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. 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. The House’s freedom from outside interference requires that it respect and observe the law.

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. The Bill of Rights 1688 and the Parliamentary Privilege Act 2014 provide the statutory basis for the privileges enjoyed by the House. 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

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1 The House’s exclusive jurisdiction is examined more closely in Chapter 45, pp 742–745.
2 See, for example: Bradlaugh v Gossett (1884) 12 QBD 271.
4 See Chapters 1 and 3.
5 Parliamentary Privilege Act 2014, s 8.
depends. 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. 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. 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. 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. 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. The Speaker has a special duty to ensure that the House observes such statutory requirements, for example, when a motion is moved for a resolution that would have legal effect under an Act. 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.

**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. 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. 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. 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. Manner and form strictures

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6 See Chapter 30.
7 See Chapter 37.
9 Shaw v Commissioner of Inland Revenue [1999] 3 NZLR 154 (CA) at [13].
11 (1909) 148 NZPD 1452 Guinness.
12 See Chapter 15: Motions and amendments.
14 Shaw v Commissioner of Inland Revenue [1999] 3 NZLR 154 (CA).
15 Colonial Laws Validity Act 1865 (UK), s 5.
16 Weston Lagan Ltd v Attorney-General [2001] 1 NZLR 40 (HC) at [91].
17 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.\(^{19}\)

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 a poll of electors.\(^ {20}\) 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.\(^ {21}\) 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,\(^ {22}\) it was believed that a Parliament could not bind its successor, and that entrenchment signalled the moral force of broadly accepted democratic rules.\(^ {23}\) 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.\(^ {24}\)

The granting of the Royal assent has been said to be another example of a manner and form provision,\(^ {25}\) 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.\(^ {26}\) 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.\(^ {27}\)

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.\(^ {28}\)

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\(^{20}\) Electoral Act 1993, s 268.


\(^{22}\) Electoral Act 1956, s 189 (now repealed).

\(^{23}\) (26 October 1956) 310 NZPD 2839–2852.


\(^{25}\) Westco Lagan Ltd v Attorney-General [2001] 1 NZLR 40 (HC) at [91].

\(^{26}\) Constitution Act 1986, s 16.


\(^{28}\) Te Runanga o Wharekauri Rekohu Inc v Attorney-General [1993] 2 NZLR 301 (GA) 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.  

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. 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. 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.

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.

**Legislative fairness**

The New Zealand Bill of Rights Act 1990 applies to acts performed by the legislative branch of government. It has been accepted that the House is therefore under a legal obligation to observe the principles of natural justice in transacting its business. 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. As a general proposition, the rules of procedural fairness do not apply to bodies exercising purely legislative functions. 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.

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31 Boscawen v Attorney-General [2009] NZGA 12 at [32].
34 New Zealand Bill of Rights Act 1990, s 3(a).
36 Wells v Newfoundland [1999] 3 SCR 199 at [59].
38 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. They are adopted solely by the House, and are not intended to diminish or restrict the rights, privileges, immunities and powers otherwise enjoyed by the House. 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.

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. 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.

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. The extensive Standing Orders on financial procedure facilitate the financial business that statute requires the House to address; 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.

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

39 SO 1.
40 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.
41 SO 1.
43 SOs 4 and 6.
44 SO 2.
45 Constitution Act 1986, s 12.
47 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.48 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.49 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).50

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

48 SOs 78(3) and 80(2).
50 SO 7.
51 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, 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. 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.

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. 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. 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. 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.

**Amendment of Standing Orders**

The Standing Orders can be amended or revoked only on notice being given of a motion to effect such change. 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. 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.

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52 (1854–1855) NZPD 6–7.
59 SO 6.
60 This is what occurred when the Standing Orders were adopted in 1995.
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. After the adoption of any amendments, the Standing Orders are reprinted and renumbered to incorporate the latest changes.

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. 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.

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. 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.

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.

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62 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).
63 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.
65 For details of these requirements, see p 211.
66 SO 3(1).
The Standing Orders themselves require leave to be granted before certain things can be done. A member needs leave to make a personal explanation and leave must be granted before a motion that has been proposed by the Chair can be withdrawn. A member who wishes to table a document in the House must first obtain leave for this purpose. 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.

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. 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. This form of prayer is still used, although it may not be strictly binding on the Speaker.

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.

69 SO 358.
70 SO 103(2).
71 SO 377.
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.76 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,77 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.78 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.79 Speakers do not encourage the raising of procedural disputes on matters the House has already passed over.80

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.81 The Speaker can recognise a member’s intervention as a point of order

76 SO 2.
77 See, for example: (1990) 507 NZPD 1896–1897 Burke.
78 (1985) 462 NZPD 4652–4653 Wall.
79 (17 September 2003) 611 NZPD 8817 Hunt.
80 (1894) 85 NZPD 470 O’Rorke.
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. 82

Until the Speaker disposes of a point of order, it takes precedence over the business then before the House. 83 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. 84 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. 85 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. 86 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. 87

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. 88 Nor may a member comment in any way at all on a point of order that has been decided. 89

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. 90

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. 91

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.

82 (16 October 2012) 684 NZPD 5795 Carter.
83 SO 88(1).
84 SO 88(2).
85 SO 88(3).
86 (30 August 2012) 683 NZPD 4987 Smith.
87 SO 88(3).
88 (1985) 465 NZPD 6737 Wall.
89 (1905) 133 NZPD 222 Guinness.