PARTIES

Political parties have long played a crucial role in New Zealand politics. A “party system” developed in the 19th century in the parliamentary sphere and in the country at large as political parties organised themselves and began to compete for office. Since the late 19th century the composition of Governments has been determined by the various parties’ representation in Parliament. The party system helps to formulate and to translate voters’ preferences into a parliamentary line-up of members. It helps to give some coherence to political action undertaken by parliamentary means, on the basis of allegiances declared at the time of a general election.1

Although parties have occupied this central place in New Zealand politics for over a century, they have received very little legal or official recognition until comparatively recently, generally having been regarded as private, voluntary bodies. This state of affairs has now changed significantly. Since 1996, the electoral system has been based explicitly on the existence and effective organisation of parties. Thus there are provisions in the law for the registration of parties; votes are cast for parties, not just for individual candidates; seats are allocated to parties on the basis of those votes; election broadcasting time and resources are provided to parties; and parties must disclose the funds donated to them.

As a result of this fundamental change from an electoral system that essentially ignored parties to one that recognises parties as primary political actors, the House has radically changed its rules. In early 1996 (before the first general election under the new mixed member proportional electoral system), the House introduced Standing Orders recognising political parties, and explicitly determining many procedural rights on the basis of party representation in the House.2

Recognition

Every registered political party3 in whose name a member (constituency or list) was elected at the preceding general election or a subsequent by-election is entitled to be recognised as a party for parliamentary purposes.4 Recognition is claimed by informing the Speaker of the name by which the party wishes to be known for

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3 The political party must be registered under Part 4 of the Electoral Act 1993.
4 SO 34(1).
particular purposes, the identity of its parliamentary leader and other officeholders, and its parliamentary membership. In the period between a general election and the election of a Speaker, these details are advised to the Clerk. The recognition of parties is a mechanism for reflecting the results of elections in the proportional basis of House and committee procedures, and in the allocation of funding and services; therefore it is important that parties be able to attest their continuing representative capacity under the Electoral Act 1993. Registration of parties under the Electoral Act and recognition of parties under the Standing Orders are distinct matters. Registration allows political parties to contest the party vote at an election and to receive allocations to broadcast election advertising. Recognition acknowledges parliamentary membership of parties elected at the previous election.

The name by which a party is known for parliamentary purposes need not be the same name under which it is registered with the Electoral Commission. The name by which it wishes to be known is the one used in all parliamentary publications, such as the journals and Hansard. Members who do not seek recognition as members of a party for parliamentary purposes are treated as independent members, regardless of what they may call themselves outside the House. If a party fails to maintain its registration under the Electoral Act after an election in which it wins seats in Parliament, it may continue to be recognised by the Speaker for parliamentary purposes on a temporary basis. This is so it can apply to be registered again. A party that failed in its attempt to re-register would be recognised as a “new party”, and would lose its recognition if its membership fell below six members of Parliament.

From this recognition as a party for parliamentary purposes flow a number of legal, procedural and funding consequences.

**Procedural consequences**

The procedural consequences of recognition of a party for parliamentary purposes are myriad. In the Standing Orders “party” means the parliamentary membership of a political party that is recognised as a party for parliamentary purposes under the Standing Orders.

Procedurally, recognition as a party entails:

- the leader of the largest Opposition party being recognised as Leader of the Opposition
- the party, as far as practicable, occupying a dedicated block of seats in the Chamber
- representation on the Business Committee
- where possible, the opportunity to participate in each debate
- allocation of speaking time on items of business in proportion to the party’s membership in the House

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5 SO 35(1).
6 SO 35(3).
8 (5 June 2013) 690 NZPD 10714 Carter.
9 (25 June 2013) 691 NZPD 11175 Carter.
11 SO 34(3).
13 SO 34(3)–(4).
14 SO 3(1).
15 SO 36.
16 SO 86(2).
17 SO 77(2).
18 SO 106(a).
19 SO 106(b).
○ priority for spokespersons in debate
○ the right to vote by party
○ the right to exercise a proxy vote for party members
○ membership of select committees in proportion to the party's membership of the House
○ right to make temporary replacements of its members on select committees
○ the right of the leader (provided that the party has a minimum of six members) to comment on ministerial statements
○ asking oral questions in proportion to the party’s membership of the House
○ the leader, if the party has six or more members, having a longer speech on the Budget debate, the Address in Reply debate and the Prime Minister’s statement debate
○ the right to grant permission to be absent from the House.

Funding and other legal consequences
The recognition of parties by the Speaker under the Standing Orders has the direct legal effect of qualifying them for the allocation of funding for parliamentary purposes. This funding is administered by the Parliamentary Service, in accordance with directions issued by the Speaker, to help the parties discharge their parliamentary duties. It includes allocations of amounts in recognition of party leadership and caucus responsibilities, and for other party activities as long as they are for parliamentary purposes.

Aside from the allocation of funding for parliamentary purposes, few express legal consequences flow from party recognition. Regarding superannuation policy, attempts have been made from time to time to create a mechanism for achieving political consensus in legislation among the parties represented in Parliament. Provision was first made for party adherence to a political accord on superannuation in 1993. It is now provided in legislation that before the Minister of Finance recommends the appointment of anyone to the Board of Guardians of New Zealand Superannuation there must be consultation with representatives of the other political parties in Parliament. The leader of a party may notify the party’s agreement to the parts of the legislation dealing with entitlements to New Zealand superannuation and the management of the New Zealand Superannuation Fund, and may also withdraw that agreement. Parties are listed in the schedule to the legislation as agreeing to the provisions on the basis of such notification. The schedule may have parties added to it or omitted from it by Order in Council reflecting their agreement to those parts or withdrawing it. Parties are automatically omitted from the schedule if they are no longer represented in the House.

20 SO 106(c).
21 SOs 141 and 143.
22 SOs 154(4) and 155.
23 SO 185(1).
24 SO 187(3).
25 SO 357.
26 SO 381(2).
27 SOs, App A.
28 SO 38.
29 Parliamentary Service Act 2000, s 3 “recognised party”, and s 3B; Members of Parliament (Remuneration and Services) Act 2013, s 5 “party”, and s 23.
30 Members of Parliament (Remuneration and Services) Act 2013, s 23.
31 Directions by the Speaker of the House of Representatives 2014. For details about party funding for parliamentary purposes, see pp 73–75.
33 New Zealand Superannuation and Retirement Income Act 2001, s 56(6).
35 New Zealand Superannuation and Retirement Income Act 2001, s 72.
Persons are nominated by the House to represent parties in Government and parties in Opposition on the Representation Commission (for the drawing of constituency boundaries), on the Parliamentary Service Commission, on the New Zealand Lottery Grants Board, on the Waitangi National Trust Board, and on the Intelligence and Security Committee. At least nominally, these are all cross-party appointments.

**Leader of the Opposition**

The leader of the largest party not in Government and not in coalition with a Government party is entitled to be recognised as the Leader of the Opposition.\(^{36}\)

The first true Leader of the Opposition is considered to have been John Ballance in 1889.\(^{37}\) However, in the more fluid political situation before strong party organisations emerged in Parliament, other members were sometimes dubbed as “leader of the opposition” (often facetiously by their opponents).\(^ {38}\)

The office was first recognised by statute in 1933, when a special allowance was conferred on the holder. Although currently recognised in a number of statutes, the office is not created by statute (nor is that of Prime Minister); it is a product of the conventions of the parliamentary system. The Leader of the Opposition is paid a special salary by virtue of the office.

The party that the Leader of the Opposition leads is known as the official Opposition, and its members are seated immediately to the left of the Speaker’s Chair. As it is a parliamentary office depending upon recognition in the House, it is for the Speaker to determine any dispute as to who is the Leader of the Opposition.

Leader of the Opposition is a most important constitutional office,\(^ {39}\) marked at the State Opening of Parliament, where the Leader of the Opposition and the Prime Minister flank the Governor-General as the Governor-General reads the Speech from the Throne. In no other instance is the peculiar strength of the parliamentary system of government so vividly demonstrated as in its recognition of the office of Leader of the Opposition. By this means the Opposition is enlisted as an official Government-in-waiting.

The Leader of the Opposition or the Leader’s nominee is an ex officio member of the Parliamentary Service Commission\(^ {40}\) and of the New Zealand Lottery Grants Board.\(^ {41}\)

The Leader of the Opposition is accorded a special status regarding intelligence and security matters. The Leader is a member of the Intelligence and Security Committee.\(^ {42}\) The Director of the New Zealand Security Intelligence Service is obliged to consult the Leader of the Opposition regularly to keep him or her informed about matters relating to security.\(^ {43}\) The Leader of the Opposition must also be advised by the Prime Minister and the Attorney-General whenever an entity has been or is to be designated a terrorist entity, and must, if the Leader requests it, be briefed on the factual basis for the designation.\(^ {44}\)

The Leader of the Opposition is entitled to precedence on the Opposition side of the House in major parliamentary debates.

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\(^{36}\) SO 36.


\(^{38}\) For example: Julius Vogel in 1867; see Raewyn Dalziel *Julius Vogel—Business Politician* (Auckland University Press, Auckland, 1986) at 78.


\(^{40}\) Parliamentary Service Act 2000, s 18(1)(c).

\(^{41}\) Gambling Act 2003, s 272(2)(c).

\(^{42}\) Intelligence and Security Committee Act 1996, s 7(1)(b).

\(^{43}\) New Zealand Security Intelligence Service Act 1969, s 4AA(3).

\(^{44}\) Terrorism Suppression Act 2002, s 20(5).
Party leaders

The appointment of a leader of a party is entirely a matter for the party itself. The House has no role in it. The leader of each party must be specifically identified to the Speaker, and will consequently be recognised as such by the Speaker.45

Party leaders in the House include, by definition, the Prime Minister and the Leader of the Opposition. Other Ministers, including the Deputy Prime Minister, may also be party leaders if their party is in a Government coalition.

Party leaders are by convention allocated a front-bench seat, and are accorded some precedence by the Speaker in calling members to speak. Those party leaders whose parties have six or more members may comment on a ministerial statement,46 and they have longer speaking times on the Budget, Address in Reply and Prime Minister’s statement debates. Before regulations relating to electoral advertisements displayed in public places can be made, the contents of the regulations must be agreed to by at least half of the parliamentary leaders of the parties represented in the House, and they must represent at least 75 per cent of all members of Parliament.47

A court has refused to make an order making party leaders representatives of their parliamentary membership for the purposes of legal proceedings as to how members were to vote.48 However, as the proceedings took place before the introduction of the MMP electoral system and the consequent procedural changes (especially party voting) recognising parties in the House, this judgment may not be a reliable indicator of the current position.

A special salary is payable to a party leader who receives no other special salary (for example, as a Minister or as Leader of the Opposition). This salary increases incrementally according to the number of members in the party. A salary is also provided for the deputy leader of each party whose members in the House number at least 25.49

Whips

The whips are an essential and peculiarly parliamentary manifestation of the party system. The term “whip” (which is derived from hunting) indicates vividly the principal task of the holder of this office: to ensure that that member’s party’s supporters are present in Parliament to support a question when it is put to the vote. Not all parties use the term “whip”. The Green Party instead uses the term “musterer”.

The whips, especially a Government party’s whips who need to maintain the Government’s voting majority, have to keep track of the movements of their members. If a member wishes to be absent from the House, he or she will be asked to justify the absence to the whips. If a member cannot or does not bother to do this, and is absent nevertheless, he or she can expect trouble with the party for a breach of discipline. The Standing Orders recognise the authority of whips to grant members permission to be absent from the House.50 When such permission is granted, it is sufficient for members to avoid liability for deductions from their salaries on account of their absence.51

The whips carry out most of the tasks that enable parties to function as teams in the House, such as arranging the speaking order of their members and helping to smooth over personal and political differences within caucus. They possess certain powers under the Standing Orders, such as holding proxy votes and making temporary replacements on select committees.52

45 SO 35(1)(b).
46 SO 357.
47 Electoral Act 1993, s 267B(1)(c), (d) and (2)(b), (c).
48 Thomas v Bolger [2002] NZAR 945 (HC).
49 Parliamentary Salaries and Allowances Determination (No 2) 2015.
50 SO 38(2).
51 SO 39; Members of Parliament (Remuneration and Services) Act 2013, s 13(5). See pp 54–56.
52 SOs 154(4) and 187(3).
The whips are the principal communicators between the parties represented in the House. The smooth running of the House depends to a large extent on the relationship that is built up between whips of different parties, and on the agreements and understandings they reach. Whips generally attend meetings of the Business Committee on behalf of their parties.

Whips first received additional remuneration by virtue of their office in 1961. A salary (increasing incrementally according to the number of members) is provided for one whip for a party with six or more members in the House, two whips for a party with 25 or more members, and three whips for a party with 45 or more members. Parties can, of course, appoint as many of their members as whips as they wish, but no special remuneration is available beyond the proportionately specified number of positions. The arrangements for the appointment of whips are internal matters for the respective parties to determine. The Speaker must be advised of the appointment of whips.

**Caucus**

Meetings of members to discuss and co-ordinate parliamentary strategy were held even before a distinct party system emerged. In 1872 Sir David Monro recorded attending a meeting, which he termed a “species of caucus”, at a private house.

Each party represented in the House holds a regular meeting of its members of Parliament called a caucus. At these meetings parties discuss parliamentary and other political business. Caucus has been described as playing a necessary but subordinate role in the decision-making process, often contributing particularly to policy formation. A particular role of caucus is to agree on the tactics to be followed by party members in the House and at select committees. Especially at caucus meetings of parties in Government, proposals for appointments to public office may be submitted to caucus for endorsement or consultation.

Depending upon each party’s arrangements, caucus meetings may be attended by people who are not members, such as the party president. Caucus meetings are held each Tuesday morning during sitting weeks and at less frequent intervals during adjournments of the House. Joint caucus meetings of parties in coalition have been held at least since 1917. However, the term “caucus” has taken on a wider meaning than a party meeting; it is also used to refer collectively to all the members of Parliament belonging to a particular party, without any connotation of a meeting being involved.

A caucus will often appoint committees to help formulate policy in particular subject areas. With the agreement of their Minister, departmental officials may attend meetings of such committees, especially those of a Government party’s caucus, to provide factual information. Officials are not permitted to make personal comment on the merits of Government or party policy to a caucus committee. While departmental officials can assist caucus committees on matters within

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53 Parliamentary Salaries and Allowances Determination (No 2) 2015; Directions by the Speaker of the House of Representatives 2014, cl 33.
54 SO 35(1)(b).
55 Rex E Wright-St Clair *Thoroughly a Man of the World: A Biography of Sir David Monro, MD* (Whitcombe & Tombs, Christchurch, 1971) at 271.
56 John E Martin *The House—New Zealand’s House of Representatives 1854–2004* (Dunmore Press, Palmerston North, 2004) at 236–237; see Keith Sinclair *Walter Nash* (Auckland University Press, Auckland, 1976) at 95, 164–167 (participants in Government meetings not submitting for wider party endorsement until the following year); and see Keith Sinclair *Walter Nash* (Auckland University Press, Auckland, 1976) at 95, 164–167 for major policy changes adopted by caucus and not submitted for wider party endorsement until the following year, and the contribution of caucus to the development of the social security reforms of 1938.
57 See, for example: Keith Sinclair *Walter Nash* (Auckland University Press, Auckland, 1976) at 103 ( Caucus agreeing on what members could refer to in a debate).
58 Michael Bassett Sir Joseph Ward—A Political Biography (Auckland University Press, Auckland, 1993) at 243 (combined caucus meeting of Reform and Liberal parties); see, for a more recent joint caucus of national and New Zealand First parties, “Caucus meetings aim to cement coalition” *The Evening Post* (18 November 1997).
59 Cabinet Office *Cabinet Manual 2008* at [3.67].
their (official) areas of expertise, they do not themselves provide secretarial or administrative services to the caucus committees. These services are provided by employees of the Parliamentary Service who are engaged to assist the party groups. A department that advertised for submissions for a caucus committee and offered its own premises for the receipt of such submissions has been criticised by a parliamentary select committee for acting improperly in doing so.\textsuperscript{60}

Caucuses and caucus committees are not governmental or parliamentary bodies; they are party bodies. Therefore documents prepared for caucus or caucus committees are not official information to which there is any public right of access, even if such papers are held by a Minister of the Crown.\textsuperscript{63} However, such caucus information changes its status if it is attached to or incorporated in advice to Cabinet. It then becomes official information.\textsuperscript{62}

Questions relating to caucus activities are not permitted in the House. The proceedings at party caucuses are not proceedings in Parliament and thus are not subject to the absolute legal protections that apply to the House’s business.\textsuperscript{63}

**Parliamentary party membership**

The House is concerned with whether or not a party is registered under the Electoral Act 1993 to assure itself that a party retains its representative capacity. But it is not concerned with who is or who is not a member of a political party. That matter is relevant to the Electoral Commission. To be entered on the Register of Political Parties and thus allowed to compete for list seats, a party must establish to the commission’s satisfaction that it has at least 500 current financial members who are eligible to enrol as electors.\textsuperscript{64} If its membership falls below 500 its registration is cancelled.\textsuperscript{65}

Party membership is also a matter about which there may be disputes between the party members themselves—for example, over whether the party’s membership rules (as an incorporated or unincorporated society) have been complied with.\textsuperscript{66}

The House is concerned with the parliamentary membership of the parties, which are recognised for parliamentary purposes. These details must be advised to the Speaker.\textsuperscript{67} The Speaker must also be informed of any change in a party’s parliamentary membership.\textsuperscript{68} A party’s membership may change during the term of a Parliament as a result of a member ceasing to be a member of Parliament (by death, resignation or disqualification), of other members being elected to Parliament in its interest, of a member resigning from the parliamentary party but continuing to sit as a member of Parliament, or of a member being expelled from the parliamentary party. The last two instances raise consequential issues as to the member’s continuing status in the House. But in all cases parliamentary membership is determined entirely under the House’s own rules, its Standing Orders.\textsuperscript{69}

\begin{itemize}
  \item \textsuperscript{61} Office of the Ombudsmen Sixth compendium of case notes of the Ombudsman (January 1985) (Case No 117) and Ninth compendium of case notes of the Ombudsman (July 1989) (Case No 1374).
  \item \textsuperscript{64} Electoral Act 1993, s 63(2)(c)(vi).
  \item \textsuperscript{65} Electoral Act 1993, s 70(2).
  \item \textsuperscript{66} Peters v Collinge [1993] 2 NZLR 554 (HC).
  \item \textsuperscript{67} SO 35(1)(c).
  \item \textsuperscript{68} SO 35(1)(c).
  \item \textsuperscript{69} (3 August 2004) 619 NZPD 14513 Hunt.
\end{itemize}
**Resignation from the parliamentary party**

Any member can leave the parliamentary party in whose interest he or she was originally elected. This would normally be effected by a letter resigning from the parliamentary party, addressed by the member to the leader or whip of the party, and a letter to the Speaker advising the Speaker of this. A member in these circumstances would then be recognised as an independent for parliamentary purposes.70 Alternatively, the member could join another parliamentary party already established in the House. In these circumstances the member advises the Speaker that he or she has joined that party with the agreement of its leader.71 The member is then recognised as a member of that party, and party numbers in the House are adjusted accordingly.

A member who has ceased to be a member of his or her original parliamentary party can also seek recognition by the Speaker as a member of another party not hitherto established in the House, provided that the new party is registered as a party by the Electoral Commission and that it has a minimum of six members of Parliament.72 Such a party loses its recognition for parliamentary purposes if its number of members in the House subsequently falls below six.73

Finally, a member who stood as a constituency candidate in the preceding general election for a component party (that is, a party that is itself a member of a registered party or has combined its membership with another party and registered the combined entity as a party) may leave the registered party and be recognised for parliamentary purposes as a member of the component party.74

When the Speaker receives advice that a member has left a party and is therefore an independent member or a member of another parliamentary party, the Speaker advises the House forthwith.75 The Speaker acts only on advice received from a party leader that a party’s membership has changed or on advice from a member that the member has left a party. It is not open to other members to give advice on behalf of another party or another member of such changes.76

From 21 December 2001 to 17 September 2005 (polling day for the 2005 general election) any member who resigned as a parliamentary member of the political party for which the member was elected automatically vacated his or her parliamentary seat.77 This requirement was imposed by legislation (colloquially known as “party-hopping” or, in New Zealand parlance, “waka-jumping” legislation) that expired at the time of the general election in 2005.78 No member resigned from parliamentary membership of their party during this period so as to trigger the legislation.

**Expulsion from the parliamentary party**

A party caucus may expel a member from membership.79 How it does so is a matter for it rather than the House.80 The leader of the party advises the Speaker of the change to its party membership, and the expelled member is thenceforth regarded as an independent member.81

From 21 December 2001 to 17 September 2005 a more formal legislative expulsion procedure was available to parliamentary parties under the waka-
jumping legislation, which, if utilised, resulted in the expelled member losing his or her seat. The expulsion procedure was used on one occasion to vacate a member’s seat. This power expired at the time of the 2005 general election.

**Suspension from the parliamentary party**

The suspension of a member from a party caucus effects no change in the party’s parliamentary membership. For parliamentary purposes the suspended member remains a member of the party, and the party’s voting strength is not affected. There is no obligation on a party to notify the Speaker of a suspension. Whether it does so or not is entirely a matter for it.

**GOVERNMENT**

If he or she is not already Prime Minister, the leader of the political party that obtains a majority of seats in the House of Representatives is invited by the Governor-General to become Prime Minister and to form a Government. This is the essential feature of responsible government and is a cardinal constitutional convention. The action of the Governor-General in selecting and appointing a Prime Minister and a Government does not require any formal consultation with the House itself, nor does the Governor-General’s choice of Prime Minister need to be confirmed by the House. In fact, the basis on which the Governor-General’s choice is made—that the person concerned commands majority support in the House—should render formal confirmation or approbation by the House unnecessary.

If no one party has an overall majority of members of the House, the Governor-General still needs to find a member of Parliament to hold office as Prime Minister. For this purpose a coalition of parties sharing portfolios may be formed on the basis of a coalition agreement entered into between them. Alternatively, parties can enter into agreements to support the Government on matters of confidence and supply, but without forming a coalition as such. The signatories of a coalition agreement or a support agreement may include party functionaries, such as the party president, as well as parliamentarians. Such agreements generally set out the political arrangements for forming and operating a coalition or support arrangements. They do not confer any legal rights or obligations; they operate purely at a political level. They have been described as a political manifesto as to how the partners in Government will act. As political documents, accountability for them lies with Parliament. They may be the subject of questions, especially to the Prime Minister, insofar as they have implications for Government business, and have been the subject of a ministerial statement when a dispute arose between the partners. Although such agreements between political parties are political, rather than legal, documents, all or part of the contents of the agreements may be approved by Cabinet and be promulgated by way of Cabinet Office circular. The agreements may also be incorporated into Government policy at a ministerial or departmental level. In these circumstances the agreement’s provisions take on the status of official governmental procedures and legal significance may attach to them. The fact that parties have formed a coalition must be specifically advised to the Speaker.

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82 Electoral Act 1993, s 55A(2), (3)(b).
83 *Awatere Huata v Prebble* [2005] 1 NZLR 289 (SC); (19 November 2004) 150 New Zealand Gazette 3749.
84 Electoral (Integrity) Amendment Act 2001, s 3.
86 *South Taranaki Energy Users Association Inc v South Taranaki District Council* HC New Plymouth CP5/97, 26 August 1997 at 70.
89 Cabinet Office *Cabinet Manual* 2008 at [3.71] and [5.16].
90 See, for example: *Westhaven Shellfish Ltd v Chief Executive of Ministry of Fisheries* [2002] 2 NZLR 158 (CA) at 28 (coalition agreement to be taken into account in approving fishing permits).
91 SO 35(2).
Under MMP, no single-party majority Government has been delivered at
election. Instead, an evolution in party arrangements has favoured a series of
minority Governments. These minority Governments consist of the major party
in Government, its formal coalition partners, and/or a series of agreements or
understandings with other parties in the House for confidence and supply. Such
arrangements can be fluid outside of confidence and supply, and parties in such an
arrangement may decide whether to support initiatives policy by policy. Some or
all parties may have Ministers in Government. Cabinet’s collective responsibility
arrangements have evolved to take account of the fact that Ministers from different
coalition parties may not agree on all matters of policy, outside of matters of
confidence. Thus “agree to disagree” provisions are available to Ministers in
coalition parties to allow them to maintain distinct party positions on issues or
policies during the decision-making process.92 Ministers outside Cabinet from
parties supporting the Government are bound by collective responsibility only
in relation to their particular portfolios, and are seen to speak as members of
Parliament when addressing matters outside their portfolios.93

**Ministers of the Crown**

The Prime Minister forms a Government by choosing members to hold office
as Ministers of the Crown, and advising the Governor-General to appoint such
persons accordingly. In a coalition or support arrangement, Ministers from two
or more parties may share the portfolios. Ministers almost invariably have one or
more departments of State assigned to them to administer, although a Minister
may be appointed without control of a specified department.

Ministers are appointed to the Executive Council, which is the body that tenders
formal advice to the Governor-General and is presided over by the Governor-
General. Many important legal powers are exercised by the Executive Council,
in particular the making of most statutory regulations. It has been described as
a conventional instrument for the formal making of subordinate legislation and a
host of other routine administrative decisions.94

Most Ministers are also members of the Cabinet, a body that is chaired by the
Prime Minister and meets apart from the Executive Council. While having few
if any legal powers itself, the Cabinet decides what advice is to be tendered to the
Governor-General in the Executive Council, and makes many other decisions of
a political or administrative nature, which are then implemented by Ministers in
their individual capacities. It is thus the Cabinet, the meeting of the politicians
charged with carrying on the Government, that makes policy decisions on behalf
of the Government as a whole. These policy decisions are given legal authority by
the Executive Council and translated into action by the Ministers themselves, as
the political heads of the various Government departments.

Some members of Parliament may be appointed as Ministers but not made
members of the Cabinet. Where members of parties formally supporting the
Government have ministerial positions, they are most frequently Ministers outside
Cabinet.95 The decision as to whether or not a Minister should be a member of the
Cabinet is made by the Prime Minister, though each party may have its own rules
as to how these decisions are made (for example, by caucus electing the members
of Cabinet).96

93 Ibid, at [5.27].
94 FAI Insurances Limited v Winneke (1982) 151 CLR 342 at 354 per Stephen J.
95 Cabinet Office Cabinet Manual 2008 at [5.26]–[5.27]. See, for example: Rt Hon John Key,
Hon Tariana Turia and Te Ururoa Flavell “2014 Relationship Accord and Confidence and Supply
Agreement with the Maori Party: ‘Te Tatau ki te Paerangi’—A doorway to our horizons”
(5 October 2014) at 3.
96 See, for example: Margaret Hayward Diary of the Kirk Years (Cape Catley Ltd, Queen Charlotte
Sound, and AH and AW Reed, Wellington, 1981) at 96–99 for a description of the election of
Cabinet in 1972.
Ministers are entitled to the honorific “Honourable” (Hon) while they are in office. They lose this title when they cease to hold office, though the Sovereign may confer the title on former Ministers for life. Prime Ministers receive the title “Right Honourable” (Rt Hon) ex officio.

By convention, Ministers are individually responsible to the House for their official actions and for the general conduct of their departments and officials. This is a political accountability. It is not limited to matters over which the Minister has legal control. This responsibility is given its most obvious parliamentary form by way of questions to Ministers. These questions can relate to any public affairs with which the Minister is officially connected. This goes far beyond matters for which the Minister has legal authority. It extends to matters over which the Minister may have no legal control but which, by virtue of accepting office, Ministers assume a political responsibility to answer for. Some statutes have in the past sought to confer a parliamentary accountability obligation on Ministers in respect of statutory functions that repose in them. These provisions have been repealed, and were inadequate as formulations of the accountability relationship between Ministers and the House. Such relationships rest on constitutional convention, not on legal rules.

Parliamentary Under-Secretaries

Since 1936 there has been provision for the appointment of Parliamentary Under-Secretaries. These are members of Parliament appointed by the Governor-General on the advice of the Prime Minister to assist particular Ministers in their departmental and parliamentary work. A Minister can delegate any of the ministerial functions, duties and powers he or she holds to his or her Parliamentary Under-Secretary.

A Parliamentary Under-Secretary may answer a question on behalf of a Minister in the Minister’s absence. Otherwise, a Parliamentary Under-Secretary cannot perform functions conferred by the Standing Orders on a Minister, such as taking charge of a Government bill.

Appointment of Ministers

No person may be appointed or hold office as a Minister of the Crown or as a member of the Executive Council unless that person is a member of Parliament. A similar provision applies to Parliamentary Under-Secretaries. Ministers and Parliamentary Under-Secretaries automatically cease to hold their offices 28 days after ceasing to be members of Parliament.

All members of Parliament cease to be members at the close of polling at the next general election after their election to the House. Members (even those re-elected) do not come into office until the day following the return of the writ, for electorate members, or the day following the forwarding by the Electoral Commission to the Clerk of the House of a return of those elected, for party list members. There is thus a period of some two or three weeks following each general election when there are no members of Parliament in office and it would consequently not be possible to appoint new Ministers. This could prevent a rapid
transfer of power to a new Government if this were desirable in the circumstances, and also inhibit the urgent reconstruction of a Government that had been returned to power.

Provision has therefore been made in law for people who were candidates at a general election to be appointed to office as Ministers of the Crown (but not as Parliamentary Under-Secretaries) even though they are not yet members of Parliament. It is also provided, however, that such appointees automatically cease to be Ministers if they have not become members of Parliament within 40 days of their appointment.\(^{108}\)

While there is no express prohibition on the reappointment to ministerial office of a person who has lost office by failing to become a member of Parliament within 40 days, it would seem that such an appointment would be contrary to the general principle of law that Ministers must be members of Parliament.\(^{109}\)

### Resignation of Ministers

All Ministers may continue in office beyond a general election until they tender their resignations to the Governor-General or until 28 days after the election, whichever occurs sooner.\(^{110}\) In the case of a Government that is defeated at a general election, all Ministers resign along with the Prime Minister. In the case of a Government that is returned to power at the election or remains in office for a prolonged period as a caretaker Government because of extended coalition negotiations, the individual Ministers who did not themselves stand for re-election or who were defeated at the election may remain in office for up to 28 days afterwards. The other Ministers may be reappointed to office before the expiration of the 28-day period, on a caretaker basis if necessary. In the normal course of events, the resignation of an entire Government takes place when the election results for the seats in Parliament have been officially declared, two weeks or so after polling day, though this period may be prolonged by coalition negotiations.

### Caretaker conventions

Where a Government is defeated at a general election, its conduct during the period after the election (while it is holding over as the Government) is subject to certain constitutional conventions or understandings. These conventions were first expressed in the period following the defeat of the Government at the 1984 election.\(^{111}\) The conventions applying to the Government following an election or a loss of confidence have now been given expanded expression in the *Cabinet Manual*.\(^{112}\)

If it is clear, following the election, who the new Government will be, the caretaker Government is expected to act on the advice of the incoming Government regarding significant matters on which decisions cannot be delayed until the formal transfer of power (for instance, the situation in 1984 where the new Government wished to devalue the currency).

If the election outcome is uncertain, or if during the term of a Parliament a Government loses the confidence of the House and continues to hold office until a new Government takes office or the House’s confidence in it is re-established, the Government holds office in a caretaker capacity.

A caretaker Government has executive authority and carries on the normal business of government. However, it is not expected to make significant policy decisions, especially any with long-term implications, by initiating new proposals or by changing existing policy. All such decisions should be deferred if possible.

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110 Constitution Act 1986, s 6(2)(b).
111 Hon JK McLay, Deputy Prime Minister and Attorney-General (media release, 17 June 1984).
112 Cabinet Office *Cabinet Manual* 2008 at [6.16]–[6.35].
If deferral is not possible, temporary or holding arrangements may be made by the caretaker Government. If a significant decision cannot be deferred or resolved temporarily, consultation with the other parties represented in Parliament must be undertaken to ascertain whether a proposed course of action has the support of a majority of the House.\textsuperscript{113}

Different considerations apply in the immediate pre-election period. In Australia a caretaker convention operates from the dissolution of Parliament until the election results are clear. In this period Governments are required to avoid implementing major policy initiatives, making important appointments or entering into major contracts or undertakings. The principle is that important decisions that would bind an incoming Government should not be made.\textsuperscript{114} It is accepted in Canada too that conventions operate to constrain the powers of the Government after Parliament has been dissolved for an election, though there can be dispute as to whether these constraints apply in a particular case.\textsuperscript{115}

The \textit{Cabinet Manual} states that in New Zealand, in the period immediately before a general election, the Government is not bound by the caretaker convention (unless the election has resulted from the Government losing the confidence of the House).\textsuperscript{116} Nevertheless, it suggests, Governments have chosen to restrict their actions to some extent for approximately three months before an election is due or from the date an election is announced if this is within three months of the election date. Examples of the forms of restraint exercised are the deferral of significant appointments and the limiting of Government advertising.\textsuperscript{117}

As the \textit{Cabinet Manual} indicates, there is clearly no established constitutional convention requiring the Government to act in a caretaker capacity in the pre-election period. However, when Parliament is dissolved before an election a Government (even one with a majority in the House) is no longer meeting Parliament and accounting to it for the exercise of executive power. There would therefore appear to be a strong case for saying that a caretaker convention ought to apply from that point onward, to constrain the making of important decisions by the Government until the outcome of the election is clear.

\textbf{Leader of the House}

The Prime Minister is the leader of the Government in every sphere and through most of Parliament’s history also played the role of a floor-leader in the House, deciding on the programming of Government business and parliamentary tactics.\textsuperscript{118} However, since 1978 another senior Minister has been appointed to the ministerial office of Leader of the House of Representatives and given particular responsibility for Government business in the House. Because of the general precedence of Government business in the House, the Leader of the House initiates many procedural matters. The Leader of the House determines the order in which Government business will be taken, and is primarily responsible for the timing of the Government’s legislative programme. The Leader attends meetings of the Business Committee to set out the Government’s intentions regarding the business to be transacted and suggests the sitting programme to be followed.

\footnotesize{\textsuperscript{113} Ibid, at [6.20].  
\textsuperscript{114} BC Wright \textit{House of Representatives Practice} (6th ed, Department of the House of Representatives, Canberra, 2012) at 60.  
\textsuperscript{115} Compare, for example: Andrew Heard "Constitutional Conventions and Election Campaigns" (1995) \textit{18(3) Canadian Parliamentary Review} 8, and John Wilson, "Constitutional Conventions and Election Campaigns: The Status of the Caretaker Convention in Canada" (1995) \textit{18(4) Canadian Parliamentary Review} 12 (dispute over whether a contract for an international airport should have been entered into during this period).  
\textsuperscript{116} Cabinet Office \textit{Cabinet Manual} 2008 at [6.9].  
\textsuperscript{117} Ibid.  
\textsuperscript{118} Though in 1931 on the formation of the National Coalition Government a separate Leader of the House was apparently appointed—see Michael Bassett \textit{Coates of Kaipara} (Auckland University Press, Auckland, 1995) at 169.}
The Leader of the House or the Leader’s nominee is an ex officio member of the Parliamentary Service Commission.\textsuperscript{119}

**Attorney-General**

The Minister of the Crown principally responsible for providing legal advice to the Government is the Attorney-General. When acting in this role as the Government’s senior law officer, the Attorney-General acts independently and is not bound by the collective responsibility of Ministers for Cabinet decisions.\textsuperscript{120} The Attorney-General is the ministerial head of the Crown Law Office. The chief executive of the Crown Law Office is the Solicitor-General.

The Attorney-General is responsible for reporting to the House on provisions in bills that appear to be inconsistent with the rights and freedoms set out in the Bill of Rights Act.\textsuperscript{121} This must be done on the introduction of a Government bill, or as soon as practicable for other types of bill.\textsuperscript{122} After a bill is passed by the House, the Attorney-General certifies to the Governor-General that the bill contains nothing that requires that the Royal assent should be withheld. (See Chapter 27.) The Attorney-General also usually chairs the Privileges Committee. Standing Orders require promoters to give the Solicitor-General notice of any private or local bill that affects the public revenues or the rights or prerogatives of the Crown or that affects a charitable trust.\textsuperscript{123}

**CONFIDENCE VOTES**

A Government subsists in office because it possesses the “confidence” of the House. This is the continuing basis of responsible government. The confidence of the House underpins any Government’s right to hold office; constitutionally, except in a caretaker capacity, it cannot do so without that confidence. It is fundamental that a Government that has lost the confidence of the House must resign or seek a general election. A Government refusing to act appropriately in such circumstances could, it has been suggested, be dismissed by the Governor-General.\textsuperscript{124} Indeed, the Governor-General may be obliged to do so to preserve constitutional government.

Strictly speaking, confidence is a negative (and somewhat circular) concept. A Government retains the confidence of the House for so long as it can avoid defeat on important parliamentary votes—those that involve a question of confidence. If a Government were defeated on such a vote, a new political settlement would need to be effected. This new settlement might take a number of forms. Another general election might be held, with the defeated Government acting in a caretaker capacity up to the holding of that election; or new coalition or support arrangements might form a Government with a majority in the House; or the defeated Government might be able to re-establish confidence in itself, having acted in a caretaker capacity in the meantime. (In any case if a new Government takes office, that new Government would itself continue in office only as long as it retained the confidence of the House.) Whatever the new political settlement, demonstration of a loss of confidence in the Government is an event that demands a reconsideration of the basis on which the Government holds office. Until a new settlement has been effected, the defeated Government could continue in office only on a caretaker basis.

\textsuperscript{119} Parliamentary Service Act 2000, s 15(1)(b).
\textsuperscript{120} Cabinet Office Cabinet Manual 2008 at [4.2]–[4.5].
\textsuperscript{121} New Zealand Bill of Rights Act 1990, s 7.
\textsuperscript{122} SO 265(2).
\textsuperscript{123} SOs, App C cl 4(2)(a), (h).
The question of the Government possessing the confidence of the House is not peculiar to a party system of government. It existed in New Zealand politics from the time of responsible government in 1856, long before there were distinct parties in Parliament. Although legally the Prime Minister and the other Ministers are (on appointment by the Governor-General) carrying on the Sovereign’s government, they are politically responsible to the House of Representatives in doing so, and are liable to dismissal, not legally by the House but at its behest, if they cannot maintain support there.

The advent of a party system introduced more stability into government, for once elected with a majority it became unlikely that the Government would lose the majority otherwise than at a general election. Even so, there were times when general elections did not produce a clear majority for a single party and uncertainty over confidence matters ensued. The means by which the retention of confidence in the Government is tested is a vote in the House itself—a confidence vote. Not since 1928 has a Government been defeated on a confidence vote and therefore been obliged to resign. The adoption of proportional representation in 1996, making it unlikely that a single party will win an outright majority of seats at a general election, has refocused attention on the need for each Government to retain the confidence of the House.

In practice, if a Government is facing inevitable defeat in a confidence vote it is unlikely to wait for the vote to occur (as the Government did in 1928) before taking action to effect a new political settlement. So even if a Government has not been formally defeated in a confidence vote, it may be forced to recognise that defeat is inevitable, to act on the basis that it has occurred, and to resign or seek new coalition partners, new political agreements with other parties, or a new mandate at an election.

Definition of a confidence vote

The confidence of a House in a Government is a matter of political judgement. It is not a matter of parliamentary procedure on which the Speaker can rule. Ultimately, it is a matter for the Governor-General in the exercise of the reserve powers of the office to judge whether a Government possesses the confidence of the House. This can involve making fine judgements on the legitimacy or effect of the actions of politicians in their management of parliamentary affairs. It has been suggested, for example, that a Governor-General would be justified in refusing a Prime Minister’s advice to dissolve Parliament and hold a general election if a motion of no confidence in the Government was under debate in Parliament, especially if the Government’s capacity to win that vote was uncertain. The purpose of refusing to dissolve Parliament in these circumstances would not be to force the Government’s resignation, but to allow Parliament to express its will.

To be regarded as inherently a question of confidence of the House in the Government, a motion must be put before the House that raises the issue of the Government’s survival in office. It is not enough that the motion raises an important issue. That might lead the Government to treat the motion as a question of confidence but does not inherently make it so.

A confidence vote must, by definition, be a party vote, with the party whips operating to ensure a turnout of members to support or oppose the Government. “Conscience” votes, where members are left to make up their own minds on an issue free of party discipline, cannot involve questions of confidence. But neither do most party votes. Governments may lose significant party votes without there...
being any necessity for them to resign or call a general election by virtue of the defeat. In 1983 the Government (a single-party majority Government) suffered a defeat on a major aspect of a bill on industrial law reform; in 1998 a Government bill was defeated on its second reading; and in 2001 the title of a Government bill was amended despite the Government voting against the amendment. A Member’s bill to adjust the public holidays marking Waitangi Day and ANZAC Day was passed in 2013 despite the main Government party voting against it. In none of these instances was the defeat indicative of the Government losing the confidence of the House in a constitutional sense. Under MMP, Governments have worked with their support parties to generate support for legislative proposals. If support appears not to be forthcoming, measures may be delayed or changes discussed and a compromise reached before progress is made and the matter put to the vote.

But although not a resigning matter in itself, an important defeat could lead the Government to test its support in the House by a suitably worded motion intended to vindicate its decision not to regard the defeat as a defeat on a vote of confidence. A Government could also resign or seek the dissolution of Parliament after being defeated in the House even though the vote was not acknowledged as a matter of confidence before it occurred. In this case it would need to persuade the Governor-General that dissolution was warranted.

Parliamentary procedure does, however, determine the circumstances in which a vote of confidence can be forced on to a Government. If the survival of the Government is to be tested at the instigation of the Opposition, the Government’s whole performance must be available for debate. There are only a few occasions in the House when the rules of debate allow so wide-ranging a debate to arise, thereby permitting a vote of confidence to be foisted on to the Government. An urgent debate, for example, where a particular matter is raised for debate, does not provide an opportunity to raise a question of confidence. While the Government cannot, except in one of those exceptional types of debates, be forced to face a vote of confidence, it can of its own accord at any time put its survival on the line by declaring any vote, no matter how narrowly based, to be a vote of confidence. This does not widen the scope of the debate but it does indicate how strongly the Government is committed to winning that particular vote, and what the political consequences of its defeat would be. Members then cast their votes on the motion knowing the possible consequence if the Government is defeated. These different types of votes of confidence are examined below.

**Votes of confidence arising independently of the will of the Government**

**Express votes of confidence**

There is no tradition in the House of Representatives, as there is in some other Parliaments, of the official Opposition putting down a motion expressing want of confidence in the Government, and the Government then finding time to debate the motion—though this has been done on rare occasions. Motions expressing want of confidence in the Government normally arise by way of amendment to other motions before the House, and, since amendments must be relevant to the motion they seek to amend, such a broad amendment may only be moved to a motion that itself permits debate to be open-ended. There are only a few debates held each year on which the scope of debate is so wide that a motion or an amendment declaring that the Government has lost the confidence of the House is

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129 (1998) 567 NZPD 8195 (Local Government Amendment Bill (No 5)).
131 (17 April 2013) 689 NZPD 9481 (Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Bill).
133 (1931) 230 NZPD 297; (1946) 273 NZPD 601.
in order. The debate on the Prime Minister’s statement (the first debate each year) now arises on an express motion of confidence in the Government moved by the Prime Minister.134 Other debates that permit a question of confidence to be raised are the Address in Reply debate (the first debate of each Parliament), the Budget debate and any Imprest Supply debate. On these debates an amendment expressly raising a question of confidence can be, and often is, moved.

A question can arise as to how explicitly the motion or amendment must be phrased to raise a question of confidence. In New South Wales (where confidence motions have statutory recognition) it has been suggested that the words “no confidence in the Government” do not have to be used in order to raise a question of confidence but that the terms of the motion must unmistakably convey the meaning that there is an absence of confidence in the Government. Thus a motion that the House “lacks confidence” in the Government would, for example, suffice. It was also accepted that a motion of no confidence in the Premier (Prime Minister) was sufficient to express no confidence in the Government but not a motion of no confidence in any other individual Minister.135

Implied votes of confidence

It has always been considered fundamental to the survival of a Government that it be able to obtain the authority of Parliament to expend money, that is, to obtain supply. (Indeed the terms “confidence” and “supply” are often linked in agreements between parties regarding support on votes in the House and in political discourse generally.)

A denial of supply at any point where a debate ranging over the whole field of government activity can arise automatically raises a question of the confidence of the House in the Government. Votes on an individual Minister’s Estimates of expenditure do not automatically raise questions of confidence, as they are narrowly based questions.136

Unlike an express vote of confidence, which emanates from the Opposition, implied votes of confidence emanate inescapably from the Government. The Government cannot avoid asking the House for supply, for to do so would be to abdicate its responsibility as a Government. So the passing of the Budget and the granting of imprest supply inevitably raise questions of confidence. Even if no amendment is moved by the Opposition expressly raising a question of confidence, any vote at the conclusion of the second and third readings of bills granting supply is a vote that tests the confidence of the House in the Government. It is also the practice to regard the provisions of a tax bill setting the annual tax rates as inherently raising questions of confidence.137 Other provisions of tax bills are not inherently confidence matters.138

In respect of these issues—supply and annual rates of taxation—a failure of a Government to secure parliamentary support at all for their grant or imposition demonstrates a loss of confidence in the Government.

Votes of confidence arising by declaration of the Government

Even if no express or implied question of confidence arises as described above, it is open to the Government to declare that it will treat a vote on any issue before the House as a matter of confidence in itself and thus resign or seek an election if it is defeated. In 1929 the acting Prime Minister chose to interpret Opposition criticism of the Government’s failure to raise public service salaries as a question

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134 See, for example: (10 February 2015) 703 NZPD 1363.
of confidence.139 The vote on the motion before the House was taken in the knowledge that it was being treated as a question of confidence. A Government may also decide after the event that a defeat it has suffered involved a question of confidence and act accordingly. So, in 1891, a Government defeat on the vote on the election of the Speaker was treated by the Government as an indication that it did not have a majority in the House and it resigned.140 The Government may itself take the initiative in proposing a question of confidence. In 1942 and in 1998, following reconstructions of the Government, the Government initiated and moved motions seeking positive expressions of confidence in itself. The motions were carried and in each case the Government continued in office.141

In each case it is a matter for the decision of the Prime Minister on behalf of the whole Government, rather than for an individual Minister to decide, if a matter is to be treated as a vote of confidence.142

There is no procedural reason for a Government to declare an issue to be a question of confidence. Nor is there any political reason for it to do so as long as its parliamentary majority is secure. A Government might declare a matter to be a question of confidence if it is unsure of all its members supporting it on the issue before the House and it wishes to ensure their support by introducing another factor—the survival in office of the Government—into the equation. Members who vote against the Government where a question of confidence is involved know that they risk bringing down the Government. Thus, in 1897 a motion critical of the Premier was treated by the Government as a motion of no confidence. Several members who might otherwise have voted for the motion felt obliged to support the Government in these circumstances and the motion was defeated by six votes.143 On the other hand, a Government may not wish to hazard unnecessarily its continuation in office by declaring a matter to be a question of confidence and thus risking its position. These are matters for political judgement. A Prime Minister can always be challenged as to whether a particular vote is to be treated as a question of confidence144 or as to the general circumstances in which the Government will regard votes as confidence votes.145

**CONSCIENCE ISSUES**

Conscience issues are those on which the House takes decisions free of the dictates of party loyalties and allegiances. Members are formally free of such loyalties and allegiances at all times and may vote in any way they please on any issue, but they tend to act in accordance with caucus decisions in recognition of the covenant with the electorate that returned them to the House as members of a political party.

In a sense, until the rise of parties, all votes in the House were conscience, or free, votes. But members did form parliamentary groups to give each other mutual support, and the continued support of a majority of the House on all major issues was essential to the continuation in office of the Government. Members therefore voted together on certain issues regardless of their personal predilections. It is undoubtedly true, however, that a party system subsumes personal choices in casting a vote in the House far more than the looser alliances of the 19th century did. Non-party voting survives for issues like liquor licensing and gambling, which

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139 Michael Bassett *Coates of Kaipara* (Auckland University Press, Auckland, 1995) at 157–158.
142 See “Williamson backs down over shipping bill view” *The Dominion* (29 June 1994).
144 See, for example: (1998) 574 NZPD 13704 (Accident Insurance Bill); (2001) 590 NZPD 8062 (Electoral (Integrity) Amendment Bill).
were regarded as too difficult ever to resolve into party matters, and for other issues (abortion and homosexual law reform, for example) that became public issues after the party system was established and were looked upon as matters for the individual’s own conscience to determine and not matters on which members should be bound by a collective decision of party colleagues.

The decision whether to treat a vote as a conscience issue is essentially for each party to decide in respect of its own members, and depends upon the nature of the issue involved. The decision on what is a conscience issue may itself change over time as society’s values change.

The consequence in parliamentary terms of a matter being treated as a conscience issue is that a personal vote, rather than a party vote, may be held on it. For this purpose, the Speaker must be satisfied that the subject of the vote is to be treated as a conscience issue. Usually, the fact that a matter is a conscience issue is known well in advance because the subject is one of those traditionally regarded as such over many Parliaments. But a conscience issue can arise out of the flow of debate (public and parliamentary) on a subject not normally understood to be a conscience issue. Applications for personal votes have been declined where there was no indication from the debate that the matter was being treated as a conscience issue. (See Chapter 17.) As an alternative to a personal vote on a conscience issue, parties may divide their vote totals to reflect individual members’ votes (a “split-party” vote). In practice, whether a matter is to be treated as a conscience issue will have been discussed in advance at the Business Committee so that members are not taken by surprise by the holding of a personal vote.

Sometimes the initiation of conscience matters is left to a Member’s bill rather than a Government bill. But the Government often brings forward its own legislation on a subject that is a conscience issue and then leaves a decision on its fate to the free votes of members. This was the case with a bill on contraception, sterilisation and abortion, drafted to implement the recommendations of the royal commission into the subject. The House has also treated certain parts or clauses of bills, or amendments to them, as conscience issues, and thus subject to a personal vote, and other parts or clauses are not treated as conscience issues and thus subject to a party vote.

The Government invariably makes the services of the Parliamentary Counsel Office available to members wishing to propose amendments to a bill that is subject to a conscience vote, for there is every likelihood that some members’ amendments to such a measure will be carried into law. The alternation of speakers in a debate may also follow members speaking for and against the measure rather than a strict party rotation. In any event, the Speaker has to exercise more personal discretion in calling members to speak to a question when the whips are not operating.

Select committees may also take a lead from the House in their handling of a bill that is being treated as a conscience issue in the House. Thus, a select committee has treated a bill as a conscience matter for the members of the committee, following

References:
146 SO 141.
147 SO 142.
149 Ibid (appointment of Deputy Speaker); (1997) 560 NZPD 2087–2088 (Compulsory Retirement Savings Scheme Referendum Bill).
150 SO 143(1)(b).
151 (1977) 412 NZPD 2358 (Contraception, Sterilisation, and Abortion Bill).
154 (1976) 405 NZPD 2203 Jack. See also: (13 March 2013) 688 NZPD 8535 Roy (Deputy Speaker) (allocation of calls in the second reading debate on the Marriage (Definition of Marriage) Amendment Bill).
an announcement in the House that the bill was a conscience matter. In these circumstances, seeing that free votes are to be held on the details of the bill when it is returned to the House, the select committee is expected to confine itself to recommending drafting amendments rather than substantive amendments and, where appropriate, presenting the House with an intelligible range of alternatives for it to choose from, rather than attempting to impose its own views. The fact that conscience issues can lead to results that are difficult to predict has led to criticism regarding the quality of the law that is thereby produced. However, criticism of poor-quality legislation is not confined to legislation passed as a conscience issue.

Conscience matters can be fractious, stimulating, moving and confusing by turns. But they remain a necessary safety valve to handle issues that cannot appropriately be treated as party matters.