

Urgent questions are designed to cater for situations that need to be dealt with by a question and reply in the House immediately, and for which the normal period of notice is inappropriate. With questions lodged on the day that they are to be answered and a notice period of only some four hours, the need for urgent questions has been considerably reduced. Therefore, the Standing Orders Committee has recommended, as a guide to the Speaker, that an urgent question should only be accepted if it deals with a matter that has arisen since 10.30 am (the cut-off time for lodging oral questions).<sup>76</sup> Urgent questions therefore provide a backstop to deal with a situation that arises suddenly.

An urgent question is submitted to the Clerk and a copy must also be given to the Minister to whom it is intended to be addressed.<sup>77</sup> It is for the Speaker to consider whether the question should be allowed on the grounds that in the public interest it should be answered immediately.<sup>78</sup> For a member to be allowed to bypass the normal notice period for questions, a need must be inherent in the question for it to be answered on that day or before the member could obtain an answer by submitting it through the normal channels.<sup>79</sup> A classic instance is where some irrevocable course of events is about to happen—a demolition of a building, for example, or the immediate deportation of a person.<sup>80</sup> Questions are not accepted as urgent when they relate to something that has already happened. Such questions, although they may be of great public interest, can be explored through the normal question system.<sup>81</sup> The test for an urgent question is whether an important event is about to happen. A question asking whether the Prime Minister had that morning issued a request to the Rugby Union to call off the Springbok tour was not accepted as being urgent as it was exploring an event in the past. On the other hand, a question to the Minister of Police asking if he was considering giving the police authority to swear in special constables that day was accepted, because it was looking ahead to an important action that might be taken

<sup>72</sup> SO 382(3).

<sup>73</sup> Standing Orders Committee *Interim report on review of Standing Orders: the publication of legislation and parliamentary information* (16 December 2002) [2002–2005] AJHR I.18A at 9.

<sup>74</sup> SO 380(4).

<sup>75</sup> SO 115(1).

<sup>76</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 74.

<sup>77</sup> SO 388(1).

<sup>78</sup> SO 388(2).

<sup>79</sup> (1980) 429 NZPD 507 Harrison.

<sup>80</sup> (1977) 410 NZPD 587 Jack. See also: (11 August 2011) 674 NZPD 20563–20565 Smith (urgent question about a deportation was not allowed as the member asking it had not given a copy to the Minister); (28 February 2013) 687 NZPD 8838–8839 Carter (urgent question about Auditor-General's report on biosecurity was not allowed as there was no identified, specific and immediate risk, although it was accepted that the matter was serious).

<sup>81</sup> (28 February 2013) 687 NZPD 8838–8839 Carter (Auditor-General's report on biosecurity).

before the member could obtain an answer to the question in the normal course of events.<sup>82</sup>

A question does not become urgent merely because of the imminent departure overseas of the Minister to whom it is addressed, unless the question relates to an action connected with the Minister's departure. If the questioner simply prefers an answer to the question from the Minister before he or she leaves to an answer by an acting Minister, the question will not qualify as urgent.

Urgent questions must also conform to the rules regarding content and ministerial responsibility. Once the Speaker reaches a decision on the acceptability of a question, both the member who submitted it and the Minister are informed. If the Speaker does not accept that the question is urgent, the member may resubmit it as an ordinary oral or written question.

## AMENDMENT OF QUESTIONS

If a question does not comply with the Standing Orders it is not accepted by the Clerk. However, the inadmissibility of a question or the inclusion of objectionable content can be inadvertently overlooked or not perceived at the time and the question accepted and published. For example, a Minister, on receiving notice of the question, may challenge it as being outside his or her area of responsibility. In these circumstances the acceptability of the question must be reconsidered.<sup>83</sup>

Even after a question has been initially accepted the Speaker has the authority to disallow it.<sup>84</sup> Whether a question must be disallowed after having been accepted depends entirely on the extent of its non-compliance with the Standing Orders. For example, if the question contains an inaccuracy, it depends whether it is inaccurate to such an extent as to taint the whole question, in which case it may be ruled out, or whether it is inaccurate in respect of a minor detail only, in which case it may be allowed to stand.<sup>85</sup>

The Speaker has power to permit questions otherwise out of order if they are revised or amended to bring them within the Standing Orders.<sup>86</sup> If an infringement can be corrected by amendment of the question without prejudice to the Minister who has to answer it, the Speaker usually allows it to remain as amended. Thus the Office of the Clerk may negotiate the rewording of a question to ensure that it complies with the Standing Orders. This process necessarily involves some give and take.<sup>87</sup> Ultimately if such negotiations fail to bring a question into order, the member asking the question would be informed accordingly and the Speaker would rule the question out of order when it was reached in the House.

If the infringement is revealed on a point of order when the oral question is actually about to be asked in the House, the Speaker may still allow it to be asked subject to amendment, provided that this does not seriously prejudice the answer that the Minister has prepared.<sup>88</sup> Such amendment cannot be allowed to turn a question into a totally different one. But in these circumstances the Speaker can also order it to be deferred so that it can be asked with notice in a correct form.

## QUESTIONS TO MINISTERS

For a question to a Minister to be admissible, there must be ministerial responsibility for the subject matter of the question.

<sup>82</sup> (1981) 439 NZPD 2454.

<sup>83</sup> (5 March 2003) 606 NZPD 3975 Hunt.

<sup>84</sup> SO 380(5).

<sup>85</sup> (1975) 396 NZPD 538 Whitehead; (1999) 580 NZPD 19507 Kidd.

<sup>86</sup> SO 380(5).

<sup>87</sup> (5 March 2003) 606 NZPD 3975 Hunt; (8 May 2014) 698 NZPD 17696 Carter.

<sup>88</sup> (1989) 496 NZPD 9129 Burke.

A Minister may be questioned on public affairs with which he or she is officially connected, and on proceedings in the House or any matter of administration for which the Minister is responsible.<sup>89</sup> In practice, this gives a very wide scope for questions to be addressed to a Minister on matters for which he or she has ministerial responsibility.

## **Ministerial responsibility**

Whether there is ministerial responsibility depends in each case on the legislative and administrative circumstances surrounding the question.

Regarding the public service, legislation specifically declares that chief executives of departments are not responsible to their Ministers but are to act independently on various decisions relating to the recruitment, promotion, disciplining and discharge of individual employees.<sup>90</sup> Ministers, therefore, cannot be asked questions about personnel actions taken in respect of identified public servants, though they are answerable for employment policies generally as they are followed in departments.<sup>91</sup> Only general information, for instance of a statistical nature, can be sought from Ministers about such matters. It is also expressly provided that the Director of the Serious Fraud Office is not responsible to the Attorney-General (the Minister responsible for the office) regarding any decision to investigate any suspected case of serious or complex fraud or to take proceedings under the legislation.<sup>92</sup> It follows that the Attorney-General is not answerable in respect of such matters, nor are Ministers answerable for a decision on whether to initiate a police prosecution, such decisions being made independently of Ministers.<sup>93</sup>

But the mere fact that a Minister has no legal control over a certain action does not mean that there can be no ministerial responsibility to answer a question about it. Legal responsibility and political responsibility are different things.<sup>94</sup> Ministers, by convention, are responsible to the House for their official actions and for the general conduct of their departments and officials.<sup>95</sup> They are answerable to the House for many matters over which they have no legal powers, and in respect of the actions of public officials who are not subject to the legal control of Ministers. Thus, questions relating to actions taken by the State Services Commission in carrying out its legal functions regarding the appointment of a chief executive were held to involve ministerial responsibility.<sup>96</sup>

There has never been any doubt that questions may be put to Ministers regarding the activities of Crown entities. This is so regardless of the precise degree of legal control that Ministers exercise over the entity concerned. However, Ministers will often make it clear in replying that they are transmitting information from the entity concerned in response to the question, and do not have any legal or operational responsibility for the matters themselves.<sup>97</sup> Crown entities are under a general legal obligation to supply responsible Ministers with information about their operations and performance to help Ministers fulfil their responsibility to answer to the House.<sup>98</sup> But Crown entities may refuse to provide information, even to a Minister, to protect the privacy of a person (if this is justified) or to enable the

<sup>89</sup> SO 378.

<sup>90</sup> State Sector Act 1988, s 33.

<sup>91</sup> (1989) 501 NZPD 12467 Burke.

<sup>92</sup> Serious Fraud Office Act 1990, s 30(1).

<sup>93</sup> (21 March 2006) 630 NZPD 1977 Wilson.

<sup>94</sup> (1997) 558 NZPD 484 Kidd.

<sup>95</sup> Public Finance (State Sector Management) Bill (99–2) (commentary, 6 September 2004) ([2002–2005] AJHR I.22C).

<sup>96</sup> (1990) 509 NZPD 2705–2706 Burke.

<sup>97</sup> (1997) 558 NZPD 484 Kidd.

<sup>98</sup> Crown Entities Act 2004, s 133(1).

entity to carry out judicial or statutorily independent functions with which it is entrusted.<sup>99</sup>

The creation of State enterprises in 1986, with Ministers' legal roles largely limited to those of shareholders in the listed enterprises, caused a reconsideration of the basis of ministerial responsibility for questions about their work. The Speaker has ruled that questions about the activities of State enterprises will be accepted, and that if a Minister considers that a particular question does not indicate any ministerial responsibility, he or she ought to challenge the question's validity; it is not up to the Speaker to take the initiative in ruling such questions out of order.<sup>100</sup>

In fact, Ministers have not challenged questions about the activities of State enterprises on the grounds of lack of ministerial responsibility, although they have often declined to provide as much information in their replies as the questioner has sought. In practice, questions about individual State enterprises on matters for which Ministers are not directly responsible are referred by the Minister to the enterprise concerned for a reply, which the Minister then delivers, making it clear that the information was obtained from the enterprise (for example, by using the phrase "I am advised"<sup>101</sup>). If the State enterprise considers that the release of certain information could be prejudicial to it, it informs the Minister, who will then normally avoid releasing the information in the answer.<sup>102</sup> State enterprises have express power to refuse to disclose to Ministers information relating to individual employees or customers if the information would allow the employee or customer to be identified.<sup>103</sup>

It has been held that there is no ministerial responsibility for the operational activities or decision-making of a local authority. Ministerial responsibility arises only where a Minister has taken particular action in relation to a local authority, such as seeking reports, undertaking reviews, or making decisions on Crown appointments to or investments in council-controlled organisations.<sup>104</sup>

Clearly Ministers have no responsibility for judicial decisions.<sup>105</sup> But, even so, Ministers can be asked to comment on judgments of courts with implications for official responsibilities of Ministers.

In practice, a wide view is taken of the concept of ministerial responsibility. The primary condition of asking a question is that the Minister has ministerial responsibility for the subject matter of the question.<sup>106</sup> If a Minister has made a statement that impinges on his or her portfolio responsibilities he or she can be questioned about it, regardless of the capacity in which the statement was made.<sup>107</sup> A Minister can be asked his or her opinion of the views of others, provided that the views in question relate to the Minister's responsibilities.<sup>108</sup> Ministers have an informational responsibility for their portfolios, and may be answerable for events that took place prior to their taking responsibility for a portfolio.<sup>109</sup> Although they are not responsible for the policy of previous administrations, if they comment on them they are answerable for the accuracy for their comments.<sup>110</sup>

The scope for questioning Ministers, and particularly the Prime Minister, is broader than simply the administrative or ministerial responsibility of the Government. In the same way that Ministers can be asked about the general conduct of their departments, the Prime Minister can be asked about the conduct

<sup>99</sup> Crown Entities Act 2004, s 134.

<sup>100</sup> (1987) 483 NZPD 617–618 Burke.

<sup>101</sup> (1997) 558 NZPD 484 Kidd.

<sup>102</sup> (1988) 488 NZPD 3964 Burke.

<sup>103</sup> State-Owned Enterprises Act 1986, s 18(3); Reply to question 2542 (1993) (16 NZPD Supp 6756).

<sup>104</sup> (1 March 2012) 677 NZPD 752 Smith.

<sup>105</sup> (1985) 464 NZPD 5594 Wall.

<sup>106</sup> (1997) 558 NZPD 278 Kidd.

<sup>107</sup> (4 April 2006) 630 NZPD 2395 Wilson.

<sup>108</sup> (15 June 2010) 664 NZPD 11651 Smith.

<sup>109</sup> (26 June 2012) 681 NZPD 3284 Smith.

<sup>110</sup> (1 June 2010) 663 NZPD 11428 Smith.

of Ministers.<sup>111</sup> Although the Prime Minister is not answerable for statements or actions taken by Ministers purely in a non-ministerial capacity, the Prime Minister can be asked how such actions or statements may affect his view of a Minister's judgement and his confidence in the Minister.<sup>112</sup> A question that impinges on the Prime Minister's responsibilities need not be ruled out just because it has a party connection.<sup>113</sup>

Questions may also be asked of the Deputy Prime Minister, if he or she has been assigned particular responsibility for a matter, such as chairing a Ministerial Committee on Poverty.<sup>114</sup>

There is no convention, as in some other legislatures, that Ministers are not answerable to the House for operational matters in the departments or agencies falling within their portfolio areas.<sup>115</sup> However, a Minister may reply in such terms if he or she chooses to.<sup>116</sup>

Where there is doubt about whether a question involves ministerial responsibility, it has been the practice for the Clerk to refer the question to the Minister concerned and, if the Minister denies any responsibility in that area, for the question to be reconsidered.<sup>117</sup> The Minister is presumed to know best what matters he or she is responsible for, although ultimately it is the Speaker who decides whether to accept or reject a question.

## **Personal or party capacity**

Questions cannot be asked of actions of a Minister in a personal or party capacity. They must relate to the portfolio that the Minister holds. A Minister cannot be questioned about a statement he or she has made if it did not pertain to one of the Minister's own portfolios. But where a Minister giving an answer to an oral question canvasses matters outside his or her direct portfolio responsibility, then questions can be asked about his or her discussion of these matters.<sup>118</sup>

Ministers cannot be questioned about the matters or activities they have declared under the *Register of Pecuniary and Other Specified Interests*, as they register them in their capacity as members of Parliament and they are not related to their portfolio responsibilities. However, Ministers are responsible for managing their conflicts of interest, and there are legitimate grounds for questioning where there is potential conflict of interest with the Minister's portfolio interests.<sup>119</sup> The Prime Minister is answerable regarding the managing of conflicts of interest, both pecuniary and non-pecuniary, under the *Cabinet Manual*. But it is not in order to ask a question with the sole aim of investigating the private or personal interests of a member.<sup>120</sup>

While the Prime Minister is answerable for any statements made as Prime Minister, the Prime Minister is not answerable for statements or actions he or she has taken purely in a non-ministerial capacity such as party leader (though this can be a hard distinction to draw).<sup>121</sup> The Prime Minister is not responsible for funding provided through Vote Parliamentary Service to his or her party.<sup>122</sup>

Considerable weight is given to a Minister's claim that actions or statements were not made in a ministerial capacity, but this is not definitive and ultimately the Speaker must form a view. An informative answer must be given if the

<sup>111</sup> (22 September 2010) 667 NZPD 14191 Smith.

<sup>112</sup> Ibid.

<sup>113</sup> (22 February 2006) 629 NZPD 1351 Wilson.

<sup>114</sup> (10 December 2013) 695 NZPD 15357.

<sup>115</sup> (2 September 2003) 611 NZPD 8243 Hunt.

<sup>116</sup> (26 July 2005) 627 NZPD 21957 Wilson.

<sup>117</sup> (5 March 2003) 606 NZPD 3975 Hunt.

<sup>118</sup> (13 July 2011) 674 NZPD 20038 Smith.

<sup>119</sup> (1991) 514 NZPD 1509 Gray; (29 July 2010) 665 NZPD 12842 Smith.

<sup>120</sup> (1991) 514 NZPD 1509 Gray.

<sup>121</sup> (2000) 585 NZPD 3768 Hunt.

<sup>122</sup> (10 October 2006) 634 NZPD 5541 Wilson; (8 November 2006) 635 NZPD 6283–6284 Wilson.

Speaker judges that there is a reasonable likelihood of a connection to ministerial responsibility.<sup>123</sup>

The coalition agreements or confidence and supply arrangements negotiated between parties following general elections raise special issues of ministerial responsibility. Such agreements are agreements between parties and as such are not actions for which there is ministerial responsibility. But where an agreement is endorsed by the Government that subsequently takes office, as a basis for the structure of the Government and how it is to take decisions, questions about these matters may be put to any Minister who has responsibility for them. Thus questions to the Prime Minister and the Deputy Prime Minister about the 1996 Coalition Agreement's provisions on the division of Cabinet posts between the parties were permitted. On the other hand, questions asking the Deputy Prime Minister to comment on the change of leadership in the party of his coalition partner were not. These questions related to his role of party leader, not his ministerial role.<sup>124</sup>

One clear area in which there is no ministerial responsibility is the policies advocated by Opposition parties. Members (particularly Government members) may try to elicit comment from a Minister on items of Opposition policy through the question system. Such moves usually fail because the question deals with an issue outside the Minister's responsibility. The Minister is obviously interested in such matters but has no official connection with them. This disentitles members to question the Minister on them directly. A question asking whether a Minister had received any reports showing conflicting views of Opposition members was not allowed, the Speaker taking the view that, while such reports may have addressed the subject matter of the Minister's portfolio, the question was unreasonable, being artificially constructed to get around the fact that Ministers have no responsibility for Opposition views.<sup>125</sup> It is not reasonable to use questions from the governing party or its support parties to attack other members of the House.<sup>126</sup>

A question is not in order if it concerns the actions of caucus or seeks information about a party document.<sup>127</sup> Ministers cannot be asked questions about party fundraising events or meetings, but they can be questioned about what they said in relation to their ministerial portfolios at such events.<sup>128</sup> But the fact that Ministers cannot be questioned in a party capacity does not prevent them giving a party perspective in their replies. Nor is it obligatory for Ministers to use any particular form of words in replying so as to distinguish their official from their party capacities, though it is advisable that they do so, so that they are not misunderstood.<sup>129</sup>

## Associate Ministers

Following a Standing Orders Committee recommendation in 1995,<sup>130</sup> questions can be asked directly of Associate Ministers within the limits of any responsibilities formally delegated to them by the principal Minister. ("Associate Minister" is taken to include all subordinate Ministers, however designated, but not Parliamentary Under-Secretaries.)

For this purpose, early in the term of a Parliament and at other times if necessary, the Leader of the House presents to the House a schedule showing which areas of responsibility Ministers have delegated to Associate Ministers. This schedule definitively determines the areas in which Associate Ministers are answerable. If

<sup>123</sup> (23 October 2014) 701 NZPD 199–200 Carter.

<sup>124</sup> (1997) 564 NZPD 5192–5193 Kidd; (2000) 587 NZPD 5483 Hunt.

<sup>125</sup> (27 September 2011) 676 NZPD 21408–21409 Smith.

<sup>126</sup> (13 November 2012) 685 NZPD 6491 Smith.

<sup>127</sup> (1993) 535 NZPD 15886–15887 Gray.

<sup>128</sup> (8 May 2014) 698 NZPD 17682 Carter.

<sup>129</sup> (2000) 587 NZPD 5483 Hunt.

<sup>130</sup> Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 76.

delegated responsibilities change, the Speaker should be informed of this.<sup>131</sup> Some Associate Ministers have no specific areas assigned to them.

Until these areas of responsibility are known, questions must be addressed to the principal Minister.<sup>132</sup> When the delegations are announced, questions relating to them can be addressed directly to the Associate Minister or continue to be addressed to the principal Minister as the member lodging the question sees fit. But the principal Minister can transfer a question to an Associate Minister who has delegated responsibility. However, an Associate Minister can be questioned only about matters delegated to the Associate. An Associate Minister cannot be asked a question ranging across the whole portfolio in a way that the principal Minister can be.<sup>133</sup> Nor can an Associate Minister be questioned about statements he or she makes on matters outside his or her delegated responsibility, even where they relate to another part of the portfolio,<sup>134</sup> or the allocation of portfolio responsibilities.<sup>135</sup>

## Parliamentary Under-Secretaries

A Parliamentary Under-Secretary may reply to a question on behalf of an absent Minister.<sup>136</sup> However, a question cannot be addressed to a Parliamentary Under-Secretary in his or her own right as if the under-secretary were a Minister. Questions to Ministers must be addressed to Ministers of the Crown (including now an Associate Minister). A Parliamentary Under-Secretary may answer a question on behalf of a Minister, but can have a question addressed to himself or herself personally as a non-Minister only in respect of parliamentary proceedings of which the under-secretary has charge (for example, as the chairperson of a select committee), not in respect of the wider range of responsibilities for which Ministers are answerable. Thus, a question to a Parliamentary Under-Secretary relating to a statement the under-secretary had made was not allowed, even though the statement was made in respect of the Parliamentary Under-Secretary's official departmental duties.<sup>137</sup>

## Transfer of questions between Ministers

It may be difficult to determine who is the proper Minister to answer a particular question. When members lodge a question they address it to a particular Minister, but it may transpire on closer examination that it is not that Minister but another who has the responsibility to answer it. This is particularly likely to happen when a number of Ministers hold closely related portfolios. The classification of questions for which there is ministerial responsibility is a matter for the Government to decide, and the Clerk having been informed of the question, it may transfer it to another Minister if it was misdirected in the first place.<sup>138</sup> In practice the arrangements for these transfers are made administratively between the Office of the Leader of the House and the Office of the Clerk, and when the member asking the question has been informed, the questions list and the Parliament website are corrected accordingly.

A member cannot insist on a particular Minister dealing with a question. If the member is dissatisfied with a transfer, the member has the right to withdraw the question or to refuse to ask it.<sup>139</sup> Ultimately, however, the Speaker could refuse to allow a question to be transferred if the transfer would be an abuse; for example, where the responsibility for a subject was obviously held by a particular Minister

<sup>131</sup> (2001) 596 NZPD 12886 Hunt; (21 October 2010) 667 NZPD 14727 Smith.

<sup>132</sup> (2000) 581 NZPD 322 Hunt.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid, at 621–622.

<sup>135</sup> (4 April 2012) 679 NZPD 1642 Smith.

<sup>136</sup> SO 385(2).

<sup>137</sup> (1977) 413 NZPD 2690–2691 Harrison (Acting Speaker).

<sup>138</sup> (1969) 362 NZPD 2045–2046; (16 November 2010) 668 NZPD 15423–15424 Smith.

<sup>139</sup> (1998) 566 NZPD 7091 Kidd; (10 February 2005) 623 NZPD 18529 Hunt.

and the transfer to another Minister would obstruct the obtaining of an answer to it or supplementary questions.<sup>140</sup> This might happen, for instance, if the Minister concerned could be expected to have personal knowledge of an issue that any other Minister was unlikely to have.<sup>141</sup> However, if a question seeks an opinion, it may be transferred to another Minister to elicit the Government's opinion. A Minister's personal opinion cannot be sought.

The disallowance of a transfer is exceptional and must concern matters of real significance, where only one Minister could possibly provide an informed reply rather than mere opinion.<sup>142</sup> In two known instances the Speaker has refused to permit the transfer of a question that was not inherently transferable.<sup>143</sup> This power to refuse to permit a question to be transferred has been called a "longstop protection" against abuse.<sup>144</sup> But, short of such exceptional circumstances, the Speaker will not overrule a ministerial transfer of a question, otherwise the Speaker would be in effect determining internal governmental arrangements rather than Ministers. If the question is transferred, then the Minister, having accepted the transfer, should be in a position to answer the question. It is not acceptable to then suggest that the supplementary questions should be directed at another Minister.<sup>145</sup>

A Minister is under an obligation to transfer a question to the appropriate Minister if it has been misdirected. It is not satisfactory to reply to a question by saying that it should have been directed to another Minister. If that is so, the Minister should have arranged its transfer in the first place.<sup>146</sup>

A question can be transferred at any time up to the time at which it is asked.<sup>147</sup> While it is desirable that the Clerk be advised of a transfer as soon as possible so that it may be reflected in the questions list, transfers often take place after the initial publication of the list. The transfer of a question will often involve changes to its text to reflect the different Minister who is to answer it. Provided that these are consequential and not substantive changes, they can be made without recourse to the member who lodged the question.<sup>148</sup> In practice, the Office of the Clerk advises the member of the transfer and of any changes to the wording of the question. If a member believes that more substantive changes to the wording are needed, for example, to preserve the original intent of the question, the rewording would need to be negotiated between the member and the Minister by the Office of the Clerk.

The Speaker will not allow members to seek leave to transfer a question back to another Minister following a transfer. The transfer is a matter for the Government, not the House, and the Government has made its decision on the Minister to answer the question.<sup>149</sup>

## **Transfer of questions involving the Prime Minister**

Objections to ministerial transfers of questions commonly arise regarding questions addressed to the Prime Minister. Given the character of a Prime Minister's responsibilities, every question for which there is any ministerial responsibility necessarily entails prime ministerial responsibility too. On this basis all questions could in theory be addressed to the Prime Minister. But members are expected to,

140 (1992) 523 NZPD 7583 Gray; (1994) 539 NZPD 316 Tapsell; (1996) 555 NZPD 12594, 12748–12749 Tapsell; (2 August 2011) 674 NZPD 20169–20170 Smith; (19 November 2013) 695 NZPD 14757 Carter; (26 June 2014) 699 NZPD 18957–18958 Carter.

141 (2000) 581 NZPD 322 Hunt; (2 August 2011) 674 NZPD 20169–20170 Smith; (12 September 2012) 683 NZPD 5124 Smith.

142 (12 September 2012) 683 NZPD 5124 Smith.

143 (1998) 573 NZPD 13010 Kidd; (2001) 596 NZPD 13150 Hunt.

144 (2002) 598 NZPD 14893–14894 Hunt.

145 (26 June 2014) 699 NZPD 18957–18958 Carter.

146 (1987) 483 NZPD 224 Burke; (25 August 2009) 657 NZPD 5803 Smith; (18 August 2010) 665 NZPD 13206 Smith.

147 (2000) 582 NZPD 1156 Hunt; (26 February 2004) 615 NZPD 11366 Hunt.

148 (1998) 566 NZPD 7091 Kidd; (1999) 578 NZPD 17300 Kidd.

149 (8 August 2013) 692 NZPD 12518 Carter.

and do, address their questions to the Minister with direct portfolio responsibility, reserving questions to the Prime Minister for matters for which there is direct prime ministerial responsibility or for questions affecting the Government as a whole. The risk in addressing questions to the Prime Minister that require detailed portfolio knowledge for informative answers to be given is that the Prime Minister cannot be expected to have all the knowledge at hand that a portfolio Minister would have, particularly if the primary question was a very broad one. Answers to supplementary questions may therefore result in the member being asked to direct a question to the portfolio Minister or to put the question in writing. If the Prime Minister considers that a question should be redirected to a Minister, the question is transferred to the Minister. There is no dedicated Prime Minister's question time. The Speaker has rejected suggestions that this allows the Prime Minister to avoid answering questions altogether. Prime Ministers cannot be seen to be continually avoiding potentially difficult questions, and in fact this does not happen.

## QUESTIONS TO OTHER MEMBERS

Questions may also be addressed to other members of the House (Government or Opposition), but in much more restricted circumstances than questions to Ministers.

A question to a non-Minister can be for oral or for written answer, except in the case of the Speaker, when it can only be for written answer.<sup>150</sup> Questions to non-Ministers are subject to the same rules regarding notice and contents as questions to Ministers.

There is no limit on the number of questions that can be set down for members.<sup>151</sup> Attempts have sometimes been made to extend question time by lodging numerous questions to members in order to delay reaching other items of business before the House. For example, some 700 questions to members were lodged with the Clerk's Office on one day, resulting in 98 questions being accepted as being in order but only seven questions being answered in the House (the rest being postponed because of the absence from the House of the member to whom the question was directed). No supplementary questions were allowed.<sup>152</sup> In lodging large numbers of questions members risk having limits placed on the number that may be asked and thus adversely affecting other members who have genuine questions they wish to pursue.<sup>153</sup>

Questions can be put to non-Ministers regarding any bill, motion or public matter connected with the business of the House of which the member has charge.<sup>154</sup> Only one matter may be raised in a question, not a number of items of business or a general class of issues. Questions to the Speaker can relate only to matters of administration for which the Speaker is responsible.<sup>155</sup>

The range of questions non-Ministers may answer is much narrower than that of questions to Ministers. Apart from any to the Speaker, they must relate exclusively to proceedings in the House of which the member has charge, whereas a Minister, as well as being answerable for proceedings in the House, is answerable for his or her department and for public affairs with which he or she is officially connected. The Standing Orders do not, therefore, give members a general opportunity to cross-question each other over statements made outside the House on policy or procedural matters. Examples of non-Ministers who may be questioned under this provision include members who have introduced a Member's bill, a local bill or a

<sup>150</sup> SO 379(2).

<sup>151</sup> (24 March 2011) 671 NZPD 17620 Smith.

<sup>152</sup> Ibid, at 17623.

<sup>153</sup> Ibid, at 17620.

<sup>154</sup> SO 379(1).

<sup>155</sup> SO 379(2).

private bill; members who have presented a petition; and, most often, chairpersons of select committees, on the procedure being followed by their committees. A question to the chairperson of a subcommittee has also been permitted.<sup>156</sup>

### Questions to select committee chairpersons

Questions to a chairperson of a select committee must relate to a matter before the committee and a process or procedure for which the chairperson has responsibility.<sup>157</sup> Questions can relate only to a matter of which the committee has charge, either because the House has referred it to the committee or because the committee has resolved to inquire into it.<sup>158</sup> Questions cannot probe about matters not before the committee or no longer before the committee.

References to proceedings in committees not open to the public are not permitted until the committees have reported to the House. After reporting to the House, the chairperson of the committee cannot be questioned further, because questions to non-Ministers must be on a matter of which the member has charge, and once the committee has reported the matter is in the hands of the House. The chairperson is no longer answerable for it. Questions have been ruled out of order where a bill was before a committee when questions were lodged in the morning, but the bill had been reported to the House and was no longer before the committee at question time in the afternoon. Although questions may have been properly accepted, they are out of order if the bill is no longer before the committee.<sup>159</sup>

The Speaker has ruled as follows regarding the extent of the powers of chairpersons of select committees and the limits for questions to them.<sup>160</sup>

Questions to a chairperson must relate to a matter before the committee and a process or procedure for which the chairperson has responsibility. The responsibilities of chairpersons relate to limited areas of process and procedure. They are limited. First, in the absence of a committee making a decision about its next meeting, the chairperson may set the date for that meeting, but the chairperson does not control the agenda. This is a matter for members of the committee. ... Second, the chairperson may, on behalf of the committee, request any person to attend and give evidence, and request papers and records be produced. ... Third, the chairperson may direct the examination of witnesses and question witnesses. ... Fourth, the chairperson with the agreement of the committee may make a public statement to inform the public of the nature of a committee's consideration of a matter. ... Finally, the chairperson signs the committee reports and presents them.

For example, the chairperson can be asked how many submissions have been received on an item of business before the committee, but is not responsible for the views of the submitters, so any question relating to the substance of a submission is out of order.<sup>161</sup>

There is no separate category of questions to chairpersons as questions to chairpersons are just a subset of questions to members. Where a Minister chairs a committee, a question relating to the business before the committee must be put down as a question to a Minister. A question to the Prime Minister, who chairs the Intelligence and Security Committee, cannot be lodged as a question to a member.<sup>162</sup>

<sup>156</sup> (1977) 415 NZPD 3918.

<sup>157</sup> (24 March 2011) 671 NZPD 17620 Smith.

<sup>158</sup> (2000) 582 NZPD 1083 Hunt.

<sup>159</sup> (9 February 2011) 670 NZPD 16591 Smith.

<sup>160</sup> (24 March 2011) 671 NZPD 17620–17621 Smith.

<sup>161</sup> (12 March 2008) 645 NZPD 14837 Wilson.

<sup>162</sup> (11 June 2013) 691 NZPD 10915–10916 Carter.

The chairperson is not answerable for the actions of other committee members or for their reasons for voting as they did in the committee,<sup>163</sup> nor for why he or she voted in whatever way on a particular issue. Nor can the chairperson be questioned on his or her opinion of a matter before the committee. The chairperson's views on such a matter are of no more significance than those of any other member.<sup>164</sup> Also a chairperson is no more questionable on general statements he or she has made outside the committee as a member of Parliament than is any other member. If a chairperson makes a statement under the Standing Orders informing the public of the nature of the committee's inquiry,<sup>165</sup> questions on the statement may be asked even if the matter before the committee is not open to the public. However, such questions cannot seek the committee's reasons for directing or initiating the statement; where these have been discussed at the committee they constitute confidential committee proceedings.<sup>166</sup>

Only the chairperson of a committee can answer a question about its business; and a question must be postponed if the chairperson is absent from the House. The deputy chairperson can answer a question only if the chairperson is out of the country.<sup>167</sup>

### **Questions to the Speaker**

Only written questions may be asked of the Speaker, and then only in respect of matters of administration for which the Speaker is responsible.<sup>168</sup> The Speaker cannot be asked for procedural guidance by way of a written question. The proper way to raise a procedural matter is by a point of order in the House. The matters on which the Speaker can be questioned include the Speaker's duties as chairperson of the Parliamentary Service Commission, and as the "Responsible Minister" for parliamentary departments such as the Office of the Clerk, the Parliamentary Service, the Office of the Ombudsmen, the office of the Auditor-General and the office of the Parliamentary Commissioner for the Environment. The Speaker's responsibility does not extend to answering for the performance of the officers' statutory duties, but only for the financial and administrative issues associated with their organisations. Regardless of the capacity in which the question is being asked of the Speaker, a question is addressed to "the Speaker". If the Speaker chairs a select committee, the Speaker may be questioned in this capacity but, again, only by way of written question.<sup>169</sup>

## **PREPARATION OF REPLIES**

The built-in period of notice gives Ministers and other members to whom a question is addressed an opportunity to prepare a considered response. How the preparation of replies is organised is a matter for Ministers and members themselves. In the case of Ministers, it will usually involve the Minister's department preparing a draft or drafts of a reply and, in the case of oral questions, also providing the Minister with background information to help the Minister anticipate and deal with supplementary questions. Generally, such drafts and information can be withheld under the Official Information Act to allow Ministers to make their own decisions as to the appropriate way to answer parliamentary questions. Releasing a draft answer might lead Ministers to seek less assistance from departments in answering questions, and thus diminish the quality of the information presented to the House. However, withholding such information will not always be justified.

<sup>163</sup> (2 September 2003) 611 NZPD 8251 Hunt.

<sup>164</sup> (1998) 570 NZPD 11008 Kidd; (2000) 582 NZPD 1083 Hunt; (2002) 599 NZPD 15371 Hunt.

<sup>165</sup> SO 242(1).

<sup>166</sup> (1978) 417 NZPD 660 Harrison.

<sup>167</sup> (23 August 2006) 633 NZPD 4763 Wilson; (6 December 2007) 644 NZPD 13597 Wilson.

<sup>168</sup> SO 379(2).

<sup>169</sup> (2001) 592 NZPD 9700–9701 Hunt.

In a particular case there may be countervailing public interest considerations indicating that there should be disclosure.<sup>170</sup>

The briefing by an official to a Minister in preparation for answering an oral question has been the subject of a defamation action and found to be protected only by qualified, not absolute, privilege.<sup>171</sup> The Privileges Committee respectfully disagreed with this decision and recommended legislative reform, leading to the enactment of the Parliamentary Privilege Act in 2014. Section 10 of this Act explicitly overturns the position previously reached by the Supreme Court in *Attorney-General v Leigh*.<sup>172</sup>

In the case of questions to other members, it is up to the member concerned whether to seek assistance in the preparation of a reply. For questions to select committee chairpersons, the clerk of the committee will automatically offer help in preparing a reply.

## QUESTION TIME

Oral questions are dealt with as the first substantive item of business transacted by the House each day.<sup>173</sup> The only items preceding it are the formal announcements by the Clerk of the petitions, papers and select committee reports presented that day and of any bills introduced. So questions are usually reached within a few minutes of the House assembling.

Until 1996 the length of question time was prescribed in the Standing Orders as 45 minutes (having been increased from 40 minutes in 1986). Now no timeframe for questions is prescribed in the Standing Orders or even recommended by the Standing Orders Committee. There are 12 oral questions to Ministers each day, and there may be urgent questions and questions to other members. The House deals with all the oral questions set down for answer each day.<sup>174</sup> The time it takes to get through all of them (including supplementary questions) varies from day to day from 45 minutes to over an hour.

Question time is particularly well attended by most members. It is also the fastest-moving part of the proceedings, with relatively short contributions from a large number of members. Consequently, it is sometimes subject to disruptive conduct. Strictly speaking, interjections are not permitted at question time (which is not a debate) but they feature nevertheless, and are tolerated as long as they do not get out of hand.<sup>175</sup> The Speaker's chairpersonship is very much to the fore at question time: calling members to ask supplementary questions, deciding whether the questions and replies are in order, keeping members' questions as brief as possible, preventing disorderly behaviour and ensuring that the House gets through the questions before it in a reasonable time.

## ASKING ORAL QUESTIONS

When a question is reached, the Speaker announces the number of the question and calls on the member in whose name it stands to ask it. The member asks the question, identifying the Minister to whom the question is addressed and reading it out as it is printed on the list of questions circulated to members in the House.<sup>176</sup> Questions are read out even though the printed list is published to the Parliament website, so that people listening to the broadcasts can follow proceedings. For

<sup>170</sup> *Ombudsmen Quarterly Review* (September 2002).

<sup>171</sup> *Attorney-General v Leigh* [2011] NZSC 106, [2012] 2 NZLR 713.

<sup>172</sup> See Chapters 44–47.

<sup>173</sup> SOs 66(1) and 383(1).

<sup>174</sup> SO 383(2).

<sup>175</sup> (1996) 554 NZPD 12077–12078 Tapsell.

<sup>176</sup> SO 384(1); (1977) 413 NZPD 2528 Jack.

the same reason an English interpretation is given of a question lodged in Te Reo Māori even though a translation is also published.<sup>177</sup>

Another member may ask the question on behalf of the member in whose name it stands if the latter is absent from the Chamber and has authorised the other member to do so.<sup>178</sup> Authority will be implied when members ask questions on behalf of absent members of their own party.<sup>179</sup> But if a member acts for a member of another party, authority must have been given expressly. A member asking a question on behalf of another member without authority risks committing a contempt of the House.<sup>180</sup> A question cannot be asked on behalf of a member who has not taken the Oath of Allegiance as he or she is therefore not entitled to sit in the House (an unsworn member may seek a written answer to a question, however).<sup>181</sup> Nor can a question be asked on behalf of a member who is present in the Chamber.<sup>182</sup>

## **Withdrawal of questions**

Members are not obliged to ask questions standing in their names, and are quite free to withdraw a question simply by informing the Clerk. The question will then be deleted from the question list published on the Parliament website. If the Speaker is informed in the Chamber that a member does not wish to ask a question standing in his or her name, the Speaker will not call it and will pass on to the next question on the list. Even when the question is reached and called, the member may still decline to ask it. No member can be compelled to ask a question standing in his or her name, and no other member can ask it on behalf of the member in these circumstances without the member's permission.<sup>183</sup>

## **Postponement of questions**

A question may be postponed with the leave of the House.<sup>184</sup> A member may request that his or her question be postponed. Often this is done so that the Minister to whom it is addressed can be present in the House to answer it personally. Exceptionally, a Minister who wishes to answer a particular question personally rather than have another Minister answer will ask a member to agree to postpone a question to this end. If leave to postpone a question is not forthcoming, the member can still withdraw it and resubmit it later. If leave to postpone is granted, the question is placed on the list of questions for the day to which it is postponed, for answer after other oral questions to Ministers that day.<sup>185</sup> A question may be postponed for more than one sitting day ahead.

## **Asking urgent questions**

Urgent questions are dealt with immediately after oral questions to Ministers have concluded. If an urgent question has been accepted, then at the end of oral questions on notice the Speaker calls upon the member to ask it.<sup>186</sup> The member must then ask the question in the same form as it has been submitted to the Speaker<sup>187</sup> (it does not, of course, appear on the questions list) and it is answered in the normal way.

<sup>177</sup> (1999) 578 NZPD 17268 Kidd.

<sup>178</sup> SO 384(2).

<sup>179</sup> (8 February 2012) 677 NZPD 177 Smith.

<sup>180</sup> (1996) 553 NZPD 11645 Tapsell.

<sup>181</sup> (1979) 423 NZPD 800 Harrison.

<sup>182</sup> (7 November 2007) 643 NZPD 12851 Wilson.

<sup>183</sup> (1969) 364 NZPD 3577–3578 Jack; (1989) 501 NZPD 12742–12743 Burke.

<sup>184</sup> (1974) 394 NZPD 4830 Whitehead.

<sup>185</sup> (1974) 395 NZPD 5363 Hunt (Deputy Speaker).

<sup>186</sup> SO 388(2).

<sup>187</sup> (1933) 236 NZPD 480 Statham.

## Asking questions to other members

Questions to non-Ministers are taken after questions for oral answer and any urgent questions have been disposed of.<sup>188</sup> Another member may ask a question of a non-Minister on behalf of the member who submitted it if that member is absent.

## REPLIES TO ORAL QUESTIONS

When the question is asked, the Speaker calls upon the Minister or member to whom it is addressed to answer it.<sup>189</sup> In the absence of the Minister, another Minister or a Parliamentary Under-Secretary may answer the question, prefacing the answer with an indication that it is being given on behalf of the Minister.<sup>190</sup> When a Minister answers a question on behalf of another Minister, he or she is answering as that Minister.<sup>191</sup> If an acting Minister has been appointed, then that Minister is the Minister for the time being and replies to a question in his or her own right and not on behalf of anyone. A reply may be in English or Te Reo Māori<sup>192</sup> but it is not obligatory for a reply to a question asked in Māori to be given in Māori, or vice versa.<sup>193</sup>

A question to a non-Minister is personal to the member to whom it is addressed and another member cannot deliver a reply for him or her. In the absence of the member to whom such a question is addressed, the question is held over.<sup>194</sup> However, if the question is to the chairperson of a select committee when he or she is absent from New Zealand or while there is a vacancy in the chairpersonship, the deputy chairperson can reply.<sup>195</sup>

## Obligation to reply

An answer must be given if it can be given consistently with the public interest.<sup>196</sup> But a Minister cannot be forced to answer a question (unless the House orders the Minister to do so, in which case failure to answer could be punished as a contempt). If, in the Minister's opinion, the public interest would be imperilled by giving the information sought, then the Minister may decline to answer or give only a limited answer.<sup>197</sup>

Whether an answer is in the public interest is not an all-or-nothing matter, where either no answer is given at all or a full answer is given. A Minister can answer a question to the extent that he or she believes is consistent with the public interest.<sup>198</sup> In considering consistency with the public interest, a Minister may address such principles as privacy, commercial sensitivity, or national security.<sup>199</sup> Matters before the coroner, or other independent statutory inquiries may also occasion a Minister invoking the public interest and choosing not to give detailed answers.<sup>200</sup> Ultimately these are matters for the Minister to judge, not the Speaker.<sup>201</sup> However, if a Minister were to cite the public interest in a situation that was clearly outrageous, as a way to avoid answering the question, then the Speaker could intervene. But a member cannot insist that a question should be answered

<sup>188</sup> SO 379(3).

<sup>189</sup> SO 385(1).

<sup>190</sup> SO 385(2); (1963) 336 NZPD 1519–1520 Algie.

<sup>191</sup> (11 February 2010) 660 NZPD 8821 Smith.

<sup>192</sup> (1990) 508 NZPD 2336 Burke.

<sup>193</sup> (1994) 542 NZPD 3325 Tapsell.

<sup>194</sup> (1978) 420 NZPD 3311–3312 Harrison; (24 June 2008) 648 NZPD 16823 Wilson.

<sup>195</sup> SO 202(1); (23 August 2006) 633 NZPD 4763 Wilson; (6 December 2007) 644 NZPD 13597 Wilson.

<sup>196</sup> SO 386(1).

<sup>197</sup> (1892) 78 NZPD 374–375 Steward.

<sup>198</sup> (17 June 2009) 655 NZPD 4367 Smith.

<sup>199</sup> (3 July 2008) 648 NZPD 17177 Wilson.

<sup>200</sup> (14 February 2012) 677 NZPD 313 Smith; (29 March 2012) 678 NZPD 1498, 1500 Smith.

<sup>201</sup> (1991) 514 NZPD 1241 Gray; (3 July 2008) 648 NZPD 17177 Wilson.

in a particular way simply because the member considers the matter to be one of public interest.<sup>202</sup>

The Speaker has held that where a question is clear and straightforward, seeking information rather than opinion, the House deserves an answer. Primary questions are on notice, giving officials time to provide the Minister with the information.<sup>203</sup> The Speaker will back members absolutely where they seek information.<sup>204</sup>

If a Minister does not wish to reply at all to a question, strictly speaking the Minister should simply not respond to the Speaker's call when the question is asked. This is not a satisfactory way of indicating an intention not to answer, however, and the Speaker has indicated that Ministers in these circumstances should announce the refusal to answer by taking a point of order.<sup>205</sup> A Minister is not obliged to give reasons for refusing to answer, although it is preferable to do so.<sup>206</sup> The fact that a Minister does not intend to answer a question, or does not intend to answer it on that day and wishes to have it postponed, does not abrogate the right of the member who lodged the question to ask it if he or she so wishes. The member would, of course, be met with no reply at all or with the reply that the Minister declined to answer it on that day.<sup>207</sup>

A refusal to answer at all would be wholly exceptional, but an unsatisfactory answer is not a refusal to answer. A Minister's response to a question that he or she does not intend to answer it is in fact a reply, unsatisfactory as it may be to members. Sometimes Ministers may be reluctant to give an informative response on a matter that is under negotiation or consideration by another body. A response in these terms is not, strictly speaking, a refusal to reply. Whether to respond in this way is a matter for ministerial judgement.<sup>208</sup> Ministers may recognise that certain matters are before the court and choose not to give detailed answers. They may answer to a certain point, and choose not to go any further, rather than risk compromising what is before the court.<sup>209</sup> Where an issue is still being considered by the Speaker as a matter of privilege, a Minister may decline to answer questions about it.<sup>210</sup>

Ministers are not expected to respond irrelevantly; to do so is contrary to the spirit of the question process.<sup>211</sup> In such circumstances the Speaker may demonstrate disapproval and invite the Minister to answer again,<sup>212</sup> allow a member to repeat a question, or allow more supplementary questions than usual. It is unparliamentary for a Minister to refuse to give information regarding a question to one member that the Minister is prepared to give to another member, and the Speaker has sought a further explanation from a Minister in such circumstances.<sup>213</sup>

Ministers can be asked for an opinion on a matter for which they have responsibility, and questions may include hypothetical material. However, "members cannot expect precise answers" to such questions<sup>214</sup> and there will inevitably be more "dissatisfaction with the replies" to them.<sup>215</sup> If the Minister thinks that a question is not in order, the Minister's proper course is to challenge it on a point of order, not to decline to answer it. The Speaker, not the Minister, decides whether it is in order.<sup>216</sup>

<sup>202</sup> (3 July 2008) 648 NZPD 17177 Wilson.

<sup>203</sup> (10 February 2009) 652 NZPD 1055 Smith; (7 April 2009) 653 NZPD 2418 Smith; (7 May 2009) 654 NZPD 3013 Smith.

<sup>204</sup> (7 April 2009) 653 NZPD 2418 Smith.

<sup>205</sup> (1980) 433 NZPD 3244–3245 Harrison.

<sup>206</sup> Ibid.

<sup>207</sup> (1892) 78 NZPD 374–375 Steward.

<sup>208</sup> (2001) 592 NZPD 9009, 9101 Hunt; (2002) 603 NZPD 1182–1183 Hunt.

<sup>209</sup> (14 February 2012) 677 NZPD 313 Smith.

<sup>210</sup> (23 October 2013) 694 NZPD 14178 Carter.

<sup>211</sup> (1991) 521 NZPD 5624 Gray; (2001) 592 NZPD 9170 Hunt.

<sup>212</sup> (14 August 2007) 641 NZPD 11031 Wilson.

<sup>213</sup> (1994) 542 NZPD 3587 Tapsell; (2000) 586 NZPD 5168–5169 Hunt.

<sup>214</sup> (10 February 2009) 652 NZPD 1061 Smith.

<sup>215</sup> (8 September 2004) 620 NZPD 15448 Hunt.

<sup>216</sup> (1991) 514 NZPD 1241 Gray.

## Form of reply

The Minister's reply must address the question asked. This involves a question of relevancy. The reply must be a direct response to the question; it cannot be a statement on an unrelated matter.<sup>217</sup>

Answering questions in the House is an important element in ministerial responsibility.<sup>218</sup> Ministers are therefore expected to take questions seriously and to give informative replies to them,<sup>219</sup> though how they go about answering questions is largely up to them.<sup>220</sup> Members cannot stipulate how Ministers must reply (for example, by insisting on a “yes” or “no” answer<sup>221</sup>), nor can the Speaker require a reply to be couched in a particular form.<sup>222</sup> Hypothetical answers may be given.<sup>223</sup>

The Minister's reply to a question is required to conform to many of the rules applying to questions. It must be concise and confined to the subject matter of the question asked.<sup>224</sup> It must not contain statements of facts and the names of any persons unless they are strictly necessary to answer the question.<sup>225</sup> But a statement of fact in a reply need not be authenticated (as it would in a question).<sup>226</sup> The reply must be no longer than is necessary to answer the question adequately. But Ministers may add more than the bare facts in giving their replies. Any information as to the reasons for the answer may be added.<sup>227</sup> Ministers must, however, confine themselves to giving information about matters for which they have responsibility. They cannot speculate about the potential effects of another political party's policy.<sup>228</sup> Nor should they bring into the answer another political party that has not been involved in the questioning.<sup>229</sup> Speakers have ruled against commencing an answer to a question with a political attack on the member asking the question, but if members make political statements in their questions, it is accepted that they are likely to get a political statement back.<sup>230</sup>

Answers may not contain any of the many kinds of expressions debarred from questions—arguments, inferences, imputations, epithets and ironical expressions<sup>231</sup>—and they must not contain any discreditable references to members or offensive or unparliamentary expressions.<sup>232</sup> Ministers may not, for example, make provocative remarks, such as comments on the extent of the questioner's knowledge, nor should they include comments that are not relevant to the question, or use terms of abuse in the answer.<sup>233</sup> A quotation can be used in a reply, regardless of its origin, provided that it relates to the Minister's area of responsibility.<sup>234</sup> Ministers, in their replies, are also under the general constraint against referring to select committee proceedings not open to the public, and to cases pending adjudication in a court.<sup>235</sup>

The notes that Ministers use to answer questions are not official documents that, if quoted from, must be laid on the Table,<sup>236</sup> but any other official document quoted by a Minister in answering a question can be required to be produced.

<sup>217</sup> (2001) 595 NZPD 11634 Hunt; (3 March 2004) 615 NZPD 11495 Hunt.

<sup>218</sup> (8 September 2004) 620 NZPD 15443 Hunt.

<sup>219</sup> (1995) 550 NZPD 9423 Tapsell.

<sup>220</sup> (1997) 558 NZPD 484 Kidd.

<sup>221</sup> (11 May 2004) 617 NZPD 12762 Hunt.

<sup>222</sup> (2001) 592 NZPD 9009 Hunt; (2002) 603 NZPD 1182 Hunt.

<sup>223</sup> (12 April 2005) 625 NZPD 20050 Wilson.

<sup>224</sup> SO 386(2).

<sup>225</sup> SO 386(2)(a).

<sup>226</sup> (9 April 2003) 607 NZPD 4959 Hunt; (2 August 2005) 627 NZPD 22173 Wilson.

<sup>227</sup> (1975) 398 NZPD 2070 Whitehead.

<sup>228</sup> (1993) 534 NZPD 14437 Gerard (Deputy Speaker).

<sup>229</sup> (7 February 2012) 677 NZPD 89 Smith.

<sup>230</sup> (6 May 2009) 654 NZPD 2923 Smith.

<sup>231</sup> SO 386(2)(b).

<sup>232</sup> SO 386(2)(c).

<sup>233</sup> (1971) 374 NZPD 2813 Jack; (5 September 2007) 641 NZPD 11568 Wilson; (10 April 2008) 646 NZPD 15570 Wilson.

<sup>234</sup> (29 March 2006) 630 NZPD 2257–2258 Wilson.

<sup>235</sup> SO 386(3).

<sup>236</sup> (1997) 565 NZPD 5769 Kidd; (2000) 586 NZPD 5105 Hunt.

If a Minister is asked questions about a report or whether the Minister has received a report, the reply is not restricted to official reports, but the report must bear a relation to the subject matter of the question for which the Minister has responsibility.<sup>237</sup> Ministers may give their own party perspective in their answers and it is not obligatory for a Minister to use any particular form of words to make it clear whether an official or a party perspective is being given.<sup>238</sup> But it is advisable for Ministers to make their position clear so that they are not misunderstood.

## Adequacy of reply

Ministers must give an answer to the question asked unless they consider it not in the public interest to do so.<sup>239</sup> Whether or not the reply provided actually answers the question is a subjective judgement. Members frequently appeal to the Speaker where they are dissatisfied with an answer. The Speaker does not judge the quality or correctness of an answer, but is concerned to ensure only that an adequate answer is given. This will often depend on the nature of the question asked. Where questions are clear and straightforwardly seeking information, the Speaker will require an informative reply. But where the questions contain political statements or seek opinion, members asking the questions run the risk that Ministers' replies will address the political statements or the opinion given will not satisfy the questioner. A precise answer cannot be expected.<sup>240</sup> The test for the Speaker of the adequacy of a reply is whether or not the question has been addressed.<sup>241</sup> An answer should "address" the question asked by being relevant to it.<sup>242</sup> Essentially, the House itself and public opinion (assisted by the news media and reports of parliamentary proceedings) are the arbiters of the quality of a reply, making a political judgement on the matter.<sup>243</sup> The Speaker cannot be appealed to on the ground that the reply is inaccurate.<sup>244</sup> A deliberate attempt to mislead the House would be a contempt, and if a Minister discovers that he or she has provided incorrect information to the House, he or she is expected to correct the record as soon as possible. But, subject to these qualifications, accuracy or otherwise is a matter that may be disputed and the Speaker is not the judge of it. It is a matter for political criticism of the Minister concerned if members believe that a Minister has answered incorrectly.

Questions often have more than one leg to them. If so, members cannot demand that a reply address every leg of their question. The Minister has the latitude to address one leg of a question and ignore others. This is a risk that members run in asking multiple questions.<sup>245</sup> It is also permissible for Ministers to answer questions that contain a premise or statement by disagreeing with or contorting the premise or statement.<sup>246</sup>

The seeking of opinions and the inclusion of hypothetical material in questions certainly contributes to dissatisfaction with the replies.<sup>247</sup> In essence, whether a reply emerges that answers the question satisfactorily, in the questioner's view or even in some "objective" sense, is a matter for political discourse. No one person has the power to make such a judgement. Question time allows issues to be raised. It does not necessarily resolve them to everyone's satisfaction.

<sup>237</sup> (19 October 2006) 634 NZPD 5937 Wilson.

<sup>238</sup> (2000) 587 NZPD 5483 Hunt.

<sup>239</sup> (10 February 2009) 652 NZPD 1055 Smith; (7 May 2009) 654 NZPD 3013 Smith.

<sup>240</sup> (10 February 2009) 652 NZPD 1061 Smith.

<sup>241</sup> (2001) 592 NZPD 9172 Hunt; (21 February 2013) 687 NZPD 8091–8092 Carter.

<sup>242</sup> (11 May 2005) 625 NZPD 20447 Wilson.

<sup>243</sup> (2002) 603 NZPD 1622 Hunt; (1 May 2003) 608 NZPD 5242 Hunt; (8 September 2004) 620 NZPD 15448 Hunt.

<sup>244</sup> (23 March 2004) 616 NZPD 11840 Hunt.

<sup>245</sup> *Ibid.*, at 11998; (7 June 2005) 626 NZPD 21043 Wilson.

<sup>246</sup> (2 March 2005) 623 NZPD 18867 Hunt.

<sup>247</sup> (8 September 2004) 620 NZPD 15448 Hunt.

## Follow-up to replies

Inaccuracies in answers to oral questions must be corrected as soon as possible. The appropriate procedure for correcting an inaccuracy is by way of a personal explanation, made at the earliest opportunity (often at the beginning of the next question time).<sup>248</sup> Should leave be refused for this purpose (this has happened on occasion), the Minister or member should write to the member who asked the question and to the Speaker, correcting the reply.

If a Minister, in replying to an oral question, promises to supply further information to the questioner, the Minister must follow up on this promise within a reasonable time. A member who does not receive the promised information can take this up with the Speaker.<sup>249</sup>

## SUPPLEMENTARY QUESTIONS

Once the Minister has delivered his or her reply, members have an opportunity to ask supplementary questions at the discretion of the Speaker.<sup>250</sup> Supplementary questions are asked by members in their own right, not on behalf of other members.<sup>251</sup>

The Minister naturally does not know exactly what supplementary questions may be asked, but is not entirely in the dark. Supplementary questions may only be put to elucidate or clarify a matter raised in the original question or in the answer given to the question.<sup>252</sup> Supplementary questions must be relevant to the original question asked; they are not an opportunity to ask questions without notice, which is a practice unknown in the New Zealand House of Representatives.

A supplementary question must conform to all the rules of content and form applying to questions generally.<sup>253</sup> Members may ask only one supplementary question at a time,<sup>254</sup> and any second element in such a question must be closely related to the first part and serve to wind up the question being asked.<sup>255</sup> But it is more difficult to apply the detailed rules to oral exchanges on the floor of the House than it is to analyse submitted questions in an office, and supplementary questions that would be disallowed as primary questions are inevitably allowed from time to time.<sup>256</sup>

Not all replies to questions provoke supplementary questions, although most do. Members wishing to ask a supplementary question rise in their places and seek the call. No member has a right to ask a supplementary question.<sup>257</sup> It is entirely over to the Speaker whether supplementary questions are permitted at all, but in practice the House expects them to be asked and they are regarded as an integral, indeed vital, part of question time. As a matter of practice, the member who asked the original question is preferred first if he or she wishes to ask a supplementary question. If the questioner does not have a further question to ask, the Speaker will call any other member on the questioner's side of the House instead.<sup>258</sup>

After the member who asked the original question has had his or her turn, other members may ask supplementary questions. The Standing Orders place discretion entirely with the Speaker as to whom to call to ask supplementary questions and how many questions to permit on each question. But in fact firm practices have evolved in the multi-party environment as to how this discretion is exercised.

<sup>248</sup> (29 April 2003) 608 NZPD 5093 Hunt; (7 December 2005) 628 NZPD 615 Wilson.

<sup>249</sup> (25 June 2003) 609 NZPD 6544 Hunt.

<sup>250</sup> SO 387(1).

<sup>251</sup> SO 387(2).

<sup>252</sup> SO 387(1).

<sup>253</sup> (1985) 462 NZPD 4549 Wall.

<sup>254</sup> (1984) 458 NZPD 1401 Arthur.

<sup>255</sup> (1999) 575 NZPD 15343 Kidd.

<sup>256</sup> (1988) 492 NZPD 7082 Burke.

<sup>257</sup> (1975) 399 NZPD 2682 Whitehead.

<sup>258</sup> (1977) 416 NZPD 4995 Harrison (Acting Speaker).

Depending upon party sizes in the House, the Speaker allows each party a “quota” of supplementary questions. Even if there are fewer than 12 questions lodged on a particular day, the Speaker allows the same number of supplementary questions overall. Those questions can then be utilised by members of each party as they see fit. Parties decide how they distribute their allocation of supplementary questions. They are not obliged to ask a supplementary question to every primary question just for the sake of it. (Smaller parties would not have enough supplementary questions to do this in any case.) Parties may allow another party to use their supplementary questions. When they trade their supplementary questions in this way, they should give the Speaker notice before the supplementary question is asked.<sup>259</sup> After giving preference to the member who asked the primary question, the Speaker calls members to ask supplementary questions in order of the size of parties. The Speaker endeavours to give all parties a chance to ask their first supplementary question before a party is allowed to ask a second supplementary question on the same question.

Extra supplementary questions may be allowed by the Speaker if he or she considers a Minister’s answers to be patently inadequate.<sup>260</sup>

In respect of an urgent question, supplementary questions are restricted to one question from the member asking the urgent question.<sup>261</sup> In respect of a question to other members, the Speaker has unfettered discretion. However, the practice is to allow one, or at most two, supplementary questions, usually from the member who lodged the primary question.<sup>262</sup> More supplementary questions may be allowed if the Speaker is not satisfied that the question has been adequately answered.

## MISREPRESENTATION DURING QUESTION TIME

A member may speak again in a debate to correct a member who has represented him or her.<sup>263</sup> This is a rule of debate and does not apply in question time, nor can a point of order be used to correct a misrepresentation. A Minister can deal with any misrepresentation in his or her answer to a question, but before 2011 a member had no real remedy in the House, except to seek leave to make a personal explanation, which left the matter in the hands of the House. Following a report of the Standing Orders Committee in 2011, a procedure has been introduced to allow a member to apply to the Speaker asking to respond to a misrepresentation during question time. The Speaker may allow a response in the House if the member has been adversely affected or his or her reputation damaged.<sup>264</sup>

## REPLIES TO WRITTEN QUESTIONS

The member who has lodged a written question need do nothing further to obtain the answer to it. A question may be withdrawn by the member informing the Clerk at any time up to the receipt of the reply by the Clerk. After that time the question has already been answered and it is too late to withdraw it.

The reply to a written question must be lodged in electronic form with the Clerk.<sup>265</sup> The reply should be signed by way of an electronic signature by the Minister or one of the Minister’s colleagues.<sup>266</sup> How the electronic signature is affixed is a matter for the Minister to decide, as long as the Minister has authorised it. Thus a Minister’s

<sup>259</sup> (2 July 2008) 648 NZPD 17100 Wilson.

<sup>260</sup> (14 August 2007) 641 NZPD 11031 Wilson.

<sup>261</sup> SO 388(3).

<sup>262</sup> (23 August 2006) 633 NZPD 4764 Wilson.

<sup>263</sup> SO 110.

<sup>264</sup> SO 359; Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHRL18B.

<sup>265</sup> SO 382(3)(a).

<sup>266</sup> SO 382(3)(b).

practice of authorising the affixing of his electronic signature by signing a hard copy of the reply was ruled by the Speaker to be perfectly acceptable.<sup>267</sup>

The reply must be lodged with the Clerk no later than the sixth working day following the publication of the question.<sup>268</sup> This effectively gives one week for the reply to be prepared. A reply due on a particular day does not have to be lodged at any particular time of the day.<sup>269</sup>

## **Co-ordinated replies**

A number of well-established governmental practices are designed to co-ordinate replies to written questions. This is especially important where a question in similar terms is lodged to all Ministers, and it is convenient for the Government to collect and collate information centrally or to respond with a single policy statement. Such questions may elicit a similar reply from all of the Ministers to whom they are addressed, or one substantive reply from one Minister and replies from the other Ministers merely directing attention to the substantive reply.

In the case of written questions addressed to the same Minister, the Minister may provide an amalgamated reply if this is warranted. But amalgamating replies cannot be used as a device to withhold information from the House, for example by avoiding responding with disaggregated figures that are material to the question asked.<sup>270</sup> The practice of amalgamating replies can be resorted to only where the questions concerned are themselves of a similar nature or otherwise associated with each other. It is not acceptable to amalgamate replies to dissimilar questions into a single reply.<sup>271</sup>

## **Holding replies**

As Ministers have only six working days to prepare replies to often complicated questions, a practice has developed of giving “holding” or “interim” replies in some cases and following up later with full replies. Since 2014 these interim replies have not been regarded as replies in terms of the Standing Orders, and questions remain unanswered even when interim replies have been provided. Interim replies are required to include a reason why an answer is not immediately available. When a final answer is received it is published electronically, along with the date of the reply and the reason for the delay in replying. Speakers have emphasised that holding replies should only be used exceptionally and the Minister must make every endeavour to follow up with the full reply as soon as possible thereafter.<sup>272</sup> Ministers have been reminded that giving holding replies should not become the norm. It is not acceptable to issue holding replies just because a Minister’s office has a large number of questions to deal with. A holding reply is only justified if answering a particular question will require considerable research.<sup>273</sup> If a Minister considers that this is the case, the Minister should say so in the initial reply. A Minister should not give a holding reply promising to supply information and then follow up with a reply declining to provide it on the grounds of the expense involved. A promise must be kept.<sup>274</sup> Nor should a holding reply be given if the Minister does not intend to follow up with a fully informative reply. It was therefore held to be unacceptable to use the holding reply mechanism where the reply eventually provided was also brief. The Minister could just as easily have given the short reply in the first place.<sup>275</sup>

267 (5 May 2004) 617 NZPD 12621 Hunt.

268 SO 382(4).

269 (14 May 2003) 608 NZPD 5690 Hunt.

270 (2001) 591 NZPD 8779–8780 Hunt.

271 (2000) 588 NZPD 6851 Hunt.

272 (1995) 547 NZPD 7195–7196 Tapsell; (2000) 582 NZPD 872 Hunt.

273 (2000) 582 NZPD 1162 Hunt.

274 (2001) 591 NZPD 8913 Hunt.

275 (2000) 586 NZPD 5168 Hunt.

## Contents of replies

The same rules that apply to the contents of replies to oral questions apply to replies to written questions. However, a written answer to a question is primarily a matter between the Minister and the member concerned, and the Speaker will not become involved in it unless it is brought to the Speaker's attention. The Speaker does not encourage this being done in the House, but will always consider objections by members to the replies they have received if they raise them with the Speaker in writing. However, a member objecting to the contents of a reply must always discuss it first with the Minister concerned to try to resolve any difficulties.<sup>276</sup> If the Speaker finds that a reply to a written question is not confined to the subject matter of the question asked, or is otherwise out of order, it may be ordered to be amended and republished.<sup>277</sup>

## Publication of replies

All replies are published on the Parliament website on the third working day following the day on which they are lodged.<sup>278</sup> (The Speaker may relax this requirement in exceptional circumstances related to the operation of the website.<sup>279</sup>) This delay in publication is to ensure that the member who asked the question has advice of the reply before its general publication.

## Amended replies

If a Minister discovers that information provided in a written reply is incorrect, the Minister must lodge an amended reply with the Office of the Clerk as soon as practicable. This is then provided to the member and published on the Parliament website. A Minister should not merely correct an answer to an earlier question in replying to a subsequent question.<sup>280</sup> If a Minister appreciates that there has been an error but needs more time to assemble the correct information, the Minister should still acknowledge the error immediately by lodging a further reply with the Clerk, and provide a fully corrected reply in due course.<sup>281</sup>

---

<sup>276</sup> (1983) 452 NZPD 2013 Harrison.

<sup>277</sup> (1983) 450 NZPD 388 Harrison.

<sup>278</sup> SO 382(3)(c)(ii).

<sup>279</sup> SO 382(5).

<sup>280</sup> (11 June 2003) 609 NZPD 6121 Hunt.

<sup>281</sup> Ibid.

## CHAPTER 40

# Referendums

Referendums have been used in New Zealand for more than a century as a means of making decisions on issues of public policy. The first national referendum in the country's history was held on 7 December 1911 on the prohibition of the sale of liquor.<sup>1</sup> The sale of liquor has been the subject most often submitted to a referendum. Until 1987 liquor licensing was subject to regular nationally organised referendums held at the time of each general election, as well as to local polls relating to the sale of liquor in particular localities. Legislation is always required for the holding of referendums, whether they are one-off, regular, or resulting from the process set out in the Citizens Initiated Referenda Act 1993. Legislation containing provisions for the calling of referendums or polls has included matters as various as local authority loans and producer-board levies. As well as referendums held under these standing legislative provisions, national referendums have been organised under special legislation from time to time on subjects including betting, compulsory military training, compulsory retirement savings and the electoral system.<sup>2</sup>

A referendum is an exercise in direct democracy, whereas the parliamentary system is the operation of a representative democracy. The two are not incompatible, but they raise separate issues. This work is not concerned with referendums generally. They are generally held under the terms of the legislation governing them and do not raise special issues for the parliamentary process. But two types of referendum have a special relationship to the parliamentary process—electoral referendums and citizens initiated referendums.

## ELECTORAL REFERENDUMS

### Binding referendums

Certain parts of the electoral system are entrenched in law by a requirement that any proposal for their amendment or repeal must be passed by a 75 per cent majority of all the members of the House or carried by a majority of valid votes cast at a poll of the electors of the general and Māori electoral districts.<sup>3</sup> The provisions that can be altered only in this special way are known as reserved provisions. They are the three-year term of Parliament; the constitution of the Representation Commission; the division of New Zealand into general electoral districts after each census; the electoral quota adjustment; the provisions that prescribe 18 years of age as the

1 Neill Atkinson *Adventures in Democracy—A History of the Vote in New Zealand* (University of Otago Press, Dunedin, 2003) at 125.

2 Electoral Commission “Referenda” (20 October 2014) <[www.elections.org.nz](http://www.elections.org.nz)>.

3 Electoral Act 1993, s 268(2).

minimum voting age; and the provisions dealing with the method of voting.<sup>4</sup> The special majority provisions are not required for the repeal of a reserved provision in a consolidating Act if that provision is at the same time re-enacted without amendment and the re-enacted provision is also entrenched.<sup>5</sup>

The practice of the House in dealing with legislation that proposes to amend or repeal a reserved provision is dealt with in discussing the legislative process. (See pp 445–446.) The alternative means of effecting the amendment or repeal of a reserved provision is to submit it to a referendum of electors. This can be done only by legislation. There is no general legislation providing a mechanism for a legally binding electoral referendum to be held, so Parliament must pass special legislation for this purpose.<sup>6</sup> Legislation submitting a reserved provision to a referendum must be “binding”, in the sense of self-implementing, if the amendment or repeal of a reserved provision is to be made by the electors rather than Parliament. Only if a referendum is binding in this sense has Parliament transferred the responsibility of making the change to the electors rather than shouldering it itself. Where Parliament transfers such responsibility to the electors, no special majority of members is needed to pass the legislation providing for the referendum, or even for provisions in the legislation for the contingent repeal or amendment of reserved provisions (the contingency being the carrying of the proposal at the referendum). For an electoral referendum to be binding, the proposal must spell out fully the details of the alternative system or systems under consideration.<sup>7</sup>

A referendum on the voting system in November 1993 was structured in this way. It was authorised by special legislation that applied many of the provisions of the Electoral Act 1956 to its conduct<sup>8</sup> and provided for the Chief Electoral Officer to declare whether the proposal was carried.<sup>9</sup> The proposal submitted to electors was a choice between the existing first-past-the-post system of electing members of Parliament and the alternative mixed member proportional (MMP) system provided for under the contingent legislation.<sup>10</sup> The contingent legislation, the Electoral Act 1993, repealed five of the six reserved provisions (excepting only the provision for a three-year term of Parliament) and altered at least two of them in the provisions that it substituted.<sup>11</sup> Had the legislation that became the Electoral Act 1993 not been made subject to a binding electoral referendum, those provisions would clearly have been required to be passed by a 75 per cent majority of members.

The binding effect of the referendum was achieved by the enactment of a statutory trigger. The new electoral legislation was to be brought into force in stages, following the Chief Electoral Officer’s declaration that the proposal favouring the introduction of a mixed member proportional system had been carried.<sup>12</sup> If the proposal had not been carried, the new legislation would have been automatically repealed.<sup>13</sup> In the event, the proposal was carried and the legislation took effect accordingly.<sup>14</sup>

## Non-binding referendums

Four non-binding referendums on electoral matters have been held since 1967. Two of them related to the term of Parliament, and two related to the voting system.<sup>15</sup>

<sup>4</sup> Electoral Act 1993, s 268(1).

<sup>5</sup> Electoral Act 1993, s 268(2).

<sup>6</sup> Referenda (Postal Voting) Bill (326–2) (commentary, 15 August 2000) at 2 ([1999–2002] AJHR I.22A at 626).

<sup>7</sup> Electoral Law Committee *Electoral Poll Bill Report* (10 December 1991) [1991–1993] AJHR I.17A at 5.

<sup>8</sup> Electoral Referendum Act 1993, s 3.

<sup>9</sup> Electoral Referendum Act 1993, s 19.

<sup>10</sup> Electoral Referendum Act 1993, s 2(2) and Form 1.

<sup>11</sup> The reserved provisions were previously contained in the Electoral Act 1956, s 189.

<sup>12</sup> Electoral Act 1993, s 2(1), (2).

<sup>13</sup> Electoral Act 1993, s 2(3).

<sup>14</sup> (16 December 1993) 181 *New Zealand Gazette* 3753 at 3753–3754.

<sup>15</sup> The referendums in 1967 and 1990 related to the term of Parliament, and those in 1992 and 2011 related to the voting system; “Referenda” (20 October 2014) The Electoral Commission <[www.elections.org.nz](http://www.elections.org.nz)>.

Because these matters are dealt with by reserved provisions, where changes to the law would have been required to implement the result of the referendum, it would have been necessary for Parliament to pass further legislation giving effect to the electorate's wishes. In such a case it would have had to do so by a 75 per cent majority, notwithstanding the result of the poll, because it would be Parliament, not the elector, that was taking ultimate responsibility for making the change to the law.

The most recent example of a non-binding or indicative electoral referendum was provided for in the Electoral Referendum Act 2010. The referendum was held in conjunction with the 2011 election on two questions relating to the voting system. The first question asked whether New Zealand should keep the MMP system. The second question asked voters which of the four alternative systems they would choose, if New Zealand were to change to another voting system.<sup>16</sup>

The bill contained provisions for a review of the MMP system if 50 per cent or more of the votes cast on the first question were in favour of retaining it.<sup>17</sup> Before the poll the Government announced its intention of holding a second legally binding referendum in conjunction with the 2014 election if a majority of electors voted to change the system.<sup>18</sup>

The result of the referendum was the retention of the current system.<sup>19</sup> A review of the MMP system was completed by the Electoral Commission in 2012. (See pp 21–22.)

Such non-binding referendums can now be held by postal vote under general legislation.<sup>20</sup>

## CITIZENS INITIATED REFERENDUMS

A general legislative mechanism for citizens to initiate the holding of referendums came into force on 1 February 1994.<sup>21</sup> It involves the collection of enough signatures to a petition supporting the holding of a referendum and the delivery of the petition to the Clerk of the House. If a petition attracts the support of not less than 10 per cent of all registered voters, a referendum must then be held.<sup>22</sup> This form of statutory petition is quite different from the ordinary petitions that individuals and groups frequently address to the House, and nothing in the legislation affects the right to petition the House or the right of the House to deal with other kinds of petition.<sup>23</sup> A petition that purports to be made under the legislation but has not followed the statutory procedure may be presented to the House and dealt with as an ordinary petition.<sup>24</sup>

The subjects of the five citizens-initiated referendums held to date under the legislation related to the employment of firefighters, the size of the membership of the House, the needs of victims in the justice system, whether smacking children should be a criminal offence, and the sale of certain State assets.

### Scope of referendum

Any referendum held following the presentation of a referendum petition is indicative only.<sup>25</sup> It cannot by itself effect any change to the law or bind any person;

<sup>16</sup> Electoral Referendum Act 2010, s 8(1) and sch 1.

<sup>17</sup> Electoral Referendum Act 2010, ss 74–78.

<sup>18</sup> Electoral Referendum Bill (128–2) (commentary, 22 November 2010) at 13–14 ([2008–2011] AJHR I.22B at 275–276).

<sup>19</sup> (10 December 2011) 190 *New Zealand Gazette* 5548.

<sup>20</sup> Referenda (Postal Voting) Act 2000, s 4.

<sup>21</sup> The effectiveness of the process and the Clerk's role in it have been questioned: Bridget Fenton and Andrew Geddis "Citizens initiated referenda" (2009) 9 *New Zealand Law Journal* 334 at 334; Ben Goschik "You're the voice—Try and understand it: Some of the practical problems of the Citizens Initiated Referenda Act" (2003) 34 *Victoria University Wellington Law Review* 695 at 695–727.

<sup>22</sup> Citizens Initiated Referenda Act 1993, ss 18(2) and 22.

<sup>23</sup> Citizens Initiated Referenda Act 1993, s 59.

<sup>24</sup> (1998) 570 NZPD 10997 Kidd.

<sup>25</sup> Citizens Initiated Referenda Act 1993, s 3.

it is intended to influence or persuade the Government, Parliament or some other constituency to implement or adopt the views it expresses. There are few restrictions on the subject matter with which a citizens initiated referendum may deal. Such a referendum petition cannot be about a disputed parliamentary election result or about a disputed result on an earlier citizens initiated referendum;<sup>26</sup> nor can a petition that is to the like effect of a citizens initiated referendum held within the previous five years be accepted.<sup>27</sup> With these limited restrictions, a citizens initiated referendum petition may be on any subject that is capable of a yes or no answer.<sup>28</sup>

## Proposals for petitions

A referendum petition cannot simply be circulated. To comply with the legislation it must go through a process of vetting and submissions designed to define the precise question to be offered to the judgement of the electors.

For this purpose any person wishing to promote a referendum petition must first submit a proposal for it to the Clerk of the House. The proposal must be accompanied by a draft of the petition and the fee payable, and give the name of the proposer, a New Zealand address where the proposer or the proposer's representative can be contacted and the name of that representative.<sup>29</sup>

A referendum petition can be promoted by a natural person (whether or not an elector) or a body of persons (whether corporate or unincorporate). There may be joint promoters. Where the proposer is not a natural person, the Clerk will need to be satisfied as to the proposer's status, that it desires to promote a referendum petition and that the person claiming to represent it is authorised to do so. These matters can be established by a statutory declaration or by other sufficient proof being produced.

The prescribed fee that must accompany a referendum proposal is \$604.10.<sup>30</sup> This fee, which includes goods and services tax,<sup>31</sup> is payable to the Clerk.

## Advertising of proposal

If the Clerk is satisfied that the proposal is in order, its receipt is notified in the *Gazette*, such newspapers as the Clerk considers necessary (usually those circulating in the main centres), and on the Parliament website. Notice is retained on the website until the petition either succeeds or ultimately lapses. The status of the petition is updated as the steps in the process are completed.

The notice includes the wording of the question that the proposer wishes to put to voters in the referendum, and calls for submissions on this wording. At least 28 days must be allowed from the date of publication of the notice in the *Gazette* for people to make comments on the question. They do this by sending three copies of their submission to the Clerk.<sup>32</sup> One copy of each submission received is sent to the proposer and one copy is made available at the office of the Clerk for inspection.<sup>33</sup>

## Withdrawal or cancellation of a proposal or petition

A proposal for a referendum petition and any referendum petition itself may be withdrawn at any time by the promoter. In either case this is done by giving written notice to the Clerk. If this is done before the Clerk has determined the precise question to be included in the referendum petition (and the petition is therefore still

<sup>26</sup> Citizens Initiated Referenda Act 1993, s 4.

<sup>27</sup> Citizens Initiated Referenda Act 1993, s 11(2)(b).

<sup>28</sup> Citizens Initiated Referenda Act 1993, s 58; Citizens Initiated Referenda Regulations 1995, Schedule.

<sup>29</sup> Citizens Initiated Referenda Act 1993, s 6.

<sup>30</sup> Citizens Initiated Referenda (Fees) Regulations 1993, reg 2.

<sup>31</sup> Citizens Initiated Referenda (Fees) Regulations 1993, reg 3.

<sup>32</sup> Citizens Initiated Referenda Act 1993, s 7(1), (2).

<sup>33</sup> Citizens Initiated Referenda Act 1993, s 8.

at the proposal stage), no determination of a question is made at all.<sup>34</sup> Notice that a petition has been withdrawn at this stage is given in the *Gazette*. If withdrawal is effected after the question has been determined (and the proposal has become a referendum petition), the Clerk is required both to notify the Governor-General and to publish notice of the withdrawal in the *Gazette*.<sup>35</sup> Withdrawal of a petition may be effected at any time before the writs for the holding of a referendum on it have been issued. In such a case no referendum is held.<sup>36</sup>

If the promoter dies or (in the case of a corporation) is dissolved or put into liquidation before the Clerk has determined the question on a proposal, no question is determined.<sup>37</sup> If there is more than one promoter, the death or dissolution of one does not prevent the proposal proceeding. Once the question has been determined and the proposal becomes a referendum petition, the death or dissolution of the promoter does not automatically stop the process, although as there is no longer anyone in a position to promote it, it will probably lapse in due course.

## Determination of question

The Clerk must consult the proposer and may consult any other person in determining the precise question to be included in the referendum petition.<sup>38</sup> The Government departments most closely concerned with the subject matter of the proposed referendum may be invited by the Clerk to comment. Cabinet has acknowledged that it is appropriate for departments to give the Clerk technical assistance in the task of finalising the wording of the question, without commenting on the substantive merits of the proposal.<sup>39</sup> Any comments received as a result of this consultation are communicated to the proposer.

The Clerk, having taken account of the proposal, comments received on it, the consultation engaged in and any other matters the Clerk considers relevant,<sup>40</sup> determines the precise question to be put to voters in the proposed referendum.<sup>41</sup> For this purpose the practice has been to allow the promoter to comment on a provisionally determined question, before making the final determination. There can be only one question to a referendum petition.<sup>42</sup> That question, as determined by the Clerk, must convey clearly the purpose and effect of the referendum and ensure that one of only two answers may be given to it.<sup>43</sup>

One of the reasons for the requirement that the Clerk determine the precise question is to ensure that the result of any referendum provides meaningful guidance to the Government and to Parliament as to the views of electors. But the Clerk cannot, in the course of determining the terms of the question, turn the proposal into something it does not purport to be. The proposed referendum may relate to matters outside of Government activity. While the Clerk is obliged to take reasonable steps to frame the question in a neutral way, the subject of the proposal may not permit complete neutrality and the subject is always chosen by the promoter.<sup>44</sup>

The determination of the precise question must be made within three months of receipt of the proposal.<sup>45</sup> The precise question is finally determined when written

<sup>34</sup> Citizens Initiated Referenda Act 1993, s 11(2)(a)(i).

<sup>35</sup> Citizens Initiated Referenda Act 1993, s 22A(3).

<sup>36</sup> Citizens Initiated Referenda Act 1993, s 22A(1), (2).

<sup>37</sup> Citizens Initiated Referenda Act 1993, s 11(2)(a)(ii), (iii).

<sup>38</sup> Citizens Initiated Referenda Act 1993, s 9.

<sup>39</sup> Cabinet Office *Cabinet Manual* 2008 at [7.130].

<sup>40</sup> Citizens Initiated Referenda Act 1993, s 10(2).

<sup>41</sup> Citizens Initiated Referenda Act 1993, s 11(1).

<sup>42</sup> Citizens Initiated Referenda Act 1993, s 5(2).

<sup>43</sup> Citizens Initiated Referenda Act 1993, s 10(1).

<sup>44</sup> *Egg Producers Federation of New Zealand v Clerk of the House of Representatives* HC Wellington CP128/94, 20 June 1994 at 9–13.

<sup>45</sup> Citizens Initiated Referenda Act 1993, s 11(2).

notice of it is given to the promoter<sup>46</sup> and notice of the question is published in the *Gazette* and in the newspapers the Clerk considers necessary.<sup>47</sup>

## Form for signatures

As soon as practicable after determining the question, the Clerk must approve a form on which signatures to the petition are to be collected. For this purpose the Clerk may consult the Government Statistician and anyone else the Clerk thinks fit.<sup>48</sup> The petition itself must ask that an indicative referendum be held and it must specify the question, as finally determined by the Clerk, to be put to voters.<sup>49</sup> These details are incorporated into any form approved by the Clerk so that potential signatories know what they are being invited to sign. The form must provide spaces for the following details: the signature; the full name of the signatory; the signatory's residential address; and the signatory's date of birth.<sup>50</sup> The forms normally make provision for 10 to 20 people to sign on each form.

When a form has been approved, notice of it is given to the proposer and published in the *Gazette* and newspapers.<sup>51</sup> This will often be done along with the notice advising of the precise question to be put to voters. The notice (or notices if they are published separately) must set out the precise question and the name of the proposer. It must also identify the proposer as the person who has been approved to use the wording determined by the Clerk, as the person who will promote a referendum petition with that wording and as the person who is authorised to use the form that the Clerk has approved.<sup>52</sup>

## Collecting signatures

When, but not before, the promoter of a referendum petition has received notification from the Clerk of the precise question to be put to voters and of the approved form, the promoter may proceed to promote the petition and collect signatures. All signatures must be on the approved form, and will not count towards achieving the required number if they are not. It is the promoter's responsibility to arrange the printing and circulation of forms as approved by the Clerk.<sup>53</sup>

Signatories must state their full names and addresses alongside their signatures. They may add their dates of birth but do not have to (although this information can be useful for the checking of a sample of the signatures later on).<sup>54</sup> Electronic signatures are not acceptable.<sup>55</sup>

The promoter has 12 months from the date of publication in the *Gazette* of the precise question determined by the Clerk to collect signatures to the petition. The petition must be delivered to the Clerk within this time if it is to proceed. If it is not so delivered, it lapses.<sup>56</sup> Those who are invited to sign by the promoter or by the promoter's agents are not being asked to endorse the policy outcome the promoter is seeking to achieve. The petition asks for a referendum to be held on a subject; it does not ask for support for any particular proposition. That is a matter to be addressed when the referendum is held, if that stage is ever reached.

---

46 Citizens Initiated Referenda Act 1993, s 13(1)(a)(i).

47 Citizens Initiated Referenda Act 1993, s 13(1)(b).

48 Citizens Initiated Referenda Act 1993, s 12.

49 Citizens Initiated Referenda Act 1993, s 5(1).

50 Citizens Initiated Referenda Act 1993, s 15(1).

51 Citizens Initiated Referenda Act 1993, s 13(1)(a)(ii), (b).

52 Citizens Initiated Referenda Act 1993, s 13(2).

53 Citizens Initiated Referenda Act 1993, s 14.

54 Citizens Initiated Referenda Act 1993, s 15(1).

55 Electronic Transactions Act 2002, s 14 and Schedule (excluding Citizens Initiated Referenda Act from its application).

56 Citizens Initiated Referenda Act 1993, s 15(3), (5).

## Expenditure in relation to a petition

No person (whether the promoter or not) may spend more than \$50,000 on advertisements published or broadcast in relation to an indicative referendum petition, nor more than \$50,000 on promoting one of the answers to the question to be posed in any referendum that is held on it.<sup>57</sup>

Any person who commissions advertising promoting a referendum petition or supporting one side or the other in the referendum must file a return listing such advertising and its cost. This return must be made to the Electoral Commission within one month of the petition lapsing or of the result of the referendum being formally announced.<sup>58</sup>

The Electoral Commission has no general power to publicise referendums, though it may be able to publicise a particular referendum whose subject matter falls within its area of responsibility.<sup>59</sup> Information about a referendum is therefore likely to be propagated only by the promoter or by anyone opposing the promoter's aims.

## Scrutiny of petition

It is the Clerk's duty to determine whether a referendum petition has been signed by not less than 10 per cent of eligible electors and if so that therefore a referendum will be held. An eligible elector is a person whose name appears on an electoral roll that is in force on the date on which the petition is delivered to the Clerk.<sup>60</sup> Therefore, to be successful, something over 314,000 eligible electors (in 2014 terms) must have signed the petition. The Clerk asks the Electoral Commission to preserve the electoral roll as at the date that the petition is delivered for the purposes of scrutinising the petition.

### Forms used

The promoter must deliver the referendum petition and pages containing signatures to the Clerk together at one time. After the delivery of the referendum petition to the Clerk no further pages or signatures may be added to it.<sup>61</sup> Any sent to the Clerk after this time are returned to the promoter.

The Clerk is required to disregard any signature that is not on a form supplied by the promoter and formally approved previously by the Clerk. Such signatures do not count towards ascertaining the total number who have signed to the petition.<sup>62</sup> Minor alterations to the approved form (such as a comment written by a signatory) do not disqualify the signatures. On the other hand, it is critical that people signing the form are aware of the precise question that has been approved, and any substantive alteration to this question by the promoter or a signatory will lead to the form being rejected. Where it can be presumed that the alteration to the question was made by a particular signatory, any earlier signatures (made when the question was unaltered) will not be disregarded.

### Preliminary count of signatures

A preliminary count is undertaken of all the signatures on forms that have been approved. The fact that a signatory may not have added his or her full name and residential address to the form is irrelevant for this purpose. All signatures are included for the purposes of determining which signatures may be checked to ascertain how many eligible electors have signed the referendum petition.<sup>63</sup>

<sup>57</sup> Citizens Initiated Referenda Act 1993, s 42.

<sup>58</sup> Citizens Initiated Referenda Act 1993, s 43.

<sup>59</sup> Justice and Electoral Committee *Inquiry into the 1999 General Election* (18 December 2001) [1999–2002] AJHR I.7C at 55.

<sup>60</sup> Citizens Initiated Referenda Act 1993, s 2.

<sup>61</sup> Citizens Initiated Referenda Act 1993, s 15(4).

<sup>62</sup> Citizens Initiated Referenda Act 1993, s 16(1), (3).

<sup>63</sup> Citizens Initiated Referenda Act 1993, s 15(2).

If, after this preliminary count, there are found to be fewer signatures than the number of eligible electors who would have been required to sign in order to force a referendum, the petition lapses and the Clerk notifies the promoter accordingly.<sup>64</sup>

### ***Checking a sample of signatures***

If the preliminary count reveals that there are enough signatures to suggest that at least 10 per cent of eligible electors may have signed, a sample of the signatures is checked to determine if this is in fact the case.

The sample to be checked is determined by the Clerk with the assistance of the Government Statistician. The sample to be taken must be such that it can confidently be regarded as providing an accurate estimate of the result that would be obtained if all of the signatures were checked.<sup>65</sup> For the purpose of obtaining the sample to be checked, the number of signatures on each form is ascertained and individual signatures at predetermined positions on some of those forms are selected. The selected signatures are the ones to be checked against the electoral roll to determine if the signatory is an eligible elector. A relatively small number of the total number of signatures generally suffices to give a result that can be relied on with confidence. Where the result is likely to be close, a larger sample is taken to give greater comfort.

Having selected the sample, the Clerk gives the signature details to the Electoral Commission; they are checked against the electoral roll and the results of this check are reported back to the Clerk.<sup>66</sup> Many of the signatories will not be found on the electoral roll, for example, because they are from people who are under 18 years of age or visiting New Zealand on holiday. Also, where signatories did not give their full names or residential addresses or date of birth, it may be impossible to establish that their signatures are those of eligible electors. The check of the sample will also reveal the extent to which persons have signed the petition twice or more.

### ***Determining if there are sufficient signatures***

The Clerk, again with the assistance of the Government Statistician, considers the results of this check and determines whether the petition has indeed been signed by at least 10 per cent of eligible electors.<sup>67</sup> This consideration will involve making allowance for the number of ineligible persons who are likely to have signed the petition and for duplicate signatories. The Clerk must be satisfied that at least 10 per cent of eligible electors have signed.<sup>68</sup> A public statement is issued when this matter has been decided.

### ***Resubmission of petition***

If the Clerk is not satisfied that the petition has been signed by 10 per cent of eligible electors, the petition is certified as having lapsed and is returned to the promoter.<sup>69</sup> However, the promoter can resubmit it to the Clerk within two months for another check to be made.<sup>70</sup> For this purpose the promoter may continue to gather signatures to the petition while it is being checked by the Clerk,<sup>71</sup> and may also include with the resubmitted petition any signatures gathered before it was first delivered to the Clerk but not submitted at that time, or collected during the first checking process.

<sup>64</sup> Citizens Initiated Referenda Act 1993, s 16(2).

<sup>65</sup> Citizens Initiated Referenda Act 1993, s 19(1).

<sup>66</sup> Citizens Initiated Referenda Act 1993, s 19(2), (3).

<sup>67</sup> Citizens Initiated Referenda Act 1993, s 19(4).

<sup>68</sup> Citizens Initiated Referenda Act 1993, s 18(2).

<sup>69</sup> Citizens Initiated Referenda Act 1993, s 18(1)(b).

<sup>70</sup> Citizens Initiated Referenda Act 1993, s 20(2).

<sup>71</sup> Citizens Initiated Referenda Act 1993, s 20(1).

The same procedure is followed in scrutinising a resubmitted petition as in its initial scrutiny. This is a completely new scrutiny, and no regard is had to the results of the first scrutiny in determining whether the petition, as resubmitted, has been signed by 10 per cent of eligible electors. The total number of eligible electors is taken as at the date on which the petition was first delivered to the Clerk, not at the resubmission date.

The Citizens Initiated Referenda Act does not currently contemplate a situation where analysis of the petition is inconclusive and it is not possible to determine with absolute certainty that the threshold of eligible signatories has been reached. In this event, it is likely that the Clerk would err on the side of deeming the petition successful, thereby allowing the electorate to have its say on the issue, if there was no further opportunity to resubmit the petition.

## **Presentation of successful petition to the House**

If the Clerk is satisfied that a petition or resubmitted petition has been signed by at least 10 per cent of eligible electors, it is certified as correct and delivered to the Speaker.<sup>72</sup> The Speaker, on receiving such a petition, must forthwith announce its receipt and present it to the House.<sup>73</sup> The first successful citizens initiated petition was presented to the House on 30 May 1995.<sup>74</sup> As it was a petition with its own statutory consequences, the House had no particular action to take in respect of the substantive issue. Nevertheless, like all petitions presented to the House, a referendum petition is classified by the Clerk and referred to the most appropriate select committee for consideration and report.<sup>75</sup>

## **Holding of the referendum**

The presentation of a successful referendum petition to the House leads to the holding of an indicative referendum on the question set out in the petition. The referendum may be conducted either by personal voting as employed at a general election or by postal voting.

The decisions on whether to use personal voting or postal voting and on the date for the referendum are made by the Government by Order in Council within one month of the presentation of the petition to the House.<sup>76</sup>

### **Date of the referendum**

Regardless of the method of holding the referendum it must, in principle, be held within 12 months of the date of the presentation of the petition to the House.<sup>77</sup> More than one referendum may be held on the same day or during the same postal voting period.<sup>78</sup>

Where a petition is presented within 12 months of the date by which a general election must be held, the Order in Council can itself fix the date of the election as the date for the referendum. Whether it does so or not, the House, by resolution, can in these circumstances require the referendum to be held on the same day as the general election or for the voting period for a postal vote for the referendum to close on polling day.<sup>79</sup> If a writ for a general election is issued after an Order in Council is made appointing a date for a referendum, the order may be revoked and the date of the election appointed as the date of the referendum or the day on which the voting period for a postal vote for the referendum closes.<sup>80</sup> Finally, the House

<sup>72</sup> Citizens Initiated Referenda Act 1993, s 18(1)(a).

<sup>73</sup> Citizens Initiated Referenda Act 1993, s 21.

<sup>74</sup> (1995) 547 NZPD 6841 (number of professional firefighters).

<sup>75</sup> SO 370.

<sup>76</sup> Citizens Initiated Referenda Act 1993, s 22(2).

<sup>77</sup> Citizens Initiated Referenda Act 1993, ss 22AA(1) and 22AB(2).

<sup>78</sup> Citizens Initiated Referenda Act 1993, s 55; Referenda (Postal Voting) Act 2000, s 79.

<sup>79</sup> Citizens Initiated Referenda Act 1993, ss 22AA(5), (6) and 22AB(6), (7).

<sup>80</sup> Citizens Initiated Referenda Act 1993, ss 22AA(7) and 22AB(8).

retains the right to postpone, but not cancel, a referendum. It can do this within three months of the presentation of the referendum petition by passing a resolution to that effect by a 75 per cent majority of all members. Such a resolution must go on to appoint a new date for the referendum that is between 12 and 24 months after the petition was presented.<sup>81</sup>

### ***Conduct of the referendum***

Where an indicative referendum is to be conducted by personal voting, the voting is largely carried out in the manner prescribed by the Electoral Act 1993 for the taking of an electoral poll.<sup>82</sup> Regulations provide for some matters, such as the form of the voting paper.<sup>83</sup>

An indicative referendum may be conducted by postal voting under the provisions of the Referenda (Postal Voting) Act 2000. A designated Electoral Commissioner is the Returning Officer for the purposes of such a referendum.<sup>84</sup> The voting period for postal voting extends over three weeks ending at 7 pm on a Friday.<sup>85</sup> The provisions of the Electoral Act 1993, as modified in their application to postal voting, are applied to the conduct of the referendum.<sup>86</sup>

The Electoral Commission notifies the results of a referendum conducted by personal voting in the *Gazette* and the Minister of Justice must, as soon as practicable, present these results to the House.<sup>87</sup> Where there has been a postal vote the Returning Officer gives public notice of the result.<sup>88</sup> Persons dissatisfied with the conduct of a referendum poll or of any person connected with it can apply to the High Court for an inquiry into its conduct within 20 working days of the declaration of the result.<sup>89</sup>

The voting papers used at a referendum (whether conducted by personal voting or postal voting) are disposed of in the same way as electoral ballot papers. They must be forwarded to the Clerk and kept for six months before they may be destroyed.<sup>90</sup> The legislation requiring the preservation of public records does not apply to such papers.<sup>91</sup>

---

81 Citizens Initiated Referenda Act 1993, ss 22AA(3), (4) and 22AB(4), (5).

82 Citizens Initiated Referenda Act 1993, s 24.

83 Citizens Initiated Referenda Act 1993, s 58; Citizens Initiated Referenda Regulations 1995.

84 Referenda (Postal Voting) Act 2000, s 8(1).

85 Referenda (Postal Voting) Act 2000, s 30(1), (2).

86 Citizens Initiated Referenda Act 1993, s 24A.

87 Citizens Initiated Referenda Act 1993, s 40(2), (3).

88 Citizens Initiated Referenda Act 1993, s 40AA(2); Referenda (Postal Voting) Act 2000, s 49.

89 Citizens Initiated Referenda Act 1993, ss 47–51G.

90 Citizens Initiated Referenda Act 1993, s 24 (applying, amongst other provisions, the Electoral Act 1993, ss 187 and 189); Referenda (Postal Voting) Act 2000, s 50.

91 Public Records Act 2005, s 6(a), (b).

# CHAPTER 41

## General, Urgent and Special Debates

Each week the House sets aside one hour to hold a “general” debate, which gives members free rein to raise matters they consider important. It is known as the general debate, and recurs most Wednesdays automatically in accordance with the Standing Orders. In addition, the House has a procedure whereby an event of particular importance can be raised for debate if the urgency of the situation requires this. This is known as an urgent debate, and takes place as occasion requires, provided that the Speaker agrees that the matter that has arisen is appropriate for debate under this provision. From time to time other special debates are held other than those recognised and regulated by the Standing Orders.

### GENERAL DEBATES

The general debate arises at each Wednesday sitting of the House following questions for oral answer and any urgent debate, if one has been allowed on that day.<sup>1</sup> If there is no Wednesday sitting of the House because Tuesday’s sitting has been extended under urgency, then the general debate will be lost, although on occasion the House has, by leave, held a general debate in these circumstances. The roster for the general debate that is lost is carried forward to the next general debate.

The general debate is an opportunity for members to debate miscellaneous topics that would otherwise not, or probably not, come before the House for debate.

The potential width of the general debate is indicated by the wording of the motion that is moved to launch the debate: “That the House take note of miscellaneous business”<sup>2</sup> During this debate members may raise any matters of concern to them.<sup>3</sup> This gives members an opportunity to refer to replies to questions that have been given, select committee reports, and the Government’s responses to recommendations addressed to it in reports. In many cases the general debate gives members their only realistic opportunity to focus on these matters on the floor of the House. For example, one general debate concentrated on a Member’s notice of motion that censured the Speaker, which would otherwise not have been debated.<sup>4</sup> But such a focus on business on the Order Paper is unusual.

Often, parties will ask their members who are to contribute to the debate to focus on a particular issue of topical concern. However, there is no reason (except

<sup>1</sup> SOs 66(1) and 392(1).

<sup>2</sup> SO 392(1).

<sup>3</sup> SO 392(2).

<sup>4</sup> (1986) 471 NZPD 1900–1911.

coincidence) that members or parties should concentrate on the same subject, and this has led to criticism that the general debate is not one debate but a number. Proposals have been advanced for nominating one or two topics in advance as subject matter for the debate, but no such proposals have been adopted.<sup>5</sup> Holding the general debate every second week only and alternating it with a focused set-topic debate has also been considered. (See p 680.) However, the weekly general debate is valued by members as an opportunity to raise issues of importance to them or their constituents.<sup>6</sup>

## **Form of the debate**

Twelve speeches, each of up to five minutes in length, are provided for in the general debate.<sup>7</sup>

In practice, the Business Committee agrees to a roster of speaking slots for general debates. This roster is designed to give each party its appropriate proportion of calls in the debate. In making this calculation Ministers are included in the proportions, unlike the calculation for the questions roster, so that Ministers take part in the general debate on the same basis as other members. The roster also prescribes the order in which parties are called to speak in the debate, so as to give each party a fair placing at or near the top of the list over a period of time, and to provide for the alternation of calls between Opposition parties and parties in Government.

No amendments are permitted to the motion that the House take note of miscellaneous business,<sup>8</sup> and at the conclusion of the debate this motion lapses and no question is put on it.<sup>9</sup>

## **No debate held in certain weeks**

The general debate is replaced by a debate on the Budget policy statement on the first Wednesday after the report of the Finance and Expenditure Committee on this statement has been presented.<sup>10</sup> The debate may also be replaced by debates on the Government's long-term fiscal position or on the Government's investment statement after the Finance and Expenditure Committee has presented its reports on these statements each year.<sup>11</sup> In addition, on Wednesdays when the debates on the Address in Reply, the Prime Minister's statement or the Budget are still running, no general debate is held.<sup>12</sup>

## **DEBATES ON MATTERS OF URGENT PUBLIC IMPORTANCE**

The House has a procedure whereby its prearranged business may be set aside so it can debate "a matter of urgent public importance". A debate on a matter of urgent public importance arises on a motion moved by a member to take note of such a matter. Such a motion can be moved only with the Speaker's permission. A high threshold applies to the granting of an urgent debate and an application must fulfil various criteria. Over the long term, approximately one in seven applications for such a debate is successful. In the 50th Parliament (2011–2014) there were 98 applications on separate subjects, and 18 urgent debates were granted.

---

<sup>5</sup> Standing Orders Committee *Review of the operation of the new Standing Orders* (4 September 1990) [1990] AJHR I.18B at [14].

<sup>6</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 32.

<sup>7</sup> See SOs, App A.

<sup>8</sup> SO 392(1).

<sup>9</sup> SO 392(2).

<sup>10</sup> SO 332(4).

<sup>11</sup> SO 336(5).

<sup>12</sup> SO 392(3).

## Applications for the debate

A member who wishes to move an urgent debate must lodge a written application to do so at least one hour before the House meets, or within such lesser time as the Speaker may permit.<sup>13</sup> The written application must be handed to the Speaker or one of the Speaker's staff, or to the Clerk or one of the Clerk's staff, for passing on to the Speaker. When delivered into one of these hands, it is regarded as having been received for the purposes of the Standing Order. It must not merely be left lying on a desk somewhere.<sup>14</sup>

In the written application the member sets out the matter that it proposes should be discussed at the imminent sitting of the House. The statement or letter should deal with only one subject for discussion. If a member wishes to raise two subjects for debate, the member should lodge two applications. In such statements members may explain why they are seeking an urgent debate and why they consider that it falls within the scope of the Standing Order. It is, after all, for members to make out the case for an urgent debate, not for the Speaker to uncover one.<sup>15</sup>

Every statement in a letter seeking an urgent debate must be authenticated in the same way as a statement in a notice of motion.<sup>16</sup> Applications that do not include authenticating material will be disallowed on this ground, whatever their merits.<sup>17</sup>

Unlike the lodging of urgent questions, no notice of the application is given to the Government by the member, and the fact that an application has been made is kept confidential by the Speaker. Nor is the member who has made an application informed of the Speaker's decision on it before the Speaker formally rules on it in the House. Most of the members of the House will therefore not know that an application has been submitted (although if a matter of some importance has arisen they may surmise that one has been lodged), and those who do know of it do not know whether it has been accepted. Only when the Speaker rules on an application in the House are members fully informed of the position.

An application may be withdrawn at any time before the Speaker rules on it in the House. In these circumstances, no reference is made to it at all by the Speaker.

## Two or more applications received on the same day

There can only be one urgent debate on each day,<sup>18</sup> so if two or more applications for an urgent debate are received on the same day it may be necessary for the Speaker to choose between them. However, this will be necessary only if more than one of the applications meets the criteria for acceptance set down in the Standing Orders. If, out of two applications lodged, only one is acceptable to the Speaker as the subject of an urgent debate, the Speaker has no occasion to choose between them.

If two or more applications are considered to meet the criteria set out in the Standing Orders, then the Speaker gives priority to the application that, in his or her opinion, is the most urgent and important.<sup>19</sup> The Speaker makes this decision, not the members submitting the applications. Members may indicate in their applications their views of the relative importance of applications they know are being submitted to the Speaker that day and the Speaker will take heed of such indications, but ultimately the Speaker decides their relative importance in such a case. Thus on one occasion the Speaker gave priority to an application because two earlier urgent debates had been held on the other application and the House had not had an opportunity to debate the former.<sup>20</sup>

<sup>13</sup> SO 389(1).

<sup>14</sup> (1976) 407 NZPD 3539 Jack.

<sup>15</sup> (2002) 602 NZPD 558 Hunt; (9 July 2013) 692 NZPD 11775 Smith (clear case not made).

<sup>16</sup> (1984) 458 NZPD 1086 Arthur; (2000) 585 NZPD 3768 Hunt.

<sup>17</sup> (2002) 604 NZPD 1810 Hunt; (14 November 2007) 643 NZPD 13080 Wilson; (14 December 2010) 669 NZPD 16395 Smith.

<sup>18</sup> SO 391.

<sup>19</sup> SO 391.

<sup>20</sup> (10 May 2005) 625 NZPD 20370–20371 Wilson.

If two applications meet the criteria for acceptance and the Speaker cannot distinguish between them on the grounds of importance and urgency, the Speaker will give preference to the application that was lodged first.<sup>21</sup> Any rejected application may be resubmitted on the following day<sup>22</sup> but there is no guarantee that it will be accepted for debate on that day, for by that time its relative urgency and importance will have changed.

## **Late applications**

Applications for urgent debates must normally be lodged with the Speaker at least one hour before the House meets, which means by 1 pm on a sitting day. But the Speaker does have authority to allow a lesser period of notice than this,<sup>23</sup> and an application can be lodged for consideration up to the time that the House actually meets.<sup>24</sup> However, an application received within one hour of the House sitting will be accepted only in exceptional circumstances.

An application can be lodged after 1 pm where the event on which the application is based occurs within one hour of the House meeting.<sup>25</sup> Thus when an announcement that an important State enterprise was to be sold was made at 1.30 pm, the Speaker accepted an application lodged shortly before the House met at 2 pm.<sup>26</sup>

## **Applications that cannot be accepted**

Apart from the criteria set out in the Standing Orders against which an application for an urgent debate must be tested, a number of other factors may cause an application to fail at the outset. In addition to these rules specific to urgent debates, they are subject to a background of general rules within which the urgent debate procedure must fit.

The Speaker will not accept an application for an urgent debate from a Minister.<sup>27</sup> The reason for holding urgent debates is to allow members to raise for discussion actions taken by Ministers; urgent debates are not intended as a means for Ministers to generate discussions on matters of their own choosing. While it is true that Opposition members lodge by far the greater number of applications, any member other than a Minister can do so and Government backbenchers are as entitled to lodge applications as any other member.

An application that otherwise would be acceptable will not be accepted if to do so would inevitably result in a breach of the rule against referring to a matter awaiting adjudication in a court.<sup>28</sup> Most applications involving the courts will fail in any event because there is no ministerial responsibility for judicial decisions. But even a decision with profound effects for the Government cannot be accepted if it is provisional and the matter under dispute is still before the courts. However, this does not mean that all matters that are the subject of legal proceedings are automatically debarred. Thus, the cancellation of an important contract was accepted for debate even though it was known that there was a legal dispute over the propriety of the cancellation. The subject of the debate was the cancellation itself rather than the legal issues it raised.<sup>29</sup>

It is a well-established rule that charges of impropriety against other members must be brought forward in a substantive motion of which notice is given. The Speaker will not permit this rule to be circumvented by allowing an urgent debate

21 (1981) 439 NZPD 2010 Harrison.

22 (1982) 444 NZPD 1234 Harrison; (19 August 2009) 656 NZPD 5675 Smith.

23 SO 389(1).

24 (1997) 562 NZPD 3868 Kidd; (12 June 2007) 639 NZPD 9740–9741 Wilson.

25 (1991) 514 NZPD 1368 Gray.

26 (1990) 507 NZPD 2053 Burke.

27 (1992) 531 NZPD 12499 Gray.

28 (1985) 463 NZPD 5173 Wall; (1988) 490 NZPD 5512 Terris; (2001) 593 NZPD 10022 Hunt.

29 (1999) 579 NZPD 18710–18711 Kidd.

to be held as a vehicle to raise such allegations.<sup>30</sup> An urgent debate is not the appropriate means for addressing matters that are the administrative responsibility of the Speaker, such as the use or misuse of parliamentary travel entitlements.<sup>31</sup> Nor should an urgent debate be used to circumvent the House's procedures for dealing with issues of judicial conduct or testing confidence in the Government.<sup>32</sup>

## Rules for acceptance of an application

An application for an urgent debate must satisfy three substantive criteria: it must relate to a particular case of recent occurrence; the case must involve the administrative or ministerial responsibility of the Government; and it must require the immediate attention of the House and the Government.<sup>33</sup>

### *Particular case of recent occurrence*

In the application, the member must specify a particular matter for debate. It has been repeatedly emphasised that the alleged absence of action on the part of the Government is not a particular case of recent occurrence that can be raised for urgent debate.<sup>34</sup>

A particular case differs from the announcement of a situation that is the cumulative result of happenings over a period of time, such as unemployment statistics. An announcement of a particular level of unemployment relates to a continuing problem—the statistics being the reflection of a number of occurrences—and does not give grounds for an urgent debate.<sup>35</sup> The laying-off of particular workers, on the other hand, is a particular case for this purpose and could be ground for a debate, provided the other criteria, particularly ministerial responsibility, are satisfied. Nor does an accumulation of information about a matter constitute a particular case,<sup>36</sup> whether or not it demonstrates that a situation is deteriorating. Allegations cannot constitute a particular case of recent occurrence.<sup>37</sup> There must have been some concrete event or announcement and not just newspaper speculation about it.<sup>38</sup>

The case must have been of recent occurrence. That is, the event must already have happened. The urgent debate procedure is not a means of debating matters that may happen in the future.<sup>39</sup> The event must have occurred recently. A member cannot sleep upon a matter and raise it weeks or months later. This does not mean, however, that the Speaker will never accept an application that is not raised at the first possible moment. (This contrasts with the requirement for a matter of privilege, which, to gain priority, must be raised at the earliest opportunity, according to a strict definition.<sup>40</sup>) The fact that a matter is not raised as soon as possible argues against its acceptance, however, by appearing to devalue its importance in the eyes of the member applying for a debate on it.<sup>41</sup> If it was not important enough to raise at once, how can it be important enough to set the House's business aside to debate it? But there may be good reasons why a matter was not raised immediately. When a matter arose on Thursday evening, the fact that the member waited until the following Tuesday was not regarded as fatal by the Speaker, who took into consideration the early start to Friday's sitting (at that

<sup>30</sup> (1990) 507 NZPD 1529–1530, 1622 Burke.

<sup>31</sup> (16 November 2010) 668 NZPD 15305 Smith.

<sup>32</sup> (26 October 2010) 668 NZPD 14777–14780 Smith; (1998) 570 NZPD 10782 Kidd.

<sup>33</sup> SO 389(2).

<sup>34</sup> (1986) 470 NZPD 1336 Wall; (2000) 582 NZPD 1287 Hunt.

<sup>35</sup> (1977) 414 NZPD 3192–3193 Harrison (Acting Speaker); (1986) 472 NZPD 2623 Wall.

<sup>36</sup> (3 May 2005) 625 NZPD 20162 Wilson.

<sup>37</sup> (1999) 575 NZPD 14854 Kidd; (30 November 2004) 622 NZPD 17228 Hunt.

<sup>38</sup> (2000) 586 NZPD 5114 Hunt; (2001) 590 NZPD 7727 Hunt.

<sup>39</sup> (2000) 589 NZPD 7287 Hunt.

<sup>40</sup> SO 402.

<sup>41</sup> (1982) 444 NZPD 1234 Harrison; (20 October 2004) 621 NZPD 16301 Hunt.

time the House sat at 9 am on Fridays) and accepted the application.<sup>42</sup> On the other hand, where a member waited a week before raising a matter based on documents he had received, the Speaker ruled that this was too long for it to be regarded as a case of recent occurrence. The member should have raised the matter when he received the documents.<sup>43</sup>

The requirement of “recent occurrence” relates to when the member became aware (or should have become aware) of the facts on which the application is based. When the event to which certain documents related occurred some time in the past and the member discovered it only when receiving the documents, that was the point at which time began to run.<sup>44</sup> But by definition a member can only become aware of something when it becomes public. Time does not run against members when an event occurs in secret and no public announcement is made. In this case, the public announcement is the particular case of recent occurrence for the purposes of an application for an urgent debate.<sup>45</sup>

The matter for debate must occur before the House meets at the sitting at which the debate is to take place. A ministerial statement made at the commencement of a sitting does not give grounds for an urgent debate at that sitting (though it might justify such a debate at the next sitting).<sup>46</sup>

Members who expect an event to occur before the House meets may anticipate that event and lodge an application for a debate.<sup>47</sup> Provided that the event does actually occur before the sitting it can be considered for debate. Where an anticipated event does not occur, members usually withdraw the application. In those circumstances the application will inevitably fail since there has been no case of recent occurrence.

### ***Involves the administrative or ministerial responsibility of the Government***

An urgent debate is a way of holding the Government accountable for an action for which it is responsible; it is not a general debate. There must be distinct governmental responsibility for the particular case it is sought to debate. The concept of ministerial responsibility for a matter qualifying for an urgent debate is narrower than for oral questions, which may encompass any matter relating to public affairs with which a Minister has an official connection.<sup>48</sup> The fact that there are implications for Government policy in what has occurred (which there will be in many instances) is not enough. Though there must be responsibility for what has happened, this does not mean that the actor in the particular case that has occurred is necessarily a Minister or even an established entity.<sup>49</sup>

Where decision-making has taken place independently of Ministers, there can be no ministerial responsibility. The exercise of statutory powers by the Meat Producers Board to refuse to allow the export of certain meat, although of obvious significance to the Government, was held not to involve ministerial responsibility, as the Minister had no power to direct the board in this regard.<sup>50</sup> The exercise of powers by any statutory officer, where the powers are not subject to ministerial control, falls outside the scope of an urgent debate.<sup>51</sup> The actions,<sup>52</sup> inquiries<sup>53</sup> or

42 (1977) 413 NZPD 2715 Harrison (Acting Speaker).

43 (1979) 422 NZPD 596 Harrison.

44 Ibid.

45 (2000) 583 NZPD 1659 Hunt.

46 (1988) 493 NZPD 7408 Burke; (2000) 586 NZPD 5114 Hunt.

47 (1991) 514 NZPD 1368 Gray.

48 (13 September 2011) 675 NZPD 21193 Smith.

49 (2002) 600 NZPD 15819 Hunt (Maori Television Service not yet established).

50 (1979) 425 NZPD 2568–2569 Harrison.

51 (2001) 591 NZPD 8659 Hunt (Registrar of Electors).

52 (2 July 2013) 691 NZPD 11424 Carter; (13 May 2014) 698 NZPD 17749 Carter (no ministerial responsibility for decisions of the Christchurch City Council).

53 (13 June 2012) 680 NZPD 2905 Roy (Deputy Speaker) (no ministerial responsibility for the Auditor-General’s decision to conduct an inquiry).

reports<sup>54</sup> of other bodies cannot themselves be the subject of an urgent debate, except in exceptional circumstances.<sup>55</sup> The Government's response to such actions, inquiries or reports would generally be the potential trigger for an urgent debate. Ministers have no responsibility for the decisions of courts. So an application to debate a High Court decision to grant an interim injunction effectively preventing the 1985 All Blacks' tour to South Africa was rejected on this ground.<sup>56</sup> Other applications to debate judicial decisions have also been rejected.<sup>57</sup> Nor can occurrences in respect of purely party matters, such as a manifesto commitment,<sup>58</sup> or a decision of caucus<sup>59</sup> be the subject of an urgent debate.

An urgent debate cannot be held on action taken by a select committee for the very reason that there is no ministerial responsibility for such a committee. Therefore, when an application was made to discuss the proceedings of a committee that was considering a bill, it was rejected on this ground.<sup>60</sup>

The concept of ministerial responsibility for a matter qualifying for an urgent debate is narrower than it is for questions for oral or written answer; such questions may encompass any matter relating to public affairs with which the Minister has an official connection. The fact that a question may be addressed to a Minister about a matter does not necessarily mean that the matter involves ministerial responsibility on which an urgent debate about it can be founded.

### ***Requires the immediate attention of the House and the Government***

The matter raised for debate must require the immediate attention of the House and the Government. This criterion creates a hurdle designed to ensure that the matter is of such substance that it justifies the House spending a substantial part of its sitting in debating it. Many recent occurrences will involve ministerial responsibility; the Government is continually making statements and taking action in one field or another. Without a requirement that the matter be sufficiently important to require it to be debated immediately, the scope for urgent debates would be enormous. There must always be such an element of urgency as would warrant precedence being given to a debate on the matter.<sup>61</sup>

Inevitably, the Speaker's decision on whether a matter requires an immediate debate is liable to be somewhat impressionistic and any guidance that may be drawn from past decisions of limited value. Thus, while the release of a report has been accepted for debate,<sup>62</sup> this will be exceptional, especially if it will take time for the Government to work through the report's recommendations and make decisions on follow-up action.<sup>63</sup> Even where the event involves a new policy announcement, not every such announcement can give grounds for a debate. One that was held to satisfy the criterion was the announcement of a general policy on the sale of State enterprises. This related to an important aspect of policy towards all State enterprises and foreshadowed a possible future development of considerable interest. Consequently it met the test for an urgent debate.<sup>64</sup> By way of illustration, the urgent debates allowed in the 50th Parliament included the following subjects: an inquiry into the actions of the Government Communications

54 (31 July 2012) 682 NZPD 4076 Smith (no ministerial responsibility for an interim report of the Waitangi Tribunal).

55 (22 July 2003) 610 NZPD 7149 Hunt.

56 (1985) 464 NZPD 5594 Wall.

57 (21 March 2007) 638 NZPD 8191 Wilson (High Court judgment on a district health board contract); (9 May 2012) 679 NZPD 2085 Smith (High Court judgment on a marine reserve decision).

58 (1987) 482 NZPD 10238–10239 Wall.

59 (1992) 532 NZPD 13272 Gray.

60 (1977) 414 NZPD 3846–3847 Harrison (Acting Speaker); (1998) 573 NZPD 13404 Kidd.

61 (1983) 455 NZPD 4113 Harrison; (29 July 2008) 648 NZPD 17462 Wilson.

62 (1998) 567 NZPD 8210 Kidd.

63 (2003) 610 NZPD 7149 Hunt.

64 (1988) 486 NZPD 2235 Burke.

Security Bureau;<sup>65</sup> contamination of dairy products;<sup>66</sup> ministerial compliance with the *Cabinet Manual*;<sup>67</sup> the resignation of a Minister (though not all dismissals or resignations will justify such a debate);<sup>68</sup> and negotiations regarding an incident involving the waiver of diplomatic immunity.<sup>69</sup>

The Speaker takes account of attendant parliamentary circumstances in deciding whether an urgent debate is warranted. If there is another convenient parliamentary means available for debating the subject of the application, the Speaker takes that fact into account in deciding whether to accept the application.<sup>70</sup> In particular, if a wide-ranging debate such as the debate on the Address in Reply, the Prime Minister's statement or the Budget is before the House, this will count against an application for an urgent debate, though it does not in all circumstances preclude one being allowed.<sup>71</sup>

Previous consideration by the House may also have a bearing. Thus when an issue had already been recently considered in principle by the House, the Speaker was not persuaded that every subsequent decision made under the legislation warranted an urgent debate.<sup>72</sup> When the House had given leave for an extended Ministerial statement, the Speaker decided that the business of the House should not be further set aside that day for an urgent debate.<sup>73</sup>

In all cases, if the matter in question must soon come before the House in the form of legislation, this will tell against a special debate being held immediately.<sup>74</sup> But if there is no reasonably foreseeable opportunity for an important and controversial happening to be debated in the near future, this will weigh in favour of its being accepted for debate,<sup>75</sup> especially if legislative action is likely to be delayed by a lengthy adjournment.<sup>76</sup>

An application that is lodged before an adjournment but cannot be dealt with at that time (because the House was sitting under urgency) will be automatically considered by the Speaker when the House resumes, though it may in these circumstances have lost any intrinsic urgency by the delay. However, even in this case if the application relates to an important enough subject it may qualify for an urgent debate when the House resumes.<sup>77</sup>

## Ruling by Speaker

The time at which a motion to take note of a definite matter of urgent public importance is moved is immediately after questions for oral answer have been disposed of and before the next business is embarked upon.<sup>78</sup> It is not possible to hold an urgent debate on the day of the State Opening of Parliament, as the Standing Orders prescribe specifically what items of business may be taken on that day.<sup>79</sup>

The Speaker rules on applications that have been lodged by informing the House what applications have been received and whether each application has been accepted or rejected.<sup>80</sup> In all cases the Speaker summarises the application in ruling on it, and does not read out the application in full.

<sup>65</sup> (27 September 2012) 684 NZPD 5757.

<sup>66</sup> (6 August 2013) 692 NZPD 12327.

<sup>67</sup> (12 March 2014) 697 NZPD 16563.

<sup>68</sup> (4 May 2004) 617 NZPD 12554 Hunt (debate declined).

<sup>69</sup> (2 July 2014) 700 NZPD 19129.

<sup>70</sup> Standing Orders Committee *Review of the operation of the Standing Orders* (2 September 1999) [1996–1999] AJHR I.18B at 31; (21 July 2010) 665 NZPD 12531 Smith.

<sup>71</sup> (1984) 459 NZPD 1813 Arthur.

<sup>72</sup> (20 April 2010) 662 NZPD 10251 Smith; (12 March 2013) 688 NZPD 8395–8396 Carter (no debate on the commissioning of new prison under legislation passed five months earlier).

<sup>73</sup> (7 September 2010) 666 NZPD 13684 Smith.

<sup>74</sup> (1973) 382 NZPD 212–213 Whitehead.

<sup>75</sup> (1973) 386 NZPD 3834 Whitehead.

<sup>76</sup> (1991) 513 NZPD 1012 Gray.

<sup>77</sup> See, for example: (1998) 567 NZPD 8210 Kidd.

<sup>78</sup> SO 390(1).

<sup>79</sup> SO 14.

<sup>80</sup> SO 390(1).

## Debate

Having ruled favourably on an application, the Speaker calls on the member to move that the House take note of the matter of urgent public importance. The member moving the motion has 15 minutes to speak, and so does the first member to speak to it. A further six members have 10 minutes each, making the total time available for the debate one and a half hours.<sup>81</sup> The second speaker in the debate is a Minister, regardless of who initiates the debate.<sup>82</sup> An urgent debate is designed to examine a matter of ministerial responsibility and, hopefully, elicit an explanation or response from the Government. A Minister is therefore given the opportunity to respond first in the debate. There is no amendment permitted to the question. At the conclusion of the speeches allowed for, the motion lapses and no question is put on it.<sup>83</sup>

## SPECIAL DEBATES

Occasionally, the House holds special or “set-topic” debates not contemplated by any of its regular procedures, such as a debate on a major select committee inquiry report<sup>84</sup> or other significant parliamentary event.<sup>85</sup> These types of debates are set down under the Business Committee’s authority to arrange House business,<sup>86</sup> and will often require cross-party negotiation and the creative use of House time (such as employing extended sittings).<sup>87</sup>

---

<sup>81</sup> See SOs, App A.

<sup>82</sup> (1999) 579 NZPD 18714 Kidd.

<sup>83</sup> SO 390(2).

<sup>84</sup> (10 December 2013) 695 NZPD 15457–15470 (debate on Health Committee *Inquiry into improving child health outcomes and preventing child abuse, with a focus on preconception until three years of age* (17 November 2013) [2011–2014] AJHR I.6A).

<sup>85</sup> (18 April 2013) 689 NZPD 9554–9588 (debate to mark a Pacific Parliamentary Forum being held at Parliament).

<sup>86</sup> SO 79.

<sup>87</sup> Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 32.

# CHAPTER 42

## International Relations

International relations have traditionally been seen as an executive, rather than a legislative, responsibility. Conducting relations with foreign States, making treaties and providing for the defence of New Zealand are quintessential executive functions in respect of which many of the Crown's legal powers are derived from the Royal prerogative rather than from statutes.

Defence policy became increasingly politicised in the 1980s, with differences emerging over defence relationships, particularly where nuclear weapons were involved. The more diverse views represented in Parliament under the MMP electoral system has raised the public and political profiles of both foreign policy and defence policy.<sup>1</sup> At the same time, the number of statutes passed by the New Zealand Parliament that have an international dimension has continued to grow both absolutely and relatively. It was estimated in 1998 that about 200 of the 600 to 700 New Zealand statutes are affected in one way or another by international law.<sup>2</sup> Quite apart from legislation implementing international obligations, the courts have been increasingly influenced in their approach to deciding cases under New Zealand law by the perceived international dimension of law. It is well established that courts seek to interpret statutes in a way that is consistent with customary international law. However, international obligations assumed by the New Zealand Government, though never legislated into New Zealand law, have also come to have an important influence on the way courts interpret legislation.<sup>3</sup> Often such connections are not apparent in the wording of the legislation itself, are expressed in expansive terms,<sup>4</sup> or prove to apply with surprising or unanticipated effects.<sup>5</sup> In these ways, the growing importance of international law and international obligations as components of domestic law has to some extent been hidden from legislators and the public.

---

1 Douglas White QC and Graham Ansell *Review of the Performance of the Defence Force in Relation to Expected Standards of Behaviour, and in Particular the Leaking and Inappropriate Use of Information by Defence Force Personnel* (20 December 2001) at [20].

2 Kenneth Keith "Governance, Sovereignty and Globalisation" (1998) 28 Victoria University Wellington Law Review 477 at 485.

3 Mark Gobbi "Making Sense of Ambiguity: Some reflections on the use of treaties to interpret legislation in New Zealand" (2002) 23 Statute Law Review 47.

4 For example: Fisheries Act 1996, s 5(a) (legislation to be interpreted, and all persons acting under it to act, in a manner consistent with New Zealand's international obligations relating to fishing); Extradition Act 1999, s 11(1) (Act to be construed to give effect to extradition treaties).

5 For example: *Sellers v Maritime Safety Inspector* [1999] 2 NZLR 44 (CA) at 57 (New Zealand regulations relating to the carrying of emergency equipment on vessels had to be read in the context of the international law of freedom of navigation on the high seas).

In 1998 the House adopted sessional orders (now incorporated into the Standing Orders) providing for some parliamentary scrutiny of treaties before their becoming binding international obligations.<sup>6</sup> These procedures, combined with heightened political interest in foreign and defence policy, have led to international developments playing a greater part in the regular work of the House.

## PROCEEDINGS IN THE HOUSE

Special debates on foreign affairs used to be held by the House annually, but ceased in the 1970s. Nevertheless, an international event or commitment may be of such importance as to justify a specific debate or even a special sitting of the House. Parliament was summoned for a special session to debate the outbreak of the first Gulf War in 1991, and subsequently special debates were held on New Zealand's contribution in both the Afghanistan and the Iraq conflicts.<sup>7</sup> The provision for the House to hold an expedited sitting during an adjournment<sup>8</sup> was utilised in 1999 when the House was recalled to debate the commitment of New Zealand forces to East Timor.<sup>9</sup>

An international commitment entered into by the Government may warrant the Speaker's accepting an application for an urgent debate. Alternatively, a special debate may be arranged on the initiative of the Government, or after representations from other parties,<sup>10</sup> which will invariably be considered by the Business Committee. This was the case when a Special Debate on Pacific Issues was held to commence the Pacific Parliamentary and Political Leaders Forum in 2013.<sup>11</sup>

Foreign affairs, defence and trade issues can also be debated in the House during other debates of a general nature—the Budget, the Address in Reply and the Wednesday general debate—and during the Estimates and annual review debates when the expenditure and performance of the Ministry of Foreign Affairs and Trade, the Ministry of Defence or the New Zealand Defence Force are under consideration.

An important way of exploring international issues on the floor of the House is by means of a question addressed to a Minister. This will usually be the Minister of Foreign Affairs and Trade or the Minister of Defence, but other Ministers hold portfolios with clear international roles, such as trade negotiations or disarmament and arms control. The expanded inquiry jurisdiction of select committees has given the subject select committees the opportunity, if they wish, to examine international developments of concern to New Zealand. Thus a committee has itself initiated an inquiry into a proposal that was likely to result in New Zealand's becoming party to a treaty.<sup>12</sup>

## FOREIGN AFFAIRS, DEFENCE AND TRADE COMMITTEE

The House has an external affairs committee—the Foreign Affairs, Defence and Trade Committee. This is one of the subject select committees established at the beginning of each Parliament. It considers bills, petitions, treaties and other matters referred to it by the House; conducts such Estimates and annual review work as is allocated to it by the Finance and Expenditure Committee; and has

<sup>6</sup> (1998) 568 NZPD 9419–9443.

<sup>7</sup> (1991) 512 NZPD 1–53; (2001) 595 NZPD 11996–12017; (18 March 2003) 607 NZPD 4110–4126.

<sup>8</sup> SO 55.

<sup>9</sup> (1999) 580 NZPD 19461–19499.

<sup>10</sup> (1997) 564 NZPD 5097–5110 (framework convention on climate change); (2001) 595 NZPD 11996–12017 (assistance offered as part of the response to the terrorist attacks of 11 September).

<sup>11</sup> (18 April 2013) 689 NZPD 9554–9588.

<sup>12</sup> Health Committee Inquiry into the proposal to establish a trans-Tasman agency to regulate therapeutic products (9 December 2003) [2002–2005] AJHR I.6D.

within its subject areas of inquiry defence, disarmament and arms control, foreign affairs, customs and trade.<sup>13</sup>

Despite the high proportion of bills with international law implications, comparatively little legislation is actually referred to the committee. Such bills are generally dealt with by the committees operating in the principal subject areas concerned. The Foreign Affairs, Defence and Trade Committee deals with legislation relating to the departments concerned with foreign affairs, defence, customs and trade, and with other obviously internationally related legislation, such as that concerning diplomatic privileges. However, it tends to have a low legislative workload compared with most of the other subject select committees.

This light legislative workload gives the committee more opportunity to utilise its inquiry powers, and in this area of select committee work it has proved to be a more active committee. Since the reorganisation of the select committees in 1985, the committee has carried out major inquiries into relations with China,<sup>14</sup> Canada,<sup>15</sup> and Tonga,<sup>16</sup> and into overseas development assistance,<sup>17</sup> the ANZAC ship project,<sup>18</sup> the sale of educational services in New Zealand,<sup>19</sup> economic and trade linkages in the Asia-Pacific region,<sup>20</sup> Parliament's role in the international treaty-making process,<sup>21</sup> New Zealand's place in the world and role in Asia-Pacific security,<sup>22</sup> defence beyond 2000,<sup>23</sup> economic and trade relations with Australia,<sup>24</sup> and New Zealand's relationships with South Pacific Countries.<sup>25</sup> At the direction of the House, the committee has also conducted inquiries into disarmament and arms control,<sup>26</sup> and the manufacture of the defoliant Agent Orange.<sup>27</sup> In 1998 a most important responsibility was given to the committee—as the House's overall co-ordinator of the treaty examination process. In this regard, the committee plays a similar role to that performed by the Finance and Expenditure Committee in respect of the Estimates and annual review processes. All treaties presented to the House for examination stand referred to the committee, which then determines the appropriate committee to examine them.

The committee is regularly allocated the votes relating to foreign affairs, defence and trade for Estimates examination, and conducts the annual reviews of

<sup>13</sup> SOs 188–189.

<sup>14</sup> Foreign Affairs and Defence Committee *Inquiry into the New Zealand—China Relationship* (12 February 1987) [1986–1987] AJHR I.5A.

<sup>15</sup> Foreign Affairs and Defence Committee *Inquiry into the New Zealand—Canada Relationship* (16 July 1987) [1986–1987] AJHR I.5B.

<sup>16</sup> Foreign Affairs, Defence and Trade Committee *Inquiry into New Zealand's relationship with the Kingdom of Tonga* (8 August 2005) [2002–2005] AJHR I.4C.

<sup>17</sup> Foreign Affairs and Defence Committee *Inquiry into Official Development Assistance* (4 September 1990) [1990] AJHR I.5B.

<sup>18</sup> Foreign Affairs and Defence Committee *Inquiry into the policies related to the execution of the ANZAC Ship Project* (30 June 1992) [1991–1993] AJHR I.5A.

<sup>19</sup> Foreign Affairs and Defence Committee *Inquiry into the sale of educational services in New Zealand* (4 September 1991) [1991–1993] AJHR I.5A.

<sup>20</sup> Foreign Affairs and Defence Committee *Inquiry into New Zealand's participation in economic and trade linkages in the Asia-Pacific region* (23 September 1992) [1991–1993] AJHR I.5C.

<sup>21</sup> Foreign Affairs, Defence and Trade Committee *Inquiry into Parliament's role in the international treaty process* (18 November 1997) [1996–1999] AJHR I.4A; Foreign Affairs, Defence and Trade Committee *Review of the international treaty examination process* (13 August 1999) [1996–1999] AJHR I.4E.

<sup>22</sup> Foreign Affairs, Defence and Trade Committee *Inquiry into 'New Zealand's Place in the World' and 'New Zealand's role in Asia-Pacific Regional Security'* (18 December 1997) [1996–1999] AJHR I.4B.

<sup>23</sup> Foreign Affairs, Defence and Trade Committee *Interim report on the inquiry into Defence Beyond 2000* (24 November 1998) [1996–1999] AJHR I.4C; Foreign Affairs, Defence and Trade Committee *Inquiry into Defence Beyond 2000* (30 August 1999) [1996–1999] AJHR I.4D.

<sup>24</sup> Foreign Affairs, Defence and Trade Committee *Inquiry into New Zealand's economic and trade relationship with Australia* (30 April 2002) [1999–2002] AJHR I.4E.

<sup>25</sup> Foreign Affairs, Defence and Trade Committee *Inquiry into New Zealand's relationships with South Pacific countries* (10 December 2010) [2008–2011] AJHR I.4A.

<sup>26</sup> Foreign Affairs and Defence Committee *Inquiry into disarmament and arms control* (15 October 1985) [1984–1985] AJHR I.19.

<sup>27</sup> Foreign Affairs and Defence Committee *Inquiry into the manufacture of Agent Orange by Ivon Watkins-Dow in New Zealand during the period of the Vietnam War* (22 May 1990) [1990] AJHR I.5A.

the departments concerned. It also has referred to it any petitions falling within the foreign affairs, trade and defence areas. As an aspect of its inquiry work, the committee sometimes meets with visiting politicians and officials from overseas, and holds debriefing sessions with members of Parliament on their return to New Zealand from attending international conferences or participating in observer missions.<sup>28</sup> The committee also receives briefings on matters of current interest from officials of the Ministry of Foreign Affairs and Trade and from non-governmental organisations.

## TREATIES

As part of the royal prerogative the Crown possesses the legal power to enter into treaties with foreign States on behalf of New Zealand. New Zealand's achievement of independent statehood with a capacity to enter into treaties in its own right occurred over an extended period, but the signing of the Treaty of Versailles on 28 June 1919 has been taken as significant. From that date New Zealand began to enter into treaties in its own right consistently, and it was treated as a separate party in respect of treaties previously entered into on its behalf by the United Kingdom.<sup>29</sup> Appropriately, the pen used by the Prime Minister, William Massey, to sign the Treaty of Versailles is mounted in a display case in Parliament House.

The power of treaty-making as one of the prerogatives or inherent legal powers of the Crown does not derive from parliamentary enactment, although it cannot be exercised in a way forbidden by or inconsistent with legislation.<sup>30</sup> Nor does a treaty entered into by the Crown need to be ratified or endorsed by the House of Representatives, unlike the requirement in a number of other political systems.<sup>31</sup> A treaty is effective as a binding international obligation once it has been fully accepted by the Crown and has entered into force for New Zealand in accordance with its terms. (The precise means by which acceptance is signified differs depending upon the terms of the treaty.) However, long-standing legal doctrine inherited by New Zealand has held that a treaty, while binding at an international level in New Zealand's relations with other States, is not in itself a source of law that can confer legal powers or duties on persons within New Zealand. Thus the Crown cannot change New Zealand law by the expedient of entering into a treaty. Only the New Zealand Parliament, in enacting legislation, can do that. Therefore, if the implementation of a treaty has implications for New Zealand law, it will be necessary for the Government to ask Parliament to change the law to make it consistent with the treaty obligations; otherwise it will be impossible to fulfil those obligations domestically.

In fact, New Zealand's treaty-making practice is to ensure that domestic law is compatible with a treaty's obligations before New Zealand becomes bound by it. (Indeed, it has been asserted that there is a constitutional convention to this effect, though whether this is so remains uncertain.<sup>32</sup>) In many cases, no question of incompatibility between the treaty's provisions and New Zealand law will arise, because the treaty will not have legal effect within New Zealand—it may be designed

<sup>28</sup> Foreign Affairs, Defence and Trade Committee Report on 1996/2051 petition of Right Honourable Helen Clark and 65 others (9 September 1999) [1996–1999] AJHR I.24 at 190.

<sup>29</sup> Ministry of Foreign Affairs and Trade New Zealand consolidated treaty list Part One (multilateral treaties) as at 31 December 1996 (1 July 1997) [1996–1999] AJHR A.263 at 10.

<sup>30</sup> See, for example: *Yuen Kwok-Fung v Hong Kong Special Administrative Region of the People's Republic of China* [2001] 3 NZLR 463 (CA) at [18] per Keith J (Extradition Act 1999, s 11(2) "is in effect a direction to the executive that in negotiating extradition treaties it is to ensure that the listed protections are incorporated").

<sup>31</sup> Legislation to require parliamentary ratification of treaties has been rejected: International Treaties Bill (67–1) (report, 25 November 2002) at 1–2 ([2002–2005] AJHR I.22A at 146–147); (19 February 2003) 606 NZPD 3589–3607.

<sup>32</sup> Climate Change Response Bill (212–2) (commentary, 14 October 2002) at 2 and 6 ([2002–2005] AJHR I.22A at 121 and 125); International Treaties Bill (67–1) (report, 25 November 2002) at 2–3 ([2002–2005] AJHR I.22A at 147–148).

to operate solely at an international level. In other cases, the treaty's obligations may already be consistent with New Zealand law and no further action is needed to ensure their compatibility. In yet others, the Government may have legal powers to itself make New Zealand law compatible with the treaty, for example, by using regulation-making power it already possesses or by changing its own policies and practices. But, finally, in some cases it may only be possible to assume the obligations in a treaty if primary legislation is passed to make this possible.

While it may be possible to implement a treaty by various means—using existing laws or non-legislative means, for example—it may, nevertheless, be preferable to enact new legislation for the purpose if the policy impact of the treaty is significant, or to ensure transparency and improve the co-ordination of functions.<sup>33</sup> However, in general, legislation will only be resorted to when no viable alternative method is available to implement a treaty's policy objectives.<sup>34</sup>

### Taking treaty action

The number of treaties entered into by New Zealand each year varies, but is substantial. From 2010 to 2015, for example, New Zealand entered into an average of 20 treaties each year—15 of a multilateral nature (that is, involving a number of other countries) and 83 bilateral (with one other party) or plurilateral (with more than two but not many) treaties.<sup>35</sup> All treaties that have become binding on New Zealand are presented to the House and published as parliamentary papers.

Individual treaties vary greatly in their significance. Exceptionally, legislation may prescribe what provisions a treaty or a certain type of treaty must contain;<sup>36</sup> however, this is rare. While consultation with interested parties in New Zealand is part of the process of considering whether to enter into a treaty and on what terms, there is generally little opportunity for general public participation in the treaty-making process, although interested non-governmental organisations are sometimes invited to participate in negotiations or to join New Zealand Government delegations. However, the Government has occasionally invited public input, by means of public advertisement before negotiations on a treaty have begun.<sup>37</sup> The Government also maintains an international treaties list of the multilateral and bilateral treaties under negotiation.<sup>38</sup> The list describes the treaties and indicates where further information about them can be obtained.

As part of the parliamentary process for the examination of treaties before binding treaty action (the final assumption of the treaty's obligations) is taken, the Ministry of Foreign Affairs and Trade will brief the Foreign Affairs, Defence and Trade Committee and other committees on treaty negotiations.

### Presentation of treaties to the House

On 16 February 1998 the Government agreed, in a paper presented to the House, that it would present certain multilateral treaties to the House on a trial basis for limited examination before the treaties were finally ratified or agreed to.<sup>39</sup> This assurance to the House was recognised in a sessional order adopted by the House on 28 May 1998.<sup>40</sup> Since 8 September 1999 this practice has been recognised in

<sup>33</sup> Climate Change Response Bill (212–1) (explanatory note, 20 May 2002).

<sup>34</sup> Rodney Harris "International Issues—The Interaction Between International Law-Making and Domestic Implementation" (address to the Fourth New Zealand Public Law Forum) (April 2002) at 9.

<sup>35</sup> Figures obtained from New Zealand Treaties Online <[www.treaties.mfat.govt.nz](http://www.treaties.mfat.govt.nz)>.

<sup>36</sup> Extradition Act 1999, ss 100–101 (provisions that must be contained in extradition treaties).

<sup>37</sup> See, for example: Ministry of Foreign Affairs and Trade "Call for public submissions on the proposed EU FTA" (16 December 2015) <[www.mfat.govt.nz](http://www.mfat.govt.nz)> (proposed free trade agreement negotiations between New Zealand and the European Union).

<sup>38</sup> See New Zealand Treaties Online <[www.treaties.mfat.govt.nz](http://www.treaties.mfat.govt.nz)>.

<sup>39</sup> Government response to report of Foreign Affairs, Defence and Trade Committee on Parliament's role in the international treaty process (16 February 1998) [1996–1999] AJHR A.5.

<sup>40</sup> (1998) 568 NZPD 9419–9443.

the Standing Orders.<sup>41</sup> It was expressly reaffirmed by a Government statement on 28 February 2000<sup>42</sup> and is now recorded in the Cabinet's own treaty-making procedures.<sup>43</sup>

### **Multilateral treaties**

The treaties the Government has agreed to present for examination include those that are to become binding on ratification, accession, acceptance or approval.<sup>44</sup> These are generally treaties to which there are a number of other parties—multilateral treaties. It is expected that such treaties will be presented to the House after they have been signed by the Government (but before they become fully binding), although there is nothing to prevent a treaty from being presented before the Government has signed it. Multilateral treaties that the Government wishes to withdraw from or to denounce are also to be presented for examination.<sup>45</sup> These, while rare, can be significant in their own right;<sup>46</sup> and, in any case, the act of withdrawing from a treaty is itself a treaty action requiring Cabinet approval.

While, in principle, multilateral treaties are to be presented for parliamentary examination before they become binding, it is recognised that in some circumstances a treaty must be entered into immediately in the national interest without the opportunity for prior parliamentary examination. Where this arises, and an urgent multilateral treaty has become binding, the treaty is still to be presented to the House,<sup>47</sup> in this case as soon as possible after the binding treaty action has been taken.<sup>48</sup> The obligation to present treaties does not apply to reports that the Government is obliged to make to international organisations to comply with its existing treaty obligations.<sup>49</sup>

Outside the strict terms of the Government's assurance as embodied in the Standing Order, the Government may present other treaties for examination. Thus, the Foreign Affairs, Defence and Trade Committee commented favourably in 2003 when the first status of forces agreement (with the Solomon Islands) was presented for examination. The major interest in the deployment justified its presentation, even though it did not fall strictly within the terms of the Standing Order.<sup>50</sup>

### **Bilateral treaties**

Most treaties that the Government enters into are not multilateral; they are agreements with one other State—that is, bilateral treaties. Double taxation agreements are the most common form of bilateral treaty. If a bilateral treaty is subject to a process of ratification or post-signature acceptance, it will be presented to the House under the Standing Orders for examination;<sup>51</sup> however, most bilateral treaties are not subject to such process.

In the case of bilateral treaties, the undertaking from the Government to the House is that any major bilateral treaty of particular significance (as determined by the Minister of Foreign Affairs and Trade) will be presented.<sup>52</sup> The Government

<sup>41</sup> SO 397(1).

<sup>42</sup> Government response to report of Foreign Affairs, Defence and Trade Committee on inquiry into the implications of New Zealand's participation in APEC (28 February 2000) [1999–2002] AJHR A.5.

<sup>43</sup> Cabinet Office *Cabinet Manual* 2008 at [7.112].

<sup>44</sup> SO 397(1)(a).

<sup>45</sup> SO 397(1)(c).

<sup>46</sup> Foreign Affairs, Defence and Trade Committee *Review of the international treaty examination process* (13 August 1999) [1996–1999] AJHR I.4E at 6–7.

<sup>47</sup> SO 397(1)(b).

<sup>48</sup> Cabinet Office *Cabinet Manual* 2008 at [7.114].

<sup>49</sup> Reply to question 8292 (1998) (34 NZPD Supp 2072).

<sup>50</sup> Crimes and Misconduct (Overseas Operations) Bill (68–2) (commentary, 20 October 2003) at 2 ([2002–2005] AJHR I.22B at 372).

<sup>51</sup> SO 397(1)(a).

<sup>52</sup> SO 397(1)(d).

thus retains a large measure of discretion as to whether or not to present bilateral treaties for examination. In fact, most bilateral treaties entered into are not presented to the House for examination, although the proportion presented is increasing.

The Minister of Foreign Affairs and Trade has set down criteria for determining which bilateral treaties should be submitted to the parliamentary examination process, as follows.<sup>53</sup>

- The subject matter of the treaty is likely to be of major interest to the public.
- The treaty deals with an important subject upon which there is no ready precedent (that is, it is an original treaty, possibly dealing with a unique situation).
- The treaty deals with an important subject and departs substantively from previous models relating to the same subject.
- The treaty represents a major development in the bilateral relationship.
- The treaty has significant financial implications for the Government.
- The treaty cannot be terminated, or will remain in force for a specific period.
- The treaty is to be implemented by way of overriding treaty regulations (that is, regulations that implement a treaty by overriding primary legislation).
- The treaty is a major treaty that New Zealand seeks to terminate.
- The Foreign Affairs, Defence and Trade Committee indicates its interest in examining the treaty.

Progress on bilateral treaty negotiations is included in the International Treaties List and in briefings given to the Foreign Affairs, Defence and Trade Committee. In the course of the 50th Parliament (2011–2014), one major bilateral treaty was presented for examination.<sup>54</sup> Under its general inquiry power, a select committee with appropriate terms of reference can initiate its own examination of a bilateral treaty.

### *Amendments of treaties*

Where the treaty being presented makes textual amendments to an existing treaty, the Government has been asked by the Foreign Affairs, Defence and Trade Committee to present a consolidated version of the treaty, incorporating the amendments, so that the amending treaty can be read intelligibly.<sup>55</sup>

### **National interest analyses**

A critical accompaniment to the treaty as it is presented to the House is a national interest analysis in respect of it. This is to be presented to the House at the same time as the treaty.<sup>56</sup>

Each national interest analysis must contain the following matters in respect of the treaty to which it relates:<sup>57</sup>

- the reasons for New Zealand becoming party to the treaty
- the advantages and disadvantages to New Zealand of the treaty entering into force for New Zealand
- the obligations that would be imposed on New Zealand by the treaty, and the position in respect of reservations to the treaty

53 International Treaties Bill (67–1) (report, 25 November 2002) at 4 ([2002–2005] AJHR I.22A at 149).

54 Foreign Affairs, Defence and Trade Committee *International treaty examination of the agreement between New Zealand and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu on Economic Cooperation* (6 September 2013) [2011–2014] AJHR I.22B.

55 International Treaties Bill (67–1) (second interim report, 14 December 2001) ([1999–2002] AJHR I.22B at 561–563).

56 SO 397(2).

57 SO 398(1).

- the economic, social, cultural and environmental effects of the treaty entering into force for New Zealand, and of the treaty not entering into force for New Zealand (this does not require a full elaboration of all future domestic policy implementation)<sup>58</sup>
- the costs to New Zealand of compliance with the treaty
- the possibility of any subsequent protocols (or other amendments) to the treaty, and of their likely effects
- the measures that could, or should, be adopted to implement the treaty, and the intentions of the Government in relation to such measures, including legislation
- a statement setting out the consultations that have been undertaken or are proposed with the community and interested parties in respect of the treaty
- whether the treaty provides for withdrawal or denunciation.

The Regulations Review Committee has urged the Government to include in the national interest analysis any material relating to the treaty that is to be incorporated into implementing legislation by reference rather than set out in its text, and to comment on how this is to be done,<sup>59</sup> and for the national interest analysis to set out the justification for implementing a treaty by regulation.<sup>60</sup> There is no requirement for the national interest analysis to give the recommendations of the various Government departments involved in devising policy towards the treaty, for example, by disclosing arguments that they have advanced against New Zealand entering into the treaty.<sup>61</sup> However, there is nothing to stop the Government supplying more information than the national interest analysis requires.<sup>62</sup>

In the case of a multilateral treaty already entered into on the grounds of urgency, the national interest analysis must also explain the reasons why urgent action preventing prior parliamentary examination was taken.<sup>63</sup> Where the Government proposes to withdraw from or denounce a treaty, it is recognised that the Government's national interest analysis must be adapted, departing from the criteria set out above, since they are directed to eliciting reasons why a treaty should or should not be entered into in the first place, rather than why one should be abandoned. In these circumstances, the national interest analysis is required to address these matters only to the full extent that they are applicable.<sup>64</sup>

Given the importance of the national interest analysis to parliamentary examination of the treaty, the committee that examines the treaty is required to append the national interest analysis to its report so that it is readily and permanently available on the public record.<sup>65</sup>

The national interest analysis must fairly expose the case for and the case against entering into the treaty. (It would thus be expected that any contrary views expressed by Government departments will be reflected in it, even if the departments are not identified.) The more information that can be put into it, the better parliamentarians and the public will understand the implications of the

<sup>58</sup> Foreign Affairs, Defence and Trade Committee *International treaty examination of the Kyoto Protocol to the United Nations Framework Convention on Climate Change* (16 May 2002) [1999–2002] AJHR I.22C at 393.

<sup>59</sup> Regulations Review Committee *Inquiry into regulation-making powers that authorise international treaties to override any provisions of New Zealand enactments* (12 March 2002) [1999–2002] AJHR I.16H at 27–28.

<sup>60</sup> Regulations Review Committee *Inquiry into material incorporated by reference* (12 July 2004) [2002–2005] AJHR I.16G at 11.

<sup>61</sup> Foreign Affairs, Defence and Trade Committee *Special report on the national interest analysis for the Cartagena Protocol on Biosafety* (7 March 2005) [2002–2005] I.22D at 298–299.

<sup>62</sup> Ibid.

<sup>63</sup> SO 398(2).

<sup>64</sup> SO 398(2).

<sup>65</sup> SO 400(3).

proposed treaty.<sup>66</sup> There have been criticisms that the case against entering a treaty has not always been adequately covered in the national interest analysis and that potential objections to a treaty are not revealed. As long as the national interest analysis makes the statements about the treaty set out in the Standing Order it will have complied with the Standing Order. It is then a matter for judgement as to whether it actually provides a justification for the treaty action in question.<sup>67</sup>

The Ministry of Foreign Affairs and Trade is responsible, on behalf of the Government, for presenting the treaty and the national interest analysis to the House.<sup>68</sup>

## Select committee examination

On presentation to the House, the treaty and the accompanying national interest analysis stand referred to the Foreign Affairs, Defence and Trade Committee.<sup>69</sup> The committee is central to the treaty examination process, and decides to which committee a treaty should be referred. It considers the subject area of any treaty referred to it and, if it falls primarily within its own terms of reference, retains the treaty for examination. If, on the other hand, it is primarily within the terms of reference of another committee, it refers the treaty to the other committee for examination.<sup>70</sup> In this way all subject select committees are expected to share in the work of treaty examination. In recognition of the fact that time can be of the essence for treaty examination, the chairperson of the Foreign Affairs, Defence and Trade Committee is, by Standing Order, given the power to take this referral decision for the committee if it is not due to meet within seven days of a treaty being referred to it. In this case, if the treaty is clearly within the terms of reference of another committee, the chairperson may refer it to that committee for examination.<sup>71</sup>

The Standing Orders do not impose any time limit on treaty examinations. In the case of an urgent treaty, binding treaty action has, by definition, already been taken, so the committee's examination is retrospective in any case. But for most treaties the examination is, intentionally, prospective, giving the House an opportunity, if it wishes, to express a view on the appropriateness of the Crown entering into the treaty before it does so. In these circumstances the time that a committee has to carry out its examination before the treaty is ratified or otherwise accepted is obviously of critical importance.

Originally, when the Government agreed to present treaties for examination, it conceded that it would not proceed to take binding treaty action (except for urgent treaties) for at least 35 days (45 days over the Christmas break) after presentation of the treaty to the House.<sup>72</sup> As a result of a select committee recommendation in 1999, this concession has now been extended to 15 sitting days.<sup>73</sup> Committees have complained of insufficient time to conduct a proper examination.<sup>74</sup> Partly for this reason, most treaty examinations are carried out by committees on the basis of the national interest analysis, supplemented by briefings from departmental officials and material from committee advisers.

<sup>66</sup> Foreign Affairs, Defence and Trade Committee *International treaty examination of the Kyoto Protocol to the United Nations Framework Convention on Climate Change* (16 May 2002) [1999–2002] AJHR I.22C at 392–393 (national interest analysis of some 60 pages).

<sup>67</sup> Ibid.

<sup>68</sup> Cabinet Office *Cabinet Manual* 2008 at [7.113].

<sup>69</sup> SO 397 (3).

<sup>70</sup> SO 399(1).

<sup>71</sup> SO 399(2).

<sup>72</sup> Government response to report of Foreign Affairs, Defence and Trade Committee on Parliament's role in the international treaty process (16 February 1998) [1996–1999] AJHR A.5 at 3.

<sup>73</sup> Ibid; Foreign Affairs, Defence and Trade Committee *Review of the international treaty examination process* (13 August 1999) [1996–1999] AJHR I.4E; Cabinet Office *Cabinet Manual* 2008 at [7.118]–[7.120].

<sup>74</sup> Primary Production Committee *Report on the international treaty examination into the International Plant Protection Convention* (10 February 1999) [1996–1999] AJHR I.24 at 648.

Only exceptionally does a select committee's examination extend further. A committee has consulted the Regulations Review Committee on the proposed use of regulations under a treaty it was examining.<sup>75</sup> When two important bilateral treaties were presented to the 46th Parliament, public submissions were called for and oral evidence heard on each, though with a short deadline for submissions.<sup>76</sup> In the case of another treaty on which the select committee invited public input, the committee received 35 submissions and heard 20 of them orally.<sup>77</sup> A committee has heard from a witness who approached the committee asking to be heard.<sup>78</sup> But the opening up of parliamentary treaty examinations to anything resembling the procedures for hearing evidence on bills is still uncommon.

The fact that the Government's assurance it will not take binding treaty action in respect of a treaty lasts at most for 15 sitting days does not mean that the Government will actually be insistent on ratifying the treaty immediately the 15 sitting days expire. It may not be ready to do so for its own reasons. Indeed, from a parliamentary point of view, one way of looking at the 15-sitting-day period is not as a maximum time within which committees have to report, but as the minimum time the Government must allow to elapse before it can take steps to implement the treaty, for example, by introducing legislation to make New Zealand law compatible with the treaty obligation that the Government wishes to assume. (See pp 693–694 for the development of this convention.)

Treaties are generally presented to the House some time after they have been signed by the Government. Signing a treaty signifies an intention to ratify it and accept it as binding in the future. Although the Government may decide later not to ratify it, this would be unusual. Whether a treaty examination carried out by a committee alters the Government's intentions regarding ratification is a matter for the consideration of the Government. Committees may seek the Government's agreement to keeping a treaty open for prospective committee examination for longer than 15 sitting days by asking the Government to defer taking binding action on the treaty, although there is no necessity for a Government to agree to do so. It is also open to a committee to continue with its examination of the treaty even after the Government has ratified or otherwise accepted it and it has become binding.

## **Report and consideration**

Committees to which treaties are referred are required to report to the House on them (although not within any particular timeframe),<sup>79</sup> and to consider whether to draw the attention of the House to the treaty on any of the grounds set out in the national interest analysis or for any other reason.<sup>80</sup> Committees are not required to state whether they agree with the proposal to enter into the treaty, although it is open to them to express their opinions on this if they wish to. In one case, a committee explicitly recommended against the Government entering into a bilateral

<sup>75</sup> Health Committee *International treaty examination of the agreement between the Government of New Zealand and the Government of Australia for the establishment of a joint scheme for the regulation of therapeutic products* (18 June 2004) [2002–2005] AJHR I.22C at 699, 709–710.

<sup>76</sup> Foreign Affairs, Defence and Trade Committee *International treaty examination of the Closer Economic Partnership Agreement with Singapore* (19 October 2000) [1999–2002] AJHR I.4A; Foreign Affairs, Defence and Trade Committee *International treaty examination of the amendments to the agreement between the Government of Australia and the Government of New Zealand establishing a system for the development of joint food standards* (6 May 2002) [1999–2002] AJHR I.22C.

<sup>77</sup> Foreign Affairs, Defence and Trade Committee *International treaty examination of the Kyoto Protocol to the United Nations Framework Convention on Climate Change* (16 May 2002) [1999–2002] AJHR I.22C at 390.

<sup>78</sup> Foreign Affairs, Defence and Trade Committee *International treaty examination of the New Zealand–Thailand Closer Economic Partnership Agreement* (29 April 2005) [2002–2005] AJHR I.22D at 364.

<sup>79</sup> SO 400(1).

<sup>80</sup> SO 400(2).

agreement.<sup>81</sup> A committee has also scrutinised the process followed when entering into the treaty for compliance with the *Cabinet Manual* procedures on treaties.<sup>82</sup>

Most committee reports on treaties, though not all, are quite brief and formal. The national interest analysis must be appended to the report.<sup>83</sup> A report on a treaty examination is set down for consideration as a Member's order of the day. It remains on the Order Paper for 15 sitting days or, if it contains recommendations addressed to the Government (only a few do), for 15 sitting days from the date that the Government's response is received.<sup>84</sup> In practice, such reports are not reached for debate, since Members' orders of the day for Members' bills take precedence over them.<sup>85</sup> However, the Government has initiated a debate on one treaty report by lodging its own notice of motion asking the House to take note of the report.<sup>86</sup> Committees may also write to the Business Committee requesting that debates on their treaty reports be held.

## LEGISLATING FOR TREATY OBLIGATIONS

Where a treaty will require legislation before it can be accepted as binding, treaty examination becomes the first step in an integrated process leading to legislative implementation of the treaty's obligations and then final acceptance of the treaty by the Government. Each step in the process informs or authorises the next step.

### Allowing time for treaty examination

Treaty examination is conceptually different from the legislative implementation of a treaty's provisions. Rather than considering only the domestic law implications of a treaty, the House, in treaty examination through its committees, requires the proposal to enter into the treaty to be justified as a matter of principle. The committee's conclusions on this (or the House's, if it chooses to express them) should, if possible, be available to the Government before it presents legislation to implement the treaty's obligations. For this purpose, such legislation is not as a matter of practice introduced until at least 15 sitting days after the treaty has been presented to the House for examination.<sup>87</sup> (However, preparatory work on the legislation within Government, such as obtaining a legislative priority and drafting the bill, may proceed within this period.)

While it is highly desirable for the select committee to have completed its examination of the treaty and reported to the House so that this can inform the Government's legislative proposals, the Government is free to introduce legislation when the 15 sitting days have expired.

### Form of legislation

Where legislative action is necessary to implement treaty obligations, there is no standard form it must take. In some cases, legislation may be introduced to give direct effect to a treaty, with the text of the treaty included in a schedule to the Act. In such a case, the treaty text itself becomes directly part of New Zealand's statute law. Where this method is adopted, it is accepted that no amendment to the schedule containing the treaty can be made by the House. But the clauses of the bill giving effect to the treaty are open to amendment, even if the effect of such an

<sup>81</sup> Health Committee *International treaty examination of the agreement between the Government of New Zealand and the Government of Australia for the establishment of a joint scheme for the regulation of therapeutic products* (18 June 2004) [2002–2005] AJHR I.22C at 703.

<sup>82</sup> Foreign Affairs, Defence and Trade Committee *International treaty examination of the New Zealand–Thailand Closer Economic Partnership Agreement* (29 April 2005) [2002–2005] AJHR I.22D at 365.

<sup>83</sup> SO 400(3).

<sup>84</sup> SO 74(4).

<sup>85</sup> SO 72(1).

<sup>86</sup> (2000) 588 NZPD 6329–6357 (report of the Foreign Affairs, Defence and Trade Committee on the agreement between New Zealand and Singapore on a closer economic partnership).

<sup>87</sup> Cabinet Office *Cabinet Manual* 2008 at [7.122].

amendment would be to withhold legislative effect from the treaty or from part of it. (See Chapter 26 for inadmissible amendments.)

In other cases, wording taken from the treaty is used in the legislation, perhaps with some slight drafting changes so that it fits conveniently into the body of New Zealand law. But the fact that the wording was drawn from the treaty may not always be readily apparent upon reading the legislation. In yet other cases, the wording in the legislation that is relied upon to implement a treaty obligation may not be drawn from the treaty at all and may bear little textual resemblance to it. This is often the case where New Zealand law is judged to be already compatible with a treaty obligation that the Government is proposing to enter into. Another legislative approach is to implement a treaty's obligations through delegated legislative powers that the Government already has or that are to be conferred on it. Legislative implementation of the same treaty may utilise more than one of these approaches.<sup>88</sup>

## **Regulations overriding statutes**

The incorporation of treaty obligations by means of delegated legislation raises special problems of parliamentary scrutiny. These issues have been the subject of study by the Regulations Review Committee and response by the Government.<sup>89</sup>

In a number of instances (10 were specified by the committee) legislation permits treaties to be implemented by regulations that override or abrogate provisions of New Zealand law. This is an example of a type of Henry VIII clause, and is contrary to the general principle that subordinate legislation should not override primary legislation.<sup>90</sup> (See Chapter 28 for Henry VIII clauses.) Some of such regulation-making provisions are limited to overriding provisions of the same Act in which they are contained, others allow other specified Acts to be overridden, while some allow both the Act in which they are contained and any other Act to be overridden.<sup>91</sup>

The committee considered that any power for regulations to override a statute in order to implement a treaty obligation should be confined to the overriding of the Act in which the power is contained. The power should be clearly defined, and identify precisely the provisions in the Act that can be overridden.<sup>92</sup> In all cases, overriding regulation-making power should only be granted by Parliament for technical matters or to deal with emergency situations. The committee instanced double taxation agreements and reciprocal child support agreements as technical agreements where overriding might be appropriate, and responding to United Nations obligations as emergency situations that would justify this power.<sup>93</sup> While in general the Government has accepted the committee's views of the principles to be applied, it has not accepted that in every case it will be possible to identify all the legislative provisions that are to be overridden or to confine the overriding to the Act in which the power is contained.<sup>94</sup>

<sup>88</sup> See Law Commission *A New Zealand guide to international law and its sources* (NZLC R34, 1996) at [47]–[64]; Mark Gobbi “Drafting Techniques for Implementing Treaties in New Zealand” (2000) 21(2) *Statute Law Review* 71 at 71.

<sup>89</sup> *Regulations Review Committee Inquiry into regulation-making powers that authorise international treaties to override any provisions of New Zealand enactments* (12 March 2002) [1999–2002] AJHR I.16H; Government response to report of Regulations Review Committee on inquiry into regulation-making powers that authorise international treaties to override any provisions of New Zealand enactments (10 June 2002) [1999–2002] AJHR A.5.

<sup>90</sup> *Regulations Review Committee Inquiry into regulation-making powers that authorise international treaties to override any provisions of New Zealand enactments* (12 March 2002) [1999–2002] AJHR I.16H at 7.

<sup>91</sup> See, for example: Child Support Act 1991, s 215(1)(a) (permitting regulations to override the provisions of any Act in order to implement a reciprocal agreement with Australia).

<sup>92</sup> *Regulations Review Committee Inquiry into regulation-making powers that authorise international treaties to override any provisions of New Zealand enactments* (12 March 2002) [1999–2002] AJHR I.16H at 22.

<sup>93</sup> *Ibid.* at 18 and 29.

<sup>94</sup> Government response to report of the Regulations Review Committee on inquiry into regulation-making powers that authorise international treaties to override any provisions of New Zealand enactments (10 June 2002) [1999–2002] AJHR A.5.

## CONVENTION OF PRIOR PARLIAMENTARY EXAMINATION OF TREATIES

A constitutional convention has emerged that the Government will not (except in an emergency) take binding treaty action until the minimum period for parliamentary scrutiny of the treaty (15 sitting days from its presentation to the House) has expired.<sup>95</sup> (This is a narrower convention than the practice of first enacting legislation to make New Zealand law consistent with a treaty it is proposed to ratify.)

A constitutional convention is not like an Act of Parliament. Indeed, it is not enforceable as law at all. A constitutional convention is an important political practice that develops over time and is accepted as binding on those who are parties to the practice. There may be dispute over whether a practice has developed into a convention and, since conventions are inherently imprecise, disagreement as to what the practice consists of and how it is to be applied in the circumstances that obtain. It has been said that constitutional conventions possess a number of characteristics: they facilitate constitutional development without formal changes in the law; they co-ordinate the practices of government and provide means for co-operation between the organs of government (for example, between the executive and legislature); and they act as a restraining and modifying influence on the exercise of legal power. The most important conventions promote responsible government by ensuring that public affairs are conducted in accordance with the people's wishes as expressed through their representatives in Parliament.<sup>96</sup>

A political practice of parliamentary examination of multilateral treaties (except in emergencies) prior to their becoming binding commenced in 1998. This is recognised in the Government's responses to select committee recommendations for such a practice, in Standing Orders changes implementing it and in a State practice (supported by the Government's own internal arrangements, which select committees themselves are now monitoring<sup>97</sup>) of complying with it since then. In particular, parliamentary examination of a proposed treaty is subject to a quite different procedure and a different timeframe from parliamentary enactment of any legislation to implement that treaty's obligations. The latter is part of the House's general legislative procedures; the former is part of its scrutiny function. A treaty is not of itself a source of law; legislation is.<sup>98</sup> The Government's own practices recognise this distinction between treaty and legislation by requiring any legislation needed to bring domestic law into compliance with a treaty not to be introduced until after the treaty has been presented or the time for a select committee to report on it (15 sitting days) has expired.<sup>99</sup> Once the 15 sitting days have expired, the Government (if New Zealand law is compatible with the treaty's obligations) may take binding treaty action, whether or not the committee has actually reported back within that time and regardless of whether the House has debated its report.<sup>100</sup> The convention inhibiting the Government in exercising the treaty power applies only during the minimum examination period.

These arrangements have been settled practice since 1998, have been endorsed by successive Governments and were made a permanent part of its procedures by the House in 1999 (although the minimum time to be observed has been altered

<sup>95</sup> See, for example: Foreign Affairs, Defence and Trade Committee *Review of the international treaty examination process* (13 August 1999) [1996–1999] AJHR I.4E at 2–3 and 5.

<sup>96</sup> Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [9.2.1] and ch 9 generally.

<sup>97</sup> Foreign Affairs, Defence and Trade Committee *International treaty examination of the New Zealand–Thailand Closer Economic Partnership Agreement* (29 April 2005) [2002–2005] AJHR I.22D at 365.

<sup>98</sup> See, for example: *European Roma Rights Centre v Immigration Officer at Prague Airport* [2003] EWCA Civ 666, [2004] QB 811 at [100]–[101] per Laws LJ.

<sup>99</sup> Cabinet Office *Cabinet Manual* 2008 at [7.122].

<sup>100</sup> Foreign Affairs, Defence and Trade Committee *Review of the international treaty examination process* (13 August 1999) [1996–1999] AJHR I.4E at 3.

and there has been continuing concern about its adequacy). Parliamentary scrutiny of treaties operates on a constitutional, rather than a legal, basis. There has been no change to the law of treaty-making, which remains essentially part of the royal prerogative. The 1998 reforms represent a compact between the executive and legislative branches of government, and acknowledged concern at the previous lack of parliamentary involvement in the treaty-making process. All parliamentarians now have the opportunity within the House's own procedures to contribute to consideration of any treaty that a Government is considering entering into in New Zealand's name.

In these circumstances, it can be argued that these executive and legislative practices, that allow parliamentarians a limited time to examine a proposed multilateral treaty before the Government proceeds to ratify or otherwise accept it as binding, amount to a constitutional convention.

## **INTER-PARLIAMENTARY RELATIONS**

### **Inter-Parliamentary Relations Strategy**

Relations between countries are no longer the exclusive domain of Governments. Parliamentarians have become more engaged internationally and "parliamentary diplomacy" has become a well-established practice. Globalisation has increased the number of issues that require global solutions rather than domestic action alone. In order to ensure that international political decisions benefit from as much democratic legitimacy as possible, parliamentarians are increasingly involved in informing and implementing international solutions.<sup>101</sup>

Parliamentary diplomacy includes activities such as promotion of the national interest by peaceful means, dialogue to increase understanding between countries, promoting best parliamentary practice, and generally taking an active part in the international parliamentary community. Importantly, it also includes technical assistance, and activities to strengthen parliaments and build their capacity such as those undertaken by the New Zealand Parliament in the Pacific.

Speakers, because of their positions, can open doors in other countries that many diplomats cannot. Members' active participation in inter-parliamentary organisations improves their knowledge and increases their insight as legislators, which in turn improves parliamentary scrutiny of Government policy. Parliamentary delegations can also bring pluralism to diplomacy, bringing together the varied political voices that characterise a healthy democracy. Personal contact between members from different States also fosters mutual understanding. Members of such organisations can bring a moral dimension to global politics that transcends a more traditional national-interest approach.<sup>102</sup>

In 2015, the Speaker proposed five strategic objectives for inter-parliamentary relations:<sup>103</sup>

- advancing New Zealand's collective interests internationally through Speaker-led diplomacy
- active participation by Parliament in inter-parliamentary organisations
- bilateral visits to contribute to collective national interest and promote parliamentary democracy
- building parliamentary capability through increasing members' knowledge of parliamentary business, the workings of representative parliamentary democracy, and of global issues

<sup>101</sup> Rt Hon Lockwood Smith, Speaker *21st conference of Speakers and presiding officers of the Commonwealth Port of Spain, Trinidad and Tobago 7 to 12 January 2012* (28 June 2012) [2011–2014] AJHR J.2A at 7.

<sup>102</sup> Office of the Speaker *Global Connections, a Better Parliament: The New Zealand Parliament's Inter-Parliamentary Relations Strategy 2015–2019* (final draft) (28 May 2015) at 6.

<sup>103</sup> Ibid, at 10–19.

- promoting good governance and strengthening parliamentary democracy in the Pacific.

## **Inter-parliamentary relations programme**

The Speaker, after consulting with the Minister of Foreign Affairs, endorses an annual inter-parliamentary relations programme, largely funded through a three-yearly appropriation in Vote Office of the Clerk and administered by the inter-parliamentary relations secretariat in the Office of the Clerk. It is through these annual programmes that the five strategic objectives for inter-parliamentary relations are pursued. The programme is multi-faceted, covering reciprocal Speaker-led delegations, participation in inter-parliamentary organisations, bilateral exchanges of members and committees, and parliamentary strengthening initiatives, as set out in the following section.

Members participating in annual inter-parliamentary relations programmes are regarded as present on a sitting day.<sup>104</sup> The programme covers both incoming and outgoing parliamentary delegations. Members participating in CPA and IPU activities (see below) are expected to report back at meetings of the New Zealand branch of the CPA and the New Zealand group of the IPU respectively on their experiences. Following a suggestion by the select committee examining the relevant Estimates that information obtained by parliamentary delegations be more widely disseminated,<sup>105</sup> parliamentary delegations now prepare formal reports to the House on their visits and may be invited to brief the Foreign Affairs, Defence and Trade Committee. Their reports, along with an annual activities report, are presented to the House by the Speaker and published as parliamentary papers.<sup>106</sup>

The Visits and Ceremonials Office of the Department of Internal Affairs (VCO) helps provide hospitality and facilitation for incoming parliamentary delegations, invited as guests of Parliament as part of the inter-parliamentary programme. Itineraries are arranged by the Office of the Clerk in consultation with the Speaker, the Ministry of Foreign Affairs and Trade, and the VCO. The international standing of the New Zealand Parliament means that it also receives many self-invited delegations of members and officials from overseas parliaments.<sup>107</sup>

## **Participation in inter-parliamentary organisations**

Members participate in three inter-parliamentary organisations—the Commonwealth Parliamentary Association (CPA), the Inter-Parliamentary Union (IPU) and the Asia Pacific Parliamentary Forum. For each Parliament, permanent delegates for both the Commonwealth Parliamentary Association branch and Inter-Parliamentary Union group are selected from the two largest parties represented in the House. These members lead the New Zealand delegations to the association's annual conference and the union's assemblies for the duration of the Parliament, providing continuity and stability for New Zealand's engagement with the respective organisations. The Asia Pacific Parliamentary Forum has no permanent delegate.

### **Commonwealth Parliamentary Association**

The Commonwealth Parliamentary Association (founded in 1911 as the Empire Parliamentary Association) is a body with branches in most of the legislatures at both federal and state levels in the Commonwealth. Members of Parliament (and former members as associate members) are entitled to join the New Zealand branch. The Speaker is the ex officio President of the branch and the Prime Minister and

<sup>104</sup> SO 37(1)(d).

<sup>105</sup> Government Administration Committee, report on 1992/93 Estimates (Vote Office of the Clerk) (15 September 1992) [1991–1993] AJHR L19C at 159.

<sup>106</sup> See, for example, Rt Hon David Carter, *Speaker Reports of the official Inter-Parliamentary Relations Programme 1 January–31 July 2014* (31 July 2014) [2011–2014] AJHR J.2P.

<sup>107</sup> Office of the Clerk of the House of Representatives, annual report (23 October 2015) NZPP A.8 at 21 and 34.

the Leader of the Opposition its Vice-Presidents. The Clerk of the House acts as honorary secretary/treasurer. The association aims to promote understanding and cooperation among its members, and the study of and respect for parliamentary institutions throughout the Commonwealth. It promotes conferences, seminars and publications towards these aims. Branches are organised on a regional basis, New Zealand being part of the Pacific Region. Many of the association's activities are regional; the Pacific Region collaborates with the Australian Region in organising regular conferences and seminars. In 2004 the Office of the Clerk assumed responsibility for providing a regional secretariat for the Pacific Region.

The New Zealand branch was host of the association's annual conferences in 1950, 1965, 1979 and 1998, and has also staged other conferences and seminars on its behalf. New Zealand also provides a permanent member representing the Pacific Region to the association's Executive Committee.

### **Inter-Parliamentary Union**

Members are also entitled to join the New Zealand group of the Inter-Parliamentary Union. The IPU was founded in 1889. It is an organisation consisting of groups formed by national legislatures. Its official languages are English and French. As in the CPA, the Speaker is the ex officio President of the New Zealand group and the Prime Minister and the Leader of the Opposition its Vice-Presidents. The union aims to secure and maintain the establishment and development of democratic institutions and international peace and cooperation. It promotes annual and ad hoc conferences and seminars. It also publishes information on parliamentary and other subjects. Through resolutions and reports, the union expresses its views and the positions of the world parliamentary community on issues of international interest, and makes recommendations for parliamentary action, working for peace and cooperation among peoples and for the firm establishment of representative democracy.<sup>108</sup> The union supports the efforts of, and works in close cooperation with, the United Nations, providing a parliamentary dimension to its work.

### **Asia Pacific Parliamentary Forum**

The Asia Pacific Parliamentary Forum seeks to provide opportunities for national parliamentarians of the Asia-Pacific region to raise and discuss regional matters of common concern and interest in a global context, and to encourage and promote regional cooperation at all levels. To a great extent, the forum acts as the parliamentary branch of Asia-Pacific Economic Cooperation (APEC), and even though it maintains an independent agenda, it keeps close ties with other regional integration institutions such as the Association of Southeast Asian Nations, the South Pacific Forum, the Pacific Economic Cooperation Council, and the Pacific Basin Economic Council.

The forum expresses its views on these issues and on the positions of the parliamentarians of the Asia-Pacific region through resolutions and a joint communiqué signed by all the heads of delegation at the conclusion of its annual meeting.

### **Speaker-led diplomacy**

Speaker-led diplomacy is the highest level of inter-parliamentary relations, and it can make an important contribution to advancing New Zealand's interests, fostering understanding and promoting international cooperation between members of Parliament and between countries and Parliaments. Through the Inter-Parliamentary Relations Strategy, the New Zealand Parliament intends to make more use of the position and profile of the Speaker by increasing the Speaker's engagement abroad, and with visiting Speakers and other dignitaries.

---

108 Inter-Parliamentary Union *Statutes of the Inter-Parliamentary Union* at Article 1.

The principal regular initiatives involving the Speaker are an annual reciprocal Speaker-led delegation and the Conference of Speakers and Presiding Officers of the Commonwealth (CSPoC). Speakers' delegations are an opportunity for the Speaker and a group of members to promote New Zealand and its Parliament, by visiting other parliaments and by hosting visiting Speakers and their delegations in New Zealand. The conference brings together the Speakers and Presiding Officers of the national parliaments of the independent sovereign States of the Commonwealth. It was created in 1969 as an initiative of the Speaker of the House of Commons of Canada, the Honourable Lucien Lamoureux. Since its inception, Canada has provided the conference with a secretariat.

The conference is an independent group and has no formal affiliation with the Commonwealth Parliamentary Association, the Commonwealth Secretariat or the Commonwealth Heads of Government. It operates on a two-year cycle, holding a conference of the full membership every two years, usually early in January, and a meeting of the Standing Committee at the same time in the intervening year. The New Zealand Parliament has been an active participant, and hosted the conference in 1984 and 2014.

## Bilateral exchanges of members and committees

### *Joint committee exchanges with Australia*

The House of Representatives has an established parliamentary exchange programme with the two Houses of the Commonwealth Parliament of Australia. In 1989 joint meetings were established between parliamentary committees from the two countries. The aim is to hold two such meetings each year, one in each country. The meetings are working sessions on subjects chosen in advance from matters under examination by the committees or the legislatures. The arrangements for the meetings are formalised between the Speaker and the presiding officers of the Australian Parliament. The visiting legislature decides which of its subject committees will participate.

The first joint meeting was held in Wellington on 19 April 1989 between the Foreign Affairs and Defence Committee and a subcommittee of the Joint (House and Senate) Committee on Foreign Affairs, Defence and Trade.<sup>109</sup> The Foreign Affairs and Defence Committee used this joint meeting to help gather information for an inquiry into overseas development assistance.<sup>110</sup> The exchange is not limited to foreign affairs committees. Each year, the Speaker writes to the subject select committees and invites each of them to make a submission if they wish to participate in the programme. The Speaker considers the bids they have made, and selects the committee to participate that year on the basis of the items of common interest it wishes to discuss.

The participating New Zealand committee must be authorised by the House to meet in Australia, as committees may only meet within New Zealand.<sup>111</sup> Having been authorised to meet, the committee may adopt such practices and procedures as it sees fit for the joint meeting.<sup>112</sup>

The procedures generally follow the rules of the committee in whose country the meeting is held. The host committee's chairperson presides and the visiting committee's chairperson acts as deputy chairperson. Votes are not taken. While the opening formalities of the meetings are held in public, subsequent sessions are held in private, subject to the right of any other member of the Houses of either Parliament to attend them. No transcript of the meetings is made, but a

<sup>109</sup> Foreign Affairs and Defence Committee *Report on the meetings with the Joint Committee on Foreign Affairs, Defence and Trade of the Parliament of the Commonwealth of Australia* (23 November 1989) [1987–1990] AJHR I.5B.

<sup>110</sup> Foreign Affairs and Defence Committee *Inquiry into Official Development Assistance* (4 September 1990) [1990] AJHR I.5B at [2.6].

<sup>111</sup> SO 192(2).

<sup>112</sup> SO 192(3).

formal record of it is agreed by both committees. Subject to the agreement of the joint meeting, both the chairperson and the deputy chairperson may make public statements about the meetings before the committees report back to their respective Houses.<sup>113</sup>

Committees of the New Zealand Parliament are expected to make a report to the House on their joint meetings.

### ***Friendship groups***

Members may establish friendship groups that engage on a country, regional or issues basis with counterparts in Parliaments around the world.<sup>114</sup> While these are informal, self-regulating groups in New Zealand, they can play an important role in some Parliaments, undertaking significant visits to build bilateral inter-parliamentary relations. The New Zealand friendship groups frequently host these visiting groups. Members have formed 32 friendship groups in the 51st Parliament.

### ***Political exchanges***

Regular exchanges are held with Australia and the United States for young members. These are important professional development opportunities for members and participation is highly valued. The New Zealand Parliament provides reciprocal exchanges for members from Australia and the USA. Members also have the opportunity to attend Commonwealth Parliamentary Association and Inter-Parliamentary Union professional development seminars.

## **Parliamentary strengthening activities in the Pacific Region**

The New Zealand Parliament supports capacity-building in parliaments throughout the Pacific region. The Office of the Clerk's inter-parliamentary relations secretariat works closely with the Commonwealth Parliamentary Association and the Inter-Parliamentary Union, the Australian Federal and State Parliaments, the New Zealand Ministry of Foreign Affairs and Trade, and other international partner agencies in the region to determine areas of need, and to implement and support study programmes and workshops for members and officials of Pacific parliaments.

The New Zealand Parliament hosted the inaugural Pacific Parliamentary and Political Leaders Forum in 2013. At this event more than 70 Pacific parliamentarians and political leaders gathered to discuss various issues of particular importance to the Pacific, including environmental issues and climate change, the global economic outlook and its implications for the region, the importance of parliament and sound governance for business development and job creation, gender equality and the gender balance of parliaments, problems of isolation and the delivery of services to remote communities, the media, health, and the importance of parliament to local communities. It is hoped that this initiative will become a regular event, not necessarily hosted as a matter of course by the New Zealand Parliament.

Members also have the opportunity to take part in the Pacific Mission, an annual event led by the Minister of Foreign Affairs, reflecting New Zealand's commitment to development in the Pacific region. The Pacific Mission gives a cross-party delegation of members of Parliament access to a wide range of people and sectors at work in the Pacific, giving them insight into the issues facing countries in the region and highlighting areas where assistance from New Zealand might be beneficial.

<sup>113</sup> Foreign Affairs and Defence Committee Report on the meeting with the Subcommittee on the South Pacific of the Joint Committee on Foreign Affairs, Defence and Trade of the Parliament of the Commonwealth of Australia (13 July 1989) [1987–1990] AJHRI.5A at 8.

<sup>114</sup> New Zealand Parliament "Parliamentary Friendship Groups—51st Parliament" (1 July 2015) <[www.parliament.nz](http://www.parliament.nz)>.

# CHAPTER 43

# Emergency Powers

There is no single definition of what constitutes an emergency and when emergency powers are justified. But various statutes make provision for action to be taken to deal with an emergency that has arisen in respect of a particular event. The exact legal and parliamentary steps to be taken differ in each case, depending upon the provisions of the legislation.

An emergency that requires parliamentary action of some description will, of its nature, be an event of national significance, posing a serious threat to public safety or threatening the destruction of or damage to property. A severe earthquake, or an outbreak of a quarantinable disease, are the most obvious examples.<sup>1</sup> Whether or not a state of national emergency is declared by the Government, the House will undoubtedly wish to give attention to any such event. The recent experience of Parliament in responding to the September 2010 and February 2011 Canterbury earthquakes raised points of interest in terms of House practice and procedure, which occasioned the Standing Orders Committee recommending a select committee inquiry into Parliament's future legislative response to a national emergency.<sup>2</sup>

## ROLE OF THE HOUSE

The role of the House contrasts with the natural pattern of emergency response by the executive, which steps in immediately to respond to an emergency, over and above a local or regional response. The role of the House is not to direct and act. The theory is that the House should be informed of the emergency and should give its members the opportunity to speak about the emergency. As an emergency unfolds there may be a role for the House in revoking or continuing a state of emergency. This will depend on the emergency legislation that is in operation. In the case of an earthquake it is the Civil Defence Emergency Management Act that comes into play, and in the case of an outbreak of a quarantinable disease it may be the Epidemic Preparedness Act 2006 or the Biosecurity Act 1993.

The House's role in respect of the Civil Defence Emergency Management Act also focuses on the planning stage. It approves emergency plans that are set

---

<sup>1</sup> Law Commission *Final report on emergencies* (NZLC R22, 1991) at [1.12].

<sup>2</sup> Canterbury suffered two massive earthquakes, the first on 4 September 2010 and the second on 22 February 2011. For the recommendation to refer an inquiry into Parliament's legislative response to future national emergencies to a select committee, see Standing Orders Committee *Review of Standing Orders* (21 July 2014) [2011–2014] AJHR I.18A at 13.

out in advance in delegated legislation. Further into an emergency response there may be a role for the House in legislating additional response powers and recovery provisions. This was the case after the Canterbury earthquakes. Finally, the House maintains its central role in holding the executive to account for the exercise of any emergency powers and its response to the emergencies generally.

## SITTING OF THE HOUSE AND MEETING PLACE

Should an emergency, such as an earthquake or an outbreak of a quarantinable disease, affect the meeting place of Parliament, legal power is vested in the Governor-General to alter the place of meeting from that to which Parliament has been summoned to meet.<sup>3</sup> Parliament is summoned to meet at such place as is appointed in the Governor-General's proclamation summoning it.<sup>4</sup> If the place to which Parliament has been summoned becomes unsafe or uninhabitable after Parliament has been summoned to meet, the Governor-General may, by proclamation, change the place at which Parliament is to meet.<sup>5</sup> This is done by a further proclamation. The House does not go into abeyance when an emergency has taken place; indeed its functions take on additional significance.

Until 2011, it was customary for a Proclamation summoning Parliament to appoint a meeting place "in Parliament House, in the City of Wellington". Following a recommendation from the Standing Orders Committee, the proclamation summoning Parliament now appoints the meeting place as "the parliamentary precincts in the City of Wellington". The House can now alter its venue on its own authority, provided it still meets within the parliamentary precincts in the City of Wellington.<sup>6</sup>

## House adjourned, prorogued or dissolved

If the House is adjourned during a parliamentary session when an emergency occurs, and because of that emergency additional or alternative arrangements must be made for the House to meet, the Speaker can postpone the next sitting of the House to allow such arrangements to be made.<sup>7</sup> A sitting cannot be postponed under this provision for more than seven days after the date originally scheduled for the next sitting. The House sits at the time determined by the Speaker.

A formal contingency plan exists, and will be activated should it be necessary to relocate the House and executive government temporarily to Auckland because of a catastrophic event in Wellington.

In the case of a declaration of a state of national emergency or an outbreak of a quarantinable disease while Parliament is dissolved or prorogued or while the House is adjourned and is not due to meet again within seven days, statute requires that the House's reassembly be accelerated. In these circumstances Parliament must be summoned to meet within seven days of the last day appointed under the Electoral Act 1993 for the return of the writ for constituency members if it is dissolved, and within seven days of the making of the proclamation if it is prorogued. If the House is adjourned at the time, it must sit within seven days of the making of the declaration at a time to be appointed by the Speaker by notice in the *Gazette*.<sup>8</sup>

Special procedures apply in the event of the outbreak of a serious disease involving people.<sup>9</sup> If the House is adjourned and an epidemic notice given under

<sup>3</sup> Constitution Act 1986, s 18(1A).

<sup>4</sup> Constitution Act 1986, s 18(1).

<sup>5</sup> Constitution Act 1986, s 18(1A).

<sup>6</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 62–63; and (15 December 2011) 193 *New Zealand Gazette* 5559 at 5651.

<sup>7</sup> SO 55(6).

<sup>8</sup> Civil Defence Emergency Management Act 2002, s 67; and Epidemic Preparedness Act 2006, s 6.

<sup>9</sup> SO 55(3), (4).

the Epidemic Preparedness Act 2006 is in force, and it appears to the Prime Minister, on the written recommendation of the Director-General of Health, that the postponement of the next sitting of the House is necessary for effective management of a serious outbreak of a disease affecting people, the Prime Minister, after consulting the leaders of other parties, may inform the Speaker that the next sitting of the House should be postponed to a specific date within one month of the date originally scheduled for the sitting. The Speaker on being so informed may postpone the sitting and notify members accordingly and determine a date for the next sitting.

When the House assembles following an emergency, apart from any legislative action that may be required, a number of procedures may be utilised to inform the House and scrutinise any Government response to the emergency. The House could expect the Prime Minister or another Minister to make a ministerial statement to inform the House, there will be opportunities to ask oral questions, and an urgent debate on the Government's response could be held. In this way, regardless of whatever else is on the parliamentary agenda, members can respond in the House to a matter of serious import that has just arisen.

## FORMS OF PARLIAMENTARY CONTROL

In a few circumstances the powers conferred on the Government or officials to deal with an emergency are regarded as so extreme that some parliamentary control is desirable to ensure that they are not abused. The House is only one means of control; another obvious means is the right to seek judicial review of the exercise of any statutory powers. The forms of parliamentary control include four elements: the right to be consulted in planning for emergencies, the right to be informed of an emergency, the need for the House in some circumstances to authorise the continuance of the emergency, and the power of the House to revoke or amend powers to deal with the emergency.

### Planning for emergencies

The Minister of Civil Defence must prepare, on behalf of the Crown, a civil defence emergency management strategy. The strategy is designed to set out the Crown's goals regarding civil defence strategy management, the objectives to be pursued to achieve them, and the measurable targets to be met in order to achieve those objectives.<sup>10</sup> Before completing the strategy the Minister must engage in a process of public consultation.<sup>11</sup> A copy of the completed strategy must be presented to the House.<sup>12</sup>

Once presented to the House, the strategy stands referred to the Government Administration Committee, which must report on it within 12 sitting days of its referral.<sup>13</sup> The strategy takes effect 28 days after it is publicly notified in the *Gazette* or on any later date specified in it.<sup>14</sup> But the House has the right to prevent it taking effect or to counteract it by resolving not to approve it, within 15 sitting days of its presentation (the House's express approval for the strategy is not required).<sup>15</sup> A motion not to approve the strategy would require notice. A decision by the House not to approve the strategy would be likely only if the Government Administration Committee were to endorse such an action in reporting on the strategy. If the House does resolve not to approve the strategy the Minister must complete a revised strategy. This would also be subject to non-approval by the House.<sup>16</sup>

<sup>10</sup> Civil Defence Emergency Management Act 2002, s 31.

<sup>11</sup> Civil Defence Emergency Management Act 2002, s 32(1).

<sup>12</sup> Civil Defence Emergency Management Act 2002, s 32(2)(b).

<sup>13</sup> SO 394.

<sup>14</sup> Civil Defence Emergency Management Act 2002, s 34(1)(a).

<sup>15</sup> Civil Defence Emergency Management Act 2002, s 35(1).

<sup>16</sup> Civil Defence Emergency Management Act 2002, s 35(2).

A strategy remains in force for 10 years or the lesser period specified in it.<sup>17</sup> It may be amended by following the consultation and approval procedure required for the strategy itself.<sup>18</sup> The Minister is responsible for ensuring that, at all times, there is a current national civil defence emergency management strategy.<sup>19</sup>

A national civil defence emergency management plan that is consistent with the strategy may be made by Order in Council.<sup>20</sup> The plan must identify and provide for the hazards and risks to be managed at the national level, set objectives, and provide for the co-ordination of civil defence emergency management during a state of national emergency.<sup>21</sup> In drawing up the plan, the Minister must engage in a process of public consultation and must present the completed plan to the House.<sup>22</sup> The plan stands referred to the Government Administration Committee,<sup>23</sup> which may consider it as it sees fit. The plan is a legislative instrument, but not a disallowable instrument, for the purposes of the Legislation Act 2012, and must be presented to the House under section 41 of the Legislation Act.<sup>24</sup> A civil defence emergency management plan must be reviewed by the Minister between five and 10 years after it is made.<sup>25</sup>

## The right to be informed

The House must be informed immediately if it is sitting, or as soon as it sits, of certain emergencies that have arisen.

This obligation is imposed on the responsible Minister in the case of a declaration of a state of national emergency (which could involve an earthquake or a flood) or the extension of such an emergency.<sup>26</sup>

Similar obligations on the responsible Minister arise in respect of a declaration of a biosecurity emergency (when, for example, a pest is, or threatens to be, beyond control of any national pest management plan);<sup>27</sup> a declaration of an outbreak of a stated quarantinable disease (within the meaning of the Health Act 1956);<sup>28</sup> the authorising of the police to exercise emergency powers in respect of an international terrorist event;<sup>29</sup> the grant of authority for the armed forces to provide assistance to the civil power in the time of an emergency (for example, to help the police, the prison service, or the civil defence authorities);<sup>30</sup> and when proclamations of a war emergency have been made and the armed forces mobilised.<sup>31</sup>

The House is informed of the emergency by a ministerial statement made by the appropriate Minister. Any regulations that must be presented are delivered to the Clerk before the House meets.

The House's response to being informed of an emergency may vary. Following the first Canterbury earthquake on 4 September 2010, the House sat on 7 September and the Prime Minister made a ministerial statement informing the House of the emergency situation. Leave was given for extended comments on the statement by all party leaders.<sup>32</sup> By agreement amongst the parties no oral questions were lodged that day out of respect for the losses sustained in Canterbury and for the loss of nine lives in an aviation accident at Fox Glacier. The Speaker declined an urgent debate

<sup>17</sup> Civil Defence Emergency Management Act 2002, s 34(1)(b).

<sup>18</sup> Civil Defence Emergency Management Act 2002, s 36.

<sup>19</sup> Civil Defence Emergency Management Act 2002, s 34(2).

<sup>20</sup> Civil Defence Emergency Management Act 2002, ss 39(1) and 42.

<sup>21</sup> Civil Defence Emergency Management Act 2002, s 39(2).

<sup>22</sup> Civil Defence Emergency Management Act 2002, ss 41 and 43.

<sup>23</sup> SO 394(1).

<sup>24</sup> Civil Defence Emergency Management Act 2002, s 39(4).

<sup>25</sup> Civil Defence Emergency Management Act 2002, s 46.

<sup>26</sup> Civil Defence Emergency Management Act 2002, s 66(2).

<sup>27</sup> Biosecurity Act 1993, s 147.

<sup>28</sup> Epidemic Preparedness Act 2006, s 5(5).

<sup>29</sup> International Terrorism (Emergency Powers) Act 1987, s 7(1).

<sup>30</sup> Defence Act 1990, s 9(7).

<sup>31</sup> Defence Act 1990, s 41(5).

<sup>32</sup> (7 September 2010) 666 NZPD 13671–13679.

application on the setting up of a Cabinet Committee on Canterbury reconstruction and the decision to allocate funding to the mayoral fund and emergency work on roading infrastructure, on the grounds that leave had been granted that day for extended comment on the Prime Minister's statement.<sup>33</sup> The Deputy Leader of the House obtained leave of the House for all members from the Canterbury area who were absent from the parliamentary precincts that day to be regarded as present for the purposes of casting party votes on that sitting day. This allowed Canterbury members to return to Christchurch while parliamentary business continued unhindered.<sup>34</sup> Following discussion in the Business Committee, the arrangement for Canterbury members to be regarded as present was extended for four weeks.<sup>35</sup>

In contrast, when the second Canterbury earthquake struck shortly before the sitting of the House on 22 February 2011, the Prime Minister made a ministerial statement at 2 pm and the House was adjourned immediately following the party leaders' comments on the statement.<sup>36</sup> On the next day, two ministerial statements were made updating the emergency situation and informing the House of the declaration of a state of national emergency, following which the House adjourned by leave until the next scheduled sitting on 8 March 2011 out of respect for the 166 people who lost their lives in the second earthquake. Again leave was granted, following consideration in the Business Committee, for members from the Canterbury region to be considered to be attending to official business and therefore present for the purposes of party voting for the next month's sitting period.<sup>37</sup>

The obligation to inform the House of a declaration of a state of national emergency having been made or authority having been given in relation to other emergencies arises regardless of the fact that by the time the House sits the emergency may be over or the authority withdrawn. Thus, the House has been informed of the grant of authority for the armed forces to assist with the custody of prisoners even though the industrial action that led to the emergency was over by the time the House resumed sitting and the authority had never been exercised.<sup>38</sup>

### **Authority to continue or revoke an emergency**

The House's authority is not required for a state of national emergency to continue in force. Nor is the affirmative approval of the House required in respect of an epidemic or biosecurity emergency, although the House can by resolution revoke such declarations or orders at any time.<sup>39</sup> An epidemic notice expires after three months unless an earlier expiry date is set or the notice is revoked.<sup>40</sup> Notice of a renewal must be presented to the House as soon as possible after it is given.<sup>41</sup> While an epidemic notice is in force, immediate modification orders may be made by Order in Council, and must be presented to the House as soon as practicable after they are made.<sup>42</sup> Any authority for the armed forces to assist the civil power lapses after 14 days unless the House agrees, by resolution, to extend it for the period specified in the resolution (the Governor-General may extend it if Parliament is dissolved or has expired).<sup>43</sup>

In the case of an international terrorist emergency, the authority given to the Police expires when the incident ends or is otherwise dealt with. At the latest it

<sup>33</sup> Ibid, at 13684.

<sup>34</sup> Ibid, at 13683.

<sup>35</sup> Business Committee determination for 15 September 2010 (extension granted until 13 October 2010).

<sup>36</sup> (22 February 2011) 670 NZPD 16937–16941.

<sup>37</sup> (23 February 2011) 670 NZPD 16948.

<sup>38</sup> (1993) 536 NZPD 16547.

<sup>39</sup> Biosecurity Act 1993, s 146(5)(b); Epidemic Preparedness Act 2006, ss 14–15 and 17–18.

<sup>40</sup> Epidemic Preparedness Act 2006, s 5(3).

<sup>41</sup> Epidemic Preparedness Act 2006, s 5(5).

<sup>42</sup> Epidemic Preparedness Act 2006, s 16.

<sup>43</sup> Defence Act 1990, s 9(8).

expires after seven days.<sup>44</sup> The House has power to extend the authority, by resolution, for such period not exceeding seven days as it thinks fit (as does the Governor-General if Parliament is dissolved or has expired). But in no circumstances may the authority be extended beyond 14 days.<sup>45</sup> In addition, the House has the power to revoke an authority or an extension to such an authority at any time.<sup>46</sup>

The declaration on 23 February 2011 of a state of national emergency relating to the second Canterbury earthquake was the first time such a declaration had been made under the Civil Defence Emergency Management Act 2002.<sup>47</sup> States of national emergency expire after seven days. There is no limit on the number of renewals available to the Minister in charge, but the requirement to inform the House stands for each renewal.

Throughout the period following the second earthquake, the House's form of parliamentary control became evident. Ministerial statements provided the House with information on the continuing state of national emergency and the Government's response to it. Comment on the ministerial statements and oral questions moved from seeking information about the Government's response to raising concerns about it. The House increasingly exerted its role of holding the executive to account.

Innovative legislative procedures were adopted to fast-track the legislative response. A truncated select committee consideration allowed legislation to be passed with the necessary urgency, while responding to concern about lack of public input and the need for external expert review.<sup>48</sup> The Canterbury Earthquake Recovery Act 2011 was introduced under urgency on 12 April 2011 to replace the 2010 Act<sup>49</sup> and to facilitate the response to and recovery from the earthquakes. The bill was not referred to a select committee, but the House granted leave for the Local Government and Environment Committee to hear evidence on the bill. It was given two days to do so. The committee managed to hear a number of useful submissions. Changes flowing from the submissions were incorporated into a substantial Government Supplementary Order Paper.

## **Power to make delegated legislation**

It has been recommended that delegated legislation of an emergency nature should be given a limited life, unless specifically confirmed by an Act of Parliament.<sup>50</sup> The only emergency regulations subject to statutory confirmation are those relating to biosecurity. Biosecurity emergency regulations must be laid before the House not later than the second sitting day after they are made.<sup>51</sup> They lapse if not confirmed by an Act of Parliament passed by the end of the year where they were made before 30 June in that year, or by the end of the following year where they were made after 30 June.<sup>52</sup> In addition to this specific provision, the House has a general power to disallow any regulations or any provisions of regulations, and to amend or to

<sup>44</sup> International Terrorism (Emergency Powers) Act 1987, s 6(4).

<sup>45</sup> International Terrorism (Emergency Powers) Act 1987, s 7(2), (3), (4).

<sup>46</sup> International Terrorism (Emergency Powers) Act 1987, s 8.

<sup>47</sup> (23 February 2011) 670 NZPD 16948 (ministerial statement in relation to declaration of a state of national emergency).

<sup>48</sup> (12 April 2011) 671 NZPD 17898–17921; Local Government and Environment Committee *Hearing of evidence on the Canterbury Earthquake Recovery Bill* (14 April 2011) [2008–2011] AJHR I.22C; Local Government and Environment Committee *Special report providing corrected transcripts from the hearing of evidence on the Canterbury Earthquake Recovery Bill* (13 June 2011) [2008–2011] AJHR I.22C.

<sup>49</sup> Canterbury Earthquake Response and Recovery Act 2010 (due to expire on 1 April 2012; repealed by Canterbury Earthquake Recovery Act 2011, s 89(1)).

<sup>50</sup> Regulations Review Committee *Inquiry into the principles determining whether delegated legislation is given the status of regulations* (30 June 2004) [2002–2005] AJHR I.16E at 26.

<sup>51</sup> Biosecurity Act 1993, s 150(5).

<sup>52</sup> Biosecurity Act 1993, s 151.

revoke and substitute regulations.<sup>53</sup> These powers are not limited to regulations in respect of which the House possesses no other power of revocation or amendment. Unless they are specifically excluded from the disallowance process by legislation, they apply to all types of regulations. It would therefore seem that they could be used in respect of emergency regulations even though the emergencies legislation might make specific provision for revocation and amendment of regulations made under the relevant Acts.

Any notice of motion given for the disallowance of an immediate modification order under the Epidemic Preparedness Act 2006 is set down on the Order Paper for the next sitting day as the first item of business after general business.<sup>54</sup> The House has six sitting days from the date on which the order was made in which to disallow it.<sup>55</sup> Where such an order is disallowed, the Clerk must give written notice to the Prime Minister and the Chief Parliamentary Counsel, who arranges for it to be published as if it were a regulation.<sup>56</sup>

The Regulations Review Committee has reported on the Orders in Council made under the emergency legislation in response to the Canterbury earthquakes.<sup>57</sup> The committee reported that the orders made under this legislation were used responsibly, but that there needs to be continuing strong parliamentary oversight of any new orders made under the Canterbury Earthquake Recovery Act 2011, along with review of the operation of current orders as they expire.<sup>58</sup> In August 2015, the House referred to the Regulations Review Committee the inquiry into Parliament's legislative response to future national emergencies that had been recommended by the Standing Orders Committee.

## EMERGENCY EXPENDITURE

Permanent legislative authority exists for expenses or capital expenditure to be incurred or for a capital injection to be made to respond to an emergency or disaster. This authority allows the Minister of Finance to approve such expenditure or capital injection where any state of emergency or of civil defence emergency has been declared or any other situation arises that affects the public health or safety of New Zealand or a part of New Zealand, and that the Government declares to be an emergency.<sup>59</sup>

The Minister may approve expenses, capital expenditure or capital injection to meet the emergency even though no appropriation exists, and public money may be spent on it accordingly.<sup>60</sup> Statements about these expenses, capital expenditure or capital injection must be included in the annual financial statements of the Government and in an Appropriation Bill for confirmation by Parliament.<sup>61</sup>

---

<sup>53</sup> Legislation Act 2012, s 42.

<sup>54</sup> SO 324; Epidemic Preparedness Act 2006, s 17.

<sup>55</sup> Epidemic Preparedness Act 2006, s 18.

<sup>56</sup> Epidemic Preparedness Act 2006, s 21.

<sup>57</sup> Canterbury Earthquake Response and Recovery Act 2010 and Canterbury Earthquake Recovery Act 2011.

<sup>58</sup> Regulations Review Committee, interim report on Orders in Council made under the Canterbury Earthquake Response and Recovery Act 2010 and the Canterbury Earthquake Recovery Act 2011 (5 October 2011) [2008–2011] AJHR I.16N.

<sup>59</sup> Public Finance Act 1989, ss 25(1) and 25A(1).

<sup>60</sup> Public Finance Act 1989, ss 25(2), (4) and 25A(2).

<sup>61</sup> Public Finance Act 1989, ss 25(5) and 25A(3).

## CHAPTER 44

# Parliamentary Privilege

### THE NATURE AND PURPOSE OF PARLIAMENTARY PRIVILEGE

All legislative bodies enjoy certain legal privileges, powers and immunities known as “parliamentary privilege”. The Parliamentary Privilege Act 2014 reaffirms and clarifies the nature, scope and extent of the privileges enjoyed by the House.<sup>1</sup> It does so by reference to the privileges exercised by the House of Commons as at 1865 (when privilege legislation was first enacted in New Zealand),<sup>2</sup> rather than by providing a comprehensive codification.

Parliamentary privilege is designed to remove any impediments or restraints to the legislature going about its work, and to enable it to deal with challenges to its authority. Parliamentary privilege has been justified in law on the grounds that a legislature must enjoy freedom from control by the Crown and the courts (an aspect of the constitutional separation of powers);<sup>3</sup> that it must possess certain powers to facilitate the carrying out of its functions; and that it, its members and others participating in its proceedings must enjoy certain immunities for the legislature to discharge its functions effectively. The privileges that a legislature enjoys are not an end in themselves; they form part of a constitutional expression of parliamentary autonomy and are a means to achieving an end—an effectively functioning legislature able to operate in the public interest. Parliamentary privilege may override other generally accepted legal rights in certain circumstances, which can at times lead to tensions. However, Parliament’s exception to the general application of the law has, over time, become a fundamental constitutional principle, which is itself part of the general law.<sup>4</sup>

The privileges, powers and immunities constituting parliamentary privilege impose corresponding duties, liabilities and disabilities on other persons who are subject to the exercise of the privileges or powers, or who have the immunities invoked against them. The public interest in an effectively functioning parliamentary system of government and the maintenance of the separation of powers legitimates derogation from any standards of legality that this may entail.<sup>5</sup> Nevertheless, the existence of other interests that may be infringed or abridged

<sup>1</sup> Parliamentary Privilege Act 2014, ss 3 and 8.

<sup>2</sup> Parliamentary Privileges Act 1865.

<sup>3</sup> *New Brunswick Broadcasting Co v Nova Scotia (Speaker of the House of Assembly)* [1993] 1 SCR 319 at 389, (1993) 100 DLR (4th) 212 at 265 per McLachlin J.

<sup>4</sup> Joint Committee on Parliamentary Privilege (UK) *Parliamentary privilege: report of session 2013–14* [2013] HL Paper 30, HC 100 at [14]–[19].

<sup>5</sup> *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC); *A v United Kingdom* (2003) 36 EHRR 51 (Section II, ECHR).

by the operation of parliamentary privilege justifies restricting the privileges to activities with a real connection to the operation of the legislature, and confining their scope so as not to trespass on other rights unnecessarily.<sup>6</sup> Parliamentary privilege does not, for instance, confer any general legal immunity on members of Parliament (as distinct from particular immunities operating when they are functioning as parliamentarians), and the exercise of the House's powers outside the parliamentary environment must itself comply with general legal standards.

## Necessity

Part of the rationale for parliamentary privilege is that certain powers and immunities are "necessary" for the transaction of parliamentary functions.<sup>7</sup> This means that the privileges, powers and immunities are adapted to the needs or purposes of the legislature, not that the legislature could not function without them.<sup>8</sup> Parliamentary privilege consists of privileges, powers and immunities that are compatible with the purposes of the House and support its operations. The privileges, powers and immunities that the House possesses are important factors in the way the House's functions have evolved. Parliamentary privilege helps to define the type of legislature New Zealand enjoys.

Necessity helps to elucidate the existence and extent of particular privileges, and remains the legal justification for the privileges of some legislatures.<sup>9</sup> However, it is not the legal foundation of parliamentary privilege in New Zealand. That foundation has, since 1865, been firmly rooted in New Zealand's own statute law. Whether or not a privilege exists, and the definition of its scope, are questions of law to be determined by a court by reference to statute law, rather than to any ground of necessity (although necessity may help to elucidate the statute). The judicial role is confined to the question of law, whether or not a claimed privilege exists. Once the existence of a privilege is established, it is for the House to judge whether it should be exercised in a particular case. The exercise of an established privilege does not have to be justified on the ground of necessity.<sup>10</sup>

The Parliamentary Privilege Act 2014 now expressly excludes use of the necessity test when determining the scope of Parliament's privilege of freedom of speech. This Act was enacted to nullify the Supreme Court's rulings in *Attorney-General v Leigh*,<sup>11</sup> and clarify the law for the future. *Leigh* involved a defamation action against an official who provided information to a Minister to help the Minister answer an oral question in the House. The Supreme Court held that necessity rather than New Zealand statute law was the legal basis of parliamentary privilege, and ruled that it was not necessary to grant the official the protection of Parliament's freedom of speech. This prompted an extensive Privileges Committee inquiry,<sup>12</sup> which culminated in the enactment of the

<sup>6</sup> *Re Ouellet (No 1)* (1976) 67 DLR (3d) 73 (CS) (privilege did not apply to a press conference given by a member); *Canada (House of Commons) v Vaid* 2005 SCC 30, [2005] 1 SCR 667 (no privilege of "management of staff"); *R v Chaytor* [2010] UKSC 52 (submission of claim forms for parliamentary allowances and expenses did not qualify for protection of privilege); *Slipper v Magistrates Court of the ACT and Turner and Commonwealth Director of Public Prosecutions* [2014] ACTSC 85 (not every aspect of "parliamentary business" would fall within the ambit of parliamentary privilege).

<sup>7</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 203 and 281.

<sup>8</sup> *Egan v Willis* (1996) 40 NSWLR 650 (CA) at 676 per Mahoney P; *Canada (House of Commons) v Vaid* 2005 SCC 30, [2005] 1 SCR 667.

<sup>9</sup> For example: the Houses of the Parliament of New South Wales; see *Egan v Willis* [1998] HCA 71, (1998) 195 CLR 424.

<sup>10</sup> *R v Richards, ex parte Fitzpatrick and Browne* (1955) 92 CLR 157; *New Brunswick Broadcasting Co v Nova Scotia (Speaker of the House of Assembly)* [1993] 1 SCR 319, (1993) 100 DLR (4th) 212; *Harvey v New Brunswick (Attorney-General)* [1996] 2 SCR 876, (1996) 137 DLR (4th) 142 at [71]; *Egan v Willis* [1998] HCA 71, (1998) 195 CLR 424 at [27]; *Telezone Inc. v Canada (Attorney-General)* (2004) 69 OR (3d) 161, (2004) 235 DLR (4th) 719 (ONCA).

<sup>11</sup> *Attorney-General v Leigh* [2011] NZSC 106, [2012] 2 NZLR 713.

<sup>12</sup> Privileges Committee *Question of privilege concerning the defamation action Attorney-General and Gow v Leigh* (11 June 2013) [2011–2014] AJHR I.17A.

Parliamentary Privilege Act 2014. This Act declares that no necessity test may be used to determine whether or not a matter is a proceeding in Parliament and covered by parliamentary privilege.<sup>13</sup>

The Privileges Committee<sup>14</sup> resolved that a test as to whether an asserted privilege was necessary for the proper and efficient functioning of the House was too narrow. Rather, the proper test was whether an occasion was directly or formally connected with the business of the House. An approach based on necessity runs counter to the historical development of parliamentary privilege in New Zealand, which moved very early on from a common law position of necessity to a statutory basis. In considering the privilege of freedom of speech, the issue is one of statutory interpretation, in particular of the meaning of the phrase “proceedings in Parliament”.<sup>15</sup>

United Kingdom and Canadian Courts have applied a necessity test when considering the scope of the House’s exclusive power to control its own proceedings (its right of exclusive cognisance). The leading cases have involved an allegation of constructive dismissal on the part of the Speaker,<sup>16</sup> and police allegations of members submitting false parliamentary expenses claims.<sup>17</sup> To determine whether or not these actions were protected by Parliament’s exclusive cognisance, it was permissible for the court to apply a common law test of necessity as the right of exclusive cognisance is a privilege sourced in the common law. In contrast, the privilege of freedom of speech in New Zealand has a clear statutory basis in article 9 of the Bill of Rights 1688, which is affirmed as part of the laws of New Zealand under the Imperial Laws Application Act 1988.<sup>18</sup> The question is solely one of statutory interpretation of the words “proceedings in Parliament” and “impeached or questioned”, as those words appear in article 9.<sup>19</sup> The Parliamentary Privilege Act 2014 reinforces this approach by enacting an extended definition of the words “proceedings in Parliament” and elucidating the meaning of “impeached or questioned”.<sup>20</sup> For the avoidance of doubt, section 10 explicitly rules out the use of any necessity test.<sup>21</sup> The law now positively discourages something that commentators earlier observed, “a disturbing trend of substituting common law reasoning for ordinary processes of statutory interpretation in applying art 9”.<sup>22</sup>

The Parliamentary Privilege Act 2014 was a much-needed remedial measure. This Act declared the purpose of parliamentary privilege<sup>23</sup> and defined the phrases “proceedings in Parliament” and “impeached or questioned”.<sup>24</sup> This purpose statement and these definitions will become the basis for determining the scope and extent of Parliament’s privilege of freedom of speech. The Act emphasises the core functions of Parliament, the imperative to uphold its independence, and the need to protect activities reasonably incidental to the transaction of parliamentary business. Considerations of necessity have no part to play.

---

<sup>13</sup> Parliamentary Privilege Act 2014, s 10(4), (5).

<sup>14</sup> Privileges Committee *Question of privilege concerning the defamation action Attorney-General and Gow v Leigh* (11 June 2013) [2011–2014] AJHR I.17A at 19–22.

<sup>15</sup> Bill of Rights 1688 (Eng), art 9.

<sup>16</sup> *Canada (House of Commons) v Vaid* 2005 SCC 30, [2005] 1 SCR 667.

<sup>17</sup> *R v Chaytor* [2010] UKSC 52.

<sup>18</sup> Imperial Laws Application Act 1988, s 3 and sch 1.

<sup>19</sup> Philip A Joseph “Constitutional Law” [2012] *New Zealand Law Review* 515.

<sup>20</sup> Parliamentary Privilege Act 2014, ss 10–11.

<sup>21</sup> Parliamentary Privilege Act 2014, s 10(2)(4)(5). See also ss 3, 4(1)(c) and 7.

<sup>22</sup> Philip A Joseph “Parliament’s Privilege of Freedom of Speech: Still More Confusion” (2015) 131 *Law Quarterly Review* 12 at 14 (on *Makudi v Baron Triesman of Tottenham* [2014] EWCA Civ 179).

<sup>23</sup> Parliamentary Privilege Act 2014, s 7.

<sup>24</sup> Parliamentary Privilege Act 2014, s 10–11.

## ESTABLISHMENT OF PARLIAMENTARY PRIVILEGE IN NEW ZEALAND

By the time that the New Zealand Constitution Act 1852 (UK) established representative government in New Zealand, the United Kingdom House of Commons had evolved its privileges over some six centuries.<sup>25</sup> Its pre-eminent privilege of freedom of speech was designed to permit members to speak freely in the House without fear of legal consequences or other repercussions. Under its privilege of freedom from arrest, the House laid claim to the service and attendance of its members over the legal rights of creditors or others to have members arrested or detained in civil (but not criminal) cases. A further privilege was the power of the House to punish for contempt anyone who committed a breach of any of its privileges or interfered with it or its members in the execution of their duties. This privilege was analogous to the power of a court of record summarily to punish persons who commit a contempt in the face of the court (for example, through insulting behaviour or improper interference with the court's proceedings). The House of Commons claimed justification for the contempt power on the ground that the House was a constituent part of a court of law, namely the High Court of Parliament.<sup>26</sup> The power ensured the independence of the Commons from the courts, as the Commons could itself punish for contempt, without need to refer cases to the courts to be dealt with (where the ultimate right of appeal was to the other Chamber of the legislature—the House of Lords). The House could take action of its own volition to protect its dignity and authority.

Unlike the House of Commons, colonial legislatures created by United Kingdom legislation have never claimed the trappings of a court. The New Zealand legislature, like other comparable Commonwealth legislatures, is a statutory emanation. It is not, and never has been, a “court”. References to the New Zealand Parliament as “the highest court in the land” draw on hyperbole rather than fact, and are historically unfounded.

As a legislative body, in common with other colonial legislatures, the common law vested in the House of Representatives such privileges as were reasonably necessary to its existence and the proper exercise of the functions it was called upon to perform. The primary privilege that the House of Commons possessed, but the House lacked, was the power to punish for contempt. It had been held in 1842 that colonial legislatures possessed no inherent power to punish for contempt.<sup>27</sup> If a colonial legislature wished to inflict punishment for a breach of privilege or for any other reason, it had to seek the aid of the courts. It could not inflict punishment itself.

From the outset, the House of Representatives entertained concern about its precise legal position. Within months of its first meeting, the House set up a select committee to inquire into what were, or ought to be, its privileges. The committee recommended legislation to supply the omission of the common law: in particular, to confer powers on the House to preserve order in the Chamber and in the parliamentary precincts, to call for witnesses and papers, and to punish by fine or imprisonment any failure to obey the House's directions on such matters. The committee also recommended exemption for members from service on juries and in the militia, and clearer protections for reports of speeches and other parliamentary publications.<sup>28</sup>

<sup>25</sup> See Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 206–217.

<sup>26</sup> Whether or not the House of Commons was ever part of a court has been doubted: see *Special Reference No 1 of 1964* [1965] AIR (SC) 745 at [160] per Sarkar J dissenting [*Keshav Singh's case*].

<sup>27</sup> *Kiellie v Carson* (1842) 4 Moo PC 63.

<sup>28</sup> Privileges Committee, report on what are or ought to be privileges of the House of Representatives (1 August 1854) VP, Session I.

Legislation was introduced to implement many of these recommendations,<sup>29</sup> although not, at first, regarding the power to punish for contempt. There was considerable doubt whether or not a colonial legislature could, even by legislation, confer such a power on itself. If the power were to be conferred, it was thought, it would have had to be part of the grant of legislative power from the Imperial Parliament. However, in 1864 the Privy Council held in an appeal from the state of Victoria that a colonial legislature was competent to confer on itself privileges equivalent to those possessed by the House of Commons, including the power to punish for contempt.<sup>30</sup> The New Zealand Parliament wasted little time in passing the necessary legislation the following year.

### **Statutory basis for privilege**

The Parliamentary Privileges Act 1865 repealed the piecemeal existing legislative provisions for privilege, and substituted one overarching definition of the privileges enjoyed by each of the Houses that comprised the (then) General Assembly.<sup>31</sup> As re-enacted in 2014, this provision is still the basis of parliamentary privilege today in New Zealand:<sup>32</sup>

- The privileges, immunities, and powers exercisable by the House, committees, and members are every privilege, immunity, or power that complies with both of the following:
- (a) it was on 1 January 1865 (by parliamentary custom or practice and rules, statute, or common law) exercisable by the Commons House of Parliament of Great Britain and Ireland, its committees, or its members; and
  - (b) it is not inconsistent with, or repugnant to, the New Zealand Constitution Act 1852 of the Parliament of the United Kingdom as in force on (the date of the coming into operation of the Parliamentary Privileges Act 1865, namely) 26 September 1865.

This provision, while not making the House a court, gives it certain attributes enjoyed by a court. Other Commonwealth countries have also adopted the practice of defining their legislature's privileges by reference to those of the House of Commons.<sup>33</sup> Likewise, many states and provinces define parliamentary privilege by reference to the Commons.<sup>34</sup> Although the statutory provisions are not identical across the jurisdictions, and they adopted the Commons' privileges on different dates, this has helped to build a Commonwealth-wide body of precedent on the law of parliamentary privilege.<sup>35</sup>

The Parliamentary Privilege Act 2014 repealed and replaced the Legislature Act 1908 and Legislature Amendment Act 1992, which had formed the statutory basis of parliamentary privilege in New Zealand. The new Act is declaratory of the law and is not intended to codify (at least in any comprehensive way) the law of

29 See, for example: Privileges Act 1856 and Militia Act 1858.

30 *Dill v Murphy* (1864) 1 Moo PC (NS) 487.

31 The Acts Interpretation Amendment Act 1986 replaced the term "General Assembly" with "the Parliament of New Zealand". See Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [6.4].

32 Parliamentary Privilege Act 2014, s 8(1).

33 See also Oliver Jones (ed) *Bennion on Statutory Interpretation* (6th ed, LexisNexis, London, 2013) at 704–706.

34 Audrey O'Brien and Marc Bosc *House of Commons Procedures and Practice* (2nd ed, House of Commons, Ottawa, 2009) at ch 3 (Canada); BC Wright *House of Representatives Practice* (6th ed, Department of the House of Representatives, Canberra, 2012) at 708 (Australia); GC Malhotra, *Practice and Procedure of Parliament (with particular reference to the Lok Sabha)* (6th ed, Lok Sabha Secretariat, New Delhi, 2009) at ch 11 (India).

35 Standing Orders Committee *Report of the Standing Orders Committee on the Law of Privilege and Related Matters* (12 December 1989) [1987–1990] AJHR I.18B at [11]; Privileges Committee *Question of privilege concerning the defamation action Attorney-General and Gow v Leigh* (11 June 2013) [2011–2014] AJHR I.17A at 13.

parliamentary privilege. It is to be read alongside article 9 of the Bill of Rights 1688, which is the legal basis of Parliament's privilege of freedom of speech. The 2014 Act's main purposes are to:<sup>36</sup>

- reaffirm and clarify the nature, scope, and extent of the privileges, immunities, and powers exercisable by the House, its committees, and its members
- update, and remedy gaps in (so ensure the adequacy of), protections from legal liability for the communication of, and of documents relating to, proceedings in Parliament.

The 2014 Act's related subsidiary purposes are, *inter alia*, to:<sup>37</sup>

- define the meaning of "proceedings in Parliament" for the purposes of article 9, and in particular to alter the law in the decision in *Attorney-General v Leigh*;
- abolish and prohibit evidence concerning proceedings in Parliament being used for "effective repetition" claims as exemplified in *Buchanan v Jennings*.

Privilege, as part of the general law of New Zealand, is to be taken notice of judicially (without being specially pleaded) by all courts and all persons acting judicially.<sup>38</sup> To ascertain specific privileges enjoyed by the House, it is necessary to establish the nature of the privileges enjoyed by the House of Commons so far as they have not been altered by British statutes passed since 1 January 1865. Specific privileges must also be ascertained in the light of any changes in New Zealand law since that date. The leading work on the House of Commons' privileges, to which reference is ritually made, is Erskine May's *Parliamentary Practice*, now in its 24th edition.<sup>39</sup>

Immediately after being confirmed in office by the Governor-General, the Speaker lays claim, on behalf of the House, to the House's privileges, which are thereupon confirmed by the Governor-General.<sup>40</sup> This is a traditional proceeding only and is not an essential prerequisite to the enjoyment of the privileges conferred on the House by statute.

## CLASSIFICATION OF PARLIAMENTARY PRIVILEGES

The Parliamentary Privilege Act 2014 intentionally makes no attempt to codify comprehensively, or specify fully or in detail, the privileges held by the House of Representatives.<sup>41</sup> Any classification or list of them is, therefore, inherently subjective.

The types of privilege that have been recognised in New Zealand and are discussed in this work are as follows:

- freedom of speech
- freedom of debate
- exclusive control of the House's own proceedings
- control of reports of the House's proceedings
- control of the parliamentary precincts
- control of access to the sittings of the House
- power to inquire
- power to obtain evidence
- power to administer oaths
- power to delegate

<sup>36</sup> Parliamentary Privilege Act 2014, s 3(1).

<sup>37</sup> Parliamentary Privilege Act 2014, s 3(2).

<sup>38</sup> Parliamentary Privilege Act 2014, s 8(2), (3). See *Awatere Huata v Prebble* [2004] 3 NZLR 359 (CA) at [40].

<sup>39</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011).

<sup>40</sup> SO 23.

<sup>41</sup> Parliamentary Privilege Act 2014, s 3(2)(a).

- power to punish for contempt
- power to discipline members
- power to fine
- power to arrest
- exemption from jury service
- exemption from liability for communicating parliamentary proceedings
- freedom from arrest
- exemption from attending court as a witness
- right to have civil proceedings adjourned
- exemption from service of legal process
- power to determine the qualification to sit and vote in the House
- freedom of access to the Governor-General
- right to a favourable construction of the House's proceedings.

These privileges are discussed in detail in Chapters 45, 46 and 47 and in a number of other chapters of this book.

The privileges of the House fall into two main categories: those that are in the nature of immunities from legal processes that would otherwise apply, and those that consist of a power to do something. The immunity-conferring privileges operate primarily in respect of individuals, usually members, but also other persons—officers, witnesses, petitioners—who participate in the work of the House. Freedom of speech is the most important form of immunity enjoyed: nothing said or done in the House or in a parliamentary committee may be called into question in proceedings outside the House. Freedom from civil arrest has lost most of its former relevance (persons are no longer liable to imprisonment for debt), but members enjoy other immunities from legal process. These immunities have no direct connection with actions they might have taken in Parliament (unlike, for example, Parliament's freedom of speech) but exist on the basis of a presumed priority for members' parliamentary work over other legal commitments. Although these privileges operate in respect of individuals, they exist for the benefit of the effective operation of the House of Representatives.

The privileges in the nature of powers are exercised collectively by the House or its committees. A major privilege is the power to punish for contempt. Any contravention of the privileges of freedom of speech, or of freedom from arrest, or of the other immunities, is unlawful, and is known as a breach of privilege. As the privileges of the House are part of the general law, the House can expect that if in a case before a court the possibility of a breach of privilege becomes apparent, the court will take that fact into account in applying the law and protect the House's privileges. Occasionally, to ensure that a court is sufficiently informed on such an issue, the House will seek leave to intervene in the proceedings and address legal argument to the court. However, in addition to the courts' observance of privilege, the House itself may take action to uphold its privileges: for example, by declaring a breach of privilege a contempt of Parliament and invoking its contempt power to impose punishment. The punishments it may inflict range from imprisonment to requiring an apology.

## **CREATION OF NEW PRIVILEGES**

The privileges enjoyed by the House of Commons in 1865 did not include the right to create new privileges. As long ago as 1704, the House of Commons acknowledged that it had no power to create a new privilege not recognised by the known laws and customs of Parliament.<sup>42</sup> If a new privilege was to be created, it had to be accomplished by legislation. However, the House has been at pains

---

<sup>42</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 281.

to declare that its privileges are not to be construed as having been diminished or surrendered because it has established procedures in its Standing Orders to facilitate their exercise.<sup>43</sup>

## ABROGATION OF PARLIAMENTARY PRIVILEGE

Parliamentary privilege is part of the law and subject to other legal rules, and is liable to be abrogated in whole or in part by legislation. Thus, questions have arisen about the extent to which legislation may have overridden or modified the legal immunities flowing from the House's freedom of speech. So, too, have questions arisen concerning the House's power to inquire into particular bodies or insist on the production of certain evidence.

Although parliamentary privilege is a (more or less) well-defined category of law, it must coexist within the general corpus of legal rights, powers and immunities that are established and recognised by legislation and the common law. It is not a body of higher or fundamental law that overrides all other law, but is subject to statutory abrogation in the ordinary way.<sup>44</sup> Nevertheless, parliamentary privilege promotes constitutional values that are entitled to high priority when privilege conflicts with other values protected by law.<sup>45</sup> Only clear, unambiguous legislation will override or abrogate an aspect of parliamentary privilege. Such provisions are rare owing to the constitutional role of parliamentary privilege.<sup>46</sup>

Questions have sometimes arisen about a legislative direction to a court to apply a defined standard, such as an international convention, when interpreting and applying legislation. In such a case, the court must make an objective judgement on whether or not Parliament has legislated consistently with the convention standard. Ordinarily, this would breach the principle of comity and the relationship of mutual respect and restraint between Parliament and the courts. However, under such legislation, Parliament itself, by its own direction, requires a judgement on the compatibility of its legislation with the prescribed standard.<sup>47</sup>

There have been claims that only an express provision in a statute is capable of abrogating parliamentary privilege.<sup>48</sup> However, this seems too extreme a position. It has been accepted in a number of cases that privilege will be abrogated if there arises a necessary implication from a statute that this must necessarily be so (for example, where the statute would otherwise be frustrated or incapable of operating sensibly). A necessary implication has been defined in the context of legal professional privilege as one that necessarily, rather than reasonably, follows from the statutory provision in question. It is not sufficient to show that it might have been Parliament's intention to have abolished some aspect of privilege, or that it might well have abolished it had it thought about it. The question is whether the express language of the statute shows that the statute *must* have abolished it.<sup>49</sup> Another approach is to ask whether, if the privilege continues, an inconsistency is thereby produced or the statutory purpose is thereby stultified.<sup>50</sup> In this sense,

<sup>43</sup> SOs 1 and 96.

<sup>44</sup> *R v Chaytor* [2010] UKSC 52 at [67].

<sup>45</sup> *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC).

<sup>46</sup> For Australian examples, see the Parliamentary Privileges Act 1987 (Cth), ss 4 and 6 (contempt), s 7(5) (power to fine) and s 8 (expulsion); for a New Zealand example, see: Parliamentary Privilege Act 2014, s 23 (expulsion).

<sup>47</sup> *Wilson v Secretary of State for Trade and Industry* [2003] UKHL 40, [2004] 1 AC 816 (legislation to be judged for compatibility with human rights convention); for a possible New Zealand example see: Human Rights Act 1993, s 92B(1)(b) (complaint of discrimination under an enactment).

<sup>48</sup> *House of Commons v Canada Labour Relations Board* (1986) 27 DLR (4th) 481 (FCA) at 490 per Pratte J; *Harvey v New Brunswick (Attorney-General)* [1996] 2 SCR 876, (1996) 137 DLR (4th) 142 at [70] per McLachlin J.

<sup>49</sup> *R v Special Commissioner of Income Tax, ex parte Morgan Grenfell & Co Ltd* [2002] UKHL 21, [2003] 1 AC 563 at [45] per Lord Hobhouse.

<sup>50</sup> *B v Auckland District Law Society* [2003] UKPC 38, [2004] 1 NZLR 326 at [59].

parliamentary privilege must be subject to abrogation by necessary implication, for otherwise the enactment would effectively be frustrated or disapplied.

Ordinarily, parliamentary privilege would prevent anyone being held liable in legal proceedings for their parliamentary actions.<sup>51</sup> However, the creation of a criminal offence for certain actions taken in the course of proceedings in Parliament must, if that offence is to be prosecuted at all, set aside the freedom of speech protections that would normally operate.<sup>52</sup> Moreover, where a statute provides for disqualification of a member on the basis of the member's parliamentary actions, judicial scrutiny of those actions is unavoidable if the court is to adjudge the legality of any claimed disqualification.<sup>53</sup> Likewise, the Committee for Privileges of the House of Lords has resolved that mental health legislation had overridden a privilege attaching to peers, although there was no express provision to that effect in the statute.<sup>54</sup> An implication arose as a matter of necessity. Conversely, general words in a statute will not be taken to override parliamentary privilege.<sup>55</sup> Nor will an implication arise indirectly because Parliament has created legal powers that are coextensive (or partially so) with parliamentary privilege.<sup>56</sup> Parliamentary privilege is always a part of the constitutional environment in which Parliament legislates.

On occasion, Parliament may set out to make it absolutely clear that no abrogation of parliamentary privilege is to be implied. A statute may expressly declare this,<sup>57</sup> or make it clear that it seeks to make no implied abrogation.<sup>58</sup> But such saving provisions are not essential to preserve parliamentary privilege. The Parliamentary Privilege Act 2014 now requires article 9 to be taken to have, in addition to any other operation, the effect required by the 2014 Act, except where a different effect is required for the prosecution of a listed offence related to parliamentary proceedings.<sup>59</sup>

Although abrogation of parliamentary privilege by express words or by necessary implication must be rare, a subsisting privilege must still be applied in a contemporary legal context. This means that the way in which an admitted privilege can be exercised may be subject to modification. The New Zealand Bill of Rights Act 1990, for example, while not abrogating parliamentary privilege,<sup>60</sup> outlines a number of fundamental rights and freedoms that the House must observe in exercising its privileges.<sup>61</sup> Thus, notwithstanding the House's exclusive power to control its own proceedings, the right to natural justice affirmed under the Act<sup>62</sup> has led to substantial procedural changes to give effect to this right in a parliamentary context. The right to be secure against unreasonable search or

<sup>51</sup> *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC) at 10. Section 9 of the Parliamentary Privilege Act 2014 provides for art 9 to have a different effect required for offences related to proceedings in Parliament, and adumbrates the following offences under the Crimes Act 1961: s 102 (corruption and bribery of a Minister of the Crown), s 103 (corruption and bribery of a member of Parliament) and ss 108 and 109 (perjury).

<sup>52</sup> See, for example: Crimes Act 1961, ss 108 and 109 (perjury).

<sup>53</sup> *Awatere Huata v Prebble* [2004] 3 NZLR 359 (CA) at [123] per Hammond J (reversed [2005] 1 NZLR 289 (SC) but without affecting the validity of this reflection as a matter of principle).

<sup>54</sup> House of Lords (UK) Committee for Privileges, report on parliamentary privilege and the Mental Health Act 1983 [1983–1984] HL Paper 254.

<sup>55</sup> *Duke of Newcastle v Morris* (1870) 4 LR HL 661; *Aboriginal Legal Service v State of Western Australia* (1993) 9 WAR 297 (SC) at 304.

<sup>56</sup> *R v Smith, ex parte Cooper* [1992] 1 Qd R 423 (SC); *Criminal Justice Commission v Dick* [2000] QSC 272.

<sup>57</sup> See, for example: Crimes Act 1961, s 9(a) (punishment for contempt); Copyright Act 1994, s 225(1)(c) (privileges of the House); Evidence Act 2006, s 68(4) (protection of journalist sources).

<sup>58</sup> For example: Human Rights Act 1998 (UK), s 6(3) (a "public authority" subject to the Act does not include either House of Parliament or a person exercising functions in connection with a proceeding in Parliament).

<sup>59</sup> Parliamentary Privilege Act 2014, s 9.

<sup>60</sup> New Zealand Bill of Rights Act 1990, s 4(a).

<sup>61</sup> New Zealand Bill of Rights Act 1990, s 3(a).

<sup>62</sup> New Zealand Bill of Rights Act 1990, s 27(1).

seizure<sup>63</sup> is another right that the House must accommodate in exercising its power to punish for contempt.

Abrogation of parliamentary privilege must be distinguished, too, from disputes over the scope of privilege. In 1986, the Supreme Court of New South Wales gave an extremely restrictive interpretation to the freedom of speech enjoyed by members of the Parliament of the Commonwealth of Australia.<sup>64</sup> This decision was not based on any claimed change in the law of parliamentary privilege but it was rather the court's view of the true meaning of that privilege. The decision led the Australian Parliament to pass legislation reaffirming the parliamentary view of the law.<sup>65</sup> Any lingering uncertainties arising from the New South Wales court's interpretation were allayed when the Privy Council declared in 1994 that it did not represent the law in New Zealand.<sup>66</sup> New Zealand, too, experienced disagreements between the courts and the legislature over the scope of parliamentary privilege. These disputes occurred between the years 2002 and 2013, and eventually led to the enactment of the Parliamentary Privilege Act 2014 to reaffirm and clarify the nature, scope and extent of parliamentary privilege.<sup>67</sup>

There will always be interpretive differences in this as in other areas of the law. A particularly restrictive interpretation of the scope of a privilege can, from a parliamentary point of view, be little different in effect from a legislative abrogation of privilege. For this reason, the House will seek leave of the court in appropriate cases to intervene in legal proceedings to present a full argument on disputed aspects of parliamentary privilege. Its concern will be to ensure that the court is fully informed before it rules on the law.

## WAIVER OF PARLIAMENTARY PRIVILEGE

An issue analogous to the abrogation of parliamentary privilege is the extent to which parliamentary privilege might be waived or surrendered in a particular case, whether by the House itself or by an individual, who may or may not be a member. A rule of parliamentary privilege may apply to a member or person in a way that is adverse to his or her immediate legal interests.<sup>68</sup>

Parliamentary privilege is part of the general and public law of New Zealand and need not be specifically invoked by a litigant. The courts themselves are specifically enjoined to take judicial notice of privilege themselves and apply it in the ordinary course of litigation.<sup>69</sup> Parliamentary privilege cannot, therefore, simply be disapplied or (except by inadvertence) overlooked. Where a rule of parliamentary privilege applies, it must contribute to the legal outcome in the matter under dispute, and may even do so decisively. Thus, in principle, waiver is not possible. But, in practice, the position is more opaque. There may be very little difference between not invoking a privilege and waiving it in a particular instance. Those privileges that comprise powers vested in the House to do or to control something necessarily depend upon the House taking the initiative. If the House refrains from exercising such powers (for example, by not punishing an obvious contempt),<sup>70</sup> it is not waiving the privilege, although the practical outcome is very much the same.

<sup>63</sup> New Zealand Bill of Rights Act 1990, s 21.

<sup>64</sup> *R v Murphy* (1986) 5 NSWLR 18 (SC).

<sup>65</sup> Parliamentary Privileges Act 1987 (Cth).

<sup>66</sup> *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC) at 8.

<sup>67</sup> Privileges Committee *Question of privilege concerning the defamation action Attorney-General and Gow v Leigh* (11 June 2013) [2011–2014] AJHR I.17A.

<sup>68</sup> See, for example: *Rost v Edwards* [1990] 2 QB 460.

<sup>69</sup> Parliamentary Privilege Act 2014, s 8(3).

<sup>70</sup> The Privileges Committee has discussed that there is some discretion as to whether the House should intervene by punishing actions taken against a witness—for instance, if the witness has acted irresponsibly by making extravagant or unjustifiable assertions: Privileges Committee, final report on question of privilege on the action taken by TVNZ in relation to its chief executive (17 October 2006) [2005–2008] AJHR I.17B at 5–6.

The question concerning waiver is likely to arise more directly with privileges that consist of legal immunities pleaded in legal proceedings. It is a rule of law that proceedings in Parliament must not be (“ought not to be”) impeached or questioned in any court or place out of Parliament.<sup>71</sup> This rule does not depend upon the individual who initiates legal action, and it is, therefore, not impliedly waived because an individual member brings a legal action. A member initiating a legal action, for example, does not thereby open up his or her parliamentary conduct to judicial scrutiny.<sup>72</sup> The opinion has been expressed that this rule can be expressly waived, either by the House itself or by individual members in their own interest.<sup>73</sup> The House has, to the contrary, taken the firm view that this privilege is not subject to waiver; that, indeed, the courts lack the basic jurisdiction to review proceedings in Parliament and that neither the House nor individual members can confer such a jurisdiction on them.<sup>74</sup> This position has been impliedly endorsed by the Privy Council<sup>75</sup> and has been supported judicially in Australia.<sup>76</sup> Writers on Australian legislatures have also taken the view that this privilege cannot be waived in the absence of legislation,<sup>77</sup> and this is the predominant view among other legislatures.<sup>78</sup>

High judicial pronouncement has now put the matter beyond doubt. In *R v Chaytor*,<sup>79</sup> the Supreme Court of the United Kingdom was resolute that article 9 was incapable of waiver, “even by Parliamentary resolution”. As Parliament’s privilege of freedom of speech has statutory foundation under the Bill of Rights 1688, no person or body may extend, waive or abridge the privilege in individual cases.<sup>80</sup> It is surprising that the contrary view garnered any support all.<sup>81</sup> As long ago as 1870, the House of Lords held that a privilege of Parliament, established by common law and affirmed by statute, cannot be abrogated or set aside other than by legislation.<sup>82</sup>

The above position explains legislative developments in the United Kingdom in 1996. The United Kingdom wished to permit waiver of article 9 in defamation proceedings for limited purposes, and introduced legislation to authorise it.<sup>83</sup> More recently, however, this was considered to be contrary to the principle that freedom of speech is a privilege of the House itself and not that of individual members. It was thought, moreover, that allowing one party to litigation but not the other to use the parliamentary record could create an unfair litigation advantage.<sup>84</sup> These misgivings eventually led to the repeal of the relevant provision in 2015.<sup>85</sup>

The preferable view is that parliamentary privilege imposes a jurisdictional bar on a court against questioning or impeaching proceedings in Parliament.<sup>86</sup> This

<sup>71</sup> Bill of Rights 1688 (Eng), art 9; Parliamentary Privilege Act 2014, ss 9–16; Imperial Laws Application Act 1988, s 3 and sch 1.

<sup>72</sup> *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC) at 9.

<sup>73</sup> *Television New Zealand Ltd v Prebble* [1993] 3 NZLR 513 (CA) at 525, 535 and 546.

<sup>74</sup> Privileges Committee, interim report on question of privilege concerning inclusion of references to debates in an amended statement of defence (22 June 1993) [1991–1993] AJHR I.15B; (1993) 536 NZPD 16191–16195; Privileges Committee *Question of privilege referred on 14 February 2001 relating to Stonhill v Mackey* (11 December 2001) [1999–2002] AJHR I.17B at 6.

<sup>75</sup> *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC) at 9–10.

<sup>76</sup> *Rann v Olsen* [2000] SASC 83, (2000) 172 ALR 395 at [59] per Doyle CJ.

<sup>77</sup> BC Wright *House of Representatives Practice* (6th ed, Department of the House of Representatives, Canberra, 2012) at 718–719; Harry Evans (ed) *Odgers’ Australian Senate Practice* (13th ed, Department of the Senate, Canberra, 2012) at 93–94.

<sup>78</sup> *Hamilton v Al Fayed* [2001] 1 AC 395 (HL) at 404.

<sup>79</sup> *R v Chaytor* [2010] UKSC 52, [2011] 1 AC 684 at [61].

<sup>80</sup> *Fitzgerald v Muldoon* [1976] 2 NZLR 615 (SC).

<sup>81</sup> See Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [13.5.10].

<sup>82</sup> *Duke of Newcastle v Morris* (1870) 4 LR HL at 688.

<sup>83</sup> Defamation Act 1996 (UK), s 13 (by permitting the privilege of freedom of speech to be waived, the legislation to that extent abrogates the privilege).

<sup>84</sup> Joint Committee on Parliamentary Privilege (UK) *Parliamentary privilege: report of session 2013–14* [2013] HL Paper 30, HC 100 at [169]–[170].

<sup>85</sup> Deregulation Act 2015 (UK), sch 23, cl 44.

<sup>86</sup> See also Nicholas Barber (2003) 119 *Law Quarterly Review* 557 at 558.

bar cannot be waived, either by individual members or by the House. In these circumstances, legislation would be necessary to confer jurisdiction on a court before it could examine and make findings about matters that were otherwise inadmissible.<sup>87</sup>

## ROLE OF THE COURTS

Parliamentary privilege is part of the general law of New Zealand and it is the constitutional duty of the courts to apply the law. This means that issues of parliamentary privilege may arise in litigation on which the courts must rule. However, as the essential idea of parliamentary privilege is to free Parliament's functioning from judicial control, justiciable issues of parliamentary privilege must be resolved in a way consistent with this ethos of non-intervention. In one case, where the litigant complained of a wrong done in the course of the parliamentary process, the court rightly observed: "The remedy for a parliamentary wrong, if one has been committed, must be sought from Parliament and cannot be gained from the courts."<sup>88</sup>

The courts do not sit in judgement on individual actions taken within the parliamentary process: Parliament asserts its right of exclusive cognisance. However, if the House seeks to project its power outside its proceedings (outside the "walls of Parliament"), it must do so in a way that is lawful. To this extent, exercises of parliamentary power are subject to judicial examination, and "not with tenderness, but with jealousy".<sup>89</sup> Extra-parliamentary exercises of parliamentary power may adversely affect private interests, and can be expected to attract intense judicial scrutiny. The New Zealand Bill of Rights Act 1990 provides a contemporary context for intensive examination of extra-parliamentary actions.

The development of a body of human rights law under the New Zealand Bill of Rights Act 1990 has provided a testing ground for the constitutional relationship of mutual respect and restraint between Parliament and the courts. The Parliamentary Privilege Act 2014 expressly recognises that this relationship is founded on the principle of comity, which requires the "separate and independent legislative and judicial branches of government each to recognise ... the other's proper sphere of influence and privileges".<sup>90</sup> Generally speaking, what is before one branch of government ought not to be adjudged by the other. Nevertheless, legal challenges concerning the consistency of legislation with the New Zealand Bill of Rights Act 1990 do and will continue to arise, bringing the protections of parliamentary privilege under the Bill of Rights 1688 into contest with the newer body of human rights law. However, the courts have acknowledged that these instruments, while three centuries apart in provenance, are capable of operating together so as to produce fair and workable results.<sup>91</sup>

The courts are mindful that issuing formal declarations of inconsistency of legislation with the New Zealand Bill of Rights Act 1990 could shift the boundaries between Parliament and the courts.<sup>92</sup> They have shown particular reluctance to entertain a declaration where the Attorney-General has issued a report under section 7 of the New Zealand Bill of Rights Act 1990 and the House has proceeded to enact the offending provisions intact.<sup>93</sup> The judicial sensitivity has been manifest in other contexts also. Where a local bill designed to validate rates was enacted

<sup>87</sup> See, for example: Special Commissions of Inquiry Amendment Act 1997 (NSW) authorising the Governor, following a resolution of a House of the state legislature, to establish a commission to inquire into parliamentary proceedings.

<sup>88</sup> *British Railways Board v Pickin* [1974] AC 765 (HL) at 793 per Lord Wilberforce.

<sup>89</sup> *Stockdale v Hansard* (1839) 9 A & E 1, 112 ER 1112 (QB) at 214 per Patteson J.

<sup>90</sup> Parliamentary Privilege Act 2014, s 4(1)(b); *Taylor v Attorney-General* [2014] NZHC 1630 at [61]; (2001) 590 NZPD 7802–7803 Hunt. See also: SO 115(3)(b) (matters subject to judicial decision).

<sup>91</sup> *Television New Zealand Ltd v Prebble* [1993] 3 NZLR 513 (CA) at 523.

<sup>92</sup> *Boscawen v Attorney-General* [2009] NZCA 12, [2009] 2 NZLR 229; *Taylor v Attorney-General* [2014] NZHC 1630; *Taylor v Attorney-General* [2015] NZHC 1706.

<sup>93</sup> *Boscawen v Attorney-General* [2009] NZCA 12, [2009] 2 NZLR 229.

in the interests of those who were affected in the community, the court declined to second-guess the political judgement or look behind Parliament's processes to evaluate the decision.<sup>94</sup>

In the United Kingdom, the development of human rights law has posed similar challenges to those in New Zealand. In one case, a constituent claimed she had been defamed by her member of Parliament and she took her case to the European Court of Human Rights. She claimed that parliamentary privilege denied her a right to a fair hearing and that such a denial contravened the European Convention for the Protection of Human Rights and Fundamental Freedoms. By a majority, the European Court ruled that the importance of elected representatives' freedom of speech in debate justified parliamentary immunity from suit.<sup>95</sup> Representative bodies, the court observed, are "the essential fora for political debate" in a democracy, so that "very weighty reasons must be advanced to justify interfering with the freedom of expression exercised therein".<sup>96</sup>

The courts and Parliament are both astute to acknowledge their respective constitutional roles.<sup>97</sup> Judicial scrutiny of parliamentary events should be limited to ensuring that Parliament exercises its power lawfully in any extra-parliamentary context. The courts naturally have a primary role in articulating the scope of parliamentary privilege, but it is for Parliament itself to determine how it exercises its privileges.<sup>98</sup> Where there is uncertainty over the precise extent of a privilege, it is ultimately a matter for the court,<sup>99</sup> but the court will have careful regard to any views expressed in Parliament.<sup>100</sup>

If the courts interpret privilege in a way that Parliament considers to be wrong or "sub-optimal", Parliament may enact legislation to change the law. Statutory reform of parliamentary privilege has a long history, reaching back over more than three centuries.<sup>101</sup> In more recent times in Australia, the Parliamentary Privileges Act 1987 was enacted to overturn certain adverse court judgments and reaffirm the orthodox understanding of parliamentary privilege.<sup>102</sup> A recent United Kingdom committee report entertained the option of legislating, but considered it should be used only when absolutely necessary to resolve uncertainty, or to reinstate Parliament's exclusive cognisance where it had been materially diminished by the courts.<sup>103</sup> The Parliamentary Privilege Act 2014 specifically alters the law as set out in the judgments of two cases: *Buchanan v Jennings*<sup>104</sup> (concerning the doctrine of effective repetition under the law of defamation) and *Attorney-General v Leigh*<sup>105</sup> (concerning the scope of the parliamentary privilege of freedom of speech).

Although the House, within its own sphere, is master of its proceedings and free of judicial control, it is principally for the House to assert and enforce its own privileges. Parliamentary privilege does not give rise to a legal cause of action for

<sup>94</sup> *Mangawhai Ratepayers' and Residents' Association Inc v Kaipara District Council* [2014] NZHC 1147, [2014] 3 NZLR 85; [2015] NZCA 612 at [134] and [147]–[150] per Miller J, and [208]–[210] per Harrison and Cooper JJ.

<sup>95</sup> *A v United Kingdom* (2003) 36 EHRR 51 (Section II, ECHR).

<sup>96</sup> *A v United Kingdom* (2003) 36 EHRR 51 (Section II, ECHR) at [79]. See also *Jerusalem v Austria* (2003) 37 EHRR 25 (Section III, ECHR) at [30], [40].

<sup>97</sup> *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC).

<sup>98</sup> Privileges Committee Question of privilege concerning the defamation action Attorney-General and *Gow v Leigh* (11 June 2013) [2011–2014] AJHR I.17A at [18].

<sup>99</sup> *R v Chaytor* [2010] UKSC 52 at [15]–[16].

<sup>100</sup> *R v Chaytor* [2010] UKSC 52 at [16].

<sup>101</sup> The preamble to the Bill of Rights 1688 refers to that bill as a declaration by the Lords and Commons "for the Vindicating and Asserting [of] their ancient Rights and Liberties". Moreover, the litigation in *Stockdale v Hansard* (1839) 9 Ad & E 1, 112 ER 1112 directly led to the enactment of the Parliamentary Papers Act 1840 (UK), which provided for a statutory protection.

<sup>102</sup> Harry Evans (ed) *Odgers' Australian Senate Practice* (13th ed, Department of the Senate, Canberra, 2012) at 49; BC Wright *House of Representatives Practice* (6th ed, Department of the House of Representatives, Canberra, 2012) at ch 19.

<sup>103</sup> Joint Committee on Parliamentary Privilege (UK) *Parliamentary Privilege report of session 2013–14* [2013] HL Paper 30, HC 100 at [46]–[47].

<sup>104</sup> *Buchanan v Jennings* [2004] UKPC 36, [2005] 2 NZLR 577.

<sup>105</sup> *Attorney-General v Leigh* [2011] NZSC 106, [2012] 2 NZLR 713.

which the courts will grant relief, any more than anyone can have a cause of action against the House in respect of the House's proceedings. The courts will dismiss actions where the relief sought involves a direct attack on a privilege enjoyed by the House.<sup>106</sup> Moreover, a court will refuse to give relief to an individual where the ground claimed for relief is an alleged breach of privilege or contempt.<sup>107</sup> This is not to say that the courts should not rule on issues of parliamentary privilege—they must do so where these issues arise in a justiciable form. Nonetheless, the courts' role regarding privilege tends to be oblique. Questions of privilege generally arise as collateral issues in a dispute that is before the courts on other grounds.

A rule of parliamentary privilege (a rule of law) may be of legal significance as an element in a legal dispute, requiring the court to rule on it as a step in resolving the case. Such questions may relate to the admissibility of evidence, the extent to which submissions may be addressed to the court, the right to cross-examine witnesses, or the question of whether or not there is a lawful excuse to prevent liability for conduct that is otherwise unlawful. Parliamentary privilege may not itself give rise to a cause of action but it may be a defence to an action: for example, by providing justification for using force that would otherwise be a trespass to the person.<sup>108</sup> It may, in a legal context, be used "as a shield and not as a sword".<sup>109</sup>

Where issues of parliamentary privilege arise, the court will need to establish the extent to which it or the parties to the litigation are constrained by the privilege, or how the outcome of the litigation may be affected by it. In some cases, the fact that a breach of privilege or a contempt of the House has been, or may be, perpetrated will be significant in (even determinative of) the legal outcome of the litigation, notwithstanding that the issue has arisen as a collateral matter in the litigation itself.

## Parliamentary intervention in legal proceedings

The House itself is rarely, if ever, involved directly in legal proceedings as a party to an action. It is also unusual for the House to be involved in legal proceedings as a party through one of its officers, such as the Speaker or the Clerk of the House, although this is not unknown. A declaration has been sought against the Speaker on the treatment of evidence tendered to a select committee,<sup>110</sup> and injunctions have been sought against the Clerk to restrain the presentation of bills for the Royal assent.<sup>111</sup> When the House or one of its officers is named as a party to the action, submissions will be directed to the court on behalf of the House on any aspect of parliamentary privilege that may arise.

However, questions regarding parliamentary privilege may arise in legal proceedings to which neither the House nor its officers are parties. Individual members of Parliament may be parties to such proceedings but this is either in their personal capacity or as a Minister of the Crown, rather than as a representative of the House.<sup>112</sup> In such cases, the members' interests in the litigation may run contrary to the privileges of Parliament. Also, questions regarding parliamentary privilege may arise in proceedings in which no member of Parliament is involved.<sup>113</sup>

<sup>106</sup> *Dillon v Balfour* (1887) 20 LR Ir 600 (freedom of speech); *British Railways Board v Pickin* [1974] AC 765 (HL) (exclusive cognisance of its own proceedings).

<sup>107</sup> *Halden v Marks* (1995) 17 WAR 447 (SC).

<sup>108</sup> *Egan v Willis* [1998] HCA 71, (1998) 195 CLR 424; (1996) 40 NSWLR 650 (CA).

<sup>109</sup> *Combe v Combe* [1951] 2 KB 213 at 224 per Birkett LJ (quoting counsel referring to equitable estoppel).

<sup>110</sup> *Queen v Speaker, House of Representatives* [2004] NZAR 585 (HC); Privileges Committee, question of privilege concerning application by Darryl Bruce Queen (10 May 2005) [2002–2005] AJHR I.17F.

<sup>111</sup> *Thomas v Bolger* (No 2) [2002] NZAR 948 (HC); *Westco Lagan Ltd v Attorney-General* [2001] 1 NZLR 40 (HC).

<sup>112</sup> Note that proceedings have also been taken against individual members who were committee chairpersons, as a result of statements made outside committee meetings: *Peters v Television New Zealand Ltd* [2008] NZAR 411 (HC) and *Stonhill v Mackey DC Wellington* 0016/01.

<sup>113</sup> For example: *Hyams v Peterson* [1991] 3 NZLR 648 (CA); *Pepper (Her Majesty's Inspector of Taxes) v Hart* [1993] AC 593 (HL); *Wilson v Secretary of State for Trade and Industry* [2003] UKHL 40, [2004] 1 AC 816; *Mangawhai Ratepayers' and Residents' Association Inc v Kaipara District Council* [2014] NZHC 1147.

In litigation to which the House is not a party, the House has no automatic right to address the court on matters of privilege but must seek the leave of the court.

In principle, there is nothing untoward with this situation. Parliamentary privilege is part of the general and public law of New Zealand, and is to be given effect to by the courts just as is any other part of the law.<sup>114</sup> However, there are obvious dangers in a laissez-faire approach by the House to litigation involving parliamentary privilege. Litigants may overlook points of privilege, whether through inadvertence or lack of knowledge of the law, or because they do not seem important to them.<sup>115</sup> The House will naturally be more vigilant in such matters and will consider privilege issues more robustly. Even where the importance of a point of privilege is appreciated by the parties, the court may still benefit from hearing full argument from the House. The courts, indeed, may welcome the House's intervention,<sup>116</sup> and may even seek it.<sup>117</sup> Its views will not be tainted by a concern for the outcome of the litigation but will be driven by a wish to ensure that, whatever the outcome, parliamentary privilege is upheld.

In the United Kingdom, the Houses of Parliament have assisted the courts from time to time when privilege issues have arisen. The Attorney-General was invited to appear in proceedings when a question of privilege concerning the House of Commons arose in the course of argument.<sup>118</sup> Other interventions have occurred on the initiative of the House itself.<sup>119</sup> In Australia, too, the Houses of Parliament have assisted the courts in matters of privilege. The Senate instructed counsel to seek leave to appear as a friend of the court in a criminal case in which evidence was tendered of confidential select committee hearings.<sup>120</sup> Similarly, the Australian House of Representatives instructed counsel to seek leave to appear on behalf of the Speaker in an action involving a person who had been a witness before a standing committee of the House.<sup>121</sup> A notable case arose in Canada that involved multiple interventions. The case involved the privileges of the Nova Scotia House of Assembly; and the Canadian Senate and House of Commons and nine other Canadian provincial legislatures intervened in the proceedings.<sup>122</sup> In New Zealand, the Privileges Committee resolved in 1988 that, in appropriate cases, counsel might be instructed on the initiative of the Speaker or the House to appear as a friend of the court to argue any point of parliamentary privilege arising incidentally in legal proceedings.<sup>123</sup>

The practice of the House instructing legal counsel is a comparatively recent one. Counsel was first instructed on the Speaker's initiative in 1989 in a defamation action involving a member of Parliament. Questions arose concerning the extent to which the member's statements in the House could be used in the litigation.<sup>124</sup> However, the action was settled without proceeding to trial. In 1992, and again in 1993, the House gave leave for counsel to be instructed to make submissions on issues of parliamentary privilege in a defamation action brought by a member against Television New Zealand Ltd.<sup>125</sup> The Attorney-General and Crown counsel

<sup>114</sup> Parliamentary Privilege Act 2014, s 8(2).

<sup>115</sup> See, for an example: *News Media Ownership v Finlay* [1970] NZLR 1089 (CA), criticised in *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC).

<sup>116</sup> *Wilson v Secretary of State for Trade and Industry* [2003] UKHL 40, [2004] 1 AC 816 at [54] per Lord Nicholls.

<sup>117</sup> *Church of Scientology of California v Johnson-Smith* [1972] 1 QB 522.

<sup>118</sup> *Church of Scientology of California v Johnson-Smith* [1972] 1 QB 522.

<sup>119</sup> *Pepper (Her Majesty's Inspector of Taxes) v Hart* [1993] AC 593 (HL); *Wilson v Secretary of State for Trade and Industry* [2003] UKHL 40, [2004] 1 AC 816.

<sup>120</sup> *R v Murphy* (1986) 5 NSWLR 18 (SC).

<sup>121</sup> (19 and 20 February 1991) 175 PD HR (Aust) 898–899, 951–952.

<sup>122</sup> *New Brunswick Broadcasting Co v Nova Scotia (Speaker of the House of Assembly)* [1993] 1 SCR 319, (1993) 100 DLR (4th) 212.

<sup>123</sup> Privileges Committee, report on question of privilege concerning letter to Winston Peters MP by or on behalf of Kensington Swan (12 April 1989) [1987–1990] AJHR I.15B at 6–7.

<sup>124</sup> (1989) 500 NZPD 11754.

<sup>125</sup> (1992) 525 NZPD 8814–8815; (1993) 536 NZPD 16191–16195.

(as amici curiae) appeared in the High Court and, on appeal, in the Court of Appeal and Privy Council.<sup>126</sup> Subsequently, the House has intervened in actions in which the Clerk of the House was a defendant concerning the submission of a bill for the Royal assent,<sup>127</sup> and where a member was a defendant in a defamation action involving statements he had made in Parliament.<sup>128</sup> In another defamation action involving a member as a defendant, the Privileges Committee reported that it would have recommended that the House intervene had the matter gone to trial, as the likely defence to the action would have led to the court being invited to examine proceedings in Parliament.<sup>129</sup> In the Supreme Court hearing in *Attorney-General v Leigh*,<sup>130</sup> the Speaker, on his own initiative, instructed counsel to address the Court on aspects of privilege concerning a defamation action against an official, who had briefed a Minister on the background to a parliamentary question.<sup>131</sup>

Any decision to intervene is taken on its merits. The Privileges Committee has declined to recommend parliamentary intervention at too early a stage in litigation, preferring to keep the matter under review.<sup>132</sup> The committee has also said that a decision to intervene should never be made lightly, and should only be made when it is in the public interest to do so. The House intervenes not to protect its members but to protect the House's privileges. In some instances, parliamentary intervention may be contrary to a member's litigation interest: for example, if parliamentary privilege prevents a member from introducing evidence that would be to the member's advantage.<sup>133</sup> The committee has declined to recommend intervention when it considered that a full argument on the parliamentary privilege issue would be made by the parties themselves, and that intervention would add no extra value.<sup>134</sup>

When the House intervenes, it may instruct the Attorney-General to represent the House's interests. In one case, where the Attorney-General was a party to the proceedings, alternative counsel was instructed.<sup>135</sup> The Attorney-General may apply to the court for leave to intervene as a party to represent the public interest,<sup>136</sup> or may ask the court to require the Solicitor-General to appoint counsel assisting the court.<sup>137</sup>

---

<sup>126</sup> *Prebble v Television New Zealand Ltd* (1992) 8 CRNZ 439 (HC); *Television New Zealand Ltd v Prebble* [1993] 3 NZLR 513 (CA); *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC).

<sup>127</sup> *Westco Lagan Ltd v Attorney-General* [2001] 1 NZLR 40 (HC).

<sup>128</sup> *Buchanan v Jennings* [2001] 3 NZLR 71 (HC); [2002] 3 NZLR 145 (CA); [2004] UKPC 36, [2005] 2 NZLR 577 (sub nom *Jennings v Buchanan*).

<sup>129</sup> Privileges Committee *Question of privilege referred on 14 February 2001 relating to Stonhill v Mackey* (11 December 2001) [1999–2002] AJHR I.17B at 5–6.

<sup>130</sup> *Attorney-General v Leigh* [2011] NZSC 106, [2012] 2 NZLR 713.

<sup>131</sup> Privileges Committee *Question of privilege concerning the defamation action Attorney-General and Gou v Leigh* (11 June 2013) [2011–2014] AJHR I.17A at 9; (27 September 2011) 676 NZPD 21399 Smith.

<sup>132</sup> Privileges Committee, interim report on question of privilege concerning *Buchanan v Jennings* (10 September 1998) [1996–1999] AJHR I.15D.

<sup>133</sup> As it did, for example, in *Rost v Edwards* [1990] 2 QB 460.

<sup>134</sup> Privileges Committee *Question of privilege referred on 11 June 1996* (13 June 1996) [1993–1996] AJHR I.15A.

<sup>135</sup> *Westco Lagan Ltd v Attorney-General* [2001] 1 NZLR 40 (HC).

<sup>136</sup> High Court Rules, r 4.27(e).

<sup>137</sup> High Court Rules, r 10.22.

# CHAPTER 45

# Types of Privilege

There is no definitive list of the types of privileges enjoyed by the House. They are a collection of powers and immunities, often referred to as freedoms. This chapter discusses the specific powers and immunities enjoyed by the House, its committees, its members and other participants in the parliamentary process.

## FREEDOM OF SPEECH

Everyone in New Zealand enjoys a general right of freedom of speech guaranteed by law.<sup>1</sup> Although freedom of speech is now regarded as a universal or human right, it first appeared as a specific privilege of the members of the House of Commons, rather than of the public generally.<sup>2</sup> “Freedom of speech” in a parliamentary context, while including elements of a right of free speech, is both older and more amorphous. Indeed, freedom of speech in parliamentary proceedings is not a single, discrete privilege of the House at all; rather, it is an idea that is expressed in specific legal powers and exemptions enjoyed by the House, its members and other participants in parliamentary proceedings.

The House’s freedom of speech in debate is one of three privileges expressly recited in the Speaker’s claim to all of the privileges of the House submitted to the Governor-General at the beginning of each Parliament.<sup>3</sup> It has been suggested that the first Speaker to lay claim to this freedom on behalf of the House was Sir Thomas More in 1523.<sup>4</sup> However, the principle of Parliament’s freedom of speech in debate precedes this date and it is thought that More’s claim was limited to asking the Crown to give a “favourable interpretation” to speeches made in the House. A petition specifically seeking recognition of freedom of speech in general was not addressed to the King until 1541.<sup>5</sup> Nevertheless, More’s claim to a favourable interpretation from the Crown was tantamount to the House claiming freedom of speech in general, as infringements of freedom of speech were most likely to emanate from the Crown. Since Sir Thomas More’s time, an express claim to freedom of speech has been made by each Speaker at the commencement of a Parliament, almost without exception. Making the claim was symbolic only,

<sup>1</sup> New Zealand Bill of Rights Act 1990, s 14.

<sup>2</sup> Geoffrey Marshall “Press Freedom and Free Speech Theory” [1992] PL 40 at 41.

<sup>3</sup> SO 23. Freedom of speech “in debate” (as mentioned in SO 23) is just one (important) example of freedom of speech in proceedings in Parliament.

<sup>4</sup> Richard Marius *Thomas More—A Biography* (Harvard University Press, Cambridge, Massachusetts, 1984) at 206–207.

<sup>5</sup> Geoffrey Marshall “Press Freedom and Free Speech Theory” [1992] Public Law 40.

but its repeated assertion contributed to the growing acceptance that speech in Parliament ought to be free of legal repercussions. By 1667 this principle was firmly established, although not always respected.<sup>6</sup> When the New Zealand Parliament was established almost two centuries later, the principle was understood to apply to all of the proceedings of the two Houses. The practice of expressly claiming the privilege at the beginning of each Parliament was established in 1861.

The privileges associated with the House's freedom of speech are part of a set of rules reflecting the respective constitutional functions of Parliament and the courts. Their primary aim is to prevent any conflict arising between the respective jurisdictions.<sup>7</sup> Thus, the courts will uphold and refuse to question the House's control of its own internal proceedings or the exercise of its power to punish for contempt, and will not visit legal liability on members and others who contribute to parliamentary debates and proceedings. These contributions may be legally relevant and admissible in legal proceedings but they cannot be the basis for or subject of legal proceedings on their own. In these ways, a principle of freedom of speech in Parliament is maintained.

Parliament's freedom of speech is an important expression of legislative independence. Without it, the House's ability to facilitate the Government's legislative programme and scrutinise its executive actions would be subject to legal challenge and control in the courts. The fundamental principle of freedom of speech in debate ensures that these functions are not justiciable.

## EXEMPTION FROM LIABILITY FOR PARLIAMENTARY ACTIONS General

There can be no legal liability for words spoken or actions taken as part of the proceedings of the House, except insofar as this protection may have been statutorily abrogated.<sup>8</sup> The legal basis of this exemption from liability is article 9 of the Bill of Rights 1688, although the privilege of freedom of speech in debate predates that enactment. The Bill of Rights is but a part of the wider compact between the legislative and judicial branches of government that secures mutual respect of their respective spheres of action.<sup>9</sup> Article 9 of the Bill of Rights 1688 is part of the laws of New Zealand,<sup>10</sup> and its effect is reaffirmed and aspects of its operation are clarified in the Parliamentary Privilege Act 2014.<sup>11</sup>

The protection article 9 offers extends beyond exempting legal liability for things said or done in debates or committees of the House. It entails also exemption from having to account "in any court or place out of Parliament"<sup>12</sup> for one's parliamentary words or actions, even where no personal liability is in question. This latter aspect of the privilege was established by the Bill of Rights 1688 and the political settlement out of which that legislation arose. The prohibition is against impeaching or questioning proceedings in Parliament (questioning arguably has a broader scope than impeaching), although this injunction has not always been respected.<sup>13</sup>

<sup>6</sup> Henry Hallam *Constitutional History of England* (Garland Publishing Inc, New York, 1978) vol 1 at 423–425 (citing Eliot's case).

<sup>7</sup> *Hamilton v Al Fayed* [1999] 1 WLR 1569 (CA) at 1587–1588 per Lord Woolf MR; *Wilson v Secretary of State for Trade and Industry* [2003] UKHL 40, [2004] 1 AC 816 at [55] per Lord Nicholls.

<sup>8</sup> For statutory abrogation, see the Crimes Act 1961, ss 102 (corruption and bribery of Minister of the Crown), 103 (corruption and bribery of member of Parliament), and 108 and 109 (perjury committed in a proceeding of the House or one of its committees).

<sup>9</sup> (1988) 489 NZPD 4322 Burke; (1999) 576 NZPD at 16210 Kidd. For judicial acknowledgement, see *Prebble v Television New Zealand* [1994] 3 NZLR 1 (PC) at 7; *R v Parliamentary Commissioner for Standards, ex parte Al Fayed* [1998] 1 WLR 669 (CA). See also SO 115(3)(b) (matters subject to judicial decision).

<sup>10</sup> Imperial Laws Application Act 1988, s 3 and sch 1.

<sup>11</sup> Parliamentary Privilege Act 2014, pt 2, sub-pt 2.

<sup>12</sup> Bill of Rights 1688 (Eng), art 9.

<sup>13</sup> See: *R v Murphy* (1986) 5 NSWLR 18 (SC).

The ninth article of section 1 of the Bill of Rights declares: “That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament”. Several immunities flow from this famous statement of parliamentary privilege, which apply to the House, its members and other participants in parliamentary proceedings. The Privy Council described the basic concept underlying article 9 as “the need to ensure so far as possible that a member of the legislature and witnesses before Committees of the House can speak freely without fear that what they say will later be held against them in the Courts”.<sup>14</sup> The important public interest, it went on to say, is to ensure that members or witnesses at the time of speaking are not inhibited from stating fully and freely what they have to say.<sup>15</sup> Article 9 is one of a collection of legal principles that give effect to the constitutional relationship between the legislature and the judiciary.

The protection article 9 confers is not for the personal benefit of members of Parliament or of any individual; it is conferred to promote the autonomous operation of the parliamentary system. Freedom of speech may protect members and others from liability that might otherwise arise, but equally it may prejudice a member in an individual capacity. For example, a member was held to be unable to give evidence of parliamentary proceedings to support his legal action because to have done so would have been in breach of article 9.<sup>16</sup>

### **House's disciplinary control and electors' democratic control**

Parliament's freedom of speech under article 9 is a protection against incurring legal liability and having to account to bodies outside the House. Freedom of speech is not an exemption from liability to account to the House itself. Nor, in a political sense, is it a freedom from having to account to the electors for one's parliamentary actions. The legal immunity does not prevent the legislature proceeding against its own members (or anyone else) for a breach of privilege or contempt.<sup>17</sup> Furthermore, parliamentary privilege cannot inhibit the fundamental democratic right of free election to Parliament. A political party does not breach privilege by withdrawing electoral support from a sitting member on account of that member's actions, whether they occurred within or outside Parliament.<sup>18</sup>

Parliament's privilege of freedom of speech is not a licence to free members from all discipline and restraint, whether in their capacity as politicians or as members of the House. Rather, it is an assertion that the jurisdiction to discipline and restrain belongs exclusively to the House during the period of the member's service as a member of Parliament. At the end of that service, the right to sanction belongs in a political sense to the electors, when members must seek re-election.

The House exercises restraint over its members prospectively by the general rules it adopts, and retrospectively by the penalties it imposes for breach of the rules. The House's rules of debate impose constraints on what members may say and how they must conduct themselves: for example, their speeches must be relevant, they must not refer to matters awaiting adjudication in court,<sup>19</sup> and they must not use “unparliamentary” language. These are general, internally imposed restraints on members' freedom of speech. They are imposed and enforced, not by the courts, but by the House itself. Article 9 does not affect the power of the House to discipline its members but is directed at repelling outside interference in its proceedings. Similar restraints under general rules apply to select committee proceedings and to other persons—officers, witnesses and petitioners—participating in parliamentary proceedings.

<sup>14</sup> *Prebble v Television New Zealand* [1994] 3 NZLR 1 (PC) at 8.

<sup>15</sup> *Prebble v Television New Zealand* [1994] 3 NZLR 1 (PC) at 8.

<sup>16</sup> *Rost v Edwards* [1990] 2 QB 460.

<sup>17</sup> *Narasimha Rao v State* [1998] AIR (SC) 2120.

<sup>18</sup> *Peters v Collinge* [1993] 2 NZLR 554 (HC).

<sup>19</sup> SO 115.

Any infringement of these general rules, and any other conduct that the House resolves obstructs or impedes the performance of its functions, may be punished by the House as a contempt.<sup>20</sup> It is no answer that such conduct occurs in the course of parliamentary proceedings and is exempt from legal liability. The exemption from accounting to a court is not an exemption from accounting to the House, which exercises an exclusive jurisdiction to discipline and sanction affronts to its dignity and authority.

## Criminal acts committed within Parliament

The principle of exemption from legal liability for parliamentary conduct does not exempt all criminal acts from prosecution, merely because they are committed in a parliamentary environment. A distinction is drawn between “ordinary” crimes (such as murder, theft or rape), and crimes committed in exercise of members’ freedom of speech in debate.<sup>21</sup> “Speech” crimes might include using threatening or offensive language,<sup>22</sup> inciting mutiny<sup>23</sup> or ridiculing people on racial grounds.<sup>24</sup> Such crimes committed in debate or in evidence to a select committee will be exempt from criminal prosecution in the courts, but ordinary crimes committed in the House or a committee are not part of their proceedings and may be dealt with under the criminal law.<sup>25</sup>

No exemption from the criminal law may be claimed by people who protest in the galleries of the Chamber or at select committee meetings. Such people are not participating in parliamentary proceedings and are not entitled to the protection of parliamentary privilege. Article 9 is not directed at permitting strangers to the House to enter the Chamber and disrupt its proceedings, or at allowing the exercise of collective or individual rights of free speech.<sup>26</sup> People have been prosecuted for trespass and disorderly conduct in such circumstances,<sup>27</sup> although such incidents may also be dealt with by the House as contempts. Parliament is able to legislate to create an offence for a matter that might equally be adjudged a breach of privilege or a contempt.<sup>28</sup>

## Freedom of debate

Article 9 declares: “That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament”.<sup>29</sup> “Freedom of speech” has been described as permitting members to say what they wish to say, and “freedom of debate” to enable them to discuss any subject that they wish to discuss.<sup>30</sup> Freedom to debate any subject was formerly asserted at the commencement of a new Parliament in New Zealand by the pro forma first reading of a dummy bill (called the Expiring Laws Continuance Bill), which was purposely not mentioned in the Speech from the Throne. This practice symbolised the right of the House to discuss any business it wished, not just business that the Crown invited it to transact. The practice of giving a pro forma

<sup>20</sup> SO 409.

<sup>21</sup> *R v Chaytor* [2010] UKSC 52, [2011] 1 AC 684 at [113]. *Chaytor* is the leading decision on crimes committed within Parliament. See Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [13.6.4].

<sup>22</sup> Summary Offences Act 1981, s 4.

<sup>23</sup> Crimes Act 1961, s 77.

<sup>24</sup> Human Rights Act 1993, s 63 (racial harassment).

<sup>25</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 241.

<sup>26</sup> *Highway v Tudor-Stack* [2006] NTC 4.

<sup>27</sup> See, for example: (25 October 2007) 643 NZPD 12721; (6 November 2007) 643 NZPD 12761; “Private lives to be out of order” *The Press* (7 November 2007); “Mallard pleads guilty to fighting charge” *The Dominion Post* (18 December 2007).

<sup>28</sup> *Highway v Tudor-Stack* [2006] NTC 4.

<sup>29</sup> Bill of Rights 1688, art 9 (emphasis added).

<sup>30</sup> *Pepper (Her Majesty's Inspector of Taxes) v Hart* [1993] AC 593 (HL) at 638 per Lord Browne-Wilkinson.

first reading to a dummy bill was discontinued in 1985, although it is still followed in the United Kingdom.<sup>31</sup> The priority the House's rules give to the debate on the Address in Reply is another assertion of the House's right to decide what it wishes to debate. This priority obviates the need for the House to turn its attention immediately to the Government's legislative programme outlined in the Speech from the Throne. In an Australian state, this practice led to a challenge to the validity of legislation that was passed before the House had finished the Address in Reply debate. However, such a challenge would itself appear to be in contradiction of the House's privilege to debate what matter it will, when it will.<sup>32</sup> In New Zealand, priority is still given to the debate on the Address in Reply,<sup>33</sup> although it is liable to be adjourned to permit legislation to proceed. Freedom of debate—in the sense of the House's ability to discuss what it wishes when it wishes—is a manifestation of the House's exclusive control over its own proceedings.

## Proceedings in Parliament

Article 9 protects “proceedings in Parliament” from external review. “Freedom of debate” in article 9 identifies the most common and obvious occasion on which the privilege of freedom of speech is exercised. The additional phrase “proceedings in Parliament” in article 9 extends the scope of the protection to cover all other transactions of parliamentary business. By 1688 committee proceedings were well established as modes of parliamentary proceeding. Exchanges between members at such meetings might have been regarded as falling within the term “debate” (although not obviously so), but the examination of witnesses would not have been. The House would also have been aware that the Court of King’s Bench had recently held that no legal liability applied to the circulation of petitions among members in the ordinary course of transacting parliamentary business.<sup>34</sup> Parliamentary business was thus coming to embrace a number of activities and communications that were not transacted on the floor of the House.

Article 9 accords these other modes of transacting parliamentary business the same protection from legal liability or examination as that which applies to parliamentary debates. Today, a much higher proportion of parliamentary business is “non-debate”, transacted off the floor of the House, than was the case in the House of Commons in the 17th century, or even in the House of Representatives itself until recent times. The phrase “proceedings in Parliament” in article 9 is therefore critically important to the effectiveness of the privilege, given the modes of operation of the House today.

## Meaning of proceedings in Parliament

The meaning of the term “proceedings in Parliament” (as used in article 9) has never been legally defined in the United Kingdom. In Australia, a statutory definition of the term has provided a detailed official exposition of what proceedings in Parliament might cover. However, even this definition is not intended to be exhaustive.<sup>35</sup> Until the decision of *Attorney-General v Leigh*,<sup>36</sup> New Zealand and English courts had accepted the Australian definition as representing a correct statement of the law.<sup>37</sup> Two key stated purposes of the New Zealand

<sup>31</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 159. See also: (27 May 2015) 596 GBPD HC 30; and Mark Sandford “Traditions and customs of the House: House of Commons Background Paper” (2 August 2013) at 16–18.

<sup>32</sup> *Namoi Shire Council v Attorney-General (New South Wales)* [1980] 2 NSWLR 639 (SC) (the objection to the legislation on this ground was dismissed).

<sup>33</sup> SO 353.

<sup>34</sup> *Lake v King* (1667) 1 Saund 131 (KB).

<sup>35</sup> Parliamentary Privileges Act 1987 (Cth), s 16(2).

<sup>36</sup> *Attorney-General v Leigh* [2011] NZSC 106, [2012] 2 NZLR 713.

<sup>37</sup> *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC); *Hamilton v Al Fayed* [2001] 1 AC 395 (HL).

Parliamentary Privilege Act 2014 are to define “proceedings in Parliament” for the purposes of article 9 and to alter the law as expounded in *Attorney-General v Leigh*.<sup>38</sup> The definition section is based on the Australian legislation, and may be taken to indicate the types of transactions that fall within the phrase “proceedings in Parliament”. The definition of “proceedings in Parliament” means “all words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of the House or of a committee”.<sup>39</sup> The Act then gives to the phrase an extended definition: “[W]ords spoken or acts done for purposes of or incidental to the transacting of reasonably apprehended business of the House or of a committee must be taken to fall within [this definition].”<sup>40</sup>

“Proceedings in Parliament” include:<sup>41</sup>

- (a) the giving of evidence (and the evidence so given) before the House or a committee;
- (b) the presentation or submission of a document to the House or a committee;
- (c) the preparation of a document for purposes of or incidental to the transacting of any business of the House or of a committee;
- (d) the formulation, making, or communication of a document, under the House’s or a committee’s authority (and the document so formulated, made, or communicated);
- (e) any proceedings deemed by an enactment to be (or a thing said or produced, or information supplied, in an inquiry or proceedings, if an enactment provides the thing or information is privileged in the same way as if the inquiry or proceedings were) for those purposes proceedings in Parliament.

Actions of the House, committees, members, officers, witnesses and petitioners that transact parliamentary business, or are directly and formally connected with the transaction of such business, are proceedings in Parliament, and are subject to the privilege of freedom of speech. This encompasses all actions taken by the House itself, whether legislative or non-legislative, although that does not mean that such actions may authorise otherwise unlawful activities to be perpetrated outside the House.<sup>42</sup> An action taken with the House’s authority may be lawful when that same action taken without the House’s authority would be unlawful.<sup>43</sup> The courts may not enforce or otherwise recognise actions taken with the House’s authority, as the House itself cannot be impeached or questioned for having taken them.<sup>44</sup>

### **Committee proceedings**

Committee proceedings are as equally “parliamentary” as proceedings on the floor of the House.<sup>45</sup> Such proceedings cover the giving of evidence orally or in writing to a committee, and the tendering of advice and preparation of draft reports generated during a committee’s work (provided that such reports are communicated in the course of the committee’s proceedings).<sup>46</sup> Presenting a committee’s report to the House is a parliamentary proceeding,<sup>47</sup> although communicating such documents

<sup>38</sup> Parliamentary Privilege Act 2014, ss 3(2)(c) and 10.

<sup>39</sup> Parliamentary Privilege Act 2014, s 10(1).

<sup>40</sup> Parliamentary Privilege Act 2014, s 10(3).

<sup>41</sup> Parliamentary Privilege Act 2014, s 10(2).

<sup>42</sup> See, for example: *Stockdale v Hansard* (1839) 9 A & E 1, 112 ER 1112 (QB).

<sup>43</sup> See, for example: Parliamentary Privilege Act 2014, s 17 (communicating proceedings, etc.).

<sup>44</sup> *Hamilton v Al Fayed* [1999] 1 WLR 1569 (CA).

<sup>45</sup> *Attorney General (Canada) v MacPhee* 2003 PESCTD 6; *Office of Government Commerce v Information Commissioner* (Attorney-General intervening) [2008] EWHC 737 (Admin), [2010] QB 98; *Makudi v Baron Triesman of Tottenham* [2014] EWCA Civ 179, [2014] QB 839; Parliamentary Privilege Act 2014, ss 5 and 10.

<sup>46</sup> *Flegg v Hallet* [2014] QSC 278, at [10] (a document tabled at or submitted to a committee protected).

<sup>47</sup> *New South Wales Branch of the Australian Medical Association v Minister for Health and Community Services* (1992) 26 NSWLR 114.

outside the committee is usually not. Any press conferences by the members following the report's presentation are not formal proceedings of the committee, and are unlikely to be protected.<sup>48</sup>

The Intelligence and Security Committee is a committee established by legislation to perform the functions ordinarily discharged by select committees.<sup>49</sup> It is not a committee established by the House but its proceedings are declared to be proceedings in Parliament for the purposes of article 9.<sup>50</sup>

### **Parliamentary documentation**

Members draft and lodge questions, present petitions, give notices of motion and prepare bills and amendments. Many of these actions were formerly carried out on the floor of the House itself, but rule changes have allowed them to be executed or performed administratively outside the Chamber. They nevertheless retain their essential quality as proceedings in Parliament.<sup>51</sup> Parliamentary questions for oral answer by Ministers in question time are proceedings in Parliament, as are the answers given to such questions in the House.<sup>52</sup> Briefing notes and materials prepared by officials to assist Ministers in answering parliamentary questions are likewise proceedings in Parliament and protected by parliamentary privilege.<sup>53</sup> Such notes and materials are prepared for the purposes of or are incidental to the transacting of parliamentary business.<sup>54</sup> Not surprisingly, the introduction of bills has been held to be a proceeding in Parliament.<sup>55</sup>

Similarly, the Attorney-General's examining and reporting on bills for conflict with the rights and freedoms confirmed by the New Zealand Bill of Rights Act 1990 is a proceeding in Parliament. This function is an internal legislative process of the House and exempt from judicial review.<sup>56</sup> Where matters are disputed, evidence may need to be provided or submissions made to satisfy a court that the disputed matter falls within the statutory definition of proceedings in Parliament.

### **Communications involving members of Parliament**

Not all actions of a member of Parliament constitute proceedings in Parliament. Proceedings in Parliament cover a much narrower range of activities than are performed by members generally. Even actions performed by a member in his

<sup>48</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 836; *Re Ouellet* (No 1) (1976) 67 DLR (3d) 73 (CS); Privileges Committee Question of privilege referred on 14 February 2001 relating to *Stonhill v Mackey* (11 December 2001) [1999–2002] AJHR I.17B.

<sup>49</sup> Intelligence and Security Committee Act 1996, ss 5–6.

<sup>50</sup> Intelligence and Security Committee Act 1996, s 16; Parliamentary Privilege Act 2014, s 10.

<sup>51</sup> Parliamentary Privilege Act 2014, ss 5 and 10.

<sup>52</sup> *Office of Government Commerce v Information Commissioner* (Attorney-General intervening) [2008] EWHC 737 (Admin), [2010] QB 98 at [47]; *Janssen-Ortho Inc v Amgen Canada Inc* [2005] 256 DCR (4th) 407 (ONCA) at [78].

<sup>53</sup> *Re Stiller and Department of Transport* [2009] QICmr 8; *Re Saffioti and Minister for Transport; Housing* [2012] WAICmr 10. But see: *Attorney-General v Leigh* [2011] NZSC 106, [2012] 2 NZLR 713 (an official's oral and written briefing on a parliamentary question held to be protected, not by the absolute protection of parliamentary privilege, but by qualified privilege under the law of defamation). A primary purpose of the Parliamentary Privilege Act 2014 was to nullify the rulings in *Leigh* and reaffirm the more expansive understanding of Parliament's privilege of freedom of speech. See Philip A Joseph "Constitutional Law" *New Zealand Law Review* 515 at 527–533 for critical analysis of the Supreme Court's decision.

<sup>54</sup> Parliamentary Privilege Act 2014, s 10(1)(3).

<sup>55</sup> *R (on the application of Wheeler) v Office of the Prime Minister* [2008] EWHC 1409 (Admin) at [49]. See also: *Mangawhai Ratepayers' and Residents' Association Inc v Kaipara District Council* [2015] NZCA 612 at [134], [147]–[150] per Miller J, and [208]–[210] per Harrison and Cooper JJ (promoting local bill).

<sup>56</sup> *Mangawaro Enterprises Ltd v Attorney-General* [1994] 2 NZLR 451 (HC); *Boscawen v Attorney-General* [2009] NZCA 12, [2009] 2 NZLR 229 at [36] and [42]; *Taylor v Attorney-General* [2014] NZHC 1630 at [79] and [87]; *Mangawhai Ratepayers' and Residents' Association Inc v Kaipara District Council* [2014] NZHC 1147, [2014] 3 NZLR 85 at [102] (see also: on appeal, [2015] NZCA 612 at [34] per Miller J). See also: *Taylor v Attorney-General* [2015] NZHC 1706 at [65] and [69] per Heath J.

or her capacity as a member may not qualify for protection.<sup>57</sup> Although actions taken in or in relation to the House are proceedings in Parliament, actions taken in relation to constituents or other persons (and vice versa) are usually not proceedings in Parliament. Communications, for instance, between a member and the public, including even a member's constituents, are not proceedings in Parliament.<sup>58</sup> Such a communication might become a proceeding in Parliament only if the communication were directly connected with some specific business being transacted, or about to be transacted, in the House or a committee. The delivery of a petition to a member for presentation to the House would qualify as a proceeding in Parliament (being proximately connected to business that the House is about to transact), as would a communication solicited by a member for the express purpose of using it in or for specific business of the House or of a committee.<sup>59</sup>

The question is whether words are spoken or acts are done for the purposes of, or are incidental to, transacting the business of the House or a committee. The Parliamentary Privilege Act 2014 requires consideration of what is "reasonably apprehended business of the House or a committee".<sup>60</sup> There must be a serious or realistic prospect of the House entertaining the business before a communication to a member will be protected. A communication's status after it has been received by the member depends upon the use the member makes of it. If the member takes some action in respect of it for the purpose of transacting parliamentary business, it may, at that point, become part of a proceeding (whether or not it is referable to a particular debate before the House).<sup>61</sup> Even so, that will not have any retrospective effect so as to afford protection in respect of the original communication to the member.

Members' communications between themselves might qualify for the protection of privilege. A communication will be regarded as a proceeding in Parliament where a member communicates with another member, such as a Minister, regarding parliamentary business: for example, where the member forwards an amendment to a bill before the House or a parliamentary question that the member is contemplating lodging.<sup>62</sup> However, a member's action in releasing information outside the House attracts no parliamentary privilege,<sup>63</sup> even if the material released is a copy of a question submitted by the member<sup>64</sup> or a speech the member delivered in the House.<sup>65</sup> Nor does privilege protect a person, such as a journalist, who receives information from a member, if that person publishes the information.<sup>66</sup> It is immaterial that the member disclosing the information may be covered by parliamentary privilege. A letter to the Speaker raising a matter of privilege is a proceeding in Parliament, but circulating or disclosing the letter otherwise than through the House's procedures for dealing with the matter is not.<sup>67</sup>

<sup>57</sup> *Attorney General of Ceylon v De Livera* [1963] AC 103 (PC); *Re Ouellet* (No 1) (1976) 67 DLR (3d) 73 (CS); *Crane v Gething* [2000] FCA 45, (2000) 169 ALR 727; *Rowley v Armstrong* [2000] QSC 88.

<sup>58</sup> *Buchanan v Jennings* [2002] 3 NZLR 145 (CA) at [64]; *Pankiw v Canada (Human Rights Commission)* [2007] 4 FCR 578 (a member's constituency newsletter was not protected by parliamentary privilege); *Rivlin v Bilainkin* [1953] 1 QB 485; *R v Ponting* [1985] Crim LR 318 (QB).

<sup>59</sup> *Erglis v Buckley* [2005] QSC 25; *Terry v Police* [2004] NZAR 489 (HC); Joint Committee on Parliamentary Privilege (UK) *Parliamentary privilege: report of session 2013–14* [2013] HL Paper 30, HC 100 at [242].

<sup>60</sup> Parliamentary Privilege Act 2014, s 10(3).

<sup>61</sup> *Erglis v Buckley* [2005] QSC 25.

<sup>62</sup> House of Commons (UK) Select Committee on the Official Secrets Act [1938–1939] HC 101; *Fowler & Rodrique Ltd v Attorney-General* [1981] 2 NZLR 728 (HC).

<sup>63</sup> (1994) 539 NZPD 470 Tapsell; (1997) 558 NZPD 718 Kidd; (1997) 563 NZPD 4019 Kidd; (18 February 2014) 696 NZPD 15974–15975 Carter.

<sup>64</sup> *Jatish Chandra Ghosh v Hari Sadhan Mukherjee* [1961] AIR (SC) 613.

<sup>65</sup> *R v Lord Abingdon* (1794) 1 Esp 226, 170 ER 337 (KB); *R v Creevey* (1813) 1 M & S 273, 105 ER 102 (KB); *Suresh Chandra Banerji v Punit Goala* [1951] AIR (Calcutta) 176.

<sup>66</sup> *Re Clark and Attorney-General of Canada* (1977) 81 DLR (3d) 33.

<sup>67</sup> (1988) 489 NZPD 4436 Burke; (2003) 609 NZPD 6543 Hunt.

Finally, statute may forbid any interference with a person's right to communicate with a member of Parliament and with the member's right to communicate with that person.<sup>68</sup> However, such protected communications do not qualify in themselves as proceedings in Parliament.

### ***Qualified immunity from legal liability***

Certain communications not protected by parliamentary privilege may nevertheless enjoy a qualified immunity from legal liability under the Parliamentary Privilege Act 2014. The qualified immunity protects from civil or criminal liability specified communications of proceedings in Parliament (that is, communications not made under the House's or a committee's authority), or of related documents not authorised by the House or a committee.<sup>69</sup> Similar communications that are made under the House's or a committee's authority are protected by both absolute privilege under the Defamation Act 1992,<sup>70</sup> and a stay of proceedings procedure under the Parliamentary Privilege Act 2014.<sup>71</sup> Where the qualified immunity applies, it exempts the relevant specified communication from liability, unless the plaintiff or prosecutor proves that the person communicating the material abused the occasion of the communication. A person abuses the occasion of communication if he or she acts in bad faith or with a predominant motive of ill will. The qualified immunity protects a delayed communication to the public, by any communicator, of proceedings in Parliament, if the communication was not made under the House's or a committee's authority.<sup>72</sup>

The qualified immunity also protects a fair and accurate report of parliamentary proceedings.<sup>73</sup> It need not be a verbatim report. A report can concentrate on one speech, but a fair and accurate report must include a summary or acknowledgement of any contrary views expressed in debate.<sup>74</sup> Immaterial inaccuracies do not cause the protection to be lost.<sup>75</sup> However, qualified immunity for a fair and accurate report is lost if it is published in defiance of the House's rules on keeping proceedings confidential. Qualified immunity is not a licence to flout lawful orders.<sup>76</sup>

The qualified immunity also protects the communication of a fair and accurate extract from, or summary of:<sup>77</sup>

- (a) a document communicated under the House's or a committee's authority; or
- (b) a document relating to proceedings in Parliament, and communicated under—
  - (i) the House's or a committee's authority; or
  - (ii) the authority of any enactment.

A legal defence of qualified privilege (which is not part of parliamentary privilege)<sup>78</sup> may protect communications between members and constituents against liability in defamation.<sup>79</sup> The qualified privilege may also protect the disclosure to the

<sup>68</sup> See, for example: Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, s 58; Corrections Act 2004, ss 69(1)(e) and 114.

<sup>69</sup> Parliamentary Privilege Act 2014, s 18.

<sup>70</sup> Defamation Act 1992, s 13(3)(a), (c) and (d).

<sup>71</sup> Parliamentary Privilege Act 2014, s 17.

<sup>72</sup> Parliamentary Privilege Act 2014, s 19.

<sup>73</sup> Parliamentary Privilege Act 2014, s 20(a).

<sup>74</sup> See "Exam question leads to apology" *The Evening Post* (30 January 1988) (the member who made the comments was not identified and contrary views were not given).

<sup>75</sup> See, generally, Stephen Todd (ed) *The Law of Torts in New Zealand* (6th ed, Brookers Ltd, Wellington, 2013) at [16.11].

<sup>76</sup> Parliamentary Privilege Act 2014, s 18(3) (proved abuse by defendant of occasion of communication).

<sup>77</sup> Parliamentary Privilege Act 2014, s 20(b).

<sup>78</sup> *Buchanan v Jennings* [2002] 3 NZLR 145 (CA) at [40] per Keith J, citing DL Keir and FH Lawson *Cases in Constitutional Law* (4th ed revised, Clarendon Press, Oxford, 1954) at 126.

<sup>79</sup> *R v Rule* [1937] 2 KB 375; *Rowley v Armstrong* [2000] QSC 88. The defence in New Zealand is preserved by s 16(3) of the Defamation Act 1992.

proper authority of a letter containing otherwise defamatory material sent from a constituent to a member.<sup>80</sup>

### ***Confidential communications***

The law provides for a range of statutory protections in court proceedings for privileged communications. A statutory protection may apply to confidential communications between a member and a constituent,<sup>81</sup> although this protection has no relationship to parliamentary privilege. Some of these protections will also apply to other situations, such as formal inquiries.<sup>82</sup> Confidentiality will not necessarily apply to all communications between members and constituents. Whether or not communications are confidential is a factual matter to be assessed case by case. The conduct of the parties, or previous dealings between them, would need to support a reasonable inference of an expectation of confidentiality in the communication.

Arguments for extending special protection for members' correspondence have been advanced but not adopted. They followed concern about the growth of members' constituency work and the inability to protect information disclosed in confidence to members by constituents (where the information disclosed has not become part of the business of the House).<sup>83</sup> Although not all information generated, received or possessed by members will be entitled to the high level of protection given to proceedings in Parliament, concern has been expressed about protecting members' information from arbitrary release. This led to the House adopting a protocol for the release of information from the parliamentary information, communication and security systems.<sup>84</sup>

### ***Meetings of caucus***

Meetings of party caucuses are not proceedings in Parliament. They are meetings that are attended by members of Parliament because they are members of a particular party that is represented in Parliament. Parliamentary business may be under discussion at such meetings but they are not transactions of parliamentary business. The absolute legal protection given by article 9 of the Bill of Rights 1688 does not apply to such meetings.<sup>85</sup>

### ***Other proceedings***

Actions taken by officers of the House in carrying out the orders of the House or its committees are proceedings in Parliament.<sup>86</sup> A "parliamentary inspector" appointed to assist Parliament in the supervision of a corruption and crime commission was held to be an officer of Parliament, and proceedings could not be brought that would impeach conclusions reached in the inspector's report.<sup>87</sup> Proceedings brought to restrain such an officer from reporting to Parliament would be non-justiciable, and might themselves amount to a contempt of Parliament.<sup>88</sup>

<sup>80</sup> *Beach v Freeson* [1972] 1 QB 14.

<sup>81</sup> Evidence Act 2006, s 69.

<sup>82</sup> Inquiries Act 2013, s 27.

<sup>83</sup> Joint Committee on Parliamentary Privilege (UK) *Parliamentary privilege: report of session 2013–14* [2013] HL Paper 30, HC 100 at [242].

<sup>84</sup> Privileges Committee *Question of privilege regarding use of intrusive powers within the parliamentary precinct* (11 July 2014) [2011–2014] AJHR I.17C; (22 July 2014) 700 NZPD 19325–19338.

<sup>85</sup> *R v Turnbull* [1958] Tas SR 80 (SC); *Awatere Huata v Prebble* [2004] 3 NZLR 359 (CA) at [63], [64] per McGrath J (endorsing at [63] the views of Philip A Joseph "Constitutional Law" [1998] *New Zealand Law Review* 197 at 219–220, and David McGee "Parliament and Caucus" [1997] *New Zealand Law Journal* 137). The British House of Commons has expressed a similar view: House of Commons (UK) Committee of Privileges [1946–1947] HC 138.

<sup>86</sup> *Hamilton v Al Fayed* [1999] 1 WLR 1569 (CA) (Parliamentary Commissioner for Standards); *ZL v Secretary of State for the Home Department* [2003] EWCA Civ 25, [2003] 1 All ER 1062 (Clerk of the Parliaments); Parliamentary Privilege Act 2014, ss 5 and 10.

<sup>87</sup> *Jenkins v McCusker* [2010] WASAT 100.

<sup>88</sup> *Re Parliamentary Inspector of the Corruption and Crime Commission, ex parte Corruption and Crime Commission* [2008] WASC 305.

People delivering petitions to members, or written or oral evidence or other material to a select committee, are engaged in proceedings in Parliament.<sup>89</sup> However, circulating a proposed petition to the public for signature is not a proceeding in Parliament and is not protected by privilege.<sup>90</sup> The connection between circulating a proposed petition and any future business of the House is too remote to satisfy the statutory test of “transacting the reasonably apprehended business of the House”.<sup>91</sup> It has been held that an email exchange between an adviser to a member of Parliament and a departmental official was too remote from the transacting of any likely business of the House to attract parliamentary privilege. Something more must occur than the mere creation of a document for a member of Parliament.<sup>92</sup>

A report of what occurred in Parliament (other than the official report made under the House’s authority) is not itself a proceeding in Parliament and is not protected by parliamentary privilege. However, other protections, such as a qualified immunity from legal liability, may be available.<sup>93</sup> The tabling of a Government response in the Australian Senate has been held to be protected by parliamentary privilege, but this protection did not extend to publication of the response on a departmental website.<sup>94</sup> The fact that something occurred in the parliamentary precincts, including even the Chamber, does not thereby confer immunity on the action.<sup>95</sup> The action in question must be part of a “proceeding in Parliament” in terms of article 9 (as clarified by section 10 of the Parliamentary Privilege Act 2014). Parliament House is not a sanctuary from the law. The Speaker has reminded members that serious allegations made in the course of a private conversation in the Chamber may not be protected outside the House. The important test in determining whether or not the allegations are directed at proceedings in Parliament is the occasion on which they were made, not the place in which they were made.<sup>96</sup> The fact that a document is delivered within the parliamentary precincts does not immunise it from judicial scrutiny if it is not connected with any proceeding in Parliament.<sup>97</sup> Nor is a press conference protected just because it is held in the parliamentary precincts.<sup>98</sup> Similarly, any necessary legal approvals must be obtained for the showing of films and videos within Parliament House, unless the showing is confined to a meeting of a select committee.<sup>99</sup>

In 1990 an English decision determined that a register of members’ interests was not a proceeding in Parliament and covered by parliamentary privilege.<sup>100</sup> However, the correctness of that ruling has been questioned.<sup>101</sup>

## Application of article 9

The protection that article 9 of the Bill of Rights 1688 affords is not confined to members of Parliament. The provision does not refer to members or to any person;

<sup>89</sup> House of Commons (UK) Committee of Privileges [1977–1978] HC 624, App IV (disclosure of information to the House or a committee would not breach the Official Secrets Act).

<sup>90</sup> Senate (Aust) Committee of Privileges *The circulation of petitions (11th report)* [1988]; Legislative Council (WA) Select Committee of Privilege, report concerning petition of Brian Easton [1992].

<sup>91</sup> Parliamentary Privilege Act 2014, s 10(3).

<sup>92</sup> *Smith v Department of Foreign Affairs and Trade* [2007] AIRC 366.

<sup>93</sup> (1988) 489 NZPD 4315–4316 Burke; (19 November 2003) 613 NZPD 10146 Hunt; Parliamentary Privilege Act 2014, ss 17–21.

<sup>94</sup> *British American Tobacco Australia Ltd v Secretary, Department of Health and Ageing* [2011] FCAFC 107.

<sup>95</sup> *Rivlin v Bilainkin* [1953] 1 QB 485.

<sup>96</sup> (1988) 489 NZPD 4436–4437 Burke.

<sup>97</sup> *Rivlin v Bilainkin* [1953] 1 QB 485.

<sup>98</sup> *Re Ouellet (No 1)* (1976) 67 DLR (3d) 73 (CS).

<sup>99</sup> (1989) 498 NZPD 10595 Burke.

<sup>100</sup> *Rost v Edwards* [1990] 2 QB 460.

<sup>101</sup> *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1, [1995] 1 AC 321 (PG); Joint Committee on Parliamentary Privilege (UK) *Parliamentary privilege: report of session 2013–14* [2013] HL Paper 30, HC 100 at [233].

it refers to parliamentary speeches, debates and proceedings, and prevents these occasions from being called into question. Members, who are most proximately involved in the business of the House, are the main beneficiaries of the privilege. Nevertheless, other persons who take part in the proceedings of the House or its committees are also afforded the protection of article 9. Officers of the House, for example, who in their official capacity are constantly engaged in proceedings in Parliament, obviously qualify for protection. Witnesses to select committees and petitioners to the House also qualify, as being engaged in the proceedings of the House. The publication of defamatory words in a petition to members of Parliament is not actionable, provided such publication is in the ordinary course of proceedings.<sup>102</sup> Publication of such defamatory material to members, otherwise than in the ordinary course of proceedings, is not protected.<sup>103</sup> However, the House may refuse to accept an abusive petition, as petitions are required to be respectful and moderate in their language.<sup>104</sup> The House might also treat the publication of scandalous material in a petition as a contempt, and punish it accordingly.

No action, civil or criminal, may be taken against a witness in respect of evidence he or she gives to the House or one of its committees.<sup>105</sup> The position of witnesses is no different from that of members in respect of members' words spoken in debate.<sup>106</sup> The protection of privilege applies whether the witness appears voluntarily or is summoned to appear before the House or a committee.

The protection of witnesses before select committees is a fundamental aspect of parliamentary privilege. The freedom of witnesses to give evidence is absolute, leaving it to the committee to decide whether or not to accept the evidence and weigh its probative value. Although evidence given before a select committee cannot be admitted into legal proceedings, conduct revealed in such evidence is not immune from investigation or action by other authorities. However, a civil action or criminal prosecution would need to be supported by evidence obtained independently of Parliament.<sup>107</sup>

## **Questioning or impeaching parliamentary proceedings**

The Bill of Rights 1688 was passed to secure in law a political settlement reached between Parliament and the courts over their respective jurisdictions.<sup>108</sup> However, the Bill of Rights did not create Parliament's freedom of speech; rather, it crystallised the respective jurisdictions of the Crown and Parliament, thus settling the long-standing dispute over executive and legislative power. The settlement was principally between the executive and the legislature but it also affected the judiciary, as the third branch of government. Article 9 of the Bill of Rights 1688 prohibited the executive power (the Crown) from using the courts to undermine the legislature's freedom of speech.

As of 1688, there may have been little, if any, distinction understood between the injunctions in article 9, prohibiting the "impeaching" and "questioning" of parliamentary free speech. It was not until a century or so later that the word "impeach" acquired a specific association with a charge at law (meaning then to subject parliamentary proceedings to some criminal or civil liability). At the time, legislative drafting was prolix and typically duplicated meaning with what we would today regard as synonymous terms. With courts inclined to literal and formal interpretations of the written law, it was natural for the drafters of the day

<sup>102</sup> *Lake v King* (1667) 1 Saund 131 (KB).

<sup>103</sup> *Rivlin v Blaikie* [1953] 1 QB 485.

<sup>104</sup> SO 367(1).

<sup>105</sup> Privileges Committee, final report on question of privilege on the action taken by TVNZ in relation to its chief executive (17 October 2006) [2005–2008] AJHR I.17B.

<sup>106</sup> *Goffin v Donnelly* (1881) 6 QBD 307; *R v Wainscot* [1899] 1 WALR 77 (SC); *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC); Parliamentary Privilege Act 2014, ss 5 and 10.

<sup>107</sup> Privileges Committee, final report on question of privilege on the action taken by TVNZ in relation to its chief executive (17 October 2006) [2005–2008] AJHR I.17B.

<sup>108</sup> Declaration of Rights 1688.

to juxtapose words with minor, if not infinitesimal, gradations of meaning. It was serendipitous that the separate injunctions against impeaching and questioning gave to article 9 its modern meaning and scope.

Article 9 has further application beyond operating as a defence to a prosecution or a civil action brought in respect of parliamentary actions. For the 17th-century parliamentarians, article 9 was a two-fold declaration: parliamentarians could not be held criminally or civilly liable for their actions in Parliament (this would have been asserted to be the law in any case, notwithstanding notorious breaches in the past), and their parliamentary actions could not be used to support a cause of action against them arising from events outside Parliament. Were the latter to be permitted, members would be answerable to the courts for their actions in Parliament.

This two-pronged meaning of article 9 is now conveniently expressed in today's understanding of the words "impeached" and "questioned". Freedom of speech is "impeached" where it is sought to make a member or person liable in criminal or civil proceedings for what they have said or done in Parliament; whereas freedom of speech is "questioned" when it is sought to undertake a critical examination in legal proceedings of what a member or person has said or done in Parliament.<sup>109</sup> A New South Wales decision challenged this distinction and sought to collapse the scope of article 9 to attempts to impeach parliamentary words or actions. However, the Privy Council discredited that approach in an appeal from New Zealand, and held that the phrase "impeached or questioned" established distinct prohibitions.<sup>110</sup>

The Parliamentary Privilege Act 2014 clarifies the scope of the prohibition on impeaching or questioning the proceedings of Parliament by providing as follows:<sup>111</sup>

In proceedings in a court or tribunal, evidence must not be offered or received, and questions must not be asked or statements, submissions, or comments made, concerning proceedings in Parliament, by way of, or for the purpose of, all or any of the following:

- (a) questioning or relying on the truth, motive, intention, or good faith of anything forming part of those proceedings in Parliament;
- (b) otherwise questioning or establishing the credibility, motive, intention, or good faith of any person;
- (c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament;
- (d) proving or disproving, or tending to prove or disprove, any fact necessary for, or incidental to, establishing any liability;
- (e) resolving any matter, or supporting or resisting any judgment, order, remedy, or relief, arising or sought in the court or tribunal proceedings.

These provisions clarify and supplement the operation of article 9 without depriving it of potentially broader application.<sup>112</sup>

### **Impeaching freedom of speech—direct attack**

The article 9 prohibition on impeaching freedom of speech or proceedings in Parliament (that is, holding someone legally liable for their parliamentary actions or speech) was a confirmation of the recognised freedom of speech of members

<sup>109</sup> Attorney-General's submission in *Pepper (Her Majesty's Inspector of Taxes) v Hart* [1993] AC 593 (HL) at 638 per Lord Browne-Wilkinson.

<sup>110</sup> *R v Murphy* (1986) 5 NSWLR 18 (SC); declared not to represent the law in New Zealand (or the United Kingdom) in *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC).

<sup>111</sup> Parliamentary Privilege Act 2014, s 11.

<sup>112</sup> Parliamentary Privilege Bill (179–2) (commentary, 5 June 2014) ([2011–2014] AJHR I.22C). See also the references in the Parliamentary Privilege Act 2014, ss 3(2)(b) and 9, to "any other operation" of art 9. Section 15(2) refers similarly to the operation of art 9 "independent of" the 2014 Act, pt 2, sub-pt 2.

and others participating in parliamentary proceedings. Conduct in parliamentary proceedings cannot support legal liability, either criminal or civil, except to the extent that statute has expressly or by necessary implication overridden the article 9 immunity. Thus a member's speech in a parliamentary debate cannot support an action for defamation,<sup>113</sup> and documents held by a member that are part of a proceeding in Parliament cannot be subject to the compulsory process of a court.<sup>114</sup> Since 1688 this immunity for one's actions or speeches in Parliament has become so ingrained as to have been rarely challenged.

### **Questioning proceedings—indirect attack**

The prohibition on "questioning" proceedings in Parliament (critically examining parliamentary proceedings in support of litigation arising from events outside Parliament) is as constitutionally significant as the prohibition on "impeaching". However, it is of more uncertain scope and thus reach.

The prohibition on questioning goes to the constitutional separation of powers between the legislature and the judiciary. Its object is to avoid conflict between Parliament and the courts, and to prevent courts censuring what is said in Parliament. A court has no legitimate occasion to pass judgement on parliamentary proceedings.<sup>115</sup> It is wrong, for example, for a court to pass judgement on the quality or sufficiency of the reasons given in Parliament for the enactment of a measure or for the transaction of particular business. The justification and utility of parliamentary business is a matter for Parliament alone.<sup>116</sup> Thus, a court considered it would be improper for it to comment on a member's speeches in Parliament, even where the body under review before it had done so (arguably itself in breach of article 9).<sup>117</sup>

This principle of non-intervention by the courts in parliamentary proceedings is mandatory. If a questioning of parliamentary proceedings should occur, it is not for a court to judge whether or not freedom of speech would actually in the particular circumstances of the case be infringed. The court must give effect to the principle of non-intervention as embodied in law (article 9).<sup>118</sup> The fact that there may be no attack on the propriety of a parliamentary statement does not displace the principle. The parliamentary record is inadmissible if a court is invited to examine it and draw inferences from it.<sup>119</sup> Parliamentary privilege prevents a challenge to the accuracy or veracity of anything said in parliamentary proceedings.<sup>120</sup>

The courts have emphasised that they cannot consider allegations of impropriety, inadequacy or inaccuracy in the proceedings of Parliament, as these are matters for Parliament to address and sanction as it sees fit.<sup>121</sup> They have declined to take into

<sup>113</sup> *Dillon v Balfour* (1887) 20 LR Ir 600.

<sup>114</sup> *Crane v Gething* [2000] FCA 45, (2000) 169 ALR 727.

<sup>115</sup> *Hamilton v Al Fayed* [1999] 1 WLR 1569 (CA) at 1586 per Lord Woolf MR; *R (on the application of Bradley) v Secretary of State for Work and Pensions* [2007] EWHC 242 (Admin); *Office of Government Commerce v Information Commissioner* (Attorney-General intervening) [2008] EWHC 737 (Admin), [2010] QB 98 at [46]; *R (on the application of HS2 Action Alliance Ltd) v Secretary of State for Transport* [2014] UKSC 3 at [78]–[79] and [206]; *Boscawen v Attorney-General* [2009] NZCA 12, [2009] 2 NZLR 229 at [36] and [42]; *Taylor v Attorney-General* [2014] NZHC 1630 at [79] and [87]; *Mangawhai Ratepayers' and Residents' Association Inc v Kaipara District Council* [2014] NZHC 1147, [2014] 3 NZLR 85 at [102].

<sup>116</sup> *Wilson v Secretary of State for Trade and Industry* [2003] UKHL 40, [2004] 1 AC 816 at [117] per Lord Hope and [143] per Lord Hohhouse; *R (on the application of Wilson) v Wycombe District Council* [2007] EWCA Civ 52, [2007] QB 801 at [31]; *R (on the application of Age UK) v Secretary of State for Business, Innovation and Skills* [2009] EWHC 2336 (Admin) at [51].

<sup>117</sup> *Peters v Davison* [1999] 3 NZLR 744 (HC) at 765–767; *Office of Government Commerce v Information Commissioner* (Attorney-General intervening) [2008] EWHC 737 (Admin), [2010] QB 98 at [54].

<sup>118</sup> *Rann v Olsen* [2000] SASC 83, (2000) 172 ALR 395 at [114], [124] and [125].

<sup>119</sup> *Rost v Edwards* [1990] 2 QB 460.

<sup>120</sup> *Office of Government Commerce v Information Commissioner* (Attorney-General intervening) [2008] EWHC 737 (Admin), [2010] QB 98 at [39].

<sup>121</sup> *R (Federation of Tour Operators) v Her Majesty's Treasury* [2007] EWHC 2062 (Admin) at [121]–[123]; *Office of Government Commerce v Information Commissioner* (Attorney-General intervening) [2008] EWHC 737 (Admin), [2010] QB 98 at [47].

account evidence given at select committees, select committee reports, or answers to parliamentary questions. This evidence was inadmissible under article 9 and on the basis that the courts and Parliament must each recognise their respective roles.<sup>122</sup>

The object of article 9 is to promote the freedom of members, witnesses and others participating in parliamentary proceedings to contribute fully without fear of repercussion: “to ensure that the member or witness *at the time he [or she] speaks* is not inhibited from stating fully and freely what he [or she] has to say”.<sup>123</sup> Article 9 is designed to remove uncertainty over whether a member’s or witness’s statement may be subsequently challenged in legal proceedings, and to give people confidence when making their parliamentary contributions that they will be immune from any reprisal or repercussion.<sup>124</sup> The Privy Council has emphasised this rationale for the expansive operation of article 9.<sup>125</sup>

## Using parliamentary proceedings to support legal proceedings

Speeches or proceedings in Parliament may not be used to support a cause of action, even where the cause of action arose outside the House.<sup>126</sup> Under article 9, parties to litigation cannot bring into question anything said or done in the House by suggesting that the actions or words were inspired by improper motives or were untrue or misleading. This imposes a prohibition on direct evidence, cross-examination, inferences or submissions intended to have such effect.<sup>127</sup>

The law reports contain many illustrations of the expansive application of article 9. For example, a court refused to allow a former Minister, who was facing prosecution on a criminal charge, to be cross-examined on remarks he had made in Parliament that appeared to contradict the evidence he had given in court.<sup>128</sup> Similarly, a judge refused to admit extracts from *Hansard* where the purpose of putting them in evidence was to examine the motives behind what had been said and done in the House.<sup>129</sup> Likewise, a court refused to admit correspondence between a parliamentary committee and witnesses, which recorded evidence given by a witness to the committee, correspondence clarifying an answer given to the committee and answers to questions the committee had asked. The purpose for citing the correspondence was to invite the court to draw inferences about proceedings in Parliament.<sup>130</sup> Simply to invite a court to infer that two parliamentary statements were incompatible would be a breach of article 9.<sup>131</sup>

Questions have arisen concerning the relief to be given where parliamentary privilege renders evidence inadmissible. If the operation of privilege makes it unjust for an action to proceed (for example, by excluding evidence that is crucial to a party’s defence), the court may order a stay of proceedings.<sup>132</sup>

## Repetition

There is no “questioning” of proceedings in Parliament in a legal action that is based on a copy of a member’s parliamentary speech that the member has supplied to a

<sup>122</sup> *British Railways Board v Pickin* [1974] AC 765 (HL) at 799.

<sup>123</sup> *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC) at 8 (emphasis in the original).

<sup>124</sup> *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC) at 10.

<sup>125</sup> *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC) at 8.

<sup>126</sup> *Church of Scientology of California v Johnson-Smith* [1972] 1 QB 522 (attempt to show member’s parliamentary speech evidence of malice in a comment made by the member on television); (29 October 2003) PD LA (WA) 12804–12806 (personal explanation by member used to support disciplinary proceedings against member in his capacity as a lawyer).

<sup>127</sup> *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC) at 10.

<sup>128</sup> *R v Jackson* (1987) 8 NSWLR 116 (SC).

<sup>129</sup> *Kable v State of New South Wales* [2000] NSWSC 1173.

<sup>130</sup> *Habib v Commonwealth of Australia* [2008] FCA 1494 at [6].

<sup>131</sup> Privileges Committee Question of privilege referred on 14 February 2001 relating to *Stonhill v Mackey* (11 December 2001) [1999–2002] AJHR I.17B at 5–6.

<sup>132</sup> *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC) at 11 (albeit the stay granted by the Court of Appeal was overturned on appeal); *Allason v Haines* [1995] NLJR 1576; *Hamilton and Greer v Hencke* High Court of Justice, Queen’s Bench Division, 21 July 1995.

newspaper or other publication.<sup>133</sup> Members distribute copies of their speeches or other parliamentary contributions (such as questions they have asked)<sup>134</sup> at their own risk (even if qualified immunity may apply to the communication in question).<sup>135</sup> Likewise, before the Parliamentary Privilege Act 2014, there was no “questioning” of proceedings in Parliament if a member referred outside the House to a speech he or she had made in the House in a way that could be interpreted as “adopting”, “reporting” or “effectively repeating” it.<sup>136</sup> Under the law of defamation, an “effective repetition” is a fresh cause of action, which allowed the parliamentary speech to be examined in court to support legal proceedings. Following prolonged criticism of the effective repetition principle as it had been applied in the parliamentary context,<sup>137</sup> the Parliamentary Privilege Act 2014 abolished the principle in its application to Parliament.<sup>138</sup> Adducing *Hansard* to ascertain the parliamentary words that were effectively repeated was an insidious form of “questioning” proceedings in Parliament, contrary to the text and spirit of article 9.<sup>139</sup> The 2014 Act prohibits evidence being offered or received, questions being asked, or statements, submissions or comments made, concerning proceedings in Parliament in support of legal proceedings, including claims of effective repetition as exemplified by the Privy Council decision in *Buchanan v Jennings*.<sup>140</sup>

A 2005 report of the Privileges Committee’s inquiry into *Buchanan v Jennings*<sup>141</sup> provided the impetus for reform. It dealt with the parliamentary implications of effective repetition and recommended that the law be changed, which later Privileges Committees reiterated.<sup>142</sup> A recent United Kingdom joint committee inquiry also highlighted the uncertainty about the extent to which members or others could repeat or refer to statements they had made in Parliament.<sup>143</sup> The Privileges Committee reported that there had been a “chilling effect” on public debate, with members and others reluctant to submit themselves to subsequent interview for fear of losing their parliamentary immunity.<sup>144</sup>

<sup>133</sup> *R v Lord Abingdon* (1794) 1 Esp 226, 170 ER 337 (KB); *R v Creevey* (1813) 1 M & S 273, 105 ER 102 (KB); *Suresh Chandra Banerji v Punit Goala* [1951] AIR (Calcutta) 176.

<sup>134</sup> *Jatish Chandra Ghosh v Hari Sadhan Mukherjee* [1961] AIR (SC) 613.

<sup>135</sup> Parliamentary Privilege Act 2014, ss 18–20.

<sup>136</sup> See Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [13.5.4(2)].

<sup>137</sup> Privileges Committee *Question of privilege referred 21 July 1998 concerning Buchanan v Jennings* (31 May 2005) [2002–2005] AJHR I.17G. See also Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [13.5.4(2)] and the criticisms of the academic writers cited therein.

<sup>138</sup> Parliamentary Privilege Act 2014, ss 3(2)(d) and 11(e).

<sup>139</sup> See: *Buchanan v Jennings* [2002] 3 NZLR 145 (CA) at per Tipping J dissenting; this judgment represents the legislative assumption behind the abolition of effective repetition in the parliamentary context. See also: Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [13.5.5(2)(b)].

<sup>140</sup> *Buchanan v Jennings* [2004] UKPC 36, [2005] 2 NZLR 577.

<sup>141</sup> Privileges Committee *Question of privilege referred 21 July 1998 concerning Buchanan v Jennings* (31 May 2005) [2002–2005] AJHR I.17G.

<sup>142</sup> Privileges Committee *Question of privilege relating to the exercise of the privilege of freedom of speech by members in the context of court orders* (28 May 2009) [2008–2011] AJHR I.17A at 6–7; Privileges Committee *Question of privilege concerning the defamation action Attorney-General and Gow v Leigh* (11 June 2013) [2011–2014] AJHR I.17A at 31–32.

<sup>143</sup> Joint Committee on Parliamentary Privilege (UK) *Parliamentary privilege: report of session 2013–14* [2013] HL Paper 30, HC 100 at [202]–[207]. See also the English Court of Appeal decision in *Makudi v Baron Triesman of Tottenham* [2014] EWCA Civ 179, [2014] 3 All ER 36, which suggested that a verbatim repetition of words spoken in parliamentary proceedings, without venturing beyond them, was protected by parliamentary privilege. Such implication does not withstand scrutiny: see *R v Lord Abingdon* (1794) 1 Esp 226, 170 ER 337 (KB); *R v Creevey* (1813) 1 M & S 273, 105 ER 102 (KB); *Wasom v Walter* (1868) LR 4 QB 73; *Sopforth v Goyer* (1978) 87 DLR (3d) 373. Philip A Joseph “Parliament’s Privilege of Freedom of Speech: Still More Confusion” (2015) 131 *Law Quarterly Review* 12 criticises *Makudi* for creating gratuitous uncertainty.

<sup>144</sup> Privileges Committee *Question of privilege referred 21 July 1998 concerning Buchanan v Jennings* (31 May 2005) [2002–2005] AJHR I.17G at 5; Joint Committee on Parliamentary Privilege (UK) *Parliamentary privilege: report of session 2013–14* [2013] HL Paper 30, HC 100 at [202]–[207]. See also (19 February 2014) 696 NZPD 16076–16077 (Commerce Commission investigation into alleged supermarket behaviour).

Members are not accountable for what others may do. A member is not liable for the use that another person makes of the member's speech in Parliament (for example, reporting or repeating it), even though the member may have known that the speech was defamatory and likely to be reported. To hold a member liable in those circumstances, for even a foreseeable repetition, would defeat the member's freedom of speech in debate.<sup>145</sup> The person defamed has either of two recourses: sue the person who repeated the defamatory statement, or have a response entered in the parliamentary record.<sup>146</sup> (See Chapter 38.)

### ***Collateral examination of proceedings***

The fact that the House has expressed its view on a matter does not preclude a court from making its own finding on the same matter if it subsequently arises before it in judicial proceedings. It is no abuse of the court's process or breach of parliamentary privilege to litigate a matter merely because the House or one of its committees has considered it. The court must make its own finding on the issue if it is relevant to the proceedings before it.<sup>147</sup>

Different conclusions may be reached in parliamentary and judicial inquiries into the same matter.<sup>148</sup> Whether or not a contrary judicial conclusion implies a view about the parliamentary finding is irrelevant.<sup>149</sup> An earlier parliamentary finding is not binding on a court, and lacks any persuasive authority.<sup>150</sup> At most, a parliamentary finding might have relevance as part of the factual matrix out of which the legal proceedings emerged. However, the court must make no findings on the parliamentary treatment of the matter but must reach its own conclusions on questions of law or fact. In particular, it cannot adjudicate by agreeing or disagreeing with expressions of opinion in Parliament, no matter how eminent or well qualified the people expressing them.<sup>151</sup>

Not all references to debates or proceedings in Parliament are contrary to article 9 of the Bill of Rights 1688. Evidence of proceedings in Parliament may be received in court, provided the evidence does not involve examining the propriety of the proceedings or of the motives or intentions of those partaking in them. Evidence of events or words uttered in Parliament, without any impeaching or questioning of the proceedings of which they were part, is permissible.<sup>152</sup> This is commonly referred to as the "historical" use of the parliamentary record. The Parliamentary Privilege Act 2014 declares that neither it nor the Bill of Rights 1688 prevents or restricts use of proceedings in Parliament to establish a historical event.<sup>153</sup> The embargo is triggered only if there is an attempt to impeach or question the parliamentary proceedings.

<sup>145</sup> *Suresh Chandra Banerji v Punit Goala* [1951] AIR (Calcutta) 176.

<sup>146</sup> SOs 159–162.

<sup>147</sup> *Dingle v Associated Newspapers Ltd* [1960] 2 QB 405 at 410–411; *Office of Government Commerce v Information Commissioner* (Attorney-General intervening) [2008] EWHC 774 at [49]; *R (on the application of Age UK) v Secretary of State for Business, Innovation and Skills* [2009] EWHC 2336 (Admin) at [51].

<sup>148</sup> Compare, for example, Transport Committee, report on the petition of Federated Farmers of New Zealand (17 December 1992) [1991–1993] AJHR I.26A with *Federated Farmers of New Zealand (Inc) v New Zealand Post Ltd* HC Wellington CP661/92, 1 December 1992.

<sup>149</sup> *Rann v Olsen* [2000] SASC 83, (2000) 172 ALR 395 at [25], [80], [85] and [123]; *R (on the application of Bradley) v Secretary of State for Work and Pensions* [2007] EWHC 242 (Admin); *R (Federation of Tour Operators) v Her Majesty's Treasury* [2007] EWHC 2062 (Admin); *Office of Government Commerce v Information Commissioner* (Attorney-General intervening) [2008] EWHC 737 (Admin), [2010] QB 98 at [48] and [57]; *R (on the application of Age UK) v Secretary of State for Business, Innovation and Skills* [2009] EWHC 2336 (Admin) at [51].

<sup>150</sup> *Hamilton v Al Fayed* [1999] 1 WLR 1569 (CA) (affirmed) [2001] 1 AC 395 (HL).

<sup>151</sup> *R (on the application of Age UK) v Secretary of State for Business, Innovation and Skills* [2009] EWHC 2336 (Admin) at [51].

<sup>152</sup> *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC); *Wilson v Secretary of State for Trade and Industry* [2003] UKHL 40, [2004] 1 AC 816 at [51]–[67]; *Toussaint v Attorney General of Saint Vincent and the Grenadines* [2007] UKPC 48 at [17].

<sup>153</sup> Parliamentary Privilege Act 2014, s 15.

Examples of permissible historical uses are using parliamentary proceedings to prove material facts, such as that a statement was made in Parliament or made at a particular time, or that it refers to a particular person,<sup>154</sup> using proceedings to prove that a member was present in the House on a particular day,<sup>155</sup> or using proceedings to prove that a report of a speech is fair and accurate and is thereby covered by qualified privilege under the law of defamation (now termed “qualified immunity” under the Parliamentary Privilege Act 2014).<sup>156</sup>

### **Statutory interpretation and judicial review**

It is well established under New Zealand law that parliamentary statements and other materials may be used in aid of statutory interpretation.<sup>157</sup> The Parliamentary Privilege Act 2014 explicitly allows the use of parliamentary proceedings for the purposes of ascertaining the meaning of an enactment.<sup>158</sup> This represents the law in all of the common law jurisdictions, where the use of parliamentary materials in statutory interpretation is regarded as compatible with article 9. However, not all parliamentary statements or material will be of assistance to courts when interpreting legislation.<sup>159</sup> For example, the courts have ignored parliamentary statements where they opposed the legislation that was in question,<sup>160</sup> and they have disregarded select committee materials where the committee was not unanimous in its views.<sup>161</sup> Using parliamentary materials to ascertain legislative meaning is permissible but other uses may not be: for example, comparing conflicting parliamentary statements and appraising them in litigation, which would constitute a “questioning” of parliamentary proceedings contrary to article 9.<sup>162</sup>

In Australia, the interpretation legislation gives particular weight to the speech of the Minister moving the second reading of the bill.<sup>163</sup> The assumption is that the Minister responsible will be sufficiently informed and capable of explaining the intentions behind the bill. In the United Kingdom, background materials—including parliamentary statements—have been held admissible for the purposes of evaluating the compatibility of legislation with convention rights, and making value judgements under the test of proportionality.<sup>164</sup> It has also been held that parliamentary proceedings may be used to assist in determining applications for judicial review, particularly by reference to ministerial statements to the House.<sup>165</sup>

<sup>154</sup> *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC).

<sup>155</sup> *Forbes v Samuel* [1913] 3 KB 706; *Tranton v Astor* (1917) 33 TLR 383.

<sup>156</sup> Parliamentary Privilege Act 2014, ss 14 and 18–20.

<sup>157</sup> For a recent illustration of the use of parliamentary materials, see *Mangawhai Ratepayers' and Residents' Association Inc v Kaipara District Council* [2014] NZHC 1147, [2014] 3 NZLR 85 at [108]. United Kingdom law is to similar effect: see *Pepper (Her Majesty's Inspector of Taxes) v Hart* [1993] AC 593 (HL); general principles are covered in *Wilson v Secretary of State for Trade and Industry* [2003] UKHL 40, [2004] 1 AC 816 at [51]–[67]; *Toussaint v Attorney General of Saint Vincent and the Grenadines* [2007] UKPC 48 at [17]; *Office of Government Commerce v Information Commissioner (Attorney-General intervening)* [2008] EWHC 737 (Admin) at [49]. See also Ross Carter, Burrows and Carter *Statute Law in New Zealand* (5th ed, LexisNexis, Wellington, 2015) at 304–306.

<sup>158</sup> Parliamentary Privilege Act 2014, s 13.

<sup>159</sup> *Re P (a minor by his mother and litigation friend)* [2003] UKHL 8, [2003] 2 AC 663 at [37] (“in the usual hopeless attempt to obtain guidance from parliamentary debates” per Lord Hoffmann); *Wilson v Secretary of State for Trade and Industry* [2003] UKHL 40, [2004] 1 AC 816 at [67]; *R (on the application of F) v Secretary of State for the Home Department* [2010] UKSC 17; *Assange v Swedish Prosecution Authority* [2012] UKSC 22.

<sup>160</sup> *Awatere Huata v Prebble* [2004] 3 NZLR 359 (CA) at [89] per McGrath J.

<sup>161</sup> *Vela Fishing Ltd v Commissioner of Inland Revenue* [2001] 1 NZLR 437 (HC) at [129]–[131].

<sup>162</sup> *R v Secretary of State for the Environment, Transport and the Regions, ex parte Spath Holme Ltd* [2001] 2 AC 349 (HL) at 391–392 per Lord Bingham.

<sup>163</sup> Acts Interpretation Act 1901 (Cth), s 15AB.

<sup>164</sup> *Wilson v Secretary of State for Trade and Industry* [2003] UKHL 40, [2004] 1 AC 816 at [110]–[111]; *Salvesen v Riddell (Lord Advocate Intervening)* [2013] UKSC 22 at [37]. See also Aileen Kavanagh “Proportionality and Parliamentary Debates: Exploring Some Forbidden Territory” (2014) 34(3) *Oxford Journal of Legal Studies* 443; Editorial (2010) 31(2) *Statute Law Review* at iii–iv.

<sup>165</sup> Joint Committee on Parliamentary Privilege (UK) *Parliamentary privilege: first report* [1998–1999] HL 43–I, HC 214–I at [46]–[55]; *Buchanan v Jennings* [2002] 3 NZLR 145 (CA) at [41] per Keith J; *Toussaint v Attorney General of Saint Vincent and the Grenadines* [2007] UKPC 48 at [17].

However, this use of the parliamentary record has been criticised as an unprincipled attack on article 9. Drawing inferences and conclusions from ministerial statements to the House entails “questioning” proceedings in Parliament.<sup>166</sup> On the other hand, greater fidelity to article 9 was shown in a case where an attempt was made to construe an enforceable legitimate expectation from a parliamentary statement. The court rejected that attempt, as it would involve “questioning” the statement contrary to article 9.<sup>167</sup> The applicant, in effect, sought to create a cause of action out of a proceeding in Parliament.

The case law in this area may appear conflicting and difficult to reconcile, raising concerns about “judicial contortions” around article 9.<sup>168</sup> The Parliamentary Privilege Act 2014 responds accordingly by declaring that evidence may not be offered or received concerning proceedings in Parliament if the purpose is to:<sup>169</sup>

- question or rely on the truth, motive or good faith of, or draw inferences or conclusions from, anything forming part of those proceedings
- question or establish the credibility, motive or good faith of any person
- prove or disprove any fact material to legal proceedings
- otherwise support or resist any legal liability or claim.

Leading evidence for any of those purposes would be to impeach or question proceedings in Parliament. The Act reinforces this embargo by explicitly allowing the use of proceedings to establish a relevant historical event or fact that does not amount to a questioning or impeaching.

In judicial review proceedings, a parliamentary statement made by a Minister can be introduced as evidence of the fact of an announcement of the Government’s policy or position on a matter. The announcement of the policy in Parliament is no different from its announcement by means of a letter.<sup>170</sup> The policy or position can be criticised and (if need be) demonstrated to be unlawful, but the evidence to do so needs to be obtained independently of the announcement in the House. The parliamentary statement cannot itself give grounds for review, for to do so it would be to impeach contrary to article 9. However, just because a Government policy or position is announced in the House, rather than elsewhere, does not mean it is immune from review, but in so reviewing a court must make its own findings.

### Court or place out of Parliament

The prohibition in article 9 applies to “questioning” proceedings in Parliament “in any court or place out of Parliament”.<sup>171</sup> Proceedings before a court are self-evident. However, the reference to any place out of Parliament, if taken literally, would inhibit criticism or examination of parliamentary proceedings on any occasion outside Parliament. Such a result would be an absurdity that would unacceptably infringe citizens’ freedom of speech. Occasional judicial statements have rhetorically imputed this extreme meaning,<sup>172</sup> but these suggestions have not been taken seriously by either the House or the courts. The parliamentarians of 1688 probably had in mind the jurisdiction of the councils formerly established by

<sup>166</sup> Philip A Joseph “Parliament’s Attenuated Privilege of Freedom of Speech” (2010) 126 *Law Quarterly Review* 568 at 583–589.

<sup>167</sup> *Thoburn v Sunderland City Council* [2002] EWHC 195 (Admin), [2003] QB 151 at [76] per Laws LJ.

<sup>168</sup> Philip A Joseph “Parliament’s Attenuated Privilege of Freedom of Speech” (2010) 126 *Law Quarterly Review* 568; Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [13.5.5].

<sup>169</sup> Parliamentary Privilege Act 2014, s 11.

<sup>170</sup> *Wilson v Secretary of State for Trade and Industry* [2003] UKHL 40, [2004] 1 AC 816 at [113] per Lord Hope.

<sup>171</sup> Bill of Rights 1688, art 9.

<sup>172</sup> See, for example: *R v Murphy* (1986) 5 NSWLR 18 (SC) at 29 per Hunt J; *Pepper (Her Majesty’s Inspector of Taxes) v Hart* [1993] AC 593 at 638 per Lord Browne-Wilkinson; *Toussaint v Attorney General of Saint Vincent and the Grenadines* [2007] UKPC 48 at [10].

royal prerogative to exercise executive and judicial functions. The latter functions were in conflict with the jurisdiction of the regular common law courts.

In promulgating the Bill of Rights 1688, members sought to ensure that councils established by the King, in addition to the regular courts, could not examine parliamentary proceedings. In the modern State, such parallel, non-curiel executive and judicial functions are exercised by tribunals and other bodies established by legislation, and the prohibition on questioning proceedings in Parliament is taken to be addressed today to such bodies. The Parliamentary Privilege Act 2014 expressly applies the prohibition to courts and tribunals. Under section 5(1), a "tribunal" means:

any person or body (other than the House, a committee, or a court, but including, without limitation, an inquiry to which section 6 of the Inquiries Act 2013 applies) with power to summons witnesses and take evidence on oath or affirmation, or with power to require (by, or without, a summons) the giving or supply (on, or without, oath or affirmation) of any kind or form of evidence or information.

The Human Rights Commission<sup>173</sup> and the Ombudsmen<sup>174</sup> have accepted that they are bound by article 9 and have refused to investigate complaints that related to proceedings in Parliament. In Canada, the Ontario Human Rights Commission rejected a complaint about the daily recital of a prayer in the legislature as it was a matter inherently related to the conduct of parliamentary proceedings.<sup>175</sup> However, the Canadian Human Rights Tribunal could entertain a complaint about statements made by a member of Parliament in a "householder" (a flyer to constituents), as parliamentary privilege did not attach to material distributed to the public.<sup>176</sup> Various bodies set up to adjudicate on freedom of information requests have accepted that parliamentary privilege may prevent the disclosure of information where it would infringe the privileges of Parliament.<sup>177</sup> In Western Australia, the Legal Practitioners Complaints Committee and the Legal Practitioners Disciplinary Tribunal (both statutory entities) have likewise accepted that they are subject to the restraint against impeaching or questioning proceedings in Parliament.<sup>178</sup>

The restraint that article 9 imposes on the executive has a long reach. An executive inquiry to investigate the possible unauthorised disclosure of information accepted that it could not interview a member who had disclosed relevant Cabinet committee papers and Government documents in Parliament. Parliamentary privilege protected the member from being asked to disclose the source of the documents, or to produce the documents, or to disclose any information pertaining to the acquisition of the documents.<sup>179</sup> However, the restraint has not always been respected. In 1978 a commission of inquiry was charged with investigating public statements made by a member of Parliament (the "Moyle affair"). The commission interpreted its terms of reference as authorising it to examine statements that had been made in the House, prompting one commentator to conclude that the

<sup>173</sup> Human Rights Commission "No Commission of Inquiry" (17 October 2001) (select committee inquiry); Human Rights Commission "The Parliamentary Prayer" (22 November 2004).

<sup>174</sup> *Ombudsmen Quarterly Review* (March 1996) (questions); Office of the Ombudsman, report for the year ended 30 June 2001 (19 September 2001) NZPP A.3 at 21 (questions).

<sup>175</sup> *Ontario (Speaker of the Legislative Assembly) v Ontario (Human Rights Commission)* (2001) 54 OR (3d) 595 (ONCA).

<sup>176</sup> *Pankiw v Canada* (Human Rights Commission) [2007] 4 FCR 578.

<sup>177</sup> For Australian examples see: *Re Stiller and Department of Transport* [2009] QICmr 8; *Re Saffioti and Minister for Transport; Housing* [2012] WAICmr 10; in the United Kingdom, see Information Commissioner's Office Decision Notice FS50116013 (6 August 2007).

<sup>178</sup> (29 October 2003) PD LA (WA) 12804–12806 (though it was not conceded that they were actually questioning proceedings in that case); *Jenkins v McCusker* [2010] WASAT 100.

<sup>179</sup> Paula Rebstock *Report to the State Services Commissioner on the investigation into the possible unauthorised disclosure of information relating to the Ministry of Foreign Affairs and Trade* (27 November 2013) at [100].

commission had “acted in breach of article 9 of the Bill of Rights and thus (in this respect) in excess of jurisdiction”.<sup>180</sup> At that time, there seemed little doubt that a commission of inquiry or a royal commission was a “place” as that term is used in the Bill of Rights 1688, and was subject to the restrictions of parliamentary privilege in carrying out its task.<sup>181</sup> The Parliamentary Privilege Act 2014 removed any room for conjecture when it clarified and affirmed the meaning of article 9. The prohibition against impeaching or questioning proceedings in Parliament was expressed to apply “[i]n proceedings in a court or *tribunal*”,<sup>182</sup> and “tribunal” is defined as covering all inquiries to which section 6 of the Inquiries Act 2013 applies, namely royal commissions, public inquiries and Government inquiries.

The phrase “place out of Parliament” need not be restricted to bodies exercising statutory functions. In 1978 the Press Council, which was established by agreement between associations representing newspaper proprietors and journalists, declined to pursue a complaint against a member of Parliament in respect of a motion he had moved and a speech he had made in the House, which, it was alleged, seriously reflected on a newspaper and the probity and professional reputation of its editor. The council accepted legal advice that it could not inquire into the appropriateness of proceedings in the House, including a parliamentary question (in fact it was a motion that was involved in that case) or a discussion on it, and that, if it did so, it would be guilty of a contempt.<sup>183</sup> The advice acted upon was not without precedent. In 1885 the House had treated an attempt by the Legislative Council to examine a member about a speech he had made in the House as a breach of privilege.<sup>184</sup>

## THE HOUSE'S EXCLUSIVE RIGHT TO CONTROL ITS OWN PROCEEDINGS

### Exclusive cognisance

A type of privilege closely related to freedom of speech is the right of the House to control its own proceedings free of outside interference.<sup>185</sup> This right, it has been said, must be regarded as so essential a part of a legislature's procedure that it inheres in the very notion of being a legislative chamber.<sup>186</sup>

The House is said to have “exclusive jurisdiction” or “exclusive cognisance” over how its proceedings are to be conducted, and the conduct of them is not subject to examination elsewhere.<sup>187</sup> The courts do not enforce or review internal parliamentary processes, as these are matters for the House itself. As a matter of law, the courts recognise that the House's internal decisions are conclusive within that sphere.<sup>188</sup> This right is not dependent on article 9 of the Bill of Rights 1688, although it is clearly associated with it. Indeed, none of the leading cases on Parliament's right to control its proceedings refers to article 9 at all.

Difficulty has been encountered in establishing the exact limits of exclusive cognisance: what specific matters should be left to be resolved by Parliament

<sup>180</sup> DR Mummery “Freedom of Speech in Parliament” (1978) 94 *Law Quarterly Review* 276.

<sup>181</sup> In *Royal Commission into Certain Crown Leasholds* [1956] St R Qd 225 it was accepted that art 9 was binding on a royal commission. In 1980 the commission of inquiry into the marginal lands affair requested that the House give leave for it to refer to *Hansard* during its inquiries: see (13 September 1980) [1980] JHR 204, 205 and 208.

<sup>182</sup> Parliamentary Privilege Act 2014, s 11 (emphasis added).

<sup>183</sup> *Editor of the New Zealand Herald v Mr AG Malcolm MP* New Zealand Press Council decision (31 August 1978).

<sup>184</sup> (1885) 53 NZPD 714.

<sup>185</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 227.

<sup>186</sup> *Egan v Willis* [1998] HCA 71, (1998) 195 CLR 424 at [107] per McHugh J.

<sup>187</sup> *Stockdale v Hansard* (1839) 9 A & E 1, 112 ER 1112 (QB) at 233 per Coleridge J; *Bradlaugh v Gossett* (1884) 12 QBD 271; *Canada (House of Commons) v Vaid* 2005 SSC 30, [2005] 1 SCR 667; R v Chaytor [2010] UKSC 52, [2011] 1 AC 684.

<sup>188</sup> Geoffrey Marshall *Constitutional Theory* (Clarendon Press, Oxford, 1971) at 8.

rather than the courts?<sup>189</sup> Some matters are clearly within the House's exclusive cognisance: the core work of what is said and done in the House or its committees is protected by parliamentary privilege. The difficulty lies in assessing how far such protection applies to ancillary matters that occur outside of the proceedings themselves. Such matters are not part of the core work of the House, but they may be necessarily connected with it. When uncertainty arises, the courts must rule on the extent of Parliament's exclusive cognisance.

Over the years, Parliament has conceded control over a good portion of its daily business. Under legislation and administrative changes, it has largely relinquished any claim to exclusive control of the administrative business of the House.<sup>190</sup> Moreover, not all parliamentary business falls within the ambit of proceedings in Parliament. Matters concerning members' expenses claims, for example, do not fall within Parliament's exclusive cognisance.<sup>191</sup>

## No examination of internal workings

Initially, the House's internal rules—its Standing Orders—were submitted to the Governor for approval before coming into effect. This requirement was repealed in 1865 and the Standing Orders and other procedures of the House became a matter for the House alone to determine.<sup>192</sup>

The courts disclaim all power to intervene in cases of alleged non-compliance with the House's rules of procedure. The Standing Orders are examples of the House giving orders to itself, which it has exclusive authority to do. It has been alleged in the courts that the legislature has passed a bill in contravention of its Standing Orders,<sup>193</sup> or that it has been induced to pass a bill by fraud or deceit in contravention of its rules.<sup>194</sup> In these cases, it was argued that the departure from the House's rules had rendered the resultant Act invalid. However, the court in each case declined to examine the internal proceedings of the legislature, holding that litigants must petition Parliament itself for any redress: "[T]he remedy for a parliamentary wrong, if one has been committed, must be sought from Parliament, and cannot be gained from the courts".<sup>195</sup>

It is a matter for the House to decide what business to consider, what legislation to pass, or what resolution to adopt.<sup>196</sup> It would make no difference that any resulting legislation would be invalid or ineffectual, or that the House had been effectively wasting its time.<sup>197</sup> If the House relies on a particular resolution as having legal significance, a court may be required to determine whether the resolution had the meaning claimed.<sup>198</sup> But the court will not allow itself to be drawn into giving relief (even of a declaratory nature) against the House for having adopted the resolution in the first place.<sup>199</sup> It is also exclusively for the House to discipline its own members, and it is not for the courts to intervene in such matters.<sup>200</sup> The House might properly decide to suspend or admonish a member (matters clearly within its exclusive cognisance), but the courts would not lack jurisdiction if, for

<sup>189</sup> See *R v Chaytor* [2010] UKSC 52, [2011] 1 AC 684 and Joint Committee on Parliamentary Privilege (UK) *Parliamentary privilege: report of session 2013–14* [2013] HL Paper 30, HC 100 at [20]–[40].

<sup>190</sup> *R v Chaytor* [2010] UKSC 52, [2011] 1 AC 684 at [89].

<sup>191</sup> *R v Chaytor* [2010] UKSC 52, [2011] 1 AC 684; *Slipper v Magistrates Court of the ACT* [2014] ACTSC 85.

<sup>192</sup> *Ontario (Speaker of the Legislative Assembly) v Ontario (Human Rights Commission)* (2001) 54 OR (3d) 595 (ONCA).

<sup>193</sup> *Ram Dubey v Government of Madhya Bharat* [1952] AIR (Madhya Bharat) 57; *Namoi Shire Council v Attorney-General (New South Wales)* [1980] 2 NSWLR 639 (SC).

<sup>194</sup> *Hoani Te Heuheu Tukino v Aotea District Maori Land Board* [1941] AC 308 (PC); *British Railways Board v Pickin* [1974] AC 765 (HL).

<sup>195</sup> *British Railways Board v Pickin* [1974] AC 765 (HL) at 793 per Lord Wilberforce.

<sup>196</sup> *Reference re Amendment of the Constitution of Canada* (Nos 1, 2 and 3) (1982) 125 DLR (3d) 1 (SCC).

<sup>197</sup> *Rediffusion (Hong Kong) Ltd v Attorney-General of Hong Kong* [1970] AC 1136 (PC).

<sup>198</sup> *Stockdale v Hansard* (1839) 9 A & E 1, 112 ER 1112 (QB); *Dyson v Attorney-General* [1912] 1 Ch 158.

<sup>199</sup> *Egan v Willis* [1998] HCA 71, (1998) 195 CLR 424; *Hamilton v Al Fayed* [1999] 1 WLR 1569 (CA).

<sup>200</sup> *Re Nalumino Mundia* [1971] ZR 70.

example, the House sought to expel a member in disregard of the Parliamentary Privilege Act 2014.<sup>201</sup> House reports to its committees on internal disciplinary matters prepared by parliamentary officers are also part of the House's internal proceedings, and beyond the jurisdiction of the courts.<sup>202</sup>

Different considerations apply if a statute prescribes a mode of dealing with a matter. In such cases, Parliament has given an order to the House, which it, as a publicly constituted body, is bound to obey: "Parliament is subject to law just like every other person and body in New Zealand; it is bound by statutory requirements".<sup>203</sup> The House and its members are subject to the law as promulgated by Parliament, and they must comply with any statute that applies to the House's proceedings. This is notwithstanding any Standing Order or practice of the House to the contrary.<sup>204</sup>

Where Parliament enacts a "manner and form" provision prescribing the procedures to be followed in enacting legislation (for example, a special majority of the House or a majority at a national referendum),<sup>205</sup> compliance with the manner and form is an essential condition of legal validity.<sup>206</sup> In a legal challenge, a court must be satisfied that the House has complied with the manner and form, and will not be prevented from viewing the House records to allay any uncertainty. A challenge to the validity of legislation that banned fox hunting in the United Kingdom confirmed the court's jurisdiction to rule on questions of law, even questions concerning the internal workings of the House.<sup>207</sup> A manner and form provision under the Parliament Acts of 1911 and 1949 (UK) authorised the enactment of legislation without the assent of the House of Lords, and it was argued that the Commons had failed to comply properly with the prescribed procedure. The House of Lords held that the issue centred on statutory interpretation of the 1911 and 1949 Acts, and that the proper interpretation of statutes is a matter for the courts, even if it relates to the legislative process.<sup>208</sup> However, a court will accord the House latitude to determine under its established procedures how it will comply with the manner and form.

In a 19th-century English case, the question arose whether the House of Commons had the exclusive power to interpret a statute that applied to its internal procedures.<sup>209</sup> The statute authorised members to make an affirmation rather than take an oath before taking their seat in the House. The court held that the House had the sole authority to interpret the statute so far as the regulation of its proceedings within its own walls was concerned, and that, even if an interpretation was erroneous, the court had no power to interfere with it directly or indirectly. However, this ruling was made subject to one important proviso: that the application of the statute to the House's internal workings did not affect third-party rights that could be exercised under the general law. The court ruled: "[A]s regards rights to be exercised out of and independently of the House ... the statute must be interpreted by this Court independently of the House".<sup>210</sup> In 2001 a decision of the Niue Court of Appeal affirmed the caveat concerning third-party

---

<sup>201</sup> Parliamentary Privilege Act 2014, s 23(1) (the House has no power to expel a member).

<sup>202</sup> *R v Parliamentary Commissioner for Standards, ex parte Al Fayed* [1998] 1 WLR 669 (CA).

<sup>203</sup> *Shaw v Commissioner of Inland Revenue* [1999] 3 NZLR 154 (CA) at [13] citing David McGee "The Legislative Process and the Courts" in Philip A Joseph (ed) *Essays on the Constitution* (Brookers Ltd, Wellington, 1995) at 84.

<sup>204</sup> *Simpson v Attorney-General* [1955] NZLR 271 (CA) at 282; *Jackson v Attorney-General* [2005] UKHL 56, [2006] 1 AC 262 at [163].

<sup>205</sup> Compare the Electoral Act 1993, s 268.

<sup>206</sup> *Westco Lagan Ltd v Attorney-General* [2001] 1 NZLR 40 (HC).

<sup>207</sup> *Jackson v Attorney-General* [2005] UKHL 56, [2006] 1 AC 262.

<sup>208</sup> *Jackson v Attorney-General* [2005] UKHL 56, [2006] 1 AC 262 at [49]–[51].

<sup>209</sup> *Bradlaugh v Gossett* (1884) 12 QBD 271.

<sup>210</sup> *Bradlaugh v Gossett* (1884) 12 QBD 271 at 282.

rights,<sup>211</sup> and in *Awatere Huata v Prebble* the Court of Appeal indicated that the Niue decision would probably also represent the law of New Zealand.<sup>212</sup>

Subject to that caveat, the courts will not be drawn into trespassing upon the province of Parliament. They will not issue orders that require members of Parliament to act in a particular way within Parliament in their capacity as members. It would transgress Parliament's exclusive cognisance, for example, for a court to make an order or declaration that imposed a duty on a member to introduce a bill to require a referendum on a particular Government initiative.<sup>213</sup> In 2014, the United Kingdom Supreme Court declined to entertain a challenge to a Government decision that would have entailed the Court scrutinising Parliament's internal workings. The issues were whether a decision to promote a high-speed rail link was compatible with an EU directive, and whether a proposed hybrid bill procedure would comply with procedural requirements of European law. Scrutinising the workings of Parliament and examining whether they satisfied externally imposed criteria would have involved questioning (and potentially impeaching) Parliament's internal proceedings, contrary to what any United Kingdom court had ever attempted.<sup>214</sup>

## **Exclusive control and the New Zealand Bill of Rights Act 1990**

The courts have disclaimed jurisdiction to review the discharge of the Attorney-General's function of reporting to the House any bill that appears to conflict with the rights and freedoms affirmed by the New Zealand Bill of Rights Act 1990.<sup>215</sup> The Attorney-General's reporting function is discharged as part of a proceeding in Parliament and is absolutely privileged under article 9. Any control of it falls to the House to exercise, to the exclusion of the courts. Similarly, it is for the House to devise procedures and practices to give effect to the protected rights so far as they are to be exercised within the proceedings of Parliament, and to decide in individual cases how these rights are to be applied.

The Court of Appeal has held that any intrusion upon the Attorney-General's reporting function under the Bill of Rights Act would breach the principle of comity and mutual restraint between Parliament and the courts. This would happen, for example, were a court to direct the Attorney-General to report a particular bill to the House, or that it be reintroduced with the Attorney-General affixing a report.<sup>216</sup> However, it would not be a breach of article 9 for a court to conclude that a statute was inconsistent with the New Zealand Bill of Rights Act 1990. Nor, indeed, would the making of a formal declaration of inconsistency infringe article 9. When the High Court made such a declaration in 2015, the Court did not regard itself as infringing article 9.<sup>217</sup> The issue of whether or not a statute is consistent with the Bill of Rights Act is a pure question of law that entails no intrusion on Parliament's internal workings.

There is no prohibition on a court substituting its own interpretation of a statute for that of the House's in respect of proceedings outside Parliament. The court might protect third-party rights under the statute that could be exercised outside and independently of the House.<sup>218</sup> The House's right to interpret how a

<sup>211</sup> *Kalauni v Jackson* [2001] NZAR 292 (Niue CA). The Niue court comprised three New Zealand judges: Casey, Hillyer and Keith JJA.

<sup>212</sup> *Awatere Huata v Prebble* [2004] 3 NZLR 359 (CA) at [54]–[59].

<sup>213</sup> *R (on the application of Wheeler) v Office of the Prime Minister* [2008] EWHC 1409 (Admin) at [49].

<sup>214</sup> *R (on the application of HS2 Action Alliance Ltd) v Secretary of State for Transport* [2014] UKSC 3 at [206].

<sup>215</sup> *Mangawaro Enterprises Ltd v Attorney-General* [1994] 2 NZLR 451 (HC); *Boscawen v Attorney-General* [2009] NZCA 12, [2009] 2 NZLR 229; *Taylor v Attorney-General* [2014] NZHC 1630; *Mangawhai Ratepayers' and Residents' Association Inc v Kaipara District Council* [2014] NZHC 1147.

<sup>216</sup> *Boscawen v Attorney-General* [2009] NZCA 12, [2009] 2 NZLR 229 at [36].

<sup>217</sup> *Taylor v Attorney-General* [2015] NZHC 1706 at [65] and [69] per Heath J (a decision under appeal).

<sup>218</sup> *Haridasan Palayil v Speaker of the Kerala Legislative Assembly* [2003] AIR (Kerala) 328 (penalties imposed for sitting and voting without having taken prescribed oath; court obliged to determine if oath taken in proper form).

statute applies to its own proceedings cannot affect the exercise of legal rights or powers outside Parliament.

## EVIDENCE OF DEBATES AND PROCEEDINGS IN PARLIAMENT

### Authority to refer to debates and proceedings

Historically, the House of Commons took a very restrictive view of attempts to report its debates or proceedings. Although such reports had come to be tolerated by the 19th century,<sup>219</sup> it was nevertheless a technical breach of privilege to report the House's proceedings<sup>220</sup>—a position that remained intact until 1971. To raise such proceedings before a court was regarded as even more serious, with litigants running the risk of being held in contempt. The practice gradually emerged of litigants petitioning the House for leave to refer to its proceedings, where the proceedings were relevant to litigation. By obtaining the House's prior approval to report its proceedings, litigants insured themselves against the House holding them in contempt.

This practice was not a means of securing release from the strictures of the Bill of Rights 1688. Any use of materials that would involve impeaching or questioning proceedings in Parliament was unlawful, and the courts would not hesitate to prevent any such incursion. However, the courts would not forbid uses of parliamentary materials that did not trigger Bill of Rights protection. The admissibility of *Hansard* and the House records as evidence in court did not depend on the House having granted leave for their production. Rather, the House's approval was an assurance for persons using parliamentary materials that they would not come into conflict with the Commons for a breach of its privileges. In 1980 the House of Commons formally abandoned the practice of litigants petitioning it for leave, and granted a general authority to refer to its proceedings. The general authority specifically reaffirms the continuing applicability of article 9 of the Bill of Rights 1688 to any use of those proceedings.<sup>221</sup>

It is doubtful whether the practice of petitioning for leave to refer to parliamentary proceedings ever truly applied in New Zealand. The House of Representatives never took the restrictive view of the publication of its proceedings that was taken by the House of Commons, and never considered it a breach of privilege to report or publish its proceedings (except secret sessions). From its inception, the House was keen to encourage reports of its proceedings, and it instituted an official report of parliamentary debates in 1867. *Hansard*, in contrast, was not made an official report of the House of Commons until 1909.

Nevertheless, there were occasional petitions to the House seeking leave to refer to its proceedings. One early application sought leave to produce as evidence a petition and minutes of the evidence on the petition, but the House refused permission.<sup>222</sup> In later cases, leave was invariably granted, although there was no settled practice of litigants applying for leave in all cases.

In 1996 the House resolved any uncertainty by adopting the House of Commons' practice of granting a general leave for its proceedings to be referred to in legal proceedings.<sup>223</sup> The House made it clear that, by granting a standing permission, it was not intending to derogate from or waive article 9 of the Bill of Rights 1688. It reiterated that any use of parliamentary proceedings in court must

---

<sup>219</sup> *Wason v Walter* (1868) LR 4 QB 73 at 95 per Cockburn CJ.

<sup>220</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 223.

<sup>221</sup> *Ibid.* at 229.

<sup>222</sup> (1880) 37 NZPD 212–215.

<sup>223</sup> SO 411(1).

be in accordance with that provision.<sup>224</sup> It also made it clear that such permission was subject to any rule or order of the House extending confidentiality to its proceedings, such as the rules on confidentiality of select committee proceedings before their report to the House.<sup>225</sup>

## Evidence by members

Members of Parliament are in no special position regarding the evidence that they may give of proceedings in Parliament, although they may obtain exemption from court attendance as witnesses.<sup>226</sup> The frequency of vexatious litigation means that ending this privilege could interfere with a member's primary duty to attend Parliament.<sup>227</sup> The question has arisen of whether or not members of Parliament can be compelled to give evidence of proceedings in Parliament.<sup>228</sup> Members may tender such evidence as is consistent with the House's freedom of speech, as now reaffirmed and clarified by the Parliamentary Privilege Act 2014.<sup>229</sup> Mere factual evidence of what has occurred in Parliament, for example, would not offend against the House's privilege.<sup>230</sup> If the use of evidence that members give does offend against that privilege, then the fact that a member proposes to give it does not make the evidence admissible.<sup>231</sup> Members may claim no exemption from the strictures of article 9. Nor may a member claim any parliamentary immunity from producing, or disclosing the source of, information he or she has received, even if the information has been used in Parliament.<sup>232</sup> However, the court may take into account the broad functions of a member of Parliament in exercising discretion whether or not to order production or to compel the giving of evidence.

In the United Kingdom, members have sometimes objected to presenting evidence of parliamentary proceedings, given the House of Commons' former practice of attempting to suppress reports of its proceedings. On such occasions, the courts have held that the express permission of the House was necessary in order to compel the member's evidence. The need for permission was regarded as an aspect of the House's privilege of control over its own proceedings.<sup>233</sup> However, Australasian legislatures have never asserted a general practice of suppressing reports of proceedings, and there seems to be no reason in principle why such evidence should not be compellable at the court's discretion. The fact that the House had not been consulted would be merely one factor the court would take into account in exercising the discretion.

A court would be expected to respect any confidentiality attaching to specific parliamentary proceedings ordered by the House or applying by virtue of the Standing Orders. This would be so whether or not the court was exercising its discretion to compel evidence or to receive it in the first place.<sup>234</sup> Any member

<sup>224</sup> SO 411(2). See Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at 78–79; Privileges Committee *Question of privilege concerning the defamation action Attorney-General and Gow v Leigh* (11 June 2013) [2011–2014] AJHR I.17A at 17–18.

<sup>225</sup> SO 411(3).

<sup>226</sup> Parliamentary Privilege Act 2014, ss 26–28 (members) and s 29 (Speaker).

<sup>227</sup> Joint Committee on Parliamentary Privilege (UK) *Parliamentary privilege: report of session 2013–14* [2013] HL Paper 30, HC 100 at [265].

<sup>228</sup> See, for example: *Plunkett v Cobbett* (1804) 5 Esp 136, although the reasoning turned on the House's former prohibition on report of debates, which is no longer relevant.

<sup>229</sup> Parliamentary Privilege Act 2014, pt 2, sub-pt 2 (especially ss 11–15).

<sup>230</sup> *Sankey v Whitlam* (1978) 142 CLR 1 at 35–38 per Gibbs ACJ.

<sup>231</sup> *Rost v Edwards* [1990] 2 QB 460.

<sup>232</sup> *Reference re Legislative Privilege* (1978) 18 OR (2d) 529 (ONCA); *Attorney-General v Lightbourn* (1982) 31 WIR 24; *O'Chee v Rowley* (1997) 150 ALR 199 (QCA).

<sup>233</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 228–230.

<sup>234</sup> Parliamentary Privilege Act 2014, s 12 (documents or oral evidence received in private, or received or heard as secret evidence). The prohibitions in s 12 apply to a court or tribunal (even if a member consents or would consent to the court or tribunal using the documents or oral evidence), unless the House or a Committee has communicated, or authorised the communication of, the document or oral evidence.

giving evidence would be under a duty to object if the parliamentary proceedings were confidential. The House has expressly reserved this point in its general permission for evidence to be given of its proceedings; no reference may be made in court to such proceedings contrary to any order of the House relating to their disclosure.<sup>235</sup> The Parliamentary Privilege Act 2014 also directs that no court may require any document submitted in confidence to the House or a committee to be admitted into evidence.<sup>236</sup> If a member suspects that he or she may be compelled to give evidence in breach of that Act or contrary to an order of the House, the member may raise this with the House, which might seek leave of the court to intervene in the proceedings.

### Evidence by parliamentary officials

The House maintains a special rule for parliamentary officials, who may be called upon to tender evidence in court of parliamentary proceedings. The rule applies whether the officer of the House gives evidence in person or by affidavit. The relevant Standing Order covers the Clerk and all other officers of the House (which includes all staff of the Office of the Clerk<sup>237</sup>), and any other person employed to make a transcript of proceedings of the House or of any of its committees. Such officers and persons may not give evidence of Parliament's proceedings without the authority of the House.<sup>238</sup> This Standing Order is directed solely to the way evidence of parliamentary proceedings may be obtained; it does not prohibit the use of parliamentary proceedings before a court or other tribunal. The Bill of Rights 1688 and the accompanying Parliamentary Privilege Act 2014 set out the legal prohibition on such uses. Parliamentary officials are bound by the Standing Orders and the giving of any evidence by them must comply with the House's own rules on the disclosure of its proceedings.<sup>239</sup>

Applications for officers to give evidence can be made by way of petition to the House, or they can be dealt with on a motion for which notice is necessary. During an adjournment of the House, the Speaker may give authority on behalf of the House, unless, in the Speaker's opinion, the matter should await consideration by the House itself.

## CONTROL OVER THE PARLIAMENTARY PRECINCTS

### The Speaker as occupier

The House, through the Speaker, exercises the control over the parliamentary precincts necessary for the proper functioning of a legislature. This control can include excluding persons from the parliamentary precincts, although any control exercised by the Speaker as occupier must comply with the New Zealand Bill of Rights Act 1990.<sup>240</sup> (See pp 158–160.) Parliament is not a sanctuary and its members are not above the law.<sup>241</sup> The New Zealand Bill of Rights Act 1990 specifically applies to the legislative branch of government,<sup>242</sup> which enjoins the compliance of the House as a constituent element.

### Exercise of enforcement and information-gathering powers

Parliaments have sought to establish procedures with external agencies about the exercise of enforcement or information-gathering powers, to ensure a

<sup>235</sup> SO 411(3).

<sup>236</sup> Parliamentary Privilege Act 2014, s 12.

<sup>237</sup> Clerk of the House of Representatives Act 1988, s 18.

<sup>238</sup> SO 412; for example: see (12 September 2006) 634 NZPD 5327 Wilson.

<sup>239</sup> SO 411(3).

<sup>240</sup> *Police v Beggs* [1999] 3 NZLR 615 (HC); *Rongonui v Police* HC Wellington CRI-485-46, 5 October 2010.

<sup>241</sup> *R v Chaytor* [2010] UKSC 52, [2011] 1 AC 684 at [80]; *Field v R* [2010] NZGA 556, [2011] 1 NZLR 784 at [20].

<sup>242</sup> New Zealand Bill of Rights Act 1990, s 3(a).

common understanding of how such powers might be exercised without infringing parliamentary privilege.<sup>243</sup> In New Zealand, the Speaker has entered into agreements with the Commissioner of Police regarding policing functions within the parliamentary precincts, including the execution of search warrants on premises occupied or used by members of Parliament.<sup>244</sup> The Speaker has also entered into a memorandum of understanding with the New Zealand Security Intelligence Service and the Minister in Charge of the New Zealand Security Intelligence Service, which concerns the collection and retention of security intelligence information.<sup>245</sup> This memorandum was entered into following a report by the Inspector-General of Intelligence and Security on a complaint by a member of Parliament.<sup>246</sup>

These documents record the mutual understandings about the checks and balances that apply regarding the protection of the privileges of the House and about the ability of enforcement and surveillance agencies to undertake their duties. These agreements do not confer new powers on the agencies or protections on the House but they do provide a framework for the agencies to go about their lawful functions without breaching parliamentary privilege.

### **Control of parliamentary information**

Control over the parliamentary precincts also extends to the management and release of information held on parliamentary information and security systems. Dealing with information within the parliamentary precincts and by members of Parliament has become highly complex. There are different categories of information, some of which have special protection, such as proceedings in Parliament. Information might also be held by people in different capacities: as ministers, as members of Parliament, as party members, or as staff or journalists working in the parliamentary precincts. Concern has been expressed that Parliament's information and security systems might cause proceedings in Parliament to be released inadvertently, or in ways that would compromise the protection afforded by parliamentary privilege. On one occasion, much personal information was released to an executive inquiry without the knowledge or consent of the member or journalist concerned, or the Speaker. The information included the metadata of the member's and journalist's emails, telephone logs and security records of swipe card usage within the precincts. This prompted the House to adopt a protocol to protect parliamentary information against improper disclosure.<sup>247</sup>

The protocol takes account of the distinct roles and functions of the key groups who operate within the parliamentary precincts, and the different categories of information held on parliamentary information and security systems. The protocol sets out principles to guide the release of information so that the privacy interests of members and others working within the parliamentary precincts are not compromised. The principles are, in summary, as follows.

---

<sup>243</sup> For example, see House of Commons (UK) Committee on Issue of Privilege *Police searches on the parliamentary estate [2009–2010]* HC 62; *Memorandum of understanding on the execution of search warrants in the premises of members of the New South Wales Parliament between the Commissioner of Police, the President of the Legislative Council and the Speaker of the Legislative Assembly* (November 2010).

<sup>244</sup> See the agreement between the Speaker and the Commissioner of Police regarding policing functions within the parliamentary precincts (18 December 2007); and the agreement between the Speaker and the Commissioner of Police regarding the execution of search warrants on premises occupied or used by members of Parliament (7 November 2006).

<sup>245</sup> See Privileges Committee, interim report on a question of privilege concerning the agreements for policing, execution of search warrants, and collection and retention of information by the NZSIS (11 June 2013) [2011–2014] AJHR L.22B at App B (Memorandum of understanding between the New Zealand Security Intelligence Service, and the Minister in Charge of the New Zealand Security Intelligence Service and the Speaker (December 2010)).

<sup>246</sup> Ibid, at App B.

<sup>247</sup> (22 July 2014) 700 NZPD 19325–19338.

- There should be a presumption that information held on the parliamentary information and security systems should not be released.
- Individual members should retain complete control over the release of information that relates to them and must specifically agree to its release.
- Journalists working in the parliamentary precincts should retain complete control over the release of information that relates to them and must specifically agree to its release.
- The Speaker of the House should be the ultimate decision-maker where information requests do not relate to an individual member.<sup>248</sup>

The protocol also requires the parliamentary agencies to develop guidelines for dealing with requests about parliamentary administration, that balance openness and transparency, privacy principles and parliamentary independence.

## POWER TO CONTROL ACCESS TO ITS SITTINGS

The House possesses the power to control access to its sittings by regulating the attendance and conduct of members and non-members at sittings, and by excluding strangers as it sees fit.<sup>249</sup>

### Proceedings in the House

The House's privileges include the power to suspend members from the business of the House if this is necessary for the House to conduct its business in an orderly fashion.<sup>250</sup> The House has rules for the maintenance of order, setting out when members may be excluded from the Chamber.<sup>251</sup> (See pp 152–155.)

Strangers are normally allowed to be present during all sitting hours of the House. However, any member of the House may move, without notice: "That strangers be ordered to withdraw".<sup>252</sup> A debate, but not a member speaking, may be interrupted to deal with such a motion.<sup>253</sup> The motion is decided immediately, without amendment or debate.<sup>254</sup> If it is carried, the public galleries are cleared immediately, the broadcasting of debates is discontinued, Hansard reporters and members of the Press Gallery withdraw, and no official report of the debate is made. A record only of the formal motions moved and questions put is noted by the Clerk for the journal.<sup>255</sup>

Exigencies during the Second World War demanded that some sessions of the House were held under secrecy. After ordering the exclusion of strangers, the House sometimes resolved that the rest of the sitting should be a secret session. Under regulations, it was an offence to publish a report of such proceedings in any public speech, newspaper, periodical, circular or other publication, unless the Speaker had officially authorised the report.<sup>256</sup> Members were prohibited from discussing or commenting in the House on what had passed at secret sessions.<sup>257</sup> However, anything said at a secret session could be repeated outside the House if it did not constitute giving information to the enemy, was not confidential and was not attributed as having been discussed at a secret session.<sup>258</sup>

<sup>248</sup> Privileges Committee *Question of privilege regarding use of intrusive powers within the parliamentary precinct* (11 July 2014) [2011–2014] AJHR I.17C at App C.

<sup>249</sup> *New Brunswick Broadcasting Co v Nova Scotia (Speaker of the House of Assembly)* [1993] 1 SCR 319, (1993) 100 DLR (4th) 212.

<sup>250</sup> *Egan v Willis* (1996) 40 NSWLR 650 (CA).

<sup>251</sup> SOs 89–93.

<sup>252</sup> SO 41(1).

<sup>253</sup> SO 132(f).

<sup>254</sup> SO 41(2).

<sup>255</sup> SO 42.

<sup>256</sup> Parliamentary Secret Session Emergency Regulations 1940; (1940) 257 NZPD 123. The regulations, made by Order in Council on 5 June 1940, were never published.

<sup>257</sup> (1940) 257 NZPD 135, 455.

<sup>258</sup> (1941) 259 NZPD 287–288.

The first secret session was held on 5 June 1940,<sup>259</sup> followed by 17 further secret sessions. On one occasion, the galleries were cleared on the Speaker's own authority.<sup>260</sup> However, officials, such as the chiefs of staff and members of the Press Gallery ("who were forbidden to report anything")<sup>261</sup> were admitted to some secret sessions.<sup>262</sup> The secret sessions regulations were revoked, along with several other emergency regulations, in 1947.<sup>263</sup>

Subject to any order of the House, the Speaker controls admission to the galleries and may make rules for the conduct of persons admitted to them.<sup>264</sup> The Speaker has ordered all strangers to withdraw from the galleries when the subject under debate warranted their withdrawal.<sup>265</sup> The Speaker or the Serjeant-at-Arms may require strangers to withdraw where they interrupt proceedings or otherwise misbehave.<sup>266</sup>

## Select committee proceedings

Admission to and exclusion from meetings of select committees are dealt with earlier, as are the circumstances in which reports of proceedings of select committees may be divulged before the committee reports to the House. (See Chapters 22–23.) The unauthorised release of select committee proceedings or reports may be adjudged in contempt of the House. (See pp 771–772.)

## Official Information

The House's privilege of maintaining the confidentiality of parliamentary materials is recognised in the statutes that provide for access to information. Requests for access to parliamentary materials may be declined if to release them would lead to a contempt of the House.<sup>267</sup> This protects Ministers and their officials, who have confidential select committee documents circulated to them in the course of their duties, from having to disclose such documents, and thereby committing a breach of privilege.

## POWER TO HOLD INQUIRIES

The House has inherent power to inquire into any matter that it considers needs investigation. Select committees likewise possess this power.<sup>268</sup>

## POWER TO OBTAIN EVIDENCE

To facilitate the exercise of its power to inquire, the House may obtain information and evidence by summoning witnesses and ordering the production of documents. This power may be delegated to a select committee as "the power to send for persons, papers and records". (See pp 494–497.)

<sup>259</sup> (1940) 258 NZPD 546.

<sup>260</sup> (1942) 261 NZPD 930.

<sup>261</sup> Michael Bassett with Michael King *Tomorrow Comes the Song—A Life of Peter Fraser* (Penguin Books (NZ) Ltd, Auckland, 1993) at 243–244.

<sup>262</sup> (1942) 261 NZPD 423; (1943) 262 NZPD 517.

<sup>263</sup> Emergency Regulations Continuance Act 1947, s 6.

<sup>264</sup> SO 44; R Hon Jonathan Hunt MP, rules for admission to the Chamber, lobbies and galleries of the House of Representatives during the sittings of the House (4 July 2000).

<sup>265</sup> (1891) 74 NZPD 98.

<sup>266</sup> SO 43.

<sup>267</sup> Official Information Act 1982, s 18(c)(ii); Local Government Official Information and Meetings Act 1987, s 48(1)(b); Privacy Act 1993, s 29(1)(i).

<sup>268</sup> SO 189(2). See Chapter 30.

## POWER TO ADMINISTER OATHS

The House and its committees have the power to administer oaths to witnesses. This power is set out in section 24 of the Parliamentary Privilege Act 2014, re-enacting section 252 of the Legislature Act 1908. (See p 498.)

## POWER TO DELEGATE

The House has always exercised a power to form committees of members and to delegate to them parliamentary functions and powers. It has been said that parliamentary committees are extensions of the legislature and derive their authority from it, and that while acting within the scope of their delegated authority they are every bit as “parliamentary” as the legislature as a whole.<sup>269</sup> The functions so delegated to committees include the examination of legislation, Estimates, treaties, petitions, and the conduct of inquiries. The powers the House delegates to committees are ancillary to the carrying out of these functions. These powers include disciplinary authority over committee members and authority to regulate access to committee proceedings. Coercive power to require persons to attend committees and produce papers or documents is no longer generally delegated to committees.

The House may also delegate powers to individual members in their own right. It does so through the Speaker, who exercises considerable power, both within the House and outside the Chamber, to make decisions that would otherwise need to be taken by the House. For example, the Speaker is delegated the power to issue a summons at the request of a select committee, requiring a person to appear before the committee or to produce papers or documents to it. The House may also delegate its powers to non-members, specifically officers of the House, such as the Clerk of the House and the Serjeant-at-Arms, who exercise powers on its behalf. The Speaker, acting on behalf of the House, retains oversight over the exercise of the powers so delegated. However, the House does not delegate the power to punish for contempt, as this power is exercised so as to uphold the dignity and authority of the House itself. (See Chapter 46.)

It is uncertain how far, if at all, the House may delegate its *functions* (as opposed to *powers*) to non-members, and give them parliamentary authority. In the past, the House has enacted specific legislation when it has wanted another body or group of persons to carry out its functions.<sup>270</sup> The analogous situation is where Officers of Parliament carry out functions on behalf of the House, which is invariably authorised under statute.<sup>271</sup> (See Chapter 47.)

## POWER TO PUNISH FOR CONTEMPT

The House’s power to punish for contempt is discussed separately in Chapter 46.

## POWER TO EXERCISE DISCIPLINE OVER MEMBERS

Members are exempt from being punished or disciplined outside the House on account of what they say or do in the course of parliamentary proceedings. Conversely, members are accountable to the House for their conduct in parliamentary proceedings. The House’s rules of order in debate subject members to the discipline of the House, which may ultimately suspend members from service in the House or on its committees. (See pp 152–153.)

<sup>269</sup> *Attorney General (Canada) v MacPhee* 2003 PESCTD 6 at [41].

<sup>270</sup> Awarua Seat Inquiry Act 1897 (determination of membership of the House).

<sup>271</sup> Finance and Expenditure Committee Report on the inquiry into Officers of Parliament (21 March 1989) [1987–1990] AJHR I.4B. See Chapter 7.

## POWER TO FINE

The House's power to fine members or others is confirmed in the Parliamentary Privilege Act<sup>272</sup> and is discussed in Chapter 47.

## POWER TO ARREST

The House's power to arrest or commit persons into custody is discussed in Chapter 47.

## POWER TO CONTROL REPORTS OF ITS PROCEEDINGS

One of the incidents of the House's freedom of speech in debate is its power to control the extent to which its proceedings may be reported. Historically, the House of Commons was innately suspicious of reports of its proceedings circulating, and, until as late as 1971, treated such reports as technical breaches of privilege. In contrast, the House of Representatives has never sought to protect the confidentiality of its debates but has done quite the opposite in seeking to publicise its proceedings. Nevertheless, it has consistently asserted the power to control the release of reports of its proceedings. The House treats the release of proceedings of committees differently from release of the proceedings of the House itself. It has always taken the view that it should be the first body to learn of the deliberations and conclusions of its own committees. The report and certain other proceedings of a committee remain confidential until the committee reports to the House. Premature disclosure of such matters may be treated as a contempt.<sup>273</sup>

The House has never sought to embargo its proceedings under confidentiality orders, except during periods in the Second World War (1939–1945) when the House ordered secret sessions.<sup>274</sup> The proceedings of the House have been broadcast on radio since 1936 and have been available for television broadcasting since 1988.

## DISQUALIFICATION OF MEMBERS FROM JURY SERVICE

The House of Commons has always claimed under privilege that its members are exempt from being required to serve on juries. The law expressly regulates this matter in New Zealand. The Juries Act 1981 provides that the Governor-General, members of the Executive Council and members of Parliament are not to serve on any jury in any court on any occasion.<sup>275</sup>

## EXEMPTION FROM LIABILITY FOR PARLIAMENTARY PUBLICATIONS

At common law, no privilege existed to protect any parliamentary publication from legal liability. It was no defence to a legal action that a document on which an action was based was published by order of the House.<sup>276</sup> In 1840 the United Kingdom Parliament passed specific legislation in order to protect such publications from legal liability.<sup>277</sup> The New Zealand Parliament passed equivalent legislation in 1856.<sup>278</sup> The Parliamentary Privilege Act 2014 now provides comprehensive protection for the communication of parliamentary proceedings under the

<sup>272</sup> Parliamentary Privilege Act 2014, s 22.

<sup>273</sup> SOs 239(1), 240(1), 241(1) and 410(q).

<sup>274</sup> See "Power to control access to its sittings", p 750.

<sup>275</sup> Juries Act 1981, s 8.

<sup>276</sup> *Stockdale v Hansard* (1839) 9 A & E 1, 112 ER 1112 (QB).

<sup>277</sup> Parliamentary Papers Act 1840 (UK).

<sup>278</sup> Privileges Act 1856.

authority of the House or a committee, in any form or medium, whether live or delayed.<sup>279</sup> (See also pp 622–624.)

Examples of “communication” of a document or proceedings include:<sup>280</sup>

- delivery of a printed copy of the document
- email of an electronic copy of the document
- internet posting of an electronic copy of the document
- radio broadcast of, or an audio file of, the proceedings
- television broadcast of, or of a video file or recording of, the proceedings
- internet webcast or podcast of, or of an audio or video file or recording of, the proceedings
- transmission of the document, or of an audio or video file or recording of, the proceedings.

If civil or criminal proceedings are commenced against a person regarding a communication made under the authority of the House or a committee, the Speaker may grant a certificate that may be lodged in any court or tribunal, which must then stay the proceedings.<sup>281</sup>

The House has broadcast its proceedings on radio since 1936, but this did not occur by order of the House until 1962.<sup>282</sup> The live and recorded television and webcast coverage of the House and the public proceedings of select committees is made under the authority of the House.<sup>283</sup> The House has published official reports of its proceedings (*Hansard*) since 1867, but initially did so under the authority of the Government. Today it is published under the House’s authority in accordance with determinations and rules made and approved by the House or by the Speaker.<sup>284</sup>

The Copyright Act 1994 provides that copyright is not infringed by anything done for the purposes of parliamentary proceedings or the reporting of them.<sup>285</sup> Where copyright material is used in parliamentary proceedings, liability was unlikely to arise in any event. The Copyright Act declares that nothing in the Act “affects any right or privilege of the House of Representatives”.<sup>286</sup> It is unlikely, however, that republication of documents generated in the parliamentary process (other than as a report of parliamentary proceedings) for commercial purposes or private gain will be protected from liability.<sup>287</sup>

## FREEDOM FROM ARREST

Members of Parliament enjoy freedom from arrest in civil process. The privilege of freedom from civil arrest runs from 40 days before the start of each parliamentary session until 40 days after its termination.<sup>288</sup> The 40-day period after the end of the session continues to run when Parliament stands dissolved,<sup>289</sup> even if the person claiming the privilege was a member of the old Parliament but was not re-elected

<sup>279</sup> Parliamentary Privilege Act 2014, s 17; SO 3(4).

<sup>280</sup> See the examples given in the definition of “communication” in s 5(1) of the Parliamentary Privilege Act 2014.

<sup>281</sup> Parliamentary Privilege Act 2014, s 17.

<sup>282</sup> SO 46(1).

<sup>283</sup> SO 46(2).

<sup>284</sup> SO 9.

<sup>285</sup> Copyright Act 1994, s 59.

<sup>286</sup> Copyright Act 1994, s 225(1)(c).

<sup>287</sup> (18 February 2002) 2 PD HR (Aust) 380.

<sup>288</sup> *Goudy v Duncombe* (1847) 1 Ex 430, 154 ER 183; *In the matter of Pillalamarri Venkateshwarlu* [1951] AIR (Madras) 269; *Ainsworth Lumber Co v Canada (Attorney General)* (2003) 226 DLR (4th) 93 (BCCA).

<sup>289</sup> *Barnard v Mordaunt* (1754) 1 Keny 125.

in the new Parliament.<sup>290</sup> In New Zealand and also in the United Kingdom, it has been recommended that this privilege be abolished.<sup>291</sup>

This privilege has lost most of its relevance following the practical abolition of imprisonment for debt in New Zealand. Legislation enacted in 1874 abolished imprisonment for failure to pay moneys owing, except in very restrictive circumstances.<sup>292</sup> However, members are not exempt from arrest in criminal matters (see discussion following), and are not immune from detention under an inpatient order for mental disorder.<sup>293</sup>

A similar privilege of freedom from arrest in civil process applies to the following persons: witnesses summoned to attend before the House or a committee; witnesses in attendance upon the business of the House; and officers of Parliament in personal attendance on the House.<sup>294</sup> The privilege enjoyed by witnesses attending upon the House or a committee subsists while they are coming to or going from the House.

## Criminal matters

There is no general immunity from the criminal law for members of Parliament. The privilege of freedom from arrest applies only to civil proceedings. It does not protect members from arrest in criminal matters or from detention under emergency powers.<sup>295</sup> Parliament has never challenged the general application of the criminal law within its precincts. The fact that a crime has been committed in the House or within its precincts is no bar to the jurisdiction of the criminal courts.<sup>296</sup> The only privilege that members enjoy in criminal matters is that words used by them in proceedings in Parliament cannot be made the subject of criminal proceedings or be used to support a prosecution. A court, therefore, will be concerned to ensure that a member has not been arrested on account of anything said in House debates or a committee of the House.<sup>297</sup> The United Kingdom Supreme Court has distinguished between “ordinary crimes” (such as murder, assault or theft, which can be prosecuted in the criminal courts) and crimes committed in the exercise of a member’s freedom of speech in debate (which cannot be prosecuted in the courts).<sup>298</sup>

The distinction between “ordinary” and “parliamentary” crimes has supported several prosecutions in the courts against members of Parliament. In 2003–2005, a member accepted free or low-cost labour on his properties by people who sought his assistance with immigration matters. Following allegations of corruption, an executive inquiry was commenced into the member’s conduct and the Speaker ruled that no question of privilege arose as the matter did not involve a parliamentary process.<sup>299</sup> The police then investigated and arrested the member, who was charged and convicted at trial under the Crimes Act 1961 of bribery and corruption as a member of Parliament.<sup>300</sup> During the inquiry, police investigation and criminal trial, no issue of parliamentary privilege arose.

<sup>290</sup> *Re Anglo-French Co-operative Society* (1880) 14 Ch D 533.

<sup>291</sup> See Standing Orders Committee Report on the Parliamentary Privilege Bill (15 October 1999) [1996–1999] AJHR I.18C at 6; Joint Committee on Parliamentary Privilege (UK) *Parliamentary privilege: report of session 2013–14* [2013] HL Paper 30, HC 100 at [257], which concurred with the recommendations of the 1999 Joint Committee that this privilege should be formally abolished.

<sup>292</sup> See now Imprisonment for Debt Limitation Act 1908.

<sup>293</sup> Electoral Act 1993, ss 55 and 56. Compare orders under the Alcoholism and Drug Addiction Act 1966, proposed to be replaced by the Substance Addiction (Compulsory Assessment and Treatment) Bill (116–1).

<sup>294</sup> Malcolm Jack (ed) *Erskine May’s Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 249–250.

<sup>295</sup> Ibid, at 243–245; *R v Chaytor* [2010] UKSC 52 at [80].

<sup>296</sup> *R v Chaytor* [2010] UKSC 52 at [80]; *Field v R* [2010] NZCA 556, [2011] 1 NZLR 784 at [20]; *Slipper v Magistrates Court of the ACT* [2014] ACTSC 85.

<sup>297</sup> *In the matter of Pillalamarri Venkateshwarlu* [1951] AIR (Madras) 269.

<sup>298</sup> *R v Chaytor* [2010] UKSC 52 at [113].

<sup>299</sup> (26 July 2006) 632 NZPD 4404–4405 Wilson.

<sup>300</sup> *Field v R* [2010] NZCA 556, [2011] 1 NZLR 784; [2011] NZSC 129, [2012] 3 NZLR 1.

A member convicted of a crime is in the same position as any other convicted person. However, in addition to the penalty imposed, the member will also lose his or her seat in the House if the crime carries a penalty of imprisonment of two years or more, or if the member is committed to prison and fails, without obtaining leave of absence, to attend the House for a whole session.<sup>301</sup> The fact that a member who is lawfully imprisoned is at peril of losing his or her seat for not attending the House is no ground for a court to grant relief against the detention.<sup>302</sup> Although members enjoy no freedom from arrest in criminal matters, the House expects to be informed of the arrest or detention of any of its members. The arresting or sentencing authority must inform the Speaker of the circumstances by letter.<sup>303</sup> A member who is arrested or detained is entitled to communicate with the Speaker on parliamentary business.<sup>304</sup>

In 2014 a member of Parliament resigned following his conviction for an offence under the Local Electoral Act 2001, which carried a penalty that could have triggered a vacancy under the Electoral Act 1993. On appeal the conviction was quashed and a new trial ordered.<sup>305</sup>

### Contempt of court

It has been said that members' immunity from arrest does not apply in respect of contempt of court.<sup>306</sup> This depends upon whether or not the contempt is of a criminal or civil nature.<sup>307</sup> Members are not exempt from being proceeded against for a contempt of court of a criminal nature, and such proceedings are not a breach of privilege.<sup>308</sup> Members in New Zealand have been proceeded against for contempt of court, and one member has been found to be in contempt.<sup>309</sup>

The distinction between civil and criminal contempt is key. Proceedings for the former type of contempt are brought "to compel performance of a civil obligation", while proceedings for the latter type punish conduct "which has about it some degree of criminality, some defiance of the general law".<sup>310</sup> In Australia, a committee of the House of Representatives resolved that it was a breach of parliamentary privilege to commit to prison a member for failure to pay court costs awarded against him in a civil action. However, this view has been challenged on the ground that commitment for costs is criminal in nature, even if the costs are awarded in a civil action.<sup>311</sup>

Parties to legal proceedings are under an obligation not to use materials obtained in court proceedings for an extraneous purpose. In one case, a party to legal proceedings disclosed the other party's affidavits to a Minister, which led to the enactment of legislation that retrospectively extinguished the rights of the other party. The use of the affidavits for an extraneous purpose was not protected by parliamentary privilege, and the party was held to be in contempt of court.<sup>312</sup>

It is clear that court orders do not prohibit members from making statements in Parliament. The court's process does not "reach" the House, although the House

<sup>301</sup> Electoral Act 1993, s 55(1)(a), (d).

<sup>302</sup> *Kunjan Nadar v State of Travancore-Cochin* [1955] AIR (Travancore-Cochin) 154.

<sup>303</sup> (9 April 1918) [1918] JHR 2; (4 November 2003) 613 NZPD 9621.

<sup>304</sup> *Re Ananda Nambiar* [1952] AIR (Madras) 117.

<sup>305</sup> *R v Banks* [2014] NZHC 1244 and [2014] NZHC 1807; *Banks v R* [2014] NZCA 575; *Banks v R* [2015] NZCA 182.

<sup>306</sup> *Re Ouellet (No 1)* (1976) 67 DLR (3d) 73 (CS).

<sup>307</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 246–247.

<sup>308</sup> *Ibid.*

<sup>309</sup> *Solicitor-General v Broadcasting Corporation of New Zealand* [1987] 2 NZLR 100 (HC) (radio and press statements by member relating to a person being tried—no contempt found); *Solicitor-General v Smith* [2004] 2 NZLR 540 (HC) (pressure on litigants, criticism of a court and disclosure of court proceedings—contempts found).

<sup>310</sup> *Stourton v Stourton* [1963] 1 All ER 606 at 610, [1963] P 302 at 310.

<sup>311</sup> BC Wright *House of Representatives Practice* (6th ed, Department of the House of Representatives, Canberra, 2012) at 724–725.

<sup>312</sup> *Street v Hearne* [2007] NSWCA 113.

might adjudge a member who wantonly breached a suppression order to be in contempt for abuse of Parliament's freedom of speech. Material covered by court injunctions has on occasion been released in Parliament, prompting attempts to have the court lift the restrictions on account of the material being publicly available as proceedings in Parliament.<sup>313</sup> In the United Kingdom, concern has been expressed over the use of "super-injunctions" whose very existence may not be disclosed or published. The use of such injunctions, and the use of parliamentary proceedings to flout judicial orders, has prompted concern about the principle of comity and mutual respect between Parliament and the courts. A Joint Committee set up to consider the issue in the United Kingdom concluded that instances of irresponsible use were rare and that no special procedures were necessary.<sup>314</sup>

## **EXEMPTION FROM ATTENDANCE AS A WITNESS IN LEGAL PROCEEDINGS**

The Parliamentary Privilege Act 2014 exempts members and certain officers of the House (the Clerk of the House, the Deputy Clerk, a Clerk-Assistant and the Serjeant-at-Arms) from attending a court or tribunal as a witness during a session.<sup>315</sup> These provisions have codified and superseded any exemptions that would otherwise have applied at common law.

The statutory exemptions of members and officers from attendance in court do not limit or affect the general power of the House to grant or withhold leave for its members or officers to attend and give evidence. However, officers and employed transcribers must not give evidence of proceedings in Parliament without the permission of the House.<sup>316</sup> The House's authority to give evidence of proceedings in Parliament may also be required to avoid members, officers or others breaching section 12 of the Parliamentary Privilege Act 2014, or otherwise disclosing proceedings in Parliament contrary to any Standing Order or other order of the House. Section 12 prohibits the disclosure of documents or oral evidence received by the House or its committees in private, or as secret evidence.

In the United Kingdom, a 2013 report supported the continuation of the privilege not to respond to a court summons to attend in court as a witness. There was no evidence that the privilege had caused harm, and abolishing it could interfere with the members' primary duty to attend Parliament (see "Evidence by members", p 747).<sup>317</sup>

### **Certificates of exemption from attendance**

Any member (other than the Speaker) or officer may apply to the Speaker to be exempted from attendance if required by a summons to attend upon any court or tribunal. The Speaker's certificate exempts a member or officer from attending personally as a party or witness in a civil proceeding, or as a witness in a criminal proceeding.<sup>318</sup> No exemption may be granted if the member or officer is a defendant in criminal proceedings. The Parliamentary Privilege Act 2014 contains a comprehensive definition of the term "court". A court includes the Supreme Court, the Court of Appeal, the High Court, a District Court (including a Family Court, a Youth Court and a District Court sitting in its admiralty jurisdiction), the

---

<sup>313</sup> *Goodwin v News Group Newspapers Ltd* [2011] EWHC 1309 (QB) at [5].

<sup>314</sup> See Joint Committee on Privacy and Injunctions (UK) *Privacy and injunctions: session 2010–12* [2012] HL Paper 273, HC 1443.

<sup>315</sup> Parliamentary Privilege Act 2014, pt 4, sub-pt 4. See also: s 5(1), definition of "officer", para (a).

<sup>316</sup> SO 412.

<sup>317</sup> See Joint Committee on Parliamentary Privilege (UK) *Parliamentary Privilege: report of session 2013–14* [2013] HL Paper 30, HC 100 at [265].

<sup>318</sup> Parliamentary Privilege Act 2014, ss 26–28 (re-enacting former ss 257 and 261–264 of the Legislature Act 1908).

Court Martial of New Zealand, the Court Martial Appeal Court, the Employment Court, the Environment Court, the Māori Appellate Court and the Māori Land Court. A “tribunal” means any person or body (other than the House, a committee, or a court, but including an inquiry under section 6 of the Inquiries Act 2013) with power to summons witnesses and take evidence on oath or affirmation, or with power to require (by, or without, a summons) the giving or supply (on, or without, oath or affirmation) of evidence or information.<sup>319</sup> Inquiries under section 6 of the Inquiries Act include royal commissions, public inquiries and Government inquiries.

To claim exemption, the member or officer must apply to the Speaker, certifying that it is necessary for him or her to attend to parliamentary business, and provide any further information that may be relevant to the Speaker’s consideration of the application. The Speaker may seek the views of other parties involved in the legal proceedings and give them an opportunity to comment.<sup>320</sup>

The Speaker must grant an exemption certificate on an application, unless satisfied (after any inquiry he or she thinks fit to make) that non-compliance with the summons would defeat or delay injuriously the interests of justice, or cause irreparable injury to another party.<sup>321</sup> The certificate must attach a copy of the summons and identify the attendance concerned, and be signed by the Speaker.<sup>322</sup> An exemption certificate exempts the member or officer from attending the court or tribunal until the end of the session during which the certificate was granted, or the end of the calendar year after the calendar year during which the certificate was granted, whichever is the earlier.<sup>323</sup>

If the Speaker is summonsed to attend a court or tribunal, the matter may be submitted to the House for it to decide what action should be taken. The House may make any order it thinks fit, including an order exempting the Speaker from attending the court or tribunal for the standard period: that is, until the earlier of the end of the session during which the certificate was granted, or the end of the calendar year after that during which the certificate was granted.<sup>324</sup> Speakers have been exempted by the House on three occasions.<sup>325</sup> During an adjournment, the Speaker may sign a certificate that exempts the Speaker from attendance, but the exemption must be submitted for the consideration of the House at the first available opportunity.

### *Effect of certificate or order*

Where a certificate granted by the Speaker, or an order made by the House, is presented to a court or tribunal, the member, officer or Speaker (as the case may be) is exempted from attendance. No civil or criminal proceedings may be commenced or continued against the member, officer or Speaker for not complying with the summons or for other non-attendance. Upon notification of the exemption, the court or tribunal may adjourn the proceedings on any terms it thinks convenient and just.<sup>326</sup> A court and all persons acting judicially must take judicial notice of the Speaker’s signature on an exemption certificate.<sup>327</sup>

<sup>319</sup> Parliamentary Privilege Act 2014, s 5.

<sup>320</sup> The Speaker, “Service of proceedings on members of Parliament” (7 December 2005).

<sup>321</sup> Parliamentary Privilege Act 2014, s 27.

<sup>322</sup> Parliamentary Privilege Act 2014, s 27.

<sup>323</sup> Parliamentary Privilege Act 2014, s 28.

<sup>324</sup> Parliamentary Privilege Act 2014, s 29.

<sup>325</sup> (13 September 1906) [1906] JHR 66; (16 November 1977) [1977] JHR 394; (26 April 1988) [1987–1990] 1 JHR 552.

<sup>326</sup> Parliamentary Privilege Act 2014, s 30.

<sup>327</sup> Parliamentary Privilege Act 2014, s 31.

## RIGHT TO HAVE CIVIL PROCEEDINGS ADJOURNED

In earlier times, it was a breach of privilege to bring a civil action against a member of Parliament or the member's servant during a session. Such privileges were abolished during the 18th century by legislation, although the House of Commons (and by extension the House of Representatives) may still, in an appropriate case, treat as a contempt the bringing of legal proceedings against a member in respect of conduct in the House, and punish it accordingly.<sup>328</sup> The Parliamentary Privilege Act 2014 now codifies the privileges of members in respect of civil proceedings instituted against them.

In 1872 a particular member's personal attendance at a civil action against him was not actually required by process of law, although it was in his interests to attend the trial personally. He was unable to do so because he had to attend the House, so legislation was passed to enable members and officers in this situation to obtain an adjournment of the proceedings.<sup>329</sup>

The Parliamentary Privilege Act 2014 repealed the former statutory process allowing a member or an officer to seek an adjournment of civil proceedings where the House required their attendance.<sup>330</sup> Now, the legislation simply provides for the court or tribunal to grant an adjournment on any terms that it thinks convenient and just.<sup>331</sup> With the availability of air travel and pre-trial conferences, it would be unlikely that a member or an officer who wished to give evidence would be unable to do so. The matter could be dealt with by an application to the court, which would obviate the need for an adjournment.

## SERVICE OF LEGAL PROCESS

Before the Parliamentary Privilege Act 2014, the law restricted the service of process and court documents against members of Parliament from courts other than the Court of Appeal, the High Court and District Courts.<sup>332</sup> Service of proceedings out of other courts was invalid and of no effect for most sessions. The Parliamentary Privilege Act 2014 has now removed the resulting anomalies and limitations.

Members are not immune from the service of process from a court or tribunal. Nevertheless, how and where such process is served is material in determining whether it constitutes an affront to the dignity of the House and should be treated as a contempt.<sup>333</sup> Serving members within the parliamentary precincts, for example, has been adjudged to be a contempt.<sup>334</sup>

## POWER TO DETERMINE THE QUALIFICATIONS OF MEMBERS TO SIT AND VOTE IN THE HOUSE

The House of Commons has asserted several privileges regarding its own membership. They have included the power to order writs to be issued to fill vacancies in its membership, trying controverted elections and determining the qualifications of members to sit in the Commons. It is doubtful whether the first two of these powers have ever been possessed by the House of Representatives as aspects of parliamentary privilege. From the inception of the colonial legislature in

<sup>328</sup> *Re Parliamentary Privileges Act 1770* [1958] AC 331 (PC).

<sup>329</sup> Privileges Act 1866 Amendment Act 1872, s 3.

<sup>330</sup> Legislature Act 1908, ss 265–266 (repealed by the Parliamentary Privilege Act 2014, s 38(1)).

<sup>331</sup> Parliamentary Privilege Act 2014, s 30(c).

<sup>332</sup> Legislature Act 1908, ss 257(1) and 267.

<sup>333</sup> Privileges Committee, report in relation to service of subpoena on the Minister of Justice (6 September 1990) [1990] AJHR I.15 at [12]; SO 410(c).

<sup>334</sup> Privileges Committee, report in relation to service of subpoena on the Minister of Justice (6 September 1990) [1990] AJHR I.15. See pp 774–775.

1854, the New Zealand Constitution Act 1852 (UK) specified how vacancies were to be filled and how disputed elections were to be determined.

Different considerations apply to the power of the House to determine the qualifications of its members. The House has exercised this power on several occasions. The House may inquire into whether a member is entitled to take a seat in the House, or whether a member has become disqualified from membership. In an early precedent, a member appeared at the Chamber claiming to have been elected but without producing the returned writ. The House inquired into the affair as a matter of privilege and admitted him only once the House was satisfied that he had been duly elected.<sup>335</sup>

Two of New Zealand's more famous parliamentarians have had their right to sit in the House challenged in exercise of this privilege. The question was raised whether or not Sir George Grey had become disqualified by reason of his absence from the House, but a motion to refer the matter to a select committee for investigation failed.<sup>336</sup> However, the House did set up a committee to inquire into whether or not Sir Joseph Ward was disqualified as a member after he had been adjudged bankrupt in 1897 (bankruptcy was then a disqualification).<sup>337</sup> The committee recommended that the matter be referred to the Court of Appeal for its opinion on the subject,<sup>338</sup> but there was no machinery to facilitate such a referral. Parliament therefore passed a special Act referring the question of Ward's bankruptcy to the court on a case stated.<sup>339</sup> The court certified that the seat had not become vacant.

In 1997 the Privileges Committee conducted an inquiry into whether or not a member had resigned from the House. In the event, the committee found that she had not resigned.<sup>340</sup> In 2003 a similar inquiry was undertaken into whether or not a member had incurred a disqualification. The member had applied for citizenship of another country, which is a ground on which a member is deemed to vacate his or her seat.<sup>341</sup> The inquiry found that he had incurred a disqualification,<sup>342</sup> but the Government introduced special legislation to preserve his membership intact.<sup>343</sup>

The House does not make legal determinations affecting the membership of the House. It retains the power to inquire into the qualifications of its members to sit, and, as an aspect of its exclusive control of its own proceedings, to admit or to exclude from its presence any person claiming to be a member. However, the question of a member's legal entitlement to membership of the House is ultimately a question of law to be determined by a court of competent jurisdiction. Statutory procedures exist, for example, for determining disputed elections.<sup>344</sup> Where a member incurs a disqualification, the Speaker, once satisfied that a vacancy exists, must notify the vacancy in the *Gazette* and commence the process of filling it.<sup>345</sup> But the Speaker's role is a consequential one, and he or she does not determine authoritatively whether a vacancy has arisen. Whether or not a vacancy existed might be established independently of any action the Speaker might take.<sup>346</sup>

<sup>335</sup> (1856–1858) NZPD 559–560.

<sup>336</sup> (1895) 87 NZPD 54–61.

<sup>337</sup> (1897) 98 NZPD 122–140.

<sup>338</sup> (8 October 1897) [1897] JHR 26; (26 October 1897) [1897] JHR 53.

<sup>339</sup> Awarua Seat Inquiry Act 1897. It is questionable whether special legislation was needed to facilitate the referral. The House was a legally constituted body under statute and the question of Ward's qualification to sit in the House was integral to the business of the House. No person or body needs to be specially empowered to do what the law does not prohibit.

<sup>340</sup> Privileges Committee, report on question of privilege relating to status of Alamein Kopu as a member of Parliament (25 September 1997) [1996–1999] AJHR I.15B.

<sup>341</sup> Electoral Act 1993, s 55(1)(c).

<sup>342</sup> Privileges Committee, report on question of privilege relating to Harry Duynhoven (6 August 2003) [2002–2005] AJHR I.17C.

<sup>343</sup> Electoral (Vacancies) Amendment Act 2003.

<sup>344</sup> Electoral Act 1993, pt 8.

<sup>345</sup> Electoral Act 1993, ss 129(1) and 134(1).

<sup>346</sup> (6 August 2003) 610 NZPD 7749 Hunt.

The House may suspend its members from the service of the House (for example, for breaching the rules of debate). It has never exercised a power to expel a member. The electoral legislation may have extinguished any such power (assuming it had existed in the first place) when it specified the grounds on which members are deemed to vacate their seats, and did not include expulsion among them. The Parliamentary Privilege Act 2014 now explicitly allays any doubt by declaring that the House has no power to vacate a member's seat by expelling the member.<sup>347</sup> (See pp 799–800.)

## **FREEDOM OF ACCESS TO THE GOVERNOR-GENERAL AND FAVOURABLE CONSTRUCTION OF THE HOUSE'S PROCEEDINGS**

The right of freedom of access to the Governor-General and the right that a favourable construction be put on the House's proceedings are two privileges symbolically claimed by the House at the commencement of a new Parliament. The Speaker claims these privileges on behalf of the House immediately after the Governor-General has confirmed the Speaker in office.<sup>348</sup> The claim to a favourable construction of the proceedings of the House may have been part of the formation of a general principle of Parliament's freedom of speech.

Neither privilege is of practical importance in New Zealand. They are of primarily historical significance, and were adopted "through the desire of our early parliamentarians to follow as closely as possible the procedures and precedents of the Commons".<sup>349</sup> However, in 1877 the House protested that, contrary to its privileges, the Governor of the day had taken notice of its proceedings and used this as a reason to decline to follow the advice tendered to him by his Ministers.<sup>350</sup> This might be significant if there were uncertainty over the confidence of the House in the Government in office.

An important aspect of the privilege is that individual members do not have a right of access to the Governor-General; only the House as a whole does, through its Speaker. The proper form for communications between the House and the Governor-General is that of an Address. Otherwise, advice to the Governor-General is tendered solely by the Crown's responsible advisers, its Ministers.

---

<sup>347</sup> Parliamentary Privilege Act 2014, s 23.

<sup>348</sup> SO 23.

<sup>349</sup> Charles Littlejohn "Parliamentary privilege in New Zealand" (LLM Thesis, Victoria University of Wellington, 1969) at 116.

<sup>350</sup> (5 November 1877) [1877] JHR at 280.

## CHAPTER 46

# Contempt

At common law a colonial legislature enjoyed no power to punish for contempt,<sup>1</sup> although it could take direct action to enforce obedience to its orders (such as evicting strangers or compelling attendance at a sitting).<sup>2</sup> This prompted the House early in its life to legislate for the power to enforce or vindicate a breach of its privileges, or to punish for contempt of Parliament generally. Under the Parliamentary Privileges Act 1865, the House could punish persons who breached its privileges or committed contempts, without having to turn to the courts for protection. The power to punish for contempt is the power to take direct action that is sanctioned by law.<sup>3</sup>

### APPLICATION OF THE POWER TO PUNISH FOR CONTEMPT

The House can impose punishment on a person for breach of any of its privileges. However, by the very nature of these privileges, it is unusual for the House to be involved in enforcing them (except those relating to disclosure of select committee proceedings). Breaches are more likely to be raised in the context of legal proceedings before the courts. Parliamentary privilege is part of the general law of New Zealand<sup>4</sup> and is recognised and applied by the courts (and by all other persons acting judicially), even if issues of privilege are not specifically raised by the parties to the litigation.<sup>5</sup> Cases of breach of privilege only infrequently arise before the House itself.

The House's power to punish includes the power to punish any act that the House considers to be a contempt, whether or not the action violates a specific privilege. The distinction between a contempt and a breach of privilege is not always clearly drawn; there is a tendency to refer to a "breach of privilege" when what is really meant is a contempt. The Standing Orders of the House list 25 examples of acts or omissions that might constitute contempts,<sup>6</sup> but the list is illustrative rather than exhaustive and does not limit the general definition of contempt.<sup>7</sup>

1 Unlike the Houses of the Parliament of the United Kingdom; see Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 203–204.

2 *Fenton v Hampton* (1858) 11 Moo PC 347; *Egan v Willis* (1996) 40 NSWLR 650 (CA).

3 The types of punishment that the House might impose are considered in Chapter 47.

4 Parliamentary Privilege Act 2014, s 8(2) and (3).

5 *Awatere Huata v Prebble* [2004] 3 NZLR 359 (CA) at [40] per McGrath J.

6 SO 410.

7 SO 409.

“Contempt” is a term that may embrace all breaches of privilege as well as a great many other types of conduct that the House considers to deserve censure. There are many acts not amounting to breaches of privilege that may nevertheless interfere with the work of the House or its members, or represent a serious affront to the dignity of the House. As they are not violations of a specific privilege of the House, the courts cannot protect the House against such acts (unless they are also crimes or civil law wrongs). However, the House is in a preferred position, as its power to punish for contempt extends to punishing these further types of acts that may interfere with the House, but do not amount to breach of a specific privilege, such as the House’s freedom of speech or freedom from arrest). Just as breaches of privilege may be treated as contempts and punished, so may any other acts that “obstruct or impede [the House] in the performance of its functions, or are offences against its authority or dignity, such as disobedience to its legitimate commands or libels [or slanders] upon itself, its Members or its officers”.<sup>8</sup> These types of acts, along with breaches of privilege, may be treated as contempts and punished accordingly.

### **Definition of contempt**

There is no formal legal definition of a contempt. Ultimately, the House is the judge of whether a set of circumstances constitutes a contempt. This open-ended understanding of contempt has prompted criticism of the lack of certainty for persons whose conduct the House might regard as objectionable. In 1996 the House sought to define more clearly the types of conduct that it might decide constituted contempts. The House adopted a general definition of contempt,<sup>9</sup> together with a long list of examples of the types of conduct that might fall within the general definition.<sup>10</sup> It was emphasised that these examples were illustrative rather than exhaustive, and that new situations might arise that the House might wish to treat as contempts.<sup>11</sup> Its right to do so is declared in the Standing Orders to remain undiminished.<sup>12</sup>

The House based its general definition of contempt on Erskine May, which is the authoritative treatise on parliamentary law and practice in the United Kingdom. The House may treat as a contempt:<sup>13</sup>

- ... any act or omission which—
- (a) obstructs or impedes the House in the performance of its functions, or
- (b) obstructs or impedes any member or officer of the House in the discharge of the member’s or officer’s duty, or
- (c) has a tendency, directly or indirectly, to produce such a result.

This definition refers expressly to the House, members and officers; but contempt may also embrace conduct involving other persons, such as witnesses before select committees and persons who petition the House, or strangers who obstruct or impede the House in discharging its functions. An action that produces, or tends to produce, this result may constitute a contempt of Parliament.

The general definition provides a template for the House to adjudge whether or not a contempt has occurred. However, the specific examples of the types of conduct that may constitute a contempt stand in their own right, as presumed obstructions or impediments to the House, or its members or officers. These

<sup>8</sup> Malcolm Jack (ed) *Erskine May’s Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 203.

<sup>9</sup> SO 409.

<sup>10</sup> SO 410.

<sup>11</sup> Standing Orders Committee Review of Standing Orders (13 December 1995) [1993–1996] AJHR I.18A at 78.

<sup>12</sup> SO 1.

<sup>13</sup> SO 409(1).

examples do not create a two-stage test for contempt. Conduct that falls within an enumerated example will constitute a contempt, but conduct falling outside the examples may still constitute a contempt under the general definition.<sup>14</sup>

The House decides case by case whether a particular act or omission directly or indirectly obstructs or impedes the House, or one of its members or officers, in the performance of their functions. Deciding whether or not the House should intervene to punish for contempt entails an exercise of judgement and discretion. The Standing Orders provide that the House may take into account the conduct of any person taking part in parliamentary proceedings, and the nature of any action taken against any person because he or she participated in parliamentary proceedings.<sup>15</sup>

## Exercise of the power

The House may declare conduct to be a contempt without any preceding inquiry into it.<sup>16</sup> Under the House's rules, however, a deliberative process is invariably followed before arriving at such a finding. The Speaker decides, in the first instance, if a matter of complaint falls within the definition of contempt, thus warranting investigation by the Privileges Committee. The Speaker rules whether or not the conduct complained of potentially entails breach of a recognised privilege, or falls within an enumerated example of contempt under the Standing Orders, or constitutes a contempt under the general definition. In deciding whether or not to intervene, the House must bear in mind the purpose of parliamentary privilege. The power to punish for contempt is not a power to punish for its own sake. It may justifiably be used only where it is necessary to vindicate the authority of the House when confronted by some obstruction or impediment to the transaction of its business. A potential contempt will not be pursued if there is no need to protect the functioning or authority of the House.<sup>17</sup> However, the "double jeopardy" rule applying to courts of law does not apply to the House. A matter may be dealt with as a breach of an order of the House or of a committee,<sup>18</sup> and be punished as a contempt of the House.<sup>19</sup>

The exercise of the power to punish is vested exclusively in the House. It is so important that it must be used with such deliberation that the House may not delegate it.<sup>20</sup> No committee (including the Privileges Committee) has ever been delegated the House's power to impose punishment for a breach of privilege or a contempt. Whatever investigative, preventative, punitive, or other coercive action the House may choose to take, it must avoid acting in a disproportionate or unreasonable way.<sup>21</sup> The New Zealand Bill of Rights Act 1990 is binding on the House, which must respect the panoply of basic rights and freedoms that the Act affirms. In Australia, a Senate committee has accepted that, if a public servant refuses at the explicit direction of a Minister to answer a question or produce a document, the legislature's remedy should lie against the Minister and not the

<sup>14</sup> Privileges Committee *Question of privilege referred on 24 February 1998 relating to a reflection on the Speaker* (6 May 1998) [1996–1999] AJHR I.15C at 3.

<sup>15</sup> Privileges Committee, final report on question of privilege on the action taken by TVNZ in relation to its chief executive (17 October 2006) [2005–2008] AJHR I.17B; SO 409(2).

<sup>16</sup> See, for example: Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 254 (member's untrue personal statement declared to be a grave contempt).

<sup>17</sup> (2001) 590 NZPD 7912 Hunt; (1988) 488 NZPD 3396–3397 Burke.

<sup>18</sup> SOs 84, 89–96, 214.

<sup>19</sup> See Chapter 11; and see also: Privileges Committee, report on a question of privilege referred on 11 March 1986 (30 October 1986) [1986–1987] AJHR I.15, Annex C; Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A at [3.13] and [7.9]–[7.11]; Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [13.13.3(2)] and [13.14.3].

<sup>20</sup> House of Commons (UK) Select Committee on Procedure *First report of session 1977–78* [1978] HC 588-I, App C at [3]; *Howard v Gossett* (1845) 10 QB 359 at 393.

<sup>21</sup> New Zealand Bill of Rights Act 1990, ss 9 and 21.

official. It would be wholly unjust to impose a penalty on the public servant in such circumstances.<sup>22</sup> The House will proceed personally against a witness, official or other person engaged in parliamentary proceedings only if there is personal culpability. Political culpability must be distinguished from personal, and addressed at the political level. By making such distinctions, a legislature acts with reason and restraint within the limits of the general law to which the House is subject. Witnesses giving evidence on oath or affirmation to the House or a committee have the same legal privileges and immunities in respect of that evidence as have witnesses giving evidence on oath or affirmation in court.<sup>23</sup>

The House's three-stage procedure for invoking the power to punish for contempt is designed to ensure that the power is used proportionately and reasonably. The first stage is preliminary examination by the Speaker, the second stage is inquiry by the Privileges Committee and the third stage is endorsement by the House. The power to punish for contempt is a highly discretionary power, which is more often than not exercised to refrain from intervening. It is of the essence of parliamentary privilege that the House acts as judge in its own cause when it makes an allegation of breach of privilege or contempt and adjudicates upon it. Ultimately, the House must decide when to exercise its privileges, and genuine differences of opinion may arise as to whether doing so in a particular case is justifiable.

## EXAMPLES OF CONTEMPT

The House has given in its Standing Orders 25 separate examples of the types of conduct that it may decide to treat as contempt.<sup>24</sup> These examples do not form an exhaustive code of contempts, although it would be exceptional for a case not falling within them to be treated as a contempt.<sup>25</sup> Miscellaneous examples of conduct that is not covered by the examples, but which the House may wish to treat as a contempt, are given below.<sup>26</sup> Such conduct must fall within the House's general definition of an act or omission obstructing or impeding the House or persons executing its business.<sup>27</sup> Conduct lacking this attribute cannot be a contempt.

The types of contempt recognised by the House are discussed below under several broad headings:

- breach of privilege
- attendance of members
- pecuniary contempts
- records and reports
- disobedience to the rules or orders of the House
- interference or obstruction
- misconduct
- punishing parliamentary contributions
- reflections
- other contempts.

---

<sup>22</sup> Senate (Aust) Committee of Privileges *Parliamentary Privileges Amendment (Enforcement of Lawful Orders) Bill* (49th report) [1994].

<sup>23</sup> Parliamentary Privilege Act 2014, s 25(1). But see also: s 25(2) and, for example, the Crown Organisations (Criminal Liability) Act 2002, s 10(1)(d) and (2) (no person may invoke privilege against self-incrimination on behalf of a Crown organisation, and, for conduct that is not an act or omission of the person, as a ground for refusing to supply information requested by a committee of Parliament).

<sup>24</sup> SO 410.

<sup>25</sup> Privileges Committee *Question of privilege referred on 24 February 1998 relating to a reflection on the Speaker* (6 May 1998) [1996–1999] AJHR I.15C at 3–4.

<sup>26</sup> See under the heading, "Other contempts", p 782.

<sup>27</sup> SO 409.

## Breach of privilege

The House may punish as a contempt of Parliament a breach of one of the privileges of the House.<sup>28</sup> These privileges (freedom of speech, freedom from arrest, exemption from legal process, etc.) are part of the law of New Zealand and must be observed when issues of privilege arise in applying the law. The House bears a special responsibility, and may wish to be represented in legal proceedings to ensure that a point of parliamentary privilege is not overlooked and is fully addressed. A court, in ruling on an issue of parliamentary privilege, may reach a view that is contrary to the House's view of the extent of its privileges. Tensions between Parliament and the courts do arise from time to time,<sup>29</sup> although their collaborative institutional relationship endures. The courts are careful to correct or prevent breaches of parliamentary privilege in the same way as they correct or prevent any other breach of law. The courts uphold the House's privileges in legal proceedings, and will stay actions in civil cases where their application would make it unfair to proceed with the trial of the case.<sup>30</sup> The House will not normally entertain exercising its power to punish for a contempt where it has been dealt with in legal proceedings. Nevertheless, the House has specifically affirmed that the power remains available to it,<sup>31</sup> and the House has, on occasion, reminded litigants that it remained an option.<sup>32</sup>

## Attendance of members

The House's Standing Orders require members' attendance and their absence without permission to be recorded in the *Journals*.<sup>33</sup> Absence from the House without permission is not a contempt, but it is open to the House to order members to attend the House when they have absented themselves from parliamentary duties.<sup>34</sup> Failure to comply with such an order would be a contempt.<sup>35</sup> A member's absence from the House may also incur a financial penalty under the statutory regime for dealing with members' remuneration. The imposition of a financial penalty is quite separate from the House's power to punish for contempt, and does not entail any finding of contempt.<sup>36</sup>

## Pecuniary contempts

### Disclosing financial interests

Members must disclose any financial interest they have in any business before the House, before they enter upon it.<sup>37</sup> (See pp 62–64.) Failure to disclose such an interest is a contempt.<sup>38</sup> In all cases, it is the Speaker who determines whether or not the member actually has a financial interest. The Speaker's decision is final.<sup>39</sup>

<sup>28</sup> SO 410(a).

<sup>29</sup> See, for example: Privileges Committee *Question of privilege concerning the defamation action*

*Attorney-General and Gow v Leigh* (11 June 2013) [2011–2014] AJHR I.17A at 31, expressing disagreement with the Supreme Court decision in *Attorney-General v Leigh* [2011] NZSC 106, [2012] 2 NZLR 713 and recommending legislation to nullify the court's rulings. The Parliamentary Privilege Act 2014 gave effect to that recommendation and affirmed and clarified the law of parliamentary privilege.

<sup>30</sup> See, for example: *Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1 (PC) at 11–12.

<sup>31</sup> Privileges Committee, report on question of privilege referred on 10 March 1992 (10 November 1994) [1993–1996] AJHR I.15B at 6.

<sup>32</sup> Privileges Committee, report on a question of privilege referred on 28 November 1995 (28 March 1996) 1996 reports of select committees at 654; Privileges Committee *Question of privilege referred on 25 July 2000 relating to Westco Lagan Ltd v Attorney-General and the Clerk of the House of Representatives* (27 March 2001) [1999–2002] AJHR I.17A at 5–6.

<sup>33</sup> SOs 37 and 39.

<sup>34</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 81.

<sup>35</sup> SO 410(s).

<sup>36</sup> Members of Parliament (Remuneration and Services) Act 2013, s 13; SOs 37–39. See pp 54–56 for attendance of members generally.

<sup>37</sup> SO 165(1).

<sup>38</sup> SO 410(f).

<sup>39</sup> SO 166.

and is not subject to review or reversal by the Privileges Committee if an allegation of contempt is made.

### **Registration of pecuniary interests**

Members are required to make initial and annual returns of the pecuniary interests that they hold.<sup>40</sup> (See pp 57–62.) Knowingly failing to make a return by the due date for a return is a contempt.<sup>41</sup> It is also a contempt for any member knowingly to provide false or misleading information in a return of pecuniary interests.<sup>42</sup> Knowingly providing false or misleading information is an important test imposing a high threshold. A member's return must be inaccurate in a material matter that the member either knew or ought to have known to be incorrect.<sup>43</sup>

The onus is on members to make an honest attempt to return all the pecuniary interests they hold. It would not be a contempt if a member genuinely overlooked something, having turned his or her mind to the interests held. Conversely, a member does commit a contempt if he or she knew of an interest and decided not to declare it; the member would thus have “knowingly” failed to declare a relevant pecuniary interest.<sup>44</sup> The fact that a third party (such as a trust) is involved does not relieve a member of the obligation to declare a relevant pecuniary interest. As members must declare all relevant pecuniary interests, the approach that is recommended is, “if in doubt, declare it”.<sup>45</sup>

The Registrar may inquire into members' compliance with their obligations to make returns. A member who reasonably believes that another member has failed to comply with his or her obligations may request in writing that the Registrar conduct an inquiry.<sup>46</sup> If a matter of privilege is raised and the Speaker determines that it should be treated as a request that the Registrar conduct an inquiry, the Speaker forwards the matter to the Registrar.<sup>47</sup> Upon completing the inquiry, the Registrar may determine that the matter involves a question of privilege and report it to the House.<sup>48</sup> To deter vexatious requests for an inquiry, the House may treat as a contempt any such request for an inquiry made without supporting evidence.<sup>49</sup>

The Auditor-General exercises a supervisory role over members' returns and may advise the Registrar of any matters arising from his or her review. However, a report from the Auditor-General is not a prerequisite to alleging a contempt regarding the return of pecuniary interests.

### **Bribery**

Any member who receives or solicits a bribe to influence the member's conduct in proceedings of the House or a committee commits a contempt.<sup>50</sup> Owing to the serious nature of such allegations, members may not raise these matters incidentally in debate but must progress them in the proper way as matters of privilege.<sup>51</sup> Also, given the seriousness of an allegation of bribery, the standard of proof needed to make it out is very high. This is reflected in the Speaker's consideration of any matter of privilege that is raised.<sup>52</sup>

Allegations of bribery are rare and, when they are made, are seldom upheld. On none of the following occasions was the allegation upheld. In 1872 it was

<sup>40</sup> SO 163(1) and App B.

<sup>41</sup> SO 410(g).

<sup>42</sup> SO 410(h).

<sup>43</sup> (5 August 2008) 649 NZPD 17667 Wilson.

<sup>44</sup> Privileges Committee *Question of privilege relating to compliance with a member's obligations under the Standing Orders dealing with pecuniary interests* (23 September 2008) [2005–2008] AJHR I.17D.

<sup>45</sup> Ibid, at 20.

<sup>46</sup> SOs, App B cl 16.

<sup>47</sup> SO 402(3).

<sup>48</sup> SOs, App B cl 16.

<sup>49</sup> SO 410(i).

<sup>50</sup> SO 410(j).

<sup>51</sup> (1934) 128 NZPD 641 Statham.

<sup>52</sup> (19 February 2003) 606 NZPD 3551 Hunt.

alleged that a member had been offered money to use his parliamentary position to advance the interests of a railway manufacturer, but the allegation was not proven.<sup>53</sup> In 1912 it was alleged that a member had been paid to support Sir Joseph Ward's Government in a crucial vote in the House. The allegation was referred to a committee for investigation but there was no evidence to support it.<sup>54</sup> In 2003 it was alleged that a member had solicited funds for herself or for other persons close to her in return for her vote, but the Speaker dismissed the allegation for lack of evidence.<sup>55</sup>

It is a contempt to offer, or attempt to offer, a bribe to a member as an inducement to act in a certain way in the House or a committee.<sup>56</sup> Although several allegations of attempted bribery have been made, no case has been upheld as a breach of privilege in New Zealand.<sup>57</sup> In 1998, however, the Speaker warned that a contempt would be committed if a member was offered payment to resign his or her seat.<sup>58</sup>

To constitute a contempt, a bribe offered or received must relate to the member's conduct concerning business before the House or a committee, or business to be submitted to the House or a committee.<sup>59</sup> The Speaker has determined that no question of privilege arose in relation to a member's actions that were not part of the parliamentary process.<sup>60</sup> Rather, the allegations related to the general conduct of the member, particularly in relation to dealings with constituents. However, it will be a contempt if a member accepts a benefit for actions the member has taken, or will take, in proceedings in the House.<sup>61</sup> Attempting to bribe a member in any capacity at all, whether or not in relation to parliamentary business, is also a crime under the Crimes Act 1961. In 2010 a former member (and Minister of the Crown) was prosecuted and found guilty of bribery and corruption under that Act.<sup>62</sup>

### ***Professional services connected with proceedings***

It is a contempt for a member to accept fees for professional services rendered by the member in connection with proceedings in the House or a committee.<sup>63</sup> This contempt will be committed whether or not the member concerned participates in parliamentary proceedings on the matter for which the member has received fees. Nor need there be any suggestion of corruption on the part of the member. The House is concerned to ensure that a member's judgement will not be influenced by a professional interest (other than an interest as a member of Parliament) that may be in conflict with the member's public duties. Whether or not there is an actual conflict, the House will not tolerate even the appearance of conflict. Members must be vigilant to keep their official and private capacities separate in their personal business dealings.<sup>64</sup>

In one case, it was considered immaterial that work for which a member received remuneration was completed before the member took his or her seat in Parliament. A newly elected member received payment for two local bills he had drafted in his former capacity as a practising solicitor. The House found him to have acted improperly and fined him a sum equal to his professional fees, even though he had completed the work before he entered Parliament.<sup>65</sup> In a more recent

53 (1872) 13 NZPD 533–539, 553–554, 582–584, 745.

54 (1912) 157 NZPD 356.

55 (19 February 2003) 606 NZPD 3551–3552.

56 SO 410(l).

57 Charles Littlejohn "Parliamentary privilege in New Zealand" (LLM Thesis, Victoria University of Wellington, 1969) at 144.

58 (1998) 574 NZPD 14721 Kidd.

59 (1992) 525 NZPD 8612 Gray.

60 (26 July 2006) 632 NZPD 4404 Wilson.

61 Ibid.

62 Crimes Act 1961, s 103; *Field v R* [2010] NZCA 556; [2011] NZSC 129.

63 SO 410(k).

64 (1991) 519 NZPD 4541 Gray.

65 (5 October 1877) [1877] JHR 202.

case, a comment (later withdrawn) that a member had been paid for things that a trust wished him to achieve in Parliament appeared to raise a serious question of contempt. Upon inquiry, however, it was found that there was no evidence that the payment was made, other than in recognition of past services to the trust rendered before the member was elected to Parliament.<sup>66</sup>

### ***Advocacy by members of matters in which they have been concerned professionally***

Closely related to receiving fees for professional services is advocacy in respect of business with which the member has been professionally involved. This type of contempt is based on a House of Commons resolution of 1858 that: “[I]t is contrary to the usage and derogatory to the dignity of this House that any of its members should bring forward, promote or advocate in this House any proceeding or measure in which he may have acted or been concerned for or in consideration of any pecuniary fee or reward”.<sup>67</sup> This is not taken to preclude members taking part in debates on matters (such as law suits) in which they have been professionally engaged.<sup>68</sup> However, a member was held to have acted contrary to the terms of the Commons’ resolution, even though the parliamentary action he took (presenting a petition) occurred five years after he had acted professionally in respect of the petition.<sup>69</sup>

It is central to the democratic ideal that the purpose of elected office is to serve the public, not to enrich the office-holder or his or her personal connections. It is important for members to ensure that they do not use their position to influence the legislative process for their own advantage or that of someone with whom they are connected.<sup>70</sup>

### **Records and reports**

The Clerk of the House of Representatives exercises custody of the journals and of all petitions and papers presented to the House, and all other records belonging to the House. Such documents must not be taken from the House or its offices without an order of the House or permission of the Speaker.<sup>71</sup> To remove, without authority, any papers or records belonging to the House is a contempt.<sup>72</sup> Similarly, to falsify or alter any such paper or record will be treated as a contempt,<sup>73</sup> as will publishing a false or misleading account of proceedings before the House or a committee.<sup>74</sup>

The House has held to be a contempt a newspaper headline that grossly misrepresented the purport of evidence given before a select committee.<sup>75</sup> The headline was considered to be of such a “startling and inaccurate nature” that it would lower the esteem in which the House was held. In another case, a member complained that a newspaper article falsely accused him of attacking the integrity of the Speaker in a speech he had made in the House (which, if true, could in itself be treated as a contempt). However, a motion to treat the article as a question of privilege was not proceeded with.<sup>76</sup>

<sup>66</sup> Douglas White QC Report for the Prime Minister on inquiry into matters relating to Te Whanau o Waipareira Trust and Hon. John Tamihere (20 December 2004).

<sup>67</sup> Malcolm Jack (ed) *Erskine May’s Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 257.

<sup>68</sup> Ibid.

<sup>69</sup> (1877) 27 NZPD 497–498.

<sup>70</sup> Standing Orders Committee Review of Standing Orders (27 August 2008) [2005–2008] AJHR 1.18B at 12.

<sup>71</sup> SO 10.

<sup>72</sup> SO 410(d).

<sup>73</sup> SO 410(e).

<sup>74</sup> SO 410(r).

<sup>75</sup> (20 November 1968) [1968] JHR 239.

<sup>76</sup> (1923) 199 NZPD 36–39, 344–345.

Merely stating one's opinion of the effect of a committee's decision cannot amount to a contempt. A statement must purport to be a factual description of parliamentary proceedings to constitute a false or misleading account.<sup>77</sup> An opinion piece will not usually trigger this contempt, although it may be considered a contempt if it amounts to a serious reflection on the character of the members of the committee.<sup>78</sup>

### **Disobedience to the rules or orders of the House**

The House will hold in contempt any person who disobeys an order of the House directed to him or her.<sup>79</sup> Such an order would normally be a direction to attend the House or a committee to give evidence, or to produce to the House or a committee documents believed to be in the person's possession. The power to hold in contempt disobedience to such an order directly supports the House's power of inquiry.

In the United Kingdom, the powers of Parliament to compel evidence and deal with contempts have recently come under scrutiny.<sup>80</sup> Generally, select committees have obtained information on request, without the threat of formal sanctions, although there have been occasional difficulties. In 2011 the Select Committee on Culture, Media and Sport summoned witnesses during its investigation into allegations of telephone-hacking. Difficulties were encountered and issues raised about imposing sanctions on witnesses for non-compliance. Subsequent inquiries have examined the options available in order to ensure that the House and committees have the powers they need to function effectively. In the United Kingdom, the Joint Committee on Parliamentary Privilege has recommended adopting internal measures that would include reasserting and clarifying Parliament's historic penal powers and setting out fair procedures to be followed if those powers were to be invoked.<sup>81</sup> The Joint Committee recommended such measures in preference to legislation to confirm Parliament's penal powers.

### **Orders to attend or produce documents**

It is unusual for the House itself or its committees to make an order for a person to attend the House or produce documents. The only committee that has the power to send for persons, papers and records is the Privileges Committee.<sup>82</sup> This committee may direct a person to attend before it to give evidence, or to produce papers and records in his or her possession that are relevant to a matter before it.<sup>83</sup> For committees other than the Privileges Committee, the House must specifically confer the power to send for persons, papers or records, and the current practice is not to do so. When occasion demands, the Speaker on behalf of the House may order a person to attend a committee or produce papers and records. The "centralisation" of the summoning power in the Speaker operates as a controlling influence on its exercise.<sup>84</sup> A refusal to comply with the order of the Speaker would be treated as a contempt, as would a refusal to comply with the order of a committee (notably, the Privileges Committee) that possessed the summoning power.<sup>85</sup>

---

<sup>77</sup> (2000) 589 NZPD 7497 Hunt.

<sup>78</sup> SO 410(o).

<sup>79</sup> SO 410(t).

<sup>80</sup> See House of Commons (UK) Liaison Committee *Select committee effectiveness, resources and powers (second report of session 2012–13)* [2012] HC 697; Joint Committee on Parliamentary Privilege (UK) *Parliamentary privilege: report of session 2013–14* [2013] HL Paper 30, HC 100 at [48]–[100].

<sup>81</sup> Joint Committee on Parliamentary Privilege (UK) *Parliamentary privilege: report of session 2013–14* [2013] HL Paper 30, HC 100 at [99].

<sup>82</sup> SO 401(2).

<sup>83</sup> SO 196.

<sup>84</sup> SO 197. See pp 494–497.

<sup>85</sup> SO 410(s), (t).

### ***Refusing to answer a question***

A witness who refuses to answer a question when ordered to do so by the House or a committee may be held to have committed a contempt.<sup>86</sup> Contempts have been upheld for refusal to answer a question in the House<sup>87</sup> and before a select committee.<sup>88</sup> Where a witness before a select committee objects to answering a question, the committee must consider in private the ground of objection and the importance of the question to its proceedings, before resolving to insist on a reply.<sup>89</sup> A witness giving evidence on oath or affirmation might, for example, invoke a privilege or immunity that a witness giving evidence in court might claim.<sup>90</sup>

### ***Premature publication of select committee proceedings or report***

It is a contempt to divulge the proceedings or report (including a draft report) of a select committee or a subcommittee, contrary to the Standing Orders.<sup>91</sup> In general, the proceedings of a select committee or a subcommittee (other than during the hearing of evidence) are confidential until the committee reports to the House.<sup>92</sup> This rule is designed to promote the good functioning of committees and to affirm that the House is entitled to be the first to hear from its committees.<sup>93</sup> Speakers have warned members and journalists to respect this rule.<sup>94</sup>

In practice, only members, officials, advisers, witnesses and journalists are in a position to divulge a committee's proceedings, for only they are privy to them. However, other persons or organisations that disseminate information that has been improperly disclosed to them are also in contempt, and the House has punished them accordingly.

In principle, all evidence heard by select committees is heard at public meetings and all written evidence received is available to the public. Questions of contempt can arise only if the committee has taken special steps to protect evidence from public disclosure. Members have committed contempts in various ways: by divulging select committee proceedings to other persons, who have then publicised the proceedings;<sup>95</sup> by writing a newspaper article disclosing evidence given at a select committee hearing that was not open to the public (it being no defence that the member was labouring under a mistaken belief that the evidence was in the public domain);<sup>96</sup> by revealing in a television interview what had taken place at a select committee meeting;<sup>97</sup> and by revealing the contents of a select committee report before it had been presented to the House.<sup>98</sup> Members are also liable to be held in contempt if they disclose in the House debates proceedings that they are not at liberty to repeat outside the committee.<sup>99</sup>

Members of the Parliamentary Press Gallery must remain especially alert. They have been held in contempt in providing for publication confidential select committee evidence.<sup>100</sup> The newspapers that published the material have likewise been held in contempt.<sup>101</sup> Similarly, a television network has been held in contempt

<sup>86</sup> SO 410(v).

<sup>87</sup> (1896) 93 NZPD 336.

<sup>88</sup> (1903) 125 NZPD 693–694; Privileges Committee, report on question of privilege concerning disclosure of confidential select committee evidence (18 August 1992) [1991–1993] AJHR I.15A.

<sup>89</sup> SO 227(1).

<sup>90</sup> Parliamentary Privilege Act 2014, s 25.

<sup>91</sup> SO 410(q).

<sup>92</sup> SO 240(1).

<sup>93</sup> (1997) 562 NZPD 3232 Kidd.

<sup>94</sup> Ibid. See Chapters 22 and 23 for the rules on disclosure of select committee proceedings and reports.

<sup>95</sup> (1874) 16 NZPD 429–430; (1898) 104 NZPD 179–192; (1900) 113 NZPD 411–414; (28 October 1971) [1971] JHR 222.

<sup>96</sup> (17 October 1974) [1974] JHR 525.

<sup>97</sup> (1976) 404 NZPD 832.

<sup>98</sup> Privileges Committee (11 December 2001), report on question of privilege relating to release of Education and Science Committee report [1999–2002] AJHR I.17C.

<sup>99</sup> (1895) 91 NZPD 701–716.

<sup>100</sup> (12 September 1901) [1901] JHR 154; (1903) 125 NZPD 693–694.

<sup>101</sup> (1903) 125 NZPD 693–694; (28 October 1971) [1971] JHR 222.

for unauthorised disclosure of select committee deliberations.<sup>102</sup> In these cases, the initial breach of confidentiality of the select committee proceedings was not by the persons or parties found in contempt, but by some other person or persons. In each case, the committee concerned probed the question of who initially divulged the proceedings but to no avail. The media jealously guard their journalistic sources. The House might have held the journalists and the newspapers concerned in contempt for refusing to divulge their sources, but this is not the way the House has proceeded. The House has imposed punishment for a refusal to divulge a journalist's sources on only one occasion, many years ago.<sup>103</sup>

Journalists may claim some immunity under the general law in order to protect their sources. They can claim an immunity in criminal or civil proceedings, but this protection does not affect the power of the House to carry out its functions.<sup>104</sup> In an inquiry into the unauthorised release of a draft select committee report, a journalist would neither confirm nor deny that he had a copy of the draft report, and refused to divulge his sources. The Privileges Committee found there had been a breach of Standing Orders and the journalist tendered an apology. His actions were also found to be in breach of the Press Gallery's rules, which require its members to act in a way that does not infringe Standing Orders. The committee referred the matter to the chairperson of the Press Gallery to be dealt with under its rules.<sup>105</sup> The House has invariably treated the publication of confidential select committee material as a contempt in its own right. Members or other persons may be adjudged in contempt, whether the material was obtained first-hand or second-hand.

### ***Breach of the sub judice rule***

In 2009 the Privileges Committee reviewed the sub judice rule of not referring in the House or a committee to matters subject to or awaiting judicial decision.<sup>106</sup> The committee's recommendations were implemented in changes made to the Standing Orders in 2011.<sup>107</sup> It is in breach of Standing Orders and a contempt to make reference knowingly to a matter that is suppressed by a court order in any proceedings of the House or a committee.<sup>108</sup> This contempt applies to members and select committee witnesses alike.

The sub judice rule requires a member wishing to raise a matter that is subject to court proceedings to give written notice to the Speaker.<sup>109</sup> This requirement ensures that the Speaker has the opportunity to balance the considerations set out in the sub judice rule that are relevant to the exercise of the Speaker's discretion. It would potentially be a contempt if a member were to raise a sub judice matter in the House or a committee without having given written notice, or, having given it, in contravention of the Speaker's ruling.<sup>110</sup> The Speaker could report to the House that the member's conduct should stand referred to the Privileges Committee, without requiring another member to raise it as a matter of privilege.<sup>111</sup>

<sup>102</sup> (1976) 408 NZPD 4447.

<sup>103</sup> (1903) 125 NZPD 693–694.

<sup>104</sup> Evidence Act 2006, s 68. A witness examined before the House or a committee and giving evidence on oath or affirmation can also invoke this protection of journalists' sources privilege, under the Parliamentary Privilege Act 2014, s 25.

<sup>105</sup> Privileges Committee *Question of privilege relating to an article published in the Sunday Star-Times purporting to summarise the contents of a draft report of the Māori Affairs Committee on its inquiry into the Crown Forestry Rental Trust* (14 October 2003) [2002–2005] AJHR I.17D.

<sup>106</sup> Privileges Committee *Question of privilege relating to the exercise of the privilege of freedom of speech by members in the context of court orders* (28 May 2009) [2008–2011] AJHR I.17A. See SOs 115–116 for the sub judice rule.

<sup>107</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 25–26. See pp 233–236.

<sup>108</sup> SO 410(y).

<sup>109</sup> SO 115.

<sup>110</sup> Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 25–26.

<sup>111</sup> Ibid.

## Interference or obstruction

The House regards as most serious any attempt to prevent, dissuade or inhibit any person (a member, officer, witness or petitioner) from participating fully in its proceedings. The House will punish such conduct to the extent necessary to preserve its effective functioning. An attempt to prevent participation may also be a crime (for example, an assault or threat of assault) punishable in the criminal courts.

### *Members and officers*

Interferences or obstructions of members or officers may be overt or covert. Such interference or obstruction may consist of an assault, molestation, or a threat or other form of intimidation. Such action will be treated as a serious contempt if it occurs in the discharge of the member's or officer's duties.<sup>112</sup> An early complaint of molestation of members entailed the sending of a spurious telegram to two Dunedin members, which caused them to return south and absent themselves from the House.<sup>113</sup> The House took no action, even though the interference with the House's right to the attendance of its members was a serious one.

In one case, a ministerial adviser made an insulting remark to a member as the member passed him in the Chamber on the way into a division lobby.<sup>114</sup> The adviser was held to be in contempt for molesting the member in the execution of his duty. In another case, a jocular remark directed by one member to another in the division lobby was held not to be a contempt.<sup>115</sup> The fact that the member took offence at the remark did not transform it into a contempt.

The Speaker may resolve that conduct does not fall within the House's jurisdiction and refer the matter to the police. When an altercation occurred between two members in a lobby, one of the members was prosecuted for assault and pleaded guilty to a lesser charge of fighting in a public place.<sup>116</sup> The Speaker has warned members not to allow banter in the Chamber to lapse into verbal intimidation. Banter that tends towards intimidation of members, particularly if a vote is in progress,<sup>117</sup> may ultimately constitute a contempt.<sup>118</sup> The House has reminded members of the Parliamentary Press Gallery not to impede the free access of members to the Chamber, or to pursue members who decline to be interviewed. In response to members' complaints, the House adopted a protocol to regulate approaches to members on their way to the Chamber.<sup>119</sup>

Sometimes, fine distinctions must be drawn between conduct that properly seeks to influence members' views and conduct that amounts to intimidation or coercion. The latter type of conduct may be punished as a contempt, and must be distinguished from legitimate forms of persuasion. All members seek to influence their fellow members when they speak in debate. So, too, do lobbyists when they advance their clients' interests.<sup>120</sup> Conduct that seeks to influence members in the performance of their public duties is perfectly proper and permissible. People may even exert pressure on members (for example, by threatening to withdraw support at the next election), unless such an attempt to influence becomes an attempt to intimidate, or there is a threat to do something that is improper in itself. An extraordinary example involved a Bible-in-schools

<sup>112</sup> SO 410(m), (n).

<sup>113</sup> (1864–1866) NZPD 929.

<sup>114</sup> (29 August 1974) [1974] JHR 463.

<sup>115</sup> (1929) 222 NZPD 663–670; (1929) 223 NZPD 35–36.

<sup>116</sup> (25 October 2007) 643 NZPD 12721; (6 November 2007) 643 NZPD 12761; "Private lives to be out of order" *The Press* (7 November 2007); "Mallard pleads guilty to fighting charge" *The Dominion Post* (18 December 2007).

<sup>117</sup> (1998) 571 NZPD 11946–11947 Kidd.

<sup>118</sup> (1988) 487 NZPD 3140–3141 Burke.

<sup>119</sup> Speaker of the House of Representatives "Protocol for interviewing members, filming, and photographing in Parliament Buildings" (11 May 2011).

<sup>120</sup> (1979) 428 NZPD 4718 Harrison.

league, which accused a member of breaching the faith in failing to give total support to Bible reading in schools. The league announced that it would read his letter of explanation at every league meeting to be held in the province and would publicise his opposition in the House to Bible reading. The House resolved that this was an attempt to intimidate the member in his parliamentary conduct, and was punishable as a contempt.<sup>121</sup> Likewise, a publication that had the effect of intimidating members in their parliamentary conduct might constitute a contempt, even if there were no specific intention to intimidate.<sup>122</sup> In the United Kingdom, it has been suggested that “hacking” of members’ mobile phones might also constitute a contempt.<sup>123</sup>

Instituting legal proceedings against members or officers to restrain them from carrying out their official duties could also constitute a contempt, provided that such proceedings related to actions that members had taken or intended to take as part of their parliamentary duties. Seeking an injunction to prevent a member raising a matter in the House, for example, may be adjudged a contempt.<sup>124</sup> However, as regards their actions outside the House, members are in the same position as any other citizen and may be the subject of legal proceedings without any parliamentary implications.<sup>125</sup>

### ***Witnesses and others***

A similar principle of protection from harassment operates regarding witnesses. Any attempt to intimidate, prevent or hinder a witness from giving evidence in full to the House or a committee may be held to be a contempt.<sup>126</sup> Such intimidation or hindrance may be overt (for example, physically preventing a witness from attending and giving evidence) or less overt (for example, offering a bribe to give false testimony, or taking legal action to prevent a witness from giving evidence or from producing all the evidence in his or her possession).

Petitioners and counsel appearing on their behalf before the House or a select committee are also protected from molestation or obstruction while discharging their duties. Such molestation or obstruction may be treated as contempt.<sup>127</sup>

### ***Serving legal process in the precincts of Parliament***

Persons attend Parliament Buildings on sitting days to participate in or observe the transaction of parliamentary business. The House will hold the service (or attempted service) of legal process within the parliamentary precincts to be a contempt if this is done on any day that the House or a committee of the House is sitting.<sup>128</sup> The House or committee need not be actually sitting at the time service is effected; a contempt is committed if such a sitting is held at any time on that day. No contempt is committed if the service of legal process is discharged with the authority of the House or the Speaker. As a matter of comity, service should ordinarily take place outside the precincts. In practice, if a member is willing to accept service at Parliament House, the Speaker will give authority for process to be

---

121 (1905) 134 NZPD 300–305.

122 Privileges Committee, report concerning article published in the *New Zealand Truth* (12 December 1985) [1984–1985] AJHR I.6A at 9.

123 House of Commons (UK) Committee on Standards and Privileges *Privilege: hacking of members' mobile phones (fourteenth report of session 2010–11)* [2011] HC 628.

124 Privileges Committee, report on a question of privilege referred on 28 November 1995 (28 March 1996) *1996 reports of select committees* at 654; (2001) 590 NZPD 7912–7913 Hunt.

125 Ibid.

126 SO 410(u). See, for example: Privileges Committee, interim report on question of privilege on the action taken by TVNZ in relation to its chief executive (6 April 2006) [2005–2008] AJHR I.17A at 7.

127 Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 269–270.

128 SO 410(c).

served. Service on a member in the Parliament Buildings, even with the member's agreement, will be a contempt if the Speaker's authority is not obtained.<sup>129</sup>

The parliamentary precincts are those areas that are legislatively held for parliamentary purposes.<sup>130</sup> They include the Parliament Buildings (the main building, library and executive wing) and the Bowen House building.<sup>131</sup> The service of a subpoena on a Minister in the Minister's office in the Beehive (executive wing) was held to be a contempt as it was effected on a sitting day. The established practice is that law firms make arrangements with the Crown Law Office for effecting service on Ministers.<sup>132</sup>

The limitation on serving or executing legal process within the precincts does not prevent police officers on duty within Parliament Buildings or grounds arresting anyone who commits or is about to commit a criminal offence. However, a warrant for the arrest of a person within the precincts should not be executed without first obtaining the Speaker's permission.

## Misconduct

### *Deliberate misleading of the House*

It is a contempt to deliberately mislead (or attempt to mislead) the House or a committee, whether by way of a statement, evidence or a petition.<sup>133</sup> An example of contempt received explicit recognition in 1963, following a political cause célèbre (the Profumo affair). The House of Commons resolved that a former member, who had made a personal statement to the House that he subsequently acknowledged to be untrue, had committed a contempt of the House.<sup>134</sup> It has been claimed that there is an established constitutional convention that Ministers should always tell the truth to Parliament, as far as this is possible without harming national security.<sup>135</sup> Whether or not this type of contempt represents a convention, a Minister lying to the House is a serious affront to the authority of Parliament. The duty of candour on Ministers has been said to be essential if Parliament is to hold the executive to account.<sup>136</sup>

The contempt can be committed by anyone taking part in parliamentary proceedings. It consists of the conveying of information to the House or a committee that is inaccurate in a material particular and that the perpetrator knew or ought to have known was inaccurate.<sup>137</sup>

### *Members deliberately misleading the House*

Most often, allegations of deliberately misleading the House refer to statements made by members in the House. Such statements may be proffered in the course of debate, or by way of personal explanation, or in reply to a question.

There are three elements to be established when an allegation is made against a member regarding the member's statement: the statement must, in fact, have been misleading; the member must have known that the statement was inaccurate at the time the statement was made; and the member must have intended to mislead the House. The standard of proof required is the civil standard of proof on the balance

<sup>129</sup> "Developments—Australia and New Zealand—parliamentary privilege in Western Australia" (1991) 2 PLR 196 (Western Australian Royal Commission apologised for serving a subpoena in a member's office even though member had invited investigators to the office).

<sup>130</sup> SO 3(1).

<sup>131</sup> Parliamentary Service Act 2000, ss 23–25 (see also: Parliamentary Service (Additional Parliamentary Precincts) Resolution 2006, and Parliamentary Service (Additional Parliamentary Precinct) Resolution 2009).

<sup>132</sup> Privileges Committee, report in relation to service of subpoena on the Minister of Justice (6 September 1990) [1990] AJHR L15.

<sup>133</sup> SO 410(b).

<sup>134</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 254.

<sup>135</sup> *R v Ponting* [1985] Crim LR 318 (QB).

<sup>136</sup> "Time to come clean" *The Observer* (UK, 16 September 1984).

<sup>137</sup> (1998) 570 NZPD 11042 Kidd.

of probabilities. The serious nature of the allegation demands that it be properly established.<sup>138</sup> Recklessness in the use of words in debate, although reprehensible and deserving of censure, falls short of the standard required to hold that a member deliberately misled the House.<sup>139</sup> An allegation will be made out where a member questions a Minister over information given and the same information is repeated and later can be shown as false.<sup>140</sup> The misleading of the House must not be concerned with a matter of no consequence, or such little consequence that it is too trivial to warrant the House's attention. Such a misunderstanding should be cleared up on a point of order or through the asking of further supplementary questions, particularly when the matter is a contestable one.<sup>141</sup>

For a misleading of the House to be deliberate, there must be an indication of an intention to mislead. Remarks made off the cuff in debate can rarely fall into this category, nor can matters of which the member can be aware only in an official capacity. But an inference of an intention to mislead can be drawn where the member can be assumed to have personal knowledge of the stated facts and made the statement in a formal manner or situation, such as by way of personal explanation.<sup>142</sup>

Most instances of deliberate misleading of the House will consist in statements made. However, it is conceivable that members might also mislead the House by their actions. For example, a member might deliberately misuse a voting proxy, or deliver to the Clerk a different document from that which the member obtained leave to table,<sup>143</sup> or might misrepresent an authority to act on behalf of an absent member.<sup>144</sup>

### ***Witnesses and petitioners deliberately misleading***

Witnesses giving evidence to select committees are under an obligation to be truthful, whether or not they are under oath. The expectation that witnesses will be truthful in giving evidence is so compelling that evidence is not usually taken on oath. Witnesses have been held in contempt where they deliberately misled a committee, wilfully suppressed evidence or knowingly provided false information. Even to prevaricate before a committee might invite questions.<sup>145</sup> A finding of contempt of Parliament brings reputational damage and public disapprobation, which is naturally to be avoided. Allegations of such contempt by witnesses are rarely made.<sup>146</sup>

For a witness to be held in contempt, there must be a strong indication of an intention to mislead the committee. Such an intention might be inferred from the nature of the evidence (where, for example, the evidence can be presumed to be within the personal knowledge of the witness), or from the circumstances of its delivery (for example, if an answer is deferred and subsequently delivered in writing, which might indicate a more considered reply than an immediate response).<sup>147</sup>

It is a contempt to present forged, falsified or fabricated documents to the House or a committee. The main form such a contempt has taken in the United Kingdom has been the affixing of forged or fictitious signatures to petitions. Any conspiracy to deceive the House or a committee will be held to be a contempt. No examples of this kind of contempt have occurred in New Zealand.

138 Privileges Committee, report on a matter of privilege (4 November 1980) [1980] AJHR I.6 at 6–7.

139 Privileges Committee, report relating to alleged deliberate misleading of the House by a member (17 December 1982) [1982] AJHR I.6 at 17.

140 (25 May 2010) 663 NZPD 11212 Smith.

141 (1976) 405 NZPD 2131–2132.

142 (1986) 476 NZPD 5961 Wall.

143 (1999) 575 NZPD 14854 Kidd; (22 October 2009) 658 NZPD 7371 Smith.

144 (1996) 553 NZPD 11644–11645 Tapsell.

145 Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 252–253.

146 House of Commons (UK) Culture, Media and Sport Committee *News International and phone-hacking (eleventh report of session 2010–12, vol 1)* [2012] HC 903—I at 6.

147 (2002) 598 NZPD 14744 Hunt.

### ***Correcting inaccurate information***

It is not a contempt to make a genuine mistake and thus tender incorrect information to the House or a committee. But it is incumbent on a member or person who has given misleading information on a parliamentary occasion to correct the error at the first opportunity once it is discovered. This obligation arises even if the correct information is not fully available when the error is discovered. Action to alert the House or committee must still be taken at that point, with a full correction to follow later.<sup>148</sup>

Misleading information can be corrected in several ways. A misleading statement made in the House in reply to an oral question is corrected by a personal explanation.<sup>149</sup> Misleading information given by way of a reply to a written question is corrected by the Minister lodging an amended reply. Misleading information given to a committee can be corrected in either of two ways: by the witnesses appearing personally before the committee to withdraw and correct the information, or by a written correction if a personal appearance cannot be arranged, or if the committee agrees that it is not warranted.

### ***Misconduct in the presence of the House or a committee***

Any misconduct in the presence of the House or a committee may be held to be a contempt.<sup>150</sup> Such misconduct may take the form of an interruption or disturbance to the proceedings of the House or of one of its committees. For example, a group of people in the public gallery who rose at the commencement of business and recited the prayer that the Speaker was about to read were held to have committed a contempt.<sup>151</sup> But no question of contempt would arise if the Speaker had given permission for a celebratory contribution to be made from the galleries.<sup>152</sup> Members who conduct themselves in a disorderly way while transacting parliamentary business may themselves be punished for contempt. The penal power of the House exists even though the Standing Orders contain specific procedures for disciplining members for breaches of order.<sup>153</sup> The Standing Orders do not displace the inherent power of the House to discipline members and strangers who cause disruption to its proceedings.

### **Punishing parliamentary contributions**

The House may punish members or others on account of their contributions to the House's deliberations: for example, if they attempt to mislead the House or a committee, or disrupt the orderly conduct of proceedings. It is also a contempt for anyone outside the House to punish or disadvantage anyone for what they say or do in the course of parliamentary proceedings. Such extra-parliamentary conduct may also amount to a criminal or civil wrong, such as assault or trespass to the person, and be in breach of the Bill of Rights 1688 and the Parliamentary Privilege Act 2014.<sup>154</sup>

Anyone who assaults, threatens or disadvantages a member or a person (for example, a witness) on account of his or her conduct in Parliament commits a contempt.<sup>155</sup> However, it must be established that the action directed at the member or person is in fact on account of what the member or person said or did

<sup>148</sup> (1998) 570 NZPD 11043 Kidd.

<sup>149</sup> (14 May 2003) 608 NZPD 5678.

<sup>150</sup> SO 410(p).

<sup>151</sup> Privileges Committee, report relating to the conduct of strangers in the gallery of the House (22 October 1981) [1981] AJHR I.6 at 3.

<sup>152</sup> (1998) 572 NZPD 12347 Kidd.

<sup>153</sup> SO 89; Privileges Committee, report on a question of privilege referred on 11 March 1986 (30 October 1986) [1986–1987] AJHR I.15.

<sup>154</sup> Bill of Rights 1688 (Eng), art 9 (freedom of speech); Parliamentary Privilege Act 2014, s 11.

<sup>155</sup> SO 410(w), (x).

in parliamentary proceedings.<sup>156</sup> Otherwise, it is not a matter of concern for the House. The legal effect of the action outside the House is of no consequence to the House.

A leading precedent involved the State enterprise Television New Zealand Ltd. The broadcaster advised its chief executive that his evidence to a select committee amounted to serious misconduct in his employment. This action was held to be in contempt for disadvantaging a witness. The House resolved that protection of select committee witnesses was of fundamental importance and that the actions of the broadcaster could deter or discourage select committee witnesses in the future. The House required a formal apology and imposed a fine of \$1,000.<sup>157</sup>

Article 9 of the Bill of Rights 1688 makes clear that evidence given at a select committee cannot be questioned in legal proceedings. However, conduct revealed in the parliamentary evidence would not be immune from investigation or action by outside authorities, such as the Police or the Commerce Commission, simply because it was the subject of evidence to a committee. Provided any criminal prosecution or civil action was supported by evidence obtained outside Parliament, a person could not be said to have been disadvantaged on account of a parliamentary contribution.<sup>158</sup>

On two occasions, conduct complained of as a contempt has involved challenging a member to repeat outside the House, without protection of privilege, what the member had said in the House. The absolute protection against actions for defamation afforded members by the Bill of Rights 1688 and the Defamation Act 1992<sup>159</sup> is to allow them to speak freely in debate and promote the public interest without fear of legal repercussions. The damage to an individual unjustly attacked in the House is outweighed by the greater public good of permitting full, free and frank discussion in the House. A person unjustly attacked in the House is not without recourse: he or she may apply to the Speaker to enter his or her response in the parliamentary record (see Chapter 38). Any misuse of the right of freedom of speech in debate is for the House to discipline under its own internal procedures. Otherwise, the House views very seriously anything that tends to inhibit members in the exercise of their freedom of speech.

Challenges to repeat outside the House words spoken in debate entail the implication that what was said was untrue and a misuse of parliamentary privilege. Such challenges may constitute a contempt, although each case must be considered on its own merits. In one case, the person who challenged the member to repeat his statement outside the House explained his action at the bar of the House and apologised for his unwitting breach.<sup>160</sup> In another case, a firm issuing the challenge published it in a letter and as an advertisement making a strong attack on the member. The firm was held to have committed a contempt, albeit again unwittingly.<sup>161</sup> In the United Kingdom, a law firm threatened legal proceedings against a member if he repeated in Parliament statements he had made outside Parliament, and the House found the firm guilty of contempt. An apology was made to the House and the member, and no further action was taken.<sup>162</sup>

<sup>156</sup> Privileges Committee, report on question of privilege relating to an allegation of assault (14 May 1997 [1996–1999] AJHR I.15A).

<sup>157</sup> Privileges Committee, interim report on question of privilege on the action taken by TVNZ in relation to its chief executive (6 April 2006) [2005–2008] AJHR I.17A. See also: House of Commons (UK) Standards and Privileges Committee *Privilege: protection of a witness (fifth report of session 2003–04)* [2004] HC 447 (contempt found in relation to evidence given by witness).

<sup>158</sup> Privileges Committee, final report on question of privilege on the action taken by TVNZ in relation to its chief executive (17 October 2006) [2005–2008] AJHR I.17B at 5.

<sup>159</sup> Defamation Act 1992, s 13(1).

<sup>160</sup> (1895) 91 NZPD 778.

<sup>161</sup> (1931) 229 NZPD 324, 365–378.

<sup>162</sup> House of Commons (UK) Committee on Standards and Privileges *Privilege: John Hemming and Withers LLP (ninth report of session 2009–10)* [2010] HC 373.

These precedents involved persons outside the House issuing challenges to members to repeat what they had said in the House. In debate, however, it is not automatically out of order and a breach of privilege for a member to invite another member to repeat outside the House what the member had just said. The cases involving contempt are confined to the issuing of formal challenges to the freedom of speech enjoyed by members. Nevertheless, it may become disorderly for a member to challenge another member persistently to repeat the member's comments outside the House. Persistent challenges would imply that the member was not telling the truth.<sup>163</sup>

Molestation of members on account of action a member had taken in the House may take quite intricate and subtle forms. In 1872 a person wished to make a member pay for the way the member had voted in a division, and applied (as he was legally entitled to do) to purchase pastoral land that the member held on licence. His application to purchase was intended to (and did) put the member to inconvenience and expense; it meant that the land had to be offered for sale at auction with no preference for the licensee. The House found the person to have committed a contempt, and induced him to withdraw his application to purchase.<sup>164</sup>

Two Prime Ministers have been the subject of complaint for remarks they made about the way members had voted. In 1869 William Fox wrote to a member after the member had voted against the Government in the House. The member, who was a serving officer in the Army, was told he must resign either his seat or his command. A committee appointed to consider the matter found that no contempt had been committed, and this was endorsed by the House. Nevertheless, the House proceeded to pass a resolution reiterating that every member of the House, without exception, was entitled to speak and vote in the House according to the member's conscience.<sup>165</sup> A similar scenario occurred in 1896, when two West Coast members voted against the Government. Premier Richard Seddon made a veiled remark that he would not forget their decision, and this remark prompted a complaint to the House. However, after some discussion, the House resolved that no action be taken.<sup>166</sup>

### ***Legal proceedings against witnesses***

In 1818 the House of Commons passed a resolution declaring that witnesses were entitled to its protection in any legal proceedings brought against them on account of their testimony to the House or a committee.<sup>167</sup> Instituting legal proceedings in such cases also constitutes a breach of privilege. Such proceedings infringe the freedom of speech guaranteed by the Bill of Rights 1688 to persons taking part in proceedings in Parliament.

Evidence given by a witness at a select committee cannot later be used as the basis for cross-examination in another proceeding or be used in a criminal or disciplinary investigation.<sup>168</sup> In the United Kingdom, a judge apologised to Parliament in a decision for not intervening to prevent the cross-examination of a witness on the truth of evidence the witness had given to a select committee.<sup>169</sup> The judge concluded that the questioning should not have been allowed by reason of the Bill of Rights 1688.

163 (1992) 531 NZPD 12223 Gray.

164 (1872) 13 NZPD 78, 158–163, 187–192, 201.

165 (25 August 1869) [1869] JHR 195.

166 (1896) 194 NZPD 478–482.

167 Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 269.

168 *Gagliano v Canada* (Attorney General) 2005 FC 576, [2005] FCR 555; *Canada (Deputy Commissioner, Royal Canadian Mounted Police) v Canada (Commissioner, Royal Canadian Mounted Police)* 2007 FC 564, [2008] 1 FCR 752. See also *R v Murphy* (1986) 5 NSWLR 18 (SC); Parliamentary Privileges Act 1987 (Cth).

169 *Weir v Secretary of State for Transport* [2005] EWHC 2192 (Ch) at [242].

Legislation formerly provided a legal indemnity for parliamentary witnesses who incriminated themselves while giving evidence on oath.<sup>170</sup> The Parliamentary Privilege Act 2014 repealed the indemnity provisions and did not re-enact them.<sup>171</sup>

## Reflections

Speeches or writings that reflect on the character or conduct of the House, or of a member in his or her capacity as a member of the House, may be treated as a contempt.<sup>172</sup> This is seen as a longstop means for the House to protect itself and its members against attacks that would lower the House in public esteem and compromise its ability to function effectively. However, the House's penal power must not be used to inhibit legitimate political debate. To constitute a contempt, a statement would need to allege corruption or some kind of gross impropriety that could not be substantiated. Hard-hitting or contentious statements might well cause members to object, but they fall within the boundaries of acceptable political interchange.<sup>173</sup> The limits of acceptable political and social comment change as social mores change. Accusing members of engaging in homosexual conduct at a time when such conduct was regarded as publicly unacceptable (and indeed was still a criminal offence) was considered by the House to be a serious reflection on members.<sup>174</sup> Attitudes and beliefs change, and statements in earlier times that were considered to reflect adversely on the House or its members may not be viewed in the same way today.

### *Reflections on the House*

Speeches or writings that reflect on the character or proceedings of the House may be treated as contempts. The fact that the prohibition on publication of reports of its debates formerly applied by the House of Commons has never operated in New Zealand does not authorise reflections on members in their parliamentary capacity, or on the propriety of the House's procedures.<sup>175</sup> The House held as a contempt an article criticising the practice of pairing in the House, which entailed the withdrawing of members from the Government or Opposition benches to offset a member's absence and maintain voting parity at a time when all members were electorate members. The criticisms *per se* were not sufficient to establish a contempt but incorrect statements in the article falsely represented the proceedings of the House, which were held to reflect adversely upon it.<sup>176</sup> It does not matter if reflections on members of the House in their capacity as members do not identify the particular member or members who are the subject of attack. Thus, when unnamed members of Parliament were accused of homosexuality or bisexuality, the person making the allegation (which she admitted was baseless) was found to have lessened the esteem with which members were held. Accordingly, she was held to have committed a contempt.<sup>177</sup>

### *Reflections on members*

Speeches and writings reflecting upon the character or conduct of individual members in their parliamentary roles may be punished as contempts. The words complained of must reflect on the member in the discharge of his or her duties in respect of particular proceedings in the House or a committee, and not merely arise out of the member's status as a public figure. It is not a contempt, for instance, if a

<sup>170</sup> See the Legislature Act 1908, s 253(3) and (5) for the former indemnity provisions.

<sup>171</sup> Parliamentary Privilege Act 2014, ss 25 and 38(1).

<sup>172</sup> SO 410(o).

<sup>173</sup> (2000) 589 NZPD 7497 Hunt.

<sup>174</sup> See, for example: (1975) 400 NZPD 3375–3393.

<sup>175</sup> (1938) 251 NZPD 909 Barnard.

<sup>176</sup> Privileges Committee, report on matter of privilege relating to an article published in the *New Zealand Times* (30 July 1982) [1982] AJHR I.6 at 8.

<sup>177</sup> (1975) 400 NZPD 3375–3393.

member is attacked over the discharge of his or her constituency duties. Although constituency work is an integral part of being a member of Parliament, it is not work that is directly concerned with proceedings in the House. Similarly, most functions performed by Ministers are not performed as members of Parliament (apart from, for example, introducing bills and answering parliamentary questions) and do not involve any question of parliamentary privilege.<sup>178</sup> However, a reflection on the Speaker in his capacity as chairperson of the Parliamentary Service Commission was found to relate to his capacity as a member of Parliament, as this is a position held ex officio by the Speaker.<sup>179</sup>

The House has a duty to protect itself and its members against attacks that would diminish its standing in public esteem and inhibit it from functioning effectively. However, this duty must be balanced against freedom of speech and of reporting and commentary by news media. The test is whether or not a reflection alleges corruption or impropriety, which would include financial influence by outside interests. An allegation of contempt was upheld where an email newsletter suggested that the liquor and tobacco industries' support for a member meant he delivered his vote for their interests. The author of the email was ordered to apologise to the House and the member.<sup>180</sup>

To constitute a reflection on a member, it is not necessary that the words used should amount to an actionable defamation.<sup>181</sup> Where the member does bring defamation proceedings, he or she is not precluded from also raising the reflection as a matter of privilege.<sup>182</sup> The member may bring an action for damages in the courts instead of or in addition to pursuing a matter of privilege,<sup>183</sup> although any court action taken will be taken into account by the House in considering the penalty to impose.<sup>184</sup> Any member may raise a reflection on a member as a matter of privilege, even though the reflection may be on another member.<sup>185</sup>

Reflections on members in their parliamentary roles might be made out in almost any situation involving the House and its members. Adverse reflections have been found where a member was accused of perjuring himself in an election petition case,<sup>186</sup> where a report that was submitted to the House accused a member of not having told the truth in statements he had made to the House,<sup>187</sup> and where a member was accused of being "in the pocket" of the tobacco industry.<sup>188</sup> The House also found that the Attorney-General had been libelled and a contempt committed when a newspaper editorial accused him of promoting a bill to further his claims to certain property.<sup>189</sup> However, no contempt was found where two members were accused of hypocrisy over atomic bomb tests. The reflections did not concern the conduct of the members as members but related to statements they had made outside the House.<sup>190</sup>

---

<sup>178</sup> Privileges Committee, report on question of privilege relating to a reflection on the Speaker (6 May 1998) [1996–1999] AJHR I.15C at 7.

<sup>179</sup> Ibid.

<sup>180</sup> Privileges Committee *Question of privilege relating to a reflection on a member in his capacity as a member of the House* (13 February 2007) [2005–2008] AJHR I.17C.

<sup>181</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 263.

<sup>182</sup> (1978) 417 NZPD 1261, 1294 Harrison.

<sup>183</sup> See, for example: *News Media Ownership v Finlay* [1970] NZLR 1089 (CA).

<sup>184</sup> Privileges Committee, report on matter relating to an article in the *New Zealand Times* (10 October 1985) [1984–1985] AJHR I.6A at 10.

<sup>185</sup> (1912) 161 NZPD 672 Guinness.

<sup>186</sup> (1911) 158 NZPD 748–768.

<sup>187</sup> (1911) 156 NZPD 884–898.

<sup>188</sup> Privileges Committee *Question of privilege referred on 6 May 1998 relating to a reflection on a member in his capacity as a member of the House* (21 July 1998) [1996–1999] AJHR I.23 at 723.

<sup>189</sup> (1877) 24 NZPD 473–479.

<sup>190</sup> (27 July 1972) [1972] JHR at 62.

### **Reflections on the Speaker and other presiding officers**

Some of the most serious reflections on members concern those against the character of the Speaker or any other presiding officer. Usually, they are accusations that presiding officers have shown partiality in discharging their duties. In 1975 the Privileges Committee reported on a question of privilege concerning a reflection on the Speaker thus: “[The] Speaker is in a special position. Being the embodiment of Parliament, reflections upon [the Speaker’s] character or conduct directly attack the very institution of Parliament itself, and have been dealt with accordingly here and in England”.<sup>191</sup> The committee refused to consider the reasons “why” the attack on the Speaker had been made, but confined itself to a consideration of “whether” such an attack had been made.<sup>192</sup>

Reflections upon the Speaker have been censured on six occasions. On one occasion newspapers launched the attack on the Speaker, and on the other five occasions members did so. In 1967 a newspaper article accused the Speaker of racial prejudice;<sup>193</sup> in 1975 a member in a newspaper article criticised the way the Speaker was presiding over the House;<sup>194</sup> in 1976 a member in a radio interview accused the Speaker of weakness and advocated replacing him;<sup>195</sup> in 1982 a member in a press statement criticised the Deputy Speaker’s failure to call him to speak in a debate and suggested that the Deputy Speaker’s politics had overtaken his impartiality;<sup>196</sup> in 1987 a member in a press statement made reflections on the way the Speaker was presiding over the House;<sup>197</sup> and in 1998 a member accused the Speaker, as chairperson of the Parliamentary Service Commission, of selectively releasing personal information to disadvantage a political party.<sup>198</sup>

The use of social media has tested the boundaries of this form of contempt. In 2015 the Privileges Committee considered the implications of people using social media to report on parliamentary proceedings, and to reflect on members of Parliament and presiding officers.<sup>199</sup> The committee believed that members should not be discouraged from using social media as it offers a unique opportunity for them to share with the public news and information about aspects of their work. However, the committee reminded members and the Parliamentary Press Gallery of the parliamentary rules and practices that apply when using it. It confirmed that the contempt of reflections on a member or the Speaker remains an important restraint on conduct in relation to parliamentary proceedings.<sup>200</sup>

### **Other contempts**

The examples of contempts set out in the Standing Orders are illustrative rather than exhaustive. Other conduct not covered by those examples could conceivably amount to a contempt. The governing test is whether or not the conduct obstructs or impedes (or has the tendency to obstruct or impede) the House or its members in the discharge of their functions and duties.<sup>201</sup>

<sup>191</sup> (1975) 400 NZPD 3295. See also: (11 November 2015) 710 NZPD 7871 Borrows (Deputy Speaker); (1 December 2015) 710 NZPD 8375–8376 Borrows (Deputy Speaker).

<sup>192</sup> (1975) 400 NZPD 3295.

<sup>193</sup> (2 June 1967) [1967] JHR 144–145; (30 August 1967) [1966–1969] JHR 249–250.

<sup>194</sup> (1975) 400 NZPD 3295–3312.

<sup>195</sup> (1976) 407 NZPD 3157–3169.

<sup>196</sup> Privileges Committee, report relating to a statement made by a member concerning the Speaker (30 November 1982) [1982] AJHR I.6.

<sup>197</sup> Privileges Committee, report on a question of privilege referred on 11 March 1986 (30 October 1986) [1986–1987] AJHR I.15.

<sup>198</sup> Privileges Committee, report on question of privilege relating to a reflection on the Speaker (6 May 1998) [1996–1999] AJHR I.15C.

<sup>199</sup> Privileges Committee *Question of privilege regarding use of social media to report on parliamentary proceedings* (15 September 2015) [2014–2017] AJHR I.17A.

<sup>200</sup> Ibid. See also: Legislative Assembly (Vic) Standing Orders Committee Report into use of social media in the Legislative Assembly and reflections on the Office of Speaker [2012] 209.

<sup>201</sup> SO 409.

### ***Abuse of the right of petition***

In the United Kingdom, the submitting of a petition containing false or scandalous allegations against a person has been treated as a contempt. So, too, has inducing signatures to a petition by false representations and threatening to submit a petition against a member. No abuses connected with the right to petition have occurred in New Zealand and been treated as a contempt.

### ***Advice to the House***

There is no convention that Ministers will advise the House of important policy announcements or decisions.<sup>202</sup> But the prior publication outside the House of a matter to be submitted to the House can, under some circumstances, constitute a contempt. For example, it may amount to a contempt if a document or statement (such as a departmental report) intended for first promulgation in the House is improperly obtained or intercepted, and then published before its promulgation in the House.<sup>203</sup> However, the Privileges Committee has recommended that the House not treat as a contempt the premature release of parliamentary papers presented to the House under statute.<sup>204</sup>

The premature release of information about bills may, in some circumstances, raise issues of contempt. A Minister committed a contempt when he prematurely released the contents of a message to the House from the Governor-General including the text of a bill His Excellency was transmitting to the House for introduction.<sup>205</sup> However, these circumstances could not now arise as this method of introducing bills has been abolished. On the other hand, it is no contempt for the Government to disclose in advance of any formal parliamentary steps the terms of a bill about to be introduced into the House. Members of the House who learn of a bill from the news media in advance of its introduction might justifiably criticise this practice, but it does not raise matters of privilege or contempt.<sup>206</sup> Yet it could be treated as a contempt if formal parliamentary steps had been taken in respect of a bill, such as notification to the Clerk that a bill was about to be introduced, or if notice of intention had been given to introduce a private or local bill. To disclose the contents of such a bill after that time could be treated as a contempt.<sup>207</sup>

### ***Miscellaneous***

Other examples of conduct that may obstruct or impede the House in carrying out its functions are unauthorised use of the name of the House or its crest on an unofficial publication,<sup>208</sup> the placing of material in the bill boxes reserved for members in Parliament House without the Speaker's permission,<sup>209</sup> and improperly attempting to induce a member to resign from the House.<sup>210</sup>

## **LEGAL SIGNIFICANCE OF CONTEMPT**

The House's power to treat types of conduct as contempt may be legally significant in various ways.

The power to punish for contempt is reaffirmed in statute law as one of the House's privileges, immunities and powers, and all courts must take judicial notice of this.<sup>211</sup> This power is exercisable only by the House itself—the courts do not

<sup>202</sup> (2000) 583 NZPD 1659 Hunt; (2002) 603 NZPD 1512 Hunt.

<sup>203</sup> (1977) 412 NZPD 1587 Jack.

<sup>204</sup> Standing Orders Committee *Report on the law of privilege and related matters (second report)* (12 December 1989) [1987–1990] AJHR I.18B at [21].

<sup>205</sup> (1955) 307 NZPD 2532–2539.

<sup>206</sup> (1892) 77 NZPD 73–77.

<sup>207</sup> Standing Orders Committee *First report (Part I)* (16 July 1985) [1984–1985] AJHR I.14 at 17.

<sup>208</sup> Reply to question 7620 (2001) (48 NZPD Supp 1680).

<sup>209</sup> (1903) 124 NZPD 571.

<sup>210</sup> (1998) 574 NZPD 14721.

<sup>211</sup> Parliamentary Privilege Act 2014, ss 8(1)–(3) and 22(4).

punish for contempt of the House, although they may be called upon to enforce punishments meted out by the House.<sup>212</sup> The fact that a contempt has been, or is about to be, committed does not create a cause of action for which relief can be obtained from a court.<sup>213</sup>

Requests for official information or personal information held about an individual may raise issues for the House. It may furnish a good ground to withhold information under the pertinent statutory regime if the release of the information would constitute a contempt of the House.<sup>214</sup> An obvious example would be a request for the release of confidential select committee information that was held by a Minister or a Government department. Release of such information under the Official Information Act 1982 would be in contempt of the House. That statute and the Local Government Official Information and Meetings Act 1987 provide that nothing in the legislation authorises or permits the making available of official information that would constitute a contempt of the House.<sup>215</sup> In reviewing decisions to withhold official information or personal information, the Ombudsmen and the Privacy Commissioner may be required to judge whether a contempt would be committed were the information to be made available.<sup>216</sup> Similar provisions protect the House against contempt arising in the course of meetings of local authorities and committees of district health boards. Local authorities and health boards may exclude the public from their meetings if the public's presence would be likely to result in disclosure of information that would constitute a contempt of the House.<sup>217</sup>

Whether or not an otherwise lawful decision or action might constitute a contempt may be a governing factor in the legality of the decision or action. Thus the Human Rights Commission has accepted advice that it should not embark upon an inquiry where to do so would lead it into committing a contempt of the House.<sup>218</sup> The courts, too, would be expected to conduct their proceedings so as to avoid what might technically amount to a contempt. For example, they might resist a request to produce or inspect documents in the course of legal proceedings where the documents were subject to parliamentary confidentiality. Parties to litigation would need to obtain the permission of the House or the committee in question before the court would admit the documentary evidence.<sup>219</sup> Judicial deference to the sensibilities of the House is a feature of the relationship between the legislative and judicial branches of government. The possibility that a contempt of the House may be committed can be a significant factor in legal outcomes, even though contempt itself cannot give rise to a cause of action.

<sup>212</sup> Parliamentary Privileges Act 2014, s 22(2), (3).

<sup>213</sup> *Halden v Marks* (1995) 17 WAR 447 (SC); *Criminal Justice Commission v Nationwide News Pty Ltd* [1994] QCA 352, [1996] 2 Qd R 444.

<sup>214</sup> Official Information Act 1982, s 18(c)(ii); Local Government Official Information and Meetings Act 1987, s 17(c)(ii); Privacy Act 1993, s 29(1)(i).

<sup>215</sup> Official Information Act 1982, s 52(1); Local Government Official Information and Meetings Act 1987, s 44(1).

<sup>216</sup> See, for example: Office of the Ombudsmen, report for the year ended 30 June 2002 (19 September 2002) NZPP A.3 at 34–35.

<sup>217</sup> Local Government Official Information and Meetings Act 1987, s 48(1)(b)(ii); New Zealand Public Health and Disability Act 2000, sch 4, cl 34(b).

<sup>218</sup> Human Rights Commission "No Commission of Inquiry" (media release, 17 October 2001); *Opinion of Dr G P Barton QC for Human Rights Commission* (28 September 2001) at [33]–[40].

<sup>219</sup> See Regulations Review Committee *Complaints relating to the Fisheries (Allocation of Individual Catch Entitlement) Regulations 1999* (14 June 1999) [1996–1999] AJHR L16P at 12–14. See also: Parliamentary Privilege Act 2014, s 12 (prohibiting a court or tribunal producing or using documents or oral evidence that the House or committee received in private or as secret evidence, unless the House or committee has communicated them to the public, or authorised their communication to the public).

# CHAPTER 47

# Proceedings in Matters of Privilege

## RAISING MATTERS OF PRIVILEGE

A member may raise a complaint of a breach of privilege or a contempt, or any matter to do with the privileges of the House, in one of four different ways:

- with the Speaker
- on motion, after notice has been given in the normal way
- on the floor of the House without notice
- by petition.

The following discussion examines these means of raising a matter of privilege.

## MATTERS RAISED WITH THE SPEAKER

The most common way of raising a matter of privilege is through the Speaker. If the matter is to have precedence over other business of the House, a member must raise the matter of privilege with the Speaker so that the Speaker can consider and deal with it in the first instance off the floor of the House.

A member alleging that a breach of privilege or contempt has occurred may put the allegation in writing and deliver it to the Speaker.<sup>1</sup> A member cannot raise a matter of privilege on the floor of the House, except in the special circumstances dealt with below.<sup>2</sup> An allegation must be formulated as precisely as possible, so that the person against whom it is made has a full opportunity to respond to it.<sup>3</sup>

### Must be raised at the earliest opportunity

A matter of privilege must be raised with the Speaker at the earliest opportunity. The Speaker will not certify that a question of privilege is involved under any other circumstances. Nor will a matter of privilege be accorded precedence over other business of the House if the matter is not raised at the earliest opportunity.<sup>4</sup> What constitutes the earliest opportunity depends upon the nature and circumstances of the allegation, and precisely when the facts supporting it come to the public's or a member's notice. In general, a member must raise a matter of privilege with the Speaker before the next sitting of the House.<sup>5</sup> However, more leeway is

---

<sup>1</sup> SO 402(1).

<sup>2</sup> (1988) 492 NZPD 6460 Burke.

<sup>3</sup> SO 403.

<sup>4</sup> SO 402(1).

<sup>5</sup> SO 402(2).

accorded if a matter of privilege involves the proceedings of a select committee. It is desirable (although not essential) for a member contemplating raising a matter to discuss it with the committee concerned first. The member may wish to place the matter on the committee's agenda for its next meeting, in order to consider whether to take any action regarding the matter. It may, for example, be able to resolve it satisfactorily without the Speaker's involvement.<sup>6</sup> To facilitate these steps, a member has until the commencement of the first sitting of the House following the day of the next meeting of the committee to raise it with the Speaker.<sup>7</sup> The member retains the right to raise the matter with the Speaker by the next sitting of the House, regardless of the committee's views on the merits of the matter.

Where matters of privilege relate to select committee proceedings, it has become the practice for the Speaker to seek the views of the committee before ruling. A committee may resolve that the chairperson raise the matter with the Speaker on its behalf. However, the chairperson does so in his or her capacity as a member of Parliament, not as the chairperson of the particular committee. The chairperson is not obliged to raise a matter of privilege, and no committee has the power to direct a chairperson to do so. Other members of the committee are not parties to the raising of the matter, unless they address letters in their own names to the Speaker to that effect.<sup>8</sup>

A matter of privilege that lapses before it can be dealt with owing to a prorogation or dissolution of Parliament cannot be raised again with the Speaker in the next session. Such a matter must, by definition, have already been raised at the earliest possible opportunity, and there cannot be another "earliest opportunity" to raise it. It may be raised again only by a notice of motion.

A matter arises when it comes to public notice or to the notice of a member, not at the time when the alleged breach occurs. When a member on 4 July raised a matter of privilege concerning a letter dated 25 March, he was held to have raised it at the earliest opportunity; he had received the letter only the previous day.<sup>9</sup> If a member suspects that a breach of privilege or contempt may have occurred but needs more time to establish the facts, the member may lodge a holding complaint to reserve the member's right to raise the matter subsequently with fuller particulars.<sup>10</sup> The Speaker will allow the matter to remain open for a reasonable period of time.

## Informing other members

A member raising a matter of privilege with the Speaker must also forward to any member implicated in the alleged breach or contempt a copy of the letter the member sent to the Speaker. The member must do this as soon as reasonably practicable after the matter has been raised.<sup>11</sup> The Speaker's office checks that this requirement has been complied with if this is not apparent from the letter sent to the Speaker.<sup>12</sup>

## References to matters of privilege

Members are not under any duty to keep confidential a matter that they intend to raise or have raised with the Speaker.<sup>13</sup> The Speaker has deprecated the circulation of a letter raising a matter of privilege, but there is nothing to forbid this.<sup>14</sup> Once

<sup>6</sup> Standing Orders Committee *Review of Standing Orders* (11 December 2003) [2002–2005] AJHR I.18B at 80.

<sup>7</sup> SO 402(2).

<sup>8</sup> Privileges Committee, interim report on question of privilege on the action taken by TVNZ in relation to its chief executive (6 April 2006) [2005–2008] AJHR I.17A at 3.

<sup>9</sup> (1912) 158 NZPD 242–246.

<sup>10</sup> (2001) 592 NZPD 9618 Hunt.

<sup>11</sup> SO 405.

<sup>12</sup> Privileges Committee *Question of privilege referred on 24 February 1998 relating to a reflection on the Speaker* (6 May 1998) [1996–1999] AJHR I.15C at 10.

<sup>13</sup> (17 February 2004) 615 NZPD 10998 Hunt.

<sup>14</sup> (1988) 489 NZPD 4436–4437 Burke; Privileges Committee, report on a question of privilege referred on 23 August 1989 (23 November 1989) [1987–1990] AJHR I.15E.

a matter of privilege has been raised, the Speaker indicated a preference that the matter should not be discussed in the media, nor that members should try to influence the Speaker through the media.<sup>15</sup> Where members have sought leave to table a letter from the member to the Speaker alleging a breach of privilege, the Speaker has suggested that doing so would make it difficult for the Speaker to take the matter as seriously as a case that is not made before the Speaker has had a chance to deal with it.<sup>16</sup>

A member making public statements about a matter of privilege and circulating copies of the letter to the Speaker would not be protected against liability in defamation under the absolute privilege attaching to proceedings in Parliament.<sup>17</sup> Matters of privilege raised off the floor of the House do not qualify as “proceedings in Parliament” as that phrase is used in article 9 of the Bill of Rights 1688.

It is not in order to refer in the House to the intention to raise a matter of privilege, or to refer to a matter that has already been raised with the Speaker.<sup>18</sup> However, there is nothing wrong with raising these matters by notice of motion instead of referring them to the Speaker. Nor is it wrong to raise such matters after the Speaker has ruled on the matter. But, while a matter is before the Speaker, it is not in order to lodge a notice of motion.<sup>19</sup>

## **Speaker’s role**

The Speaker is required to consider the matter that has been raised and to determine whether a question of privilege is involved.<sup>20</sup> Formerly, the Speaker was required to rule whether a *prima facie* case of breach of privilege or contempt had been made out. This was changed in 1979, but the change was not intended to alter the nature of the decision that the Speaker must make. The Standing Orders Committee that considered the procedure and recommended the change felt that a ruling that a *prima facie* case existed gave an unwarranted impression that the Speaker thought that a breach of privilege or contempt had indeed been committed. The committee believed it desirable to require instead the more neutral ruling that a question of privilege was involved.<sup>21</sup> Moreover, rulings that a *prima facie* case exists concern allegations of a breach of privilege or contempt but not all matters of privilege involve allegations. A matter of privilege may relate, for example, to the question of whether or not a member is qualified to sit in the House. Such questions entail no suggestion of a breach of privilege.

The Speaker is there to sort the wheat from the chaff. The Speaker must consider, on the evidence presented, whether the facts alleged could, if true, amount to a breach of privilege or contempt of the House, or whether they otherwise raise a matter seriously affecting the privileges of the House. If a matter of privilege involves the Speaker personally, the Speaker delegates the responsibility for ruling on it to the Deputy Speaker.<sup>22</sup>

## **Consideration by the Speaker**

The Speaker acts judicially—that is, impartially and independently—when ruling on whether a matter of privilege is involved. The Speaker does not inquire into the veracity of the evidence presented, and does not hold a full inquiry into the

<sup>15</sup> (4 August 2011) 674 NZPD 20328–20329 Smith.

<sup>16</sup> Ibid.

<sup>17</sup> Standing Orders Committee *Report on the law of privilege and related matters (second report)* (12 December 1989) [1987–1990] AJHR I.18B at [59]; (1988) 489 NZPD 4436 Burke; (25 June 2003) 609 NZPD 6543 Hunt.

<sup>18</sup> (1986) 473 NZPD 3805 Wall.

<sup>19</sup> (4 August 2011) 674 NZPD 20328–20329 Smith.

<sup>20</sup> SO 404(1).

<sup>21</sup> Standing Orders Committee *Final report* (7 November 1979) [1979] AJHR I.14 at 16.

<sup>22</sup> (1976) 404 NZPD 1552; (1987) 479 NZPD 7974; (1998) 566 NZPD 6688; (11 November 2015) 710 NZPD 7871 Borrow (Deputy Speaker); (1 December 2015) 710 NZPD 8375–8376 Borrow (Deputy Speaker).

matter that is raised. These are the functions of the body appointed to consider questions of privilege—the Privileges Committee.<sup>23</sup> The Speaker appraises the evidence submitted in support of a complaint to determine whether it points to a reasonable (rather than remote) possibility that a breach of privilege or contempt has occurred.<sup>24</sup>

Members affected by a matter of privilege raised with the Speaker may make representations about it to the Speaker.<sup>25</sup> It is expected that a member who is implicated in a complaint of breach of privilege or contempt will wish to make known his or her point of view for the Speaker's consideration. But members must take the initiative in making such representations, and the Speaker will delay making a decision on a matter of privilege or contempt only for a reasonable time. The Speaker has rejected a member's complaint that he was not given enough time to respond when the Speaker waited a week before ruling, and the member had twice been reminded by the Speaker's office that it was in his interest to comment.<sup>26</sup>

Where a matter of privilege relates to select committee proceedings, the member's letter to the Speaker raising the matter may have sufficiently conveyed the committee's views. If not—either because the member had not raised it with the committee or because the committee had not communicated its views to the Speaker—the Speaker will invariably seek the committee's comments before ruling on it.<sup>27</sup>

Where a matter of privilege involves the conduct of a person outside the House, there is no obligation on the member raising it to inform that person. Nor is the Speaker obliged to give the person an opportunity to comment. However, if the person is aware that a matter of privilege is to be raised with the Speaker (because the member has informed the person or had made a public statement to that effect), the Speaker will receive and consider any comments the person wishes to make before ruling on the matter.

## Determination by the Speaker

The Speaker determines whether a breach of privilege or contempt may have occurred, or whether a matter relating to the privileges of the House has arisen. The Speaker makes the determination on the facts as alleged and on any representations made by members or a committee, having regard to the rules and precedents pertaining to the privileges of the House. The House cannot create new privileges, although new factual situations may arise that fall into the established categories of privilege or contempt. If the Speaker resolves that a subject of complaint does not relate to one of the House's established privileges, the Speaker will rule that no question of privilege is involved. In cases of genuine doubt, the Speaker may allow the matter to proceed so as to allow the House and the Privileges Committee to determine it.

In ruling on matters of privilege, the Speaker is enjoined to consider the relative seriousness of the matter that has been raised. Under the Standing Orders, the Speaker must take into account the importance of the matter raised, and rule that no question of privilege is involved if the alleged breach or contempt is technical or trivial, and thus not warranting the attention of the House.<sup>28</sup> The conduct complained of must be genuinely regarded as tending to impede or obstruct the House in the discharge of its duties in order for the conduct to raise a question of privilege.<sup>29</sup>

<sup>23</sup> (1980) 433 NZPD 3761 Harrison.

<sup>24</sup> Ibid, at 3673, 3761.

<sup>25</sup> (1989) 500 NZPD 12150 Burke; (2000) 589 NZPD 7499 Hunt.

<sup>26</sup> (2000) 589 NZPD 7499 Hunt.

<sup>27</sup> (2002) 598 NZPD 14743 Hunt.

<sup>28</sup> SO 404(2), (3).

<sup>29</sup> Privileges Committee, report relating to matters of privilege referred on 14 and 15 December 1982 (17 December 1982) [1982] AJHR I.6 at 17–18.

Not all matters that are considered trivial in themselves will be automatically rejected by the Speaker. An incident that seems unimportant in itself may raise an important matter of principle. When an allegation was made that a member had breached a court order during a general debate, the Speaker ruled that the member's conduct did not in itself impede or obstruct the business of the House; nevertheless, the member's actions did raise an important matter of principle concerning the House's privilege of freedom of speech.<sup>30</sup> The Speaker must exercise judgement on the desirability of investigating a matter, having regard to the interests at stake and what might be gained. In one case where the premature disclosure of select committee proceedings clearly amounted to a contempt, the Speaker exercised his discretion to find that no question of privilege was involved. The chief executive of the department in question had already apologised for the lapse and there was no reason to pursue the matter further.<sup>31</sup> The Speaker may hold that no question of privilege is involved if there is no need for the House to take corrective action (for example, if the matter has already been resolved).<sup>32</sup>

## **When the Speaker determines that no question of privilege is involved**

If the Speaker considers that no question of privilege is involved, he or she makes this determination known by informing the member who raised the matter, which is then at an end.<sup>33</sup> The determination is communicated in writing and is copied to any other member involved. The member may still wish to raise the matter by lodging a notice of motion, but no precedence over other business will be accorded to it. The Speaker may or may not give reasons for determining that no question of privilege is involved, depending on the seriousness of the matter raised. The Speaker is less likely to do so if a member has sought political coverage in the media.<sup>34</sup> If the member publicly releases details of the complaint implicating persons outside the House, the Speaker will also advise those persons of the determination.<sup>35</sup> There is no other mechanism to ensure that such persons who had been publicly named are advised that the complaint has been dismissed.

Where the member who raised it is advised that no question of privilege was involved, the Speaker has the authority to make a ruling in the House if the decision raises an important point of principle,<sup>36</sup> or if there is wide interest in the matter.<sup>37</sup> When reporting that no question of privilege was involved, Speakers have given guidance to members on the procedure to be followed in raising matters of privilege and on the nature of the particular privilege or contempt raised.<sup>38</sup>

## **When the Speaker determines that a question of privilege is involved**

The Speaker's determination that a complaint raises a question of privilege is the jurisdictional trigger that authorises the Privileges Committee to investigate the complaint. The Speaker reports the determination to the House at the first opportunity.<sup>39</sup> However, the Speaker must first inform any member who is involved in a question of privilege that he or she proposes to report the matter to the House.<sup>40</sup> This ensures the member has an opportunity to be present in the Chamber when the Speaker reports and to respond to any immediate public comment on the ruling.

<sup>30</sup> (3 July 2008) 648 NZPD 17177 Wilson.

<sup>31</sup> (1988) 488 NZPD 3396–3397 Burke.

<sup>32</sup> (2001) 590 NZPD 7912 Hunt.

<sup>33</sup> (1980) 433 NZPD 3672–3673 Harrison.

<sup>34</sup> (4 August 2011) 674 NZPD 20328–20329 Smith.

<sup>35</sup> (25 June 2003) 609 NZPD 6543 Hunt.

<sup>36</sup> (1986) 476 NZPD 5961 Wall.

<sup>37</sup> (26 July 2006) 632 NZPD 4404 Wilson.

<sup>38</sup> See, for example: (19 February 2003) 606 NZPD 3551–3552 Hunt.

<sup>39</sup> SO 406(1).

<sup>40</sup> SO 406(2).

Normally, a Speaker's ruling reporting to the House on a question of privilege is given immediately after prayers. Although there is no particular form for this report, the Speaker attempts to express the ruling in terms that make clear the nature of any breach of privilege or contempt that is alleged.<sup>41</sup> Once the Speaker has ruled that a question of privilege is involved, the matter automatically stands referred to the Privileges Committee.<sup>42</sup> There is no motion and no debate in respect of the matter.

## MATTERS OF PRIVILEGE RAISED BY NOTICE OF MOTION

Members do not have to raise a matter of privilege with the Speaker. But such matters are given precedence over other business of the House only if members proceed in this way, and the procedures already discussed come into play. However, a member can choose to give a notice of motion in the ordinary form raising a matter of privilege.<sup>43</sup> This may be done whether or not the member has already raised the matter with the Speaker and received a ruling that no question of privilege is involved. This is the only method of reviving a question of privilege that had lapsed in the previous session.

A notice of motion alleging a breach of privilege or a contempt is not treated in any special way. At one time such notices were given precedence over other notices but this is no longer the case. Under the House's current procedures for dealing with notices, it is most unlikely that the notice of motion would be dealt with at all. Such a notice must set out clearly what is alleged to constitute the breach or contempt, and cannot include any material other than the bare charge or allegation that the member is making.<sup>44</sup>

Such a notice may seek to refer a matter to the Privileges Committee for inquiry, or declare certain conduct to be a breach of privilege or a contempt without an inquiry. It would be highly unusual (although not unprecedented) for the House to act upon such a notice of motion without a Privileges Committee inquiry. Two exceptions were respectively when the House of Commons declared a former member's conduct to have been a contempt,<sup>45</sup> and when the House of Representatives censured a member for remarks he had uttered.<sup>46</sup> Neither action entailed a formal hearing.

## MATTERS OF PRIVILEGE RAISED WITHOUT NOTICE

In one situation, a matter of privilege may be raised without notice. Where the conduct of strangers present in the House gives rise to a matter of privilege (for example, as a result of misconduct on their part),<sup>47</sup> the Speaker has discretion to deal with the matter as he or she determines, and any debate in progress may be interrupted for this purpose.<sup>48</sup>

## MATTERS OF PRIVILEGE RAISED BY MEANS OF PETITIONS

A petition was once the recognised means of seeking the authority of the House to use extracts from debates or other House reports or proceedings in court. (See

<sup>41</sup> Privileges Committee, report in relation to words used in the House by a member (15 October 1981) [1981] AJHR I.6 at 3.

<sup>42</sup> SO 407.

<sup>43</sup> (1982) 447 NZPD 3981 Harrison.

<sup>44</sup> (1929) 222 NZPD 663.

<sup>45</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 254.

<sup>46</sup> (2000) 585 NZPD 3457.

<sup>47</sup> SO 402(4).

<sup>48</sup> SO 113(b).

pp 746–747.) This form of petition is now obsolete, as the House has granted a general authority for litigants to refer to its proceedings in court.<sup>49</sup>

The House has received and referred to the Privileges Committee petitions alleging that contempts have been committed.<sup>50</sup>

## PRIVILEGES COMMITTEE

The Privileges Committee is the select committee that exercises the delegated authority of the House to determine matters relating to its privileges. The House establishes this committee at the commencement of each Parliament, and the Attorney-General usually (although not invariably) chairs it.<sup>51</sup> Its remit is to consider and report to the House on any matters referred to it relating to or concerning parliamentary privilege.<sup>52</sup> The committee does not have the power to initiate inquiries, and operates solely on the basis of issues that the House refers to it.

The committee's membership typically includes senior members of the House, such as the Leader of the House, the Leader of the Opposition and other party leaders. A committee member who raises a matter of privilege with the Speaker, alleging a breach of privilege or a contempt, may not serve on the committee to consider the particular complaint.<sup>53</sup> However, this disqualification does not extend to a member who raises a matter of privilege not involving an allegation of breach of privilege or contempt. Such members may continue to sit on the committee to inquire into the matter.

The committee's reports to the House carry great weight, and their recommendations are almost always adopted. The Standing Orders Committee has recommended that the committee's membership remain fixed throughout an inquiry, so that only those members who have heard all of the evidence on a complaint should deliberate on it.<sup>54</sup>

### Powers

The Privileges Committee possesses the same powers and is subject to almost all of the procedural rules as the other select committees. However, the committee has conferred upon it an important additional power to send for persons, papers and records.<sup>55</sup> The committee does not have to apply to the Speaker to obtain the Speaker's authority to exercise the summoning power, as must other committees that want to send for persons, papers or records.

Like the other committees, the Privileges Committee hears evidence in public. However, the nature of its adjudicative task means the committee proceeds differently from the other committees. For example, the committee is exempt from the prohibition on committees inquiring into, or making findings in respect of, the private conduct of members.<sup>56</sup> The committee investigates allegations of breach of privilege or contempt, and members are often the subject of such allegations. The committee does not shrink from making adverse findings against members if an allegation is established. Sometimes, an allegation may be directed against no

<sup>49</sup> SO 411.

<sup>50</sup> (14 March 1997) [1996–1999] JHR 1367 (schedule of petitions presented); see also: Privileges Committee Petition 2002/0175 of Amer Salman and Omar Ali and 724 others (17 March 2006) [2005–2008] AJHR.

<sup>51</sup> Privileges Committee *Question of privilege referred on 24 February 1998 relating to a reflection on the Speaker* (6 May 1998) [1996–1999] AJHR I.15C at 10; (1998) 567 NZPD 8364.

<sup>52</sup> SO 401(1).

<sup>53</sup> SO 408; where chairperson of a committee raises a matter of privilege, see Privileges Committee, interim report on question of privilege on the action taken by TVNZ in relation to its chief executive (6 April 2006) [2005–2008] AJHR I.17A at 3.

<sup>54</sup> Standing Orders Committee *Final report* (7 November 1979) [1979] AJHR I.14 at 16.

<sup>55</sup> SO 401(2).

<sup>56</sup> SO 200.

specific person, which requires the committee to investigate the facts as alleged in an attempt to identify the perpetrator or perpetrators. The committee plays an inquisitorial role, but endeavours to conduct its proceedings in accordance with the recognised principles of natural justice.<sup>57</sup> The committee applies the civil law standard of proof on the balance of probabilities, in order to determine whether a breach of privilege or a contempt has been proven.<sup>58</sup>

People appearing before the Privileges Committee are permitted to have their own counsel should they wish to be represented. The House and the committee approved this practice well before it was permitted expressly in the Standing Orders.<sup>59</sup> It is the practice of the committee to ask witnesses appearing before it whether or not they wish to be assisted by counsel. The committee is concerned to ensure that witnesses do not, by default, forego the opportunity to be represented. The committee follows the standard adversarial practice of permitting anyone who is the subject of an allegation, or counsel on their behalf if they are represented, to cross-examine other witnesses appearing before the committee.<sup>60</sup>

## Scope of inquiry

The High Court has described inquiries by the Privileges Committee as “*sui generis*”.<sup>61</sup> Its proceedings do not fall into any general category of inquiries.

Once a matter of privilege has been referred to it, it is for the Privileges Committee to decide how deeply to investigate the matter and how widely to pursue possible offenders. The committee does not consider itself confined to considering only issues referred to it by the Speaker. The committee is charged with investigating the facts, and reporting to the House whether or not a breach of privilege or contempt has been committed, or if some other matter affects the privileges of the House. The precise formulation of any allegation referred to it by the Speaker does not limit the committee’s investigation or ruling on the matter.<sup>62</sup> However, the committee must give notice to any member affected before considering other matters of privilege beyond the scope of the question initially fixed by the Speaker’s ruling.<sup>63</sup>

## Findings

In conducting its inquiries, the Privileges Committee is bound by the same rules of natural justice as apply to the other select committees of the House. The committee must make known to any person whose reputation may be seriously damaged its provisional findings and give that person an opportunity to respond.<sup>64</sup> It has adopted the civil law standard of proof on the balance of probabilities in investigating allegations and making findings of breach of privilege or contempt.<sup>65</sup>

<sup>57</sup> See SOs 232–238 for the natural justice protections applying to committee hearings generally, and SOs 403, 405 and 408 for additional protections applying to Privileges Committee hearings. These protections were adopted in the 1995 rewrite of the Standing Orders in anticipation of the new political environment under the MMP voting system. See Philip A Joseph “Report to the Standing Orders Committee on Natural Justice” in Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] AJHR I.18A, App F. See [7.1]–[7.11] for discussion of natural justice issues as specifically affecting the Privileges Committee.

<sup>58</sup> Privileges Committee, report on a matter of privilege (4 November 1980) [1980] AJHR I.6 at 7–8; Privileges Committee *Question of privilege relating to compliance with a member’s obligations under the Standing Orders dealing with pecuniary interests* (22 September 2008) [2005–2008] AJHR I.17D.

<sup>59</sup> See, for example: Privileges Committee, report in relation to letter reflecting on the character of a member of Parliament (9 August 1912) [1912] AJHR I.8 at 3.

<sup>60</sup> Privileges Committee, report on a matter of privilege (4 November 1980) [1980] AJHR I.6 at 4.

<sup>61</sup> *Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) at 724.

<sup>62</sup> Privileges Committee, report on matter of privilege relating to an article published in the *New Zealand Times* (17 December 1982) [1982] AJHR I.6 at 8; Privileges Committee, report on question of privilege relating to an allegation of assault (14 May 1997) [1996–1999] AJHR I.15A at 3–4.

<sup>63</sup> Privileges Committee, report on question of privilege relating to an allegation of assault (14 May 1997) [1996–1999] AJHR I.15A at 4.

<sup>64</sup> SO 246(1).

<sup>65</sup> Privileges Committee *Question of privilege relating to compliance with a member’s obligations under the Standing Orders dealing with pecuniary interests* (22 September 2008) [2005–2008] AJHR I.17D.

The committee must consider the totality of the evidence, and ask itself if it is satisfied on the basis of compelling evidence that a breach of privilege or a contempt has occurred.<sup>66</sup> Nothing less will discharge the burden of proof on the committee.

## Report

The committee reports to the House on questions of privilege referred to it. It is the House that finally decides whether a breach of privilege or a contempt has been committed, and, if so, what punishment should be inflicted. However, the most important factor in the House's decision is the finding and report of the Privileges Committee. The committee does not constrain itself to strictly factual findings, but seeks to work out the optimal solution to a complaint. It may correspond with persons it considers to be in contempt and recommend to the House what it considers to be an appropriate punishment. It presents comprehensive recommendations, sometimes extending to matters beyond the alleged breach of privilege or contempt referred to it. For example, it has recommended improvements to the House's procedures and administrative arrangements for providing services to members, when such matters have arisen in the course of inquiries.<sup>67</sup>

## Consideration of report

A report from the Privileges Committee is set down for consideration as general business.<sup>68</sup> This accords it a priority for consideration by the House that is not accorded to any other type of select committee report. Consideration of a report of the Privileges Committee is taken on the sitting day following its presentation, after question time and any urgent or general debate.<sup>69</sup>

The debate on the committee's report takes place on a motion moved by the chairperson of the Privileges Committee. This may be a motion to take note of the report (the normal motion on the consideration of a select committee report), or, if the report contains recommendations (as it often will), a motion to reflect the recommendations.<sup>70</sup> The debate is not subject to any overall time limit under the Standing Orders, but each member may speak only for up to 10 minutes.

## OUTCOME OF QUESTION OF PRIVILEGE

There are several possible outcomes from an inquiry into a question of privilege. The decision of the House need not entail a finding as to whether or not a breach of privilege or a contempt has been committed, or what punishment (if any) should be imposed. The House's privileges relate to its legal position generally, and the House may need to consider its privileges in contexts other than allegations of breach of privilege or of contempt. Thus a question of privilege may be raised concerning, for example, the question of whether or not the House wishes to become involved in legal proceedings. It may resolve to make application to join the proceedings in order to present argument that would uphold its view of its privileges, or to ensure that the effect of its privileges on a matter before the court is not overlooked.<sup>71</sup> Similarly, a question of privilege may be raised about the status of a member or of a proceeding before Parliament. In the past, the House has

<sup>66</sup> Privileges Committee, report on question of privilege relating to an allegation of assault (14 May 1997) [1996–1999] AJHR I.15A at 5.

<sup>67</sup> Privileges Committee, report on matter of privilege relating to an article published in the *New Zealand Times* (17 December 1982) [1982] AJHR I.6 at 7–9.

<sup>68</sup> SO 250(1)(a).

<sup>69</sup> SO 66(1).

<sup>70</sup> SO 251.

<sup>71</sup> Privileges Committee, report on question of privilege referred on 10 March 1992 (10 November 1994) [1993–1996] AJHR I.15B; Privileges Committee *Question of privilege referred on 25 July 2000 relating to Westco Lagan Ltd v Attorney-General and the Clerk of the House of Representatives* (27 March 2001) [1999–2002] AJHR I.17A.

decided, on a question of privilege, whether or not a person has been duly returned as a member of Parliament,<sup>72</sup> and whether or not a member had vacated his or her seat by resignation or other disqualification.<sup>73</sup>

Most questions of privilege entail allegations of breach of privilege or of contempt by members or persons outside the House. A finding that an allegation has been made out raises the question of whether or not the House should exercise its penal power, and, if so, what punishment it should impose.

## PUNISHMENTS

If the House finds that a contempt has been committed, it must decide whether to punish the person (or persons) who are culpable, or whether the offence is not worth further notice. If the House does take the matter further, there are several punishments it may inflict and means it may employ to express its displeasure. In addition to “punishing” an offender for contempt, the House may also use its penal powers to enforce and uphold its privileges. It may order or coerce someone to do something it wishes to be done, for example committing a person to the custody of the Serjeant-at-Arms so that he or she may be brought to give evidence before a committee. When using its powers in this way, the House is not “punishing” anyone for past transgressions, but rather ensuring that no transgressions occur. The House uses its powers to secure compliance with its orders before there has been any disobedience of them. If a person committed into the Serjeant’s custody escaped, then a contempt would be committed and the person would be liable to be punished. The distinction between punishing for disobedience and taking action to secure compliance can be a fine one where there is disobedience to the House’s order.<sup>74</sup> However, the distinction has little practical import for a House that enjoys by statute all of the privileges possessed by the House of Commons as at 1865: either way, the House’s penal power is undoubtedly.

The rights and freedoms affirmed under the New Zealand Bill of Rights Act 1990 are binding on the House<sup>75</sup> and may affect the exercise of its penal powers. The relevant rights and freedoms are the protections against unreasonable search or seizure<sup>76</sup> and arbitrary arrest or detention,<sup>77</sup> the right to seek the writ of habeas corpus to secure release from an unlawful imprisonment,<sup>78</sup> and the minimum standards of conduct to be observed when a person is placed under arrest.<sup>79</sup> The House must ensure that it acts consistently with these rights and freedoms when exercising its penal powers to arrest or punish for a breach of privilege or contempt.

In the United Kingdom, concern has been expressed about the penal powers of the two Houses of Parliament. Two factors have been observed to impede their exercise. The first is a reluctance to invoke the powers for fear that to do so might seem oppressive. The penal jurisdiction should be exercised as sparingly

<sup>72</sup> (1856–1858) NZPD 559–560.

<sup>73</sup> Privileges Committee, report on question of privilege relating to status of Alamein Kopu as a member of Parliament (25 September 1997) [1996–1999] AJHR I.15B; Privileges Committee, report on question of privilege relating to Harry Duynhoven (6 August 2003) [2002–2005] AJHR I.17C.

<sup>74</sup> *Egan v Willis* (1998) 195 CLR 424 at 455 per Gaudron, Gummow and Hayne JJ.

<sup>75</sup> New Zealand Bill of Rights Act 1990, s 3(a).

<sup>76</sup> New Zealand Bill of Rights Act 1990, s 21.

<sup>77</sup> New Zealand Bill of Rights Act 1990, s 22.

<sup>78</sup> New Zealand Bill of Rights Act 1990, s 23(1)(c). See also: Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [13.13.3(2)].

<sup>79</sup> New Zealand Bill of Rights Act 1990, s 23. Any person “who is arrested or who is detained under any enactment” may claim the s 23 rights. The qualifier “under any enactment” applies to a detention, not an arrest, and the House’s penal powers are not exercised under any enactment: see Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [13.13.3(2)]. Although the privileges and powers enjoyed by the House of Representatives were initially adopted under statute (see now the Parliamentary Privilege Act 2014, s 8), they evolved out of prescriptive usage and assertion by the House of Commons reaching back to the beginnings of the English Parliament. Judicial recognition and acceptance of Parliament’s privileges transformed them into principles of customary common law, which have never been codified in legislation.

as possible, and only where it is essential to protect the House, its members or its officers from improper obstruction or interference.<sup>80</sup> The second impediment is fear of successful legal challenge. The pertinent rights under the European Convention on Human Rights incorporated under the Human Rights Act 1998 (UK) have caused particular concern for the two Houses. In 2013 the Joint Committee on Parliamentary Privilege recommended against Parliament legislating to confirm its penal powers, expressing a preference for the two Houses to adopt internal measures to reassert the continuing existence of Parliament's historic jurisdiction. It recommended that the two Houses clarify their view on Parliament's penal powers and adopt fair procedures to be followed when it is necessary to invoke them.<sup>81</sup>

## Imprisonment

The power to imprison is the ultimate power the House possesses to enforce or vindicate its privileges. The House of Commons has used this power on literally hundreds of occasions. It has been claimed that there were a "little less than a thousand" commitments between 1547 and 1810.<sup>82</sup> In contrast, neither the House of Representatives nor the Legislative Council (while it was in existence)<sup>83</sup> has ever resorted to imprisoning for breach of privilege or contempt.<sup>84</sup> In 1896 a proposal was made and debated in the House that the President of the Bank of New Zealand be imprisoned for refusing to answer questions put to him by a select committee. The proposal was defeated and a fine imposed on the president instead.<sup>85</sup> It was also proposed that he be committed into the custody of the Serjeant-at-Arms until he had paid the fine, but the proposal was withdrawn.<sup>86</sup>

The power of the House of Commons to imprison people by committing them into the custody of the Serjeant-at-Arms was well recognised as of 1 January 1865. This was the date on which the House of Representatives acquired by adoption the same powers and privileges as enjoyed by the Commons in the United Kingdom.<sup>87</sup> In 1893, when all common law crimes were abolished in New Zealand, it was specifically enacted that such abolition did not limit or affect the House's power to punish for contempt.<sup>88</sup> The authority of the House to punish by imprisonment is not limited by the courts' jurisdiction to grant a writ of habeas corpus to secure the release of persons unlawfully detained.<sup>89</sup>

The prorogation or dissolution of Parliament brings the session to an end, and any person then held in custody is automatically discharged.<sup>90</sup> The House cannot imprison a person beyond the session in which the committal was ordered.<sup>91</sup> However, this does not prevent the House ordering the same person's re-arrest in the following session, if it is so inclined.<sup>92</sup>

---

<sup>80</sup> House of Commons (UK) Committee of Privileges *Recommendations of the select committee on parliamentary privilege: third report of session 1976–77* [1977] HC 417.

<sup>81</sup> Joint Committee on Parliamentary Privilege (UK) *Parliamentary privilege: report of session 2013–14* [2013] HL Paper 30, HC 100 at [99].

<sup>82</sup> Carl Witte *The History of English Parliamentary Privilege* (Da Capo Press, New York, 1970) at 137.

<sup>83</sup> The Legislative Council also enjoyed the imprisonment power until the Council was abolished in 1950. See: the Legislative Council Abolition Act 1950.

<sup>84</sup> Charles Littlejohn "Parliamentary privilege in New Zealand" (LLM Thesis, Victoria University of Wellington, 1969) at 172.

<sup>85</sup> (1896) 93 NZPD 327–335.

<sup>86</sup> Ibid, at 335.

<sup>87</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 191–195.

<sup>88</sup> See now Crimes Act 1961, s 9(a), proviso.

<sup>89</sup> Habeas Corpus Act 2001, s 4(2).

<sup>90</sup> (1888) 63 NZPD 37.

<sup>91</sup> Sri Susant Kumar Chand v Speaker, Orissa Legislative Assembly [1973] AIR (Orissa) 111.

<sup>92</sup> Pandit MSM Sharma v Shri Sri Krishna Singh [1959] AIR 395.

### *Speaker's warrant*

The commitment of any person into custody by order of the House is made under a warrant issued by the Speaker. There can be no arrest without warrant in New Zealand, except with express statutory authority.<sup>93</sup> This renders the Speaker's warrant essential for a person to be taken into custody by order of the House.

There is no particular form that the Speaker's warrant must take. Warrants issued in other jurisdictions have merely stated that the person named has been found guilty of a contempt and is committed into custody, without stating the facts on which the finding of contempt was based.<sup>94</sup> Conversely, a warrant may set out, with some particularity, why the person is being arrested.

Several judicial decisions have considered the extent to which the courts can review warrants on the grounds either that they do not disclose any breach of a known privilege or that the warrant is otherwise irregular. In the leading case on committal by order of a legislature, the High Court of Australia held that if a warrant specifies the ground of commitment, a court may examine the warrant in order to determine whether or not that ground is sufficient in law to amount to a breach of privilege or contempt. But the scope for judicial intervention was found to be limited. If the ground alleged was consistent with a breach of an acknowledged privilege or contempt, that was conclusive evidence of the warrant's validity. The court would not go behind the warrant, even if it was stated in general terms.<sup>95</sup> On the other hand, the Indian Supreme Court (by majority) has ruled that a general warrant committing a person for contempt could be inquired into to ascertain if there were grounds for the committal.<sup>96</sup> It may be, too, that the civil right under the New Zealand Bill of Rights Act 1990 to be secure against unreasonable search and seizure<sup>97</sup> now requires the Speaker's warrant to set out with sufficient particularity the grounds on which the arrest was ordered. Failure to do so may itself be found to be unreasonable so as to vitiate the warrant. No deprivation of liberty can be legally or morally justified where the grounds in support are not readily ascertainable.

### Fine

Until the enactment of the Parliamentary Privilege Act 2014, much doubt had been expressed about the power of the House to exact fines.<sup>98</sup> This Act provides that the House may, by resolution, impose on a person for a contempt of the House a fine not exceeding \$1,000.<sup>99</sup> Enforcement of the fine is effected under a process similar to that which applies for a contempt of court.<sup>100</sup> The Act makes it explicit that the power to fine does not affect the other penalty powers of the House, which may be exercised in addition to or instead of the imposition of a fine.<sup>101</sup> Because doubts were formerly held as to the existence of a power to fine, the Act declares that the conferral of the power is "for the avoidance of doubt".<sup>102</sup>

Until the passage of the 2014 Act, it depended upon whether or not such a power was "held, enjoyed and exercised" by the House of Commons as at 1 January 1865.<sup>103</sup> The House of Commons had not exercised the power to fine since 1666, and the leading authority on the powers of the Commons does not explicitly claim this power as one currently enjoyed by that House.<sup>104</sup> Furthermore, in 1967

<sup>93</sup> Crimes Act 1961, s 315(1).

<sup>94</sup> *Speaker of the Legislative Assembly of Victoria v Glass* (1871) LR 3 PC 560.

<sup>95</sup> *R v Richards, ex parte Fitzpatrick and Browne* (1955) 92 CLR 157 at 162.

<sup>96</sup> Special Reference No 1 of 1964 [1965] AIR (SC) 745 [*Keshav Singh's case*].

<sup>97</sup> New Zealand Bill of Rights Act 1990, s 21.

<sup>98</sup> See Philip A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Brookers Ltd, Wellington, 2014) at [13.14.2].

<sup>99</sup> Parliamentary Privilege Act 2014, s 22.

<sup>100</sup> Parliamentary Privilege Act 2014, s 22(2).

<sup>101</sup> Parliamentary Privilege Act 2014, s 22(4).

<sup>102</sup> Parliamentary Privilege Act 2014, s 22(5).

<sup>103</sup> Parliamentary Privilege Act 2014, s 8(1).

<sup>104</sup> Malcolm Jack (ed) *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 196.

and 1977, House of Commons select committees recommended that legislation be introduced to enable the House to impose fines.<sup>105</sup> These precedents imply that the power once held may have been lost.

It has been argued that “exercised” must be understood in the sense of “exercisable”, and that on 1 January 1865 the power to fine was exercisable by the House of Commons, even if at that date it had not actually been exercised for 199 years.<sup>106</sup> A power that is not used is not necessarily forfeited. The House of Commons allowed its power of impeachment to fall into disuse for 170 years (1450–1620) but successfully revived it. Similar considerations apply to the power of the Commons to suspend its members. This form of punishment had not been imposed for nearly two centuries, until the Speaker ruled in 1877 that it was still available to be used against a member.<sup>107</sup> Moreover, the Joint Committee on Parliamentary Privilege (UK) suggested recently that desuetude was not a recognised legal doctrine in England and Wales, and that there was no need for statute to confirm what already existed as a matter of law.<sup>108</sup> On the other hand, there are precedents that support a doctrine of desuetude. There has not been a prosecution for impeachment since 1806, and *Erskine May* regards the impeachment power as having either fallen into disuse or become obsolete with the development of responsible government.<sup>109</sup>

Until the Parliamentary Privilege Act 2014, the power of the House to fine was destined to remain contested. There were suggestions that the power remained intact as it had never formally been abolished, and there had been two separate attempts in the United Kingdom to revive it (in 1848 and again in 2004).<sup>110</sup> Similar precedents occurred also in New Zealand. From 1865, when the House acquired the privileges and powers of the House of Commons, the House regarded itself as authorised to fine both strangers and members as a punishment for contempt. Strangers were fined on five occasions: the President of the Bank of New Zealand was fined in 1896 for refusing to answer questions before a select committee relating to customers’ accounts;<sup>111</sup> a member of the Parliamentary Press Gallery was fined in 1901 for publishing evidence given to a select committee before the committee had reported to the House;<sup>112</sup> a newspaper was fined in 1903 for publishing select committee papers likewise before the committee had reported; the newspaper’s representative in the Press Gallery was fined for refusing to reveal the person from whom he had obtained the papers;<sup>113</sup> and in 2006 Television New Zealand Limited was fined for the actions it took in “disadvantaging” its chief executive on account of evidence he had given before a select committee.<sup>114</sup>

## Censure

The House may consider that the conduct of a member or a stranger is deserving of its formal censure or rebuke, and may express its views accordingly. In the House

<sup>105</sup> House of Commons (UK) *Report of select committee on parliamentary privilege* [1967] HC 34 at [197]; House of Commons (UK) Committee of Privileges *Recommendations of the select committee on parliamentary privilege: third report of session 1976–77* [1977] HC 417 at [15].

<sup>106</sup> Charles Littlejohn “Parliamentary privilege in New Zealand” (LLM Thesis, Victoria University of Wellington, 1969) at 46–54.

<sup>107</sup> Malcolm Jack (ed) *Erskine May’s Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 198.

<sup>108</sup> Joint Committee on Parliamentary Privilege (UK) *Parliamentary privilege: report of session 2013–14* [2013] HL Paper 30, HC 100 at [77] (referring also to the power to fine recently asserted and used in New Zealand).

<sup>109</sup> Malcolm Jack (ed) *Erskine May’s Treatise on the Law, Privileges, Proceedings and Usage of Parliament* (24th ed, LexisNexis, London, 2011) at 182.

<sup>110</sup> See Glen Rangwala and Dan Plesch *A case to answer: A first report on the potential impeachment of the Prime Minister for high crimes and misdemeanours in relation to the invasion of Iraq* (report produced for Adam Price MP, August 2004).

<sup>111</sup> (1896) 93 NZPD 336.

<sup>112</sup> (11 September 1901) [1901] JHR 154.

<sup>113</sup> (1903) 125 NZPD 693–694.

<sup>114</sup> Privileges Committee, interim report on question of privilege on the action taken by TVNZ in relation to its chief executive (6 April 2006) [2005–2008] AJHR I.17A.

of Commons, the practice is for a formal reprimand or admonition to be made by the Speaker on behalf of the House. A member who is censured stands in his or her place in the Chamber, and a stranger stands at the bar of the House. In New Zealand, the Speaker has admonished a person at the bar of the House on a question of privilege,<sup>115</sup> but it has not generally been the practice to admonish members so formally as the Commons. When censuring members, the House has normally contented itself with passing a formal resolution to that effect and leaving the matter at that. On at least three occasions, the House has adopted recommendations of the Privileges Committee to censure members on account of their conduct.<sup>116</sup> One member was censured for knowingly providing false information on a return of pecuniary interests, and two members were censured for criticising the Speaker. The House has also censured a member for remarks that he made without first referring the matter for inquiry by the Privileges Committee.<sup>117</sup>

## Prosecution at law

Certain breaches of privilege or contempts may also constitute criminal offences. The House has often left actions that it could have treated as contempts to be dealt with by the courts in prosecutions for offences. Most disturbances in the public galleries that have resulted in arrests and charges of trespass or breach of the peace have been dealt with in this way. However, the House is not dispossessed of its penal jurisdiction merely because a person has been charged with a criminal offence in respect of such conduct. The House may treat the conduct as a contempt and impose its own punishment, regardless of any penalty that the court might hand down. Nevertheless, the House is usually content to leave criminal conduct to be dealt with by the courts. This is understandable where any penalty the House might impose would be inadequate.<sup>118</sup>

Where a matter is raised as a question of privilege, the House may conclude that a criminal offence may have been committed and direct that the offender be prosecuted in the courts for the offence. Such a direction may be given in addition to any proceedings the House might take to punish for contempt. The Attorney-General begins a prosecution entered at the direction of the House. In the only case in which such action has been taken in New Zealand, it was the Attorney-General who was accused of the improper conduct. The House accordingly directed the Attorney-General “to prosecute according to law for a libel on a member of this House in his place in Parliament”.<sup>119</sup> The prosecution failed.

## Impeachment

One of the powers of the House of Commons in 1865 not inherited in New Zealand was the power to impeach. There was no dispute that the power existed, although it had not been exercised in the United Kingdom since 1806. Impeachment was a prosecution by the House of Commons of a person (often a Minister who had fallen from favour) for “high crimes and misdemeanours”. The trial traditionally took place before the House of Lords.

The consensus is that the House of Representatives did not inherit the impeachment power. There is nothing in the New Zealand Constitution Act 1852 (UK) to suggest that it did, and nor was the power passed on when the House of

<sup>115</sup> (1872) 13 NZPD 201.

<sup>116</sup> Privileges Committee *Question of privilege relating to compliance with a member's obligations under the Standing Orders dealing with pecuniary interests* (23 September 2008) [2005–2008] AJHR I.17D at 20, adopted (23 September 2008) [2005–2008] JHR 1298; Privileges Committee, report on a matter of privilege concerning article by the Hon RD Muldoon in the *New Zealand Truth* (23 July 1975) [1975] AJHR I.6, adopted (23 July 1975) [1975] JHR 203–206; Privileges Committee, report relating to a statement made by a member concerning the Speaker (30 November 1982) [1982] AJHR I.6, adopted (30 November 1982) [1982] JHR 393–394.

<sup>117</sup> (2000) 585 NZPD 3457.

<sup>118</sup> *R v Chaytor* [2010] UKSC 52 at [81].

<sup>119</sup> (28 August 1877) [1877] JHR 63–66.

Commons' powers and privileges were acquired in 1865. The House of Commons' power was not to convict a person but to accuse him or her of high crimes and misdemeanours before the upper House, the House of Lords. In New Zealand, however, there was no equivalent legislative chamber that could conduct a trial on impeachment. New Zealand's upper house, the Legislative Council, enjoyed the powers and privileges of the House of Commons rather than those of the House of Lords.<sup>120</sup> This left New Zealand without the machinery to prosecute a trial on impeachment. The abolition of all common law crimes in 1893<sup>121</sup> confirmed the non-applicability of impeachment in New Zealand.

## Suspension from the House

By its nature, the power to suspend persons from the House is a punishment applicable only to members of the House. Under the Standing Orders, members may be suspended from the service of the House for breaches of order or for committing contempts.<sup>122</sup> The power to suspend for a contempt is quite distinct from the power to suspend under the summary procedure used to deal with breaches of order.<sup>123</sup> The House may utilise its procedures to suspend for a breach of order, but this does not prevent it from also proceeding against the member for contempt if the member's conduct justifies it. However, any earlier punishment imposed for the breach of order will be taken into account when considering what action to take over the contempt.<sup>124</sup> Three members have been suspended from the service of the House for contempt after making remarks reflecting gravely on the conduct of Speakers in their capacity as Speaker. The Privileges Committee recommended that the members be suspended for varying periods and the House adopted its recommendations.<sup>125</sup>

The Standing Orders set out the rights members forfeit when they are suspended under the disciplinary procedures.<sup>126</sup> (See p 153.) These Standing Orders do not apply to a member suspended for contempt, but they may be taken to indicate, by analogy, the disabilities a suspended member incurs. Such a member cannot enter the Chamber or voting lobbies, or any other part of the building from which the House specifically excludes the member. Nor can the member serve on or attend a meeting of a select committee or lodge questions or notices of motion. The Members of Parliament (Remuneration and Services) Act 2013 also provides for a deduction equivalent to a day's salary from a member's annual salary for each day the member is suspended from the service of the House, as certified by the Speaker.<sup>127</sup>

## Expulsion

The House of Commons has claimed historically the power to expel a member from membership of the House, thereby causing the member's seat to become vacant. Historically, expulsion did not disqualify a member from being re-elected at the ensuing by-election.<sup>128</sup> While the House of Commons infrequently exercised this power, there has been no instance of expulsion in New Zealand. Before the Parliamentary Privileges Act 1865 was passed, the House refrained on one occasion from proceeding with a motion to expel a member because it was doubted that the House possessed the power to expel.<sup>129</sup> The legal position changed with

<sup>120</sup> Parliamentary Privileges Act 1865, s 4.

<sup>121</sup> Criminal Code Act 1893, s 6 (now Crimes Act 1961, s 9).

<sup>122</sup> SOs 89–95.

<sup>123</sup> SO 96.

<sup>124</sup> Privileges Committee, report on a question of privilege referred on 11 March 1986 (30 October 1986) [1986–1987] AJHR I.15.

<sup>125</sup> (15 October 1976) [1976] JHR 267–268, 655; (1987) 480 NZPD 9169–9182; (1998) 567 NZPD 8358–8381.

<sup>126</sup> SO 95.

<sup>127</sup> Members of Parliament (Remuneration and Services) Act 2013, s 14.

<sup>128</sup> *Bradlaugh v Gossett* (1884) 12 QBD 271.

<sup>129</sup> (1854–1855) NZPD 339.

the acquisition of the House of Commons' privileges as at 1 January 1865. The consensus was that the Commons' expulsion power devolved upon the House of Representatives, although doubts were still entertained. In 1877, for example, the Speaker disclaimed the power to declare the seat of a member to be vacant: "[T]he utmost extent to which the House can go, and this is very widely different from declaring a seat to be vacant, is to expel the member from its presence".<sup>130</sup> By this, the Speaker meant "*to suspend* the member from its presence". The list set out in the Electoral Act 1993 of the events that cause a seat to become vacant does not include expulsion from the House.<sup>131</sup> However, this may not in itself be conclusive, as the expulsion power is seen as a self-protective power rather than a disqualification.<sup>132</sup> The Parliamentary Privilege Act 2014 finally ended the speculation by declaring that the House has no power to expel a member and cause the member's seat to become vacant.<sup>133</sup>

### **Exclusion from the precincts**

The Crown, as legal owner, permits the House to exercise control over the Parliament Buildings and grounds. This control is vested in the Speaker,<sup>134</sup> although the House may, at any time, make orders relating to the presence of strangers in the galleries of the Chamber or elsewhere within the Parliament Buildings. The power of the House to exclude strangers from its presence (that is, from the galleries) is an aspect of its freedom of speech guaranteed by article 9 of the Bill of Rights 1688. The control of the House over access to the premises that it occupies is a necessary adjunct to the proper functioning of a legislature.<sup>135</sup>

From time to time, the House will ban strangers from the parliamentary precincts as a punishment for conduct amounting to a contempt. In 1981 an incident in the galleries at the beginning of a sitting was referred to the Privileges Committee, which recommended that everyone who could be identified as having been involved should be excluded from the precincts of the House for 12 months.<sup>136</sup> The House adopted the recommendation, and the Speaker excluded the people concerned from the public areas of the buildings and the areas used by members generally. The exclusion did not apply to rooms or suites allocated for the personal use of members or Ministers, or to the use of otherwise prohibited areas for transit in order to visit a member as an invited guest. Another case involved the director of a courier company who refused to answer questions before the Privileges Committee. The House ordered that courier companies with which he was associated were to be banned from making deliveries to the parliamentary complex.<sup>137</sup> The Speaker implemented the order and issued instructions to that effect.<sup>138</sup>

### **Exclusion from the Parliamentary Press Gallery**

Membership of the Parliamentary Press Gallery carries with it special responsibilities. Journalists who commit a contempt of the House are liable to have their memberships terminated or downgraded. One journalist had his status as

<sup>130</sup> (1877) 26 NZPD 341 Fitzherbert.

<sup>131</sup> Electoral Act 1993, s 55(1).

<sup>132</sup> *Yeshwant Rao Meghwale v Madhya Pradesh Legislative Assembly* [1967] AIR (Madhya Pradesh) 95; *Anbazhagan v The Secretary, Tamil Nadu Legislative Assembly* [1988] AIR (Madras) 275. Compare *Awateere Huata v Prebble* [2004] 3 NZLR 359 (CA) at 392 (citing Philip A Joseph *Constitutional and Administrative Law in New Zealand* (2nd ed, Brookers Ltd, Wellington, 2001) at [12.4.3]).

<sup>133</sup> Parliamentary Privilege Act 2014, s 23.

<sup>134</sup> Parliamentary Service Act 2000, ss 23 and 26.

<sup>135</sup> *Zündel v Boudria* [2000] 46 OR (3rd) 410 (ONCA).

<sup>136</sup> (1981) 442 NZPD 4315–4325.

<sup>137</sup> (1992) 528 NZPD 10626–10631.

<sup>138</sup> Speaker of the House of Representatives (media release, 18 August 1992).

a full member reduced to that of an associate member and his privilege of using Bellamy's withdrawn for disclosing confidential select committee materials.<sup>139</sup>

## **Apology**

Most findings of contempt end with the offender tendering an apology, which the House accepts. In many cases, the apology or expression of regret is tendered to the Privileges Committee during its investigation of the question of privilege. If the offender does not tender an expression of regret, the Privileges Committee will take this into account in determining what action to recommend to the House.<sup>140</sup> In its report, the committee will inform the House of any apology or expression of regret tendered, and, if it thinks fit, will recommend that the House accept the apology. Acceptance of the apology brings the matter to an end.

If no apology has been tendered to the Privileges Committee during its consideration of the matter, the committee may recommend in its report that an apology be made to the House. On occasions, the Privileges Committee has considered that an apology made to it was not unqualified,<sup>141</sup> or was not sufficient to put an end to the matter,<sup>142</sup> and has recommended that a formal apology be made to the House.

The apology is then tendered by letter, usually to the Speaker, sometime after the report has been received by the House. Failure to tender an apology when required to do so by the House could itself be treated as a contempt. The Speaker may read the letter of apology to the House, or may decide merely to present it to the House. Exceptionally, the House may order that the apology be tendered personally at the bar of the House. Where a member commits a contempt and is ordered to apologise, the member attends in his or her place in the House and apologises for the contempt.<sup>143</sup>

---

139 (10 October 1985) [1984–1985] JHR 820–821.

140 (1976) 407 NZPD 3157.

141 Privileges Committee *Question of privilege relating to a reflection on a member in his capacity as a member of the House* (13 February 2007) [2005–2008] AJHR I.17C.

142 Privileges Committee, interim report on question of privilege on the action taken by TVNZ in relation to its chief executive (6 April 2006) [2005–2008] AJHR I.17A.

143 (1998) 567 NZPD 8358–8381.



# Table of Statutes and Instruments

- Accident Compensation Act 2001:  
    s 44: 469  
    s 329: 541  
    s 331: 541
- Acts and Regulations Publication Act 1989:  
    s 11: 469
- Acts Interpretation Act 1901 (Cth):  
    s 15AB: 739
- Acts Interpretation Act 1924:  
    s 5: 357
- Acts Interpretation Amendment Act 1986: 710
- Adult Adoption Information Act 1985: 358
- Agricultural Compounds and Veterinary Medicines Act 1997:  
    s 81E: 540
- Animal Products Act 1999:  
    s 118: 540
- ANZ Banking Group (New Zealand) Act 1979: 362
- Appropriation (1994/95 Supplementary Estimates) Act 1995:  
    s 7: 527  
    Second Schedule: 527
- Appropriation (1995/96 Supplementary Estimates) Act 1996:  
    s 7: 527  
    s 9: 531  
    Third Schedule: 527
- Appropriation (1997/98 Financial Review) Act 1999:  
    s 7: 535, 596
- Appropriation (2007/08 Supplementary Estimates) Act 2008:  
    schs 3 and 4: 455
- Appropriation (2014/15 Supplementary Estimates) Act 2015:  
    s 6: 528  
    s 8: 528
- Appropriation (2015/16 Estimates) Act 2015:  
    s 5: 555
- Appropriation (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2007: 66
- Appropriation (Financial Review) Act 1993:  
    s 3: 596
- Appropriation (Parliamentary Expenditure Validation) Act 2006: 66  
    s 5: 535, 568
- Audit Act 1858:  
    s 19: 498
- Awarua Seat Inquiry Act 1897: 46, 509, 752, 760
- Bank of New Zealand Act 1988: 363
- Bill of Rights 1688 (Eng): 8, 140, 379, 624, 716, 717, 718, 723, 733, 738, 741, 742, 746, 748, 777, 778, 779  
    art 4: 511, 536  
    art 9: 499, 507, 708, 711, 714, 716, 723, 724, 725, 726, 727, 728, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 745, 746, 747, 777, 778, 787, 800  
    art 13: 140
- Biosecurity Act 1993: 699  
    s 57: 469  
    s 100L: 540  
    s 100ZB: 540  
    s 137: 540  
    s 146: 703  
    s 147: 263, 702  
    s 150: 704  
    s 151: 704
- Broadcasting Act 1989:  
    Part 6: 20  
    s 69A: 34  
    s 70: 32, 34  
    s 70A: 33  
    s 74: 33  
    s 74B: 34  
    s 75: 33  
    s 75A: 33  
    s 76: 33  
    s 76A: 33  
    s 76C: 33  
    s 76D: 33  
    s 79A: 32, 34  
    s 79B: 34  
    s 79C: 34  
    s 79D: 34

- Building Act 2004:  
s 389: 541
- By-elections Postponement Act 1943:  
s 2: 48
- Cadastral Survey Act 2002: 390
- Canterbury Earthquake Recovery Act 2011: 483, 487, 704, 705  
s 71: 483, 487  
s 89: 704
- Canterbury Earthquake Response and Recovery Act 2010: 704, 705
- Children's Health Camps Board Dissolution Act 1999: 363
- Children, Young Persons, and Their Families Act 1989:  
s 433: 234
- Child Support Act 1991: 388  
s 215: 692
- Citizenship Act 1977:  
s 15: 43  
s 16: 43  
s 17: 43
- Citizens Initiated Referenda Act 1993:  
20, 600, 662  
s 2: 668  
s 3: 664  
s 4: 665  
s 5: 666, 667  
s 6: 665  
s 7: 665  
s 8: 665  
s 9: 666  
s 10: 666  
s 11: 665, 666  
s 12: 667  
s 13: 667  
s 14: 667  
s 15: 667, 668  
s 16: 668, 669  
s 18: 664, 669, 670  
s 19: 669  
s 20: 669  
s 21: 78, 670  
s 22: 664, 670  
s 22AA: 670, 671  
s 22AB: 670, 671  
s 22A: 666  
s 23: 84  
s 24: 671  
s 24A: 671  
s 40: 671  
s 40AA: 671  
s 42: 668  
s 43: 668  
ss 47–51G: 671
- s 55: 670  
s 58: 665, 671  
s 59: 601, 664
- Citizens Initiated Referenda (Fees) Regulations 1993:  
reg 2: 665  
reg 3: 665
- Citizens Initiated Referenda Regulations 1995: 671  
Schedule: 665
- City Single Electorates Act 1903: 19
- Civil Aviation Act 1990:  
s 42A: 540
- Civil Aviation Charges Regulations 1990: 477
- Civil Defence Emergency Management Act 2002: 704  
s 31: 701  
s 32: 701  
s 34: 701, 702  
s 35: 701  
s 36: 702  
s 39: 702  
s 41: 702  
s 42: 702  
s 43: 702  
s 46: 702  
Part 4: 251  
s 66: 263, 702  
s 67: 143, 144, 189, 700
- Civil List Act 1979:  
s 17: 70
- Clerk of the House of Representatives Act 1988:  
s 3: 78, 84, 88  
s 7: 84  
s 9: 29  
s 11: 508  
s 12: 84  
s 16: 80, 84  
s 18: 748
- Climate Change Response Act 2002:  
s 247: 459
- Colonial Laws Validity Act 1865 (UK):  
s 5: 9
- Conservation Act 1987:  
s 5: 570  
s 6C: 622
- Constitution Act 1986: 8, 70, 141, 143,  
162  
s 5: 145, 162, 165  
s 6: 124, 125  
s 7: 384, 615  
s 8: 124  
s 9: 124  
s 10: 49, 628

s 11: 49, 162, 164, 175, 254, 258	Crown Entities Act 2004: 124, 546, 576
s 12: 12, 77, 81, 165, 167	s 3: 571
s 13: 81	s 4: 106, 572
s 14: 1	s 5: 572
s 15: 2, 356	s 6: 572
s 16: 10, 356, 454	s 7: 571
s 17: 29, 145, 146	s 10: 572
s 18: 141, 143, 144, 147, 700	s 27A: 589, 590
s 19: 140, 142, 143	s 30: 52
s 20: 146, 200, 325, 478, 612	s 47: 52
s 22: 511, 512, 536	s 88A: 590
s 23: 233, 508	s 89: 52
s 25: 97	s 97: 52
Constitution Amendment Act 2005:	s 107: 573
s 5: 135	s 108: 573
Contraception, Sterilisation, and	s 109: 573
Abortion Act 1977:	s 110: 573
s 10: 108	s 133: 643
s 11: 108, 508	s 134: 644
s 12: 108	s 136: 584, 594
s 14: 108	s 137: 584
s 39: 577, 584	s 138: 531, 582, 584
Copyright Act 1994:	s 139: 531, 582, 584
s 27: 90, 352, 457	s 139A: 582, 584
s 58: 97	s 139B: 584
s 59: 754	s 140: 584
s 225: 714, 754	s 141: 582, 584
Copyright Act Commencement Order	s 144: 584
2000: 90, 352, 457	s 145: 582, 584
Corrections Act 2004:	s 146: 582, 584
s 69: 52, 730	s 147: 582, 584
s 109: 52	s 148: 582, 584
s 114: 52, 730	s 149: 583, 584, 615
s 161: 52	s 149A: 584
Court Martial Act 2007:	s 149B: 531, 584
s 8: 234	s 149C: 531, 584
Court Martial Appeals Act 1953:	s 149D: 584
s 4: 234	s 149E: 582, 584
Court of Appeal Fees Regulations	s 149F: 582, 584
2001: 477	s 149G: 582, 584
Crimes Act 1961: 359, 625, 755, 768	s 149H: 582, 584
s 9: 714, 795, 799	s 149I: 582, 584
s 77: 725	s 149J: 582, 584
s 102: 714, 723	s 149K: 582, 584
s 103: 53, 57, 714, 723, 768,	s 149L: 584
s 108: 498, 714, 723	s 149M: 584
s 109: 498, 714, 723	s 150: 578, 584, 587, 615, 622
s 315: 796	s 150A: 578, 584
Crimes of Torture Act 1989:	s 151: 578, 584
s 16: 106	s 152: 578, 584
Crimes (Provocation Repeal)	s 153: 578, 584
Amendment Act 2009: 359	s 154: 578, 583, 584
Criminal Code Act 1893:	s 155: 578, 584
s 6: 799	s 156: 583, 584
Criminal Procedure Act 2011:	s 156A: 584
s 176: 234, 499	s 156B: 584

s 157: 584	s 87B: 588
s 157A: 584	s 87C: 588
s 158: 542	s 164: 113
s 174: 578	s 206: 625
s 175: 578	Education Standards Act 2001: s 84: 568
s 201: 455	Electoral Act 1956: 663 s 189: 10, 663
sch 1: 21, 571, 572	Electoral Act 1993: 8, 19, 115, 700 s 2: 663
sch 2: 572	s 3: 23, 26, 81
Crown Organisations (Criminal Liability) Act 2002: s 10: 499, 504, 765	s 3A: 35
Crown Proceedings Act 1950: s 24: 525	s 3B: 35
Crown Research Institutes Act 1992: s 6: 573	s 3E: 35
s 26: 625	s 4B: 20, 21
Crown Suits Act 1908: s 32: 525	s 4D: 21
Customs Amendment Act 1970: 539	s 4G: 508
Customs and Excise Act 1996: s 80A: 540	s 4H: 21, 178
Customs and Excise (Budget Measures—Motor Spirits) Amendment Act 2013: 539	s 5: 21
Decimal Currency Act 1964: 359	s 7: 21
Declaratory Judgments Act 1908: s 3: 9	s 8: 21
Defamation Act 1992: 624, 730, 778 s 13: 623, 730, 778 s 16: 730	s 20A: 36 s 20B: 36 s 20D: 36 Part 3: 21
Defamation Act 1996 (UK): s 13: 716	s 27: 49
Defence Act 1990: s 9: 263, 702, 703 s 25: 530 ss 38–40: 141 s 41: 702	s 28: 24
Demise of the Crown Act 1888: s 2: 145	s 34: 24
Deregulation Act 2015 (UK): sch 23: 716	s 35: 23, 25
Disputes Tribunals Amendment Rules 1998: 477	s 36: 24
District Courts Act 1947: s 3: 234	s 38: 25
District Courts Fees Amendment Regulations (No 3) 2001: reg 5: 477	s 40: 25
District Courts Fees Regulations 2001: 477	s 41: 178
Dog Control Act 1996: s 78B: 474	s 44: 29
Education Act 1989: 484, 625	s 45: 23, 24, 25
	s 47: 28, 30, 43
	s 48: 44
	s 52: 30
	s 53: 30
	s 54: 39, 40, 46, 70, 124, 142, 164
	s 55: 42, 43, 44, 45, 55, 56, 165, 755, 756, 760, 800
	s 55A: 121, 122
	s 55AA: 43
	s 56: 45, 755
	s 57: 44
	s 58: 45
	s 59: 30
	Part 4: 20, 114
	s 63: 27, 120
	s 63A: 27
	s 64: 27
	s 65: 27
	s 66: 27
	s 67: 27
	s 70: 27, 120

- s 71: 31  
 s 71C: 27  
 s 71E: 27  
 Part 5: 20, 21  
 s 73: 25  
 s 74: 25  
 s 75: 25  
 ss 76–78: 26  
 s 79: 26  
 s 80: 26, 28  
 s 82: 25  
 s 83: 26  
 s 95: 26  
 s 115: 26  
 Part 6: 20  
 s 125: 29, 141  
 s 127: 31  
 s 127A: 31  
 s 129: 46, 47, 48, 78, 509, 760  
 s 131: 30, 48  
 s 134: 46, 47, 48, 78, 509, 760  
 s 136: 48  
 s 137: 47  
 s 138: 48, 164  
 s 139: 29, 142  
 s 143: 30  
 s 144: 30  
 ss 146A–146L: 31  
 s 148: 36  
 s 150: 37  
 s 153: 29  
 s 153A: 29  
 s 153B: 29  
 s 153C: 29  
 s 153E: 29  
 s 154: 32  
 s 155: 36  
 s 160: 38  
 s 161: 37  
 s 168: 37  
 s 172: 37  
 s 174: 38  
 s 174C: 38  
 s 174D: 38  
 s 174E: 38  
 s 174F: 38  
 s 175: 38  
 s 176: 38  
 s 178: 37, 38  
 s 179: 39  
 s 180: 39  
 s 181: 39  
 s 185: 39, 162, 164  
 s 186: 39  
 s 187: 40, 671  
 s 189: 40, 84, 671  
 s 191: 40  
 s 192: 23, 40  
 s 193: 23, 40, 162, 164  
 s 193A: 40  
 s 197: 32  
 Part 6AA: 20, 32  
 s 204F: 35  
 Part 6A: 20, 32  
 s 205C: 35  
 s 205D: 35  
 s 205E: 35  
 s 205EA: 35  
 s 205K: 35  
 s 205N: 36  
 s 206C: 35  
 s 206I: 35  
 s 206J: 35  
 s 206N: 36  
 s 206V: 35  
 s 206ZE: 36  
 s 210: 27  
 s 210B: 28  
 s 210C: 28  
 s 210D: 28  
 s 210F: 28  
 s 214C: 28  
 s 214F: 28  
 s 214J: 28  
 Part 7: 32  
 Part 8: 760  
 s 229: 28  
 s 230: 41  
 s 231: 28, 41  
 s 234: 41  
 s 235: 41  
 s 236: 41  
 s 242: 41  
 s 243: 41  
 s 243A: 41  
 s 244: 41  
 s 245: 41  
 s 246: 41  
 s 258: 42  
 s 259: 42  
 s 260: 42  
 s 262: 42  
 s 264: 344, 510  
 s 267B: 118  
 s 268: 10, 20, 145, 246, 445, 662, 663,  
     744  
 s 269: 26  
 sch 2: 37, 47  
 Electoral (Administration)  
     Amendment Act 2010: 20  
 Electoral (Administration)  
     Amendment Act 2011: 20

- Electoral (Advertisements of a Specified Kind) Regulations 2005:  
32  
Electoral Amendment Act 1953:  
s 6: 145  
Electoral Amendment Act (No 2) 1995: 45  
Electoral Amendment Act 1996:  
s 2: 455  
Electoral Amendment Act (No 2) 1987:  
s 2: 48  
Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010: 26, 358  
Electoral (Integrity) Amendment Act 2001:  
s 3: 121, 122  
Electoral Referendum Act 1993: 20  
s 2: 663  
s 3: 663  
s 19: 663  
Electoral Referendum Act 2010: 7, 664  
s 8: 21, 664  
sch 1: 21, 664  
ss 74–78: 7, 21, 664  
Electoral Regulations 1996:  
reg 20: 37  
reg 45A: 37  
reg 47: 37  
reg 47A: 37  
reg 47B: 37  
Electoral (Vacancies) Amendment Act 2003: 760  
s 4: 46  
s 5: 46  
Electronic Transactions Act 2002:  
s 14: 667  
Schedule: 667  
Emergency Regulations Continuance Act 1947:  
s 6: 751  
Employment Relations Act 2000:  
s 186: 234  
s 204: 508  
Energy (Fuels, Levies, and References) Act 1989:  
ss 22–24: 540  
Energy Resources Levy Act 1976:  
s 4: 540  
Environment Act 1986:  
s 4: 107  
s 5: 29, 52  
s 6: 103, 104  
s 7: 104, 508  
s 9: 103  
s 10: 103  
s 11: 107  
s 14: 299  
s 16: 107, 299, 611  
s 26: 103  
Environmental Reporting Act 2015:  
s 18: 107  
Epidemic Preparedness Act 2006:  
699, 701, 705  
s 5: 702, 703  
s 6: 143, 700  
s 14: 703  
s 15: 703  
s 16: 470, 703  
s 17: 703, 705  
s 18: 703, 705  
s 21: 705  
Estate and Gift Duties Act 1968: 388  
Estate Duty Abolition Act 1993: 388  
Evidence Act 2006:  
s 68: 714, 772  
s 69: 731  
Extradition Act 1999:  
s 11: 681, 684  
s 100: 685  
s 101: 685  
Family Courts Act 1980:  
s 4: 234  
Finance Act 1941:  
s 37: 46  
Finance Act 1976:  
s 2: 568  
Finance Act 1978:  
s 2: 360  
Financial Advisers Act 2008:  
s 14: 51  
Financial Markets Conduct Act 2013:  
576, 583  
s 5: 368  
s 549: 459  
Financial Reporting Act 2013:  
s 8: 577  
s 12: 577  
s 22: 577  
s 25: 577  
Fire Service Act 1975:  
s 48: 540  
s 51B: 503  
Fiscal Responsibility Act 1994: 515  
Fisheries Act 1996:  
s 5: 681  
Food Act 2014:  
s 203: 540  
s 398: 469

- Forests Act 1949:  
s 67ZM: 540
- Gambling Act 2003:  
s 272: 52, 111, 117  
s 274: 111  
s 319: 540  
sch 4: 124  
sch 5: 52, 112
- Gaming Duties Act 1971: 388
- Gas Amendment Act 2004: 455
- Goods and Services Tax Act 1985: 388,  
538  
s 7: 538  
s 8: 538
- Government Life Insurance Corporation Act 1983: 363
- Government Life Insurance Corporation Act 1987: 363
- Government Superannuation Fund Act 1956: 72  
s 82A: 71  
s 95: 527
- Greater Christchurch Regeneration Act 2016:  
sch 8: 571
- Habeas Corpus Act 2001: 358  
s 4: 795
- Health Act 1956: 702
- Health and Disability Commissioner Act 1994:  
s 38: 601
- Health and Safety at Work Act 2015:  
s 222: 459
- High Court Fees Regulations 2001: 477
- High Court Rules:  
r 4.27(e): 721  
r 10.22: 721
- Homosexual Law Reform Act 1986:  
358
- Human Assisted Reproductive Technology Act 2004: 358
- Human Rights Act 1993: 380  
s 63: 725  
s 92B: 462, 713  
s 92J: 462  
s 92K: 462
- Human Rights Act 1998 (UK): 795  
s 6: 714
- Immigration Advisers Licensing Act 2007:  
s 11: 51
- Imperial Laws Application Act 1988:  
s 3: 708 716, 723
- sch 1: 708, 716, 723
- Imprest Supply (First for 2015/16) Act 2015:  
s 3: 564  
s 8: 529
- Imprest Supply (Second for 2015/16) Act 2015:  
s 3: 564
- Imprest Supply (Third for 2001/02) Act 2001: 564
- Imprisonment for Debt Limitation Act 1908: 755
- Income Tax Act 1994: 388
- Income Tax Act 2004: 388
- Income Tax Act 2007: 388, 537  
s BB 1: 537  
s CW 31: 71  
s CX 12: 71  
s RD 3: 71  
s RD 5: 71  
s YA 1: 537  
sch 1: 538
- Independent Police Conduct Authority Act 1988:  
s 5: 112  
s 5A: 112  
s 6: 113, 508  
s 7: 112  
s 12: 112  
s 18: 601
- Injury Prevention, Rehabilitation, and Compensation Act 2001: 368
- Inquiries Act 2013:  
s 6: 741, 742, 758  
s 27: 731
- Inspector-General of Intelligence and Security Act 1996:  
s 5: 110  
s 29: 91, 92
- Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003:  
s 58: 52, 730
- Intelligence and Security Committee Act 1996: 216, 505  
s 5: 109, 728  
s 6: 109, 110, 351, 505, 559, 728  
s 7: 52, 109, 117  
s 7A: 110  
s 8: 109  
s 10: 153  
s 12: 110  
s 13: 110  
s 16: 110, 505, 728  
s 18: 110
- International Terrorism (Emergency Powers) Act 1987:

- s 6: 704
- s 7: 263, 702, 704
- s 8: 704
- Interpretation Act 1858:
  - s 6: 386
- Interpretation Act 1999: 357, 459
  - s 5: 365, 368
  - s 8: 367, 454
  - s 17: 476
  - s 27: 368
  - s 29: 141, 459
- Judicature Act 1908:
  - s 3: 234
  - s 9A: 526
  - s 57: 234
- Judicature Amendment Act 1954: 455
- Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004: 502
  - s 7: 110
  - s 8: 110
  - s 11: 607
  - s 33: 212, 508
  - s 34: 212, 508
  - sch 2: 110, 111, 508
- Juries Act 1981:
  - s 8: 753
- KiwiSaver Act 2006: 388
- Land and Income Assessment Act 1891: 537
- Land Tax Abolition Act 1990: 388
- Land Transfer Act 1952: 390
- Land Transport Amendment Act 2009: 361
- Land Transport Management Act 2003:
  - s 6: 542
  - s 10: 542
  - sch 4: 124
- Legal Services Act 2011:
  - s 7: 41
  - s 51: 485
  - s 52: 485
- Legal Services Amendment Act 2013:
  - s 16: 485
  - s 17: 485
- Legislation Act 2012:
  - 69, 73, 459, 476, 702
  - s 4: 460, 467, 540
  - s 6: 457, 458, 469, 620
  - s 7: 457
  - s 8: 457
  - s 9: 112
  - s 10: 469
  - s 11: 469
- s 12: 469
- s 14: 469
- s 16: 457
- s 17: 457
- s 18: 457
- s 19: 85
- s 20: 457, 458
- s 23: 383
- s 24: 383
- s 25: 383, 456, 457
- s 26: 383, 457
- s 27: 383, 456, 458
- s 31: 375, 393, 458
- s 32: 393
- Part 3: 522
- s 38: 460, 540
- s 39: 460, 540, 541
- s 41: 9, 178, 466, 470, 540, 614, 625
- s 42: 471, 476, 516, 704
- s 43: 178, 477, 478, 540, 541
- s 44: 476
- s 45: 476
- s 46: 473, 474, 516
- s 47: 473, 476, 478, 540
- s 47A: 473
- s 47B: 472, 473, 539, 540
- s 47C: 473, 539, 540
- s 47D: 473
- s 47E: 473
- s 47F: 473
- s 47G: 473
- s 47H: 473
- s 47I: 473
- ss 48–57: 466
- s 59: 112, 381, 382, 383, 470
- s 60: 382
- s 66: 112
- sch 2: 473
- Legislation (Confirmable Instruments) Amendment Act 2015:
  - sch 3: 473
- Legislative Council Abolition Act 1950: 1, 795
- Legislature Act 1908: 710
  - s 252: 752
  - s 253: 780
  - s 253A: 623
  - s 257: 757, 759
  - ss 261–264: 757
  - ss 265–266: 759
  - s 267: 759
- Legislature Amendment Act 1977: 146
- Legislature Amendment Act 1992: 710
  - s 2: 622

- Letters Patent Constituting the Office of Governor-General of New Zealand (issued 28 October 1983 and amended in 1987 and 2006): 2
- Local Authorities Loans Act 1956: 360
- Local Electoral Act 2001: 360, 756
- Local Government Act 2002: 407, 419
- s 12: 360
  - s 93: 97
  - s 95: 97
  - s 98: 97
  - sch 3: 107
- Local Government Amendment Act (No 2) 1982:
- s 11: 360
- Local Government Amendment Act (No 2) 1989:
- sch 4: 369
- Local Government Amendment Act (No 3) 1996: 360
- Local Government (Auckland Council) Act 2009:
- sch 2: 52
- Local Government Official Information and Meetings Act 1987:
- s 17: 784
  - s 44: 784
  - s 48: 751, 784
- Local Government (Rating) Act 2002:
- s 120: 359
- Maori Education Foundation (Abolition) Act 1993: 363
- Māori Language Act 1987:
- s 3: 225
- Maori Purposes Fund Act 1934–35:
- s 4: 111
  - s 7: 51, 111
- Maori Representation Act 1867: 23
- Maori Reserved Land Amendment Act 1997:
- sch 5: 369
- Maraeroa A and B Blocks Claims Settlement Act 2012: 376
- Maraeroa A and B Blocks Incorporation Act 2012: 363, 376
- Marriage Act 1955: 362
- Marriage (Definition of Marriage) Amendment Act 2013: 358, 362
- Members of Parliament (Remuneration and Services) Act 2013:
- s 3: 67
  - s 5: 116
  - s 8: 68, 71, 526
  - s 9: 68, 69
  - s 10: 70
- s 11: 70, 71, 81
  - s 12: 71
  - s 13: 49, 56, 71, 118, 178, 766
  - s 14: 49, 56, 71, 153, 799
  - s 15: 71
  - s 16: 67, 68, 69, 73, 75
  - s 17: 73, 80, 460
  - s 18: 73
  - s 20: 73
  - s 21: 69, 73, 76
  - s 23: 73, 74, 80, 116
  - s 24: 75, 95
  - s 25: 73
  - s 26: 73, 76
  - s 27: 75
  - s 28: 75
  - s 29: 73
  - s 30: 73, 76
  - s 32: 72
  - s 37: 76
  - s 41: 69
  - s 44: 73
  - s 67: 75
  - sch 1: 73
- Members of Parliament (Accommodation Services for Members and Travel Services for Family Members and Former Prime Ministers) Determination 2014: 73
- Mental Health (Compulsory Assessment and Treatment) Act 1992:
- Part 2: 45
- Militia Act 1858: 710
- Ministers' Travel Services within New Zealand Determination 2014:
- cl 1.7: 75
  - cls 2.1–2.4: 75
  - cl 3.2: 75
  - cl 3.3: 75
  - cl 3.4: 75
- Ministry of Agriculture and Fisheries Amendment Act 1990:
- s 2: 524
- Misuse of Drugs Act 1975:
- s 3A: 474
  - s 4: 474, 477
  - s 4A: 474
- National Animal Identification and Tracing Act 2012:
- s 62: 540
- National Bank of New Zealand Limited Act 1994: 362
- National Parks Act 1980:
- s 11: 375

- National War Memorial Park (Pukeahu) Empowering Act 2012:  
 s 33: 477  
 s 36: 477
- New Zealand Antarctic Institute Act 1996:  
 s 12: 625
- New Zealand Bill of Rights Act 1990:  
 11, 379, 462, 489, 717, 728, 745  
 s 3: 11, 494, 501, 626, 714, 748, 794  
 s 4: 380, 714  
 s 5: 381, 413  
 s 6: 380  
 s 7: 127, 380, 399  
 s 9: 764  
 s 14: 722  
 s 16: 159  
 s 21: 494, 495, 715, 764, 794, 796  
 s 22: 794  
 s 23: 794  
 s 25: 502  
 s 27: 12, 501, 626, 628, 714
- New Zealand Constitution Act 1852 (UK): 19, 526, 709, 710, 760, 798  
 s 44: 142  
 s 45: 40  
 s 52: 12, 671  
 s 53: 2  
 s 54: 101  
 s 55: 135  
 s 56: 455
- New Zealand Constitution Amendment Act 1973:  
 s 2: 2
- New Zealand Food Standard 1996: 477
- New Zealand (Mandatory Fortification of Bread with Folic Acid) Amendment Food Standard 2009: 477
- New Zealand Public Health and Disability Act 2000:  
 s 113: 528  
 sch 4: 784
- New Zealand Security Intelligence Service Act 1969:  
 s 4AA: 117
- New Zealand Sign Language Act 2006: 226
- New Zealand Superannuation and Retirement Income Act 2001: 446  
 s 39: 513  
 s 42: 552  
 s 44: 552  
 s 56: 116  
 s 72: 116  
 s 73: 259, 401
- New Zealand Superannuation (Political Commitment) Order 2003: 116, 401
- Ngai Tahu Claims Settlement Act 1998: 366
- Ngarimu VC and 28th (Maori) Battalion Memorial Scholarship Fund Act 1945:  
 s 4: 112  
 s 7: 112
- Notice of Scopes of Practice and Related Qualifications Prescribed by the Nursing Council of New Zealand  
 cl 4: 474
- Oaths and Declarations Act 1957:  
 s 3: 163  
 s 4: 162, 163, 498  
 s 6: 51  
 s 9: 51  
 s 17: 162, 163  
 s 19: 54  
 s 30A: 162
- Oaths and Declarations (Māori Language) Regulations 2004:  
 reg 4(1): 163  
 reg 5(1): 163  
 reg 6(1): 163
- Official Information Act 1982: 105, 106, 158, 334, 506, 510  
 s 9: 549  
 s 18: 505, 751, 784  
 s 52: 505, 784
- Official Secrets Act 1911 (UK): 732
- Ombudsman's Rules 1962: 473
- Ombudsmen Act 1975: 106  
 s 3: 106  
 s 4: 29, 52  
 s 5: 103, 104  
 s 6: 104, 508  
 s 9: 103, 527  
 s 10: 103  
 s 13: 106, 299, 610  
 s 15: 106, 473  
 s 17: 606  
 s 28A: 106  
 s 29: 107  
 s 31A: 103
- Ombudsmen Rules 1989: 106, 473
- Papa Adoption Discharge Act 1982: 362
- Pardon for Soldiers of the Great War Act 2000: 359

- Parliamentary and Executive Titles  
 Act 1907:  
 s 4: 49
- Parliamentary Commissioner  
 (Ombudsman) Act 1962:  
 s 2: 99
- Parliamentary Papers Act 1840 (UK):  
 622, 718, 753
- Parliamentary Privilege Act 2014: 622,  
 623, 624, 625, 707, 708, 710, 715, 718,  
 727, 728, 730, 737, 742, 748, 757, 759,  
 766, 797
- s 3: 706, 708, 711, 727, 734, 737
- s 4: 708, 717
- s 5: 91, 92, 623, 631, 727, 728, 731, 733,  
 741, 754, 758
- Part 2: 723, 734, 747
- s 7: 708
- s 8: 8, 11, 168, 706, 710, 711, 715, 720,  
 762, 783, 794, 796
- s 9: 334, 499, 714, 716, 734
- s 10: 120, 623, 631, 708, 708, 716, 727,  
 728, 729, 731, 732, 733
- s 11: 499, 708, 716, 734, 737, 740, 742,  
 777
- s 12: 716, 747, 748, 757, 784
- s 13: 499, 716, 739
- s 14: 716, 739
- s 15: 499, 716, 734, 738
- s 16: 716
- s 17: 78, 351, 619, 623, 631, 727, 730,  
 732, 754
- s 18: 351, 602, 624, 730, 732, 737, 739
- s 19: 92, 730, 732, 737, 739
- s 20: 602, 619, 631, 730, 732, 737, 739
- s 21: 732
- Part 4: 757
- s 22: 753, 783, 784, 796
- s 23: 713, 744, 761, 800
- s 24: 498, 752
- s 25: 334, 499, 765, 771, 772, 780
- s 26: 78, 747, 757
- s 27: 78, 747, 757, 758
- s 28: 747, 757, 758
- s 29: 747, 758
- s 30: 758, 759
- s 31: 78, 758
- s 38: 759, 780
- Parliamentary Privileges Act 1865: 706,  
 710, 762
- s 4: 799
- Parliamentary Privileges Act 1987  
 (Cth): 715, 718, 779
- s 4: 713
- s 6: 713
- s 7: 713
- s 8: 713
- s 16: 726
- Parliamentary Salaries and Allowances  
 Determination 1999: 69
- Parliamentary Salaries and Allowances  
 Determination 2003: 69
- Parliamentary Salaries and Allowances  
 Determination 2013: 70
- cl 5(2): 296
- sch 1: 296, 298
- Parliamentary Salaries and Allowances  
 Determination 2015: 70
- Parliamentary Salaries and Allowances  
 Determination (No 2) 2015: 69, 118,  
 119
- Parliamentary Salaries Determination  
 2015: 82
- Parliamentary Secret Session  
 Emergency Regulations 1940: 750
- Parliamentary Service Act 2000: 59, 67
- s 3: 70, 81, 82, 116, 148, 149, 175
- s 3B: 51, 74, 116
- ss 3B–3E: 66
- s 6: 94
- s 7: 94
- s 8: 67, 80, 95
- s 10: 94
- s 11: 80, 94
- s 13: 68
- s 14: 68, 95, 96
- s 15: 52, 95, 127
- s 16: 80, 82, 95
- s 18: 81, 117
- s 20: 76, 94, 95, 96
- ss 20–22: 74
- s 22: 96
- s 23: 149, 775, 800
- s 24: 96, 148, 775
- s 25: 96, 149, 175, 775
- s 26: 80, 149, 159, 800
- s 27: 96
- s 28: 96
- s 29: 94, 95, 96
- s 30: 96
- s 33: 82, 149
- sch 1: 94, 95, 97
- sch 2: 96
- Parliamentary Service (Additional  
 Parliamentary Precinct) Resolution  
 2009: 775
- Parliamentary Service (Additional  
 Parliamentary Precincts) Resolution  
 2006: 775
- Parliamentary Superannuation  
 Determination 2003:  
 cl 5: 72

- Parliamentary Travel,  
Accommodation, Attendance,  
and Communications Services  
Determination 2007: 66
- Patea By-election Act 1954: 47
- Plumbers, Gasfitters, and Drainlayers  
Amendment Act 2013: 485
- Plumbers, Gasfitters and Drainlayers  
Board (Drainlayers Registration and  
Licensing) Notice 2010: 477
- Plumbers, Gasfitters and Drainlayers  
Board (Fees) Notice 2010: 477
- Plumbers, Gasfitters and Drainlayers  
Board (Gasfitting Registration and  
Licensing) Notice 2010: 477
- Plumbers, Gasfitters and Drainlayers  
Board (Plumbing Registration and  
Licensing) Notice 2010: 477
- Primary Products Marketing  
(Regulations Confirmation) Act  
1988:  
s 3: 472
- Privacy Act 1993: 158  
s 29: 751, 784  
s 71: 601
- Private Bills Evidence Act 1860:  
s 2: 498
- Privileges Act 1856: 622, 710, 753
- Privileges Act 1866 Amendment Act  
1872:  
s 3: 759
- Prostitution Reform Act 2003: 358
- Protected Disclosures Act 2000: 502  
s 15: 106
- Public Audit Act 2001: 515, 583  
s 5: 105, 576  
s 8: 29, 52  
s 9: 585  
s 10: 104  
s 11: 104  
s 12: 104  
s 14: 105, 584  
s 15: 585  
s 16: 586  
s 17: 585  
s 18: 586  
s 20: 66, 105, 585  
s 21: 105, 585  
s 23: 585  
s 24: 585  
s 25: 585  
s 26: 585  
s 27: 585  
s 30: 585  
s 32: 585  
s 34: 585
- s 36: 104, 105, 549  
s 37: 105  
s 38: 103, 584  
sch 1: 105, 576, 583, 584  
sch 2: 105, 584  
sch 3: 103, 104, 508, 527
- Public Finance Act 1989: 12, 515, 522,  
536, 546, 563, 570, 571, 589  
s 2: 80, 81, 85, 94, 103, 524, 532, 533,  
545, 549, 554, 560, 570, 571, 577  
s 4: 512, 535  
s 4A: 523  
s 5: 511, 523  
s 6: 525, 527, 538  
s 7A: 529, 530, 532, 579  
s 7B: 532  
s 7C: 533, 549, 560  
s 9: 529  
s 10: 527  
s 11: 529  
s 12: 514, 551  
s 12A: 532  
s 12B: 532  
s 13: 373, 514, 552, 554, 555  
s 14: 527, 529, 554  
s 15: 529, 555, 557  
s 15A: 512, 527, 529, 555, 557, 579  
s 15B: 529, 555, 557  
s 15C: 512, 529, 531, 555, 557, 579, 589  
s 15D: 529, 555, 579  
s 15E: 529, 532, 555  
s 15F: 529, 555  
s 16: 373, 565  
s 17: 565  
s 17A: 565  
s 17B: 565  
s 18: 521, 548  
s 19C: 579  
s 24: 532  
s 25: 534, 567, 596, 705  
s 25A: 534, 596, 705  
s 26A: 533, 567, 596  
s 26B: 534, 567, 596  
s 26C: 535  
s 26D: 535  
s 26E: 137, 548, 549
- Part 2: 515  
s 26G: 515  
s 26I: 542, 552  
s 26J: 542  
s 26K: 542  
s 26L: 542  
s 26M: 546  
s 26N: 542  
s 26NA: 543  
s 26O: 543, 552

- s 26Q: 543  
 s 26R: 543  
 s 26S: 546  
 s 26T: 35  
 s 26U: 543  
 s 26Z: 589  
 s 27: 542, 579, 583  
 s 29: 580  
 s 29A: 589  
 s 29B: 584  
 s 30: 580  
 s 31: 580, 615, 622  
 s 31A: 542, 580  
 s 34: 581  
 s 35: 558, 590  
 s 36: 581  
 s 38: 547, 580, 581  
 s 39: 547, 580, 615  
 s 40: 547, 580  
 s 41: 580  
 s 43: 581  
 s 43A: 581  
 s 44: 587, 615, 615, 622  
 s 45: 577  
 s 45A: 581  
 s 45B: 581  
 s 45C: 581  
 s 45D: 581  
 s 45F: 547, 577, 584  
 s 45G: 107, 108  
 s 45M: 456, 576, 584  
 s 45N: 576  
 s 45O: 588  
 s 45OA: 577, 583, 584  
 Part 5A: 576  
 s 45R: 576  
 s 45S: 576  
 s 46: 512  
 ss 47–65D: 513  
 s 49: 574  
 s 60: 513, 527  
 s 65I: 542  
 s 65K: 533  
 s 65L: 534  
 s 65M: 534  
 s 65P: 532, 534  
 s 65R: 513, 514  
 s 65S: 513  
 s 65T: 514  
 s 65U: 514, 542  
 s 65V: 514, 525  
 s 65W: 514  
 s 65Y: 525, 526, 529  
 s 65Z: 66, 525  
 s 65ZA: 525  
 s 65ZH: 513, 527  
 s 70: 542  
 s 73: 541  
 s 74: 542  
 s 79: 589  
 s 80: 589  
 s 80A: 578, 589  
 s 81: 578, 589  
 s 82: 103, 104, 471, 474, 578  
 sch 4: 576, 584  
 sch 4A: 572, 576, 577, 584  
 sch 5: 576, 583  
 Public Finance Amendment Act 2013:  
 s 94: 456  
 Public Finance (Transfers Between  
 Outputs) Order 2015: 533  
 Public Records Act 2005:  
 s 6: 40, 671  
 s 42: 86  
 s 58: 86  
 Public Trust Act 2001:  
 s 43: 542  
 Public Works Act 1981:  
 s 26: 141  
 Radiocommunications Act 1989:  
 s 177: 90  
 Radio New Zealand Act 1995: 113  
 s 7: 113, 510  
 Radio New Zealand Act  
 Commencement Order 1995: 113  
 Rating Powers Amendment Act 1991:  
 s 6: 360  
 Referenda (Postal Voting) Act 2000:  
 s 4: 664  
 s 8: 671  
 s 30: 671  
 s 49: 671  
 s 50: 671  
 s 79: 670  
 Regulations Act 1936:  
 s 3: 469  
 Regulations (Disallowance) Act 1989:  
 460, 476  
 s 9: 474  
 Remuneration Authority Act 1977:  
 s 2: 70  
 ss 4–6: 68  
 s 12: 68, 69, 72  
 s 12B: 460  
 s 14: 69  
 s 16: 68, 69  
 s 17: 72  
 s 17A: 68  
 s 18: 69  
 s 18A: 69  
 s 19: 68

- s 21: 68
- Remuneration Authority (Members of Parliament Remuneration) Amendment Act 2015: 69, 70
- Representation Act 1887: 24
- Reserve Bank of New Zealand Act 1989: 113
  - s 15: 618
  - s 46: 52
  - s 53A: 584, 618
  - s 58: 52
  - s 161: 113, 528
  - s 162E: 618, 619
  - s 163: 577, 584, 618, 619
  - s 167: 586
- Resource Management Act 1991: s 247: 234
- Retirement Income Act 1993: 116
- Road User Charges (Transitional Exemption for Certain Farmers' Vehicles) Regulations 2013: 477, 478
- Road User Charges (Transitional Matters) Regulations 2012: reg 5: 478
  - reg 8: 478
- Royal Powers Act 1953: 1
- Royal Society of New Zealand Act 1997: 363
- Seal of New Zealand Act 1977: s 3: 141
- Second Ballot Act 1908: 19
- Sentencing Act 2002: s 106: 44
- Serious Fraud Office Act 1990: s 30: 643
  - s 36: 503
- Sharebrokers Act 1871: 455
- Sharebrokers Act Amendment Act 1872: s 2: 455
- Social Assistance (Portability to Cook Islands, Niue, and Tokelau) Act 2015: 446
- Social Security Act 1964: 446
  - s 5: 615
- Southland Electricity Act 1993: s 5: 573
  - s 18: 625
- Special Commissions of Inquiry Amendment Act 1997 (NSW): 717
- Stamp and Cheque Duties Act 1971: 388
- State-Owned Enterprises Act 1986: 216, 576
  - s 2: 573, 574, 575
- s 4: 574
- s 6: 575
- s 12: 513
- s 13: 575
- s 14: 575
- s 15: 583
- s 16: 583
- s 17: 575, 587, 615, 622
- s 18: 644
- s 19: 584
- s 23: 575
- s 30: 574
- s 31: 510
- State Sector Act 1988: 546, 570
  - s 16: 113, 135
  - s 27: 570
  - s 27A: 570, 571
  - s 30A: 570
  - s 33: 643
  - sch 1: 570
  - sch 1A: 571
- Statistics Act 1975: s 23: 141
- Student Loan Scheme Act 1992: 388
- Student Loan Scheme Act 2011: 388
- Subordinate Legislation (Confirmation and Validation) Act 1997: s 9: 472
- Subordinate Legislation (Validation) Act 1997: 472
- Sullivan Birth Registration Act 2014: 362
- Summary Offences Act 1981: s 4: 725
- Superannuation Schemes Act 1989: s 35: 72
- Supreme Court Act 2003: s 6: 234
  - s 18: 2
- Tariff Act 1988: s 9C: 539
  - s 11: 539
  - s 11A: 539
  - s 12: 538, 539
- Tax Administration Act 1994: 388
  - s 3: 377, 388
  - s 81: 503
  - sch: 388
- Taxation (Budget Measures) Act 2010: s 45: 538
- Taxation Review Authorities Act 1994: 388
- Telecommunications Act 1991: s 69N: 459

- Terrorism Suppression Act 2002:  
s 20: 117  
s 70: 344, 510
- Te Runanga o Ngai Tahu Act 1996:  
363
- Te Runanga o Ngati Awa Act 2005:  
363
- Te Ture Whenua Maori/Maori Land  
Act 1993:  
s 1: 366  
s 6: 234  
s 50: 234
- The Triennial Parliaments Act 1879:  
145
- Thomas Cawthon Trust Act 1924:  
109  
s 3: 52, 109
- Tower Corporation Act 1990: 363
- Tower Corporation Amendment Act  
1989: 363
- Treasury Instructions 2015: 514
- Treaty of Waitangi Act 1975:  
s 6: 404  
s 8: 404  
s 9: 601, 606
- Trustee Act 1956:  
s 64A: 363
- Waikato Raupatu Claims Settlement  
Act 1995: 366
- Waitakere Ranges Heritage Area Act  
2008: 360
- War Pensions Act 1954: 446
- Waste Minimisation Act 2008:  
s 26: 540
- Westpac Banking Corporation Act  
1982: 362
- Westpac New Zealand Act 2011: 362
- Wine Act 2003:  
s 89: 540

# Table of Cases

Bold numbers locate cases in this text.

- A v United Kingdom* (2003) 36 EHRR 51 (Section II, ECHR) **706, 718**  
*Aboriginal Legal Service v State of Western Australia* (1993) 9 WAR 297, (1993)  
    113 ALR 87 (SC) **494, 497, 502, 714**  
*Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, (1992) 106 ALR 11  
    **624**  
*Ainsworth Lumber Co v Canada (Attorney General)* (2003) 226 DLR (4th) 93 **754**  
*Air Caledonie International v Commonwealth of Australia* (1988) 165 CLR 462,  
    (1988) 82 ALR 385 **537**  
*Allason v Haines* [1995] NLJR 1576 **736**  
*Alton v Broadcasting Standards Authority* [1990] NZAR 571 (HC) **33**  
*Ananda Nambiar, Re* [1952] AIR (Madras) 117 **756**  
*Anbazhagan v The Secretary, Tamil Nadu Legislative Assembly* [1988] AIR  
    (Madras) 275 **800**  
*Anglo-French Co-operative Society, Re* (1880) 14 Ch D 533 **755**  
*Anning v Minister of Education* HC Wellington CP122/00, 26 April 2002 **524**  
*Archives and Records Association of New Zealand v Blakeley* [2000] 1 NZLR 607  
    (CA) **524, 527, 528, 529, 533, 550, 554, 567**  
*Assange v Swedish Prosecution Authority* [2012] UKSC 22 **739**  
*Attorney General (Canada) v MacPhee* 2003 PESCTD 6, 221 Nfld & PEIR 164, 46  
    Admin LR (3d) 171 **279, 495, 727, 752**  
*Attorney-General v Jones* [2000] QB 66, [1999] 3 All ER 436 **44, 48**  
*Attorney General of Ceylon v De Livera* [1963] AC 103, [1962] 3 All ER 1066 (PC)  
    **57, 729**  
*Attorney-General v Leigh* [2011] NZSC 106, [2012] 2 NZLR 713 **652, 707, 711,**  
    **718, 721, 726, 727, 728, 766**  
*Attorney-General v Lightbourn* (1982) 31 WIR 24 **747**  
*Auckland City Council v Auckland Electric Power Board* HC Auckland CP26/93,  
    16 August 1993 **349**  
*Auckland Electric Power Board v Electricity Corporation of New Zealand Ltd*  
    [1994] 1 NZLR 551 (CA) **574**  
*Auckland Harbour Board v The King* [1924] AC 318 (PC) **526**  
*Australian Capital Television Pty Ltd v Commonwealth of Australia* (1992) 177  
    CLR 106, (1992) 108 ALR 577 **491**  
*Awatere Huata v Prebble* [2004] 3 NZLR 359 (CA) **120, 711, 714, 731, 739, 745,**  
    **762, 800**  
*Awatere Huata v Prebble* [2005] 1 NZLR 289 (SC) **122, 714**  
*Awatere Road Board v Colonial Treasurer* (1887) 5 NZLR SC **372 524**  
  
*B v Auckland District Law Society* [2003] UKPC 38, [2004] 1 NZLR 326 **713**  
*Baburao alias PB Samant v Union of India* [1988] AIR (SC) 440 **85**  
*Banks v R* [2014] NZCA 575 **756**  
*Banks v R* [2015] NZCA 182 **756**  
*Barnard v Mordaunt* (1754) 1 Keny 125, 96 ER 939 **754**  
*Beach v Freeson* [1972] 1 QB 14, [1971] 2 All ER 854 **731**  
*Boscawen v Attorney-General* [2009] NZCA 12, [2009] 2 NZLR 229 **11, 381, 717,**  
    **728, 735, 745**

- Boscawen Properties Ltd v Governor-General* HC Auckland M.555/93, 10 December 1993 **472**
- Bowles v Bank of England* [1913] 1 Ch 57 **538**
- Bradlaugh v Gossett* (1884) 12 QBD 271 **8, 165, 742, 744, 799**
- British American Tobacco Australia Ltd v Secretary, Department of Health and Ageing* [2011] FCAFC 107 **732**
- British Railways Board v Pickin* [1974] AC 765, [1974] 1 All ER 609 (HL) **717, 719, 736, 743**
- Brocklebank v R* [1924] 1 KB 647 **541**
- Brown v West* (1990) 169 CLR 195, (1989) 91 ALR 197 **524**
- Bruton v Estate Agents Licensing Authority* [1996] 2 VR 274 (SC) **624**
- Buchanan v Jennings* [2001] 3 NZLR 71 (HC) **721**
- Buchanan v Jennings* [2002] 3 NZLR 145 (CA) **721, 729, 730, 737, 739**
- Buchanan v Jennings* [2004] UKPC 36, [2005] 2 NZLR 577 **718, 721, 737**
- Canada (Deputy Commissioner, Royal Canadian Mounted Police) v Canada (Commissioner, Royal Canadian Mounted Police)* 2007 FC 564, [2008] 1 FCR 752 **779**
- Canada (House of Commons) v Vaid* 2005 SCC 30, [2005] 1 SCR 667 **491, 707, 708, 742**
- Chaffers v Goldsmid* [1894] 1 QB 186 **607**
- Chaudhuri v State of Punjab* [2001] AIR (SC) 2707 **125**
- China Navigation Co v Attorney-General* [1932] 2 KB 197 **542**
- Church of Scientology of California v Johnson-Smith* [1972] 1 QB 522, [1972] 1 All ER 378 **720, 736**
- Churchward v R* (1865) LR 1 QB 173 **523**
- Clark and Attorney-General of Canada, Re* (1977) 81 DLR (3d) 33 **729**
- Combe v Combe* [1951] 2 KB 215, [1951] 1 All ER 767 **719**
- Commonwealth v Colonial Ammunition Co Ltd* (1924) 34 CLR 198 **523**
- Crane v Gething* [2000] FCA 45, (2000) 169 ALR 727 **729, 735**
- Criminal Justice Commission v Dick* [2000] QSC 272 **714**
- Criminal Justice Commission v Nationwide News Pty Ltd* [1994] QCA 352, [1996] 2 Qd R 444 **784**
- Daphtry v Gupta* [1971] AIR (SC) 1132 **509**
- Dentice v Valuers Registration Board* [1992] 1 NZLR 720 (HC) **792**
- Desailly v Brunker* (1888) 9 LR NSW (L) 536 **523**
- Dill v Murphy* (1864) 1 Moo PC (NS) 487, 15 ER 784 **710**
- Dillon v Balfour* (1887) 20 LR Ir 600 **719, 735**
- Dingle v Associated Newspapers Ltd* [1960] 2 QB 405, [1960] 1 All ER 294 **738**
- Director-General of Social Welfare v Disputes Tribunal* (1999) 12 PRNZ 642 (HC) **530**
- Duke of Newcastle v Morris* (1870) 4 LR HL 661 **714, 716**
- Dunne v CanWest TVWorks Ltd* [2005] NZAR 577 (HC) **34**
- Dyson v Attorney-General* [1912] 1 Ch 158 **529, 743**
- Egan v Chadwick* [1999] NSWCA 176, (1999) 46 NSWLR 563 **507**
- Egan v Willis* (1996) 40 NSWLR 650 (CA) **494, 495, 506, 507, 615, 707, 719, 750, 762**
- Egan v Willis* [1998] HCA 71, (1998) 195 CLR 424, (1998) 158 ALR 527 **491, 507, 707, 719, 742, 743**
- Egg Producers Federation of New Zealand v Clerk of the House of Representatives* HC Wellington CP128/94, 20 June 1994 **666**
- Electoral Commission v Cameron* [1997] 2 NZLR 421 (CA) **34**
- Electoral Commission v Tate* [1999] 3 NZLR 174 (CA) **35**
- Erglis v Buckley* [2005] QSC 25 **729**

*European Roma Rights Centre v Immigration Officer at Prague Airport* [2003]  
EWCA Civ 666, [2004] QB 811 **693**

*FAI Insurances Limited v Winneke* (1982) 151 CLR 342 **123**

*Fairfield Properties Ltd v Exmouth Docks Company Ltd* (1990) *The Times Law Reports* 660 **399**

*Federated Farmers of New Zealand (Inc) v New Zealand Post Ltd* HC Wellington CP661/92, 1 December 1992 **612, 738**

*Fenton v Hampton* (1858) 11 Moo PC 347, 14 ER 727 **762**

*Field v R* [2010] NZCA 556, [2011] 1 NZLR 784 **53, 54, 748, 755, 768**

*Field v R* [2011] NZSC 129, [2012] 3 NZLR 1 **53, 755, 768**

*Fitzgerald v Muldoon* [1976] 2 NZLR 615 (SC) **716**

*Flegg v Hallet* [2014] QSC 278 **727**

*Forbes v Samuel* [1913] 3 KB 706 **39, 739**

*Fowler & Rodrique Ltd v Attorney-General* [1981] 2 NZLR 728 (HC) **729**

*Friesen v Hammell* (2000) 190 DLR (4th) 210, (2000) 78 BCLR (3d) 317 (BCSC) **32**

*Gagliano v Canada (Attorney General)* 2005 FC 576, [2005] FCR 555 **779**

*Goffin v Donnelly* (1881) 6 QBD 307 **499, 733**

*Goodwin v News Group Newspapers Ltd* [2011] EWHC 1309 (QB) **757**

*Goudy v Duncombe* (1847) 1 Ex 430, 154 ER 183 **754**

*Habib v Commonwealth of Australia* [2008] FCA 1494 **736**

*Haliburton v Broadcasting Commission* [1999] NZAR 233 (HC) **470**

*Halden v Marks* (1995) 17 WAR 447 (SC) **784, 719**

*Hamilton v Al Fayed* [1999] 1 WLR 1569, [1999] 3 All ER 317 (CA) **233, 723, 727, 731, 735, 738, 743**

*Hamilton v Al Fayed* [2001] 1 AC 395, [2000] 2 All ER 224 (HL) **716, 726**

*Hamilton and Greer v Hencke* High Court of Justice, Queen's Bench Division, 21 July 1995 **736**

*Harendranath Barua v Dev Kanta Barua* [1958] AIR (Assam) 160 **494**

*Haridasan Palayil v Speaker of the Kerala Legislative Assembly* [2003] AIR (Kerala) 328 **165, 745**

*Harvey v New Brunswick (Attorney-General)* [1996] 2 SCR 876, (1996) 137 DLR (4th) 142 **707, 713**

*Highway v Tudor-Stack* [2006] NTCA 4 **725**

*Hoani Te Heuheu Tukino v Aotea District Maori Land Board* [1941] AC 308, [1941] 2 All ER 93 (PC) **743**

*Hoffman-La Roche v Secretary of State for Trade and Industry* [1975] AC 295, [1974] 2 All ER 1128 (HL) **475**

*Horne v Barber* (1920) 27 CLR 494 **53**

*House of Commons v Canada Labour Relations Board* (1986) 27 DLR (4th) 481 (FCA) **713**

*Howard v Gossett* (1845) 10 QB 359, 116 ER 139 **491, 494, 764**

*Hyams v Peterson* [1991] 3 NZLR 648 (CA) **719**

*Isaacs & Sons Ltd v Cook* [1925] 2 KB 391 **624**

*Jackson v Attorney-General* [2005] UKHL 56, [2006] 1 AC 262 **744**

*Janssen-Ortho Inc v Amgen Canada Inc* [2005] 256 DCR (4th) 407 (ONCA) **728**

*Jatish Chandra Ghosh v Hari Sadhan Mukherjee* [1961] AIR (SC) 613 **729, 737**

*Jenkins v McCusker* [2010] WASAT 100 **731, 741**

*Jerusalem v Austria* (2003) 37 EHRR 25 (Section III, ECHR) **718**

*Kable v State of New South Wales* [2000] NSWSC 1173 **736**

- Kalauni v Jackson* [2001] NZAR 292 (Niue CA) **745**
- Kielley v Carson* (1842) 4 Moo PC 63, 13 ER 225 **709**
- Kunjan Nadar v State of Travancore-Cochin* [1955] AIR (Travancore-Cochin) 154 **42, 756**
- Lake v King* (1667) 1 Saund 131, 85 ER 137 (KB) **602, 726, 733**
- Lonrho plc, Re* [1990] 2 AC 154, [1989] 2 All ER 1100 (HL) **233**
- Makudi v Baron Triesman of Tottenham* [2014] EWCA Civ 179, [2014] QB 839 **708, 727, 737**
- Mangawaro Enterprises Ltd v Attorney-General* [1994] 2 NZLR 451 (HC) **11, 381, 728, 745**
- Mangawhai Ratepayers' and Residents' Association Inc v Kaipara District Council* [2014] NZHC 1147, [2014] 3 NZLR 85 **718, 719, 728, 735, 739, 745**
- Mangawhai Ratepayers' and Residents' Association Inc v Kaipara District Council* [2015] NZCA 612 **718, 728**
- Melser v Police* [1967] NZLR 437 (SC) **159**
- Mercury Energy Ltd v Electricity Corporation of New Zealand Ltd* [1994] 2 NZLR 385 (PC) **574**
- Miah v Secretary of State for Work and Pensions* [2003] EWCA Civ 1111, [2003] 4 All ER 702 **475**
- Morris v Burdett* (1813) 2 M & S 212, 105 ER 361 **491**
- M v Home Office* [1992] QB 270, [1992] 4 All ER 97 (CA) **235**
- Nalumino Mundia, Re* [1971] ZR 70 **743**
- Namoi Shire Council v Attorney-General (New South Wales)* [1980] 2 NSWLR 639 (SC) **726, 743**
- Narasimha Rao v State* [1998] AIR (SC) 2120 **724**
- New Brunswick Broadcasting Co v Nova Scotia (Speaker of the House of Assembly)* [1993] 1 SCR 319, (1993) 100 DLR (4th) 212 **156, 706, 707, 720, 750**
- News Media Ownership v Finlay* [1970] NZLR 1089 (CA) **720, 781**
- New South Wales Branch of the Australian Medical Association v Minister for Health and Community Services* (1992) 26 NSWLR 114 **727**
- New South Wales v Bardolph* (1934) 52 CLR 455 **525, 529, 554**
- New South Wales v Commonwealth* (1908) 7 CLR 179 **513, 524**
- Norske Skog Tasman Ltd v Clarke* [2004] 3 NZLR 323 (CA) **419**
- Nottinghamshire County Council v Secretary of State for the Environment* [1986] 1 AC 240, [1986] 1 All ER 199 (HL) **475**
- O'Chee v Rowley* (1997) 150 ALR 199, (2000) 1 Qd R 207 (QCA) (*sub nom. Rowley v O'Chee*) **747**
- Office of Government Commerce v Information Commissioner (Attorney-General intervening)* [2008] EWHC 737 (Admin), [2010] QB 98 **506, 727, 728, 735, 738, 739**
- Ontario (Speaker of the Legislative Assembly) v Ontario (Human Rights Commission)* (2001) 54 OR (3d) 595 (ONCA) **193, 741, 743**
- Ouellet (No 1), Re* (1976) 67 DLR (3d) 73 (CS) **707, 728, 729, 732, 756**
- P (a minor by his mother and litigation friend), Re* [2003] UKHL 8, [2003] 2 AC 663 **739**
- Pandit MSM Sharma v Shri Sri Krishna Singh* [1959] AIR (SC) 395 **795**
- Pankiw v Canada (Human Rights Commission)* [2007] 4 FCR 578 **729, 741**
- Parliamentary Inspector of the Corruption and Crime Commission, ex parte Corruption and Crime Commission, Re* [2008] WASC 305 **731**
- Parliamentary Privileges Act 1770, Re* [1958] AC 331, [1958] 2 All ER 329 (PC) **759**
- Payne v Adams* [2009] 3 NZLR 834 (HC) **31, 41**

- Pepper (Her Majesty's Inspector of Taxes) v Hart* [1993] AC 593, [1993] 1 All ER 42 (HL) 233, 719, 720, 725, 734, 739, 740
- Peters v Clarkson* [2007] NZAR 610 (HC) 35
- Peters v Collinge* [1993] 2 NZLR 554 (HC) 30, 120, 121, 724
- Peters v Davison* [1999] 3 NZLR 744 (HC) 735
- Peters v Television New Zealand Ltd* [2008] NZAR 411 (HC) 719
- Pillalamarri Venkateshwarlu, In the matter of* [1951] AIR (Madras) 269 754, 755
- Plunkett v Cobbett* (1804) 5 Esp 136, 170 ER 763 747
- Police v Beggs* [1999] 3 NZLR 615 (HC) 159, 748
- Prebble v Television New Zealand Ltd* (1992) 8 CRNZ 439 (HC) 721
- Prebble v Television New Zealand Ltd* [1994] 3 NZLR 1, [1995] 1 AC 321, [1994] 3 All ER 407 (PC) 499, 626, 706, 713, 714, 715, 716, 718, 720
- Proceedings Commissioner v Air New Zealand Ltd* (1988) 7 NZAR 462 234
- Queen v The Speaker of the House of Representatives* [2004] NZAR 585 (HC) 719
- Raj Narain Singh v Atmaran Govind, Speaker of the Uttar Pradesh Legislative Assembly* [1954] AIR (Allahabad) 319 154
- Ram Dubey v Government of Madhya Bharat* [1952] AIR (Madhya Bharat) 57 424, 743
- Rank Film Distributors Ltd v Video Information Centre* [1982] AC 380, [1981] 2 All ER 76 (HL) 500
- Rann v Olsen* [2000] SASC 83, (2000) 172 ALR 395 716, 735, 738
- Rayner v R* [1930] NZLR 441 (CA) 525
- R v Banks* [2014] NZHC 1244 756
- R v Banks* [2014] NZHC 1807 756
- R v Boston* (1923) 33 CLR 386 52, 53
- R v British Broadcasting Corporation, ex parte ProLife Alliance* [2003] UKHL 23, [2004] 1 AC 185, [2003] 2 All ER 977 34
- R v Chaytor* [2010] UKSC 52, [2011] 1 AC 684 707, 708, 713, 716, 718, 725, 742, 743, 748, 755, 798
- R v Colonial Treasurer* (1878) 4 NZ Jur (NS) 47 (SC) 524
- R v Creevey* (1813) 1 M & S 273, 105 ER 102 (KB) 729, 737
- R v Criminal Injuries Compensation Board, ex parte P* [1995] 1 All ER 870 (CA) 524
- R v Field HC Auckland CRI-2007-092-18132, 6 October 2009* 57
- R v Fineberg* [1968] NZLR 119 (SC) 2
- R v Immigration Appeal Tribunal, ex parte Joyles* [1972] 3 All ER 213, [1972] 1 WLR 1390 (QB) 614
- R v Jackson* (1987) 8 NSWLR 116 (SC) 736
- R v Lord Abingdon* (1794) 1 Esp 226, 170 ER 337 (KB) 729, 737
- R v Murphy* (1986) 5 NSWLR 18, (1986) 64 ALR 498 (SC) 715, 720, 723, 734, 740, 779
- R v Parliamentary Commissioner for Standards, ex parte Al Fayed* [1998] 1 WLR 669, [1998] 1 All ER 93 (CA) 723, 744
- R v Ponting* [1985] Crim LR 318 (QB) 729, 775
- R v Poumako* [2000] 2 NZLR 695 (CA) 381, 400
- R v Richards, ex parte Fitzpatrick and Browne* (1955) 92 CLR 157 707, 796
- R v Rule* [1937] 2 KB 375, [1937] 2 All ER 772 730
- R v Secretary of State for the Environment, Transport and the Regions, ex parte Spath Holme Ltd* [2001] 2 AC 349, [2001] 1 All ER 195 (HL) 739
- R v Secretary of State for the Home Department, ex parte Fire Brigades Union* [1995] 2 AC 513, [1995] 2 All ER 244 524
- R v Smith, ex parte Cooper* [1992] 1 Qd R 423 (SC) 714
- R v Turnbull* [1958] Tas SR 80 (SC) 120, 731
- R v Wainscot* [1899] 1 WALR 77 (SC) 499, 733

- R (Federation of Tour Operators) v Her Majesty's Treasury* [2007] EWHC 2062 (Admin) **735, 738**
- R (Khan) v Secretary of State for Health* [2003] EWCA Civ 1129, [2003] 4 All ER 1239, [2004] 1 WLR 971 **523**
- R (Morgan Grenfell & Co Ltd) v Special Commissioner of Income Tax* [2002] UKHL 21, [2003] 1 AC 563 **503, 713**
- R (on the application of Age UK) v Secretary of State for Business, Innovation and Skills* [2009] EWHC 2336 (Admin) **735, 738**
- R (on the application of Bradley) v Secretary of State for Work and Pensions* [2007] EWHC 242 (Admin) **735, 738**
- R (on the application of F) v Secretary of State for the Home Department* [2010] UKSC 17 **739**
- R (on the application of HS2 Action Alliance Ltd) v Secretary of State for Transport* [2014] UKSC 3 **735, 745**
- R (on the application of Wheeler) v Office of the Prime Minister* [2008] EWHC 1409 (Admin) **728, 745**
- R (on the application of Wilson) v Wychavon District Council* [2007] EWCA Civ 52, [2007] QB 801 **735**
- R (Westminster City Council) v National Asylum Support Service* [2002] UKHL 38, [2002] 1 WLR 2956, [2002] 4 All ER 654 **369**
- Real Estate House (Broadtop) Ltd v Real Estate Agents Licensing Board* [1987] 2 NZLR 593 (CA) **369**
- Rediffusion (Hong Kong) Ltd v Attorney-General of Hong Kong* [1970] AC 1136 (PC) **491, 743**
- Reference re Amendment of the Constitution of Canada (Nos 1, 2 and 3)* [1981] 1 SCR 753, (1982) 125 DLR (3d) 1 **743**
- Reference re Canada Assistance Plan* [1991] 2 SCR 525, (1991) 83 DLR (4th) 297 **11**
- Reference re Legislative Privilege* (1978) 18 OR (2d) 529 (ONCA) **747**
- Rivlin v Bilainkin* [1953] 1 QB 485, [1953] 1 All ER 534 **729, 732, 733**
- Rongonui v Police HC Wellington CRI-485-46, 5 October 2010* **748**
- Rost v Edwards* [1990] 2 QB 460, [1990] 2 All ER 641 **715, 721, 724, 732, 735, 747**
- Rowley v Armstrong* [2000] QSC 88 **729, 730**
- Royal Commission into Certain Crown Leaseholds* [1956] St R Qd 225 **742**
- Rudolph v Lightfoot* (1999) 197 CLR 500, (1999) 167 ALR 105 **41**
- Saffiotti and Minister for Transport; Housing, Re* [2012] WAICmr 10 **728, 741**
- Salvesen v Riddell (Lord Advocate Intervening)* [2013] UKSC 22 **739**
- Sankey v Whitlam* (1978) 142 CLR 1, (1978) 21 ALR 505 **747**
- Sellers v Maritime Safety Inspector* [1999] 2 NZLR 44 (CA) **681**
- Shaw v Commissioner of Inland Revenue* [1999] 3 NZLR 154 (CA) 9, **744**
- Simpson v Attorney-General* [1955] NZLR 271 (SC) **10, 146**
- Simpson v Attorney-General* [1955] NZLR 271 (CA) **10, 744**
- Slipper v Magistrates Court of the ACT* [2014] ACTSC 85 **707, 743, 755**
- Smith v Department of Foreign Affairs and Trade* [2007] AIRC 366 **732**
- Solicitor-General v Broadcasting Corporation of New Zealand* [1987] 2 NZLR 100 (HC) **756**
- Solicitor-General v Smith* [2004] 2 NZLR 540 (HC) **756**
- Sopforth v Goyer* (1978) 87 DLR (3d) 373 **737**
- South Taranaki Energy Users Association Inc v South Taranaki District Council* HC New Plymouth CP5/97, 26 August 1997 **122, 349**
- Speaker of the Legislative Assembly of Victoria v Glass* (1871) LR 3 PC 560 **796**
- Special Reference No 1 of 1964* [1965] AIR (SC) 745 [*Keshav Singh's case*] **709, 796**
- Sri Susant Kumar Chand v Speaker, Orissa Legislative Assembly* [1973] AIR (Orissa) 111 **795**

- State Chamber of Commerce and Industry v Commonwealth of Australia* (1987) 163 CLR 329, (1987) 73 ALR 161 **49**
- Stiller and Department of Transport, Re* [2009] QICmr 8 **728, 741**
- Stockdale v Hansard* (1839) 9 A & E 1, 112 ER 1112 (QB) **491, 498, 622, 717, 718, 727, 742, 743, 753**
- Stonhill v Mackey DC* Wellington 0016/01 **719**
- Stourton v Stourton* [1963] P 302, [1963] 1 All ER 606 **756**
- Street v Hearne* [2007] NSWCA 113 **756**
- Sue v Hill* (1999) 199 CLR 462, (1999) 163 ALR 648 **46**
- Suresh Chandra Banerji v Punit Goala* [1951] AIR (Calcutta) 176 **729, 737, 738**
- Sykes v Cleary* (1992) 176 CLR 77, (1992) 109 ALR 577 (*sub nom. Sykes v Cleary (No 2)*) **28**
- Taiaroa v Minister of Justice* [1995] 1 NZLR 411 (CA) **26**
- Takerei v Winiata HC* Hamilton CIV-2010-419-001071, 2 March 2011 **31**
- Tannadyce Investments Ltd v Commissioner of Inland Revenue* [2011] NZSC 158, [2012] 2 NZLR 153 **470**
- Taylor v Attorney-General* [2014] NZHC 1630 **717, 728, 735, 745**
- Taylor v Attorney-General* [2014] NZHC 2225 **10**
- Taylor v Attorney-General* [2015] NZHC 1706 **717, 728, 745**
- Television New Zealand Ltd v Prebble* [1993] 3 NZLR 513 (CA) **716, 717, 721**
- Telezone Inc. v Canada (Attorney General)* (2004) 69 OR (3d) 161, (2004) 235 DLR (4th) 719 (ONCA) **707**
- Terry v Police* [2004] NZAR 489 (HC) **729**
- Te Runanga o Wharekauri Rekohu Inc v Attorney-General* [1993] 2 NZLR 301 (CA) **10**
- Thoburn v Sunderland City Council* [2002] EWHC 195 (Admin), [2003] QB 151, [2002] 4 All ER 156 **465, 740**
- Thomas v Bolger (No 1)* [2002] NZAR 945 (HC) **118**
- Thomas v Bolger (No 2)* [2002] NZAR 948 (HC) **10, 719**
- Timmins v Governor-General* [1984] 2 NZLR 298 (HC) **25**
- Toussaint v Attorney General of Saint Vincent and the Grenadines* [2007] UKPC 48 **738, 739, 740**
- Transpower New Zealand Ltd v Meridian Energy Ltd* [2001] 3 NZLR 700 (HC) **575**
- Tranton v Astor* (1917) 33 TLR 383 **739**
- Trustor AB v Smallbone* [2000] 1 All ER 811 (CA) **500**
- Turners & Growers Export Ltd v Moyle HC* Wellington CP720/88, 15 December 1988 **472**
- Vardon v O'Loglin* (1907) 5 CLR 201 **47**
- Vela Fishing Ltd v Commissioner of Inland Revenue* [2001] 1 NZLR 437 (HC) **419, 739**
- Vela Fishing Ltd v Commissioner of Inland Revenue* [2002] 1 NZLR 49 (CA) **419**
- Victoria v Commonwealth* (1975) 134 CLR 338, (1975) 7 ALR 277 **523**
- Vidadala Harinadhbabu v NT Ramarao* [1990] AIR (Andhra Pradesh) 20 **51**
- Vikram Singh v Shri Ram Ballabhji Kasat* [1995] AIR (Madhya Pradesh) 140 **45**
- Waikato Regional Airport Ltd v Attorney-General* [2003] UKPC 50, [2004] 3 NZLR 1 **541**
- Wang v Minister of Internal Affairs* [1998] 1 NZLR 309 (HC) **470**
- Wason v Walter* (1868) LR 4 QB 73 **491, 737, 746**
- Weir v Secretary of State for Transport* [2005] EWHC 2192 (Ch) **779**
- Wells v Newfoundland* [1999] 3 SCR 199, (1999) 177 DLR (4th) 73 **11**
- Westco Lagan Ltd v Attorney-General* [2001] 1 NZLR 40 (HC) **9, 10, 719, 721, 744**

- Westhaven Shellfish Ltd v Chief Executive of Ministry of Fisheries* [2002] 2 NZLR 158 (CA) **122**
- West Lakes Ltd v State of South Australia* (1980) 25 SASR 389 (SC) **11**
- Wilkinson v Osborne* (1915) 21 CLR 89 **53**
- Wilson v Secretary of State for Trade and Industry* [2003] UKHL 40, [2004] 1 AC 816 **713, 719, 720, 723, 735, 738, 739, 740**
- Wood, Re* (1988) 167 CLR 145, (1988) 78 ALR 257 **43, 46, 47**
- Woolwich Equitable Building Society v Inland Revenue Commissioners* [1993] AC 70, [1992] 3 All ER 737 (HL) (*sub nom. Woolwich Building Society v Commissioners of Inland Revenue (No 2)*) **537**
- Yeshwant Rao Meghwale v Madhya Pradesh Legislative Assembly* [1967] AIR (Madhya Pradesh) 95 **800**
- Yuen Kwok-Fung v Hong Kong Special Administrative Region of the People's Republic of China* [2001] 3 NZLR 463 (CA) **684**
- ZL v Secretary of State for the Home Department* [2003] EWCA Civ 25, [2003] 1 All ER 1062, [2003] 1 WLR 1230 **456, 731**
- Zündel v Boudria* (2000) 181 FLR (4th) 463, [2000] 46 OR (3rd) 410 (ONCA) **158, 800**



# Index

- Abortion Supervisory Committee** 108, 508, 577, 584, 591
- Absence**  
leave of 42, 54, 55, 251  
members 54–56, 207, 230, 250, 251  
Minister 54–55  
penalty 55–56  
select committee chairperson 297, 298  
Speaker 82
- Accident Compensation Corporation** 534, 572  
levies 540–541
- Acknowledgment to Chair** 78–79
- Acts of Parliament** 453–458  
as a source of procedure 8–11  
bills, amending or repealing, in same session 386  
classification 356, 357  
commencement 366, 454, 482  
definition 2, 3, 356  
errors in 455, 456  
evidence of 457  
local 357, 359, 398, 399  
official version 457  
publication 112, 383, 456–457  
private 361–363  
promulgation of 456, 457  
reprints of 457  
temporary laws 367
- Addressing members** 224
- Address in Reply** 171–174  
adjournment of debate 172  
adoption of 173  
amendment to 138, 172, 173, 215  
debate 136, 138, 171–172, 227, 673  
motion for 137, 172  
precedence 172, 726  
presentation 138, 174  
seconder 172, 213
- Addresses** *see also Address in Reply*  
appropriations, for 136, 365, 548, 549, 562  
motions for 137, 138  
papers, for 137  
preparation of 138  
presentation 77, 138, 173  
removal of public officers 20, 104, 108, 110, 113, 137, 233, 508  
replies 139  
returns, for 137  
Speech from the Throne, in reply to 136, 170–174  
Sovereign, to 139  
subjects of 137–138
- Adjournment of debate** 239, 240
- Adjournment of House** 153, 154, 171, 186–189  
amendment to motion for 188  
beyond next sitting day 186  
business transacted at time for 187, 200  
committee of the whole House 186, 271  
declaration of emergency during 187, 189  
early recall of House during 189  
following election of Speaker 171, 187  
grave disorder 153, 154, 187  
indefinite 187  
motions 187–189  
period of 188  
questions and 635  
select committee meetings during 188  
Sundays 176  
vote in progress 188  
without question put 187
- Adjournment of select committee** 309
- Administrator of the Government** 2, 171, 454
- Advisers**  
Chamber, in 150, 430  
select committee 299–302, 324, 326
- Affirmation** *see Oaths*
- Affirmative resolutions** 474–476
- Agenda** *see Select committee meetings*
- Air New Zealand Limited** 576, 591, 594
- Allowances** *see Members*
- Alteration of vote** *see Votes (Estimates)*
- Amendments to bills** 414–416, 434–443  
admissible 436  
select committee, in 414  
Appropriation bills, to 423, 554  
Clerk’s discretion to correct bills 453  
closure, put following 244  
conflicting with a previous decision 216, 415, 438–439  
direct negatives 439, 440  
financial veto and 424, 442, 516, 518  
form 434, 439  
frivolous 439  
grouping 272, 435, 444  
Imprest Supply bills, to 424, 551  
inadmissible  
committee, in 436–443  
direct negatives 439, 440  
inconsistent with bill 436, 437, 438–439, 440  
international treaties, to 374, 691

**Amendments to bills—continued**

local bills 415, 442–443  
 Local Legislation bills 442  
 private bills 415, 442–443  
 same in substance as previous  
 438

scope, outside 436, 442–443  
 settlement bills 376, 441  
 local bills 415, 442–443  
 Local Legislation Bill 392, 416, 419,  
 442  
 moving 436  
 New Zealand superannuation, to 401  
 notice 434, 435, 442, 517  
 omnibus bills 372, 437  
 omnibus nature, of 372, 438  
 order considered 435–436  
 preamble 441  
 private bills 415, 443  
 public affairs 423, 551, 554, 567  
 question put, on 443, 444  
 reasoned 423  
 relevancy 436–437  
 reserved provisions 10, 20, 246, 438,  
 445, 662, 664

schedules 432  
 second reading 422–424  
 select committees

nomination to consider bill 406  
 recommended by 418–421  
 Statutes Amendment bills 376  
 Supplementary Order Paper, placed on  
 434–435, 436  
 taxation, affecting 442  
 third reading 451  
 title clause 439  
 vague 439  
 verbal and formal 453  
 withdrawal 443

**Amendments to motions 214–217**

Address in Reply 138, 173, 174, 215  
 adjournment of the House 188  
 admissible  
 relevancy 215  
 statutory motions, relating to 216  
 alteration 214, 215  
 amendments to 214  
 closure 244  
 confidence, raising question of 129  
 debate on 215  
 delivery to Clerk of the House 215  
 direct negatives 216  
 first reading 403  
 form 214, 215  
 general debates, on 673  
 inadmissible  
 direct negatives 216  
 irrelevant 215  
 main question, involving consideration  
 and decision of 173, 214  
 moving 214

**Amendments to motions—continued**

notice 215  
 question put, on 217  
 reasoned 423  
 relevancy 215  
 second reading 422–424  
 select committees, establishment 287  
 statutory motions 216  
 Supplementary Order Paper, placed  
 on 215  
 third reading 451  
 time limit of speeches on 222–223  
 withdrawal 217

**Amendments to questions 642****Amendments to regulations 471,  
 473–474****Amendments to reserved provisions 10,  
 20, 246, 438, 445, 662, 664****Amendments to Standing Orders 14, 15****Annual reports 542, 587, 615****Annual review 592–599**

debate 596–599  
 Finance and Expenditure committee  
 allocates 592  
 reports on 594–596  
 select committee conduct 279,  
 592–594

**Apparent bias 293, 294,**

natural justice 501

**Appendix to Journals of the House of  
 Representatives 86, 339, 352, 613, 620,  
 621****Appropriation Acts 140, 550, 554, 562****Appropriation bills 372–373, 552**

amendments 422, 554  
 appropriations for Offices of  
 Parliament 548, 549  
 assent to 454  
 Budget, debate on 559–563  
 Estimates, consideration in committee  
 of whole House 559  
 Estimates, examination by select  
 committee 281, 555–558  
 first reading 552, 596  
 form of 552, 554–555  
 further 372, 373, 566  
 introduction 395, 552, 565, 596  
 main 372, 527, 552  
 preamble to 366  
 schedules 555  
 second reading 422, 552–553, 566,  
 596  
 select committees and 405, 406  
 third reading 451, 563–564, 567, 597  
 titles 366

**Appropriations**

absence of 535  
 addresses for 136, 365, 548, 549, 562  
 aggregation of 533  
 annual 527  
 effect 524–526

- Appropriations—continued**
- expenses or capital expenditure
    - pursuant to 511, 512, 523–525, 530–532, 548, 551
  - main 527
  - multi-class output expense 530
  - multi-year 527, 555
  - Offices of Parliament 136, 548–549
  - permanent 65, 71, 103, 513, 524, 526
  - supplementary 372, 528, 565–567
  - transferring 533, 596
  - types of 529–532
- Archives New Zealand** 86, 136, 456
- Arrest**
- freedom from 753, 754
  - offenders 87, 794–795
- Arts Council of New Zealand Toi Aotearoa** 572
- Assistant Speakers** 82
- absence of Speaker and Deputy Speaker 83
  - appeal to Speaker 83
  - appointment on day of State Opening 82, 171
  - Chairperson in committee of whole House 273
  - closure motions 243
  - speaking in debate 83, 273–274
- Association of Former Members of the Parliament of New Zealand** 109
- Attorney-General** 127
- Director of the Serious Fraud Office 643
  - inconsistencies with Bill of Rights, reports 8, 127, 380, 381, 399–400, 413, 621, 728, 745
  - judges' conduct 110
  - Parliamentary Counsel Office 112, 300, 381–382, 383
  - parliamentary privilege 720, 721
  - Privileges Committee 127, 294, 791
  - prosecutes offenders 798
  - publishing of Acts of Parliament 456, 457
  - regulations 462, 469
  - Royal assent 454
  - stay of proceedings 499
  - terrorist entities, and 117
- Audit** 584–587
- departments 104, 584–587
  - opinion 584–585
  - standards 584, 585
- Audit New Zealand** 104, 585
- Auditor-General** 104–105 *see also Offices of Parliament and Officers of Parliament*
- appointment 103
  - controller function 104, 524–525, 529
  - debt, central government 513
  - Deputy 103
- Auditor-General—continued**
- disqualification from membership of House 29
  - duties 101, 104, 105, 584–587
  - fees and charges, and 541
  - Finance and Expenditure Committee and 104, 520–522
  - inquiries by 586
  - office of the 80, 99, 104–105, 571, 651
  - registration of pecuniary interests of members 61, 62, 767
  - removal 104
  - remuneration 103
  - reports 490, 513, 587
  - select committees 299, 324, 557, 593
  - suspension 104
  - term of office 103
- Authorisations**
- expenses or capital expenditure
    - pursuant to 523, 524
    - interim 528–529, 550 *see also Impress Supply*
- Autonomous Crown entities** 572
- Backbenchers** 149, 172
- Ballot papers** 36, 40, 84
- Bar of the House**
- apology 801
  - censure 798
  - summons 494, 498
  - Usher of the Black Rod 169–170
  - visitors 149, 156
  - witness 87, 492–493, 494, 498
- Beehive** 148, 157
- Bellamy's** 90, 97, 148, 801
- Bells**
- absence of Minister 54–55
  - adjournment of sitting 186
  - election of Speaker 166–167
  - failure to ring 253
  - opening of Parliament 161
  - personal votes 253–255
  - sitting of House 177, 192
  - speaking time 223
  - suspension of sitting 184 192, 223
  - voting during 255
- Bill of Rights Act 1990, New Zealand**
- 379–381
  - applies to actions of the legislature 11, 494, 501, 626, 717, 748, 764
  - Attorney-General's reports on inconsistencies 127, 380–381, 399–400, 413, 621, 728, 745
  - delegated legislation, and 489
  - select committee consideration 413–414, 420
- Bill of Rights 1688 (Eng)** 8, 140, 379, 738, 711, 716, 723, 731, 732, 741, 748, 777, 779
- Bills**
- briefings 408

**Bills—continued**

- Government *see* Government bills
- local *see* Local bills
- Members' *see* Members' bills
- Office 398, 617, 636
- omnibus *see* Omnibus bills
- origin 356
- private *see* Private bills
- public 357, 358
- types of
  - Appropriation 365, 372, 373
  - confirmation 371, 373, 473
  - Customs Acts Amendment 373
  - Finance 371, 373
  - Government 195, 196, 357, 358
  - Imprest Supply 373
  - Income Tax (Annual) 537
  - international treaty 374, 441
  - local 196, 357, 359–361, 391
  - Law Reform (Miscellaneous Provisions) 370
  - Local Legislation 361, 371, 374–375
  - Māori Purposes 371, 375
  - Members' 196, 357, 358–359
  - private 196, 356, 357, 361–363, 391
  - public 357, 358
  - Reserves and Other Lands Disposal 371, 375
  - settlement 365, 376
  - Statutes Amendment 371, 376, 377
  - Subordinate legislation 373
  - Taxation reform 377
- Black Rod** 161
- Borrowing** 512, 513, 531
- Bribery** 57, 767–769
- Briefings** 282, 493
  - annual reviews 593
  - bills 408
  - disclosure of proceedings 325
  - discontinuation 325, 342
  - Estimates 557
  - function of select committees 282, 493
  - lapse 342
- Broadcasting, election** 20, 32–34
- Broadcasting Standards Authority** 32, 572
- Budget (Financial Statement)**
  - debate 226, 553, 673
  - delivery 551, 552
  - papers 552, 617
  - precedence 553
  - preparations 545–549
  - secrecy 549, 550
- Budget policy statement** 544–547
  - Minister as witness 329
  - report-back deadline 343
  - select committee hearing transcript 340
  - debate 546, 673

**Business of the House** 192–205

- arrangement of 196–199
  - committee, in 425–428, 443, 444, 448
  - general 194–195, 205, 793
  - Government 122, 180, 195–196
  - interruption of 186, 197, 200
  - lapse of 145–146, 325, 342, 353
  - members' 195, 196
  - opening of session, at 170
  - urgency 181–182
  - postponement 197
  - reinstatement of 146, 171, 200, 201, 325, 344, 353, 417
  - statement 193, 204, 261, 552
  - Tuesdays 205
  - Thursdays 205
  - time limits for *see* Time limits
  - Wednesdays 205
- Business and Parliament Trust, New Zealand** 111
- Business Committee** 201–205
- Budget, and 551
  - committee stage, and 425–429, 432
  - conscience issues, and 132
  - Crown entities, etc, debate, and 598
  - establishment 201, 202
  - Estimates debate, and 560
  - functions and powers 203–204
  - general debates, and 673
  - maiden statements, and 269
  - Members' bills 397
  - membership 202
  - membership of committees
    - determined by 287–292
  - omnibus bills, and 371, 372, 437
  - orders of the day, and 195–199,
  - parties, and 12, 13, 115
  - party votes, and 250
  - petitions, and reports on 612
  - questions, allocates 637
  - select committee meetings, and 250, 304, 305
  - sitting programme, recommends 190
  - speaking times, and 222–223, 403
  - time limits, and 343, 345, 403, 417, 418
  - unanimity, principle, of 14, 202, 203, 279, 316
  - urgency, and 181, 185
  - valedictory statements, and 269
- By-elections** 27, 34, 47
- Cabinet** 123
- Budget 546
  - collective responsibility 123
  - financial veto 517
  - formation of Government 122–123
  - Government response to select committee 613
  - legislative programme 378
  - papers 335, 506

**Cabinet Manual**

caretaker convention 125–126  
conduct of Ministers 54, 645  
international treaties 691

**Cabinet Office**

disclosure for Government bills 369  
Government response to select committee 353, 613  
Ministers' interests 64–65

**Call, in debate 219–221**

committee of whole House 221, 272  
invalid 219  
points of order 17, 223  
putting question 443  
resumptions 240  
split 222  
time limits 222–223

**Capital expenditure 512, 523, 524, 533–535, 549, 550, 567, 568, 596****Caretaker conventions 125–126****Caucus**

committees 68, 119  
defined 119, 120  
expulsion from 121, 122, 250  
meetings of 51, 78, 119, 120, 731  
questions about 120  
suspension from 122, 250

**Cawthron Institute Trust Board 109****Censure, contempt, for 797–780****Central agencies 570, 588****Chair, acknowledgment to 79****Chairperson of committee of the whole House 272–274**

absence 273  
acting 273  
admissibility of amendments 215  
call 219, 221  
closure 243–244  
correction of vote 257  
Deputy Speaker 81  
participation in debate 273–274  
powers 154, 219, 243, 272  
reflections on 273  
seat 271  
suspends committee 154  
temporary 273

**Chairperson of select committee 294–297**

absence 297, 298  
acting 298  
admissibility of amendments 414  
agenda 314–315  
apparent bias ruling 293  
appointment by House 295  
call for submissions 319–320, 409  
calling meetings 304  
cancellation of meeting 308  
deputy 297–298  
election 294  
evidence, giving 330  
exclusion of disorderly member 292

**Chairperson of select committee—*continued***

functions and duties 295, 296, 313–314, 319, 320, 333, 409  
hearings, conduct of 333, 410–441  
interest declared 64  
maintaining order 308, 316–317  
matters of privilege, raising 786  
presents reports 350, 351  
questions to 298, 327, 650–651, 654  
removal 296–297  
resignation 296  
rulings 313  
salary 296  
statement 326–327, 651  
subcommittees 310–311, 650  
suspension of meeting 308, 317  
vacancy 296, 297

**Chamber 149–155**

admission of officials to 155  
articles brought into 151  
conduct in 150–151  
description of 148, 149  
dress in 151–52  
order in 152–54  
seating in 150  
withdrawal from 152

**Chief Archivist 86****Chief District Court Judge 39****Chief Electoral Officer 20, 21, 24, 29, 84, 164, 663** *see also Electoral Commission***Chief Justice 2, 41, 110, 161****Chief Ombudsman 104–107, 378****Chief Parliamentary Counsel 112, 456, 457, 464, 467, 469, 620****Citizens initiated referendum 664–671**

Clerk of the House's responsibilities 84, 664–670  
determination of question for 84, 666, 667  
expenditure on 668  
holding of 670, 671  
petition presented by Speaker 78, 670  
proposal for 665–666  
resubmission of petition 669, 670  
signatures 667–669  
scrutiny of petition for 668–670  
withdrawal of 665, 666

**Civil defence emergency management plan 701, 702****Civil defence emergency management strategy 701****Clauses of bills**

amendments to 434–444  
commencement 366, 367, 432  
definition 366, 367  
division of 368, 433  
expiry 367  
heading 368  
interpretation 368

**Clauses of bills—continued**

new 434, 519  
 omit, amendments to 439, 440  
 postponement of 432, 433  
 preliminary 432  
 purpose 368, 437, 441  
 questions on 431  
 recommittal to consider 449  
 temporary laws 367  
 title 366, 432  
 transfer of 433

**Clerk of the House of Representatives**  
 advises select committees on  
 procedure 313  
 amendments, lodged with 215  
 appointment 84  
 appoints Registrar 60  
 ballot papers, custody of 40, 84  
 bills, reads 395  
 citizens initiated referendum duties 84, 664–670  
 committee clerk, assigns 298, 299  
 Deputy 29, 60, 84  
 disqualification from membership of House 29  
 duties 85, 88, 352  
 financial veto certificate lodged with 519  
 Government bills 395–396  
 journals and records 85, 86, 352, 613  
 legal proceedings, and 719–721  
 local bills 384, 390–392, 398  
 members, administers oaths to 84, 162  
 Members' bills 396, 397  
 notices of motion 207, 475  
 officers of Parliament, administers oaths to 103  
 opening of Parliament 161  
 order paper, prepares 193, 194, 196  
 orders of the day, calls 197, 271  
 papers 85, 86, 617, 621, 624  
 party votes 248  
 petitions 85, 86, 110, 280, 607, 608, 613  
 principal officer of Office of the Clerk 80, 84, 300  
 private bills 385, 386, 391, 398  
 proceedings, notes 84  
 proclamations read in presence of 141  
 questions 633, 636, 637, 639, 645, 647, 648, 653, 659  
 regulations 473  
 removal 508  
 reprinting of bills 420  
 return of members 39, 40, 48, 124, 162, 164  
 Royal assent 84, 453, 454, 455, 456, 719, 721  
 seat at Table 149  
 select committee  
   documents, custody of 86  
   procedure 313

**Clerk of the House of Representatives—continued**

reports delivered to 351, 420  
 Speaker  
   absence of 82  
   election 165, 166  
 Supplementary Order Papers 434, 435  
 witnesses, administers oaths to 498

**Clerk of the Writs** 39

**Coalition agreements** 122, 123, 646

**Code of conduct** 52–54, 57

**Cognate bills** 401, 452

**Colleges of education** 113, 572

**Commerce Commission** 572

**Commerce Committee** 113, 284

**Commercial Operations Advisory Board** 589

**Commissioner of Crown Lands** 388

**Commissioner of Inland Revenue** 68, 73, 377, 388, 605

**Commissioner of Police** 157

**Commissioners, Royal** 134, 161, 169, 171

**Commissions**  
   Inquiry, of 232, 234, 615, 621, 742  
   oaths and affirmations, for  
     administration of 162, 163  
   Parliament, for opening 134, 161, 169  
   Royal 20, 65, 132, 232, 234, 379, 615, 621, 622, 624, 742

**Committee of Supply** 270

**Committee of the whole House**  
   adjournment 186, 271  
   amendments in 434–443  
   appointment 270  
   bills committed to 426, 428  
   bills recommitted to 449, 450  
   chairpersons 81, 154, 156, 186, 243, 272, 273  
   clause by clause, consideration 432, 436  
   Crown entities, etc, debate 598  
   debate in 221, 271, 272, 431  
   disorder 154  
   dividing a bill 446, 447  
   dividing a clause or part 368, 433  
   Estimates 559  
   examination of witnesses 492, 493  
   functions 271, 274, 275  
   grossly disorderly conduct 154  
   Imprest Supply Bill 551  
   instructions 275–277, 428, 429  
   interruptions of proceedings 154, 186, 276, 277, 447  
   maintenance of order in 154  
   member named in 154  
   note of proceedings in 85  
   order of business in 429–431, 443  
   part by part, consideration 431, 432, 440  
   postponement of provisions 432–433  
   preliminary clauses 432

**Committee of the whole House—*continued***  
 procedure in 271, 272, 429, 430  
 proceedings referred to 228  
 progress, report of 186, 167  
 recommittal, on 449  
 references to 228  
 report 83, 277, 278, 448  
 schedules 432, 433  
 Speaker voting in 79  
 Speaker's ruling, taking 272, 277, 278  
 speeches 272, 429–430  
 Standing Orders, amendments to,  
   considered in 14  
 subcommittees 271  
 suspension of proceedings in 154  
 title debate 431, 432  
 transferring provisions 433  
 votes in 443–446

**Committee of Ways and Means** 270

**Committees, select** *see Select committees*

**Commons, House of** *see House of Commons*

Commonwealth legislatures 235, 627, 710, 720

**Commonwealth Parliamentary Association** 77, 695, 696

Conscience issues 128, 129, 131

**Contempt**  
 absence 56  
 abuse of privilege 237  
 advocacy 769  
 apology 801  
 bribery 56, 767  
 commitment 756, 794, 795  
 corruption 767  
 definition 712, 762, 763  
 disclosure of select committee  
   proceedings 771–772  
 disobedience to the rules or orders of  
   the House and committees 56,  
   495, 496, 615–616, 770–772  
 disorderly conduct 153, 777  
 examples of 765  
 false or misleading reports 769  
 fees, acceptance of 56, 768  
 financial interests, disclosing 766  
 House, misconduct in presence of 777  
 intimidation 500, 773, 774  
 interrupting business of House 777  
 legal process, serving 759, 774, 775  
 legal significance of 783, 784  
 members, attendance of 766  
 misleading House or committee 224,  
   225, 267, 656, 775–777  
 molestation 499, 500, 773, 774,  
   777–779  
 officers, obstructing 773  
 pecuniary interests 62, 766  
 petition, abuse of right of 732, 783

**Contempt—*continued***

premature publication of proceedings  
   or report 322, 348, 349, 350, 771,  
   772  
 privilege, breach of, and 762, 763, 766  
 professional services 768, 769  
 punishment for 154, 498, 763, 764  
 reflections 79, 780–782  
 removing or altering documents 769  
 reports, improperly published 771,  
   772  
 resignation, procuring 44  
 select committee, misconduct at 777  
 social media 782  
 witnesses, by 497, 776  
 witnesses, obstructing 500, 774, 779

**Contempt of court** 44, 756

**Controller and Auditor-General** *see Auditor-General*

**Conventions**  
 caretaker 125–126  
 constitutional 122, 124–126, 264, 454,  
   549, 684, 693, 775

**Cook Islands** 43, 605

**Corrupt practices** 31, 41, 44, 48

**Corruption** 767–768

**Court of Appeal** 42, 46, 146, 233, 234,  
   508, 509, 721, 757, 759

**Courts**  
 contempt of 44, 756  
 delegated legislation, review of 462,  
   463, 486  
 exemption from appearance before  
   78, 757, 758  
 matters before 233–236  
 parliamentary privilege, and 9, 712,  
   717–721, 738, 740  
 Ministers and 678  
 references to 231, 233, 236  
 sub judice 233–235, 314, 641, 675

**Cross benches** 149

**Crown**  
 addresses to *see Addresses*  
 agents 572  
 consent of 135, 450  
 clauses binding 369  
 entities  
   audit of 105  
   companies 52, 572  
   debate on 597, 598  
   definition 571–572  
   instructions to 578  
   ministerial responsibility for 572,  
   573, 643  
   monitoring of 589, 590  
   outputs, providing 530  
   reporting 578–579, 582, 583  
   review 281, 591–599  
   subsidiaries 52, 572  
   types of 571–572  
 financial veto *see Financial veto*

- Crown—continued**
- land 388
  - rights and prerogatives 127, 135
- Crown Bank Accounts** 513–514, 525, 541, 542
- Crown Law Office** 127, 380, 381
- Crown's financial veto** 414, 424, 441, 477, 515–520, 562 *see Financial veto*
- Customs Acts Amendment bills** 373
- Customs and excise** 388, 538, 539
- Death**
- members 45, 188, 290
  - Sovereign 145
- Debate**
- absence of members 230
  - addressed to Speaker 224
  - adverse references during 627
  - adjournment 239, 240
  - amendment, on 214, 215
  - anticipation 227
  - call, in 219–221, 272
  - closure 184, 187, 242–245
  - contents of speeches 226–236
  - disorderly words 229
  - duration of 241, 243
  - English or Māori, speeches in 225
  - Governor-General, references to 228
  - giving way 237
  - interjections 236–238
  - interpretation 225
  - interruption 180, 181, 239
  - judges, reference to 232, 233, 236, 508
  - lapse of 245
  - length of speeches 222–223
  - maiden speeches 172, 173
  - maintenance of order 152–155
  - manner of speaking 224
  - Māori, in 89, 225
  - misrepresentation 264, 265
  - newspapers, quotations from 228
  - New Zealand Sign Language 226
  - offensive words 229
  - official report *see Hansard*
  - personal reflections 229, 230
  - place of speaking 224
  - points of order 223
  - precedence in speaking 219, 220
  - quotations 228
  - reference to parties 231
  - reference to persons outside the House 231
  - reference to proceedings of committees 228
  - relevance 227
  - repetition, tedious 227
  - reply, right of 221, 403, 554
  - resumption of 240
  - scope of, on
    - Address in Reply 171
    - adjournment of the House 187
- Debate—continued**
- amendments 215
  - Budget 553
  - consideration of select committee reports 354
  - Estimates 562, 563
  - first reading 402, 403
  - general debates 672, 673
  - Imprest Supply bills 550, 551
  - instructions 275
  - motions regulating the period of adjournment 188
  - Prime Minister's statement 262
  - Privileges Committee report 793
  - report of select committee 345, 354
  - second reading 422
  - select committees, establishment of 287
  - supplementary Estimates 566
  - suspension of Standing Orders 15
  - third reading 451
  - title clause 432
  - urgent matter 680
  - sign language 226
  - Sovereign, references to 228
  - Speaker, addressed to 224
  - speaking twice 218
  - special 680
  - speeches
    - contents, rules 226–236
    - English or Māori, in 89, 225
    - length 222–223
    - New Zealand Sign Language 226
  - strangers, reference to presence of 156, 224
  - sub judice matters 233–235
  - tedious repetition 227
  - time limits *see Time limits*
  - unbecoming references 232, 233
  - unparliamentary language 229–232
  - visual aids 238
  - yielding 237
- Declaration of financial interests** 62–64, 294, 766–767
- Defamation** 601, 602, 622, 623, 627, 733, 754, 778, 787
- Delegated legislation**
- administrative decisions, rights dependent on 485, 486
  - Algie Committee 460, 463
  - amendment 471, 473, 486, 487
  - approval of 474–475, 578
  - appropriate for parliamentary enactment 486, 487
  - calling for elucidation 488, 489
  - confirmation 472
  - confirmable instrument 460
  - deemed 369, 467–470, 489
  - definition 459–460
  - disallowable instruments 69, 209, 460, 469, 473, 476, 615

**Delegated legislation—*continued***  
 disallowance 69, 178, 209, 476, 477, 704  
 draft 322, 461, 467  
 drafting 111, 381, 467, 470  
 emergency 705  
 empowering provisions 368, 411, 460,  
 462–465  
 fees and charges, and 482, 541  
 forms of 460  
 House, made by 473  
 human rights review 462  
 incorporation of material by reference  
 489  
 judicial review 462, 486  
 Legislation Design and Advisory  
 Committee (LDAC) 111  
 making an unexpected or unusual use  
 of statutory power 482, 483  
 not in accordance with statute's objects  
 481, 483  
 notice and consultation 470, 488  
 parliamentary control 460, 461,  
 471–478  
 presenting to the House 178, 470–71  
 primary legislation amended by  
 (“Henry VIII clauses”) 465, 466,  
 472, 475, 486, 489, 490, 692  
 printing and publication 112, 469, 470,  
 621  
 reporting standards, on 577  
 report on 480–490  
 retrospective 487  
 Review Committee *see* **Regulations**  
**Review Committee**  
 revocation 476, 480  
 Statutes Revision Committee 460, 484  
 taxation, and 472, 482, 537–538  
 trespassing unduly on rights and  
 liberties 482, 485  
 validation 471, 472, 540

**Demonstrations** 157–160

**Department**  
 agencies 571  
 audit 105, 584–587  
 chief executive 388, 530, 557, 571, 581,  
 590  
 Conservation, of 588  
 Crown Law Office 127, 380, 381, 775  
 definition 570, 571  
 Foreign Affairs and Trade, (Ministry)  
 of 682, 686  
 Government Communications  
 Security Bureau 109, 158, 505, 559,  
 609  
 Inland Revenue 300, 382, 396  
 Internal Affairs, of 94, 158, 589  
 Justice, (Ministry) of 21, 22, 33, 380,  
 594  
 Legislative 93  
 New Zealand Security Intelligence  
 Service 109, 158, 505, 559, 609

**Department—*continued***  
 Parliamentary Service 94, 95  
 Prime Minister and Cabinet, of the  
 94, 110, 148, 158, 570, 589  
 reporting by 594–597  
 State Services Commission 102, 330,  
 334, 335, 506, 570, 589  
 Te Puni Kōkiri (Ministry of Māori  
 Development) 24  
 Treasury 35, 513–515, 517, 520, 525,  
 541, 570, 579, 589

**Departmental bank accounts** 513, 514,  
 525, 541, 542

**Deputy chairperson of select committee**  
 297, 298, 349, 654

**Deputy Clerk** 29, 60, 84, 508

**Deputy Controller and Auditor-**  
**General** 103, 104, 508

**Deputy Independent Police Conduct**  
**Authority** 112, 508

**Deputy Prime Minister** 118, 150, 646

**Deputy State Services Commissioner**  
 113

**Deputy Speaker**  
 absence 273  
 administers oath or affirmation 163  
 appointment 81, 171  
 committee of the whole House, chairs  
 272  
 duties 81  
 participation in debate 273  
 powers 81, 83, 149, 243  
 reflections on 782  
 salary 70, 82  
 vacancy 82

**Disallowable instruments** *see* **Delegated**  
**legislation**

**Disclosure statements** 400

**Disobedience to orders of the House** 42,  
 615–616, 770–772

**Disorder** 152–155, 308, 316, 317

**Dissolution**  
 arrest, freedom from 754  
 business, lapse of 146, 199  
 death of the Sovereign and 145  
 effect of 146, 200, 795  
 Governor-General, powers of 144  
 Parliament, of 29, 32, 48, 144–146, 201,  
 514, 622  
 privilege during 754  
 proclamation of 144  
 proclamation of emergency, during  
 143, 700

**District health boards** 572, 784

**District Court judge** 39, 106

**District Courts** 40, 234, 757, 759

**Documents**  
 Budget 552  
 custody of 86, 352, 353, 769  
 falsified 769  
 official 228, 618, 619

**Documents—continued**

- power of House to order 494–497, 615, 770
- presenting to the House 617, 783
- proceedings in Parliament, as 727
- reading extracts from 228
- removed or altered 769
- responsibility for presenting 228
- select committees 352, 353
- tabled 236, 614, 616

**Dress codes** 151**Economic and fiscal update** 35, 542, 546, 552**Education and Science Committee** 285**Education service** 30**Elections** *see also Chief Electoral Officer, Electoral Commission*

- advance voting 37
- advertising 20, 32, 115
- boundaries 24, 25
- broadcasting 20, 32–34
- by-elections 27, 34, 47, 163
- campaign 27, 31
- candidates 22, 28, 29, 30–31
- corrupt practices 28, 31, 44, 48
- declaration of result 39
- deposit 30, 31, 39
- disputed 40–42, 509, 760
- economic and fiscal update 35
- electoral roll 26
- expenses 27, 31, 35
- general 20, 26, 29, 30, 126
- general electoral districts 23, 29
- illegal practices 32
- Māori electoral districts 23, 111, 112
- nomination day 29, 30
- party lists 19, 22, 23, 24, 29, 31, 39–40, 42, 47
- petitions 28, 39–41, 71, 509
- poll 29–32
- pre-election 30
- public awareness 21, 30, 34
- qualifications for members 28–29
- referendum on voting system 20, 21
- registration of electors 21, 23, 25
- registration of parties 21, 27, 31–33, 114, 120
- Representation Commission 21, 24, 29, 117, 662
- review of 21, 22
- returning officers 30, 36, 38, 40
- scrutineers 34
- select committees, and 21, 22
- special votes 26, 37
- turnout 38
- uncontested 36
- voting system 19, 20, 25, 30, 35, 663
- writs
  - amendment 39, 41
  - error in 39

**Elections—continued**

- issue of 27, 29
- return of 27, 29, 39, 142, 164

**Electoral Commission** *see also Elections*

- allocates funding 33
- campaign rules 32
- citizens initiated referendum 664–671
- consultation 33
- Electoral Enrolment Centre 20
- disclosure rules 27
- functions 20–21
- legislation 21, 22
- members 21, 508
- powers 21, 27, 31, 33, 39
- reviews 21–22
- vacancies 47

**Electoral districts** 23, 29, 111, 112**Electoral Enrolment Centre** *see***Electoral Commission****Electoral Legislation Committee** 21**Electoral population** 23**Electoral referendums** 19–21, 23, 662–663**Electors** 20, 25–29**Emergency expenses and capital expenditure** 534, 596, 705**Emergency proclamations** *see***Proclamations and declarations, emergency****Employment Court** 234, 508**Enacting formula** 366, 416**English language** 162, 224, 225, 604**Entrenchment, proposals for** 246, 445–446**Environment Court** 234**Estimates**

- adjusting 562, 563
- altering 561, 562
- committee of the whole House, consideration in 559
- debate 559–563
- documentation 556
- examination 281, 555–559, 566
- form of 521, 548
- further 563
- intelligence and security 559
- main 554–563
- offices of Parliament 80, 136, 548, 549
- passing 563
- preparation 547
- presentation 552, 617
- questionnaire, standard 556
- relevancy 560, 561
- reports on 558
- select committee examination 281, 555–558, 566
- supplementary 565, 566
- time for 559–560
- votes 554, 555, 558, 560–562

**Evidence**

- Acts of Parliament 457

- Evidence—continued**
- advertising for 320
  - courts, in 746, 747, 748
  - custody of 86
  - false 498
  - members giving 747, 748
  - officers giving 331, 748
  - oath, on 333, 498, 499
  - oral 328
  - petitions for production of 746, 747
  - power to obtain 494–497, 502, 503, 504
  - proceedings in Parliament, given in courts 746–748
  - publication, premature 324–326
  - private, taken in 321, 322, 331
  - protected 499, 500
  - public, taken in 321, 331, 771
  - recording of 89, 339–340
  - secret 86, 322, 323
  - written 327
- Executive Council** 54, 123, 124, 753
- Expenses**
- confirmation of 567, 568, 596
  - election 20, 31, 35, 36
  - incurring 512, 523, 524, 529–535, 550, 551, 596, 705
  - witnesses 339
- Expert Advisory Committee on Drugs** 475
- Explanatory note** 369, 370
- Expulsion** 799, 800
- Extended sittings** 178–180 *see Sittings of the House, extended*
- External Reporting Board** 577
- Extraordinary urgency** 183, 186
- Family Courts** 234
- Finance and Expenditure Committee** 520–522
- adviser 302, 412
  - allocation of Estimates and annual reviews 281, 521, 555, 556, 591
  - annual reviews 591–592, 596
  - Auditor-General 104, 105, 522, 557, 586
  - bills 521
  - Budget policy statement 329, 546, 552, 673
  - Crown entities, review of 522, 591
  - debt 513
  - economic and fiscal update 520–521, 542–543, 546, 552–553, 564
  - establishment 285, 520
  - Estimates examination 520, 553, 555–558, 563, 566
  - Estimates, format of 548
  - Estimates questionnaire 556
  - fiscal strategy report 520–521, 542–543, 552–553, 564
  - functions 104, 281, 283, 285, 331,
- Finance and Expenditure Committee—continued**
- 520, 521, 542–543, 546, 552–553, 555–558, 566, 573, 580, 591–592, 625
  - Government's financial statements 513, 520, 536, 537, 542, 579–580, 591, 596, 597
  - half-year economic and fiscal update 521, 546
  - inquiries 99, 100, 522
  - membership 289, 520
  - Minister of Finance 329, 552–553
  - monetary policy statement 331, 340
  - proceedings transcribed 339–340
  - reporting standards 578, 580
  - reports 343–344, 522, 564, 594, 596
  - Reserve Bank of New Zealand 331, 340
  - staff and advisers 302, 411–412
  - subject area 285
  - Supplementary Estimates 566
  - tax adviser 302, 412
  - whole-of-government directions 283, 344, 573
- Finance bills** 371, 373
- Financial business, annual cycle** 544, 545
- Financial interests** 62–64, 294, 766–767
- Financial reporting** 569–584
- Financial responsibility of the Crown** 514, 515
- Financial review** *see Annual review*
- Financial statement** *see Budget*
- Financial statements, annual** 547, 577–580, 591, 596, 597, 705
- Financial veto** 515–522
- amendment to bill, inadmissibility of 442, 516, 518
  - appropriation rule 135, 515, 517
  - bill, third reading 245, 451, 516
  - certificate 518–520
  - change to Vote 561–562
  - customs and excise 539–540
  - disallowable instrument, motion to disallow or amend 473, 477–478
  - more than minor impact 517
  - notice of amendment 517
  - select committee amendments 414, 424, 441, 516, 518
  - third reading 245, 451
  - Treasury advice 517
- Financial year** 513
- First-past-the-post (FPP)** 19, 20, 663
- First reading** 402–404, 596
- Fiscal aggregates, Government's** 516–517
- Fiscal strategy report** 552
- Finance and Expenditure Committee examination 520–521, 542–43, 552–553, 564
- Foreign Affairs and Trade, Ministry of** 682, 686

- Foreign Affairs, Defence and Trade Committee** 682–685  
 inquiries 683  
 international treaty examinations 281, 687–691  
 subject area 285, 683  
 treaty negotiations 685
- Former Members of the Parliament of New Zealand, Association of** 109
- Free votes** *see* **Conscience issues**
- Freedom** *see also* **Privilege**  
 access of 135, 168  
 arrest from 754–756  
 debate, of 725  
 speech, of  
   abuse of 232, 236  
   Bill of Rights 723–742  
   House's control of its own proceedings 11, 165, 742–743, 745  
   Speaker's claim 168, 722
- Fridays**  
 extended sitting 179, 180  
 select committee meeting 305–306, 307  
 sitting day 176, 177
- Front benches** 118, 150
- Galleries** 155, 156, 751, 777
- General Assembly** 1, 96, 148
- General business** 194–95  
 business before 193  
 general debate 195  
 introduction of bill 398  
 not taken 262  
 Privileges Committee reports 196, 354, 793  
 select committees 315  
 time for 205  
 urgency motion after 181
- General debate** 672–673  
 lapse of question 245  
 not held 173, 205, 262, 354, 539, 543, 546, 554, 673  
 urgency motion after 181
- General elections** *see* **Elections, general**
- General Manager of the Parliamentary Service** 80, 94–97
- Goods and services tax** 538
- Government**  
 adopts members' bills 364  
 appointment 122  
 business 122, 180  
 caretaker *see* **Caretaker conventions**  
 coalition 123, 127  
 confidence in 4, 123, 125, 127–131, 173, 262  
 defeated at a general election 125  
 departments 570, 571  
 financial statements 521, 542, 543, 547, 577–580, 591, 596, 597, 705
- Government—continued**  
 financial veto 515–522 *see* **Financial veto**  
 fiscal management, and 514–516  
 international treaties, and 682, 684–694  
 introduction of bills by 395, 396  
 legislative programme 378, 726  
 members 149, 172, 646  
 minority 123, 394  
 motions 213  
 notices of motion 171, 208, 406  
 orders of the day 137, 195, 196, 205  
 outcomes 512, 530  
 reflections on 229, 230  
 reporting entity 569  
 representative 3  
 resignation 125  
 responses to select committee  
   recommendations 200, 353, 490, 612, 616, 621  
 responsible 3, 4, 122, 127, 128, 134, 135, 514, 693  
 revenue, sources of 536–537  
 select committee reports to 468  
 urgency claimed by 180  
 whips 118, 119
- Government Administration Committee** 283, 285, 344, 701–702
- Government bills**  
 arrangement on Order Paper 196  
 Bill of Rights Act and 380–381, 405  
 definition 357, 358  
 drafting 381, 383, 396, 412  
 first reading 395, 398, 402–404  
 introduction 395, 396  
 Local Legislation bills as 374  
 Minister in charge 358, 384, 385  
 orders of the day, as 195  
 precedence 205  
 pre-legislative scrutiny 379  
 publication 383, 398  
 referral to select committee 405–407  
 urgency for passing 405
- Government Communications Security Bureau** 109, 505, 559, 609
- Government House** 148, 167
- Government's financial veto** 515–522  
*see* **Financial veto**
- Government Statistician** 24, 667, 669
- Government Superannuation Fund** 71–72
- Governor-General**  
 accommodation 148  
 addresses to 136–39, 169–174, 508, 549, 563, 615  
 alters meeting place of Parliament 700  
 appointment of Ministers 3, 4, 122, 123  
 by-elections 47  
 command of 615

**Governor-General—continued**  
 commissioners, appoints 134, 161  
 freedom of access to 134, 168, 761  
 messages from 135, 169, 170, 450, 783  
 Parliament, constituent of 1, 134, 161  
 Parliament, dissolution, prorogation and summoning of 1, 143–144, 147, 161  
 precedence 77  
 proclamations 141  
 references to 228  
 referendum proposal, withdrawal of 666  
 removal of officer-holders 137, 507–509  
 reserve powers 128, 514  
 Royal assent 1, 134, 454, 455  
 Speaker, confirmation of 81, 134, 161, 167, 168  
 Speech from the Throne 134, 169–171

**Governor of the Reserve Bank of New Zealand** 113  
 Finance and Expenditure Committee 318, 331, 521  
 funding agreement 113, 528

**Grave disorder**  
 committee, in 154, 272, 448  
 House, in 154  
 select committee, in 308–309, 316–318

**Guardians of New Zealand**  
 Superannuation 116, 401, 572

**Hansard**  
 committee stage reported 88  
 courts and tribunals, use of by 738–740  
 expressions ruled out of order 229  
 interjections reported 89, 237  
 publication of 85, 754  
 quoting from 265  
 report 78, 85, 88–90, 115, 226, 627, 754  
 votes, record of 251, 257

**Headings of bills** 368

**Health Committee** 285, 475

**“Henry VIII clauses”** *see* Delegated legislation

**High Court**  
 conduct and removal of judges 110, 233, 508, 607  
 election petitions 39–41, 46, 509  
 judges as commissioners 161  
 members attending 757  
 Parliament, of 709  
 referendum poll, and 671  
 registrar, Acts deposited with 457  
 service of legal process on members 759  
 witnesses 499

**Higher Salaries Commission** *see* Remuneration Authority

**Honorary consuls, members as** 43

**House of Commons**  
 Chamber 149  
 committees 493, 495  
 intervention in legal proceedings 720  
 powers and privileges of 168, 491, 498, 709–711, 722, 753, 759, 769, 794, 796–800  
 proceedings in Parliament, and 726, 746–747, 780  
 Royal assent 455  
 Serjeant-at-Arms 87

**House of Lords** 709, 714, 799

**House of Representatives**  
 adjournment 154, 171, 186–189  
 bar 149, 163, 492, 798  
 censure by 797–798  
 Chamber 149–155  
 confidence of 4, 122, 127–131, 173, 262  
 days of meetings 176  
 delegated legislation, making 473  
 development of 5–7  
 disobedience to 56, 615, 770–772  
 disputed elections 40–42, 509, 760  
 disqualification from 29, 42–46  
 early recall of 189  
 elects Speaker 165–168  
 examination of witnesses, by 492, 493  
 exclusive jurisdiction over internal proceedings 11, 165, 724, 742–745, 761  
 expulsion from 799–800  
 favourable construction of proceedings 168, 723, 761  
 fines by 796–797  
 functions 2–5, 752  
 history of 5–7  
 hours of sitting 177  
 international treaties, and 685–691  
 law, duty to obey 9  
 members, number of 22–23  
 misleading of 267, 657, 775–776  
 Parliament, and 1  
 petitions to 602  
 place of meeting 5, 147–148, 700  
 privileges 168, 706–708  
 proceedings, power to control own 11, 165, 724, 742–745, 761  
 prosecution of offenders 798  
 quorum 54  
 reflections upon 780  
 seats of members 117, 118, 150  
 sittings 6, 175–191  
 strangers, admission of 156  
 suspension from 799

**Human Rights Commission** 462, 572, 741, 784

**Human Rights Review Tribunal** 462

**Impeachment** 798, 799

**Imprest Supply bills**  
 amendments 424, 551

- Imprest Supply bills—continued**
- first 550–551
  - first reading 404
  - introduction 396, 550
  - purpose 373, 374
  - second and subsequent 564
  - second reading 423
  - select committees, and 405
  - titles 366
- Imprisonment** 794, 795
- Inadmissible amendments** *see* Amendments, inadmissible
- Income tax** 140, 190, 537, 538
- Incorporation by reference** 383, 489, 688
- Independent Crown entities** 572
- Independent Police Conduct Authority** 112, 508
- Inland Revenue** 300, 382, 396
- Inland Revenue Acts** 388
- Inquiries**
- committee of the whole House, by 492, 493
  - criminal wrongdoing 502
  - form of 492
  - House, power to conduct 491
  - membership of the House, into 509
  - removal of office-holders, into 508, 509
  - select committee 281, 282, 343, 493, 502, 503
  - statutory 502, 509, 510
- Inspector-General of Intelligence and Security** 92, 110, 749
- Instructions**
- committee of the whole House 275, 276, 428, 429
  - consideration clause by clause 276
  - Crown entities 578
  - debate on 276
  - dividing bills 446
  - moving 276
  - notice 276
  - offices of Parliament 103, 578
  - select committees 283, 284, 405, 406
- Intelligence and Security Committee** 52, 109, 110, 117, 153, 351, 505, 609, 728
- Internal Affairs, Department of** 94, 158, 590, 695
- International law** 681
- Interest, pecuniary** *see* Pecuniary interests
- Interjections**
- changing seats to facilitate 237
  - irrelevant 236, 237
  - maiden speech, on 173
  - misrepresentation of 265
  - party votes, during 249
  - provocation of 173, 237
  - questions, during 652
  - reasonable, allowed 236, 237
  - reported in *Hansard* 237
- Interjections—continued**
- “visual” 238
  - yielding 237
- Inter-Parliamentary Union** 77, 696
- Interpretation and translation** *see* Te Reo Māori
- Interruption**
- business 186, 200
  - committee stage 447
  - debate 239
  - proceedings in committee 154, 186
  - vote in progress at time 187, 447
- Journals**
- Appendix to the 86, 352, 613, 620, 621
  - changes to votes 562
  - Clerk’s notes 85, 88
  - committee of the whole House, proceedings in 85
  - custody 86
  - decisions 259
  - documents 139, 619
  - election certificates and reports 41
  - papers, presentation 85, 619
  - preparation 85, 115
  - split-party votes, record of 251
  - votes, changes 562
  - votes, recording 257
- Judges**
- commissioners, as 134, 161
  - conduct and removal 110, 232, 233, 508, 509, 607
  - delegated legislation, and 462, 485
  - disputed elections 41
  - petitions relating to 607
  - reflections on 232, 233, 236
  - salaries 526
  - select committees, appearing before 236, 331
- Judicial Conduct Commissioner** 110, 508
- Judicial Conduct Panel** 110, 508
- Justice, Ministry of** 21, 22, 33, 380, 594
- Justice and Electoral Committee** 22, 285
- Kaumātua o Te Whare Pāremata** 97, 98
- KiwiSaver** 72
- Land Information New Zealand** 375, 390
- Law and Order Committee** 285
- Law Commission** 378, 572
- Law Reform (Miscellaneous Provisions) bills** 370
- Leader of the House** 126–127
- Associate Ministers’ areas of responsibility 646
  - business and 196, 202, 204, 552
  - business statement 261
  - Government bills, and 396
  - legislative programme, and 378
  - messages, and 135

- Leader of the House—continued**  
 office of 126, 196  
 programme of sittings, and 190  
 Parliamentary Service Commission,  
 and 95, 127
- Leader of the Opposition**  
 Budget 552, 553  
 lotteries grants 111, 117  
 Parliamentary Service Commission  
 95, 117  
 recognition 115, 117  
 salary and allowances 117  
 seating 150  
 security 109, 117  
 State Opening 117
- Leave of absence** 42, 55, 251
- Leave of the House** 15, 16
- Legal professional privilege** 507, 713
- Legislation Advisory Committee** *see*  
 Legislation Design and Advisory  
 Committee (LDAC)
- Legislation Design and Advisory  
 Committee (LDAC)** 111, 383, 464,  
 466, 488
- Legislative Council** 1, 5, 6, 88, 93, 148,  
 149, 161, 286, 742, 795
- Legislative Department** 94
- Legislative instruments** 459, 460, 469 *see  
 also Delegated legislation*
- Levies** 540
- Library** *see National Library,  
 Parliamentary Library*
- List members** 19, 20, 22, 42, 45, 46, 50, 51,  
 70, 124, 164, 389
- Loans** 512, 513, 533
- Lobbies** 149, 155, 251, 253, 255, 257
- Local authorities** 359, 360, 374, 375, 384,  
 385, 784
- Local bills** 359–361  
 advertising 387, 409  
 affecting rights or prerogatives of the  
 Crown 127, 135  
 amendments 416, 443  
 arrangement on order paper 195, 196,  
 205  
 Clerk of the House 391  
 declaration 391  
 definition of 357, 359–361  
 deposit and inspection 389  
 drafting of 300, 381–383, 412  
 endorsement of declaration 391  
 examination of 391  
 fees 57, 384, 390–391  
 first reading 398, 402–404  
 introduction 398  
 land, dealing with 390  
 locality 360  
 member in charge 78, 384  
 members, advice to 389  
 notice for 396  
 notices 387–389
- Local bills—continued**  
 plans or surveys 390  
 precedence on Wednesdays 205  
 promoter 360, 385, 386, 399, 416  
 publication 383, 398  
 Standing Orders, compliance with  
 391  
 withdrawal 399
- Local Government and Environment  
 Committee** 285
- Local Legislation bills** 282, 361, 371, 374,  
 375, 392, 416, 419, 442
- Mace** 79, 87, 88, 138, 161, 167, 184, 192,  
 271
- Maiden speeches** 172, 173
- Maiden statements** 268
- Manner and form provisions** 9–11, 246,  
 744
- Māori**  
 electoral districts 23, 111, 112  
 electoral option 26  
 language  
 interpretation and translation 89,  
 98, 225, 226, 336, 653  
 oaths and affirmations in 163  
 petitions in 604  
 questions and replies, in 653, 654  
 reports in 350  
 speeches in 225  
 title of bill in 366  
 registration as an elector 26  
 Treaty of Waitangi, persons and the  
 404
- Māori Affairs Committee** 225, 285, 336
- Māori Appellate Court** 234
- Māori Land Court** 234
- Māori Purposes bills** 371, 375
- Māori Purposes Fund** 111
- Māori Purposes Fund Board** 51, 111
- Māui Tikitiki-a-Taranga** 336
- Members**  
 absence, leave of 42, 55, 250  
 absent 55, 207, 230, 250, 251  
 access to Governor-General 134, 168,  
 761  
 accommodation 59, 73  
 acting for each other 212  
 affirmation, making 163  
 allowances 69–71, 73  
 apparent bias 293, 294, 501  
 arrest of 754, 755  
 attendance 42, 54, 55, 230, 311, 766  
 backbench 149, 172  
 bribery of 57, 767  
 business 195, 196  
 capacity of 49, 729, 780  
 charges against 504  
 communications 67, 728, 729  
 complaints of privilege involving 787  
 corruption 767

**Members—continued**

court appearances, exemption from 78  
 death 45, 188, 290  
 declaration of financial interests 62–64, 294, 766  
 demonstrations, and 159, 160  
 designation 49  
 disallowance of regulations, and 477, 478  
 disqualification 29, 42–46  
 duties 52, 53  
 expulsion 799, 800  
 fees, acceptance of 57, 768  
 former 109  
 honorary consuls, as 43  
 independent 55, 115, 121, 220  
 intimidation of 256, 773, 774  
 jury service, exemption from 753  
 leave of absence 42, 55, 251  
 legal proceedings involving 719, 747, 748, 757–759  
 letters to 728, 729  
 local or private bill, in charge of 78, 384, 385  
 mental disorder 45  
 misrepresented 264, 265, 268  
 molestation of 773, 774  
 naming of 152, 153  
 new, introduction of 163  
 notices of motion 209  
 number of 22, 23, 664  
 oath 42, 49, 84, 162–165  
 obstruction, of 773, 774  
 out-of-Parliament offices 74  
 pecuniary interests 53, 56–60, 766  
 personal explanations 225, 265, 266  
 personal interests 64  
 personal votes 252  
 petitions, presenting 607  
 present at select committees 231, 292  
 private affairs, reference to 230  
 publishing copies of speeches 729, 746, 754  
 qualifications to sit 28, 46, 164, 165, 509, 759, 760  
 questions to 649, 654  
 reflections upon 229, 230, 780, 781  
 remuneration 65–69  
 resignation 44, 45, 121  
 return of 39, 40, 47, 124, 164  
 role 49–51, 69  
 salaries 69–71, 526  
 school boards of trustees, reports on 588  
 seats 117, 118, 150, 224  
 select committees, present at 231, 292  
 served with notice of local bills  
 services for  
 accommodation 59, 73  
 ICT equipment 74

**Members—continued**

out-of-Parliament offices 74  
 travel 73, 75  
 spouse or family member of 74  
 superannuation 58, 71–72  
 suspension 152, 153, 250, 291, 799  
 swearing in 162–165  
 tabling documents 616, 617  
 taxation, and 49, 71  
 travel 73, 75  
 voting 247–256  
 withdrawal from House 152  
 witnesses, as, before select committees 329, 330

**Members' bills**

adopted by Government 364  
 affecting rights or prerogatives of the Crown 135  
 arrangement on order paper 195, 196, 205  
 definition 357–359  
 drafting of 300, 412  
 first reading 398, 402–404  
 introduction 396, 397  
 member in charge 358, 384  
 notice of 396  
 precedence 205  
 publication 383, 398

**Messages** 1, 77, 135, 136, 450, 783**Minister (portfolios)**

Civil Defence, of 701  
 Conservation, of 587, 588  
 Education, of 588  
 Finance *see Minister of Finance*  
 Foreign Affairs and Trade, of 682, 686  
 Justice, of 21, 33, 102, 380, 671  
 Local Government, of 374, 375, 416  
 Māori Development, for 375  
 Ministerial Services, responsible for 67, 68, 75  
 Police, of 641  
 State Owned Enterprises, for 576  
 State Services, of 573  
 Transport, of 468

**Minister of Finance**

Budget, delivering 222, 545, 551, 552, 553  
 Budget policy statement 329, 546  
 Crown Bank Accounts 513, 514, 525  
 Crown entities 576, 580  
 Crown's financial veto 519  
 emergency expenses and capital expenditure 534, 535, 705  
 Estimates 521, 548, 555, 562  
 financial statements of the Government 579, 591  
 fiscal responsibility 515  
 New Zealand superannuation 116, 401  
 non-financial reporting, instructions on 577, 578  
 offices of Parliament, and 103, 578

- Minister of Finance—continued**
- pre-election economic and fiscal update 35
  - Reserve Bank 113
  - shareholding Minister, as 575
  - unappropriated or unauthorised expenses and capital expenditure 535, 596
- Ministerial statements** 122, 222, 263, 264, 401, 701
- Ministers**
- Associate 263, 384, 646, 647
  - acting for each other 212, 430, 654
  - advisers 150, 559
  - appointment 3, 4, 124, 125
  - Cabinet members 123
  - Crown entities, and 576, 577
  - documents, production of 496
  - giving notice of motion 208
  - Government bills, introducing 357, 358
  - interests 54, 64, 65
  - legal process, service on 774
  - local bills, may introduce 359
  - moving adjournment of House 187
  - nominating committee to consider Government bill 406
  - offices 123, 148
  - papers, presentation of 616, 617
  - Parliamentary Service Commission, and 95
  - presence required 54
  - questions to 4, 124, 633, 642–649, 652
  - quoting documents 228, 618, 619, 656
  - referral of matters to select committees 392, 467
  - resignation 125
  - responsibility for department 124, 570
  - salaries 69, 70
  - seats 150
  - select committees, appearing before 329, 330
  - services 75
  - shareholding 575, 583
  - transfer of questions between 647–649
  - urgent debates, and 675, 677, 679
- Ministry of Justice** 380, 413
- Ministry of Māori Development (Te Puni Kōkiri)** 24
- Misrepresentations in debate** 264, 265
- MMP Review Committee** 21, 510
- MMP system** 19, 20, 22, 45, 663, 681
- Molestation**
- members, of 773, 774
  - officers of the House, of 773, 774
  - witnesses 500, 774
- Mondays** 176, 177, 186
- Motions** 207–214
- Address in Reply 138, 172
  - adjournment see **Adjournment, motions**

- Motions—continued**
- adjournment of debate 239, 240
  - bills, to introduce 209
  - closure 242–245
  - definition 206
  - establishment of select committees 287, 406
  - Government 213
  - matters already decided in same session 386
  - members' 212
  - moved on behalf of another member 212
  - moving of 212, 213
  - notice not required 209–210
  - notices *see* **Notices of motion**
  - orders of the day, postponing or discharging 197, 198
  - question proposed on 213
  - recommittal 449, 450
  - rescind resolution, to 259
  - same question rule 386
  - seconding 213
  - sittings of the House, relating to 187, 188
  - special requirements 210
  - subject matter of 207, 208
  - withdrawal of 213
  - without notice 42, 179, 181, 198, 199, 209, 210, 276
- National civil defence emergency management strategy** 701
- National interest analysis** 687–689
- National Library of New Zealand** 96
- Natural justice** 501
- House's obligations to observe principles 11, 12, 501, 626
  - responses to adverse reference in the House 626–631
  - select committees, and 292, 324, 337–339, 347
- New Zealand Business and Parliament Trust** 111
- New Zealand Centre for Public Law** 461
- New Zealand Customs Service** 388
- New Zealand Defence Force** 570, 682
- New Zealand Lottery Grants Board** 111, 117
- New Zealand Public Service** 570
- New Zealand Security Intelligence Service** 109, 117, 505, 559, 609
- New Zealand superannuation** 116, 401
- New Zealand Symphony Orchestra** 570
- New Zealand Transport Agency** 572
- Ngarimu VC and 28th (Maori) Battalion Memorial Scholarship Fund Board** 51, 112
- Niue** 43, 605

**Notices of motion 207–210**

- absent member, for 212
- authentication of 207
- bills, for 209, 396, 397
- delivered to Clerk 207
- establishment of select committees, for 406
- form and content 207, 208, 627
- general rules 207
- giving 207
- Government 171, 208, 406
- lapse of 137, 209
- members' 209
- not required 209–210
- order paper containing 208
- period of 209
- privilege 790
- publication of 208
- regulation, to approve 475
- vetting of, by Speaker 207
- withdrawal of 209

**Oaths 162–165**

- affirmation in lieu of 162, 498
- allegiance, of 42, 162, 653
- auditors, power to take evidence on 585
- commissions for 162
- committees, witnesses before 333, 334, 498
- death of the Sovereign, on 165
- English or Māori, in 162, 163
- failure to take, consequences of 164
- foreign power, to 42, 165
- members asking questions before taking 165
- new members 163, 164
- Officers of Parliament 103
- time for taking 162
- witnesses 333, 334, 498

**Office of the Clerk of the House of Representatives** *see also Clerk of the House of Representatives*

- advisers 299, 301, 302
- broadcasting, and 90
- department, deemed to be 570
- interpretation and 226
- legislative drafting by 300, 382, 412
- messages, and 135
- organisation 84, 85, 89, 93, 158
- papers, and 619–621
- parliamentary travel, and 695
- petitions, and 608, 613
- principal officer 80, 84
- publication of bills 383, 398
- questions, and 90, 633, 660
- responsible Minister for 80, 84, 533, 651
- Royal assent, and 453
- select committee proceedings, recording and transcribing 339

**Office of the Clerk of the House of Representatives—continued**

- select committee staff, from 298, 299, 411
- staff as officers of the House 748

**Office of the Ombudsmen** *see Ombudsmen***Officers of Parliament 99–104**

- appointment of 101–102
- conditions 103–104
- definition of 99
- reports of 281
- select committees, advice to 299, 412
- select committees, evidence to 331

**Officers of Parliament Committee 79, 101–104, 107, 137, 283, 285, 295, 300, 549, 563, 578****Officers of the House**

- evidence, giving 331, 748
- legal proceedings against 774
- molestation of 773, 774
- privilege 731
- obstruction of 773, 774
- witnesses, as 757

**Offices of Parliament**

- annual review 343, 520, 577, 591
- funding of 101, 103, 136–137, 545, 548–549
- performance reporting 579, 580, 587, 615

**Official information 86, 105, 120, 334, 353, 505, 506, 510, 585, 651, 751, 784****Official report** *see Hansard***Ombudsmen 105–107** *see also Officers of Parliament and Offices of Parliament*

- petitions within jurisdiction of 606, 610
- removal from office 508
- role of 105–107

**Omnibus bills 370–372**

- amendment of 372, 437
- definition of 370, 371
- types of 371, 372

**Opening of Parliament** *see Parliament, Commission Opening of; Parliament State Opening of***Opposition**

- Leader *see Leader of the Opposition*
- members 117, 150
- official 117
- parties 115
- policy 646
- representatives 24, 117

**Oral questions** *see Questions***Order paper 193–194**

- business set out on 193, 194, 197, 199, 398, 421, 425, 450
- supplementary *see Supplementary Order Papers*

- versions of 18, 195

**Order, points of** *see Points of order*

- Order, powers of the Chair to maintain** 152–155
- Orders of the day** 195–200  
amendments to bills, and 424  
arrangement of 196, 199, 450  
called 197, 272  
committee stage of bill 425  
consideration of select committee  
  reports for 421  
definition of 195  
discharged 198, 199, 399, 450  
Government 137, 195, 196, 205, 399,  
  425  
Members' 137, 196, 197, 205, 425, 490,  
  612, 691  
not reached 200, 691  
order paper containing 194, 398, 421,  
  425, 450  
postponement 197  
private and local 196, 197, 205, 398  
setting down 197, 398, 421, 425, 448  
third reading, for 451
- Outcomes** *see Outputs*
- Output plans** 530, 556, 590
- Outputs** 512, 530, 531, 557, 596
- Overhang seats** 1, 23
- Papers** 614–625  
  addresses for 615  
  adverse references in 627  
  Appendix to the Journal, in 86, 620,  
    621  
  Budget 552, 618  
  custody of 86, 619  
  definition of 620  
  distribution 617, 621, 622  
  errors in 621  
  leave, presented by 616, 617  
  legal status of 622–624  
  list of 617  
  method of presentation 617, 618  
  non-parliamentary 621  
  order for 615, 616, 753, 754  
  parliamentary 620–622, 783  
  power to send for 494–497, 615  
  presentation 625  
  publication of 85, 619, 620, 621, 622,  
    757, 783  
  record of 619  
  returns 615  
  shoulder numbers 620, 621  
  Speaker, and 617, 621  
  statutory requirement to present  
    614–615  
  Table, laying upon 614
- Parliament**  
  Act of 3, 8, 357, 604  
  buildings 74, 79, 81, 157, 775  
  Commission Opening of 144, 161, 200  
  constituent parts 1, 161, 356  
  continuity of 141, 700–701
- Parliament—continued**  
  court, as 709  
  criminal acts in 725  
  date of meeting 142, 161  
  definition of 1  
  dissolution 16, 29, 32, 48, 144–146,  
    200, 514, 622  
  duration 29, 145, 632, 633  
  expiration 16, 29, 32, 145, 200, 622  
  functions 2  
  House 147, 148, 157, 302, 411, 454, 732  
  grounds 80, 158–160  
  length of 29, 145, 632, 633  
  manner and form provisions, and  
    9–11  
  new, meeting of 142, 143, 160  
  opening of 142, 144, 169–171  
  place of meeting 5, 147, 160, 700  
  proceedings in 120, 726–732  
  proclamations 141, 143  
  prolongation 145  
  prorogation 142, 143, 146, 261  
  sessions and recesses 144, 622  
  State Opening of 114, 144, 169–171,  
    200, 261, 679  
  summons 141–143  
  term of 29, 145, 632, 633  
  treaties, and 684, 685
- Parliamentary Bulletin** 204
- Parliamentary Commissioner for the Environment** 107–108 *see also Officers of Parliament and Offices of Parliament*
- Parliamentary Corporation** 94, 95, 148
- Parliamentary Counsel Office** 112  
  drafting of legislation 381–383  
  delegated legislation 467–70  
  publication of Acts 456–457
- Parliamentary historian** 6
- Parliamentary Library** 90, 96, 97, 157,  
  299
- Parliamentary Papers** *see Papers, parliamentary*
- Parliamentary papers (series)** 86
- Parliamentary precincts** 80, 96, 148, 157,  
  317, 775, 800
- Parliamentary Press Gallery** 90, 148,  
  155, 156, 750, 751, 771, 772, 797
- Parliamentary procedure** 8–18 *see also Sessional Orders, Standing Orders*
- Parliamentary Service** 70, 73, 74, 75, 80,  
  81, 86, 93–97, 117, 120, 157–160, 533, 571
- Parliamentary Service Commission** 75,  
  77, 80, 81, 95, 96, 117, 127, 651, 781, 782
- Parliamentary superannuation** 71–72
- Parliamentary Under-Secretaries** 70,  
  95, 124, 295, 358, 384, 618, 647, 654
- Parties**  
  debates, participating in 219–221, 597  
  development of 5, 6, 114  
  elections, and 20, 24, 31, 114

**Parties—continued**

- financial disclosure, and 21, 27, 28, 35
- funding of 116
- legal position of 116
- meetings of members of 51, 78, 119, 120
- membership of 28, 31, 45, 49–51, 56, 120–122
- ministerial responsibility and 645, 646
- Parliamentary Service Commission, and 95
- procedure and 115, 116
- questions, co-ordinated by 634, 637
- recognition of 114
- references to 231
- registration of 20, 27, 28, 31–33, 114, 120, 121
- seating 150
- select committees, representation on 202, 203, 288–292
- support funding and services 67, 68, 73, 74
- voting 248–51

**Part (of a bill)**

- amendments to 436
- debate on 244, 431, 432, 440
- definition of 368
- delete, amendments to 440
- division of 433
- new 430
- omit, amendments to 431, 432, 440
- order of considering 430, 432
- postponement of 432
- questions on 431
- transfer of 433

**Party leaders** 74, 81, 82, 116–118, 121, 189, 249, 262–264**Party lists** 19, 23, 29, 31, 39–42, 45, 47**Party spokespersons** 116**Party votes** 248–252

- confidence votes, not all 128
- interjections during 249
- participation 248
- procedure for 249
- proxies, and 250, 251
- split 132, 251
- totals 249, 250
- voting contrary to one's party 251
- "zero" 250

**Pecuniary interests** 56–60

- members' 52, 54, 56, 765
- registration of 56–60, 765

**Perjury** 334, 499**Permanent legislative authority** 524

- appropriations 526–527, 567
- Crown borrowing 513, 527
- emergency expenditure 705
- salaries and allowances 71, 72, 76, 103, 526

**Personal explanations** 225, 265–267**Personal reflections** 229, 230**Personal votes** 252–257

- bell rung during 254
- both lobbies, voting in 254
- conscience issues, on 131–133, 252, 253
- correction of 256
- disallowance of votes 164
- following party vote 253
- intimidation of members during 256
- numbers, declaration of 256
- obligation to vote 254
- order during 256
- procedure 253–255
- Speaker, election 167
- tellers 254, 255, 256
- voice, vote following 255
- voting lists 256
- voting twice 257
- wrong lobby, voting in 257

**Petitions** 600–613

- abroad, from 604
- abuse of right 733, 783
- announcement of 608
- citizens initiated referendums, for see **Citizens initiated referendum**
- circulation of 601, 602, 726, 729, 732
- contents of 604
- corporations, from 601, 603
- defamatory 602
- development of 600, 601
- early form of legislation by 356, 600
- election 28, 39–42, 71, 509
- English or Māori, in 604
- form of 602
- intelligence and security department, relating to 110, 505
- irregularities in 607, 608
- judges relating to 607
- language in 604
- lapses 612
- legal remedies 601, 605
- legislative competence, within 605
- matter, on, already dealt with 606
- member, from 607
- number of 601
- Ombudsmen 299, 606, 610
- Parliamentary Commissioner for the Environment, and 107, 611
- presentation of 607–608
- privilege, affecting 746, 747, 790
- promotion of 601, 602
- records of 613
- responses to, by Government 612, 613
- scrutiny of 607
- select committee consideration 280, 608–611
- signatures 599–603, 726
- transfer 603
- translation 604

**Points of order** 17–18

- indicating refusal to answer a question on 654, 655

- Points of order—continued**
- raising 17, 18
  - time limits, and 223
- Police** 30, 80, 317, 570, 702, 775
- Police Complaints Authority** *see* **Independent Police Conduct Authority**
- Polytechnics** 113, 572
- Prayers** 16, 176, 192
- Preamble 365–366**
- amendment of 440
  - Appropriation Bill, to 365
  - consideration of 410, 430
  - insertion of 440
  - private bills 365, 366, 386
  - purpose of 365–366
  - report on 419
- Precincts, parliamentary** 80, 96, 148, 157, 317, 775, 800
- Pre-election economic and fiscal update** 35
- Presentation**
- addresses 78, 138, 174
  - estimates 552
  - papers 617
  - petitions 607–608
  - regulations 177, 470–471
  - reports of select committees 351, 420
  - treaties, international, of 685, 686
- Presiding officer** 272, 294 *see also* **Assistant Speaker, Chairperson of committee of the whole House, Deputy Speaker, Speaker**
- Press Council** 742
- Press Gallery** *see* **Parliamentary Press Gallery**
- Primary Production Committee** 285
- Prime Minister**
- appointment 122
  - departments, and 570
  - elections, and 29, 30, 48, 128
  - lotteries grants, and 111
  - Ministers, and 65, 123, 125, 131, 572
  - precedence of 77
  - questions to 64, 122, 641, 645, 646, 648
  - resignation 125, 128
  - Royal assent, and 454
  - salary and allowances 70
  - seating 150
  - security 110, 117
  - Statement 118, 219, 261, 262, 673
  - State Opening, and 117
- Prime Minister and Cabinet, Department of** 94, 110, 148, 158, 571
- Prime Minister's Statement** 118, 219, 261, 262, 673
- Prisons** 52, 497
- Privacy Commissioner** 784
- Private bills 361–363**
- advertising 387, 409
- Private bills—continued**
- affecting rights or prerogatives of the Crown 127, 134
  - amendments 414, 436
  - arrangement on Order Paper 195, 196, 205
  - banks, dealing with 362
  - Clerk of the House 391, 392
  - declaration, for 391
  - definition 357, 361–363
  - deposit and inspection 389
  - drafting of 300, 381, 382, 411
  - endorsement of petition 391, 392
  - examination of 391
  - fees 390
  - first reading 398, 402–404
  - Government guarantees, concerning 362
  - introduction 391, 398
  - justice, administration of, relating to 363
  - land, dealing with 362, 385, 390
  - member in charge 78, 384, 385
  - notices, giving of 387–389, 398
  - preamble 363, 365, 386, 415
  - printing 383
  - promoter 361, 385, 386, 399, 416
  - publication 383, 398
  - secret 89, 750, 751
  - select committee consideration 412, 419
  - Standing Orders, compliance with 391
  - withdrawal 399
- Privilege**
- abrogation of 713–715
  - access, freedom of 134, 168, 761
  - apology 801
  - arrest, freedom from 754–56
  - bar of the House, offenders brought to 798
  - Bill of Rights 11, 723–742
  - breach of 762, 766
  - claimed by Speaker 76, 167, 168, 711
  - censure 797
  - classification of 711, 712
  - collective 712
  - Committee of *see* **Privileges Committee**
  - contempt *see* **Contempt**
  - counsel, hearing of 332, 792
  - courts, and 11, 712, 717–721
  - criminal acts 725
  - definition 168, 169, 491, 706–708
  - delegate, to 752
  - earliest opportunity, matters must be raised at 785, 786
  - “effective repetition”, and 736–738
  - elections, jurisdiction in 47
  - establishment of, in New Zealand 709, 710

**Privilege—continued**

- exclusion from the precincts 800
- exclusion from the Press Gallery 800, 801
- exclusive cognisance 11, 165, 725, 742–743, 760
- exemption from legal liability 723, 724
- expulsion 799, 800
- favourable construction of proceedings 168, 722, 761
- fine, power to 796–797
- freedom
  - access, of 134, 168, 761
  - arrest, from 754, 755
  - speech, of 168, 722–724
- impeachment 798, 799
- imprisonment 795, 796
- inherent 706–708
- inquiries 491
- jury service, disqualification from 753
- matter of 785
- members
  - arrest 754, 755
  - molestation of 773, 774
  - qualifications of 28, 47, 164, 509
  - reflections on 780, 781
- nature of 706
- natural justice, and 292, 501, 714
- necessity 707–708
- new 712, 788
- notices of motion 790
- petitions concerning 746, 747, 790
- premature publication of proceedings 324–326, 746, 771, 772
- prosecution 798
- publication of speeches 746, 753
- punishments 794–801
- qualifications of members 28, 47, 164, 509
- qualified *see Qualified immunity*
- question of 47, 789
- questioning or impeaching
  - proceedings 733–742
- raising a matter of 729, 785–787, 790, 791
- separation of powers, and 706, 734
- Speaker's ruling on matter of 787–789
- sittings, access to 750, 751
- speech, freedom of 168, 722–724
- statutory basis 168, 710–711
- suspension 799
- tribunals, and 741
- waiver of 715, 716
- witnesses, oath, giving evidence on 498, 499

**Privileges Committee 791–793**

- chairperson 294, 791
- charges against members, and 504, 791, 792
- counsel before 332, 792
- established 286, 791

**Privileges Committee—continued**

- financial interests, members' 64
- functions 282, 286, 764, 788, 791–792
- general business, reports of as 195, 205, 354, 793
- legal proceedings, intervention in 719–721
- members attending 292
- membership 293, 330, 791
- persons, papers and records, power to send for 495, 770, 791
- procedures 788–791
- qualifications of members, and 46, 509, 760
- recommendation on contempt 783, 793
- reports 196, 205, 354, 781, 793
- Privy Council** 710, 715, 716, 721, 724
- Proceedings**
  - committee, in, reference to 228
  - favourable construction of 168, 722, 761
  - Parliament, in 120, 726–732, 752
  - premature disclosure of select committee 324–326, 746, 771, 772
  - publication of 89, 339, 340
  - reports of 88–90, 746–748, 753
  - use of, by courts 739, 740
- Proclamations and declarations**
  - altering meeting place of Parliament 700
  - dissolution 144
  - emergency 142, 143, 189, 700, 703, 704
  - prorogation 143
  - summoning Parliament 141, 142, 147
- Prorogation 143**
  - accelerated meeting of Parliament during 144, 700
  - effect of 146, 261
  - Governor-General, by 134, 143, 454
- Proxy votes 250–251, 258–259**
  - amendment of 258
  - authority to cast 250
  - limit on 250–251
  - party votes 250
  - select committees, not allowed in 316, 348
  - withdrawal of 258
- Public affairs amendments** 424, 551, 567
- Public finance 511–522**
  - appropriations and authorisations 523–535
  - audit 104–105, 584–586
  - Budget 551–553
  - financial veto 515–522
  - principles 511
  - reporting 569–584
  - revenue 536–543
  - scrutiny 281, 522, 589–598
  - supply 544–567
- Public interest immunity** 506–507

**Public organisations**

debate on 597, 598  
reporting 577, 582, 591–598  
review 281

**Public servants**

advisers to select committees 300–301, 326  
evidence to select committees 330  
information requests, and 334–335  
Ministerial responsibility 643

**Public Trust** 542**Publishing**

Acts of Parliament 383, 456  
bills 383, 398, 420  
debates 89–90, 746, 747, 753  
financial and operational reports 587, 588  
papers 85, 619–622, 753, 757, 783  
protections for publications 623–624, 753–754  
questions 636  
regulations 112, 469, 470, 623  
select committees, reports and proceedings of 86, 339, 351–352, 420, 623  
speeches 754

**Purchase agreements** 530, 531**Qualified immunity** 351, 602, 623–624, 730–732, 739**Questions 633–661**

adequacy of reply 657  
adjournment and 635  
allocation 634, 636–637  
already answered 640  
amendment of 642  
answers to 266, 506, 651, 654–661  
arguments 639  
asking 652–654  
authentication 638–639  
caucus activities 120  
changes to 636  
conciseness 638  
contents of 637–641  
Crown entities, concerning 573, 643  
epithets 640  
facts 638  
follow-up replies 658, 661  
imputations 639  
inferences 639  
ironical expressions 640  
joint 633  
lodging 633–636  
members, to 649, 654  
ministerial responsibility 643–645  
Ministers, to 4, 124, 633, 642–649  
names of persons 627, 638  
notice of 633–636  
obligation to reply 654, 655  
opinion, expressing 640  
opinion, seeking 640, 657

**Questions—continued**

oral 633, 635  
oral, replies to 266, 506, 651, 654–658  
order of 636  
origin of 632  
Parliamentary Under-Secretaries, to 124, 647, 654  
parties, allocation to 634, 636–637  
postponement 653  
Prime Minister, to 65, 122, 641, 645, 646, 648  
publication of 636, 661  
quotations in 639  
refusal to answer 654, 655  
repetition of 640  
select committee chairpersons, to 298, 650  
Speaker, to 79, 81, 96, 651  
State enterprises, concerning 575, 576, 644  
subcommittee chairperson, to 311, 650  
sub judice, and 641  
supplementary 658, 659  
time for asking 652  
transfer between members 633  
transfer between Ministers 647–648  
transfer from oral to written 637  
types of 633  
ungrammatical 636  
unparliamentary language 640  
urgent 633, 635, 641, 642, 653  
withdrawal 653  
written 81, 89, 634, 635  
written answers to 89, 659–661

**Questions from the chair**

amendments, on 216, 217  
bills 443–446  
committee, in  
annual review 597  
estimates 560  
divided 247  
form of 213, 216  
manner of putting 217, 244, 245, 443–446  
parts of bill 431  
proposed 213, 216, 217, 218  
putting of 217, 244, 245, 247, 443–446  
rescission of resolutions 259  
same question rule 386  
speaking again, when new question proposed 214, 217, 218

**Quorum**

House 54  
select committees 311  
subcommittees 310

**Quotations** 228, 618, 619, 639, 656**Radio broadcasting** 34, 90, 91, 113, 224, 754**Radio New Zealand Limited** 90, 91, 113, 510

- Recess** 144, 622
- Records**
- custody of 86, 136, 613, 619
  - destruction of 86
  - power to send for 495–497
- Referendums**
- Citizens initiated *see* **Citizens initiated referendum**
  - electoral 19–20, 662–664
  - other 662
- Register of Pecuniary and Other Specified Interests of Members of Parliament** 57–60
- Registrar-General of Land** 388
- Registration of electors** 20, 25–30
- Registration of parties** 20, 27, 28, 31–33, 114, 120
- Regulations** *see* **Delegated legislation**
- Regulations Review Committee** 461
- bills referred to 408, 473
  - chairperson 294, 461
  - complaints to 281, 479
  - confirmation of delegated legislation, and 472–473
  - deputy chairperson 297
  - draft delegated legislation referred to 322, 467, 470
  - drawing attention to regulations 283, 480–489
  - empowering provisions, and 368, 383, 462–465
  - established 286, 461
  - examination of delegated legislation by 479, 480, 625
  - inquiries by 493
  - international treaties, and 688, 690, 692
  - member of, giving notice to disallow 209, 477, 478
  - reporting to other committees 411, 463, 466
  - reports 196, 343, 354, 480–489
  - reports to Ministers 468
  - role 459, 460–461, 466
  - staff 410
- Reinstatement of business** 146, 171, 200, 201, 325, 344, 353, 417
- Relevancy** 215, 227, 333, 554, 560, 561
- amendments 215, 216
  - conduct of hearing 332, 333
  - debate 13, 173, 221, 227, 551, 560–561, 564
  - responses to questions 656
  - role of chairperson 272, 436, 504
- Remuneration Authority** 65, 67, 68, 72, 73, 103
- Reply, right of** 241, 403, 554
- Reporting** 569–584
- departmental 547, 577, 580–581, 595, 596
  - financial 577, 581
  - non-departmental 582–584
- Reporting—continued**
- non-financial 577
  - publication of 587, 588
  - types of entity 569–576
- Reports of select committees** *see* **Select committee reports**
- Representation Commission** 21, 24, 25, 29, 117, 662 *see also* **Elections**
- Representatives, House of** *see* **House of Representatives**
- Reserve Bank of New Zealand** 113
- see also* **Governor of the Reserve Bank of New Zealand**
  - accountability to the House 113, 591
  - Finance and Expenditure Committee 318, 331, 521
  - funding agreement 113, 528
  - monetary policy statement 340, 521
  - papers 618
- Reserved provisions** 10, 20, 246, 438, 445, 662, 663
- Reserves and Other Lands Disposal bills** 371, 375
- Reserves boards** 587
- Resignation**
- members 44, 45, 120, 121
  - Ministers 125
  - Speaker 81
- Resolutions**
- affirmative 474–476, 578
  - amendment of regulations 471, 473
  - customs and excise 538–539
  - definition of 259
  - disapply directions, to 573
  - emergencies, relating to 702, 703
  - financial veto, and 516
  - legal significance of 743
  - rescission of 259
- Responses**
- adverse references, to 501, 627–631
  - allegations, to 332, 337–339, 501
  - select committee recommendations, to 201, 353, 490, 612, 613, 616
- Returning officers** 30, 36, 38, 40
- Returns**
- motions for 494, 506, 615
  - orders or addresses, for 137, 616
  - papers, for production of 495, 616
  - writs, of *see* **Elections, writs, return of**
- Right of reply** 241, 403, 554
- Roll of Members** 163
- Royal assent** 1, 10, 134, 135, 453–456, 719, 721
- Royal commissioners** 134, 161, 169, 171
- Royal Commissions** 20, 65, 132, 232, 234, 379, 615, 621, 622, 624, 742
- Royal prerogative** 684, 694, 741
- Sainte Laguë method** 40
- Saturdays** 176, 177, 182, 184

- Schedules (of bills)**
- amendment of 432
  - consideration of 430, 432
  - definition 368–369
- School boards of trustees** 572, 578, 588
- Scrutineers** 38
- Seating** 117, 118, 150, 430
- Second reading** 422–423
- amendments on 422–424
  - Appropriation bills 401, 423, 550–552, 566, 596
  - bills 421–424
  - debate, duration of 422
  - debate on 422
  - Government bills 421
  - Imprest Supply bills 401, 423, 550
- Second ballot** 19
- Seconding** 172, 213
- Secrecy provisions** 503–504
- Secret sittings** 89, 750–751
- Secretary to the Treasury** 388, 580, 591
- Select committees**
- ad hoc 22
  - charges against members 504
  - disobedience to orders of 496
  - establishment
    - automatic 287
    - life of Parliament, for 288
    - motion for 287
    - subcommittees 271, 310, 311
  - expert assistance 300–302, 411, 557
  - functions 278–283
  - instructions to 283, 284, 406, 407
  - intelligence and security departments, and 109
  - joint 286, 697, 698
  - natural justice, and 292, 324, 337–339, 347
  - papers, power to send for 494–497, 616, 770
  - Parliament, established for life of 288
  - persons, power to send for 495–497, 616, 770
  - privilege, matter of, involving 785, 788
  - proxy voting, no 316, 348
  - records, power to send for 495–497, 616, 770
  - special 297, 341, 343, 406
  - Standing Orders, established pursuant to 14, 284–286
  - subcommittees 271, 310, 311
  - subject 284, 285
  - temporary 291, 292
  - terms of reference 284
  - voting 316, 317
- Select committee business**
- advertising 320, 409
  - advisers 104, 107, 299–302, 326, 411, 412, 557, 593
  - briefings 282, 408, 409, 493, 557
- Select committee business—continued**
- clerk of the committee 291, 294, 298, 299, 314, 318, 338, 498, 609
  - conscience issues, and 132
  - consideration stage 345, 414
  - deliberation 312, 347, 412
  - draft regulations 322, 467, 468
  - general business 315
  - international treaties, and 281, 682, 684, 689, 690
  - items of business 315, 316
  - petitions, consideration of 106, 609, 610
  - petitions, referred to 280, 608, 609, 670
  - post-election reviews 21
  - recommendations, responses to 201, 353, 490, 612, 613, 616, 621
  - referral of matters to 281
  - transfer of bills and petitions between committees 407
- Select committee chairperson** 294–297
- absence 297, 298
  - acting 298
  - admissibility of amendments 414
  - agenda 314–315
  - apparent bias ruling 293
  - appointment by House 295
  - call for submissions 319–320, 409
  - calling meetings 304
  - cancellation of meeting 308
  - deputy 297–298, 349, 654
  - election 294
  - evidence, giving 330
  - exclusion of disorderly member 292
  - functions and duties 295, 296, 313–314, 319, 320, 333, 409
  - hearings, conduct of 333, 410–411
  - interest declared 64
  - maintaining order 308, 316–317
  - matters of privilege, raising 786
  - presents reports 350, 351
  - questions to 298, 327, 650–651, 654
  - removal 296–297
  - resignation 296
  - rulings 313
  - salary 296
  - statement 326–327, 651
  - subcommittees 310–311, 650
  - suspension of meeting 308, 317
  - vacancy 296, 297
- Select committee consideration of bills** 407–416
- amendments to bills 414–415, 418, 424
  - bills before 407–416
  - bills referred to 280, 405–407
  - bills reported from 420, 421
  - delegated legislation-making powers, and 368, 411, 462–465
  - dividing a bill 416
  - empowering provisions, and 368, 411, 463–465

- Select committee evidence** 319–339  
 advertising for 320, 409  
 allegations, responding to 332, 333,  
 337–339, 346, 347  
 broadcasting 91, 92, 318  
 counsel heard before 332, 792  
 custody of 86, 352, 353  
 examination of witnesses 328–337,  
 410, 558, 593, 771  
 false 498  
 judges appearing before 236, 331  
 interpretation and translation 336  
 inviting 319  
 oaths 333, 334, 498, 499  
 petitions, on 609, 610  
 premature publication of 323–325  
 private, taken in 321, 322, 331  
 public, taken in 321, 331, 771  
 recording of 89, 339  
 relevancy of 333  
 secret 86, 322, 331  
 submissions 327–331, 410, 411  
 televising 92  
 webcasting public hearings 93  
 witnesses  
   affirmation, making 333  
   attendance 770  
   evidence, false, giving 498  
   examination 327–337, 410, 411,  
     493, 505, 557, 558, 593, 594  
   expenses 339  
   failure to answer 504, 771  
   false evidence 498, 776  
   freedom from arrest 754  
   indemnified 499  
   intimidation 500, 774  
   legal proceedings against 499, 500,  
     732–734, 736, 774, 779  
   members, as 329, 330  
   molestation of 500, 774  
   oaths 333, 498  
   objecting to questions 333–336,  
     771  
   obstruction of 774  
   protection of 499, 500  
   public servants 330, 331  
   refusal to attend 770  
   refusing to answer question 504,  
     771  
   representation 332  
   self-incrimination 500, 504  
   summons of 494, 497, 733, 770  
   written 327  
 videoconference and teleconference  
 329, 411
- Select committee financial scrutiny** 281  
 annual review, conduct of 281, 577,  
 578, 591–596  
 Crown entities, review 281, 558,  
 591–596  
 Estimates, examination of 281, 555–558
- Select committee financial scrutiny—*continued***  
 public organisations, review 281,  
 591–596  
 State enterprises, review 281, 558,  
 591–596
- Select committee inquiries** 281–282  
 briefings 282  
 initiation of 282, 493, 683  
 papers, power to send for 494–497,  
 616, 770  
 persons, power to send for 495–497,  
 616, 770  
 powers of inquiry 282, 491–493  
 readoption of 342  
 records, power to send for 495–497,  
 616, 770  
 scope of 283, 502, 503
- Select committee meetings** 303–317  
 adjournment of 309  
 adjournment, meeting during 188  
 admission to meetings of 751  
 agenda 295, 299, 314, 315  
 attendance 311  
 calling, of 304  
 cancellation 308  
 disruption 317  
 duration of meeting 308, 309  
 first 303  
 grave disorder 317  
 joint 310  
 minutes 311, 318, 319  
 notice of 304, 305, 314  
 order in 308, 316, 317  
 order, outside parliamentary precincts  
 317  
 place of 303–304  
 quorum 311  
 suspension of 308, 317  
 times of 305–308
- Select committee members** 288–294  
 additional 292  
 attendance 231  
 choice of 288, 289  
 disqualification 292–294  
 nomination 289–292  
 non-voting 290, 311, 478  
 number of 116, 288  
 presence of other 230, 292  
 vacancies 290
- Select committee proceedings** 288–294  
 documents, custody of 352–353  
 premature disclosure of 324–326, 746,  
 771, 772  
 published 89, 339  
 record of 18, 312–314, 727–729  
 referred to 228, 641
- Select committee reports** 341–354  
 activities 343  
 adoption of 345–350  
 adverse findings in 346, 347

**Select committee reports—continued**

amendments 418  
 annual review 594–596  
 bills, on 416–420  
 commentary 417, 418  
 consideration of 354, 421, 425  
 debate on 354, 355  
 deliberation 314, 347  
 draft 345, 346  
 estimates, on 558  
 final 342, 343  
 Government, to 470  
 Government responses to 201, 353,  
 490  
 interim 341, 352  
 languages of 350  
 Local Legislation bills, on 420  
 minority or differing views 348, 419,  
 738  
 petitions, on 611, 612  
 premature disclosure 349, 350, 771,  
 772  
 presentation 351, 420, 612  
 private bills 419  
 privilege 196, 205, 354, 355, 781, 793  
 proceedings, of 89  
 publication of 85, 351, 352, 622  
 regulations 480–490  
 Speaker, to, seeking a ruling 313  
 special 297, 341, 343, 352  
 subcommittee 310  
 time limits for 343–345, 417–418  
 treaties, on 690

**Serious Fraud Office, Director of** 643  
**Serjeant-at-Arms** 87–88

addresses, transmission of 87, 138  
 announces Speaker 192  
 appointment 87  
 arrests persons 87  
 broadcasting 92  
 Mace, custody of 79, 87–88, 192, 271  
 members excluded 152, 153  
 offenders, in custody of 87, 795  
 officer of the House 87  
 orders, serves 497  
 strangers, removes disorderly 87, 156

**Session (of the House)**

arrest, freedom from, and 754, 755  
 bill with same title introduced in same  
 366  
 definition of 144  
 length of 144  
 new opening of 144  
 presentation of papers 621, 622  
 unfinished business at end of 146

**Sessional orders** 16**Shoulder numbers** 620, 621**Sign language** 226**Sittings of the House**

access to 750, 751  
 broadcasting 175

**Sittings of the House—continued**

days 176  
 extended 178–180  
 Fridays 176, 177, 180  
 Mondays 176, 177, 186  
 motions relating to 188  
 normal 176, 177  
 programme of 189  
 prolongation of 180–184  
 Saturdays 176, 182, 183, 187  
 secret 89, 750, 751  
 select committees meeting during 306  
 Sundays 187  
 suspended 154, 184–186  
 Thursdays 176, 179, 180, 181, 185, 186,  
 190, 277  
 Tuesdays 176, 179, 180, 185, 186, 190,  
 277  
 Wednesdays 176, 179, 180, 185, 186,  
 190, 277  
**Social media (use of)** 93, 151  
**Social Services Committee** 285  
**Solicitor-General** 127, 381, 388  
**Sovereign** 1, 2, 134, 137, 139, 145, 165, 228,  
 270, 454, 569  
**Speaker** 77–83  
 absence of 82  
 addresses, presents 77, 138, 174  
 adjournment, power to call House  
 during 189  
 adjourns House for grave disorder 154  
 administers oath or affirmation 163  
 applications to debate a matter of  
 urgent public importance 674–  
 676, 680  
 bills, does not move 78, 213  
 Business Committee chairs 201, 202  
 calls members to speak 219–221  
 caucus, attendance at 78  
 claims right to House's privileges 77,  
 168, 711  
 classification of bills, determines 364  
 closure 242–244  
 committee of the whole House 270,  
 272, 277  
 communications, formal 78  
 court attendance 757  
 criticism of 79  
 decides where majority lies on a vote  
 247  
 debate  
 addressed to 224  
 rising to interrupt 150  
 takes no part in 78  
 time limits 222–223  
 disorder, powers to prevent 78,  
 152–155  
 dress 79, 151  
 duties 9, 14, 52, 77–78  
 election of 77, 78, 131, 161, 165–168  
 election petitions 42

**Speaker—continued**

- exempts members from court attendance 78, 757
- grants leave of absence 251
- grave disorder, adjourns or suspends House for 154, 187
- legal proceedings, and 719
- members' services, determines 68, 70, 73–75
- messages from Governor-General 77, 135
- names a member 152, 153
- Officers of Parliament, and 101–103, 107, 299
- order, powers to maintain 78, 152–154
- papers, presents 615, 617
- Parliament buildings and grounds, control of 80, 149, 157–160
- Parliamentary Service Commission, chairs 77, 79, 81, 95, 781
- powers to maintain order 78, 152–154
- prayer, reads 192
- precedence of 77
- privilege, raising of matter of 729
- proposes the question 213
- puts the question 247
- questions, control of 651, 652
- questions to 79, 81, 96, 651
- receives resignations 44, 45
- referendum petitions, presents 78, 670
- reflections upon 782
- registration of pecuniary interests, and 60
- representing House 77
- resignation of 81
- responses to adverse references, and 626–631
- responsible Minister, as 80, 81, 84, 104, 302, 533, 549, 560, 571, 651
- rulings 9, 17, 78, 83, 272, 277, 313
- salary and allowances 69, 81
- select committees, first meetings of 303
- select committees, service on 22, 79, 101, 295
- Serjeant-at-Arms, issues warrant to 87
- Speech from the Throne, reports 171
- speeches to be addressed to 224
- summons, issues 496, 497, 770
- suspends sitting for grave disorder 153, 154, 186
- takes chair 192
- temporary 82, 83, 243
- term of office 70, 81
- vacancies, and 46–48, 78, 760
- vets notices of motion 207
- voting 78, 255
- warrant, issue of 87, 796
- withdrawal of strangers, orders 156

**Speech, freedom of**

- abuse of 232, 236
- Bill of Rights 723–742

**Speech, freedom of—continued**

- debate, words spoken in 723
- House's control of its own proceedings 11, 165, 742–743, 745
- privilege of 722, 723
- proceedings in Parliament 120
- Speaker's claim 168, 722

**Speech from the Throne** 1, 77, 136,

170–171, 725

**Speeches**

- committee, in 271, 272, 429
- English, in 225
- maiden 172, 173
- Māori, in 89

**Split-party votes** 132, 251**Spokespersons, party** 116**Standing Orders** 12–15

- adopted 12
- amendment of 14, 15
- leave of the House, and 15, 16
- local bills, compliance with 391
- objects of 12, 13
- private bills, compliance with 391
- review of 13–14
- ruling on 17
- select committees established pursuant to 13, 14
- suspension of 15, 55, 372

**Standing Orders Committee** 13–15, 79,

91, 93, 286, 294, 297, 330, 371, 501, 515, 635, 646, 787

**State enterprises**

- audit of 105, 584, 585
- debate on 597, 598
- definition 583, 584
- equity bonds, and 513
- ministerial responsibility for 575, 644
- monitoring of 589, 590
- questions concerning 575, 644
- reporting 583, 587, 588
- review 281, 558, 591–598

**State Opening of Parliament** 117, 144,

169–171, 200, 261, 679

**State servants**

- advisers to select committees 300–301, 326
- evidence to select committees 330
- information requests, and 334–335
- Ministerial responsibility 643

**State Services Commission** 102, 330,

334–335, 506, 572, 589, 595

**State Services Commissioner** 94, 113, 589**Statements** *see* **Maiden statements, Ministerial statements, Valedictory statements****Statements of intent** *see* **Strategic intentions****Statements of performance**

- audits and inquiries of 585, 586
- expectations 582–583

- Statements of performance—continued**  
information 579, 585–586
- Statutes Amendment bills** 370–372, 376, 416, 445
- Statutes Revision Committee** 460
- Stills photography** 93
- Strangers**  
admission 156  
exclusion of 156  
misconduct 156  
reference to 156, 224  
secret sittings 89, 750, 751  
withdrawal of 156
- Strategic intentions** 547, 556, 580–583, 592, 615
- Sub judice rule** 233–236, 314, 334, 641, 675
- Subcommittees** 271, 310, 311, 650
- Summoning Parliament** 141–143
- Summons**  
issue of 495, 497, 770  
witnesses, of 494, 495–496, 770
- Sundays, no sittings on** 176
- Superannuation, parliamentary** *see*  
Parliamentary superannuation
- Supplementary estimates**  
Appropriation Bill containing 565  
debate on 556, 557  
examination of 566  
further 566
- Supplementary Order Papers** 194, 215, 245, 392, 422, 434, 435, 440, 446, 447, 449
- Supplementary questions** 658, 659
- Supply** 130, 140, 190, 271, 508, 544–567
- Supreme Court** 233, 234, 508
- Surveyor-General** 24
- Suspension**  
committee of whole House,  
proceedings of 154  
members 152, 153, 250, 291, 799  
select committee meeting 308  
sittings of the House 154, 155, 184–186  
Standing Orders 15, 55, 372
- Swearing in of members** 162–165
- Table of the House** 149, 224, 614
- Taxation**  
annual 130, 140, 190, 442, 538  
bills 377  
definition 537  
delegated legislation and 472, 482, 538  
members, and 49, 71  
private and local bills, and 388
- Tedious repetition** 227
- Television broadcasting** 32, 33, 91, 92
- Tellers** 254, 256
- Temporary**  
chairpersons 273  
laws 367  
Speakers 82, 83, 243
- Te Puni Kōkiri (Ministry of Māori Development)** 24
- Te Reo Māori**  
interpretation and translation 89, 98, 225, 226, 336, 653  
oaths and affirmations in 163  
petitions in 604  
questions and replies, in 653, 654  
reports in 350  
speeches in 225  
title of bill in 366
- Territorial authorities** 360
- Tertiary education institutions** 113, 572, 582, 591
- Third reading** 450–452  
amendments on 452  
Appropriation bills 423, 563, 567, 596  
bill set down for 450  
debate on 451, 452  
financial veto and 451  
Imprest Supply bills 551  
Recommittal 449, 450
- Thursdays** 176–180, 181, 183, 194, 205, 277
- Time limits**  
Address in Reply 172–173  
allowance for time lost 223  
amendments 215  
annual review 594, 595  
Budget 553  
closure and 243  
Crown entities, etc 597, 598  
debates 222  
estimates 559  
extension of 344–345, 418  
general 222  
general debates 672  
Government bills 403  
Imprest Supply bills 550  
individual speeches 222  
local and private bills 403  
maiden statements 269  
Members' bills 403  
ministerial statements 264  
Prime Minister's Statement 262  
points of order, and 223  
questions 652  
reply, in 403  
second reading 422  
select committee reports 343–345, 417–418  
supplementary estimates 566  
third reading 451  
urgent public importance, motion to discuss matter of 680
- Title of bill**  
amendment 440  
debate on 432  
definition of 366  
distinguished by numbers 366  
first clause 366, 432

- Title of bill—*continued***
  - notices headed with 387
  - rejection 432
- Tokelau** 43, 605
- Transfer**
  - appropriations, of 533
  - bills between committees 407
  - bills between members 384, 385
- Transfer**
  - parts and clauses 431, 432
  - petitions 609
  - questions 237, 647–649
- Transport and Industrial Relations Committee** 285
- Treasury benches** 149
- Treasury** 35, 513–515, 517, 520, 525, 541, 545, 548, 561, 566, 572, 579, 589
- Treaties, international** 684–693
  - amendment of 687
  - bills and 374, 441, 691, 692
  - incorporation by reference 383, 489, 688
  - list 686
  - national interest analysis for 687–690
  - presentation of 685, 686
  - reports on 690, 691
  - Royal prerogative, and 684, 694
  - select committee consideration of 281, 682, 683, 690, 691
  - source of law, as 681, 684, 685, 693
- Treaty of Waitangi** 365, 376, 404, 441, 527, 531
- Tuesdays** 176–180, 181, 183, 194, 205, 277
- Unappropriated expenses and capital expenditure** 535
- Under-Secretaries** *see* **Parliamentary Under-Secretaries**
- Universities** 113, 572, 591
- Unparliamentary language** 229–232, 640
- Urgency** 180–183
  - effect 177, 181–183, 405
  - extraordinary 183
  - moving 181, 183
  - reasons for 181
  - termination 183
- Urgent public importance, discussion of matter of** 673–680
  - administrative or ministerial responsibility 677
  - applications for 674–676
  - debate 680
  - particular case of recent occurrence 676, 677
  - requires immediate attention of House 678, 679
  - Speaker's decision 679
  - time for 680
  - two on same day 674, 675
  - withdrawal of application 674
- Urgent questions** 633, 635, 641, 642, 653
- Usher of the Black Rod** *see* **Black Rod**
- Vacancies** 28, 30, 42–48, 56, 78, 121, 759, 760, 800
- Valedictory statements** 269
- Validation of delegated legislation** 471, 472
- Videoconference and teleconference** 329, 411
- Votes (Estimates)** *see also*
  - Appropriations and Estimates**
  - allocation by Finance and Expenditure Committee 555–556
  - alteration of 561, 562
  - Estimates debate 560
  - departmental 85, 94, 554, 556, 558, 560–562
  - examination of 555–558
- Votes (on a question before the House)**
  - adjournment, in progress at time for 187
  - closure, on 244
  - definition 247
  - disallowed 164
  - errors and irregularities 249, 255, 256
  - first held in House 192
  - majority, qualified 246
  - records of 257
  - Speaker decides where majority lies 247
  - Speaker, in committee 270
  - voice 247, 255
- Votes and Proceedings** 86, 88
- Votes, free** *see* **Personal votes**
- Waitangi Tribunal** 404
- Wānanga** 572
- Warrants for commitment** 796
- Wednesdays** 176–180, 181, 183, 194, 205, 277
- Whips**
  - appointment 119
  - Business Committee and 202
  - Deputy Speaker or Assistant Speaker, may not be 81
  - duties 118, 119
  - leave of absence, and 118
  - leave of the House, and 16
  - members speaking in debate, and 219, 593
  - party votes, and 249, 251
  - proxies and 250
  - salaries 119
  - seats 150
  - select committee changes 290, 291
  - select committee meetings 303, 305
- Whole of government directions** 573
- Withdrawal**
  - amendments 217
  - applications for urgent debates 674

**Withdrawal—continued**

Chamber, from 152  
 citizens initiated referendum 665  
 disorderly expressions 232  
 local bills 399  
 members, of 152  
 motions 213  
 notices of motion 209  
 offensive words 232  
 private bills 399  
 proxies 258  
 questions 653  
 strangers 156  
 unparliamentary language 232

**Witnesses**

affirmation, making 333  
 attendance 770  
 evidence, false, giving 498, 774  
 examination of 328–337, 410, 492–493,  
 504, 557, 558, 593, 594  
 expenses 339  
 failure to answer 504, 771  
 false evidence 498  
 freedom from arrest 755  
 indemnified 499  
 intimidation 500, 774  
 judges, as 236, 331  
 legal proceedings against 499, 500,  
 732–736, 774, 779

**Witnesses—continued**

members as 329, 330  
 molestation of 500, 774  
 oaths 333, 498, 499  
 objecting to questions 333–336, 771  
 obstruction of 774  
 protection of 499, 500  
 refusal to attend 770  
 refusing to answer questions 771  
 representation 332  
 self-incrimination 504  
 summons of 494, 497, 733, 770

**Woodhouse Report** 379**Words**

disorderly 229  
 enacting 366, 416  
 misquoted or misunderstood 264, 265  
 offensive 229

**“Working day” defined** 176**Written questions** 81, 89, 634, 635**Writ**

amendment 39, 41  
 error in 39  
 issue of 29  
 return of 29, 39, 142, 164

**Year, financial** 513**Yielding** 237**Youth Courts** 234









