

WORKING WITH SELECT COMMITTEES

A Guide for Public Service Advisers



Office of the Clerk of the House of Representatives

2007

About this booklet

In producing this guidebook, our aim is to promote effective working relationships among select committee members, committee staff, and public sector officials required to work with select committees. We hope this will enhance the select committee process through providing guidance to officials not only about select committees but also about the wider constitutional framework in which they work.

The booklet is aimed specifically at the core public service but its principles have application to those in the wider State sector who are also required to work with select committees. It will also assist those from outside the State sector who may advise committees on occasions. While it provides guidance to those already familiar with select committee processes, it will be of particular benefit to those who are just starting to work with select committees and are learning about the role committees play, particularly in progressing legislation.

In the production of this booklet the State Services Commission has been consulted.

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General principles for public servants

Sources of guidance

SSC's Officials and Select Committees – Guidelines is an important source

The State Services Commission provides detailed guidance to public servants on the relationship between officials and select committees. For ease of reference some of the topics covered in the State Services Commission's publications have been repeated here but for details from the Public Service's perspective, see *Officials and Select Committees – Guidelines*. This is available on the Commission's website (www.ssc.govt.nz). Any public servant who is to come in contact with select committees should first be familiar with this document.

Cabinet Manual

The *Cabinet Manual* gives clear guidance to officials in their roles and outlines the relationship with select committees. (www.dpnc.govt.nz/cabinet).

Three principles in Code of Conduct

The *Public Service Code of Conduct* (www.ssc.govt.nz) sets out three principles of conduct all public servants are expected to observe:

- Public servants should fulfil their lawful obligations to the Government with professionalism and integrity.
- Public servants should perform their official duties honestly, faithfully, and efficiently, respecting the rights of the public and their colleagues.
- Public servants should not bring the Public Service into disrepute through their private activities.

The second principle, in particular, illustrates the expectations both of the Government and of select committees themselves when public servants are working with committees.

Advisers must act in good faith

Responsibility to Minister

A departmental adviser's primary responsibility is to the Minister. Advisers to select committees also have a responsibility to advise committees to the best of their abilities and in good faith, while still being subject to ministerial direction.

Potential conflict of interest in dual role

A criticism of the system of using departmental advisers is that the advice is not independent or neutral because it is delivered on behalf of the Minister. There is a potential conflict of interest between being in a position of trust with a committee and being subject to ministerial direction. The system is, however, practical and expedient because these officials have a detailed working knowledge of the policy. See also *Officials and Select Committees – Guidelines*, paragraph 44.

Advisers must maintain good faith with both the Minister and the committee

Departmental advisers must be competent to manage complex relationships. For instance, if an adviser has undertaken to provide some particular information to a committee (or even acquiesced in such a request) but the Minister does not want that information to be provided, the adviser must act in a way that maintains good faith with both parties. In this situation, the most ethical approach would be to inform the committee the department will not be providing that information, rather than hoping the committee does not notice it has not been provided. This ensures committee members are aware of what is not being provided and can obtain it elsewhere if necessary.

Direct involvement of the Minister can resolve some difficulties

An adviser must not mislead a committee, knowingly hide information, or distort the truth. If an adviser is caught between the wishes of the Minister and a committee, a good option is for the Minister to become involved directly. For example, if a committee asks advisers to work on proposals that are not Government policy and the Minister does not agree to this request, advisers could suggest that the committee invite the Minister to attend a committee meeting to discuss how to progress the work.

Whole-of-Government approach

The Government speaks with one voice

The Government is a single entity when it comes to Government policy. Advice to committees, therefore, should represent Government policy rather than a narrow departmental view.

Departments should avoid airing differences in front of a committee

If a committee has appointed advisers from more than one Government department or agency, those advisers should work together to provide a clearly agreed position on various issues. Inter-departmental differences are best not aired at committee meetings as this makes it difficult for the committee to know precisely what the actual Government position is.

Public servants as witnesses

This publication does not provide advice to public servants as witnesses before committees

Public servants have a very different role with committees when they appear as witnesses. Advisers are working on the inside with a committee, assisting it as it makes its decisions. Witnesses are involved only at the information-gathering stage (see ‘Evidence or advice?’). Guidance on appearing as a witness is not given in this publication but can be found in the State Services Commission’s *Officials and Select Committees – Guidelines*.

The New Zealand Parliament under MMP

The political reality of minority government

MMP creates the conditions for minority government

The MMP (mixed member proportional) system of electoral representation is much more likely to produce a minority Government than the previous system (first past the post). Minority government occurs when the party or parties that make up the Government hold 50 percent or fewer of the seats in the House and, therefore, do not command an absolute majority. The Government maintains the confidence of the House by forming an agreement on confidence and supply with one or more of the other parties. Previous elections have resulted in the formation of minority Governments and, under these circumstances, the Government is unable to exercise the level of influence over select committees that is possible with a majority Government.

The role of departmental advisers is becoming more complex

Committees continue to make effective use of departmental advisers when working through legislation. However, the relationship between those advisers and the committees is growing in complexity. The advisers are still working under ministerial direction but the Government, which they represent, cannot expect to influence committee outcomes to the extent that it did in the past. Under minority government, departmental advisers may find themselves representing a minority interest when advising committees.

Focus on Parliament for progress of legislation

While majority government is still possible, the greater uncertainty of the proportional system brings Parliament itself into clear focus as the centre of the legislative process.

Parliament is the Sovereign and the House of Representatives

Parliament defined

The Parliament of New Zealand consists of the Sovereign and the House of Representatives. The Sovereign's duties in relation to Parliament are mostly carried out by her representative in New Zealand, the Governor-General. Such duties include giving the Royal assent to bills, and summoning and dissolving Parliament.

Passes legislation

Functions of the House of Representatives

The House is the elected component of Parliament. As a legislature, the House passes legislation. That legislation then receives the Royal assent and becomes an Act of Parliament, enforceable by the powers of the State.

Provides a Government

Formation of the Government depends on the proportion of seats in the House secured by each party. Under the MMP electoral system, it can be expected that there may need to be some negotiation between parties in forming the Government.

Consents to taxation and supply of public funds

All taxation and appropriation (supply) of public funds must have the legislative authority of Parliament. The Government cannot impose a tax or appropriate public funds outside this process.

Sustains the Government

The House sustains the Government, which cannot function without the confidence of the House. Therefore, the Government is accountable to the House for its executive actions. If the Government were to lose the confidence of the House, the Governor-General would need to ask the leader of another party if he or she could form a Government that would have the House's confidence or a new election would be held.

A minority Government needs support on confidence and supply

A Government can function as a minority Government if it has the support of other parties on confidence and supply. This means the Government needs over 50 percent of the votes in the House on confidence issues such as the supply of public funds. The MMP electoral system can be expected to deliver minority Governments regularly. This has particular implications for public servants because legislation needs majority support to get through the House. This requires frequent negotiations.

The House delegates much of its work to committees

The House cannot carry out all its detailed work without delegating much of it to select committees made up of members of the House. Select committees are constrained by Standing Orders in conducting their proceedings.

Standing Orders

Standing Orders are the House's rules of procedure

The *Standing Orders of the House of Representatives* set out the rules for the conduct of proceedings in the House and its committees. Select committees must conduct their business according to these rules. There are specific procedures for select committees, but if a situation arises where there is no specific select committee procedure, the committee can follow the procedures for the House.

'SO' in text is the Standing Order number

Where applicable the relevant Standing Orders are cited with prefix 'SO' in this guidebook. Committee staff can help departmental advisers with any queries on interpretation. Advisers are not expected to have a detailed knowledge of the Standing Orders but some understanding of principles is expected.

Select committees and their business

Subject select committees

13 subject select committees

The House establishes select committees at the beginning of each Parliament for its full term. There are 13 subject committees:

- Commerce
- Education and Science
- Finance and Expenditure
- Foreign Affairs, Defence and Trade
- Government Administration
- Health
- Justice and Electoral
- Law and Order
- Local Government and Environment
- Māori Affairs
- Primary Production
- Social Services
- Transport and Industrial Relations

SO 189

Guidebook mainly reflects role of officials with legislation

This guidebook mainly reflects the role officials have as advisers on legislation to the 13 subject committees; however, officials may occasionally come in contact with other committees.

Specialist committees

Five specialist committees

Five specialist committees are established under Standing Orders. Their specific roles are quite different from the roles of the 13 subject committees. These committees may have some impact on departmental advisers and are discussed below.

<i>Agrees membership, reporting deadlines, and meetings outside Wellington</i>	<p>Business Committee</p> <p>This committee’s determinations affect committee membership, changes to deadlines for committees to report on bills, and permission for committees to meet outside Wellington when the House is sitting. Public servants do not normally have any interaction with this committee. SO 74–78</p>
<i>Recommends appropriations for Offices of Parliament</i>	<p>Officers of Parliament Committee</p> <p>This committee recommends the appropriations for Offices of Parliament (Offices of the Auditor-General, Ombudsmen, and Parliamentary Commissioner for the Environment) so they can operate independent of executive government. It can also look into other matters relating to Officers of Parliament. SO 386</p>
<i>Considers matters of privilege, including contempt</i>	<p>Privileges Committee</p> <p>This committee considers matters related to parliamentary privilege, including matters of contempt of Parliament that may arise from the improper release of select committee proceedings. SO 391–402</p>
<i>Background reading on privilege and contempt is available</i>	<p>The chapters on privilege and contempt in <i>Parliamentary Practice in New Zealand</i> by David McGee provide a substantive explanation of parliamentary privilege and contempt of Parliament (see ‘Further reading’).</p>
<i>Broad jurisdiction encompassing all regulations</i>	<p>Regulations Review Committee</p> <p>This committee has broad jurisdiction encompassing all ‘regulations’ as defined in the Regulations (Disallowance) Act 1989. The committee has contact with an equally broad range of Government agencies and officials. It does not normally examine bills, petitions, financial reviews, or Estimates and is not a policy</p>

	committee. Instead, it principally carries out technical scrutiny of regulations on behalf of the House, in relation to nine grounds. SO 315(2)
<i>Government agencies contacted about regulations</i>	Typically, the contact between the committee and a Government agency occurs when the committee writes to an agency and requests written responses to questions about: <ul style="list-style-type: none"> • a particular statutory regulation (including deemed regulations) • the substance of a complaint • draft statutory regulations referred to the committee by the relevant Minister • an inquiry being conducted by the committee. SO 314, 316
<i>Departmental responses regarded as evidence</i>	Interactions between officials and the committee, whether written or oral, are generally regarded as evidence (see ‘Evidence or advice?’). This is because the committee’s role is one of scrutinising law-making instruments the Executive has made under a delegated authority from Parliament. The committee’s role is part of the House’s function of holding the Executive to account.
<i>Regulation-making powers in bills examined</i>	The Regulations Review Committee also examines regulation-making powers in bills before select committees. It reports to those committees if there are any concerns about the provisions. Departmental advisers are expected to respond to the reports and take them into account when advising committees on those bills. SO 314(3)
	Standing Orders Committee
<i>Reviews procedure and practice</i>	This committee reviews the procedures and practices of the House and committees. SO 7

Ad hoc committees

Ad hoc committees may be established

Ad hoc committees may be established by the House to examine a specific item (or multiple items) of business such as an inquiry or a bill. For instance, in 2003 the House established a committee to consider fisheries and other sea-related legislation.

Subcommittees

Committees can form subcommittees

Committees can form subcommittees to assist in progressing business. The subcommittee's conduct must be consistent with Standing Orders. Subcommittees report to the main committee. They do not report direct to the House.

Types of committee business

Examination of bills

Bills are usually referred to subject committees. Officials have a substantive role in advising committees on Government bills. They may also advise on Members' bills, private bills and local bills (see 'Detailed guide for advisers').

Departmental officials generally not advisers on the items below

In addition to bills, committees consider several other types of business, as set out below. It is rare for departmental officials to be involved in any of these items as advisers. They are generally involved as witnesses (see 'Advice or evidence?').

Estimates

The Finance and Expenditure Committee allocates the Estimates to subject committees. This enables select committees to scrutinise the Government's annual appropriations of expenditure and departmental budgets. **SO 329**

Financial reviews

Committees conduct financial reviews of the performance in the previous financial year and the current operations of Government departments, Offices of Parliament, Crown entities, State enterprises, and organisations that the House

deems to be public organisations. As with the Estimates, the Finance and Expenditure Committee allocates the financial reviews to the subject committees. **SO 335**

Inquiries and briefings Inquiries can be referred by the House but are more likely to be initiated by a committee if the inquiry topic relates to the subject matter in the terms of reference for that committee. They can range from complex and lengthy inquiries to a one-meeting briefing on a particular topic. Inquiries do not always result in a report to the House. **SO 190(2)**

International treaties International treaties presented to the House stand referred to the Foreign Affairs, Defence and Trade Committee, which determines the appropriate subject committee to conduct the examination. **SO 387–390**

Petitions The Clerk of the House allocates petitions to committees. Petitions have no reporting deadline. **SO 361**

Membership and meetings of select committees

Membership of select committees

Committee membership is proportional to House membership

The Business Committee appoints permanent members to committees proportional to party membership in the House. Current committees range in size from five to twelve members. When there is a minority Government this means the Government does not have sufficient places to control all of the committees. **SO 186**

Committee members can be replaced

Sometimes permanent committee members are temporarily replaced for a specific item of business or for a period during a meeting. Replacements are usually from the same party but can be from another party. Permanent changes can also be made. **SO 188**

The House sometimes appoints 'non-voting' members

Some of the smaller parties do not have representation on every committee. If an item of particular interest to one of those parties comes before a committee on which it is not represented, the Business Committee may appoint a member of that party as a 'non-voting' member for that item. That member becomes a full participant in the item except for the ability to vote and to make up the quorum. This maintains proportionality but enables those members to be involved in the item of business. **SO 187**

Chairperson and deputy chairperson

Each committee has a chairperson and deputy chairperson. The chairperson is responsible for chairing the committee's meetings and ruling on procedural and relevance issues. The deputy chairperson performs the duties and exercises the authority of the chairperson in the chairperson's absence. **SO 202, 203**

Any member can attend a committee meeting

Any member of Parliament, including a Minister, who is not a member of the committee may attend a committee meeting but can participate only with the agreement of all members of the committee.

SO 211(1)

Cabinet Ministers are not usually members of subject committees

While not proscribed by the Standing Orders, it is unusual for a Cabinet Minister to be a member of a committee. If they are members of committees, these are normally the specialist committees such as the Privileges Committee. Ministers outside Cabinet are sometimes members of subject committees. A Minister or member in charge of a bill (not being a member of the committee) may take part in a committee's proceedings when examining the bill but may not vote. **SO 211(2)**

Meeting times and places

Committees usually meet on Wednesday and Thursday mornings

The most common meeting time for select committees is on Wednesday and Thursday mornings from 10 am to 1 pm in a week when the House is sitting. Committees with heavy workloads often meet beyond these times.

Committees can travel

If a committee decides to meet outside Wellington to hear evidence, this is more likely during adjournment weeks. Committees need specific authority from the Business Committee to meet outside Wellington while the House is sitting. Committees cannot meet outside New Zealand without the authority of the House. **SO 193, 194**

Schedule of meetings updated regularly

A regularly updated schedule of committee meetings for the week is available on the parliamentary website. Meeting details can be subject to change at short notice and it is important to keep in touch with the committee secretariat on times affecting advisers.

Evidence or advice?

Knowing the difference

Officials must know if they are witnesses or advisers

Departmental officials are sometimes under the impression that they are advising a committee when they are in fact witnesses before a committee. It is crucial that officials are clear about whether they are giving evidence or advice when they are working with a select committee. If this is unclear committee staff can clarify the status of the meeting.

Evidence

Evidence is generally heard in public

Committees hear evidence from witnesses in public unless the committee determines otherwise (see below). News media and other members of the public are present. Examples of evidence are public submissions on bills and representatives of Government departments appearing before committees on the Estimates or financial reviews. **SO 223**

Committees can receive private or secret evidence

A committee may agree unanimously to hear evidence in private or secret. Evidence heard in private is confidential to the committee until it reports to the House. Secret evidence may not be disclosed unless the House expressly authorises such disclosure. Committees rarely receive private or secret evidence because they like to be able to talk openly about evidence received. Advisers may, with the agreement of the committee, be allowed to hear evidence given in private or secret but must abide by the confidentiality conditions under which it was received. **SO 219, 220**

Submissions and evidence are publicly released

Submissions are provided to a committee in written format and submitters may also ask to be heard by the committee. Submissions that are

presented orally become publicly available when a submitter speaks to that submission, unless they have been released earlier. Evidence received by a committee in written format is available to the public when formally released by a committee or when the item of business is reported to the House. Submitters are not prevented from releasing their own submissions. **SO 218**

Natural justice protections apply

If allegations that may seriously damage a person's reputation are made during a hearing of evidence, natural justice procedures offering right of reply must be implemented. Details on the natural justice provisions are included in *Natural Justice Before Select Committees* (see 'Further reading'). **SO 235**

Advice

Advisers have a very different role from that of witnesses

A committee can appoint advisers and is in effect inviting them to be part of the committee's private consideration of an item of business. Advisers have a very different role from that of witnesses because they are assisting the committee, as committee officials, with the analysis of evidence and the viability of possible solutions to problems identified. **SO 212**

Advice is not given in public

A committee's substantive proceedings other than the hearing of evidence are not open to the public and remain strictly confidential until the committee reports to the House. Advice is, therefore, not given to a committee in public. **SO 240**

Advisers cannot reveal confidential proceedings

Advisers cannot reveal proceedings of committee meetings other than public hearings of evidence and evidence that has been released. However, this does not prevent discussion with the Minister, other committee advisers or officials from another Government department with an interest in the

policy issues. This is discussed further under the heading 'Departmental reports'.

Premature disclosure of confidential proceedings can be a contempt of the House

Premature disclosure of confidential proceedings could result in the person disclosing the information being found in contempt of the House. **Section 18(c)(ii) of the Official Information Act 1982** specifically provides that requests for official information may be refused if making particular information available would constitute a contempt of the House of Representatives. This would apply to any advice, written or oral, provided to a committee on an item that is still before the committee. **SO 400(p)**

Disclosure of committee proceedings can be investigated as a matter of privilege

If premature disclosure of committee proceedings comes to the attention of a member of Parliament it may be raised with the Speaker as a matter of privilege and referred to the Privileges Committee for investigation. This is a very serious process and departmental advisers should at all times avoid placing themselves at risk of being investigated on a matter of privilege. **SO 392, 397**

All proceedings publicly available after the committee reports

Once a committee has presented its report to the House, all proceedings relating to that item (except secret evidence), including advice given to the committee, become publicly available. To facilitate access, departments might consider placing their advice to the committee on their own websites at that stage. **SO 240(1)**

Sources of advice to select committees

<i>Office of the Clerk provides procedural and report drafting services</i>	Office of the Clerk of the House of Representatives The Office of the Clerk provides procedural and advisory services to the House and its committees. The staff in each committee secretariat represent the Clerk of the House. They do not work for the Government or take instructions from Ministers. Committee staff prepare minutes and draft committee reports. They also arrange all meetings, including public hearings.
<i>Clerk of committee is main contact</i>	The clerk of the committee is the main point of contact for queries about the work of a particular committee and is responsible for the management of the committee's business and the provision of procedural advice.
<i>In-house legal advice for committees</i>	The Office also employs two Legislative Counsel, who are available to provide legal advice to committees.
<i>Committees appoint advisers</i>	Departmental advisers If a committee wishes to appoint specified Government departments as advisers for an item of business, the committee resolves to do so. The principal advisers will be those from the administering department. Individuals are not specified in the resolution. It is up to the department to determine which officials and how many can best advise the committee. SO 212
<i>Departmental advisers most likely for legislation</i>	Departmental officials are most likely to be advising committees on legislation. However, if they are appointed as advisers for any other business the practices in the next section, 'Detailed guide for advisers', while concentrating

on legislation, can generally be applied in terms of expectations and processes to be followed.

Parliamentary Counsel Office

Parliamentary counsel provide law drafting services

Parliamentary counsel provide law drafting services to the Government. They also work closely with committees to transform concepts for amendment into fully drafted amendments for committees to consider. They attend many of the committee meetings where legislation is being considered.

Office of the Auditor-General

Office of the Auditor-General advises on Estimates, financial reviews, and inquiries

The Office of the Auditor-General regularly advises select committees on Estimates examinations and financial reviews. The Office also assists with select committee inquiries and with select committees' consideration of reports of the Auditor-General tabled in the House. The *Code of Practice for the Provision of Assistance by the Auditor-General to Select Committees and Members of Parliament*, I.15A, 2002, sets out a protocol for managing the Auditor-General's interactions with select committees.

Parliamentary Commissioner for the Environment

Parliamentary Commissioner for the Environment can provide advice

Similarly the *Code of Practice for the Provision of Assistance by the Parliamentary Commissioner for the Environment to the House of Representatives, Select Committees and Members of Parliament*, I.17B, 1996, provides a protocol for the Parliamentary Commissioner for the Environment's interactions with select committees.

Independent advice available

Specialist advisers

Select committees may appoint specialist advisers to provide independent, specialist advice. Specialist advice is most frequently sought when a committee is undertaking an inquiry and wants some expert advice on a particular topic. The Clerk of the House contracts a specialist adviser to work with a select committee. The process of appointment is set out in *Protocol for the Provision of Independent Specialist Assistance to Select Committees*, J.5A, 2007.

Independent research available

Parliamentary Library

The Parliamentary Library, which is part of the Parliamentary Service, employs analysts who are able to undertake independent research for committees as required.

Detailed guide for advisers

Emphasis on legislation

Procedures specifically relate to legislation but can be adapted

This section provides guidance on how advisers are expected to work with a committee when it is considering legislation. These suggested procedures may be adapted to suit when working as advisers on other items of business.

Clerk of committee appreciates early warning of coming legislation

Departmental officials may wish to indicate to the appropriate clerk of committee that a bill is likely to be introduced and establish a working relationship at an early stage. It is helpful for clerks to have some idea of the committee's potential legislative workload as early as possible.

Bills referred to committees

Departmental advisers appointed mostly for Government bills

Bills are referred to committees after their first reading in the House. The most common relationship a departmental official has with a select committee as an adviser is when the committee is considering a Government bill. Committees appoint advisers to aid them in understanding the policy issues involved and to advise on possible amendments. The committee appoints advisers from the Government department promoting the bill and sometimes also from other departments. Public servants represent their Minister when they are appointed in this capacity.

Departmental advice usually sought on Members' bills

Select committees often request advice from officials on Members' bills. These are bills introduced by individual members other than Ministers. The committee seeks the Minister's approval for the provision of advice. The Minister may agree even if the bill is contrary to Government policy. This ensures that advisers can comment on policy and implementation

issues. The Minister may set limits on the extent of advisers' involvement. If the advisers consider committee expectations are overstepping the limits placed on them by the Minister the advisers can remind the committee of those limits.

Members' bills can be passed without Government support

In times of minority government it is possible for a Member's bill not supported by the Government to be passed into law. Under these circumstances, advisers will have some interest in seeing that the legislation is as workable as possible given that their department will ultimately administer the legislation.

Department of Internal Affairs advises on local bills

Local bills are promoted by local authorities and deal with matters confined to a particular locality. The Department of Internal Affairs routinely provides advice on local bills.

Departmental advice generally sought on private bills

Private bills are infrequent. They provide for a particular interest or benefit of an individual or group of people. There is still a role for officials in advising on these bills, subject to the Minister's approval.

Date for report to the House

Most bills have a 6-month reporting deadline

Most bills are referred with a 6-month reporting deadline, although the House sometimes sets shorter deadlines. The clerk of the committee will discuss potential workload and timetabling issues with advisers. **SO 291(1)**

Business Committee may extend reporting deadline

If a committee cannot complete work on a bill in time, it can ask the Business Committee to extend the reporting deadline. Agreement from the Minister for this extension is also sought prior to the committee's request to the Business Committee. Advisers may be involved in aiding

the Minister in this process. The Business Committee does not always agree to the select committee's or the Minister's request. **SO 291(2)**

Bills can be discharged from a committee

If a bill is not reported in time it will be discharged from the committee and set down for its next stage in the House. This is a very rare occurrence and should not be viewed as a mechanism for progressing legislation unless committee processes have broken down completely. **SO 291(3)**

Liaison with clerk of the committee

One adviser to liaise with committee clerk

One adviser should be identified to the clerk of the committee as the main contact person. If a committee has appointed advisers from more than one Government department or public organisation, one adviser should co-ordinate the contributions of all the advisers.

Calling for submissions

Public submissions are a key part of the legislative process

Public submissions are a key resource in this part of the legislative process. By international comparison, the level of detailed public input at this stage of the legislative process in New Zealand is high and it is much valued by members of Parliament.

Advertising for submissions

Once a bill has been referred, a committee generally calls for submissions. Advertisements are placed in newspapers and details are posted on the parliamentary website.

Departmental advisers to provide list of potential submitters

The committee will probably seek submissions by direct invitation as well as advertising. Advisers should provide a list of people and organisations they know are interested in the bill. It is helpful if advisers keep an up-to-date list of people they have consulted during the policy development stage. At the consultation stage advisers should

seek individuals' and groups' permission for their names to be forwarded to a committee. The list must cover the full range of interests, not just those supporting the policy objectives in the legislation.

Distribution of submissions

Committee staff will send submissions to advisers prior to hearings of evidence. Submissions are usually distributed to advisers as they are processed by committee staff. Submissions are numbered consecutively. Those where no request has been made for a hearing are given a number and 'W' (for 'written') suffix.

Submissions not yet released by the committee

At this stage the submissions have not been released by the committee and departmental advisers must be careful not to disclose their contents except to other appointed advisers.

Initial briefing by advisers

Advisers brief the committee on the bill

Usually the first stage in a committee's consideration of a bill consists of receiving a briefing on the content, purpose, and implementation of the bill. The Minister can be involved in this briefing, although it is usually left to the officials. The clerk of the committee will inform advisers of the committee's requirements.

Written material to be supplied in time for distribution to members

Advisers should prepare a written briefing paper to supplement their oral briefing. This, as with all material for the committee, should be provided to committee staff by the Monday prior to the briefing or otherwise by arrangement. This enables time for distribution to the members. The clerk of the committee will indicate how many copies are required. It is unreasonable to expect a committee to consider a paper it has not had an opportunity to read prior to the meeting.

<i>Topics that might be covered in the briefing</i>	<p>Committees sometimes refuse to consider a paper that is handed to members at the meeting.</p> <p>The briefing should cover topics similar to those included in the explanatory note to the bill and issues that would have been outlined for the Cabinet Legislation Committee such as:</p> <ul style="list-style-type: none"> • the general policy behind the bill • significant parts of the bill • costs, benefits, and impacts • groups affected • consultation undertaken • basic constitutional and legal principles (vested rights altered, retrospectivity, powers of entry, consistency with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993) • delegated law-making powers • proposals requiring an affirmative resolution of the House (e.g. section 4A of the Misuse of Drugs Act 1975)
<i>Advisers listed on committee agenda</i>	<p>Names and designations of advisers present at a meeting are listed in the agenda and minutes. Committee staff will liaise with the main contact adviser to verify the names of advisers who will attend each meeting.</p>
<i>Advisers attend hearings of evidence</i>	<p>Hearing of evidence</p> <p>Advisers attend the public hearings of oral submissions. Their role at this stage is mainly to listen and take note of the main points that arise during the hearing of evidence.</p>
<i>Submissions publicly released</i>	<p>The written component of each oral submission is released at the time the submitter starts giving evidence. At the time a committee starts hearing oral submissions it is also likely to release all the</p>

‘written’ submissions (with the ‘W’ suffix), where no hearing was requested. Advisers should check with the clerk of the committee before assuming written submissions have been released.

SO 218

Advisers are sometimes asked for comments during hearings

Committee members may ask for comments from advisers during the hearings or ask for short written reports on specific issues that require quick clarification. If advisers are asked for immediate comments they should be aware that it is a public hearing and their comments may be reported. They are entitled to save their comments for the committee after the hearing. Judgment is required in considering whether to provide an immediate answer. Advisers need not enter into public debate with witnesses or committee members. The clerk of the committee notes the committee’s requests for written advice in the minutes and will liaise with advisers on any questions about the requests and time frames.

Advisers attend hearings outside Wellington at departmental expense

Committees sometimes travel outside Wellington to hear submissions. Departmental advisers are expected to arrange their own travel to attend these hearings and to travel at departmental expense. Committee staff will keep advisers informed of venues and estimated timing of hearings.

Departmental reports

Next stage is ‘consideration’

Once the committee completes hearing evidence, it moves to the ‘consideration’ stage. The focus of the committee’s consideration is the departmental report from advisers. The committee could have meetings to consider advice prior to completing the hearing of evidence but this is not the norm. This and remaining stages of the select committee process are strictly confidential to the committee

until it reports to the House (see ‘Evidence or advice?’).

Departmental report to be complete but concise

The report should aim to achieve a balance between conciseness and comprehensive coverage of all the required information. It should be written in plain, succinct language that enables members to read it quickly. Submitters’ key points should be clearly identified along with advisers’ recommendations on these issues. In large reports a summary of the recommendations with references to the appropriate clause at the start of the report is helpful.

All issues raised to be covered, within reason

Comments on all relevant issues raised in the hearing of evidence and written submissions, within reason, must be included in the departmental report. Advisers must not omit from the report issues with which they do not agree. To do so would be contrary to the principle of acting in good faith (see ‘General principles for public servants’). Such an omission will usually be detected. Progress of legislation has been delayed when this has occurred.

Some issues are outside the scope of the bill

Limited comment may be provided on issues outside the scope of the bill but there is no expectation that these will be covered in any detail, if at all, as the primary focus should be on the bill itself. The clerk of the committee can advise on whether an issue is outside the scope of the bill.

Suggested report format in appendix

A suggested format for a departmental report is set out in the appendix. It may be necessary to discuss issues around the format and preparation of the report with the committee at an early opportunity. This is particularly important with a large bill and can avoid advisers being asked to

	change the format after considerable work has been done.
<i>Inclusion of new issues to be drawn to committee's attention</i>	If, since the bill's introduction, new issues have come to light that were not raised in submissions, these can be included in the departmental report at the appropriate place. Particular care should be taken to draw the committee's attention to these issues when working through the departmental report. If there is any question about whether the new issues are within the scope of the bill the clerk of the committee will advise.
<i>New issues may require further public consultation</i>	Committees may not wish to consider new issues that have not been the subject of public submissions. Alternatively, the inclusion of new issues could delay the legislation while the committee undertakes consultation.
<i>Committee permission not required for policy consultation within the core public service</i>	Advisers can consult within the core departmental structure on matters of policy without obtaining the committee's permission. This is, of course, subject to the usual constraint of those being consulted knowing that confidential committee proceedings are involved and must be respected.
<i>Committee authorisation required for further consultation</i>	If consultation beyond the core departmental structure or further research is needed, advisers must obtain committee approval before undertaking such discussions if the disclosure of confidential proceedings is necessary. Again, those involved in such discussions must be aware of constraints associated with confidential committee processes.

<i>Departmental reports must be supplied according to agreed timeframes</i>	Throughout the process, liaison with the clerk of the committee on the proposed timetable is essential to ensure the departmental report is completed in time. The report should be with the committee secretariat for distribution to members on the Monday prior to the first meeting scheduled for considering the report. Multiple copies will be required. It is best to check with the clerk of the committee for exact requirements as this can vary across committees.
<i>Consideration of departmental report</i>	Consideration of the departmental report can take many meetings as committee members work through the issues raised in submissions and the reasons for and against making various amendments. Throughout this stage the committee may ask advisers to undertake further work and report on various proposals at subsequent meetings.
<i>Parliamentary counsel drafts amendments</i>	Once each issue is resolved in concept, parliamentary counsel will draft amendments to the bill according to the wishes of the committee.
<i>Committee report is the commentary plus the reprinted bill</i>	<p>The committee's report</p> <p>Most bills are reported to the House with recommended amendments. The committee reports a 'commentary' and the bill reprinted with the committee's amendments shown. If a committee has no amendments to recommend to a bill, its views will be conveyed to the House in a narrative report.</p>
<i>Advisers asked to comment on draft commentary</i>	Committee staff will prepare the draft commentary outlining the committee's proposed amendments and the reasons for these changes. The departmental report may be used for preparing parts of the commentary and it is helpful if an electronic version of the report is available to committee staff. Advisers will be

asked to comment on the draft commentary before the committee considers it. This is to check for accuracy of information and is not an opportunity to rewrite it in the department's preferred style.

Commentary often includes differing views

The committee will consider the draft commentary after the completion of consideration of the departmental report and after making decisions on amendments. Committees often include differing views when there is disagreement with the majority view. **SO 246**

Deliberation

Formal voting on amendments and commentary occurs during 'deliberation'

The formal voting stage on the draft amendments and the commentary is described as 'deliberation'. Advisers do not have a role in the deliberation stage but it may be helpful for them to be present or remain nearby in case further issues arise. This is at the discretion of the committee.

Outcome not always predictable

Although the outcome of deliberation might generally be predictable as a result of agreements in principle during earlier stages, such agreements are not binding and the outcome of the final vote cannot be taken for granted. Occasionally there is no majority in favour of some or all amendments or the bill itself. A committee can report this to the House. The decisions can then be taken in the House during the later stages of the bill. The chairperson has no casting vote to ensure a majority.

Amendments may be reported without a commentary

It is possible that a committee may agree on recommended amendments to a bill but be unable to agree on its commentary. If this occurs, the recommended amendments can still be reported

and shown in a reprinted bill but without a commentary.

Reporting to the House

A few days required for printing processes

Once the committee has deliberated no decisions can be revisited. Committee staff will finalise the commentary and prepare the bill for printing, according to the committee's decisions. This, combined with printing and proofreading processes, involves a delay of a few days before the report can be presented.

Committee report available at Bennetts and on website

The committee's printed report (commentary and proposed amendments) is made available for purchase in Bennetts Government bookshops. It will also be placed on the parliamentary website.

After report to the House

Evidence and advice publicly available after report presented

All submissions (apart from secret evidence) and departmental reports are publicly available once the committee has reported to the House. A set of submissions and reports is deposited in the Parliamentary Library for public access.

Bill set down for second reading

Once the report has been presented, the bill is set down for second reading in the House. If it is a Government bill it is set down as a Government order of the day and the Government decides its placement in relation to other priorities. If it is a Member's bill, a private bill, or a local bill it is set down for consideration on a members' day, which is every second Wednesday of sitting weeks. There is a formula to be followed in terms of priorities, as opposed to the Government's discretion on its own bills. **SO 292**

Committee amendments adopted

The vote on the second reading of a bill is an acceptance of all the committee's amendments agreed unanimously. If any amendments were agreed in the committee by majority only, there

will be a separate vote in the House on whether to adopt those amendments. This mechanism can be used to overturn controversial committee amendments. However, it has not been used to date. **SO 294(1), 296**

Further stages before passing into law

After the second reading, the bill is considered by a committee of the whole House. This is another opportunity for the bill to be amended. Departmental advisers will continue advising the Minister throughout this process. Further stages before the bill is passed into law are the third reading and Royal assent.

Further reading

Cabinet Manual, Cabinet Office, Wellington. www.dPMC.govt.nz/cabinet

Code of Practice for the Provision of Assistance by the Auditor-General to Select Committees and Members of Parliament, I.15A, 2002.

This report sets out ways in which the Office of the Auditor-General can assist select committees with Estimates, financial reviews and inquiries. This code is subject to review by the Officers of Parliament Committee and may be replaced during a Parliament.

Code of Practice for the Provision of Assistance by the Parliamentary Commissioner for the Environment to the House of Representatives, Select Committees and Members of Parliament, I.17B, 1996.

This report sets out ways in which the Parliamentary Commissioner for the Environment can assist select committees with inquiries. This code is subject to review by the Officers of Parliament Committee and may be replaced during a Parliament.

Effective House Membership: A Guide for Members of Parliament, Office of the Clerk of the House of Representatives. www.parliament.nz

This provides guidance on House procedures for members of Parliament.

Effective Select Committee Membership: A Guide for Members of Parliament, Office of the Clerk of the House of Representatives. www.parliament.nz

This guide was prepared for members of Parliament to assist them with select committee work. It can also help other readers in understanding the parliamentary context and perspective of select committees.

McGee, David, *Parliamentary Practice in New Zealand*, Third Edition, Wellington, 2005.

This book provides detailed guidance on parliamentary procedure and practice. It also provides some theoretical background to aspects of Parliament that will assist in learning about constitutional principles.

Making a Complaint to the Regulations Review Committee, Office of the Clerk of the House of Representatives. www.parliament.nz

This booklet provides guidance for people wishing to make a complaint about regulations. It also provides background information about regulations and the parliamentary processes associated with them. Copies are available free of charge from the Office of the Clerk.

Making a Submission to a Parliamentary Select Committee, Office of the Clerk of the House of Representatives. www.parliament.nz

This booklet provides guidance for people making submissions to a select committee. It is particularly useful for those who are not experienced at preparing written material for committees. Copies are available free of charge from the Office of the Clerk.

Natural Justice Before Select Committees, Office of the Clerk of the House of Representatives. www.parliament.nz

This booklet informs people about their rights in relation to select committee proceedings, especially regarding allegations that may have been made about them. Copies are available free of charge from the Office of the Clerk.

Officials and Select Committees – Guidelines, State Services Commission, Wellington. www.ssc.govt.nz

These guidelines cover the principles of the relationship between officials and select committees; officials as witnesses and advisers; attendance by Ministers at select committees; and attendance by an official in a private capacity. Officials giving advice or evidence to select committees are expected to be familiar with these guidelines.

Parliament Brief, Office of the Clerk of the House of Representatives. www.parliament.nz

This is a series of fact-sheets about Parliament. Copies are available free of charge from the Office of the Clerk.

Protocol for the Provision of Independent Specialist Assistance to Select Committees, J.5A, 2007.

This sets out processes associated with engaging specialist advisers for select committees.

Public Service Code of Conduct, State Services Commission, Wellington.
www.ssc.govt.nz

Speakers' Rulings: 1867 to 2005 inclusive, New Zealand, 2005.
www.parliament.nz

Standing Orders are interpreted and applied by the Speaker. It is likely that many problems of interpretation and application of Standing Orders have arisen before and the Speaker at the time may have ruled on them. Such important rulings as are still current are published to assist with the interpretation of Standing Orders. While some rulings may date back to the 19th century, they can still provide useful guidance. Also included in this publication are excerpts from Standing Orders Committee reports that provide significant guidance on how a rule is intended to be applied.

Standing Orders of the House of Representatives, New Zealand, 2005.
www.parliament.nz

This is the complete set of rules by which the House and its committees operate.

Appendix

Suggested format for departmental report

<p style="text-align: center;">TITLE OF BILL REPORT OF THE DEPARTMENT/MINISTRY OF... Date</p> <p>Introduction / Summary</p> <p>General comments on submissions and/or proposed amendments may be useful depending on type of bill.</p> <p>(New page for each clause/issue, or apply this formula to a table in landscape format using columns.)</p> <p>Clause number and title, or issue and related clauses</p> <p>Explanation of the clause or overall issue</p> <p>Summary of issues in submissions</p> <p>Concise summary of issues raised by submitters. Identify submitters by number and/or name where appropriate.</p> <p>Comments</p> <p>Departmental comment on issues raised in submissions or new issues. Include reasons for agreeing or not and whether changes can be made.</p> <p>Recommendations</p> <p><i>Either</i></p> <p>We recommend no change.</p> <p><i>Or</i></p> <p>We recommend that:</p> <ol style="list-style-type: none">1. Clause 5 be amended to include / provide / omit ... <p><i>And/or</i></p> <ol style="list-style-type: none">2. New clause 5A be inserted to provide ...
