SPEAKERS’ RULINGS

As at 2017
INTRODUCTION

The first collection of Speakers’ rulings in New Zealand was made in 1888; primarily for the private use of the Speaker, other presiding officers, and the Clerks who were on duty at the Table and were required to advise presiding officers on the rules and practices of the House. *Speakers’ Rulings* has been publically available for many years now, but it retains its principal purpose: to provide immediately available access to previous rulings of presiding officers and other important precedents when a matter arises in the course of a sitting. *Speakers’ Rulings* provides an extract or précis of rulings deemed useful in a readily usable form. It is not itself an authoritative source. That source resides in the pages of *Hansard* or the select committee report from which the ruling is extracted.

This edition of *Speakers’ Rulings* includes rulings given up to the dissolution of the Fifty-first Parliament, and incorporates those rulings previously included in the *Supplement to Speakers’ Rulings* published in July 2016. This edition takes account of the changes to the Standing Orders that came into effect on 23 August 2017. It also draws on a number of statements of principle made in the report of the Standing Orders Committee on its *Review of Standing Orders* (2017, I.18A).

David Wilson
Clerk of the House of Representatives

October 2017
EDITIONS OF SPEAKERS’ RULINGS

To 1888, 1899 and 1905 by C C N Barron, Chief Hansard Reporter;

To 1911 by H Otterson CMG, Clerk of the House;

To 1936 by H N Dollimore, Second Clerk-Assistant, and W J Organ, Annotator of Statutes to the Legislative Department;

To 1949, 1953, 1963 and 1969 by H N Dollimore CBE, Clerk of the House;

To 1980 by C P Littlejohn CBE, Clerk of the House;


To 2008 (Supplement 2010), 2011 (Supplement 2013) and 2015 by Mary Harris, QSO, Clerk of the House;

To 2017 (Supplement 2016) by David Wilson, Clerk of the House.
SPEAKERS' RULINGS

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CHAPTER 1
GENERAL PROVISIONS AND OFFICE-HOLDERS

INTRODUCTION (SOs 1–7)

Leave

1 Where there is no question before the House and a member is speaking entirely with the indulgence of the House one member’s voice will stop the discussion.


2 Leave is something that is given freely by individual members. It is not something that the Speaker can demand, or about which the Speaker can say it is too late. It is a continuing permission given by the House.


3 A matter of leave being sought in the normal way by a point of order must be settled without a dissentient voice. But a motion which has the word “leave” in it can be carried by the majority.


4 When leave is sought any member can object, and a member is never recorded in Hansard as objecting. That is a decision for the Speaker to make.


5 There are limits on the seeking of leave. Members cannot seek leave to require another member to do something. If this were possible, members would have to deny leave to prevent themselves being put under an obligation. Leave is a way by which the House does something of a prescribed nature, without going through the Standing Orders formalities. It is not a way of imposing obligations.


6 Apart from a whip in respect of the whip’s own party, no member may seek leave on behalf of another member who is present in the Chamber. The latter is perfectly capable of seeking leave for himself or herself. A member may seek leave for a member who is not then present, but only with that member’s authority.

1 If the whips work out agreements, it is incumbent on them to settle disputes about them, and not to have the time of the House wasted by agreements being litigated on the floor of the House.


Standing Orders

Amendment

2 As a body that considers changes to the rules of the House, the Standing Orders Committee includes representatives from each recognised party, and generally operates on a consensual basis. By convention, we do not divide on Standing Orders matters: we ascertain whether the overall package of amendments to be recommended has the support of members who represent an overwhelming majority of the House.


3 The consensual principle on which the Standing Orders Committee operates is not the same as the principle of unanimity or near-unanimity on which the Business Committee operates. The Business Committee’s principle is not a convention, but a rule of the House embodied in the Standing Orders. The Business Committee takes executive decisions on behalf of the House [extensions to reporting times, personnel of committees, etc.] It can take these decisions only if there is near-unanimity. The Standing Orders Committee, on the other hand, does not make decisions on behalf of the House. It recommends to the House a negotiated package of measures. There is no presumption that every party in the House will agree with every recommendation made by the committee.


4 (1) All that is required in the case of an amendment of the Standing Orders is that notice shall be given; (2) when the motion before the House is to make a new Standing Order, the whole question of the Standing Orders is not open for discussion.

CHAPTER 1  GENERAL PROVISIONS AND OFFICE-HOLDERS

Suspension

1  A general discussion of the Standing Orders is not allowed on a motion to suspend a particular Standing Order.

2  On a motion to suspend the Standing Orders to enable the debate on the report of a select committee on a bill to be continued, members may not discuss the merits of the bill or of any bills on the Order Paper.

3  A motion to suspend Standing Orders [without specifying particular Standing Orders] does not relate to the suspension of all Standing Orders for all purposes. A limitation is implicit in all similar motions to suspend the Standing Orders to permit a particular line of action to be taken. The motion is not a general motion.

JOURNALS AND RECORDS (SOs 8–11)

4  A member is tied to what the member said and may not alter the Hansard report. The spoken words stand. It has always been the custom where a member insists on making other than minor or grammatical alterations to the report for the matter to be brought to the Speaker’s notice by the editor. Alterations of meaning or substance are not allowed.

5  The translation that appears in Hansard of a speech in Māori is, like all Hansard text, subject to the final approval of the member before it goes to print.

6  (1) No maps, document, photographs, or pictures are to be inserted in Hansard without authority of a special resolution of the House; (2) nor a cartoon.

7  Interjections do not appear in Hansard if no notice of them is taken by the member speaking.
1 If a member wishes to have proceedings expunged from *Hansard*, notice of motion must be given.


2 During the production of the official report, the content of debates is edited to make the report more readable, recognising the conventional difference between the spoken and the written word. At present, then, *Hansard* is not a verbatim report. With the convergence of audio, video, and print publishing, and a more searchable service, a more verbatim approach is required.


OPENING OF PARLIAMENT (SOs 12–14)

3 The purpose of the oath is to make a solemn promise of allegiance to the Head of State of New Zealand. Any other wording used in the oath-taking ceremony alters the nature of the solemn promise made. It does not fulfil the requirement of the Oaths and Declarations Act 1957, and therefore fails to meet the requirement of section 11 of the Constitution Act 1986 for members to take the oath or affirmation before being permitted to sit or vote in the House. Members can make statements about their beliefs and other complementary allegiances at other times, for example during debate, in the media, or in public policy discussions, but not when being sworn in.


4 [The member] was advised prior to his taking the affirmation that the law of New Zealand, of this country, required the affirmation to be taken in a certain way. Our [Standing Order 12(e)] makes it clear that members must “take the oath or make the affirmation required by law”. The Oaths and Declarations Act 1957 provides for the making of an affirmation in te reo Māori in a form set out in the regulations made pursuant to section 30A—the Oaths and Declarations (Māori Language) Regulations of 2004. The practice [of altering or adding to the words of the oath or affirmation] is actually breaking the law. For members to set that kind of example in this place is unacceptable. We must all remember that we, as members, are not above the law. (*A member made the affirmation in te reo Māori using wording not prescribed by regulation, and was instructed to leave the Chamber and return on a sitting day when he would be prepared to make his affirmation according to law.*)

PRESIDING OFFICERS (SOs 26–33)

1. When the Deputy Speaker or an acting Speaker is in the Chair, whatever happens in the House is that officer’s responsibility and the Speaker cannot be called upon to overrule it.

2. There is no appeal whatever from a ruling of the Deputy Speaker to the Speaker, by any other method than the constitutional method of challenging it by a motion with notice.

3. I believe that it is appropriate that from time to time the Speaker or the presiding officer should be able to comment on the tactics being used in the House. That is absolutely essential from time to time. It is entirely over to the presiding officer.

4. It is entirely a matter for the judgment of the Deputy Speaker or Assistant Speaker as to whether he or she should participate in the debates or in the discussion of questions.

5. There is an agreement between the Speaker and the other presiding officers that if the Deputy Speaker or an Assistant Speaker speaks in a debate, they do not in any way officiate during the course of that debate.

6. It would be most improper for any officer of the House, such as the Deputy Speaker or an Assistant Speaker, to use their presiding officer status when speaking in a debate.

PARTIES (SOs 34–36)

7. Whatever name a party is registered under with the Electoral Commission is beside the point. The name that a party wishes to be known by in the House is as stated in its letter to the Speaker.
Recognition and registration are quite different things. Registration concerns the general membership of a political party; recognition concerns the parliamentary membership of a party. In general, the House is not concerned with the membership of political parties; it concerns itself with parliamentary membership of parties that are recognised for parliamentary purposes.


Registration under the Electoral Act and recognition of a party under the Standing Orders are not the same thing. Registration allows political parties to contest the party vote at the next election and to be considered for an allocation of free time and money to broadcast election advertising. Recognition acknowledges the parliamentary membership of parties elected at the previous election. Recognition provides some benefits in the House, but its greatest significance resides in the fact that it enables a party’s parliamentary membership to receive additional funding. In considering the recognition of a party, the Speaker must balance two fundamental public interests: on the one hand, it is not tenable for a party that cannot reasonably demonstrate its wider representative capacity to continue to be funded; on the other, party representation of community interests expressed at a general election should not be interfered with lightly.


Whether under the Standing Orders or the Electoral Act, the Speaker is not concerned with what persons outside the House do, but only with what members of the House do by way of giving formal advice of changes to party arrangements. The Speaker acts on formal advice and does not take the initiative. How members conduct themselves politically is a matter for them to determine.


A suspension of a member from caucus effects no change in a party’s parliamentary membership.

CHAPTER 2
SITTINGS OF THE HOUSE

ATTENDANCE (SOs 37–40)
1 A member’s first duty is to the House. It is important that members attend the House and are seen to do so. The requirement on members to attend the House is important to maintaining respect for the institution of Parliament. The House would be brought into disrepute if members were seen to be able to simply abandon their duty to it.


2 The Speaker may grant members permission to be absent for compassionate reasons, or for a family purpose, such as parental leave. Discretion may also be used to allow a member to be absent for all or part of a day to breastfeed or care for an infant or child.


STRANGERS (SOs 41–44)
3 Strangers are not allowed to remain in the lobbies or those portions of the House that are set apart for the use of members while the House is sitting.


4 While it is customary for people who are not members or officers of the House to be barred from the floor during a sitting, this parliamentary objection is not applicable to infant children of members. Such arrangements would need to avoid undue disturbance to, and distraction from, the participation of other members in the House’s proceedings.


5 It is quite improper for a member to converse with strangers from a seat in the House.


6 If a member wishes to converse with a stranger the member should go out beyond the Bar of the House.

I do not think it is within the Standing Orders for a visiting member who is not a current elected member to open with a karakia. *(The Speaker declined to allow a member to seek leave for a visitor, a former member, to say a karakia.)*


**Advisers**

2 Ministers are entitled to have officials present in the Chamber during questions.


3 Ministers are entitled to have advisers present in the lobby and on the right of the Chair when a bill is being considered by the House. But members should not bring other persons into the lobby while the House is sitting, except where that person is acting as an adviser to a Minister or member in charge of a bill.


4 If a Minister wants an adviser present for a bill, the Minister can have whomsoever he or she likes.


5 It is not in order for a member to berate ministerial officials who are present in the Chamber either in debate or directly to them. The proper course, if a member objects to their conduct, is to raise a point of order or to speak privately with the Minister.


**Galleries**

6 A member is not in order in referring to what is happening in the gallery.

The House entrusts the Speaker with the responsibility of defining how persons who are admitted to the galleries must conduct themselves. In carrying out that responsibility the Speaker will seek to reflect the sense of opinion among members. The procedures to be followed are:

1. no contributions can be made from the galleries without prior permission being given by the Speaker. A contribution made without authority is an interruption of the House and will be treated as a contempt;
2. permission to make such a contribution must be sought from the Speaker in writing;
3. permission will only be given for a contribution that is celebratory in nature and which relates to a speech or decision of the House;
4. the Speaker will inform members when permission has been granted;
5. a celebratory occasion will usually only be permitted between speeches, so as not to interrupt the member who is speaking, but, on an occasion such as a maiden speech, if the member desires this, contributions can be permitted during the speech;
6. in other cases the celebratory contribution must take place only immediately after the House’s decision has been made. A celebratory contribution can never be used to influence the House’s deliberations on a matter;
7. while karanga and waiata may be permitted, the Speaker will not allow anything in the nature of a speech, such as whaikorero;
8. the Speaker [may] permit accompanying music in the galleries.

Where members wish [that the House] acknowledge visitors in the gallery they should seek leave of the House to have them acknowledged.

Exclusion of strangers

A member may not discuss or comment on what was said in secret session.
SITTINGS (SOs 45–61)

Sittings of the House

1 Whenever the House has taken a decision, whether it technically should or should not have been sitting is beside the point. The decision stands until rescinded by the House.


Adjournment of the House

2 Notice is not required for a Government motion to adjourn the House. The House always has power to fix by resolution the date and times when it shall meet again.


3 A debate on a motion that the House do at its rising adjourn until a certain date is not an adjournment debate. The debate is confined to the matter of the House rising, or reasons why the House should or should not adjourn.


 Interruption of business

4 Under [Standing Order 53] when a vote on a closure motion is in progress at the time appointed for the interruption of business, any further motion, including amendments, may be moved pursuant to [Standing Order 138(2)] to bring to a decision any question already proposed from the Chair.


5 Once the chairperson has accepted a closure motion and commenced to put the question, it does not matter how far the chairperson gets; under [Standing Order 53] the time to report progress is deferred until the closure and any consequential questions are determined.


6 The debate [on the second reading] has now concluded. [Standing Order 298] requires the Speaker to put a question that the amendments recommended by the select committee by majority be agreed to [and, when this question is determined, to put a further question that the bill be now read a second time]. Therefore, I am going to put votes on all the questions, which may take us past 10 o’clock.

Suspension

1. Though the Speaker is directed by the Standing Orders to leave the Chair [for the lunch and dinner suspensions], the House may continue sitting, and its proceedings are not invalid; (2) with the general indulgence of the House, its sitting may be prolonged after the time it would otherwise have been suspended.


Broadcasting

2. The conditions under which television and stills photography in the Chamber may be undertaken are:
   (1) the broadcaster or photographer can decide which portions of the proceedings to film;
   (2) coverage should be medium range, concentrating on the Speaker and the member who has the call. This means a head and shoulders shot of the Speaker or the member with the call, not a close-up;
   (3) an occasional general, wide-angle shot of the Chamber gradually returning to focus on the member speaking may be made;
   (4) interjections and interruptions from the gallery should not be covered;
   (5) panning of the Chamber and close-ups are not allowed;
   (6) no extraneous matter, for example, graphics, other than the name of the member speaking, may be included in any broadcast;
   (7) Flashes should not be used without express permission.

The Serjeant-at-Arms will intervene if it becomes apparent that cameras are filming matters not within the rules. Broadcasters or photographers who offend the rules may have their privilege of filming in the Chamber withdrawn.

Note: These conditions apply primarily to stills photography in the Chamber. The rules for filming are set out in Appendix D of the Standing Orders.


Urgency

When moved

3. A debate cannot be interrupted for the purpose of moving for urgency, but urgency may be moved for the passing of a bill the interrupted debate on the second reading of which has been set down as an order of the day, provided the motion for urgency is moved before the order of the day is called on.

1 A motion for urgency for an interrupted debate on a matter does not “interrupt” the debate if it is moved before the debate is entered upon that day.  

Business

2 An urgency motion cannot anticipate business that has been set down for a future day. (However, urgency may be accorded to the first reading of a bill despite the bill not being available to be set down for first reading [Standing Order 285(3)].)  

Reasons

3 There is a requirement on the Government to inform the House why it wishes to take urgency on a bill. The reason why is not justiciable—unlike for extraordinary urgency, where the Speaker has a role to play.  

4 We expect that specific information about the business to be accorded urgency, and the reasons why it is urgent, will be given if it can be given consistently with the public interest. The public interest would be for the Minister to judge.  

5 (1) If the mover of an urgency motion does not give reasons, the motion is not properly moved. If objection is taken before the question has been determined, the proceedings up to that point are nugatory and the motion may be moved again; (2) but if the absence of reasons is overlooked by the Chair or not raised as a point of order before the motion for urgency is decided there can be no occasion to re-open events which occurred before the determination of the question by the House. Once urgency has been accorded, it can be broken only by the subsequent interruption of the proceedings.  

6 If the House desires discussion on the motion it may be permitted with leave; leave given to permit some discussion between the leaders of the parties.  
Effect of urgency

1  When urgency is taken for the “passing” of a bill, this means passing through all stages.

2  Where bills are reported back to the House from committee and set down for third reading during urgency they are not set down on an Order Paper. The Government can therefore deal with them in whatever order it wants.

3  Whilst a matter may be included in an urgency motion, there is no obligation on the Government to advance it or to take it through all possible stages. The moment the Speaker gets an indication [which can be as simple as no one in the Government moving further business] urgency terminates and—assuming that it is outside normal sitting hours—the House adjourns.

Extraordinary urgency

4  Exceptionally, it may be necessary for the House to continue sitting beyond midnight to pass a particularly urgent piece of legislation. Primarily this will involve Budget legislation, but it could also apply in other cases of real emergency, for example, where there was a need to pass legislation to deal with the collapse of a commercial or financial organisation or in a matter involving state security. To deal with these latter cases provision is made [in the Standing Orders] for another motion, to be termed a motion for “extraordinary” urgency.
    Standing Orders Committee, First Report, July 1985 (I.14), para. 2.3.1.

Lapse

5  The rule now is that just about nothing breaks urgency, except a conscious act to do so.

BUSINESS OF THE HOUSE (SOs 62–76)

Parliamentary prayer

6  The parliamentary prayer is aspirational; no member is disqualified by it.
1. The wording of the prayer is not regarded as strictly binding on the Speaker, but there is a strong expectation that the Speaker would consult members before making a permanent change.


**Order Paper**

2. Merely because there happens to be a misprint or slight omission of a technical nature in the Order Paper does not invalidate the Order Paper.


3. An Order Paper is not circulated, until the previous sitting ends.


4. A motion to discharge an order of the day and refer a bill to a select committee was ruled out of order where the House had accorded urgency to the passing of the bill.


5. I am now confirming that the motion to discharge and refer a bill back to select committee is not debatable or subject to amendment.


**BUSINESS COMMITTEE** (SOs 77–82)

6. When a member representing four of the 99 members of the House opposed a proposal before the Business Committee, the Speaker ruled that there was near unanimity.

CHAPTER 3
GENERAL PROCEDURES

MAINTENANCE OF ORDER (SOs 84–96)

1. It is the duty of the Speaker to uphold the authority of the Chair, and that authority is not the authority of the individual who happens to occupy it, but of the House itself.

2. The Speaker is chairperson of the Parliamentary Service Commission as well as being Speaker. While in the Chamber the Speaker is Speaker of the House not the chairperson of the Parliamentary Service Commission. (A point of order relating to correspondence with the Speaker as chairperson of the Parliamentary Service Commission not permitted to be developed.)

3. If I call “Order” from the Chair it is directed to the House at large, but not to the individual member who is speaking, and if I want to direct the attention of the member who is speaking to the fact that I am critical of what he is doing, I shall rise.

Behaviour in Chamber

Seating

4. By custom, [Standing Order 86] has been relaxed somewhat in respect of the Leader of the House, the Leader of the Opposition, and the whips on both sides, because they have matters to attend to by virtue of their appointments within the Chamber.

5. Within the areas allocated to each party group or caucus in the Chamber, the allocation of particular seats to individual members, by practice of the House, is left to the party leaders and whips and the Speaker does not intervene.

6. A member suspended from caucus continues to be seated within the area of seating allocated to the party—though precisely which seat is a matter for the leader of that party to determine.
Activities

1. The telephones in the Chamber should be used rarely and not so as to interrupt the business of the House.
   

2. Members do not use the phone function of cellphones when the House is sitting. There are a number of members who have phones at their desks for particular purposes—senior members and whips—and my ruling is that members can use those phones, but not cellphones, while the House is sitting.
   

3. The use of electronic devices in the Chamber is permitted, but not so as to disrupt the business of the House, and they must be switched to silent mode. They may be placed on the top surface of members’ desks when being used for notes when speaking in debate. At all other times they should be placed on the drop-down work surface so that they in no way obstruct or interfere with the Speaker’s view of the House or any of its members.
   

4. Knitting is permitted in the Chamber except by a Minister in charge of a bill in committee.
   

Consumables

5. (1) Eating, or drinking a cup of tea, is not permitted in the Chamber; (2) the restriction extends to all beverages other than water—water is a speaker’s aid.
   

Dress

6. The Speaker will take issue with any member who is not dressed in appropriate business attire, whether the member is male or female.
   
1 It is not appropriate, unless the Speaker’s permission is sought, to advertise sports teams in this Chamber. Nothing is allowed to be advertised in this Chamber. If a male member of this House came into the Chamber wearing a soccer top or a rugby top, he would be asked to leave. There are times when members wear ties and pins of sports teams, and I have no objection to that whatsoever. *(A female member wearing a sports team’s shirt was instructed to leave the Chamber and return appropriately dressed.)*


2 There is no rule prohibiting a member wearing a hat. To wear a hat with advertising or a message written on it would not be acceptable. But in the normal wearing of attire a member is perfectly entitled to wear a hat.


**Signage**

3 Signs that demean this Parliament will not be displayed.


4 The member has something on his box [on his desk] … if it is a slogan, could the member put the box away. *(The Speaker would have denied the member the call if he had noticed the box earlier.)*


**Lobbies**

5 The Speaker has no jurisdiction over what takes place in the lobbies or elsewhere outside the Chamber. The Speaker has jurisdiction in the Chamber to deal with words used in the Chamber. A matter which occurs in the lobby is for the House to decide.


**Criticism of Speaker**

6 The one and only proper form for attack on the chairmanship of the House is by notice of motion.


1 (1) The Speaker’s ruling may be challenged only by a direct motion with notice; (2) such notice cannot be accepted immediately after the ruling has been given. It must be given at the appropriate time.  
   (1) 1891, Vol. 72, p. 7. Steward.  

2 (1) It is out of order for a member to suggest that the Speaker is defending the Government—such a statement [or questions] must be withdrawn unreservedly; (2) or to bring the Speaker’s name and opinions into a debate.  

3 An amendment seeking to deal with the action of the Speaker and of the House in relation to the suspension of a member is entirely out of order.  

4 The issue of bringing the Speaker into the debate applies equally to question time.  

5 A member must not suggest that the Speaker is being intimidated by the Prime Minister.  

6 A member must not say that another member is defying the Chair, as that would be casting a reflection on the Chair.  

7 It is out of order to tell the Chair to assert his or her authority.  

8 To suggest that worse things have been said in the House than the statement of an outsider which has been declared a breach of privilege is a serious reflection on the Chair and out of order.  
1 To claim that the Speaker made no attempt to stop a barrage of interjections from Government benches is a grave reflection on the Chair.

Order to withdraw from Chamber

2 Where a member has been asked to apologise and has left the Chamber rather than comply, the Speaker always insists that the member return to the Chamber and apologise. Members cannot avoid complying with the Speaker’s direction by just leaving the Chamber. *(But where a member refused to apologise and was ordered to leave the Chamber by the Speaker, the matter is at an end at that point.)*

3 If a member is excluded from the Chamber under [Standing Order 89] without the Speaker stating the period of the expulsion, the member, before returning to the Chamber, should make enquiries of the Speaker through the Serjeant-at-Arms as to the period for which the member is required to withdraw.

4 In the case of a Minister who has been ordered to withdraw, another Minister should be allowed to answer a question on his or her behalf. Disorderly conduct by a Minister should not diminish the extent to which the Government is accountable to the House.

5 A member of the House cannot remain in any of the galleries if he has been ordered to withdraw from the Chamber.

Points of order

6 A point of order is a matter concerning procedures in the House in which the Speaker can take action—for example, by giving a ruling, or putting a request for leave. It is not a means of making a statement or asking another question.

7 The member cannot use the point of order process to clarify things for the record—it is either a matter of order in this House or it is not.
1. The factors set out in [Standing Order 106] as applicable in determining the order of speakers in a debate may not be suitable for points of order. For example, there is no expectation that a member of each party should participate on a point of order, or that overall participation should be proportional to party membership. On the other hand, if a point of order has been raised concerning a particular member’s conduct in the House, the Speaker may then give preference to that member or a senior member of his or her party.


2. A member may use a point of order to draw the Speaker’s attention to the fact that the member intends to exercise a right given by the Standing Orders, for example, to move an amendment or a motion for recommittal.


3. A point must be raised at the time; if a member is not present, that is just too bad. The House cannot go back just because a member is not present.


4. If members take exception to anything said in the course of debate which they consider a breach of order that it is their duty to point out, they should do so at once and not take it upon themselves to deal with it later in the debate.


5. We consider, however, that the Speaker is able to deal retrospectively in the House with matters of order if the Speaker considers it important and in the House’s interests to do so. The Speaker’s primary task is to preside over the effective conduct of proceedings. Where an incident may have a continued impact on the House’s ability to deal with its business, the Speaker can address the matter.

   Retrospective intervention by the Speaker should be infrequent and used only in serious cases. In such situations, the Speaker could ask the offending member to withdraw and apologise, or could take stronger action if necessary. Members should raise such issues privately with the Speaker, outside the House. This ensures that the prohibition on retrospective points of order remains undisturbed, and members can discuss their concerns with the Speaker away from the charged atmosphere of the Chamber. There is still, of course, a strong presumption that points of order will be raised immediately.

1 The Speaker may rule on a point of order when raised without allowing any discussion beyond what is urged by the member raising the point.

2 There is no obligation on a presiding officer to let a point of order run on as long as members want it to run on. If the Speaker or chairperson feels that the point has been made, he or she is entitled to say so and to rule on it.

3 Members, when they raise their points of order, should do so succinctly and keep to the point of the principle.

4 If members are making a point of order, they should indicate to the Chair where there has been a breach of the rules of the House.

5 If members raise a point of order, they are entitled to be heard in silence, but they must keep to the subject matter on which the point is raised and not take the opportunity to make personal remarks.

6 A point of order should use absolutely objective language and not accusatory language. The language involved when raising points of order is very different from the language involved in debate.

7 Under a point of order one cannot abuse anyone. It does not matter who the person is. (A member raising a point of order commented on a person outside the House.)

8 It is perfectly in order for any member to call the attention of the Speaker to the fact that a member is transgressing the rules of debate.
1  Constantly raising trifling points of order is itself disorderly.
   1891, Vol. 72, p. 144. Steward.

2  Once a point of order has been decided, comment on the action taken is not allowed.

3  Members have a right and a duty to raise points of order when they feel that the House is acting outside its Standing Orders, but when a matter has already been the subject of a decision by the Chair that decision is final, and any attempt to subvert it or bring into question that decision is out of order and is in no way protected by the Standing Orders. To persist in doing that, despite warning, makes it a highly disorderly procedure.

**Time taken up on a point of order**

4  A member has no right to claim extra time for time taken up by a point of order, but where the point of order is decided in favour of the member speaking it is fair to allow the member a little extra time. Where the point of order is raised because of what a member has done and it is decided against the member, then, having offended against the rules of the House, the member should not claim time.

5  A member speaking is not automatically entitled to an allowance for time taken up by points of order. It is over to the discretion of the Speaker.

**MOTIONS (SOs 97–104)**

**Notices of motion**

6  A notice of motion that is lodged and is in order is placed on the Table when the House meets. It is then set down as a Government or Member’s order of the day for the next day on which the House sits.
Contents of motions

1. Motions inviting the House to deplore the “irresponsible statements” of candidates and members of the Opposition or the “callous indifference of the Government” are admissible. I am not aware of any rule or ruling that would preclude the acceptance of the motion of which notice has been given.


2. Members may, on a substantive motion with notice, raise matters they think are of public importance and the Speaker is not entitled under the Standing Orders or the practice of the House to reject a notice of motion affecting persons however highly placed provided the motion is framed in a manner that does not transgress normal usage and does not contain unbecoming or offensive expressions excluded under [Standing Order 101].


3. The Speaker declined to accept a member’s notice of motion because of its excessive length and suggested that its form be reconsidered.


4. Although there is no rule which states how long a motion may be, the Speaker has an inherent authority to intervene if satisfied that an abuse is proceeding.


5. Many notices of motion contain assertions. If they are asserted as facts, there is some need for them to be authenticated. There are occasions on which, to make the subject matter clearer, a member considers that some supporting assertion should be included about the matter for debate. These are not statements of fact.


6. As far as authentication of notices is concerned, the Speaker accepts evidence submitted at its face value as being submitted in good faith and does not go behind it in order to examine its validity. If it substantiates the statements of fact in the notice it is accepted. The Speaker also accepts the word of a member given in the House, so when an assurance in rebuttal of a statement in a notice is given, the notice is held for further examination.

1. It is no part of the Speaker’s duty to check every fact stated or assertion made in a motion, and actually it would be a practical impossibility to do so in the limited time available. The accuracy or otherwise of the facts or assertions is a matter to be canvassed in debate.

2. If a member quotes another member, the Speaker would require authentication of that, usually a statement in a newspaper report or perhaps a transcript of a radio or television programme.

3. The question of the correctness of a quotation in a paper is a debating matter, not one that goes to the root of the admissibility of a notice of motion. The responsibility of a person intending to move a motion on the basis of a report is to see that the report is correctly quoted or the substance of it is correctly stated.

4. There is no obligation upon members to give to the House the source of the quotations they use when giving notices of motion. All they have to do is to authenticate to the Speaker’s satisfaction either that the facts are correct or that the reference to the statement made is accurate.

Moving

5. When a member moves an instruction the member moves it in his or her own right, not on behalf of another member. A member moves a motion on behalf of another member only when that other member has a bill or motion on the Order Paper and is not present to move it.

6. A Minister may move a motion for [another Minister] without stating that the Minister has the consent of that colleague.

7. A member may move a motion for another member if the member assures the Chair that he or she has the authority of that other member to do so.
1 In moving a Government notice of motion on the Order Paper the Minister
does not have to read out the motion.

Withdrawal and alteration
2 A motion cannot be withdrawn in the absence of the mover.

3 Before a motion is withdrawn any amendment proposed to it must also be
withdrawn.

4 A motion of which notice has been given cannot, when before the House, be
altered by the mover without the unanimous consent of the House.

RULES OF DEBATE (SOs 105–121)

Absence of members
5 It is a convention that we do not make reference to the fact that a member is
away or is not in the member’s seat.

6 If it is felt that the absence of a member is of sufficient importance, then the
real or suggested importance of the absence overrides the convention.

7 (1) The convention of not referring to the absence of a member is equally
valid when applied to the presence or absence of a member from a select
committee hearing. Members should not refer to the absence of a particular
member from the House or from a select committee hearing; (2) there is no
breach of the convention in referring to the fact that a member was not a
member of the committee and so did not attend committee hearings when
evidence was being heard.

8 There is no breach of the convention against referring to the absence of a
member by referring to the fact that the member did not speak.
1  It is quite in order to demand, to call, to say whatever to urge someone to take
a call; it is not appropriate to refer to the absence of a member.

**Anticipating discussion**

2  It is a breach [of the Standing Orders for the member to anticipate an order
of the day] only if it can be reasonably expected that debate on the bill will
be reached on the same sitting day.

3  A member debating the general principles of a bill in the general debate on
the same day as the committee stage of that bill is to be debated is not
contravening [Standing Order 113].

**Call to speak**

**Seeking the call**

4  It is not sufficient for a member wishing to speak merely to rise. Members
must rise and call, and should properly wait until called by name to speak.

5  If the member wants to have a call—and I know that you stood up earlier—
you must call out “Mr Chairman”. If you do not call, then the call goes to
someone else.

6  [Giving the call] is not a race; it is up to the Speaker’s discretion within the
Standing Orders. I remind the member that it is the Business Committee that
has agreed to an indicative order of calls, which we have certainly been
following.

7  In order to get the call a member must be occupying a seat that the member
is entitled to occupy—that is, a seat allocated to that member’s party.
A Government member cannot speak from the Opposition benches. But a
member does not have to be actually occupying the seat that the member’s
leader or whip has currently assigned to the member.
**Speaking rights**

1. How a party utilises its speaking and questions rights is an internal matter for that party to determine.
   

2. An Independent member takes the consequences of his or her independence and cannot expect special treatment on the basis of a decision that the member has taken to become an Independent. As a starting point, an Independent member is 1/120th of the House, but one must also look at the environment in which a debate is being held. In the case of most debates on a bill, it quickly becomes apparent that a number of members will be involved in the debate, as distinct from the general mass of members. As a debate develops, the Chair gets a feel for the participants. In those circumstances, an Independent might well have, by way of the member’s background interests and expertise, a chance of participating in the debate more frequently than others in the House.


3. A motion without notice is by convention one that is for party leaders to comment on, but I am aware of the member’s interest in the issue. On this occasion I will take a contribution from [an Independent member]. *(Motion moved by Prime Minister expressing support for a country hit by a natural disaster.)*


4. If a member called does not have speaking rights at all [because the member has exhausted all of his or her calls], the call is invalidly given and the member’s speech should be terminated as soon as the presiding officer becomes aware of that fact.


5. Once the presiding officer has called on a member to speak that member has the floor and cannot have the call taken away. This applies even though the principle of alternation or, in committee, the obligation to give preference to a member who has spoken less often is overlooked. It makes no difference whether or not the member has begun to speak; the right to speak applies from the moment the presiding officer calls the member.

Corruption and disloyalty

1 It is not only the right, but the duty, of a member who can show that there has been anything in the nature of bribery or corruption on the part of other members to bring that matter before the House in the proper constitutional way, but a member must not make veiled suggestions during the course of debate.


2 This House takes corruption very seriously. It is well established that any such allegation must be raised as a matter of privilege by writing to the Speaker. It must not be raised on the floor of the House by way of interjection, in questions, or debate.


3 Imputation of disloyalty must be withdrawn unreservedly and apology made.


4 A member charging a Minister with having used the Minister’s official position to advance that Minister’s material welfare must do so by way of substantive motion and not incidentally during the course of debate.


5 If any charges are to be brought against a member by another member they should be clearly stated and a notice of motion given.


Form of address

6 (1) Robust debate is healthy and to be expected, but things run off the rails when the words “you” and “your” are used, as they bring the Speaker into the debate. The words “you” and “your” are not to be used in debate; (2) however, application of this rule is at the sole discretion of the Speaker, and members should not disrupt speeches by raising points of order about the use of the second person.

1 (1) If there is a deliberate failure to address a member properly, the Speaker will intervene. But it is not up to the Speaker to correct the mispronunciation of a member’s name; (2) unless a member deliberately mispronounces another member’s name so as to create disorder.
   

2 (1) Members do not have to use the names of electorates and can refer to other members by name. But that does not mean total familiarity. The use of a member’s Christian name, and only a Christian name, is out of order; (2) members should use a person’s full name, title, or position; (3) members may not be addressed by nicknames, first names and so on.
   

3 It is in order in debate to describe another member as chairperson of a committee. But a member does not acquire a title by being made a chairperson and a member’s name is not thereby changed. While members may describe another member by the position the member holds, they may not name another member in this way. Direct reference to someone as “chairperson so-and-so” should not be made.
   

Judiciary

Purpose of sub judice rule

4 There are two strands to [Standing Order 115]. One is if a judge or jury would be influenced by parliamentary references. The other reflects a comity between Parliament and the courts. What is before one ought not to be discussed or adjudicated on in the other. Parliament often asks the courts to uphold its privileges. It must be equally vigilant in defending the courts’ privileges. (There would be opportunity later for members to examine how the action came about and who initiated it. There was no overriding public interest in permitting reference to a case pending adjudication when the case dealt with a subsidiary matter and did not affect the House’s right to debate the main issue.)

1 The purpose of the sub judice rule is to safeguard the interests of justice. The rationale behind the rule is important. This is the implicit acknowledgement by the legislature, above all other institutions, that it should take extreme care not to undermine confidence in the judicial resolution of disputes by intruding its view in individual cases.


2 It is important to emphasise the high constitutional nature of the [sub judice] rule. It stands as an expression of the relationship between the different branches of government—the legislative branch and the judicial branch. This House determines what the law should be, but it is for the courts to determine in each particular case how the law is to be applied. In criminal matters, it is not for this House to decide guilt or innocence. That is a matter for a court of law. [Standing Order 116] defines quite precisely when this constitutional principle is engaged.

Where it is engaged, this House does not embark, either by debate or by question, on an examination of matters that are for adjudication by a court. Not only is this prejudicial and unfair to those involved in judicial proceedings; it is contrary to our constitutional practices. The Speaker will therefore be vigilant to ensure that these are maintained.


Application of sub judice rule

3 The sub judice rule has always operated subject to the right of the House to legislate and the exercise of Speaker’s discretion. Conversely, the privilege of free speech in the House has also been subject to limitation in relation to matters before the court.


4 The particulars of the charges brought ought not to be referred to. Although the Speaker has discretion under Standing Order 115, there must be a request in writing to exercise it. As there may yet be a trial, the Speaker will be vigilant in ensuring that the House’s rules are followed to the letter.


5 The sub judice convention, [Standing Order 115], does not apply to prevent the House debating a bill.

**Media comment on cases**

1. The House is not in the same position as the media when reporting cases. [Standing Order 115](#) seeks to ensure on the one hand that a judge or jury is not influenced by parliamentary discussion, and on the other hand it enshrines the special relationship between the courts and Parliament. It reflects a comity between Parliament and the courts. What is before one ought not to be discussed in the other.


2. I do not accept the argument that it is anomalous that the news media can discuss something that is not open to members to raise. The fact is that Parliament sets higher standards for itself than does the news media. With regard to matters awaiting adjudication, these standards have regard to the constitutional relationship between Parliament and the courts.


**Discussion of general principles**

3. While matters pending adjudication in the courts must not be debated in the House, nor any motion made in regard to them [Standing Order 115](#), the general principle involved in a case affected by a bill before the House may be discussed, but not the particular case.


4. An application to the court for a general wage order would be canvassed widely up and down the country; it would be strange if Parliament gagged itself. (Members not permitted to refer to the detail of the application but allowed to canvass the concept and principles underlying it.)


5. [Standing Order 115](#) must be read subject to the pre-eminent right of Parliament to freedom of speech. It would be improper to apply it to a generality of cases in such a way that members are inhibited in discussing possible penalties. The courts are constantly required to consider drinking and driving, and drug offences. It cannot be suggested that Parliament should not discuss possible or desirable penalties for such offences merely because some of them are before some court of record. Similarly Parliament should not be inhibited from discussing suitable penalties relating to court cases involving demonstrators, provided the discussion is on a general basis.

1 Under [Standing Order 115] the law in general may be discussed, but one may not discuss the application of the law to the particular case that is before the court, because any argument about it could prejudice the conduct of the case or its outcome.


Cases concluded

2 The rule against referring to a case pending adjudication did not apply where the court had issued a compliance order but had deferred giving its reasons until later. As the order had been made, the judicial proceedings contemplated by the Standing Order had run their course.


3 It did not seem that there was a real and substantial danger in the instant case [of prejudice to the trial of the case] because an interim judgment was available and that must be considered to be available not only to the parties to the case but also to those interested in the outcome, including the House. The House does not prejudice the outcome, particularly if—as alleged—it was the interim judgment that led in some part to the bill before the House. It was material to the debate that the judgment had been delivered and it needed to be discussed.


Matters not covered by sub judice rule

4 There are no grounds for ruling against a member making a statement that there is a legal action in existence.


5 The sub judice rule is set out in the Standing Orders and the Speaker determines its application. It is not for individual members to waive the application of the rule.


6 Preliminary investigations by the police following a complaint being laid do not make a matter sub judice if the matter is not before the court.

1 The House is not debarred from discussing a matter that is before a Royal commission as would be the case if the matter were before a court. Reference in the House to subjects before a commission is not out of order, being rather a question of propriety, but members should avoid embarrassing the commission by any statements they make.


2 An inquiry by an Ombudsman is not within [Standing Order 115]. An inquiry by an Ombudsman or any other officer, even a senior officer, postulates a different situation from one where there are contending parties and where the outcome of their contention or dispute may be influenced by what is said in the House.


References to judges

3 [Standing Orders 105 to 121] are headed “Rules of Debate” and the group of Standing Orders which follow relate to the conduct of debates. [Standing Order 117] means that in the course of debate in the House no member shall use unbecoming words against the House or judiciary. The rule does not apply to statements made outside the House.


4 (1) The House of Representatives is the proper tribunal to hear charges against a judge. Parliament will not interfere with any question relating to the administration of justice or the conduct of a judge except upon such strong prima facie case being made out as would induce Parliament to come to the conclusion that if the charge in that prima facie case were proved, an address to the Crown for the removal of the judge should be made; (2) the conduct of a judge can only be brought before the House by motion.

   (1) 1874, Vol. 16, p. 112. Bell.
   (2) 1901, Vol. 119, p. 199. Guinness (Deputy Speaker).

5 It is highly unconstitutional to reflect on or speak disrespectfully of judges. Specific charges against a judge must be brought forward by a proper motion.

1896, Vol. 95, p. 47. O’Rorke.
1900, Vol. 113, p. 54. O’Rorke.
Though there is no prohibition on referring to a judge, members may not do so in a critical way, suggest unfairness or make any other negative reference. The conduct of a former judge is not so protected.


(1) A member must not cast reflections on a court; (2) or its personnel; (3) nor suggest that a court is linked with the Government of the day; (4) a member may criticise the court system, but cannot criticise the court itself even by way of quotation of what another member has said or written outside the House.


A member may criticise the effects of the findings of a court, but cannot say that either a judge was unfair or unjust or that the court was unfair or unjust, or that the finding was unfair or unjust.


A member may say that action taken by the Government influenced a court, but may not say that the Government is influencing the court.


Judgments of a court may be read and criticised, but criticism must not extend to the judge.


It is not out of order to refer to the presence of judges before a select committee, nor is there any convention that would prevent such a reference being made.


A Royal commission or commission of inquiry if headed by a serving member of the judiciary is shielded from unbecoming references by [Standing Order 117], but commissions headed by other persons or retired judges are not so protected. Personal reflections against the latter classes of persons are not out of order per se but are matters of propriety.

Court orders

1 Members have absolute privilege in the House and cannot be held liable outside the House in relation to statements they have made in the House. However, the privilege that the House enjoys is not a licence for anyone to break the laws of the country outside the House. *(If a press report of proceedings in the House violates a court order, yet is fair and accurate, qualified immunity may provide a defence to legal liability.)*


2 Members should take care never to abuse the privilege of free speech, and, in that respect, they should respect the position of the judiciary in the judiciary’s sphere, just as members would expect the judiciary to respect the privileges of Parliament.


3 It is incumbent upon all members to treat the privilege of free speech in the House with the utmost respect and to use it only in the public interest, because it has been conferred on Parliament in the public interest. If a court has made a suppression of name order it must be presumed to have been made for a good reason. It should be obeyed by members in the House unless the public interest impels otherwise. I can envisage its being necessary to disregard such an order only in the most exceptional cases.


Interpretation

Members interpreting their own speeches

4 A member cannot be required to give a translation of his or her remarks following an address to the House in either of the official languages.


5 Members must be careful to be accurate in any interpretation they give. If they do not, they might invite an accusation of misleading the House.


6 A member who gives his or her own interpretation of a speech is under an obligation to clear up any error in the interpretation as soon as the error is appreciated. But where the interpretation is given by an interpreter no such onus falls on the member. It would be hoped, however, that a member would, on a point of order, clear up any misunderstanding arising out of an interpretation of the member’s speech.

Interpretation under Speaker’s control

1 When all that is in issue is how many votes a member has cast there can be no objection to the interpretation being given by another member. If it could be proved that another member deliberately did not give the correct interpretation, that would be a serious breach of privilege.


2 The interpretation is in the hands of the Speaker or chairperson. The Speaker or chairperson can call upon anyone in whom they have confidence to make the interpretation.


3 The interpreter is responsible to the Speaker [in committee, the chairperson]. If members do not like the way the interpreter is rendering their speeches into English, they are at liberty to give their own interpretation. Members do not “own” the interpreter’s contribution; it is controlled by the Speaker on behalf of the House. Members can seek to correct the subsequent Hansard translation in the normal way.


New Zealand Sign Language

4 The Speaker may permit a member extra time to give a spoken translation from New Zealand Sign Language [NZSL] if prior arrangement has not been made for a simultaneous interpretation service. In this case, it would be helpful if the Speaker knew in advance that a member intended to use NZSL extensively and then to give a spoken translation, so that extra time could be allowed.


Interpreter’s role

5 The process of interpretation is not merely a matter of transliterating word for word from one language into another. Especially with languages as different in their origins as English and Māori, this is not possible.

1 The object of interpreting into English is to enable members listening to the member’s speech to have a reasonable, but not necessarily total, understanding of what is said. As all members have good facility in English it is not necessary to interpret English into Māori. Interpretation is undertaken only when there is a practical need to do so.


2 The interpretation is not a definite translation of what the member has said; a translation is made later for inclusion in Hansard. An interpretation will always, to a certain extent, be rough and ready.


3 There is no translator in the House. There is an interpreter. The interpreter is here to interpret words used by members in the course of a debate, not to give definitive translations of the texts of bills. If members are not satisfied with the words in a Minister’s amendments, they should vote against them. The interpreter is an official of this House, not a person to be brought into the debate. Where a Minister has an amendment, questions about the amendment should be addressed to the Minister. In future it would be helpful if Ministers, in moving an amendment on a Supplementary Order Paper, included the translation in the explanatory note of the Supplementary Order Paper.


4 The staff of the Office of the Clerk do not give assurances about the text of bills. The interpreter is a member of staff, not a witness before a committee.


Misrepresentation

When arising

5 A member who has been misrepresented must wait until the end of the speech of the member concerned before rising to make an explanation even though the speech in which the misrepresentation is alleged to have been made has been interrupted by the adjournment on a Friday and is not concluded until after the resumption of the debate on the following Tuesday.

Members claiming to have been misrepresented by a Minister or member who is speaking cannot interrupt the speech to make an explanation unless the Minister or member gives way.


The right to correct a misquotation applies only to a misquotation made in the course of a debate—the same debate. A Minister who has not spoken can, of course, refer to the matter in the Minister’s speech if called to speak.


A member claiming to have been misrepresented by a previous speaker has an absolute right to refer that matter to the House. The member can, however, do only two things—say what the previous member claims the member said and then refute that by giving what the member says is the correct version.


A member who has already spoken and claims to have been misrepresented by following members concerning statements made by the member outside the House cannot correct those statements under [Standing Order 110] but may seek leave to make a personal explanation under [Standing Order 358].


[Standing Order 110] does not apply in respect of an interjection. The Standing Order applies only to a member who has been called to speak, and who has made a speech on the question before the House. An interjector is not in that position and has no right to explain an interjection. A member interjecting must assume the risk of the interjection being misunderstood and, if affronted by a reply, can only seek to make a personal explanation.


Members interject at their peril, and if they are misquoted, that is all part of interjecting.

Contents

1  A member seeking to correct a misrepresentation does so by stating what it was claimed the member said and then what the member actually said, and that ends it.

2  When a member who has already spoken in the debate is making an explanation the member must confine the remarks strictly to a statement of the matter which is claimed to have been a misrepresentation; the member must state specifically the statements to which exception is taken and where the member has been misrepresented. A member is only entitled to deal with what has been said in the House, and cannot introduce arguable or debatable matter.

3  When a member claims to have been misrepresented the member is confined to the specific words which it is alleged have been misquoted and may support the allegation by the Hansard proof.

Personal reflections

Against members

4  If a member of his or her own volition refers to the member’s own personal affairs there is nothing to prevent another member from referring to what has been said.

5  Members should address each other in a courteous way, and references to the mental prowess, or lack thereof, of a particular member are inappropriate in questions and in debate.

6  Reference to the private affairs of members or personal reflections would have to be of a strongly undesirable, insulting or offensive nature to come within the meaning of the terms used in [Standing Order 120].
1 Members’ freedom of speech should not be curtailed, unless members’ remarks are offensive on the face of it or are strongly insulting. 

2 There is nothing in the Standing Orders to prevent a member from making reference to: (1) the property held by another member or (2) the occupation or profession in which a member has been engaged, unless this is done in an offensive way.

3 I cannot see that I should rule out of order a reference to the status of a member, but I should like to discourage this practice, because I believe there is a distinct danger of reducing the standard of our debates if members refer to the status and private affairs of other members.

4 Repeated reference to the age or marital status of an honourable member, though not of itself contrary to the Standing Orders, is to be regretted if it becomes too persistent unless there is very adequate occasion for it.

5 Personal references to a member may be made as long as they are not offensive.

6 A letter reflecting on members may not be read to the House or to a select committee. A private letter written by a member to a petitioner which has been given in evidence before a select committee may be read to the House, but if such letter contains reflections on members it may not be read to the committee or to the House.
   1898, Vol. 102, p. 70. O’Rorke.

Against members’ spouses

7 It is most undesirable in the interest of the decorum of the House that the conduct or the character of a member’s spouse should be brought up on the floor of the House during debate.
If the spouses or family members of members of Parliament hold political positions, commercial positions, or other public positions that are entirely separate from their relationship to the member, they may be referred to in debate. Members should distinguish between quoting spouses or family members of members of Parliament because of the position they hold and quoting them in their capacity as a family member.


Allegations of racism

2 The House’s rules prevent members conducting debate in certain ways because, if permitted, this may lead to disorder. The most relevant rule of this type is [Standing Order 120], which prohibits any imputation of improper motives or a personal reflection against a member. An allegation that a member is racist clearly imputes what most members would regard as an improper motive and is out of order …

Happily, in New Zealand, we have been free of parties espousing openly racist policies in this Chamber. Until the day comes when there is such a party there is no place in debates in the House for allegations of racism against other members. Not only would this clearly lead to disorder, it is also a lazy debating tactic. I understand the feelings of members who feel that the policies or views of other members are objectionable. They must be permitted to criticise those policies or views in strong terms. But, rather than throwing epithets at each other, members should concentrate on developing intelligent arguments about the subjects before the House. For the Speaker to permit allegations of racism to be addressed to other members would encourage what is already a regrettable feature of this place—an undue personalisation of issues and debate.


3 If the word “racist” is used in an insulting or demeaning way to any [member] or party, it is out of order. If it is used in a conversational way to describe something, the presiding officer must make a judgment.


Allegations of misleading

4 Any member is entitled to question the sources of another member’s information and to draw conclusions. There is no ruling precluding any member from suggesting whence a member received information.

A member may say he or she believes a statement is incorrect, but must not accuse another member of making a statement that member knew to be incorrect.


A particular mode of expression that has been ruled out of order consistently has been the use of the word “lie”. Many other expressions can be used to say that a member is stating something that is incorrect—and that is material for debate, which goes on in the Chamber every sitting day.


The offence of calling another member a liar, or implying that another member of the House is a liar, is an offence against the House not an offence against the other person; it is an offence against the dignity of the House and the assumption that its members behave truthfully and honourably. For the Chair to allow that accusation to go unchecked would not be an injustice to the member accused but an injustice to the whole House.


Ordinarily it is not out of order to suggest that a member had “misled” the country. But where this allegation followed immediately on an allegation that the member had not told the truth, the allegation could not be divorced from what had gone on before. The context was such that the allegation reflected on the integrity of the member and was out of order.


It is not automatically out of order during debate to invite a member to say outside the House what a member has just said. However, persistently to challenge another member to repeat comments outside the House, or to challenge a member in such a way as to imply that the member is not telling the truth, is disorderly.


Procedure

A member having denied a statement, another member must not refer to it.


The member cannot take exception on behalf of another member. That member herself has to take objection.

The guiding principle as to whether words used in debate are out of order under [Standing Order 120] is the motive attributed to the member accused of using the words and whether something dishonourable is being attributed to another member. Words or phrases used robustly in debate but which do not impugn the honour of a member will not be ruled out of order.


It is the right of any member to challenge a statement of another member, especially if there is any suggestion of improper conduct on the part of a member.


If a member feels that repeated reference to some matter in the member’s private life is a reflection on the member’s integrity, then the member is entitled to the protection of the Chair, and it is improper for another member to pursue the matter.


It is not the Speaker’s duty to intervene if objection is not taken to the language used by one member towards another, unless the Speaker considers it is such language as requires the Chair’s immediate intervention.


Where a personal reflection is made, the Speaker will intervene if it is offensive to the dignity of the House as a whole—for example, an accusation of lying or racism. The member against whom a personal reflection is made may raise the matter with the Speaker. If the member is not present, then that is too bad. The Speaker will intervene to protect the member, if the reflection attributes something dishonourable to the member or is strongly undesirable, insulting, or offensive. In judging the matter, the Speaker will also take into account the circumstances—the state of order in the House at the time. If the personal reflection will lead to disorder, it will be ruled out of order.


Members have a right to object to personal reflections on them, but there is no right to have contestable statements automatically ruled out of order.

Quotations

1  A member cannot be compelled to give the sources from which the member quotes. There is no hard and fast principle that if any member quotes the words of another member he must give his source. It is better that he should, but I do not know of any rule which says the obligation is absolute.

2  A member cannot be compelled to read the whole of a newspaper quotation. It is usual for a member to choose the part of the story that suits the member’s purpose. There is no rule that a member must not refer to one part of a newspaper article when there is another part which gives a different picture.

3  Members have an absolute privilege in the House, and that privilege cannot be taken away by anyone writing a letter to a member and marking “private and confidential” and “copyright” on it. These do not preclude it being quoted.

4  Members cannot use the device of reporting quotations in newspapers to overcome the rules on the use of unparliamentary expressions.

5  Quotations should be as free from unparliamentary language as a member’s own speech.

6  The Speaker cannot allow any improper reflections to be made on members by means of quotations in the House of a private letter.
   1898, Vol. 102, p. 70. O’Rorke.

7  A member may quote a speech made by himself or herself outside the House relevant to a proceeding before the House.

See also PAPERS AND PUBLICATIONS (SOs 372–377), Documents quoted by Ministers
Relevancy

1 Because a matter is incidentally mentioned in the course of a debate, that does not justify discussion on the subject.

2 An irrelevant interjection does not justify a member in dealing with that interjection.

3 (1) It is usual to allow a member to reply to statements made by a preceding speaker even though that speaker was not called to order for going outside the debate; or (2) if the preceding speaker was so called to order, to reply to the extent that such preceding speaker had been allowed to speak.

4 Members must confine their remarks to the bill before the House and cannot make irrelevant matters relevant by suggesting they ought to be included in the bill.

5 On a motion to refer a Supplementary Order Paper to a select committee a member is confined to discussing whether the matter should be referred to the committee and may not discuss the merits or policy of the Supplementary Order Paper.

Speaking

6 When a member moves a motion the member immediately proceeds with his or her speech. Once a member sits down the call is expended and goes to the other side.

7 There is a requirement for members to address the Chair when they are speaking and they may not speak from passageways and certain other places but there is no requirement that a member must face the Chair when he or she is speaking.
1. Discussion in the House is directed to the Chair and it is a discussion among members, not with anybody else. Any blatant talking to people outside the House is not in order.


2. (1) There is no limitation on where members may address the Chair from. Members may use their own desk or another member’s; (2) or come to the Table if they want to.


3. A member may not direct a continuous series of questions during a speech to members on the opposite side of the House.


4. A member asking a question across the floor of the House in the course of a debate is not offending by not giving an opportunity for reply.


Reading speeches

5. Where possible, members should not read speeches. However, no member, other than the Speaker, may interrupt a member who is speaking to suggest a breach of this convention, and the Speaker may allow speeches to be read in some circumstances. Such circumstances may relate to the technical nature of the material under discussion, or the relative experience of the member concerned.


6. It is incumbent on the Government to have a Minister at least familiar enough with the material they are presenting to the House that they can make a speech without just reading it out. Otherwise, it becomes a pro forma exercise, and, I think, does not show due respect to the House.


7. General debates—of all debates—should not necessitate members to read speeches, unless it is something particularly technical that a member wishes to be covering. I want to hear debate in this House, not speeches read in this House, especially in the general debate.

1 There is nothing wrong with quoting and reading out quotes.  

2 It is a strong convention in this House that Ministers giving third reading speeches are entitled to read their speeches.  

**Sovereign or Governor-General**

3 A member may discuss any matters referred to in His Excellency’s speech, but it is out of order to quote extracts from an address delivered by the Governor-General outside the House in support of the member’s own views.  

4 [Standing Order 118] does not specifically exclude reference to the representative of the Queen in another of her realms.  

**Time limits**

5 The official clock that I work on is not any of those that members can see, which can be adjusted by a variety of means. For example, cleaners can accidentally move the hand of a clock forward or back. The House has clocks that show the precise time that officers work to, and they are not the clocks that the public and members can see.  

6 Time limit does not apply to a member speaking to a point of order; but remarks must be confined to the point of order raised.  

7 In a time-limited debate, once those calls allocated by the Business Committee are exhausted or not sought, the overall time limit prevails and the call may go to any member seeking the call.  

8 A member has no right to claim extra time for time taken up by a point of order, but where the point of order is decided in favour of the member speaking it is fair to allow the member a little extra time. Where the point of order is raised because of what a member has done and it is decided against the member, then, having offended against the rules of the House, the member should not claim the time.  
1 Debates subject to a time limit are not extended at the discretion of the Speaker as with questions. There is no provision for an extension to the end of a speech in timed debates. It has been the custom of the House for debates to be stopped immediately.


2 (1) Time limit of speech can only be extended in favour of a member by the unanimous consent of the House; (2) a member’s objection to extension of time to another member may not be commented on.


3 Actually, when it is a split call, it is an unusual arrangement. That is, the member can speak for as long as he wants to for up to 10 minutes, and then the next speaker gets the balance of the time.


4 During the course of a debate the Speaker is not in a position to accept a motion for an extension of time, but can take the pleasure of the House.


Unparliamentary language

Government and parties

5 The Government consists of members of Parliament; therefore a term cannot be applied to the Government which cannot be applied to other members.


6 A member has no right to charge the Government or any member of the Government with an intention to corrupt any person, except by a motion of censure. No “conduct approaching to trickery or unworthy proceedings” can, as a matter of debate, be charged to a Government.


7 It is just as unparliamentary to apply an offensive term to members of a party as to apply it to members individually.

A member may not (1) impute improper motives to the Government; (2) suggest that the Government has received orders to put a bill through; (3) impute dishonesty to the Government; (4) suggest domination by outside bodies.


It is in order to say that the Government is influenced, but it is not in order to say that in the carrying out of its administrative and governmental duties, apart from the formulation of its policy before it came to the House, the Government is dictated to by an outside body.


A member may suggest that a party was given advice from outside, but not instructions or directions.


It is out of order to suggest that the Government or any member is subject to outside domination, but the term “pressure” is a borderline one.


It would be out of order to suggest that a member takes payment to act in a certain way, and the member must be careful not to do that.


There can be no suggestion that a decision being made by any Minister is because of potential [campaign donations].


A suggestion by way of interjection that a firm to which the Government has let a contract has made a donation to party funds is in order unless such interjection carries an inference that the making of contributions to party funds influenced the Government in the letting of such a contract.

Persons outside the House

1 Temperate and decorous language should be used with regard to persons outside Parliament.

2 The rules concerning the discussion in the House of an outside individual’s private affairs are not clear, but members are supposed to refrain from bringing the names of individuals into their speeches.

3 It is up to members whether they observe privacy rules. There is no House rule that says that members cannot release private information. This is a matter for political conduct by members.

4 (1) There is no Standing Order to prevent a member commenting in severe terms upon the conduct of any official of the Government—it is a matter of taste—and members should remember such persons have no opportunity inside the Chamber to reply or defend themselves; (2) the general statement of the Minister in charge that the Minister takes responsibility for the conduct of the officers of the department does not prevent members commenting on their actions, but if the Minister in charge states that the particular matter under discussion was carried out under the Minister’s direct instructions and that the officer was not responsible, then members must not continue to blame that officer.
   (1) 1903, Vol. 126, p. 34. Guinness.

5 There is nothing which prevents a member from commenting, if necessary in severe terms, on the conduct of people outside Parliament, but the member should do so only if it is necessary for the argument being put forward.
1 There is no Standing Order that prevents members from attacking former members of this House. But the privileges in this House should be treated with respect. Members should think carefully before they make vicious attacks on people who are not in this Chamber and are not able to defend themselves.


2 The use of the word “liar” is absolutely forbidden in the House when it relates to current members. The same protection does not exist for those outside the House.


Unparliamentary language—general

3 Unparliamentary language, if heard, though not intended to be heard, must be withdrawn.


4 The Speaker will interpose immediately when, in the Speaker’s judgment, the word used is offensive; if the Speaker lets it pass, a member may rise and test the matter. The Speaker is guided by the content and the immediate circumstances; a word may be used in different ways and have different connotations but when it is used offensively it is out of order.


5 If a member makes an unparliamentary remark, that does not justify another member in making an unparliamentary remark in reply to it.


6 A member reading or quoting unparliamentary words is in the same position as if that member had used them.


7 A statement made by a member outside the House which if made in the House would be ruled unparliamentary may not be quoted.

1 To simply say “I’m not going to say something” and then utter the word is effectively the same as using the word.

2 Many words used in debate are of questionable taste, but it is not the function of the Speaker or the chairperson to judge the good taste of members using them; it is their duty to prevent if possible the use—and to secure the retraction, if used—of words clearly unparliamentary; the use of ambiguous words capable of conveying a sinister as well as an innocent meaning should be avoided. Whether a word used is or is not unparliamentary does not depend on exception being taken by members to its use.

3 A member may not refer to lack of dignity in the House.

4 The discretion given to the Speaker to rule whether words used are or are not out of order depends to a large extent on the context in which they are used. The first requirement in deciding whether or not words should be ruled out is the state of order in the House at the time. If no disorder was caused by the use of certain words in certain circumstances, probably those words will be allowed to be used. If there was likely to be disorder, the Speaker would normally intervene.

5 An expression or a word that may be regarded as acceptable parliamentary language in one context may not be acceptable in another context.

6 The key element in judging whether a word is appropriate, is whether it will bring disorder. The inflection, the gesture, or the menace with which a word is said, can also bring disorder.

7 Standing Order 119 requires the Speaker to intervene where offensive or disorderly words are used. The test for the Speaker intervening is the state of order in the House at the time. If the Speaker does not intervene, members may test a particular remark with the Speaker, but contestable words used robustly in debate will not necessarily be ruled out of order.
The member is being critical of another member; the member is entitled to do that. The performance of members in this House can be challenged. I think it was not done in a derogatory way and I do not want to go ruling out words. It is the way it is done that is important.


To pronounce a word differently from the way in which another member pronounces that word is not a matter of order. No member has the monopoly of directing how a word is to be pronounced. But if a member deliberately mispronounces a word—particularly another member’s name—so as to create disorder, that is out of order and the Speaker will intervene.


*Withdrawal*

3 The cause for a matter to be withdrawn in the House is not that one member feels aggrieved. A member is required to withdraw something because the House itself is affronted. The individual reaction of members is not quite irrelevant but it is not the reason for withdrawal.


4 The correct process [when the Speaker has not heard a comment] is that I ask the member whether he made that comment, and see if he says he did or not; then his word must be accepted in the House.


5 A member must withdraw an offensive expression unreservedly, and must not use an expression which may imply a repetition.


6 Words ordered to be withdrawn must be withdrawn without qualification and an apology, if required, must likewise be made without qualification.


7 Words withdrawn cannot be commented on; but it is not always sufficient that the words be withdrawn. It is open to the House to demand an apology for the use of them.


1 Because words are withdrawn does not mean that they are expunged from the record; they are still part of the debate and are recorded in *Hansard*. Once words have been withdrawn that is the end of them in the House and the House continues with its business without further reference to them, but that does not mean they cannot be reported by the news media.


2 If a withdrawal and apology is asked for, no other words should be used. It should be a withdrawal and apology without qualification. But if the chairperson directs a member to apologise in a certain way, the member so directed should apologise in that way.


Visual aids

3 It has been the custom of the House on occasion to allow the presentation of visual material to illustrate a member’s speech. However, an excessive number of exhibits could interfere with the free movement of members around the Chamber. As long as exhibits do not inconvenience members they may be presented. They should be removed when the member concludes the speech.


4 Articles brought into the House should not obstruct the Speaker’s view of the House or of any of its members, or interfere with the activities of any member or the free coming and going to and from the House.


5 A major consideration in deciding whether a visual aid can be used is the convenience or inconvenience of members. If the aid is restricted to the desk at which the member is seated, it can be used. It is not in order for members to stand next to the member speaking holding up something. If the member wishes to put the aid elsewhere than on his own desk, the presiding officer deals with it as members find it.

The presiding officer has to judge whether a visual aid is an appropriate aid to use in the House. Members do not have an absolute right to use any object they choose in the course of their speeches. One major consideration will be the size of the object that a member seeks to introduce into the Chamber. The Standing Order allows members to illustrate a point they are making in the course of their speeches. It does not permit a demonstration to be staged in the Chamber.


In general, it is not necessary to obtain the presiding officer’s agreement before using a visual aid if the object is not displayed prominently prior to use and is, as it were, produced during the member’s speech. But often it will be necessary to bring the object into the Chamber before the member speaks. In those circumstances approval to bring the object into the Chamber in the first place must be sought. This can be done privately.


Members must exercise good sense in how they conduct themselves in the Chamber. How they conduct themselves includes what objects they bring with them into the Chamber. It does not contribute to the dignity of the Chamber, or the esteem in which this institution is held, to bring in objects that trivialise Parliament. I think that the Speaker and the other presiding officers have a duty to use their offices to protect Parliament from such trivialisation.


It is perfectly acceptable for a visual aid to be used by the member and, therefore, the person assisting the bench, but it is not acceptable for visual aids to be shown from other benches.

Yielding

1 Yielding is based on the practice of the House of Commons where a member with the call can be asked whether he or she will yield to another member to allow a relevant question to be asked, but it is not for the member with the call to invite another member to intervene. It is a way of making an interjection, not a speech, and is confined to a brief comment or question on what the member yielding was speaking on. Yielding should be for a brief period, after which the original member who has the call resumes the debate. Yielding is not a means of transferring the call to another member, nor is it an opportunity to develop a subject at some length or to take up the balance of a member’s time. If more than a reasonable time has been taken by the member taking the yield, the Speaker will interrupt and ask the member who yielded to resume his or her speech. The next call should be given, following the normal practice, to a member from the opposite side of the House to the member with the call.


2 When a member yields to another, the member given the floor may refer only to the matter raised by the member yielding. A member yielding yields the member’s time to the other member.


RULES FOR AMENDMENTS (SOs 122–130)

3 A member can sign written amendments on behalf of another member if the member has that other member’s permission.


4 There is no Standing Order or Speaker’s ruling that compels a member to intimate, at any particular part of the member’s speech, an intention to move an amendment, but usually, as a matter of courtesy, it is done at the commencement of the speech.

(1) It is not competent for the mover of a motion to move an amendment thereto in the course of replying to the debate; (2) but the amendment may be included in the motion by the unanimous consent of the House.


2 A member having moved an original motion cannot move an amendment to it.


3 A member cannot without the unanimous consent of the House materially alter an amendment of which notice has been given and which is before the House.


4 An amendment to a motion that the House meet at 9 am on Wednesday to provide that the House should meet at 2.30 pm instead was ruled out as a direct negative of the motion, as if the House did not meet at 9 am it would normally meet at 2.30 pm in any case.


5 An amendment extending the scope of a motion fulfilling a statutory obligation imposed on the House is in order, but an amendment restricting such a motion would not be in order. (Motion related to the House’s obligation to set up a select committee under section 31 of the State-Owned Enterprises Act 1986.)


6 As appointments to the Intelligence and Security Committee are made on the nomination of the Prime Minister and the Leader of the Opposition and are submitted to the House for endorsement only, the House cannot amend the nominations. The motion could be severed so as to allow members to vote on each nomination separately.


7 When an amendment is under consideration a member may give notice of a further amendment the member intends to move, or move an amendment to the amendment, but may not move a separate amendment to the one under consideration.


See also CLOSURE OF DEBATE (SOs 136–138)
INTERRUPTION OF DEBATE (SOs 131–132)

Interjections

1  Strictly speaking, a member is entitled to be heard without interruption, but with the tacit consent of the House the rule has been relaxed in favour of members asking reasonable questions. This latitude is allowed only to enable members to elicit further information, and the proper time to use argument against the measure under discussion is when they are called on to speak.


2  (1) Interjections in debate are out of order unless they are rare and reasonable; (2) occasional interruption by way of interjection is in order if relevant; but (3) a running commentary of interjection is out of order; (4) if members have other matters to bring forward they must wait their opportunity to make a speech.


3  The barrage to try to prevent the Minister from being heard was apparent. Everyone has a right to be heard. Freedom of speech is in fact observed in this House, and denying people the right to be heard is denying them their freedom of speech.


4  It is a very well established custom that members on both sides of the House refrain from interjecting during a maiden speech. It is also a well-established custom, but not always followed, that therefore a maiden speech, made under privilege, is not controversial or provocative.


5  (1) Courteous interjections are permissible, but not those by way of contradiction; (2) reasonable questions may be asked by way of interjection, provided the member then addressing the House does not take exception to them; (3) it is highly disorderly for a member to persist in interjecting when the member has been called to order.

1 A member may not make interjections while standing or leaving the member’s seat.

2 A member may interject from any seat the member may be occupying at the time, but not while walking about. It is disorderly to change seats to facilitate interjection.

3 The practice of members engaging in a constant barrage of interjections amounts to heckling; it is entirely intolerable in a debating chamber.

4 It is accepted that the constant asking of questions needling a member who does not have the floor leads in the direction of disorder, and is out of order.

5 Frivolous interjections or points of order designed to break up a 5-minute speech lead to disorder.

6 The rules permitting interjections are predicated on the assumption that the person being interjected against has the call. There are members on my right and my left who do not have the call and, therefore, are not permitted to interject against each other.

7 It is a longstanding convention that when a member is speaking from the backbenches other members who are sitting near that member do not interject, because of the effect it has on the live microphone.
1 There is a convention that, in committee, members in charge of legislation should not take unfair advantage of a live microphone by way of interjection.


ADJOURNMENT OF DEBATE (SOs 133–135)

2 By moving the adjournment of a debate, a member establishes a right to speak first on the resumption of the debate, if the member chooses to take it; if the member does not take it, the member may speak later in the debate. A member does not need to safeguard the right to do this by declaring this to the House when the debate resumes.


CLOSURE OF DEBATE (SOs 136–138)

3 A member who has been properly called to speak can move the closure.


4 A member does not have to be at a particular seat to move a closure motion. Seats are allocated for each party. Any member of that party can sit in one of those seats at any time and can move any motion as required.


5 If the member speaks to a question he or she cannot move the closure at the end of the speech.

   1931, Vol. 229, p. 34. Statham.

6 A member when rising to move “That the question be now put” cannot then give reasons for doing so. (Motion declined at that point.)


7 There is a proper form for moving the closure motion, but to suggest that to say thank you is to make a speech is a little unfortunate. Courtesy in this House is something I have been trying to encourage.

A closure motion is treated as a speech in its own right. When a member moves the closure, that is all the member can say on that point. But if [as in committee] a member has the right to speak more than once to a question, there is nothing to stop a member on his or her second or subsequent call from moving the closure motion.

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The [chairperson] is the sole judge as to whether or not he ought to sanction the putting of the closure motion, and it must be left entirely in his hands. The [chairperson], who has been presiding and has listened to the debate in committee, must be the best judge whether the closure ought to be put. I can only express the hope that it will not be applied too harshly.

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It is not for the Speaker to second-guess the Chair’s judgment [on the closure]. Of course, if in fact the committee does not agree with the Chair’s decision to accept the closure, then it is always open to the committee to vote down the question, “That question be now put”.

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The chairperson is the person who listens to the ebb and flow of the debate, and is the person best placed to see whether the committee is of a mind to accept a closure motion. A closure is not the chairperson’s decision; it is the committee’s decision.

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The number of times that a closure is called for should not in any way determine when a chairperson decides that the debate has adequately been given sufficient time within the committee.

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In considering accepting the closure, the Chair will tend to ensure that a party of large numbers gets an appropriate number of calls. The Chair also has regard to questions of relevance and repetition.

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Closure motions are more likely to be accepted in a shorter time period if Ministers have engaged in a positive manner to non-political technical questions.
1 The acceptance of a closure motion is about the content of the part, the content of the speeches, and the way that the committee conducts itself.

2 The form of drafting of a bill is a matter that the chairpersons should take into account in committee in deciding when to accept a closure motion. (Considerably longer debate would be permitted on a part with numerous subparts than would otherwise be the case.)

3 [Standing Order 106(b)], stating that overall participation in a debate should be approximately proportional to party membership in the House, does not mean that the Chair, in exercising discretion to accept the closure, must allow the debate to run on until calls are proportional to party numbers. It principally applies to a fixed-time debate. It is a relevant factor to consider, but it is not binding on the Chair.

4 A member may not, without leave, withdraw an amendment on a Supplementary Order Paper [or that has been handed in to the Table] after a closure motion has been carried.

5 If the closure motion is carried the main question and any properly proposed amendments tabled before the closure are also put forthwith and decided without further amendment or debate. The Standing Orders do not allow the closure to be moved only on an amendment, followed by further debate or amendment to the main question. To do so would defeat the purpose of the closure.

See also FORM OF BILLS (SOs 253–261)

PUTTING THE QUESTION (SOs 139–155)

General

6 It is not possible for a member to be recorded as having voted without having first taken the Oath of Allegiance.

7 Any member is free to come to the Table and look at the voting list.
CHAPTER 3

GENERAL PROCEDURES

1 There is no provision for a secret vote.

2 Once a vote is commenced, it has to be completed. (A member could not move a motion to set aside this rule where voting on a series of amendments was likely to extend into the lunch break. This could only be done by leave.)

3 Until the words the Chair uses to put the question have actually concluded, he or she can accept a call at any stage during that time.

Voice vote

4 Vote follows the voice, but not necessarily a speech. I know of no rule preventing an honourable member from speaking on one side and voting on the other.

5 (1) A member having given his or her voice in one direction, when the question is put the member’s vote must follow the voice; (2) but a member can make a personal explanation afterwards.

6 The rule that vote follows voice is a rule applying to a personal vote. It cannot be applied directly to a party vote where one member declares the vote on behalf of all members of a party. The equivalent rule on a party vote is that a member voting with the majority, whether a whip or not, should not then call for a party vote. This is improper and a waste of time of the House or committee. In a clear case the Chair could refuse to allow a party vote to be held if the party calling for the vote had given its voice for the side of the question that the Chair agreed was in the majority.

7 When the Speaker declares the result on the voices, that, unless challenged, is final and may not be disputed. The right to challenge does not lie with those whom the Speaker has declared to be the majority. The right to challenge the result lies with the minority who believes that the decision of the House would be different if it were tested by a vote.
1 (1) The mover of a motion or amendment may vote against it; and (2) is not compelled to stay in the House and vote for or against it.

Party vote

2 A party vote is not an opportunity for a member who does not agree with the result on the voices to test the position of another party. The Chair will have the Clerk conduct a party vote only if asked to by a member who gave his or her voice contrary to the Chair’s declaration of the result on the voices.

3 Normally the expectation is that members call for a further vote only if they wish to challenge the outcome and have given their voices in the minority. However it is my view that it is in the House’s interest for members to be able to record their position when they wish to abstain. *(The Assistant Speaker directed that a party vote be held to enable a party to record abstentions, though there were no dissenting voices when the question was put that a bill be read a first time.)*

4 If members want a party vote, they must challenge the Speaker at the time when the result is declared. A party vote does not follow automatically because a voice is given for the noes.

5 On a party vote, the Clerk names the party by its official name and the whip responsible for voting then gives the vote. No other comment at all is allowed.

6 Hansard records only the votes cast. It does not record particular words during voting.

7 Parties must be given the opportunity to vote in order of their size. But if votes are for some reason cast in a different order that does not invalidate the vote, provided the party vote has not concluded.
1 If, during a party vote, a party’s name is called by the Clerk and nobody answers, that party’s vote is not counted. 

2 It is highly disorderly for members to interject on other members while votes are being cast. Not only does this make it extremely difficult for the vote to be conducted accurately, it may also become intimidating of members. Verbal intimidation of a member who is voting could ultimately amount to a breach of privilege. 

3 “Zero” is not an acceptable vote—it is the absence of a vote. A party is entitled to decide not to participate in a vote; it is not entitled to cast zero votes. That is a contradiction in terms. Any party announcing “zero” will be treated as not participating in a party vote and will not be recorded in the Journals or Hansard voting lists. 

4 A member casting a party vote on behalf of another party does not have to indicate that it is a proxy. The member merely casts the vote. 

5 If the party is present, it has to vote. (The leader of a small party had authorised the casting of his party’s votes by the whip of another party, but was present in the Chamber.) 

6 The purpose of seeking leave [to be absent from the House] from the Speaker, if it is a smaller party, is so that that person is granted leave legitimately and that that vote can therefore be cast in good faith by the whip. 

7 It is not acceptable for a member to cast a party vote from the floor of the House; the member must be at a seat. But members do not have to be in their own seats. So long as they represent the particular party concerned, they may vote from any seat in the House. 

8 Provided the member is not the Speaker, Deputy Speaker or an Assistant Speaker officiating, any member, including the Minister in the Chair, may vote from any part of the Chamber on behalf of the party that he or she represents. 
1 The Speaker is not concerned to know the reason a party has not voted its full strength.

2 A member suspended from caucus is included in the party vote totals cast for that party, unless the member votes contrary to the party. In that case, the member may cast a separate vote.

3 If a member votes with a party on an issue, it is part of the party vote. Any member is entitled to give a different vote, including an abstention. This is done under “Any other votes?”.

4 How the names of members voting contrary to their parties are identified is up to the chairperson. It could come from the members or from the Chair. If a proxy is involved, the member must say for whom it is being cast.

5 A party vote is not completed until the Speaker declares the result.

6 This [first reading] debate has concluded. The Speaker has determined that the vote will be a personal vote. Following the personal vote, there may be two other procedural votes [on the select committee to consider the bill and the reporting date]. These will be cast as party votes.

Personal vote

7 A conscience issue may arise on the grounds of the traditional understanding of that term over many Parliaments or out of the flow of debate—public debate as well as in the House. *(A motion for the appointment of a Deputy Speaker was not a conscience issue.)*
The fact that the House may, on a party vote, divide rather closely might well be a pattern on every vote throughout a session. It is clearly not intended by the Standing Orders that there should be a personal vote more often than not. Closeness on a party vote is not enough, of itself, for a personal vote unless there is something that might make a material difference. This might arise, for example, out of some elements of confusion.


If the voting sheets are handed back to the Clerk before the 7 minutes [during which the bell is being run] are up—that is, before the doors are locked—and a member comes in and wants to vote, the member may still vote. The time for the vote is after the doors have been locked; that is the time when the question is put for the vote.


Locking the doors is a procedure that is necessary to ensure that all members are present when the vote is taken, so that no member who was not present when the vote is taken is able to come into the House and claim to have a vote recorded, but locking the doors is not an essential requirement for a valid vote. Similarly the failure of the bell to ring in any part of the buildings does not invalidate the vote.


The voting lists as given to the Speaker by the tellers are absolute evidence of the members who have voted.


During a personal vote the rules are somewhat more relaxed and members may move about and talk to each other in a way that would be unacceptable during debate. While a certain amount of banter occurs amongst members at that time, members must be careful not to allow it to get out of hand. In particular, there must be nothing that tends towards verbal intimidation of other members performing their duties during a personal vote. While the Chair will not lightly intervene, it can do so in an appropriate instance, and, ultimately if the matter continues, it might even constitute a breach of privilege.


If a member is locked in the member is bound to vote. A member is bound by the vote actually given, whatsoever the member’s intention may have been and there is no provision for altering a vote.

1 No convention or Standing Order requires that a member [present within the Chamber or lobbies] who fails to vote should cast the vote one way or the other. The Standing Order allowing the Speaker to correct voting lists does not apply in this type of situation.

2 The Standing Orders do not provide a penalty [such as automatic transfer of a vote to the other side] in the case of a member present in the Chamber who fails to vote. But a member who wilfully refused to go into the lobbies to vote [or refused to record an abstention] would be in contempt of the House.

3 A teller is one of the official observers of the vote, acting on behalf of the Speaker and the House. It is the duty of the tellers, before they sign and return the voting list to the Table, to satisfy themselves that the numbers recorded on the voting lists are correct. If they are not satisfied that that is so they should not sign. If the lists are properly signed and reported to the House the Speaker would have to have good grounds for not accepting the lists as presented by the tellers.

4 A personal vote is not complete until the Speaker has announced the result.

Proxies

5 The onus is on the member to inform the whip how a proxy is to be exercised. The whip can exercise that proxy only as authorised by the member. If a whip was to exercise a proxy that he or she was not authorised to exercise, that could well constitute a contempt.

6 Without particular evidence, the word of whips or other people casting votes must be taken.

7 If a member does not want a general proxy to continue to be exercised, the onus is on that member to terminate it or attach conditions to it. Nobody else can do that and no amount of hearsay, no amount of intention and no amount of communication to somebody other than the proxy holder, will do.
   (A communication of an intention to another member that a particular piece of legislation is not favoured and that the proxy would be withdrawn, is not enough to invalidate the proxy.)
Communication of the withdrawal or amendment of a proxy does not have to be effected in writing. It can be communicated orally, for example, by telephone, as long as it is conveyed directly to the proxy holder.


Whips have an automatic right to exercise proxy votes for members of their party. But an Independent member is not a member of a party. It is for the Independent member, as grantor of the proxy, to indicate whether there may be any substitute exerciser of it. It does not automatically pass to be exercised by anyone acting as a whip.


An Independent member who has been granted the Speaker’s permission to be absent and have a vote recorded by proxy has to judge whether the condition applies entitling him or her to have a proxy vote recorded. If, for example, there is no family illness and the member is not attending to public business, the member should notify the person who holds the proxy that it is not to be exercised while that state of affairs continues. The member is the primary judge as to whether he or she is on public business.


[Standing Order 154(4)] [conferring a general proxy on whips] is intended to facilitate the casting of proxy votes during a party vote. It is axiomatic that it cannot apply in the case of a personal vote on a conscience issue. A written proxy has to be issued in the case of a particular personal vote.


A member present in the public gallery can have a vote cast by proxy on a personal vote.


Errors and mistakes

Where a chairperson is aware that there is confusion or a mistake over a vote or some reason for a member wanting to have something further to say about his or her vote it is not unreasonable for the Chair to allow a little time for that to be clarified. It is for the chairperson to decide.


There is no provision in the Standing Orders to alter a vote and neither the Speaker nor the chairperson can change a member’s vote. Leave is required to withdraw a member’s name from the voting list.

1 Whether a member goes into the wrong lobby through inadvertence or from any other cause the member is bound by the vote actually given without regard to intention. A member’s vote cannot be disallowed but must stand as it appears on the voting list.


2 A member inadvertently locked out and consequently not present in the House when a personal vote is taken cannot have his or her name recorded in the voting lists.


3 If an error occurs in the voting lists in committee the Speaker will, upon the House being satisfied that the member voted and the member stating how he or she voted, direct the voting list to be corrected.


4 In the absence of a serious allegation that the count was wrong, the Speaker or chairperson has no authority to reorder the vote to be taken. The mere circumstance of a door not being locked is not a ground laid down by the Standing Orders for the vote to be retaken. There has to be an element of doubt as to the numbers.


5 [Standing Order 152(2)] allows the correction of voting lists so that the record accurately records the vote that took place. It does not allow members who have not voted to have their names recorded or members who have voted to have their names deleted. It is solely for the purpose of ensuring that the record accurately portrays the proceedings of the House.


EXAMINATION BY ORDER OF THE HOUSE (SOs 156–158)

6 When a person appears at the Bar of the House to answer for his or her action towards a select committee, the Speaker will put formal questions suggested in the report of the committee; then members can send up questions in writing to be asked by the Speaker. At the close of examination the person at the bar will be heard in explanation personally or by counsel.

RESPONSES (SOs 159–162)

1. Where the Speaker declines an application for a response there is nothing to stop a member in the course of, for example, the general debate taking up somebody’s dissatisfaction or line of argument, or defending that person against what another member had said; nor does it prevent a petition on the subject.


2. The fact that a response has been tabled does not mean that members have to agree to it. It is up to members whether they comment on the response. When a response is accepted for tabling, no judgment is made on the truth of the response.


DECLARATION OF FINANCIAL INTERESTS (SOs 164–166)

3. To have a financial interest in the passage of a private bill, the interest must be direct. Policyholders in a large life office did not have a financial interest in a private bill restructuring the company as it would be unreal to say that they stood to gain financially from it. Each case must be considered on its merits. The decision might be different if a member held shares in a small private company or was a director or major shareholder in a company, and the company concerned promoted legislation.


4. The Standing Orders on declaring a financial interest do not disqualify a question being asked.


5. If a member is acting professionally for a petitioner and is going to receive a fee or reward for services rendered within the House the member would have a financial interest on any question connected with that petition.


6. Members do not have a financial interest in a Payment of Members Bill. Honorarium does not attach to the individual, but to the office. There is no instance on record where a member’s vote has been disallowed when he voted on a question of public policy. This is considered to be a question of public policy.


1. A farmer member does not have a financial interest in a bill to provide for the payment for and marketing of dairy produce.  

2. Ministers do not have a financial interest in a Ministers’ salaries and allowances bill—the salary attaches to the office, not the individual.  

3. A member does not have a [financial interest] in a question merely because the member is a director of a company which provides mortgage broking services for a company which may own land affected by the proposal at issue.  

4. The fact that an amendment might open up a business opportunity for a number of companies in which members have an interest is not a direct financial benefit. Such a business opportunity might or might not eventuate from a particular clause or bill becoming law. The matter is entirely speculative.  

MESSAGES AND ADDRESSES (SOs 167–169)

5. After rising on the announcement of the receipt of a message from the Governor-General, members sit down once the Governor-General’s name has been announced.  

COMMITTEES OF THE WHOLE HOUSE (SOs 170–183)

Powers

6. The committee of the whole House has no power to grant leave to refer anything back to a select committee.  
Chairperson

1 (1) The chairperson is judge of all matters arising in committee, and the Speaker will not interfere with the chairperson’s decision unless the committee decides by resolution to obtain the Speaker’s opinion. An individual member cannot appeal from the chairperson to the Speaker; (2) the proper course for a member disputing the ruling of the chairperson is to give notice of motion; (3) the Speaker will not review the ruling of the chairperson if not referred by resolution of the committee or by motion made in the House.

   (1) 1870, Vol. 9, p. 163. Monro (amendment).
   1895, Vol. 89, p. 582. O’Rorke.


2 The Chairperson has a duty to ensure that all sides may take part in the debate and to protect the ability of the minority to participate. He or she does so by listening to the debate, judging relevance, keeping order, and ensuring that members have the opportunity to contribute.

1  In committee the chairperson is (1) the sole judge on the question of relevancy; and (2) decides whether an amendment or clause offered is foreign to a bill or involves an appropriation; or (3) whether there is tedious repetition or irrelevance; and the Speaker will not review, reverse, or interfere with the chairperson’s ruling on any of these matters; (4) any such ruling of the chairperson can only be corrected or reversed by the House itself by resolution upon motion with notice.


   (2) 1909, Vol. 147, p. 605. Guinness.


2  The Speaker may not interfere with the decision of the chairperson on a question of relevancy.


3  It is bordering on an inappropriate use of the undoubted right to recall the Speaker to do so on the ground of relevance, and it is likely to bring the longstanding custom of the committee of the whole House always acquiescing without dissent in such a request, into question. Members need to take great care in seeking to recall the Speaker.

1. In committee, the clock is stopped when a point of order is taken. The Chair then decides whether time is deducted from the speech. On the other hand when the Chair rises to point out to a member that the member is not being relevant, the clock is not stopped. It is then up to the Chair whether to allow extra time.


2. The chairperson has the discretion to give consecutive calls in committee but a member could not claim that as of right. The chairperson also has to take into account proportionality as well as the seniority and interest of the member with the call.


3. In deciding who gets the call, members of a select committee [that considered the bill being debated] tend to get some preference.


4. (1) A member is not in order in reflecting on the actions of the chairperson or of anyone presiding over the proceedings of Parliament; (2) nor may a member reflect on the chairperson by inferring that rights were exercised that the chairperson was not entitled to exercise under the Standing Orders.


5. When a chairperson is also the chairperson of a select committee there is no practice which requires the chairperson to refrain from taking the Chair in committee on a bill which has been considered by that select committee.


**Member in charge of bill**

6. The Minister who is responsible for the bill has to be in the Chair or leave the Chamber.


7. There is some obligation on members, when they have important questions that they want the Minister to respond to, to ask their questions generally within the first 10 minutes of their speaking time rather than after the Minister has responded.

1 The Minister in the chair will decide whether he or she wishes to answer a question. It is not for the presiding officer—the Chair—to decide whether the Minister in the chair answers questions.


Instructions

2 It is competent for a member to move an instruction the subject matter of which is neither “irrelevant nor foreign nor contradictory to the decision of the House taken on the introduction and second reading of the bill, which is not subversive of the principle of the bill nor suggests an alternative scheme”, but which is merely supplementary and seeks to confer on the committee of the whole House a power which it does not possess. *(The instruction which was moved and held to be in order was as follows: “That it be an instruction to the Committee of the Whole on the Finance Bill that it hath power to make provision in the bill for ensuring that the cost of living, including food, clothing, and rent, be lowered simultaneously with, and in proportion to, the amount of the reduction in the salaries of the Public Service employees as specified in Part I of the bill, and simultaneously with, and in proportion to, the amount of reduction in wages as ordered from time to time by the Arbitration Court under Part II of the bill.”)*


3 The committee of the whole House to which a bill has been referred has no other function than to go through that bill, make such amendments as are thought proper, and report the bill back to the House; and a member may not move an instruction seeking to give the committee of the whole House authority to set up a subcommittee to report back to the committee of the whole House which in turn is to embody that subcommittee’s report in its own report to the House.


4 An instruction that is completely foreign to a bill is not a proper instruction. [Standing Order 302] is a standing instruction. A motion for an instruction in respect of an amendment is designed to widen the committee’s power beyond the Standing Order.


5 The member can move an instruction to the committee on an amendment when it is consistent with the bill or associated with the bill, but if it is one step removed and it is foreign to the bill then the member cannot do it by a motion. In that particular case, the member can do it only by leave.

An instruction to empower the committee to do something the committee already has power to do is not in order. (*A motion for an instruction to the committee of the whole House to have the power to consider amendments that were within the scope of the bill was ruled out of order.*)


[Standing Order 176] defines how an instruction is moved. If a member considers that an instruction has not been properly moved, it is incumbent on the member to challenge the procedure at once. It is too late to challenge it after the House has resolved on the motion.


[Standing Order 176(2)] prevents other business from being transacted between calling an order and making an instruction. “Immediately” means that the motion must be moved before the House goes into committee. After that time, it is too late to move it. But no Standing Order prevents a member raising a point of order or seeking leave before moving for an instruction.


1. This is a procedural motion (for an instruction to the committee of the whole House to consider a Supplementary Order Paper), and it is a narrow debate. The only matter under debate is whether the committee should have the power to examine and adopt this Supplementary Order Paper; (2) members cannot debate the content of the amendments; they are tabled for members to look at.

   (2) 2011, Vol. 674, p. 20070. Tisch (Deputy Speaker).

**Motions to report progress**

5 A motion in committee that the chairperson report progress can only be moved by a member who has the call, it cannot be moved on a point of order.


6 The member in charge of a bill in committee may move that the committee report progress on the bill and add the word “presently” if it is desired to consider the bill later in the same sitting.

Where a committee has defeated a motion to report progress and another motion to report progress is moved immediately thereafter, it simply raises again the matter the committee has already resolved. However, motions that progress be reported during the committee stage do not always raise the same considerations. The rejection of such a motion in one circumstance does not presuppose that it may be similarly rejected in a new committee on a different day, or during the consideration of a different provision of the bill. Therefore, a motion to report progress moved pursuant to [Standing Order 181(1)] having been defeated by the committee, a further motion to report progress may not be moved while the procedural circumstances remain unchanged—in other words, while that committee continues to consider the same substantive question proposed by the Chair.

CHAPTER 4
SELECT COMMITTEES

ESTABLISHMENT OF COMMITTEES (SOs 184–187)
1 (1) On a motion for the establishment of a select committee, remarks must be confined to the subjects mentioned in the motion or to reasons why the committee should not be established; (2) but members may mention any matter they consider should be brought before the committee, though they cannot discuss the whole subject.


2 On a motion to set up a special committee and refer to it certain matters for consideration and report, members cannot debate the questions the committee is to go into.


MEETINGS OF COMMITTEES (SOs 190–194)
3 If a committee has power to meet while the House is sitting it is up to the committee whether it exercises it. There is no convention that committees may not meet while the House is in urgency.


4 It is inexcusable for it to be advertised to potential witnesses that a committee meeting is to take place at a time that is prohibited under the Standing Orders. Notices of meetings cannot be issued for such meetings and arrangements should not be made for witnesses to attend, before the authority of the House is obtained.


5 Once a committee has called a select committee meeting, the chairperson may not cancel it.


6 Unless all members of a committee are in agreement, or the House has specifically authorised a committee to do so, committees should not meet between midnight and 8 am.

1 An agreement under [Standing Order 190(2)] relating to the time for the meeting of a select committee is an agreement that results in a direction from the committee that it shall meet at a set time. Informal arrangements are not embraced by the Standing Order.


2 Meetings of select committees on separate calendar days are separate meetings and cannot be treated as one continuous meeting.


POWERS OF COMMITTEES (SOs 195–200)

3 Select committees report to the House. They are not independent decision-making bodies.


4 [Standing Orders 199(1) and 115] appear to preclude inquiries into decisions about whether to prosecute.


5 Clothing a select committee with the usual powers of calling for persons, papers and records does not confer the power to order returns.


6 [Standing Order 195] implies that a committee cannot request papers and records unless the chairperson is satisfied they are relevant to some matter that is currently before the committee. This does not prevent a committee seeking information when it is considering whether to initiate an inquiry, although the information sought should be relevant to the particular question of whether or not to initiate the inquiry and associated issues such as the draft terms of reference.


7 A Minister or other member ultimately cannot be forced to attend to give evidence to a committee except by an order of the House to that effect.


8 If documents are held by the Minister as head of the department to be confidential State documents the Minister can refuse to produce them [to a committee]. The House by resolution has power to order the production of confidential State documents.

When a Government agency or public organisation receives a select committee request, it should not be treated in the same way as a request under the Official Information Act 1982, although that Act may provide some guidance. A public body must seriously consider responding to such a request as a facet of its accountability to Parliament and the public. The provisions of the 1982 Act do not exempt it from this accountability obligation.


It is in order for a select committee to request information to which statutory secrecy provisions may apply. A committee may make a request, and it is for the agency concerned to consider how its response to the request is affected by relevant legislation. Not all secrecy provisions are in the same terms and their application to parliamentary requests for information must be carefully considered.


If papers are refused to a committee when called for, the committee reports the matter to the House.


If a select committee desires to call for papers or records, a formal resolution should be passed asking the Minister or some officer appointed by the Minister to produce them. If the Minister refuses and the committee still insists, the chairperson may then report the same to the House, which will deal with the matter.


If papers or records are subject to a statutory secrecy provision, the Speaker may take account of that fact when considering an application for the issue of a summons.


A legal opinion is the property of the person who commissioned it, and without that person’s consent a select committee cannot expect an opinion to be furnished by the person who prepared it.

1 Members will always have the right to inquire into agencies that are accountable to Parliament but with this come responsibilities. Parliamentary processes should not be used to encourage witnesses to disclose information when other more appropriate means can be used (such as the Protected Disclosures Act 2000). If this occurs, there is a danger that Parliament may be brought into disrepute.

   *Question of privilege on the action taken by TVNZ in relation to its Chief Executive, following evidence he gave to the Finance and Expenditure Committee, Final report of the Privileges Committee, October 2006 (I.17B), p. 6.*

2 A select committee may examine a witness who is too ill to attend at the witness’s residence; but if a witness is in prison, the proper course is that the Speaker’s warrant shall issue, by order of the House, directing that the prisoner be brought into custody, from day to day, before the committee. A committee should not proceed to a prison to examine a witness without the prior consent of the House.

CHAIRPERSON AND DEPUTY CHAIRPERSON (SOs 201–203)

1 The Standing Orders do not set out how the role of chairperson should be performed, and this is appropriate. However, we wish to set out some expectations for chairing select committees. Unlike the Speaker in the House, select committee chairpersons participate both as presiding officers and also as members in a deliberative and political capacity. The overarching principle is that select committee chairpersons, when exercising functions and authority as presiding officers, must regard the interests of the House as paramount.

The interests of the House are served when:

- the rules and practices of the House are impartially and consistently interpreted, constructively applied, and always complied with
- members are able to make informed decisions about the business before them
- meetings are facilitated so that time is used effectively and collaborative decision-making can occur where possible
- participants in parliamentary processes are treated fairly and respectfully
- Parliament engages well with the public and democratic participation is encouraged
- bills and other instruments are scrutinised properly and improved so that New Zealand is regulated by good-quality legislation
- the Government is held to account for its policies, strategies, administrative actions, and financial performance
- legitimate expectations of Government and non-Government members are accommodated
- reports properly crystallise the outcomes of committee consideration and allow the expression of differing views
- business and arrangements for meetings are signalled in advance, and good warning is given of meetings outside Wellington
- business is considered in a timely way and reporting deadlines are met.


2 An acting chairperson of a select committee cannot be properly elected if the chairperson is actually present, and a member who takes the Chair in that situation is not authorised to put a question for the decision of the committee. Any question that is so put cannot be considered to have been properly resolved. It is the chairperson’s role to put a question on a motion to the committee and to declare the result. No other member is authorised to do so.

The chairperson of a select committee is in the same position in the matter of ruling as the chairperson when the House is in committee. The chairperson decides on all points of order, and the Speaker has no power or authority to give a ruling on a decision unless the committee in either case requests the Speaker to do so.


It is up to a select committee to elect its chairperson. That is clearly the prerogative of the committee, but there is no reason why a chairperson cannot indicate that he or she has resigned or retired as chairperson. It is a matter of whether the member tells the committee. If a chairperson no longer wants to be chairperson, the member is no longer chairperson.


If a chairperson is absent from a meeting of a select committee, the deputy chairperson acts as chairperson at that meeting of the committee. But the deputy chairperson cannot assume the chairperson’s functions outside a meeting (except as provided in Standing Order 202(1)). (In the chairperson’s absence from the House a question to a chairperson is postponed.)


It is the practice of the Standing Orders Committee to appoint the member of the committee with the longest service in the House [apart from the Speaker] as its deputy chairperson.


It is irregular for any action to be taken in a committee’s name before that committee has held its first meeting and elected a chairperson. When a chairperson has been elected the chairperson attends to many administrative matters without reference to the committee, but there can be no warrant for action being taken, purportedly in a committee’s name, when the committee had not met.


Notices calling meetings of committees should set out clearly the matters to be considered so that members will know what is likely to happen at the committee on a given day if they are unable to turn up or decide, for good reason, not to be present.

[Standing Order 8] provides that all proceedings of the House shall be noted by the Clerk. The Standing Order applies to meetings of select committees, when the duty is normally performed on behalf of the Clerk by a member of the staff of the Office of the Clerk. Informal meetings of members of committees are not meetings of select committees, and will not be noted by the Clerk or by a member of staff pursuant to the Standing Orders. The Clerk or a member of staff would normally attend such a meeting only when attendance will enable information to be obtained that is of direct relevance to an inquiry being carried out by the committee—for example, if the members meet as a body to obtain a briefing on some matter.


When a result is not challenged and no vote is recorded, the decision is regarded as unanimous. If a member wishes to express a dissenting vote and ensure the decision is not considered unanimous, it is the responsibility of that member to ask that respective votes be recorded in the minutes. In some situations in select committees when many questions are being put, it is possible that arrangements could be made for members’ votes to be recorded in a certain way. The acceptability of such arrangements is ultimately for the chairperson to determine in each case. However, any arrangements must be completely clear and unambiguous.


The minute book of a select committee must be taken as conclusive evidence of resolutions passed by the committee.


The question of the appropriate dress worn by members is a matter of order, both in the House and in select committees. In select committees, the standard to be observed is a matter for the chairperson of each select committee to determine, after having taken account of submissions from members of the committee. There is no presumption that the standards of dress rules followed in the House will be followed in select committees. In each case it is a matter for the judgment of the chairperson.

Rulings

1. The House has no cognisance of anything taking place before a select committee unless it is reported by the committee through the chairperson. The only way in which to raise a point of order in the House on a matter taking place in such committee is to move that the chairperson report to the House in order to obtain the Speaker’s opinion. If the motion were declined, the only alternative would be to give notice of motion to move in the House that the chairperson’s ruling be disagreed with. It has been the custom for the Speaker’s ruling here and in the House of Commons to be obtained privately through the chairperson by arrangement with the committee.


2. What transpires in a select committee, and which may or may not have been a matter of order, is to be dealt with in the committee. It is not proper to raise it in the House.


3. The Speaker has no jurisdiction and no authority whatsoever to get involved in the proceedings of a select committee unless approached by the chairperson following a resolution from the committee calling the Speaker in to adjudicate on any matter.


4. If a select committee has doubts as to the procedure to be followed within the committee and wishes to seek advice from the Speaker, the committee should instruct its chairperson to see the Speaker privately. It is not a matter for discussion in the House at that stage unless the committee decides to instruct the chairperson to report progress, or for a particular purpose, in which case the House can again discuss what has been handed over to the committee to deal with.


5. The procedure that has been followed in recent years has been for the Clerk, as an officer of the House, to be invited to advise the committee on the procedures to be followed if the chairperson thinks advice is needed, or the committee thinks the chairperson needs advice. This is the first step that should be followed in a select committee. It can call on the Clerk, and, if necessary, call on the Speaker, and then, by resolution of the committee, it can require the chairperson to report to the House to get the Speaker’s formal ruling.

When a member alleges that another member attending a select committee by virtue of [Standing Order 210] breached that Standing Order by taking part in the proceedings of the committee, the point must be raised at the select committee and if it is desired to bring the matter before the House this must be done by means of the committee reporting to the House.


The Speaker having ruled, at the request of a select committee on a ruling given by its chairperson, the matter is closed and no further discussion thereon can take place.


The chairperson of a select committee should accept any motion that it is relevant or proper to move.


**Attendance of members**

When a select committee excludes a member for disorder it does so under [Standing Order 214]. [Standing Orders 89 to 96] do not apply in respect of select committee proceedings at all. The period of exclusion may not exceed the remainder of the meeting held on that day.


[Regarding] the matter of members of the executive serving as substitute members of select committees. By convention, Cabinet Ministers are not select committee members. That is appropriate given the role committees play in scrutinising the executive. Ministers outside Cabinet often serve on select committees and, in some instances, Ministers have served on committees that overlap with their ministerial duties. All members have political interests. That is inherent in their role. If a conflict arises between a member's ministerial duties and their select committee role, that is a matter for the member to manage. The Standing Orders do not require members to excuse themselves from proceedings in which they have an interest, though they must declare any financial interest they hold in an item of business before participating—Standing Order 164. Parliamentary under-secretaries are less likely to face conflicts between their duties as members of the executive and their presence at select committee meetings. If such a conflict was to arise, it would be for the member to manage. The public will judge any member who appears not to manage a conflict appropriately.


*See also SELECT COMMITTEE CONSIDERATION (SOs 291–294)*

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SOs 204—214
NATURAL JUSTICE (SOs 232–238)

1 The purpose of the Standing Order [232] on apparent bias is to prevent members serving on a committee if they have expressed decided views against a person whose reputation is in issue for having committed a crime or engaged in conduct or activity of a criminal nature.

Administrative law concepts may help to elucidate the meaning of the Standing Order, but it is the Standing Order which chairpersons and, on appeal, the Speaker have to construe. There can be no warrant for constructing a set of rules on apparent bias that are entirely outside the purview of the Standing Order.


INFORMATION ON PROCEEDINGS (SOs 239–242)

Confidentiality of proceedings

2 Every member of Parliament, and immediate support staff, should be given access to all select committee papers in the electronic committee system, with the exception of secret evidence. However, committee proceedings, other than public hearings of evidence and released submissions, are confidential until committees report back to the House. Unauthorised disclosure to any person could result in a charge of contempt. Therefore, all immediate support staff must be thoroughly briefed on the confidential nature of the documents and the serious repercussions of unauthorised disclosure.


3 The onus is on members to clarify whether proceedings may be released. Members cannot claim to be ignorant about the confidentiality of particular proceedings. If there is any doubt they should seek clarification in the committee or discuss with committee staff whether disclosure is permissible.


4 The mere mention at a committee of a matter known extraneously to the proceedings of the committee does not clothe it with confidentiality. What is discussed at a committee is confidential until it comes to the House unless those facts are available to, and known by, people otherwise than during the proceedings of the committee.

Information on committee’s proceedings

1 The normal way for a decision to hold an inquiry to be announced is for the chairperson to issue a public statement. It is crucially important, therefore, that whenever a committee decides to hold an inquiry, it should, at the same meeting, turn its attention to authorising the chairperson to make a public statement announcing the decision. That can be done even though the committee may not have agreed to detailed terms of reference, and so is not yet in a position to advertise for submissions.


2 When the chairperson of a select committee has made an agreed statement announcing that there is to be an inquiry, other members of the committee are free to talk about the committee’s proceedings leading up to the decision to hold the inquiry. In that way, the public interest is served in knowing about the factors that led the committee to take the decision in the first place.


Evidence and reports

3 A select committee may be instructed to withhold evidence which they deem it undesirable to publish, such as evidence affecting private character.


4 A select committee having resolved not to lay evidence on the table, and the question being asked if the committee had power to retain the evidence in its own possession, held, “No select committee has power to keep evidence in its own possession. It should be handed to the Clerk of the House, who is custodian of all records of select committees as well as of those of the House”.


5 A draft report should remain confidential to a committee after the business to which it relates has been reported. Draft reports are prepared for committees by secretariat staff as a service to the committee, and first drafts of reports do not necessarily reflect a committee’s views. It is paramount that the relationship between members and committee staff remains free and frank. We believe that routine publishing of draft reports could undermine this relationship.

1 The report and evidence presented to the committee are the property of the House as soon as the chairperson has reported. In debating the report, members are entitled to refer to the evidence, minutes, and the report.  

Harrison (Deputy Speaker).  


2 When a committee makes an interim report the presumption will be that all relevant proceedings are released unless the committee withholds them. Such a decision would need to be recorded clearly in the minutes.  


3 The transcript [of evidence to a select committee] related to hearings in public, and therefore the information is public anyway. Were it a report of the committee, were it a transcript of a hearing when the committee was in session, not in public, that would be a totally different situation … Standing Order 240] is intended to cover actual reports of committees and a transcript, I would argue, is not a report. (Uncorrected transcript of evidence ruled to be not strictly confidential until the committee reports to the House, and could be tabled by leave.)  

Smith.  


4 When a select committee reports finally on an item of business, the committee’s proceedings become available to the public (apart from secret evidence). This does not necessarily mean the proceedings are published or posted on the Parliament website. The Clerk, as part of his or her custody of the House’s proceedings, can exercise discretion about whether to publish proceedings. The Clerk also redacts information such as personal contact details from submissions before publishing them.

The Clerk occasionally receives requests from individuals for their submissions to be removed from the Parliament website. Where a submitter’s views have simply changed from those originally expressed, removing the submission is not warranted. However, in cases involving significant personal safety, privacy, or family considerations, the potential harm to individuals may outweigh the public interest in the transparency of parliamentary proceedings. We endorse the Clerk’s exercise of discretion in such exceptional cases.

**REPORTS (SOs 243–252)**

**Consideration and deliberation**

1 “Consideration” in a select committee involves going over the details of all the reports and the evidence to such an extent as the committee may choose to. That is quite a separate process from deliberation. “Deliberation” is a stage when each [provision] of a bill requires a definite and recognisable decision by the committee, and it is done by resolution or by agreement of the committee.


2 Where a select committee, as part of its deliberation, sets a specific deadline for receipt of amendments to a report or minority views, it has in effect agreed to a closure. In doing so a committee should be careful to ensure the effect of the closure resolution is very clear. The setting of a closure does not presuppose that the amendments or minority views that are the subject of it will be agreed to. In agreeing to resolutions to conclude deliberation outside a committee meeting, a committee should also give careful consideration to including a resolution to deal with the situation where agreement cannot be reached.


3 If a member is absent from the committee at a time when evidence is being heard, the member is expected to learn of the evidence placed before the committee and there is no reason why such a member should not participate in the committee’s deliberations.


**Interim reports**

4 If a committee purports to have dealt with everything referred to it, it is functus officio, and can deal with nothing further, but if its report is an interim one then it is not functus officio on the matters not finally dealt with in the report and it can continue to consider those matters.


**Minority views**

5 There is no such thing as a minority report, there is only one report presented to the House by a select committee. The minority or differing views of members may be indicated in a report. These differing views, if accepted by the committee for inclusion in its report, become an integral part of the report.

Differing views should be fairly reflected in reports. There is a strong presumption that this will occur. Members who are in the minority have a legitimate expectation that all reasonable steps will be taken to ensure that this convention is followed, even though [Standing Order 245] gives some discretion to committees. This discretion should be exercised only as a last resort when text supplied by a minority is significantly misleading or intemperately expressed, and reasonable efforts to find a compromise have been unsuccessful. Where possible, members should give some advance warning that they are likely to enter differing views, so that their perspectives can be incorporated.


No committee is obliged to indicate diverging views in a report. A majority of the committee can refuse to include other views if it wishes. But a majority cannot rewrite a minority’s views so that effectively the majority is putting words in the minority’s mouth. That would misrepresent diverging views.


A minority does not have a blank cheque to include whatever it wishes in a report:

- A majority can refuse to admit differing views altogether. If a minority’s views are objectionable or too long, there may be a trade-off whereby the minority agrees to cull its contribution. But this must be done consensually; the majority cannot just rewrite a minority’s view.
- A minority contribution, like every contribution, must be relevant to the subject before the committee. The chairperson rules on relevancy.
- A minority contribution must be free of unparliamentary language, as must the report as a whole. The chairperson judges whether language is unparliamentary.


The indication of majority amendments is a mechanism to allow the House to determine whether to adopt amendments, about which there has been disagreement, before they become part of the bill when it is read a second time. The display of amendments as “unanimous” or “majority” in reprinted bills, therefore, occurs for the purpose of facilitating a House procedure. It is not primarily a means for the select committee concerned to express the diversity of its views—the appropriate vehicle for that is the committee’s commentary.

Adoption of report

1 When a select committee has directed its resolution or resolutions to be reported to the House as and for a final report, or has agreed to a final report and directed such report to be brought up, it has performed its ultimate function and cannot afterwards rescind or reconsider such resolution, resolutions, or report; indeed, the moment the direction to report has been given—except in the case of an interim report—the committee, as to the particular matter which is the subject of the report, is functus officio, and, if appointed in relation to that matter only, there and then ceases as a committee to exist, and must be revived before it can be directed to proceed further. But until a committee has directed its resolution or resolutions to be brought up, or has agreed to a report and directed such report to be brought up, it can reconsider any resolution at which it has arrived, provided that due notice of such intended reconsideration be given to all its members.


2 The chairperson signs the report as the mouthpiece of the majority, and not necessarily as concurring in it.


3 A committee can only report when it has agreed on its report and directed the chairperson to present the report accordingly. A political decision has to be taken by the committee. Where a committee fails to report business [other than a bill] within the prescribed time, its obligation to report is not automatically discharged. That still remains. On the other hand, a committee cannot be permitted indefinitely to remain in breach of the Standing Orders by failing to report. In the absence of the House regularising the position, the Speaker determines when the committee must report. If the committee then fails to do so, its task is at an end and no report at all is made.


4 Where a select committee report is in English and Māori, these parts are not translations of each other. Both are part of the report adopted by the committee. Members are entitled to criticise the committee over any discrepancies between the parts, but that is not a point of order.

Presentation of reports

1. As soon as the chairperson of a committee is directed to make a report to the House it should be made with the least possible delay. If there is delay, the only course open to the House is to make an order calling upon the chairperson to present the report. The report should be presented to the House with all possible dispatch, unless there is some special reason for withholding it.


2. A chairperson of a select committee must report to the House within a reasonable time of being directed to do so. This does not mean at once, or even at the first opportunity. Indeed, it is desirable to hold back a report for a few days so that the necessary preparations can be made to reprint the bill. A delay of about one week in reporting to the House is quite acceptable.


3. Chairpersons of select committees cannot transfer the duty of presenting a report to another member who is not a member of the committee. It is their responsibility to present select committee reports or to ensure that another member of their committee does so.


4. The chairperson cannot make a report to the House without the direction of the committee.


5. The chairperson of a select committee may not report to the House in any way other than that in which the chairperson is directed by the committee. If doubts arise as to what the chairperson was directed to report, the report should be deferred for the committee to meet again and clarify the position.


6. There is no authority suggesting that reports of select committees on similar topics must be made on the same day. There may be various reasons why it is not convenient to make them together.


7. There is no reason why a committee cannot report in the same report on two matters which had been referred to it. Whether a committee adopts that course is over to the committee to decide.

Consideration of reports

1 The only proper course for the House to follow if it wants a report of a select committee amended is to refer it back to the committee. There is no power vested in the House to change a report purporting to come from a committee over the signature of its chairperson.

CHAPTER 5

LEGISLATIVE PROCEDURES

FORM OF BILLS (SOs 253–261)

General

1 Apart from a few provisions in the Standing Orders, no direction is available about the form in which a bill for introduction is to be drafted. The rules in relation to amendments are more detailed and more binding and give more direction than the rules in relation to legislation in its original form. In the absence of a precise definition in the Standing Orders of the form of a bill, the Chair cannot move to control the drafting of a bill.


2 Obviously, a Minister cannot deliberately mislead the House in an explanatory note. But whether an explanatory note is accurate is always a matter of opinion. It is not a matter on which the Speaker can judge. The Minister’s opinion can be criticised in the debate, and members do not have to accept it. But there is no absolute standard to which an explanatory note must conform. An explanatory note must be drafted in factual, not argumentative, terms. But whether the facts it recites are accurate or whether members agree with them is quite beside the point. That is why there are debates in the House: so that members can take issue with ministerial claims either in Ministers’ speeches or in the explanatory note.


3 A procedural error cannot negate an amendment agreed. Only a recommittal to consider the amendment could achieve that. The Speaker cannot overturn decisions of the committee. But the bill having been set down for third reading, the Speaker must ensure it is in a form agreed by the committee. (Amendment to Part 1 of a bill was agreed to by the committee of the whole House, but the bill was reported to the House without amendment. The Speaker determined that the amendment had been agreed to and the bill was reprinted showing that amendment for its third reading.)


Local bills

4 The question whether a bill is a local bill or not can be raised at any stage of the bill.


1. A bill to amend a public Act is a public, not a local bill, even if it relates to (2) a district only or (3) a particular locality.
   

2. A bill which deals with (1) several matters in different localities or (2) several localities, is a public, not a local bill.
   

3. A bill dealing with Crown land in a particular locality which does not propose to divest the Crown of the land, but to remove a forest reservation so that the land may be made available for settlement, is a public and not a local bill.

4. A bill enabling a local body (Wellington City Council) to transfer land to the Victoria University College Council as a site for the University College and to receive land in exchange from the Wellington College Board of Governors, and enabling the Wellington Hospital Trustees also to transfer land to the Victoria University College Council, the Trustees to be paid out of public money, is a public, not a local bill. *(Victoria College Site Bill 1901. The University College was designed to serve all the middle districts of New Zealand.)*

5. (1) Local Acts are liable to be dealt with by a measure of State policy; and (2) the matter originally dealt with by a local Act having become a matter of State policy, an amending bill introduced as a public bill may, in the absence of objection, proceed as a public bill. *(New Zealand State Forest Bill 1885, incidentally repealing the Whangarei High School Act 1878.)*
   
If the committee on a local bill reports that a local bill contains clauses that should be dealt with under the Standing Orders relating to private bills, the Speaker will challenge the bill; but the member in charge of the bill may move to suspend the Standing Orders relating to private bills to enable the bill to proceed through all its stages as a local bill, including the clauses referred to by the local bills committee.


If a select committee examining a local bill receives new evidence, not previously available to the Clerk of the House, that casts doubt on whether the Standing Orders have been complied with, the committee should draw that matter to the attention of the House.


**Private bills**

A bill amending a public Act which gave a State guarantee to a private corporation [Bank of New Zealand] is a measure of public policy and not a private bill.


[Standing Order 253] requires a local bill to be promoted by a local authority; clearly, the promoter of this bill is not a local authority. Many bills that were passed as local Acts in the late 1800s and early 1900s benefited private groups or corporate entities, and would, had they been introduced today, have been classified as private bills. The Standing Orders now provide clear guidance about the classification of bills. I declare the bill to be a private bill. *(Christ’s College (Canterbury) Amendment Bill. A private bill amending a local Act, the Christ’s College (Canterbury) Act 1910.)*


A bill empowering a licensing committee—a public body established by statute—to issue at its discretion a licence which it may not issue under the existing law and which does not name the person to whom the licence shall be issued and which does not deal with the private property or interests of any person or persons is not a private bill and cannot proceed as such. If a large body of people are interested or concerned in a subject or if the powers of a statutory public body are to be varied legislation should be by way of public bill. It would be difficult to deal with a licensing matter by way of private bill without transgressing the practice of Parliament.

OMNIBUS BILLS (SOs 262–263)

1. The current [omnibus bill] rules allow for an approach that facilitates, for example, the inclusion in a single bill of a number of interrelated amendments that improve the coherence of provisions in different Acts. Proposed amendments must have a common purpose or be linked to some broad policy objective.


2. [Taxation bills] would be acceptable for introduction as an omnibus bill provided that they are confined to amendments to Inland Revenue Acts [as currently defined by section 3(1) of the Tax Administration Act 1994] and to amendments to those provisions in other Acts relating to the exercise or performance of powers and functions by the Commissioner of Inland Revenue.


3. A clause giving effect to a deed of family arrangement is a matter for a private bill and should not appear in a Reserves and Other Lands Disposal Bill.


4. Clauses in the nature of a private bill should not be included in a Finance Bill.

*(Standing Orders relating to private bills suspended to allow four clauses relating to private trusts to be included in the bill and to be passed in accordance with the procedure prescribed for public bills.)*


5. There is a very clear chronology in terms of how these matters are dealt with. The question of an omnibus bill meeting the requirements of the Standing Orders is addressed at the introduction of the bill. The House has now accepted that the provisions in this omnibus bill meet those requirements. *(During the debate on the second reading of an omnibus bill, a member raised a point of order about whether the bill complied with [Standing Order 263(a)].)*

GENERAL PROVISIONS (SOs 264–275)

Same bill or amendment

1 The purpose of the Standing Orders is to prevent a question which has already been decided from being brought up again in an altered form, and the same in substance can be expressed as meaning “having the same effect”. A question is not substantially the same because it contains four out of five points of the question as originally proposed. The quantitative interpretation cannot be sustained. The important point is the effect of the words not the amount.


2 Bills that are the same in substance as ones read or defeated in the same calendar year will not be permitted into the ballot.


3 [Standing Order 264] does not prevent the introduction of a bill to repeal an Act passed earlier in the same session.


New Zealand Bill of Rights

4 Whether a bill is inconsistent with the New Zealand Bill of Rights Act is not a matter of order of the House. The Attorney-General has an obligation to report if any provision appears to be inconsistent with any of the rights and freedoms contained in the New Zealand Bill of Rights. There is no obligation to report on whether a bill complies, only when it appears that a bill does not comply. The question of whether a report is to be made lies with the Attorney-General, not with the House.


5 The Attorney-General’s obligation to report to the House is a safeguard designed to alert members to legislation that may give rise to inconsistency with the New Zealand Bill of Rights Act 1990, and to enable them to debate the proposal on that basis. Ultimately, it is for the House itself to determine: firstly, whether it believes that a bill is inconsistent with the provisions of the Act [on which it may reach a different conclusion from the Attorney-General] and secondly, where it considers that there is an inconsistency, whether it nevertheless wishes to pass the bill.


6 We encourage select committees to invite officials or Ministers to assist them in their consideration of New Zealand Bill of Rights 1990 issues.

Copies of bills
1 There is no requirement to have copies of the bill on each side of the Table, just as long as the bill has been tabled, and there are copies on the Table.

2 [Standing Order 267] sets out the general rule, but it does not deal specifically with bills introduced under urgency. There is no requirement to table a bill prior to its introduction, but bills must be tabled at their introduction.

INTRODUCTION (SOs 276–284)
3 Any local authority is entitled to ask any member to promote a bill on its behalf. Normally, the local authority asks the member resident in the city, borough, or county involved. In the case of larger cities, a local authority usually picks the member in the centre of the area but there is no reason why it should do that if it would rather pick another member. It is really a matter of convention. There is no reason why a member promoting a bill on behalf of a local authority should support that bill.

4 Where two members’ bills seek to achieve the same outcome but by different means, each case has to be judged on its merits. It is possible that the policies proposed to achieve an outcome could be so different as to merit the House allocating time to consider both proposals separately. In such circumstances the scope rules may provide useful guidance. If the difference between the policy proposals is one that could be bridged by an amendment that is within scope, then the bills can be considered substantially the same and the proper course is for a preliminary ballot to be conducted. Should the successful bill be introduced, the member responsible for the unsuccessful bill would be at liberty to propose an amendment to the introduced bill addressing the proposal in his or her bill.

5 Any organisation is entitled to ask any member to promote its own private bill on its behalf. That does not imply that the member has to support the bill, any more than a member putting in a petition has to support the petition.

6 An Associate Minister has power to introduce a Government bill.
Revision bills could potentially be introduced under [Standing Order 263(a)], as they could be regarded as implementing a single broad policy (the revision of the statutes concerned).


SELECT COMMITTEE CONSIDERATION (SOs 291–294)

Select committee to consider bill

2 I refer the Minister to [Standing Order 287(1)]: the Minister should, at the commencement of his speech, indicate to the House the committee he nominates should consider the bill. So I ask the Minister, before he continues, to actually do that now.


3 An instruction [under Standing Order 290] to a select committee can relate only to that bill. It could not extend to any other business before the committee.


Re-referral to select committee

4 An order for the further consideration of a bill in committee must be discharged before the bill can be referred to a select committee.


5 An order of the day for the further consideration of a bill in committee may be discharged and the bill referred back to a select committee for the further consideration of a clause.


6 One clause of a bill cannot be referred to a select committee without the whole bill; but the bill may be so referred with an instruction to the committee to consider only a specific clause.


Consideration

Select committee process

7 Select committees should have six months or more to consider most bills. There is no intention for the default period for select committee consideration of bills to be shortened, and the Government should exercise due restraint when considering the truncation of the select committee process.

1. It is irregular for a select committee to take formal action—such as advertising for submissions—in anticipation of a bill being referred to it by the House.


2. The committee considers that private and local bills … should be treated in the same way as all other bills, and recommends that select committees advertise for submissions at least in the localities likely to be affected by the bill.


3. It is common for the initial advertisement calling for submissions on bills to be placed on the chairperson’s authority rather than waiting until the select committee has met and formally resolved to place an advertisement. There is an obvious utility in this practice; otherwise over a week might be lost before the advertisement appears. This can be important where a committee is working to a limited time frame imposed by the House.

The chairperson’s action in such a case is therefore perfectly proper, but it is provisional and is subject to repudiation or alteration by the full committee when it meets to consider the bill. A chairperson may consult with committee members or at least senior members before fixing a closing date, but this is not obligatory. When it meets it is for each committee to decide whether to endorse the chairperson’s actions or not.

Any such advertisement should not give the impression that all members of the committee participated in the decision to place it.


4. In setting a closing date for submissions on any matter a committee or chairperson should generally allow a minimum of six weeks. A lesser period may be allowable in exceptional circumstances, but submitters should be given a realistic period to comment on a substantial bill or inquiry. Exceptional circumstances would include, for example, the House having significantly limited the time available to a committee to consider an item. A shorter period may also be acceptable when a committee considers interest in a bill is confined to persons or organisations already in dialogue with the committee, or when a committee decides that a more limited information-gathering process for an inquiry is desirable.

Summaries in advertisements are not intended to be a substitute for potential witnesses studying the bill itself. Rather, they are designed to alert people to the fact that there is a bill before a committee that may be of interest to them. In no case can a summary be comprehensive. Summaries are prepared by the committee secretariats as neutral statements of a bill’s contents.

When a committee meets it could decide what it requires to be included in a summary. But it would be improper for a chairperson, in placing an advertisement on behalf of a committee, to direct staff how to word a summary of the bill; in these circumstances, the summary is prepared by the secretariat, not by an individual member—even the chairperson. Any dissatisfaction with the summary must be raised at the committee meeting. The Speaker cannot arbitrate on it.

Legislative quality

Parliament is the supreme law-making body in New Zealand, but it operates within a larger constitutional framework. Our democracy requires respect for the rule of law and avoiding the arbitrary deprivation of rights and freedoms. Care should be taken to ensure that proposed legislation passed by the House is appropriate in this context. We encourage select committees to examine legislative quality issues, with a particular focus on matters of constitutional and administrative law, when preparing their reports on bills.

Ultimately it is for a select committee to determine a suitable course according to the circumstances of each bill before it. However, we consider it appropriate that select committee members examining a bill involving conscience issues undertake the task with a view to improving the bill in its coherence and workability, so that the House can resolve the broader policy matters with the participation of all members.

The legislative process would be enhanced if select committees were more frequently to invite Ministers in charge of bills to attend meetings to explain policy matters, although the Ministers’ participation should occur before the committees enter the final phase of their consideration. Ministers should be reasonable about the amount of time made available for such appearances, and committees should not be unreasonable in their requests.
1. [There are] implications for the quality of legislation of allowing insufficient
time for the drafting of amendments and commentaries. We urge select
committees examining bills to programme sufficient time for the drafting and
consideration of amendments, and for the subsequent drafting and
consideration of commentaries.


2. The Parliamentary Counsel Office has a statutory function to report on
the form and effect of local bills and potentially on Members’ bills and
private bills. It would be appropriate for the Attorney-General to provide
relevant reports on bills to the committees considering them, either by
correspondence or by attending in person. The committee concerned in each
case could then request a briefing on the report or seek further advice as it
required. We recommend that select committees considering bills follow this
course whenever reports from the Parliamentary Counsel Office are drawn to
their attention.


3. Select committees and advisers should exercise caution when considering
amendments that would cause a provision to have retrospective effect. In
particular, they should have regard to the part of the *Guidelines on Process
and Content of Legislation* issued by the Legislation Advisory Committee
that deals with retrospective provisions.


SELECT COMMITTEE REPORTS (SOs 295–296)

4. The reporting back of a bill with amendment involves reprinting the bill. Bills
should not be reported back with amendment unless the amendment is of such
significance that it would require the reprinting of the bill. When the only
amendments are formal amendments which can be corrected under [Standing
Order 316] a bill should be reported back without amendment.


5. When a bill is reported back with amendments, every endeavour is made to
carry out the reprinting work on the bill before it is reported back so that the
reprinted copy is available as soon as the report is presented. This is not
always possible, due to reporting deadlines, and it is always dependent on the
size and amount of work to be done on the bill being reported.

1 The Speaker will not permit a bill to be debated until reprinted copies of the bill are available to members.


SECOND READING (SOs 297–300)

Amendments

2 An amendment during the second reading debate to refer a bill to a select committee is out of order.


3 On the second reading of a bill members are asked to endorse the bill, defer it (the “three months” amendment) or state why it should not proceed (the “reasoned” amendment). An amendment to add words does not do any of these things; it attaches conditions to the second reading. If such an amendment were permissible, the House’s decision would be unclear since the House would not have unequivocally agreed to the bill’s second reading.


4 No amendment can be moved simply to add words to the motion for the second reading of a bill.


5 An amendment to defer the second reading of a bill for 14 days to enable the bill to be referred to a select committee together with instructions empowering it to draw up an order of reference for a Royal commission to investigate living costs is not acceptable.


6 An amendment to the motion for the second reading of a bill, to refer the bill back to the Government with a recommendation that a select committee be appointed to inquire into the whole subject touched by the bill, is in order.

1 (1) The amendment [to the motion for the second reading of a bill] would not be in order if it confined itself to striking out certain portions of the schedule because the committee could strike out items of expenditure without direction from the House; (2) a member may not seek to refer the bill to something which may be set up and which is outside the control of Parliament—an amendment to defer the second reading until three months after a commission which may be set up will report is not acceptable; (3) a member may, on the second reading of a bill, move any resolution declaratory of some principle not contained in (but relevant to) the bill; it may be adverse. An amendment to the motion that a bill be read a second time, to strike out all words after the word “That” and insert the words “in the opinion of this House provision should be made for enacting that all policies of accident insurance under the Workers’ Compensation Act shall be issued only by the Government Insurance Commissioner …” is in order.

   (3) 1924, Vol. 204, pp. 198–99, 201. Statham.

2 An amendment to strike out all the words after the word “That” and insert “this House views with grave alarm the Government’s proposal to embark on a course of uncontrolled inflation” was ruled out as offering no alternative to second reading and being in no way linked with the motion.


3 An amendment to defer the second reading of a bill until three months after the report of a Royal commission does not give a specified time and is not in order.


Amendments—superseded orders

4 (1) It is clearly and explicitly laid down in Erskine May and other authorities that in the event of the second reading of a bill being superseded by an amendment it becomes what is known as a superseded order. It may be revived on any subsequent day by motion without notice, and if the authority of the Crown has already been given to such bill no further recommendation is necessary; (2) all the House decides by carrying the amendment is that the bill be not now read a second time; the Government can move the second reading of the bill at some other date.

   (1), (2) 1924, Vol. 204, p. 201. Statham.
1. An amendment to the motion for the second reading of a bill, to refer the question of capital punishment for decision by a referendum is a “reasoned” amendment which when carried supersedes the second reading; by carrying it the House declines “now” to accord the bill a second reading.


Debate

2. Members must confine discussion to the main purpose and the contents of a bill and not deal at length with matters not provided for therein though reference may be made to such matters if related to the bill.


3. At the second reading stage of a bill it has long been accepted that the broad intention of the bill, the broad principles of it, are a proper subject of discussion and that that is relevant which makes it seem more likely or less likely that the House should accept the broad principles laid down in the bill.


4. On the second reading of a bill discussion must be confined to the bill before the House as printed.


5. (1) A member may, during a second reading debate, refer to the subject matter of an amendment appearing on a Supplementary Order Paper, but it cannot be discussed in detail; that is a matter for committee; (2) but when a report has been made by a committee on a Supplementary Order Paper that Supplementary Order Paper can be discussed along with the bill on second reading.


6. It is bad practice for a member to quote from a Supplementary Order Paper that no member of the Opposition has seen; the member should make only passing reference to the fact that there is a Supplementary Order Paper and not debate what is actually in it at that stage.

1. It is in order to suggest briefly, in passing, other possible amendments but a long debate on matters outside the bill is not permissible. 

2. During a second reading debate a member may indicate an intention to move an amendment in committee and may state reasons, but the member cannot go into details in the same manner as when dealing with the amendment in committee.

Debate on amending bills

3. On the second reading of an amending bill a member (1) may point out further amendments which the member thinks should be made in the principal Act; (2) may not discuss any question which would cause debate to develop on lines outside the question before the House; (3) may not make irrelevant matters relevant by saying that they ought to be included in the bill (for example, a discussion of general banking law on a Bank of New Zealand Amendment Bill.)
   (1), (2) 1924, Vol. 203, p. 752. Statham.

4. When an amending bill is before the House a member may suggest other amendments but may not develop lengthy argument thereon—the member is confined in the main to the bill before the House.

5. The second reading debate on an amending bill does not open up everything; the debate must be confined to the bill and matters reasonably related to it; although matters outside the bill may be mentioned they must not be debated.

6. The debate on the second reading should be confined to the bill under consideration, but if the subject matter of two bills is identical it is not possible to prevent the debate overrunning both.
Debate on cognate bills

1 It has been customary to have a wide-ranging debate, at least over the field of taxation, when the Income Tax (Annual) and the Income Tax Amendment bills are being considered together.

2 Bills of a similar nature [in this case seven bills dealing with new universities and agricultural colleges] may be taken together for purposes of discussion, but the question for the second reading of each bill must be put separately after the conclusion of the debate.

COMMITTEE STAGE (SOs 301–310)

General

3 Consideration by the committee of the whole House is the nuts and bolts stage in which a bill is considered as drafted, to decide in effect whether the detailed clauses do properly incorporate the principle of the bill already agreed to by the House.

4 It is not competent for the committee of the whole House to refer a clause and proposed amendment to a select committee for consideration.

5 Motions [in committee] that clauses be referred to select committees or that the House be asked to refer clauses to select committees are beyond the competence of the committee of the whole House.

6 When a bill is being dealt with in committee of the whole House it must be treated as a whole. The function of the committee is to pass, negative, or make amendments to the clauses of the bill, but it is not in the power of the committee to refer any one clause back to the Government with a recommendation that it be amended in a particular direction.

7 It is not within the power of the chairperson to rule out of order something already agreed to by the House.
1. When a chairperson is also the chairperson of a select committee there is no practice which requires the chairperson to refrain from taking the Chair in committee on a bill which has been considered by that select committee.  

2. When several Government bills are committed together, the Government can take them in what order it chooses.  

3. The member should do that [seek leave to correct an answer given earlier that day] after we have reported progress. We cannot actually do that in the committee of the whole House.  

4. When a bill has a significant change occur at the select committee and it has not been properly advertised for submission that means that it is treated differently at the committee stage, and, therefore, there is an extended debate, in particular on that part of the bill.  

**Postponement of a provision**

5. If a part is postponed there is no barrier to the committee returning to it during urgency. It is part of the same committee stage.  

6. There is nothing in the Standing Orders to constrain a Minister from using the power to postpone for any reason. The House cannot inquire into why the Minister has invoked it.  

7. The Minister in charge of a bill is allowed to postpone any part in a bill and does not have to give reasons. But it would be in the interests of good order if reasons were given, either informally in discussions between the whips or in a short statement by the Minister to the committee. Any reasons that are given are not debatable.  

8. The right of the Minister in charge of a bill to have any part postponed applies to any part as originally in the bill or a new part coming from the Minister or from any other member.  
Part by part consideration

1 At the commencement of each part, the question stated is, “[That Part 1 (etc.) stand part]”. If it is desired to amend a clause in that part, that amendment can be discussed and voted on separately.


2 Taking a bill part by part relates to the parts of the bill that are before the committee, not to new parts to be inserted in the principal Act.


3 In debating a bill part by part, debate may range widely over each part.


4 Since leave has been declined [to address the bill’s five parts as one question], that means that the committee will stick very closely to each part for the rest of the debate.


Clause by clause consideration

5 We now move on to clauses 2, 3, and 4. As these debates are not part by part debates but clause by clause debates, they will be narrow debates. Members are to confine themselves to the words of the particular clause and issues contained therein. *(Bill was drafted without a part structure. Wide-ranging debate had been permitted on clause 1 as the bill had not been considered by a select committee.)*


Title clause

6 When debating the preliminary clauses at the end, members should have some latitude to summarise, and make concluding remarks about, the issues they have raised during the committee’s consideration of the bill.


7 The rejection of a title of a bill by a committee of the whole House is tantamount to rejection of the bill itself and the chairperson should proceed no further with it, but pass on to the next bill if there were another bill in committee.

Amendments

Form

1. Amendments which refer to the bill as a whole are not in order. (The amendment was to defer consideration of the bill until the Minister had introduced a taxation bill.)

2. Amendments or parts of amendments which are too vague are out of order. (Amendment provided that local authorities were to have such resources as would enable them to engage adequate services and to operate adequate technical facilities, plant and equipment.)

3. An amendment must be drafted with some precision, in a form of words that may be embodied in law. It must offer a serious alternative form of words. An amendment that is merely an attempt to criticise the provision will not be accepted.

4. Proposing amendments that simply seek to change the order of words in a particular clause, or to substitute words with the same or very similar meaning—amendments that do not offer any significant change in the meaning of the provision—is simply not in order.

5. An amendment to have an entire clause [or part, where the bill is being considered part by part] omitted ruled out of order as a direct negation of the question.

6. Committees [of the whole House] can start committee stage debates prior to a Supplementary Order Paper being available.
1 It has never been the custom in the committee of the whole House for the chairperson to read out every amendment that has been tabled. All members who wish to participate seriously in the debate ought to avail themselves of copies of amendments, study them, and understand them.


2 It is not for the Chair to attempt to dissect proposed amendments and rule on whether they are wholly or partially in order—either they are in order or they are not. It is certainly not the role of the Chair to amend proposed amendments to try to bring them into order.


3 An interpreter cannot give evidence to the House or committee any more than the Clerk can. If members do not like the Māori text of a bill or amendment, they can move amendments to it, but they cannot ask the interpreter to second-guess a member’s statement.


4 The Te Reo Māori and English text of this bill have equal authority. Amendments that are in one language are not automatically treated as amending the other text of the bill. If a substantive amendment is to be agreed to by the committee, it is highly desirable that the text in both Te Reo Māori and English is agreed to.


5 A Supplementary Order Paper does not have to have an explanatory note at all. The adequacy of any such note is a matter for criticism in debate.


Title clause

6 An amendment to the title of a bill must be a serious or objective description of the bill rather than an attempt to criticise its contents.


7 An amendment to substitute the word “shall” for the word “may” in the title of a bill is a frivolous amendment which the chairperson should rule out of order.

Amendments ruled out of order as not being a serious amendment:
(1) amendment to alter the title of the bill from the Subordinate Legislation (Confirmation and Validation) Act (No. 2) 1992 to the War Pensions and Senior Citizens Betrayal Act 1992; (2) amendment to substitute “Exploitation of Workers Act” as the title of the Employment Contracts Bill; (3) amendments to change the title of the Tariff (Zero Duty Removal) Amendment Bill to “Tariff (Growing the Gaps) Amendment Bill” and “Tariff (Breaking International Agreements) Amendment Bill”.

Preliminary clauses

An amendment to a commencement date must provide certainty about when the Act is to come into force. An amendment that relies on an indeterminate event is not in order.

These amendments are not consistent with the Standing Order that defines a preliminary clause. They propose an expiration clause and should have been in the body of the legislation. They are ruled out of order.

Relevancy

Any clause is out of order which is—
(1) not within the leave to introduce the bill granted by the House; or
(2) outside the purview of the bill; or
(3) foreign to the bill; or
(4) in conflict with the provisions of the bill.
1. The Clerk’s Office will draft amendments for members and circulate them even if they are not in order. The fact that it publishes and circulates a Supplementary Order Paper does not indicate that it is in order. Ultimately, it is up to the Chairperson in the committee of the whole House to rule on the admissibility of any amendment.

   2016 Vol. 714, p. 11143 Tisch (Chairperson).

2. A bill can be amended only in ways that are relevant. It cannot be turned into something that it is not, and did not start out as.


3. An amendment is not in order if it is foreign to the clause which it seeks to amend. *(Clause dealt with disputes as to the value of wheat for the purposes of the Tariff. Amendment sought to give the Minister control over the production, importation and price of wheat, and the wages paid to workers in the wheat, flour and breadmaking industries.)*

   1934, Vol. 239, p. 970. Smith (Chairperson).

4. An amendment to insert a new clause of general application [giving the Minister of Finance power to acquire shares in any company] ruled out of order as inconsistent with the character of the bill it sought to amend, as that bill proposed only measures that applied in specific ways to specific organisations.


5. An amendment or new clause must be within the scope or purview of the bill, as defined by its contents as originally introduced. To find out what is relevant to the bill one must examine the clauses in the bill. An amendment that may be fairly associated with the original clauses is within the scope of the bill and may be moved in committee.


6. Amendments that are outside the scope of a bill do not widen the scope of debate on the bill.


7. A wide purpose clause does not justify any amendment whatsoever.


8. The test for admissibility of an amendment is whether it is relevant; not whether it is new policy.

1 While the House is not prevented from amending a revision bill in any way, amendments proposed will need to be relevant to the bill. A revision bill is one that restates the existing law and may clarify its intent. Its scope is limited to that purpose. Amendments that are relevant to that purpose would be admissible, but amendments that go beyond that purpose, for instance, that significantly change the effect of the law, may be outside the scope of a revision bill. Such an amendment would require an instruction from the House. This would effectively limit the nature of amendments that committees could make and militate against the temptation to bring in new policy considerations.


Amendments substantially the same

2 A chairperson has to consider the admissibility of amendments that are substantially the same as an amendment that has already been negatived by the committee. The amendments are not admissible because the committee has already negatived an amendment that is substantially the same as those other amendments. (A series of amendments to change a date ruled out of order after an amendment to change the date had been defeated.)


Other amendments

3 (1) Amendments may be moved to the principal Act in an amending bill; (2) such an amendment would be in order even if it conflicts with the provisions of the principal Act and its effect would be that there would have to be some consequential alterations, but it must not conflict with anything already passed by the committee of the whole House.

(1), (2) 1926, Vol. 210, p. 128. Statham.

4 The second reading declares the intent of the House in relation to the bill. In that regard the House voted down an amendment to have a referendum. Amendments [at the committee stage] to have a referendum are out of order because of Standing Order 298(1), when the House has already declared its intent.

1  Matters that should be in private bills cannot be introduced into public bills by way of amendment. Amendments to exempt individual establishments from the general law are of interest or benefit to a person or body of persons. They should therefore be promoted in a private bill. Generic amendments, even though of limited application because there are few such establishments, are permissible.


2  (1) An amendment that purports to amend an agreement reached between the Crown and other parties is out of order in a bill to give effect to that agreement (2) unless the parties to the settlement agree to the amendment.


Withdrawal

3  Any member who has amendments at the committee stage of a bill can choose not to proceed with them at any time before the chairperson puts the question on them.


4  Leave is not necessary to withdraw a Supplementary Order Paper. It is just that the committee does not proceed with it.


5  A member may not, without leave, withdraw an amendment on a Supplementary Order Paper [or that has been handed in to the Table] after a closure motion has been carried.


Putting the question

6  In committee, when no member wishes to speak further to a question, whether or not a closure has been moved, the chairperson proceeds to put all amendments of which notice has been given to the committee for decision. There is never any debate on a clause after the point at which the chairperson starts putting amendments to the committee. If there is no closure it is incumbent on members to seek the call to continue the debate if they wish to speak. If members do not call, the chairperson begins to put the questions on the amendments and there can be no further debate on the clause.

Once the debate on a Part concludes the motion that is then put is that the part stand part, but before that can be dealt with, the amendments have to be dealt with first. There is no provision in the Standing Orders for there to be any further debate on any of those amendments. *(A member had sought the call between votes on amendments, when there had been no closure.)*


Standing Order 307(4) allows the grouping of a member’s amendments where it does not detract from the intent of the amendments.


**Dividing a bill**

A debate on a motion to divide a bill is a very narrow debate. It is not an opportunity to recanvass all the principal issues contained within the bill. It is strictly related to the proposal that the bill should be divided.

THIRD READING AND PASSING (SOs 311–317)

Recommittal

1 A motion for recommittal must be moved as soon as the order of the day is called. A member cannot speak to a motion before the House and then move that a bill be recommitted or an order of the day be discharged.


2 If the House defeats a motion under [Standing Order 311] that a bill be recommitted it is not open to any other member to move a motion under the Standing Order on that day. If the third reading is not completed that day and the bill is set down for further consideration of the third reading on a subsequent day, a motion under [Standing Order 311] can be moved on that subsequent day.


3 A motion to recommit a bill to enable the Government to consider a specified matter, but which gives the committee no work to do, is out of order. A bill can only be recommitted, either as to the whole bill or a certain clause, for a specific object. (Motion proposed: “That the bill be recommitted for the purpose of enabling the Government to reconsider the question of giving teachers the right of appeal against non-reappointment.”)


4 A motion that the bill be recommitted to insert a new clause cannot be accepted by the Speaker if the clause or one to the same effect has been ruled out of order by the chairperson.


5 If a bill is recommitted for the purpose of considering amendments proposed on a Supplementary Order Paper, the committee can only deal with such matters as are stated in the motion for recommittal.


6 (1) A bill may be recommitted for reconsideration of a portion of a clause; (2) if a bill be recommitted for the consideration of a particular subsection of a clause, consideration must be confined to that subsection.

1. If a bill be recommitted for consideration of a clause it is competent to reject the clause.

2. Where two members wish to move the recommittal of a bill, the Minister in charge of the bill has prior right to the call.

3. If an excise duty proposed by a bill is reduced in the committee on the bill, it may be restored to the original amount proposed in the bill upon recommittal.

Third reading

4. Members must confine themselves to the general principles of the bill as it emerged from the committee.

5. The second reading debate is concerned with the principles of the bill, the committee stage with the details of the bill and the third reading debate should be in the nature of a summing up.

6. Extended debate on matters not in the bill as it emerged from committee is not permissible but a brief passing reference to alternatives is not out of order.

7. Members must confine themselves to the main purposes and contents of the bill; they must not deal at length with matters not provided for in the bill.
On the third reading of a bill a member cannot discuss—
(1) any matter not included in the clauses of the bill; (2) a clause that was ruled out of order by the Speaker; (3) the merits of an amendment proposed by the member and ruled out of order in committee; (4) the provisions of a bill about to be introduced; (5) a scheme foreign to the one proposed in the bill; (6) nor may a member go through the bill clause by clause; members must confine themselves to the general principles of the bill.


Though it is common practice to refer to what was said in committee, that is only one of the uses of a third reading speech. The absence from the House of a member during the committee stage does not disentitle that member from speaking in the third reading debate.


A third reading debate is not limited to matters raised in committee.


The third reading is an occasion for drawing attention in passing to amendments that were defeated but not for a lengthy discussion on matters that were defeated in committee.

Previous Speakers’ rulings emphasising that the third reading debate is the time to discuss what went on during the committee stage were given at a time when the committee stage of a bill was not reported in *Hansard*. Now that there is a report of the committee stage they are not so applicable. If a bill is a detailed technical bill and the committee stage took that form, broad dissertations on expanded subjects will not be permitted. But, especially if a bill was taken part by part, thereby generalising discussion in committee, it follows that debate on the third reading will be somewhat broader.

CHAPTER 6
FINANCIAL PROCEDURES

GOVERNMENT’S FINANCIAL VETO (SOs 326–330)

1 During the committee of the whole House, the Government will be able to make a submission to the chairperson that an amendment or a change proposed to be moved, appears to have more than a minor impact on the fiscal aggregates and 24 hours’ notice has not been given. If there is doubt about whether a proposed amendment may have more than a minor impact … and 24 hours’ notice has not been given, the proposed amendment or change should be ruled out. The onus is on a member proposing to move an amendment to a bill … to give 24 hours’ notice if there is any possibility that the amendment may have an impact on the fiscal aggregates.


2 The Speaker has no role in evaluating the financial veto beyond ensuring that it complies with the Standing Orders.


3 There is nothing in the Standing Orders specifying which Minister must sign a financial veto certificate. It must be given in the name of the Government but which Minister signs is a matter for the internal arrangements of the Government.


4 A typographical error does not invalidate a financial veto certificate.


5 [Standing Order 330] is not neutral as to whether an amendment is out of order. If a member fails to give 24 hours’ notice and there is any doubt or possibility that it has a fiscal impact, the amendment is out of order. The onus is on the member proposing such an amendment to give 24 hours’ notice.

1 It is not the role of the chairperson to argue about whether, on a balance of probabilities, there is a fiscal impact. The intent of [Standing Order 330] is to penalise members who do not lodge amendments early enough. It is quite proper for the Minister to raise the issue on official advice, although it is finally for the chairperson to rule.


2 For the purpose of [Standing Order 330(1)] “lodging” means the point at which a member gives authority for the amendment to be circulated by the Clerk and made public. In any case this cannot be until the amendment is in the proper form. In the case of a Supplementary Order Paper, this means the time at which the member gives authority for the printed Supplementary Order Paper to be circulated. But a member may give approval to circulate amendments before they are sent for printing. Authority to circulate cannot be assumed by the Clerk, it must come explicitly from the member.


3 The Government has issued a financial veto certificate in relation to this amendment [new Part 2A]. Therefore, it is out of order. No question will be put and it is not separately debatable. However, the veto certificate may be debated in the context of the next part.


THE BUDGET (SOs 332–336)

4 The Budget speech is not like any other speech; it is the delivery of a pre-printed statement. It is not appropriate for members to interject because it is impossible for the Treasurer to reply. Similar courtesies of restraint should be extended to the leaders of parties speaking in the Budget debate.


5 Discussion on a Budget debate, although wide, must have some relevance to the administration of the country.


6 The debate on the Budget policy statement is not a Budget debate. A Budget debate is wide-ranging and members can canvass anything they like in that debate. The Budget policy statement debate is a debate based on the report of the Finance and Expenditure Committee and the report on the Standing Orders has indicated that it is, indeed, a narrow debate.

ESTIMATES (SOs 337–341)

Format
1. The process for consultation on proposals to change the content or format of the Estimates (or Supplementary Estimates) and other supporting information is:

- Following presentation to the House by the Speaker, any proposal to change significantly the format or content of the Estimates (or Supplementary Estimates) and other supporting information under section 18 of the Public Finance Act 1989 will be referred to the Finance and Expenditure Committee for consultation.

- The Finance and Expenditure Committee will disseminate the proposal to other subject select committees and coordinate their responses.

- The Finance and Expenditure Committee will communicate its own views, and those of any other subject select committee, directly to the Minister of Finance.


Examination of Estimates
2. It is customary for the responsible Minister to attend the committee for consideration of the Estimates, and that is to be encouraged as it is part of the accountability procedure. If possible, one would expect only pressing public business elsewhere or illness for another Minister to take the responsible Minister’s place. Constitutionally, however, another Minister may act so the debate can proceed.


Scheduling of debate
3. There is no reason why the House should not discuss a department’s Estimates while an Acting Minister is in charge of the department.


4. Discussion of a Vote can proceed where there is an acting Minister. The Government should aim to have a responsible Minister available but I am not prepared to say that during the Estimates debate a certain Minister has to be here if that Minister … is responsible for whatever part of the portfolio is being discussed.

1 If a Minister whose Estimates are being debated is in the Chamber, that Minister must be in the Minister’s chair.

2 It is necessary for each class of Estimates to be passed by the select committee before the committee of the whole House can debate them. It has been the custom that the reports of the appropriate departments and papers called for by members of the committee should be available before the debate on each category of Estimates takes place in the committee of the whole House but it is not obligatory.

Estimates debate

3 The discussion must be fastened on to some item in the Estimates, and if that cannot be done, generally speaking, the discussion is irrelevant and therefore out of order.

4 The role of the select committee Chair, in speaking in the Estimates debate, is to set out the major findings of their committee in relation to the Estimates.

5 On the Estimates a member may ask a question relative to the expenditure of an appropriation voted the previous year, but may not debate it—discussion must not travel outside the items which are to be appropriated during the current financial year.

6 Members must confine their remarks to the items of the Estimates in the class that is being dealt with. (Discussion of the powers and functions of the Public Service Commissioner out of order when the Mines Department’s Estimates were under consideration.)

7 Relevancy means relevancy to the class of Estimates under discussion—that is, to the administration of the department and to the items included in the particular class of the Estimates, and is a matter of which the chairperson is the sole judge. A certain amount of latitude should be allowed members if they ask for reports and papers which are really part of the administration of the department.
1. Matters of policy as they relate to the appropriate Estimates under discussion may be debated.

2. The 1972 Standing Orders Committee recommended that discussion of policy was to be permitted at all times. However, the discussion of policy must be related to the Vote under consideration.

3. The Estimates debate is confined to current spending plans as contained in the Estimates document. The debate is no longer a vehicle for scrutinising and debating past performance; that is the function of the annual review debate. The purpose is not to permit discussion of general policy but to focus attention on the need to grant, reduce, or refuse to grant particular appropriations.

4. The report of the Controller and Auditor-General is not fully open for discussion on the Audit Department Vote—only that portion which can be tied to an item in that Vote. *(Chairperson’s ruling that discussion of interest rates inadmissible, upheld.)*

5. The Controller and Auditor-General is not competent to pass judgment on the policies or the administration of a department. These are the responsibility of the appropriate Minister, and questions on these matters should be raised when the appropriate departmental Vote is under consideration, not on the Audit Vote.

6. On the Treasury Vote general questions can be asked as to whether Treasury has given proper consideration to all factors when it makes various allocations. It is not in order to question the Minister on whether the Minister had anything to do with any detailed activity of another department.
1 In debating Vote State-Owned Enterprises, the discussion is confined to matters set out in the Estimates and the proposed appropriations. Debate on the performance and current operation of State enterprises and other public bodies is not within the scope of the Estimates debate. Those matters will be open for discussion in the debate set aside for the review of those bodies.


2 The Business Committee has determined that the Estimates debate will be divided into 10 separate debates covering the sectors set out in the Estimates of Appropriations. Each debate will be led by a call from the chairperson of the select committee nominated by the Government as the major committee reporting on the sector. Committee chairpersons are expected to focus their speeches on the major findings of the committee.


3 Since the Public Finance Act 1989 each output within a Vote is a separate, legal appropriation. Members, in moving to reduce a Vote, must therefore specify which output is to bear the reduction.


SUPPLEMENTARY ESTIMATES (SOs 342–343)

4 Whilst the second reading debate on the Appropriation Bill containing Supplementary Estimates may be quite wide-ranging, it is not another Budget debate. As far as possible the debate should be relevant to the bill’s provisions dealing with the appropriations to be supplemented or varied. However, it is the winding-up debate of the financial year and may therefore cover an overview of the policies for which the Government has sought appropriations in the financial year, and of the Government’s financial position at the end of the year.


ANNUAL TAXING PROVISION (SO 344)

5 The annual taxing provision is of such significance that it is unwarranted for the committee of the whole House to have the power to avert its separate consideration. The separate debate on an annual taxing provision could be dispensed with only by way of an instruction from the House to the committee.


6 As clause 29 sets the annual rates of income tax, we will take it first, before the other provisions of Part 3.

1 The debate should pertain particularly to the tax rates for the year concerned.

ANNUAL REVIEW (SOs 345–350)

Conduct of reviews
2 We recommend that the approach to conducting annual reviews should be to
group reviews where possible, so that committees are not overwhelmed by a
vast plethora of organisations to scrutinise.

3 We consider that the Finance and Expenditure Committee’s general power to
allocate and group scrutiny activities is sufficient to enable the allocation of
standalone reports on appropriations.

Departments
4 If a matter in the select committee’s report on a department’s performance is
outside the scope of the annual review debate [by not relating to the
department], the fact that it is in the report does not make it admissible in the
debate and it cannot be referred to.

5 The purpose of the annual reviews carried out by select committees is to
consider whether individual departments and Offices of Parliament are
performing as intended—that is, whether their actual performance, both in
supplying services and in managing their balance sheets and other assets, is
consistent with forecast performance.

6 The question of how many calls the Minister gets in the annual review debate
is entirely at the discretion of the Chair. (Where the Minister had already
spoken twice to the question, priority was given to another Government
member who was seeking the call.)
Conduct of debate

1. A motion to report progress on the bill must be moved on a call, not a point of order. Because the annual review debate will run for a fixed period of time and the calls have been allocated proportionally, it would harm the proportionality of the debate to treat the motion to report progress as a member’s entire call. Therefore, when a member moves to report progress in this annual review debate, the presiding officer will call on that member first when the debate resumes.


2. Unless the Standing Order [relating to the annual review debate] is suspended or set aside by leave, it is the Speaker’s duty to ensure that the requirement for such a debate is observed. If the Speaker did not do so the Government could with impunity simply not allocate any time at all. (Speaker determined that he would interrupt other business on the final sitting day of the financial year, if necessary, for the purpose of moving to the State enterprises debate.)


3. In calling members for the [annual review debate], at some point members must make a reference to the period of expenditure under review or one of the select committee reports.


4. The review of the performance and current operations of State enterprises and other public organisations covers both performance in the previous financial year and the current operations. Reference to the principles of the State-Owned Enterprises Act 1986 must be tied to the performance or current operations of the particular State enterprise. The history of a State enterprise or public organisation before the period of its annual report is outside the scope of the debate.


5. On the review of the performance and current operations of State enterprises and other public organisations, the annual reports of State enterprises and public organisations, together with their statements of corporate intent and other documents, as well as the select committee reports on the reviews, may be referred to and used during the debate.

1 Anything that is part of a Minister’s responsibility as a shareholding Minister is clearly within the scope of the debate on the review of State enterprises and other public organisations. Members can attack a Minister with regard to his or her role as a shareholding Minister, but not with regard to his or her general competence as a Minister.


2 Because reporting is a continuous process, there will always be some reports on entities outstanding whenever the [annual review] debate is scheduled.

CHAPTER 7
NON-LEGISLATIVE PROCEDURES

ADDRESS IN REPLY (SOs 351–353)
1 The view has long been held that in the Address in Reply and Budget debates the field is virtually wide open.

DEBATE ON PRIME MINISTER’S STATEMENT (SOs 354–355)
2 On the debate on the Prime Minister’s statement, party leaders in order of size of party follow the Leader of the Opposition.

3 I am not ruling out interjections, but I think they should be reasonable, so that the public can hear a speech they want to hear. (Members interjected at the commencement of the Prime Minister’s speech.)

STATEMENTS IN THE HOUSE (SOs 356–360)
Ministerial statements
4 While it is eminently good practice for Ministers to make important policy announcements in the House, it is not by any means a convention in New Zealand.

5 It is for the Government to decide when it releases its publications. It is also up to the Government when it utilises the ministerial statement provision. It is not a question for the Speaker.

6 Ministerial statements should be made in the House but this rule is not always observed. When the House goes into committee on a bill it does so just to consider that bill. If the committee allows Ministers or members to make statements that is a matter for the committee, but leave is required.
1. It is entirely up to a Minister how copies of material related to a ministerial statement are distributed.

Maiden statements

2. New members are not obliged to speak during the Address in Reply debate. However, except where this is unavoidable due to illness or other personal reasons, it is expected that members will do so and their speeches are thus recognised as maiden speeches. [Standing Order 360] permits members who have not spoken on the Address in Reply to make a statement at a time that the Speaker agrees is convenient. It is clear from the Standing Orders Committee’s report in 1995 that that was intended to cater for members who were unavoidably absent during the Address in Reply, or who were elected later in the Parliament.

Members who voluntarily refrain from speaking in the Address in Reply debate can take advantage of [Standing Order 360]. However, in those circumstances, they cannot expect the Speaker to be so accommodating as to the time at which they make their statements.

3. I can confirm that allowing a new member to speak now does not curtail his or her opportunity to make a maiden speech of 15 minutes during the Address in Reply debate. (A member, who had not yet given a maiden speech, spoke on a bill considered under urgency when the Address in Reply debate had been adjourned.)

Personal explanation

When arising

4. No member can speak and have his or her word accepted for another member; it is up to the member concerned to make a statement.

5. A personal explanation must be personal to the member. A member cannot make a personal explanation when he or she believes that another member has suffered offence from another party.
A member is not disqualified from asking for leave to make a personal explanation [regarding a previous statement which has been made] simply because the statement was made months or years ago.


It is one of the valued practices and privileges of the House that when a member feels the member’s honour has been impugned or something of very strong emotional significance has happened so that the member feels a great urge to correct it or feels that a wrong has been done to somebody by the member making a mistaken statement and the member wants to correct that, leave is sought to make a personal explanation and the House almost invariably grants it. But if a member feels that in the course of debate someone has said something the member disagrees with or something that is incorrect, it comes near to abusing the privilege merely to correct that statement unless it is of such strong emotional import as to impugn the honour of the member rather than something mistakenly or wilfully put the wrong way. In these circumstances, members should be slow to seek leave to make personal explanations.


It is extremely unusual to deny leave to a member to make a personal explanation for the purpose of making a correction. It is the right of any member to deny leave, but what it does is leave on the record incorrect statements.


A personal explanation can be used about an answer a Minister has given. That is always the way in which a misleading reply is cleared up.


A personal explanation [to correct a reply to an oral question] cannot be made while the House is in committee.


It would be helpful to the House if a member seeking to make a personal explanation gave an indication of the type of explanation it is wished to make.


Requests for personal explanations should be made at the conclusion of a speech; they cannot interrupt a member speaking.

Under [Standing Order 358] the member rises to a point of order and seeks the leave of the House to make a personal explanation. A member has no absolute right—as members have to correct words under [Standing Order 110]—but seeks the leave of the House. When the member has not spoken in the debate it should be pointed out that the appropriate time to make the explanation is when the member is called upon to speak; if the member has an opportunity to speak in the debate, that is the correct time to make the explanation. However, when a member considers his or her honour has been impugned, the House will normally grant an opportunity to make an explanation although the member has an opportunity to speak.


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2 Leave to make a personal explanation is normally sought because a member feels his or her honour has been impugned but a member should not introduce substantial debating material under the guise of making a personal explanation.


3 In making a personal explanation a member is confined to what is purely personal to the member, and cannot defend other persons, as, for example, the other members of a commission of which the member was one.


4 If personal explanations are long and provocative—the Standing Order provides there will be no discussion—there is a distinct risk that when someone asks leave to make a personal explanation, some other members will say “No”—and only one person has to say “No” to exclude this valuable privilege.


5 Personal explanation cannot be used as a vehicle to cross-question any other member or to start a debate.


6 If any statements are made which impugn the honour of a member the fullest latitude will be given to the member to reply to them.


1 When a member who claims his or her honour has been impugned has been given leave to make a personal explanation the member should not proceed too far and introduce matters of fact as would strain the leave granted by the House.


2 There is no provision which enables the Speaker to accept a motion during the course of a statement. *(Motion to withdraw the privilege of making a personal explanation from the member giving it, not accepted.)*


3 Members can use a personal statement only to explain matters that are personal to them. They cannot use a statement to attack or criticise other members. To attempt to do so is an abuse. The Speaker has a duty to the House to police the use that members make of statements so as to ensure that they confine themselves to personal matters. If a member makes comments that are impermissible the Speaker will intervene. Ultimately, if it is clear that a member is misusing the leave given, the Speaker can and will terminate the statement.


4 It is out of order for there to be interjections while a member is making a personal explanation.

Effect

1  Denial by a member of a charge or insinuation, or of a statement imputed to the member, must be accepted.
   
   1901, Vol. 118, pp. 314, 325, etc. Guinness (Deputy Speaker).

2  (1) A member’s denial of the accuracy of a statement attributed to the member by a newspaper must be accepted without question [question quoting the report disallowed]; (2) but the House is not precluded from discussing in a later debate what the member actually said.
   

3  As long as the member who made a personal statement remains a member of the House, the member’s personal explanation may not be debated or otherwise challenged, even where it was given in a previous Parliament.
   

4  When a member is alleged to have made a statement and thereupon denies ever having made it, then the House accepts the member’s word and there the matter ends. Nevertheless, the mere making of a statement in the House, or the giving of a personal explanation relating to a subject, certainly does not remove that subject or topic from further discussion in the House.
   
A personal explanation cannot be debated, and that includes referring to it in a question. But the events that gave rise to the explanation can be referred to, as long as the veracity of the statement made by the member is not challenged or questioned.


The fact that a member makes a personal explanation with the leave of the House does not deny another member the right to discuss comments made by the first member or by any other member.


Much greater weight is placed on a denial made by way of personal explanation than on one made during debate. When a denial is made by way of personal explanation that is usually the end of the matter in parliamentary terms, unless members raise it as a matter of privilege at a later date if they have evidence that they believe is contrary to that which the denial would indicate.


**PETITIONS (SOs 361–371)**

**Presentation**

1. A petition specially addressed to the Governor-General cannot be received by the House. It should be forwarded to the Governor-General; (2) but a petition addressed to the Governor-General may be received by the House with the acquiescence of the Governor-General.


2. Presenting a petition is a “proceeding” of the House and a member professionally engaged for a petitioner should not present a client’s petition.


3. Members presenting petitions cannot divest themselves of responsibility. It is their duty to satisfy themselves that a petition is bona fide. If members presented petitions about which they had any doubt concerning the authenticity of the signatures, that would be abusing the confidence the House reposed in them.

1 [Standing Order 368(1)] requiring a member presenting a petition to ensure that it conforms to the Standing Orders does not require the member to check every signature to confirm its authenticity.


2 Members are not obliged to present a petition but the general practice has been for a member to present a petition on behalf of a constituent or on behalf of an organisation that has headquarters in the member’s electorate.


3 It is a longstanding practice that petitions are presented by the member for the electorate in which the petitioner resides. This is not an absolute rule, but in the first instance a petitioner should offer a petition to the local member to present it. It is the Clerk’s Office’s practice to send a petition to the local member to present it.


4 A petition from an unincorporated association will be accepted provided the association is adequately identified as a collective entity. Petitions which do not adequately identify an entity—for example, a petition from teachers of a certain school or employees from a certain workplace—will not be accepted. The latter type of petition will have to be in the name of an individual on behalf of the other individuals involved.


5 The request in a petition, unless already short, is to be reduced to a précis that is sufficient to indicate the petitioner’s object, but it should be no more than that.


Admissibility

6 Where a right of legal action or appeal rights to the courts or a tribunal are available, those rights are to be exercised before resort is had to the House by petition. But [Standing Order 371(a)] does not require anyone to make an application for judicial review in preference to using the petitions procedure.


7 The opportunity to make submissions to a select committee may be a political remedy; it is not a legal remedy. Petitions relating to a bill before a select committee may therefore be presented to the House.

A petition which contains a reflection on the conduct of a judge but which does not set forth matter which would justify Parliament in asking the Governor-General to remove that judge from office is not in order and cannot be received.


The conduct of a judge can be called in question only by a substantive motion moved in the House. (A petition seeking the replacement of the Chairman of the Government Service Tribunal, an additional Judge of the Court of Arbitration, could not be received.)


Select committee consideration

It is the duty of any select committee to which petitions have been referred either to deal with the petitions by way of report or to return them to the House and say it has been unable to deal with them.


There is no rule of the House which prevents a committee from dealing with a petition because it involves a matter of policy. The House sets up a committee, and refers matters to it, and generally it is with the express purpose of getting the opinion of the committee on those matters. There is nothing unconstitutional about a select committee dealing with a matter of policy, expressing its opinion on that matter of policy, and reporting it back to the House.


The presumption should be that principal petitioners will be invited to make written submissions on their petitions; but if a committee is dealing with a large number of petitions it is up to the committee to determine whether to invite written submissions and whether to hear from each petitioner.


Committees should include some reasoning in their reports on petitions; presenting pro-forma reports with little content should be uncommon.

PAPERS AND PUBLICATIONS (SOs 372–377)

Documents quoted by Ministers

Definition

1 The Official Information Act 1982 does not apply in the House and [Standing Order 376] operates quite independently of it. The two procedures are not on all fours. They may be wider or narrower in their operation, depending upon the context. The Act does not assist in applying [Standing Order 376].


2 An official document is a document connected with the government of the country or a document which has passed between officers of the Government and Ministers or between one officer and another.


3 An official document includes a document written by an official of the Government or by one official head of a department to the official head of another department. It must be of an official nature and written by a Government official in the course of the officer’s official business.


4 An official document is not just a piece of paper with notes for the Minister’s guidance, but is a more formal piece of writing conveying a message or memorandum, or recording some matter between officials of the Government or between the Government and other persons.


5 (1) The notes that Ministers use to answer questions are not official documents that Ministers are obliged to table; (2) Documents prepared by the Parliamentary Library are not official documents.


6 There is no document requiring to be tabled under [Standing Order 376] where a Minister quotes from the Minister’s notes on discussions that had taken place. However, members cannot avoid tabling a document merely by saying that it is only a copy of a document.

1 A letter written to a member by someone outside the House concerning a bill before the House and referred to by that member in debate is not an official document whose tabling can be required under [Standing Order 376].


2 [Standing Order 376]: (1) applies by analogy to a Parliamentary Under-Secretary who quotes from a document; (2) provided the Under-Secretary is Under-Secretary to the Minister in charge of the bill under discussion. A Parliamentary Under-Secretary to another Minister is in no different position from any other non-Minister.


3 The Speaker must accept the assurance of a Minister that a document from which the Minister is quoting is not a public document.


4 The Minister must be asked if the document is an official document. If it is not, that ends the matter. If it is, then the Minister must be asked if it is of a confidential nature. Again, the Minister’s answer must be accepted.


Procedure

5 The proper course, if a member wishes a document to be laid on the Table, is to raise a point of order at the time the document is produced by the Minister, and not at the conclusion of the speech.


6 The proper time for tabling documents under [Standing Order 376] is when they are requested.


7 The Minister did not quote from the document. She certainly made reference to the document but she did not quote from the document. That is what [Standing Order 376] requires.

1 The Minister is required to table only the actual physical official document which is quoted in the House. If this is a copy and not the original, then the Minister is required to table the copy and not the original. When applying [Standing Order 376], attention must be confined to the document before the Minister when making the quotation. If the Minister has the entire document and quotes from it, the Minister can be required to table the entire document. If an extract or portion of an official document is quoted, the Minister can be required to table that extract or portion only and does not have to go away and procure the whole document for tabling in the House.


Papers
Publication

2 Ministers can publish information as to the contents of the report of a Royal commission before it has been presented.


3 A paper presented but not ordered [or authorised] to be published is not a parliamentary paper that will appear in the [Parliamentary Papers series]. The Speaker has no control over it, and any requests for copies should be directed to the Minister in charge.

1. The mere tabling of a document in the House does not mean that the House has ordered or authorised the publication of that document. Where the House does order or authorise the publication of a document, the House makes the document its own, and any subsequent publication of it is absolutely privileged (see section 17 of the Parliamentary Privilege Act 2014 and section 13(3) of the Defamation Act 1992).

Where, as in this case, the document is merely tabled, no legal protection in respect of any subsequent publication outside the House arises by virtue of that tabling. By “publication”, I mean delivering it, showing it or disclosing it to any other person. The tabling of a document is intended to convey its contents to members of the House but any publication to persons outside the House is done at the risk of the person who so publishes it.

In most cases when a member tables a document by leave, no question of legal liability for its subsequent publication could arise, because the document is itself innocuous. The Clerk of the House, into whose custody it is delivered, allows the press and other persons to have access to the copy delivered to him.

But where a document that is tabled contains material that is subject to a court order protecting its confidentiality, another public interest, reflected in the court order, must be taken into account. It is a convention that the House and the courts respect each other’s role and procedures as far as possible. For this reason the Clerk will not allow his office to be used as a means to transmit material contrary to an order of the court.

In such a case, the Clerk will permit members to have access to the copy which has been delivered to him but will not disclose it to anyone else. All requests to see the material that are received from the press or from other persons will be referred to the member who tabled the document.

Members and the press, in particular, should remember that the fact that the material has been tabled in the House does not protect them from liability if they subsequently disclose, or otherwise publish, it. They would do so at their own risk.


2. Members are not required to give any personal warranty or disclaimer in respect of documents that they table in the House. But the Speaker and the Clerk are entitled to take such steps as they consider proper so as to ensure that they (the Speaker and the Clerk) do not break the law in respect of the handling of such documents.

1. The general presumption is that documents tabled by leave will be made available on request, the House having accepted them in the first instance. Staff of the Clerk’s Office are not expected to scrutinise such documents prior to their release. However, the House’s tabling procedures ought not to be used to publish material that is known to be subject to a court order or some other protection order, or that is clearly defamatory. If a member considers that there is a public interest in releasing such material, that is the member’s responsibility; the member cannot transfer that responsibility to the Clerk, unless there is an order of the House.

Therefore, the Clerk’s Office will not make a document tabled by leave available, other than to members, where it contains material that is known to be the subject of a court suppression order; the purpose of which is clearly and primarily to defame; that is pornographic; or that is confidential to a select committee. Ideally, the House would not allow such documents to be tabled by leave in the first place. If they are, the member has the option of clarifying the status of the document in order that the Clerk’s Office may safely release it, or the member can take responsibility for its release himself or herself.

The Clerk’s Office will inform the Speaker of any decision that it not publicly release a document tabled by leave. I expect that such decisions will be rare.


**Tabling**

2. A member cannot be compelled to lay the notes of the member’s speech on the Table.


3. A member quoting from a document cannot be required to table it. Ministers are different from members in that regard.


4. Except where there is a statutory obligation, whether Ministers table documents is a matter for them to decide. It would be hoped that important documents are tabled as a matter of course.


5. A member is entitled at any time to seek the leave of the House to table a document. There is no debate about whether the document should be tabled.

CHAPTER 7 NON-LEGISLATIVE PROCEDURES

1 It is a convention, but not more than a convention, that leave is sought [to table documents] at the end of the time for supplementary questions.

2 I invite members to make points of order that are about matters of process at the end of a speech, not during it. I think it shows some discourtesy to the speaker at the time. *(A member had interrupted a speech to seek leave to table a document.)*

**Nature of documents**

3 In seeking leave to table a document members should not only succinctly describe what is in the document but also sufficiently describe the nature of the document to inform members.

4 What I will require of members when seeking leave to table a document are three things, and that members identify these three things in this order: the source of the document, when it was published or produced, and to very succinctly inform the House of its nature.

5 A document for the purpose of interpreting [Standing Order 377] is a piece of text or text and graphics. This is more usually printed on paper, but could also be conveyed in electronic form. While this does not entirely rule out the tabling of CDs, DVDs, or other means of conveying electronic files containing documents, it would not generally extend to audio, video, or multimedia presentations. Each case must be considered on its merits.

6 I have developed a procedure whereby members identify the source of a document before citing the information in it, so that we can quickly determine whether leave should be sought to table the document. Seeking leave is not an opportunity to convey information while members are on their feet; seeking leave is about whether a document should be tabled. First, the House needs to know the source of the document.
Members are using points of order to table documents in order to make extra speeches. That is not what is intended in the Standing Orders. The strategy of giving a long explanation and then saying, “I table it”, is not appropriate. When members are tableing documents they should seek leave, give the purpose for the leave, and then identify the document they wish to table so that other members can make an informed judgment on whether they should accept that.


Tabling a document is not to be an opportunity to make a statement. The rules are quite clear that, as long as the document is identified—not necessarily the content of it but the document—then that is sufficient.


Members, in granting leave to table a document, can seek specific assurances on the record about its contents.


A member cannot seek leave that another member table documents. A member must do that for himself or herself.


Members do not have a right to table a document, they always have to seek leave, and it is entirely up to members whether or not they object. It takes only one member to object and leave is not granted.

CHAPTER 7
NON-LEGISLATIVE PROCEDURES

1 (1) The primary purpose of the procedure for seeking leave to table documents is to inform debate by making available to members documents that otherwise would not be available. It is not desirable for members to seek to table documents that already are available as part of the House’s proceedings, such as replies to questions for written answer, parliamentary papers, select committee reports, *Hansard*, or the Standing Orders, (2) or submissions to select committees where the eCommittee system provides for them to be published on the Parliament website. (3) It also will no longer be in order to seek leave to table Acts and bills before the House, and recent media articles from the major daily newspapers and national weeklies or their websites, and from the major television and radio broadcasters or their websites. The intention is that historic documents that are not readily available to members that may have significance and may be useful for members’ information can still be tabled. It is not the intention, at all, to prevent the tabling of those, or, likewise, media articles from overseas publications that would not be readily available to members but would be relevant to them.


2 Although today most documents are on the internet, the sheer volume of material means that they cannot always be said to be readily available. Leave may be sought to table historic documents and media releases and reports from credible overseas publications or organisations. The websites on which they may be found will be much less familiar to members, and it is less likely that there will be reference to them in the New Zealand media or on websites that members commonly access.


3 [A member may seek leave] to table an answer to a written question that is in the three-day stand-down period, so it would normally not be available.


4 The document tabled must be an authentic source. It is not acceptable in this House to seek to table members’ own views of the facts, or documents annotated to substantiate those views … documents prepared in parties’ own research units or documents prepared by members are not the material envisaged by [Standing Order 377].

1 Leave should only be sought to table papers that are not readily available from other sources. The tabling of a document is not an occasion to make a point; it is an opportunity to produce for the House a paper that other members may not see or may not have seen.


2 Seeking leave to table a press statement is not good practice for this House, and I urge all members to refrain from doing so unless it is in some exceptional circumstance.


3 Members would be ill-advised to proceed to ask for that leave if they have not done the courtesy of asking [the individuals who signed the letter] whether they are happy for their letter to become public information—that could be breaching their privacy.


**Timing of tabling**

4 Under Standing Order 377 the Speaker determines when documents will be tabled. (1) I have determined that documents will be tabled on the same day on which leave is granted by the House. (2) Where leave is granted for a document to be tabled, it must be provided to the Clerk by the end of the sitting day.


5 Where a member seeks leave to table a document, the Clerk should not have to discern whether the document that has been provided is, in fact, the document for which the House granted leave. It should be evident on the face of it.


6 If a member is given leave to table a document and deliberately misleads the House by delivering to the Clerk a totally different document from that for which leave was granted, a contempt would be committed.

1 (1) The practice of manufacturing a document after leave is granted does not meet the requirements of the Standing Orders. (2) A blank piece of paper is not a document.


QUESTIONS TO MINISTERS AND MEMBERS (SOs 378–388)

Lodging and arrangement of questions

2 How a party utilises its speaking and questions rights is an internal matter for that party to determine.


3 A member may lodge a question in the name of another member provided that he or she has the authority of that other member to do so.


4 When a member who originates a question is not available to hand it in, one of the member’s colleagues may put it in and sign it on the member’s behalf.


5 The provision for joint questions was omitted from the Standing Orders when they were revised in 1962 and that deletion having been made the implication is that questions may be asked only by one member.


6 It has been the practice for all questions deferred by arrangement to be automatically put at the bottom of the following day’s questions.


Questions to Ministers

Transfer of questions—Government entitled to transfer questions

7 A question should be addressed to the Minister primarily responsible. A Minister to whom a question is misdirected may request the Clerk to direct it to the Minister more directly concerned.

1 Ministers are responsible for the classification of questions and may ask that a misdirected question be redirected to the Minister to whom it more properly belongs.

2 The Minister primarily concerned is presumed to be the person to decide whether it is a question related to that portfolio or whether it is misdirected.

3 It is not for the Speaker or the House to determine which Minister has responsibility for a question. The arrangement of administrative responsibility within Cabinet is an internal arrangement, and the Minister responsible for each portfolio answers the appropriate question.

4 Ministers not only have a right to determine which of them is the appropriate Minister to answer a question, they also have a duty to the House to decide on the appropriate Minister to answer. It is not satisfactory for a Minister to say that the question is the responsibility of another Minister. If that is so, the Minister should transfer the question and advise the Clerk’s Office accordingly.

Transfer of questions—transfer should not obstruct answer

5 (1) The Government has the right to transfer a question, but not if in any way it then obstructs the answer. (2) Ministers should be in a position to answer supplementary questions.


CHAPTER 7 NON-LEGISLATIVE PROCEDURES

1 (1) The Government is perfectly entitled to transfer questions from one Minister to another or from the Prime Minister to another Minister, except were the transfer to be anathema to the obtaining of information. If the Minister or Prime Minister being questioned could be the only person who had particular information and the question was transferred to make it not possible to obtain that information, then I would have real concerns. But where an opinion is being sought about the Government’s position on things, I do not see that it is contrary to Speakers’ rulings if the question is directed to another Minister. (2) Opinions about whether people stand by certain statements are hardly matters that reach that test. Disallowing the transferral of a question must be restricted only to issues of real significance, where the Prime Minister or the Minister to whom the question is addressed is the only person who could possibly have that information.


Transfer of questions—transfer disallowed

2 (1) The Speaker would only refuse to permit a transfer of a question in very exceptional circumstances—such as if the Minister concerned could be expected to have personal knowledge of the issue that it would not be likely that any other Minister would have. (2) In this case, I did not allow the transfer, because of the very specific nature of the question. I determined that the only person who could satisfactorily answer the question that the member has raised was the Minister of Finance, and on that basis I did not allow the transfer.


3 Ultimately, the Speaker could refuse to permit a question to be transferred to another Minister for answer if the responsibility for a subject is so primarily held by a particular Minister as to mean that the transfer of the question would be an abuse.

1 [Speaker’s ruling 153/3] recognises a longstop protection against abuse in transferring a question, where only one Minister could be expected to have personal knowledge of the subject. In none of the rulings cited did the Speakers concerned actually refuse to allow the Government to transfer the particular question. The Speakers merely acknowledged that, ultimately, they could prevent that happening.


Transfer of questions—transfer procedure

2 A question can be transferred up until the very moment it is asked.


3 The transfer of a question often involves necessary textual changes. Provided that these are entirely consequential on the transfer they can be made in the Clerk’s Office without recourse to the member.


4 A member cannot insist on a particular Minister dealing with a question. The matters addressed in the question as originally lodged were not ones where only one Minister could be expected to have personal knowledge of the subject. However, there should be clarity because of ministerial responsibility. Although the Government may make changes because of conflicts of interest, it does make the situation more complex for members lodging questions. Ideally, such changes should be rare, arising only from real and significant conflicts of interest. Where they do occur, it would be helpful to members if the Government were to ensure members are officially informed.


5 The matter of a transfer is over to the Government: the Speaker will not put leave to transfer the question back, because the Government has already made its decision. (A member sought leave to transfer a question back to another Minister following a transfer.)


6 A member always has the right, if dissatisfied that his or her question has been transferred, to withdraw the question or decline to ask it.

Ministerial responsibility—subject matter determines responsibility

1 In practice, a wide view is taken of the concept of ministerial responsibility. In each case it will depend on a consideration of the legislative and administrative circumstances surrounding the question. While the Prime Minister is answerable for all actions taken and statements made as Prime Minister, the Prime Minister is not answerable for statements or actions taken as the leader of a political party or in a personal capacity, although this can be a hard distinction to make. A connection having been made to a matter of ministerial responsibility, an informative answer should be given. Although considerable weight must be given to Minister’s claim that actions or statements were not made in a ministerial capacity, this can never be definitive. Where I judge a question to reveal a reasonable likelihood of a connection to ministerial responsibility, an informative answer must be given.


2 The primary condition of asking a question of a Minister is that the Minister has ministerial responsibility for the subject matter of the question. If there is no ministerial responsibility, there can be no question. An opinion that is sought from a Minister must relate to a matter for which the Minister has responsibility.


3 Members are able to ask Ministers whether they agree with the views of other people, as long as the view that is being expressed is about a matter that is very much the Minister’s responsibility.


4 Where a Minister indicates a question is outside his or her area of portfolio responsibility, or challenges its validity, acceptance of the question must be reconsidered. In order to save a question for a member, the Clerk’s Office may negotiate rewording of the question. This will of necessity involve some give and take.


5 Just because a Minister may not have been present at the time does not relieve a Minister of being answerable for what took place. (A Minister was asked about a decision that occurred in his portfolio before he became a Minister.)

1 Questions to Ministers relate to a portfolio that a Minister holds, not to an individual person. A question must relate to one portfolio and can only be directed to a Minister about a matter for which he or she is currently responsible and not to a portfolio held previously. The exception is the Prime Minister, who is responsible for all activities of the Government.


2 Where a portfolio is defunct, there may be a Minister in a related, successor portfolio. In that case, a question should be directed to that Minister. Ministers have a duty to the House to decide on the appropriate Minister to answer a question and to direct the question to the Minister who holds the portfolio more directly concerned with the subject matter of the question. There will be some instances where there is no clear successor portfolio. The Prime Minister is the head of executive Government and determines the title, scope, and allocation of all ministerial portfolios. Because the Prime Minister is the only one who can disestablish a ministerial portfolio and because of his or her very wide sphere of ministerial responsibility, questions about a portfolio that no longer exists should be addressed to the Prime Minister where there is no successor portfolio. There are some limitations on the Prime Minister’s responsibility for defunct portfolios. He or she is not responsible for a previous administration.


3 The Minister of Justice has no responsibility for the actions of other Ministers outside her own portfolio responsibilities. She cannot be asked to confirm something for which she is not responsible.


4 There is no reason why the Prime Minister should not be questioned about coalition agreements in so far as it had implications for the arrangement of Government business.


5 Ministers can be questioned only on matters for which they have responsibility. If they have made statements that impinge on those responsibilities, they can be questioned on them, regardless of the capacity in which the statements are made. (Questions to a Minister on his remarks "speaking from his experience as a councillor", allowed; questions to the Minister relating to his actions as a councillor, disallowed.)

Although I accept that the Minister could argue that he is not responsible for the share register (of a private company), this question relates to answers to an oral question yesterday where these matters were canvassed by the Prime Minister. 

(A question to the Prime Minister was allowed despite his not having direct responsibility for the matter, because the Prime Minister had made statements relating to the matter in a previous question time.)

Ministerial responsibility—pecuniary interests

Questions about the ministerial code on pecuniary interests may be addressed to the Prime Minister. Such questions must relate to the register or to the ad hoc declaration rules. A question whose sole purpose is to pry into a member’s private affairs is not in order. Members must be careful not to imply or impute misconduct on the part of a Minister in the guise of a question to the Prime Minister about the register.

Individual Ministers are not responsible for the Register of Pecuniary Interests. That is a thing that members of Parliament are required to comply with. However, Ministers are responsible for their management of conflicts of interest, and where there is a potential conflict of interest with the Minister’s portfolio interests, then there is a legitimate ground for questioning.

The Prime Minister and Ministers are responsible for only those matters that fall within their responsibilities as Ministers, not as leaders of parties. That goes for all parties in the House.

The Prime Minister is answerable for any statements made as Prime Minister. But the Prime Minister is not answerable for actions taken in a non-ministerial capacity, whether as Leader of the Opposition or as leader of a political party.
The Prime Minister has no responsibility as Prime Minister for the fundraising of his political party.

A question which does nothing more than request information about a party document, as opposed to seeking information about Government policy, is out of order.

The Prime Minister is not responsible for funding provided through the Parliamentary Service to the party.

The Prime Minister has no responsibility either for what occurred at a select committee or for a member of the caucus.

Where a question impinges on the Prime Minister’s official responsibilities as Prime Minister, it will not be ruled out of order just because there is a party connection.

Where a question does contain a party connection it will undoubtedly have implications for the reply. Questions must relate to public affairs with which the Minister is officially connected. In practice a wide view is taken of the concept of ministerial responsibility. The scope for questioning Ministers and, in particular, the Prime Minister is broader than simply the administrative or ministerial responsibility of the Government. In the same way that Ministers may be asked about the general conduct of their departments, the Prime Minister can be asked about the conduct of his Ministers. Although the Prime Minister is not answerable for statements or actions taken purely in a non-ministerial capacity, such as those taken as a party leader or in a personal capacity, the Prime Minister can be asked about how such actions or statements may or may not affect his view of a Minister’s judgment and his confidence in a Minister. (The Prime Minister was questioned regarding his confidence in the judgment of a Minister who was also a party leader, where that judgment related to a party matter.)
Ministerial responsibility—no responsibility for Opposition parties

1 The Government can answer only for its own intentions and has no responsibility for the Opposition.

2 In respect of the activities of the previous Government, which the Minister has had to confront as the Minister in this Government, I believe it is legitimate for the Minister to make comment on those, although the Minister can be tested on the accuracy of what he or she says.

3 The Government is not considered by the House to be a single, continuous entity. The defeat of a Government in an election marks the end of one administration and the commencement of another. Ministers in the Government of the day are not responsible for the activities of the previous administration.

4 The Prime Minister is not responsible for the decisions of another party, but she may address the question as long as she does not address the other parties’ attitude on it.

5 It is not reasonable to use questions from the governing party or its support parties to attack other members of the House.

6 The question is clearly constructed to get round the fact that the Minister does not have responsibility for any Opposition views. I do not think I should allow it. It takes the artificial construction of questions to an unreasonable extreme. But I do not intend to make it out of order to ask Ministers about reports. On this occasion the Minister clearly has no responsibility whatsoever for the issues contained in any report about what an Opposition member might have said. *(Question asking Minister if he had received reports showing conflicting views of Opposition members ruled out of order.)*
Ministerial responsibility—responsibility for operational matters

1. The fact that a Minister has no legal control over a certain action does not mean that there is no ministerial responsibility to answer a question. Many questions are answered by Ministers who have no statutory power over the matter on which they are replying. In other cases the statutory power lies with a public official, but nevertheless the Minister assumes the political responsibility to the House to answer questions on those matters. *(Questions relating to actions taken by the State Services Commission in the course of carrying out its functions relating to the appointment of a chief executive did involve ministerial responsibility.)*


2. Questions to Ministers about the activities of State-owned enterprises will be accepted. If a Minister considers that a particular question does not disclose any ministerial responsibility, it is incumbent on the Minister to challenge its validity under the Standing Orders. The Speaker will not take the initiative in ruling out such a question.


3. Although a reply that something is an operational matter is strictly not out of order, I agree that on its own it is neither informative nor helpful. In practice, a wider view is taken of ministerial responsibility. There is no convention that Ministers are not answerable to the House for operational matters in the departments or agencies falling within their portfolio areas. Even though a Minister may not have legal control, the Minister assumes the political responsibility to the House to answer such questions. Legal responsibility and political responsibility are different things.


4. Under our system of government, decisions on whether to initiate a police prosecution are made independently of a Minister.


5. Under section 33 of the State Sector Act 1988, a question relating to one of the staff matters set out in that section, as it relates to an individual employee of the Public Service, is not in order. That does not prevent questions relating to employment policies generally as they are followed in each Government department, but the Minister will not be answerable for personnel actions taken in respect of any identified member of staff.

1 The Minister is not responsible whatsoever for the operational activities or decision making of a local authority. The Minister can be responsible only for any particular actions he might be taking in relation to the local authority, or Crown decisions on appointments to council-controlled organisations or Crown investment in those organisations. But matters outside that are certainly not the responsibility of the Minister.


Ministerial responsibility—responsibility for Associate Ministers

2 Any question raised subsequently as to the action of an Acting Minister should be addressed to the Minister who holds the portfolio responsibility.


3 Questions can be asked of Associate Ministers. However, it is necessary to know what delegated area of responsibility each Associate Minister has. Associate Ministers cannot be asked questions across the whole portfolio in the way that a portfolio Minister can. Until the Speaker is advised that an Associate Minister has had particular responsibilities delegated, questions can only be allowed to the portfolio Minister.


4 The fundamental rule is that members of the House, whether Ministers or not, are answerable only for matters in respect of which they have responsibility. In the case of Associate Ministers answerability is determined by the official list of delegated responsibilities tabled in the House. If this list ceases to be correct, the Speaker should be informed by the Government at once.


5 (1) Questions about matters for which there is delegated authority can be asked directly to Associate Ministers, but they cannot be questioned about matters for which they have no formal delegated responsibility, (2) nor about statements they make on matters outside their delegated responsibility, (3) nor the allocation of portfolios.

Questions to other members

Chairpersons of select committees

1  A question to a chairperson of a select committee can only be for information on a matter for which the committee has charge—that is, on a matter referred from the House or that the committee has resolved to inquire into.


2  When the questions were accepted at 10.30 this morning the bill was before the committee. The bill has now been reported to the House and is no longer before the committee. Although the questions were properly accepted this morning, they are now out of order. A question to a chairperson of a select committee must relate to a matter for which the committee has charge.


3  Whether someone has written a letter to the committee is not a matter before the committee. (Supplementary question ruled out of order as asking about a letter that did not relate to an item of business referred to, or initiated by, the committee.)


4  Questions can be addressed to the chairperson regarding a statement under [Standing Order 242(1)] notwithstanding that the matter under consideration by the committee is itself not open to the public. However, while a question may be asked in elucidation of the statement, it cannot seek the committee’s reasons for directing the statement to be made as these must have been discussed at the committee and therefore constitute part of the proceedings.

Questions to a chairperson must relate to a matter before the committee and a process or procedure for which the chairperson has responsibility. The responsibilities of chairpersons relate to limited areas of process and procedure. First, in the absence of a committee making a decision about its next meeting, the chairperson may set the date for that meeting, but the chairperson does not control the agenda. This is a matter for members of the committee. Second, the chairperson may, on behalf of the committee, request any person to attend and give evidence, and request papers and records be produced. Third, the chairperson may direct the examination of witnesses and question witnesses. Fourth, the chairperson with the agreement of the committee may make a public statement to inform the public of the nature of a committee’s consideration of a matter. Finally, the chairperson signs the committee reports and presents them. These are the extent of the chairperson’s powers and set the limits for questions to chairpersons. Questions that ask about committee decisions are not in order. Questions asking what the committee is currently considering, for example, or when it will consider a matter are not in order. The chairperson is no more responsible for such a decision than any other member of the committee is. Furthermore, such decisions are more than likely to be confidential to the committee. Similarly, the chairperson is no more responsible for progress on an item of business than any other member of the committee is.


The Chair of a committee is empowered to call for submissions. The Chair does not need the approval of the committee to call for submissions. The Chair can call for submissions, and can be asked in this House whether he has done that. If the Chair has acted independently [that is, without a decision of the committee] to call for submissions, the Chair can be questioned on that.


A primary question that concerns the chairperson’s power to request persons to attend under [Standing Order 195] is a proper question.


The chairperson of the committee is not responsible for the views of submitters to the committee. The chairperson is responsible only for the process. Any question relating to the process is in order, but any question that relates to the substance of the submission is out of order.


The chairperson of a select committee cannot be asked for an opinion or assessment of correspondence that is to be considered by the committee.


The chairperson of a select committee is not responsible for voting decisions by individual members of the committee.

(1) If a chairperson is absent from a meeting of a select committee, the deputy chairperson acts as chairperson at that meeting of the committee. But that does not mean that the deputy chairperson can assume the chairperson’s functions in this Chamber. A question to the chairperson was therefore properly postponed when the chairperson was absent from the House.
(2) Unless the chairperson is out of the country, the deputy chairperson cannot reply.


Parliamentary Under-Secretaries

While a Parliamentary Under-Secretary may answer a question on behalf of a Minister, a question cannot be addressed to an Under-Secretary in the Under-Secretary’s own right under [Standing Order 378]. A question can only be addressed to a Parliamentary Under-Secretary under [Standing Order 379] in relation to parliamentary proceedings of which the Under-Secretary has charge.


Contents of questions

Form of questions

A member is entitled to ask any question provided it is within Standing Orders, and it is up to the member whether the question is a written one or an oral one.


There is no rule against the doubling up of questions.


Opinions can be sought and will be given.


When opinions are sought that in effect are asking for a legal interpretation, that is not permitted under Standing Orders. If legal opinions are called for, they will not be permitted.

1 Members can ask hypothetical questions but Ministers do not need to respond to the hypotheses.

2 I think experienced members know that if they ask political questions they are likely to get political answers.

3 For some time there has been a working rule that oral questions should not have more than two legs, otherwise the House could have oral questions in the nature of centipedes. Members are supposed to ask a single question.

4 Members may ask any number of written questions, and with that ability comes a requirement to ask questions responsibly. Vague or very broad questions make it difficult for a Minister to meet accountability requirements and are less likely to receive an informative answer.

5 A primary question is often longer than a permitted supplementary question. In this case the question contained a very long quote that the member thought was necessary. The question has been allowed and it has been accepted.

Acceptance of questions

6 A question will not be ruled out of order because it is ungrammatical.

7 Changes to questions put in by members should not be made lightly. Changes should be made only in cases of bad grammar or something similar.

8 All issues relating to the acceptance of a question should be raised with the Clerk’s Office up until the commencement of question time.
If a Minister thinks that a question is not in order, the proper course is to raise a point of order about it [and not to decline to answer]. The Speaker will then decide whether the question is permitted. It is not for a Minister to decide whether or not a question is in order.


The matter of whether a question is or is not in order is not dependent on the time that it is lodged. The matter can be determined up until the time the question is asked in the House.


There is no requirement for a Supplementary Order Paper to be lodged for it to be referred to in a question.


Where the Speaker will back members absolutely in seeking information is when they put down a primary question that seeks information. *(The Minister had been asked for an opinion about information.)*


**Factual content**

The denial by the Leader of the Opposition that a proposal quoted from a pamphlet and referred to in a question had been made by the leader’s party must be accepted.


A member’s claim not to have made a statement attributed to the member is accepted without hesitation and a question to a Minister based on the incorrect statement cannot be allowed to proceed.


It is perfectly proper on a point of order for a member to deny a statement or action that is attributed to oneself in a question. Such a denial must be accepted and the question rephrased.

1 Whether a question is out of order as inaccurate depends upon the amount of inaccuracy. If it is patently inaccurate and spoils the whole purpose of the question it should be ruled out, but it is not necessarily out of order because it contains some inaccuracy.


2 The member who puts in a question is responsible for its contents. Where there is any doubt as to the accuracy of a question, and the Minister’s office notices the inaccuracy, it should be referred back immediately to the member concerned for that member to prove its accuracy. If the member cannot do that, the question will not be allowed.


3 Members cannot make implications or imputations in questions that go to matters that could be interpreted as misconduct or corruption.


4 Individuals should not be named in questions unless there is an indication that the need for the disclosure of the individual’s name is necessary for the protection of the public. A question whose plain purpose is to be damaging to a named person should not be accepted without any compensating need for disclosure being indicated.


5 While members may be strongly critical in debate of persons outside the House, the rules for questions require members to take much more care if they wish to include such reflections in their questions.


Authentication

6 If members include statements of fact in their questions they must be prepared to authenticate them. But this does not mean that this should be required as a matter of course. The following are the circumstances in which authentication will always be required: (1) direct quotations; (2) paraphrases of statements or reports referred to in the question; (3) the names of persons included in a question; and, (4) figures or numbers set out in the question. In other cases the Clerk’s Office will not insist on the provision of authenticating material. In these circumstances the obligation to cite facts accurately obviously devolves solely upon the member lodging the question.

1 There can never be any question of authenticating an opinion. An opinion is out of order per se. In the case of alleged statements of fact, if another member raises a serious challenge to such a statement, then the statement must be ruled out of order. Whether the question is out of order depends upon whether the question can stand alone without the statement of fact.


2 If a member is quoted in a supplementary question, the member is entitled to dispute that quotation and the question must be disallowed. It can be resubmitted on another day with appropriate authentication. But it cannot be authenticated across the floor of the House during the course of supplementary questions.


3 If members put statements in their questions, Ministers are entitled to address those statements and challenge them.


Quotations

4 The practice of quoting from a source is so generally used that unless the House itself decides to rule out quotations from newspapers and other sources of questions, it would be wrong for the Speaker to deal with the question in that way. The House has by long custom established that it is prepared to receive excerpts in questions.


5 [A member] cannot quote endlessly when asking a question.


6 Members, when they are lodging a question or a notice of motion, should provide the Clerk with a copy of the press statement or other statement they intend to quote from. If this is not done, the Clerk should send the question or notice back to the member for proper authentication.

1 (1) A newspaper clipping or quotation is given to the Speaker to authenticate statements (in questions). The long-standing practice is that the member is not required to disclose the source of the information to the person of whom the question is asked; (2) such clippings of quotations are not as a matter of practice passed on to the Minister to whom the question is addressed—if the member wishes the source of the information to be passed on to the Minister the Clerk should be told when the question is handed in.


2 If one puts words in inverted commas, these words should repeat exactly what was said. If one leaves out a portion of a statement, at least some dots should be inserted to indicate the omission.


3 A member is responsible for the accuracy of quotations in questions.


4 A member asking a question based on a quotation must assure the House the quotation is correct but cannot be asked to be responsible for the facts in the quotation. The member should give the source of the quotation so that it may be checked.


5 When a question is based on a quotation or excerpt from a newspaper article, the excerpt must be correct, or if the report is paraphrased in the question, the paraphrase must be a fair one.


6 Members are perfectly at liberty to include what they believe is a quote in a supplementary question, as long as it is crucial to the question being asked, not just an additional injection of a statement into the question. The Minister being questioned is perfectly at liberty to dispute the quote. That is the risk that members take when they include a quote in a supplementary question that has not been validated.


7 Under [Standing Order 380(1)(c)] “discreditable references to the House or any member of Parliament or any offensive or unparliamentary expression” cannot be included in a question, including in a supplementary question. Even if a quotation is being used, if it makes discreditable reference to another member of the House, strictly it is outside the Standing Orders.

Asking questions

1. There is no rule against any member of the House, including Ministers, asking questions.

2. If possible, doubts about the wording of a question should be resolved by 11.30 am when the oral questions for the day are published to the Parliament website. But it is the questions printed and circulated with the Order Paper in the Chamber that are questions for that day. Publication on the website is a courtesy, and does not give an oral question any particular status.

3. If when a question is called the member in whose name it stands elects not to ask it, the member cannot be compelled to do so, and unless leave is sought and given to postpone it the question would disappear from the Order Paper.

4. Members may take a question off the paper before it appears in the House, and if it appears in the House it does not have to be asked by that member, and cannot be asked by any other member unless the member has authorised the question to be asked in the member’s absence.

5. The leave of the House must be given for an oral question to be deferred.

6. A member cannot ask an oral question on behalf of a member who has not taken the oath required of members by the Constitution Act. However, an unsworn member can seek a written answer to a question.

7. The member cannot ask a question in the name of a member who is present in the Chamber, so I will ask the member in whose name the question stands to please ask the question.
CHAPTER 7 NON-LEGISLATIVE PROCEDURES

1 Members must be authorised to ask a question on behalf of an absent member. The authority will be implied when members act for absent members of their own party, but where members act for members of another party they must be expressly authorised by the member in whose name the question stands. If members seek the call to ask a question that they have not been authorised to ask, they risk being accused of deliberately attempting to mislead the House.


2 (1) The question as printed must be read out because that alone is what the Speaker has to supervise; (2) but where there has been an error in transcribing a question, a member may ask it with amendment provided that this does not seriously prejudice the answer that the Minister may have prepared.


3 A question should be read as it appears on the [list of questions] [not commenced with a translation of it]. If a member wants a question to be in Māori it should be lodged in Māori.


4 A member cannot demand a “yes” or “no” answer to a question.


5 A member cannot require a specific or particular answer to a question. The Minister is just required to address the question.


6 (1) Interjections are permitted during question time, as long as they are reasonable and not disorderly in themselves. But concerted or widespread interjection is out of order and will be dealt with as appropriate by the Speaker. (2) If interjections become disruptive to the member asking or answering a question, the Speaker will intervene.


7 The rules for question time are very clear. It is not a time when we have debates. We have questions asked, hopefully, and answers given.

Supplementary questions

Asking supplementary questions

1. No member has an absolute right to be given the call to ask a supplementary question.


2. As a matter of practice, the first supplementary question is allotted to the member who asked the original question. The logical extension of that practice is to allow another member on the same side of the House as the member who asked the question to substitute for that member in asking the first supplementary, if that member so desires.


3. Supplementary questions are allowed at the Speaker’s discretion. In recent times Speakers have given an indication of the way that they may allocate questions. This is based on the same system of proportionality that is used for the allocation of primary questions. The allocations to parties are calculated as a proportion of the total number of members excluding members of the executive. These are allocated across the three question times each week.


4. In the exercise of their discretion to permit supplementary questions, Speakers do not normally allow more than one or, at most, two supplementary questions to each question to another member.


5. Members seeking to ask supplementary questions must stand and call to the Speaker. But rising and calling is not a race. The Speaker calls whomever the Speaker determines that it is appropriate to call, regardless of who rises first. After giving the first supplementary to the member who asked the primary question, the Speaker generally prefers members in order of size of party. When all parties that wish to do so have asked a question, parties can come in for a second round of questions, and so on, generally in order of size of party.

A member cannot seek leave that another member ask a supplementary question. Members must act for themselves in such a situation. The action of a member in seeking leave on behalf of someone else could put that member in a position in which he or she should not be put.

When members trade their supplementary questions, they should give the Speaker notice of that fact before they rise to their feet.

Form of supplementary questions

A member may not ask several supplementary questions in the form of one.

A supplementary question should contain only one question.

The opportunity to ask about two matters in a supplementary question is not permitted. The allowing of a second element needs to be closely related to and to wind off the thing being asked about (such as, “if not, why not?”).

(1) Ministers need address only one of the questions contained in supplementary questions. (2) If members ask multiple questions, they run the risk of Ministers answering the parts that they regard as less important.

Supplementary questions must not be prefaced with a statement.

Members are not to preface their questions with assertions or assumptions, such as “given” or “in the light”.

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8 Members are not to preface their questions with assertions or assumptions, such as “given” or “in the light”.

Questions are meant to be succinct, not speeches or long statements.

The general requirements of [Standing Order 380] apply to supplementary questions in the same way as they do to ordinary questions, because a supplementary question is merely an extension of the original question and comes from the right of members to ask those original questions.

Some supplementary questions are admitted which, if one had the time to analyse them in the way that primary questions are analysed, would be ruled out of order or would require further authentication. However, members should not be permitted to ask a Minister to respond to outlandish assertions. Supplementary questions will be disallowed whenever a member raises a serious objection to their factual accuracy so as to require that a question of that nature be pursued—if it is to be pursued at all—through the normal question system with notice.

I have not actually ruled out [supplementary questions containing irony]; I have normally let the Minister deal with them, but if the questioner appeals to me for assistance, I normally point out that the question was actually not in order. But I would rather not deprive the Minister of the opportunity to utilise such a question … I will normally rule out only part of a question … But I do not want to be intervening all the time, so unless it is highly offensive, I tend not to rule them out.

Scope of supplementary questions
Supplementary questions must arise directly from the Minister’s reply; they must be related to it not indirectly but directly.

If a Minister in an oral answer to a question adds something more than was sought, the additional material could be the basis for a supplementary question.

If a member wants to have that kind of specificity addressed in a supplementary question, the primary question needs to be somewhat more specific than this one. (The primary question to the Minister was, “Does he stand by all his recent statements?”)
1 Where a very general primary question is laid down, members cannot necessarily expect a Minister to have the information required to answer a specific supplementary question.

2 A supplementary question may be put to elucidate an answer, that is, to make clear or find out what the answer means—the member says in effect that the Minister has not answered the question.

3 The whole idea of supplementary questions is not to make a range of political statements about an issue but to dig into an issue, to test a Minister’s answer.

4 It is irregular to preface a supplementary question with the words “Is the Minister aware” and then proceed with a massive statement of fact. Unless the member wishes to ask a question seeking elucidation of the answer to the original question, the member should not proceed.

5 Questions commencing “Is the Minister aware”, “Would the Minister confirm” are generally not seeking elucidation but seeking to inject information or propaganda a member wishes to be heard.

Replies

Answering on behalf of another member

6 A Minister replying to a question for another Minister should tell the House that the reply is on behalf of that other Minister.

7 Ministers answering on behalf of another Minister are speaking as if they are that Minister.

8 Any Minister has an absolute right to delegate responsibility for answering a question to any other Minister.
1 The fact that Associate Ministers can have primary questions addressed to them does not mean that they have to answer a question on behalf of the portfolio Minister if that Minister is absent. It is still for the Government to decide who deputises for an absent Minister.


2 Where an Acting Minister has been appointed, the Acting Minister is for all purposes the Minister and does not answer a question on behalf of anyone. If an Acting Minister is present when a question is reached it is the Acting Minister’s responsibility to reply.


3 Where a Minister enters the Chamber while a question is being asked or answered the Minister is responsible for answering any supplementary question.


4 [Standing Order 385(2)] does not allow another member to answer a question on behalf of a member of whom the question is asked. The proper course, if the member is not present, is to hold the question over.


Obligation to answer

5 A Minister must give an answer “if it can be given consistently with the public interest”. The Minister is instructed under [Standing Order 386(1)] to consider the public interest in framing a reply. In considering consistency with the public interest, the Minister may address such principles as privacy, commercial sensitivity, or national security. But, ultimately, the judgment of whether a particular reply is consistent with the public interest is for the Minister to make. It is not a matter for the Speaker to judge. Nor is it a matter for the member asking the question to suggest that because that member considers the matter to be a matter of public interest, the question should be answered in a particular way.


6 Whether an answer is in the public interest is not an all-or-nothing matter where either no answer is given at all or an answer is given. If a Minister wishes to be helpful, a Minister can answer a question in so far as he or she believes he or she can do so consistent with the public interest.

Ministers from time to time recognise that matters are before the court, and therefore choose not to give further detailed answers. They may answer to a certain point, and then choose not to go any further, rather than risk compromising what is before the court.


Where there is an independent inquiry by a statutory authority, I have to respect an assertion of it not being in the public interest to comment while that inquiry is under way.


I want to make it clear to Ministers that where a question is as clear as this question is I expect Ministers to answer it, unless they consider it not to be in the public interest to do so. If a Minister decides that to answer a question is not in the public interest, I will accept that. But where a question is clear, I think New Zealanders expect Ministers to answer it.


The Speaker cannot force a Minister to give an answer to a question and has no responsibility for the quality of the answer that is given nor its content.


Accountability to the House

Ministers have a responsibility to the House, and through the House to the country, to account for the public offices they hold. Question time is an important element of this accountability. Ministers should therefore take questions seriously and endeavour to give informative replies to the questions that they are asked.


Requests under the Official Information Act 1982 may be refused if the information requested is or will soon be publicly available. A question to such a Minister is not a request under the Act and should not be treated as such. While that Act may provide some guidance when replies to questions are being prepared, it does not exempt Ministers from their accountability to the House through the question procedures. The House has established its own rules for replies to questions, and its entitlement to information exceeds that under the Act.

1. There is no rule that precludes a Minister from making public any information on a subject that forms the basis of a member’s question. While it would be courteous for the Minister to ensure that his or her reply has gone to the member asking the question before that reply is made available to others, this is not a matter of order.

2. The question was on notice. It was not just a supplementary question. Officials have had time to provide the Minister with information. The House deserves an answer. (*The Minister had replied that the cost of a proposal was “minuscule”.*)

3. If some information can be given in addition to the bare facts asked for in a question, information which would supplement the reason for the answer, giving such information would comply with the spirit of question time.

4. It would be unparliamentary if a Minister refused to give information through the question process to one member that the Minister was prepared to give to another.

5. Our question system is based on the assumption that Ministers will try to give informative replies to the questions they are asked. But I am loath to say that a Minister must go about getting information to answer a question in any particular way. That must be a matter at the discretion of the Minister.

6. The use of the phrase, “I am advised”, by Ministers answering questions may be an attempt on the part of Ministers to indicate that they have no legal or operational responsibility for the matters that form the subject of the reply. But how Ministers choose to answer questions, subject to matters such as unparliamentary language, is a matter for them.
Form of reply

1 The scope of question time has expanded in recent years. Members can now ask opinions and include hypothetical material. Questions no longer have to seek just factual material. It is therefore inevitable that there will be greater dissatisfaction with the replies to questions of much greater scope.

2 Where opinions are sought, members cannot expect precise answers.

3 Members need to be aware of the fact that when they ask whether a Minister is aware of something, the answer will never be very precise.

4 Hypothetical answers to questions are permitted.

5 A quotation can be used in replying to a question regardless of its origin, provided that the quotation relates to the Minister’s area of responsibility.

6 The rules are not the same for questions and replies. Statements of fact in questions must be authenticated. There is no such rule for answers.

7 The Speaker cannot insist on an answer that quantifies an amount if the Minister has said that it is impossible to do so.

8 Replies should be concise, which means not only short in terms of the number of words used, but also no longer than need be in order to answer the question adequately.
1 It is the duty of the Speaker to decide when a Minister, or the Prime Minister, has spoken for too long when answering a question. The length of the question asked and whether the Speaker considers the Minister or the Prime Minister is genuinely attempting to answer it, will be taken into account.

2 I judge the length of answers, and what does determine that, to some extent is the level of interjection that a Minister may be getting.

3 Ministers, when replying, should address the question, (1) and refrain from making comments that are not relevant to the question that was asked; (2) without terms of abuse being part of the answer.

4 A Minister’s reply that he did not have responsibility for setting the salaries and conditions of employment of executives of a State enterprise is an answer to a question in terms of the Standing Orders.

5 If Ministers refute information contained in questions, they need to be careful about doing that. I have made it very clear that were it to be established that it was done to avoid answering a question—that is, if it was not correct—and incorrect information was given that impeded the business of the House, then that would be a serious issue.

Replies—reports and party matters

6 (1) If a Minister is asked a question about a report, or whether the Minister has received a report, he or she can answer that question and talk about what was in the report. (2) These are not restricted to official reports, though they must relate to the subject matter of the question for which the Minister has responsibility.

7 The Minister, in answering about the report, cannot be hypothetical about what may or may not be the effects of another political party’s policy.
1. Any Minister is entitled to report to the House on the economic situation inherited by the Government. But the Minister must not cross the line of ascribing to another party in the House current policies and criticising them in any way.


2. Ministers should not bring another political party, which has not been involved in the questioning, into an answer.


3. Ministers should not commence an answer to a question with a political attack on the person asking the question. That is totally outside the Standing Orders. But where members asking questions make a political statement, they are likely to get a political statement back.


4. Ministers answer questions in the capacity of a Minister. But Ministers can give a party perspective in their answers. It is not obligatory on a Minister to use any particular form of words to make it clear whether an official or a party perspective is being given. But it is advisable for Ministers to make their positions clear so that they are not misunderstood.


5. Adequacy of reply

An answer must be relevant to the subject matter of the question. The quality of the answer required by the Standing Order comes from the use of the word “address”. That is the test of adequacy.


6. Any answer must address the question asked. The answer must be a direct response; it cannot be on an unrelated matter that it suits the Minister to introduce. But it does not mean that the answer will be satisfactory to the questioner.


7. Members are not always satisfied with the answers given by Ministers. The Standing Orders do not require them to be so. On this occasion the Minister did actually address the question. It may not have been to the satisfaction of the member, or it may not have been the answer the member wanted, but the Minister did address it.

1 The House and public opinion arbitrate on the quality of an answer to a question. It is not the Speaker’s role.

2 The Speaker has no jurisdiction to determine whether the answer to a question is correct.

3 It is not the province of the Speaker to decide whether a Minister’s answer is correct. The Speaker is not a quizmaster who decides whether the right answer has been given to a question. Many of the appeals that have been made to the Speaker on that subject treat the Speaker as if he is conducting some kind of quiz rather than a parliamentary question time.

4 The Speaker is not responsible for accuracy in replies. Accuracy requires a judgment that is up to Parliament and the public at large. The Speaker is concerned with whether the Minister addressed the question.

5 Question time is a political exchange. The adequacy of the performance of members, whether in Government or in Opposition, is judged on a political basis. The Speaker does not give them marks for performance as to the quality of their questions or their answers. Members cannot appeal to the Speaker every time they get an answer they do not like or are not satisfied with.

6 The Speaker does not make political judgments on how well Ministers have responded to the House, or, indeed, how well other members are performing. Those are matters for members themselves, the press, and the public generally.

7 In replying to a supplementary question, the repetition of an original reply may be a perfectly sensible way of responding and does not necessarily deserve censure. If the Speaker feels that a Minister is trifling with the House, the Chair can permit a further question or questions to be asked.
1 There may be occasions on which an answer, though relevant, is so patently inadequate that the Speaker may demonstrate some disapproval of it. In such a case, the Speaker may invite the Minister to answer again or permit an extra supplementary question.


2 A Minister must attempt to give a reasonable answer to a question. However, this does not mean that a Minister’s reply will be satisfactory to the questioner. If a Minister introduces an entirely unrelated subject in replying, the Speaker will call the Minister to order and may permit further supplementary questions to a particularly uncooperative Minister. But the Minister is ultimately responsible for the reply given, not the Speaker, and the Speaker cannot force the Minister to reply in a particular way even if the reply is not fully satisfactory.


3 The Speaker can prevent Ministers replying in a way that is out of order, but, provided the reply is in order, the Speaker cannot require it to be couched in one form rather than another. It is entirely a matter for Ministers to decide how they answer questions, as long as they remain within the Standing Orders.


Follow-up

4 A personal explanation can be used about an answer a Minister has given. That is always the way in which a misleading reply is cleared up.


5 The normal course of action as soon as one becomes aware of an error in an oral answer is to take the earliest opportunity to explain. That should be at the beginning of question time. If leave is denied the member should approach the Speaker in writing to explain what has happened.


6 An incorrect answer to a question cannot be corrected or modified by way of clarification. An attempt to correct an answer by way of clarification on a subsequent day will not be acceptable.

There is an obligation on Ministers, whenever they answer questions, subsequently realising that it is not correct, to come back at the earliest opportunity to correct that answer. In this case, it has been done very belatedly via another question being raised. The member needs to consider whether he thinks it is serious enough to lodge a breach of privilege, and then I would have to consider it in the light of judging whether it was deliberate and whether it has seriously disadvantaged accountability to the House. I have reminded Ministers many times that they might get some figures wrong. They are expected to return to the House as soon as possible to correct those figures.


A correction to an answer can only be taken by a personal explanation, by leave by that particular Minister, not an acting Minister. *(Member believed the answer a Minister gave was incorrect and sought a correction, but the Minister who gave the answer was absent from the House.)*


Where a Minister promises to get back to a member with information in response to an oral question the Minister has made a promise that should be honoured as soon as possible. Members who do not get a follow-up reply should approach the Minister first and raise the matter with the Speaker if the Minister has not responded within a reasonable time. What is a reasonable time to follow up will vary in each case.


**Written replies**

Members lodging written questions and Ministers replying to them must sign them with an electronic signature. The responsibility for a written question and the reply lies with the member or Minister concerned. But the member does not have to affix the signature personally. The way in which a member authorises his or her signature to be affixed is a matter for the member. *(A Minister’s practice of authorising the affixing of an electronic signature by signing a hard copy was perfectly proper.)*

A Minister may answer a question by referring a member to information that is already publicly available. That may be the appropriate response where a significant amount of information is requested. However, if a Minister chooses to reply by directing a member to information already available, he or she must do so with some particularity. It is not acceptable to simply state that the information has already been released or that it was provided to a select committee. Rather, the Minister should provide a sufficiently detailed answer to enable the member to directly locate the information.

“Holding” or “interim” replies should be used only in exceptional cases. Every endeavour must be made to provide a full reply within the period. Where a holding reply is lodged, Ministers are under an obligation to the member concerned to follow up with a full reply as soon as possible thereafter.

The interim reply is not regarded as meeting the requirements of the Standing Orders, and in effect the question remains unanswered.

Interim or holding replies are to be used only if considerable research to prepare the answer is to be undertaken. They are not to be used as a matter of course just because the Minister’s office has a large number of replies to deal with on the same day.

Ministers should use holding replies only when they intend to follow up with fully informative replies. It is wrong to give a holding reply and then some time later give a short reply that could just as easily have been given in the first place.

If a Minister considers that the expense of answering a question cannot be justified, that is what the Minister should say. But if a promise is made to provide an answer subsequently, that promise must be met.
1 Amalgamating written replies is a well-established practice where a member asks a series of questions about Government activity across the board, and it is convenient for the Government to collect and respond to the information centrally. It may also be appropriate to amalgamate written replies where they involve a single issue and the Government wishes to respond to the issue with a single policy statement. But while amalgamating replies may be employed for the purposes of administrative convenience, it cannot be used to withhold information from the House. (*It was not appropriate to have amalgamated replies for the purposes of denying the House disaggregated information, rather than merely to present it in a more convenient form.*)


2 It has been a common practice for many years for Ministers to give a single reply to a number of written questions. But the practice is acceptable only in answering questions that are similar or associated. It is not acceptable for Ministers to answer dissimilar questions in a single answer.


3 A reply to a written question is due back on a particular day, not at a particular time on that day.


4 (1) A written answer is primarily a matter between the Minister and the member. The Speaker will not intervene in regard to its contents unless when it is printed it is brought to the Speaker’s attention in the House; (2) the member should discuss the matter initially with the Minister to try to correct the answer if it is considered that it does not comply with the Standing Orders.


5 Anyone giving inaccurate information in a written reply should clear up the error as soon as he or she realises it has occurred. That obligation applies even though the member may not have all the information needed to clear the matter up fully at the time the error is appreciated. It is still incumbent on the member to take the first opportunity to acknowledge the error, with a promise of a full correction in due course. It is not sufficient for a Minister to acknowledge an error only in answering further questions. Where there is an error the Minister should lodge with the Clerk a further reply, indicating that it is believed that there are errors in identified replies and promising to lodge fully corrected replies in due course.

Urgent questions

1 There is no time limit for lodging urgent questions, but members should try to ensure that there is a reasonable opportunity for the question to be in the Speaker’s and the Minister’s hands so that an answer can be obtained. 
(Question not accepted where announcement on which it was based had been made at midday and question was not lodged until the House met—the member having ample opportunity to lodge the question before that time.)

2 I cannot allow the question, because it is not in order … at the time I had to make a ruling on it the Minister did not have a copy of the urgent question. So the Standing Orders had not been complied with. (Urgent question not allowed as the member asking it had not given a copy to the Minister.)

3 As a further guide to the Speaker when deciding on whether applications for urgent questions should be accepted, we recommend these should deal only with matters that have arisen or come to the attention of the member after 10.30 am [the cut-off time for oral questions] on the day of application.

4 A member would normally get an answer to a question in 48 hours, but where an adjournment for 14 days is about to be taken a question which is somewhat urgent becomes doubly so by reason of such adjournment.

5 [Standing Order 388] permits urgent questions to be asked when there is urgency in the public interest. A classic circumstance of urgency in the public interest is where some irrevocable course of events is about to happen—for instance, if a building is about to be demolished.

6 One of the classic definitions of urgent questions is that of a building about to be demolished—in other words, the matter is one that has to be dealt with immediately in the House; not something that, if the question was not asked, might well be dealt with a day or so later.
1 The guidance used in deciding whether a question is urgent is to ask whether it needs to be answered today, tomorrow, or next week. (A question about the casting of special votes in a by-election which in the normal course would not have appeared on the Order Paper until after the election ruled to be an urgent question.)


2 The test for an urgent question is whether an important event is about to happen, not what has happened in the past. The question of the day format provides an adequate and timely means of exploring things that have occurred.


3 The urgent questions procedure is intended to deal with an event that is about to occur within the next day or two, and that will be over before a member could get an answer to a question following the ordinary period of notice.


4 When asking an urgent question which has been submitted to the Speaker a member may not ask it in a different form; such questions are submitted to the Speaker so that it may be decided if they are in order.


5 [The acceptance or not of] an urgent question is a decision that I make. I then have a duty to advise the member who wished to ask the urgent question, and I have a duty to advise the Minister. I do not normally make such an announcement in the House.

DEBATE ON A MATTER OF URGENT PUBLIC IMPORTANCE (SOs 389–391)

Notice

1 The written notice required under [Standing Order 389] must be handed to a member of the Speaker’s staff, not simply left lying on a desk somewhere. (Speaker permitted the motion to be moved, even though it had not been received one hour before the House met, as it had been left in the office of a member of the Speaker’s staff.)


2 Charges of improper conduct ought to be made in their own right by way of substantive motion. [Standing Order 389] is not a suitable vehicle for such a matter.


3 Every statement in a letter seeking to debate a matter of urgent public importance must be authenticated in the same way as statements in a notice of motion.


4 If applications for an urgent debate are not accompanied by authenticating material they will be declined on that ground.


5 The purpose of authentication is to verify the facts in an application for an urgent debate and to make out the case in support of it. In this instance, the facts of the matter are well known and hardly require authentication. I am prepared, on this occasion, to accept the application without authentication. (Application for debate on the resignation of the Prime Minister accepted.)


6 Where the event on which an application for an urgent debate is based occurs within one hour of the sitting of the House, the application can be lodged following the event.

1 An application for an urgent debate can be lodged up to the time the House meets. If something occurs after that time it can be lodged for debate on the next sitting day.

2 A Minister of the Crown cannot raise a matter for debate under the Standing Order relating to debates on matters of urgent public importance.

3 It is for members to make out a case for an urgent debate, not for the Speaker to discover one.

4 (1) An application under [Standing Order 389] cannot be accepted when to do so would inevitably involve a breach of the rule against referring to a matter pending adjudication in any court; (2) but an application was not automatically debarred where it related to the cancellation of a contract rather than the court-related actions themselves. (No reference to the legal issues or the conduct of the proceedings permitted.)
   (1) 1985, Vol. 463, p. 5173. Wall. (The decision of a court.)
   2012, Vol. 679, pp. 1779–82. (Judicial review lodged.)

5 In light of the findings of the report, the State Services Commission has referred the matter to the Serious Fraud Office to consider whether any of the activity is of a potentially criminal nature that requires further investigation. The matter is now with the Serious Fraud Office for investigation. The House is not prevented from debating matters that are under investigation, but it is not likely to assist the administration of justice to do so. While this matter may receive further attention from the House in the future, I do not consider it appropriate to set aside the business of the House today to debate a matter that has just become the subject of a criminal investigation, and the application is therefore declined. (Debate not agreed to on allegations of conflicts of interest of staff at a Government agency.)
1 Where the Speaker received two applications under [Standing Order 389] dealing with substantially the same subject and therefore could not differentiate between them on the ground that one was more urgent and important than the other, priority was accorded under [Standing Order 391] to the application lodged first.


2 (1) Where an application is set aside under [Standing Order 391], it may be resubmitted on the following day. (2) However, there is no guarantee that it will be accepted for debate on that day.


Administrative or ministerial responsibility

3 For there to be an urgent debate there must be administrative or ministerial responsibility for the case of recent occurrence. The concept of ministerial responsibility for a matter qualifying for an urgent debate is narrower than it is in respect of questions for oral answer, which encompass any matter relating to public affairs with which the Minister has an official connection under [Standing Order 378(a)]. The fact that questions have been addressed to Ministers about the matter does not necessarily mean that it involves ministerial responsibility on which an urgent debate can be founded. An urgent debate is a way of holding the Government accountable for an action for which it is responsible. There must be distinct governmental responsibility for the particular case which it is sought to debate. (Application denied for debate on factors contributing to chaos in downtown Auckland ahead of the Rugby World Cup opening ceremony.)

2011, Vol. 676, p. 21637. Smith. (The downgrade of New Zealand’s credit rating by two rating agencies.)

4 With regard to the Waitangi Tribunal, the Government is responsible only for its own response to the tribunal’s recommendations. (Application denied for debate on the release of an interim Waitangi Tribunal report regarding water rights, to which no Government response had yet been made.)

1. It would not be appropriate to use the mechanism of an urgent debate to try to circumvent the procedures laid out in our Standing Orders for dealing with issues of judicial conduct. In terms of the transparency of the judiciary there are mechanisms for this House to deal with that, via the proper process of the judicial complaints authority—by the process of a panel, and then by the Attorney-General putting a motion to this House. There is that possibility of a notice of motion being raised in the House, but I do not think that an urgent debate is the way to deal with these issues. (*Application denied for an urgent debate on the announcement that a judge would resign.*)


2. The fact that under legislation in force the Government has power to make regulations dealing with specific cases of takeovers and mergers does not render a particular takeover a matter of direct Government responsibility.


3. Questions relating to the conduct of a select committee are not within the administrative or ministerial responsibility of the Government. Committees are responsible to the House and accordingly their proceedings cannot be made the subject of a motion under [Standing Order 389].


4. The responsibility for the fact that accreditation [as a building consent authority] is to be revoked lies with the Christchurch City Council. The Government has a general power to revoke accreditation, but this does not render this particular revocation a matter of direct Government responsibility.


5. There is no ministerial responsibility for the exercise of powers given to the Meat Producers Board by statute in relation to the export of meat—the Minister had power to nominate two members on the board but not to direct the board on the exercise of its powers.

Application under [Standing Order 389] to debate a High Court decision to grant an interim injunction restraining the New Zealand Rugby Football Union from sending a team to South Africa declined as not involving the administrative or ministerial responsibility of the Government. Under our system of government the decision of a court is not a matter for which any Minister of the Crown has responsibility.

2007, Vol. 638, p. 8191. Wilson. (High Court judgment on a district health board contract.)
2012, Vol. 677, p. 498. Smith. (High Court judgment on the Minister’s decision on the sale of the Crafar Farms.)
2012, Vol. 679, p. 2085. Smith. (High Court judgment on a marine reserve decision.)
2012, Vol. 682, p. 389819. Smith. (The High Court set aside the Minister’s decision and granted a judicial review.)
2015, Vol 707, p. 5337. Carter. (High Court declaration that an Act of Parliament was inconsistent with the New Zealand Bill of Rights Act 1990.)

Although the Minister of Police is answerable to this House for police operational matters, under our system of Government the decision to prosecute or not is not a matter of ministerial responsibility.


The urgent debate is a way of holding the Government accountable for an action for which it is responsible. It is not a vehicle for addressing matters that are the responsibility of the Speaker. (Application denied for debate on the resignation of a Minister arising from the use of parliamentary travel entitlements for which the Speaker has administrative responsibility.)


There is no ministerial responsibility for the decision of the Auditor-General to inquire into the expressions of interest process [for the building of a convention centre]. The time for such a debate may be when the Government announces its response, if any, to the Auditor-General’s inquiry.

1. There is no ministerial responsibility for an Auditor-General’s report. The Government is responsible for the concerns raised, but it is an ongoing matter. To warrant an urgent debate there must be a new situation or decision of importance in itself.


2. [Standing Order 389] cannot be used to debate a purely party matter such as a manifesto commitment as this is not a matter for which there is ministerial responsibility.


3. Caucus is not a body for which the Government is administratively or ministerially responsible. Caucus is a meeting of members of Parliament who are members of the same party; it is not an official body. As there is no ministerial responsibility for it, its decisions cannot be the subject of a debate on a matter of urgent public importance or the subject of a question.


4. While the Government is responsible for policy relating to the administration of the electoral law, it is not responsible for official actions taken by individual Registrars of Electors.


5. A decision of the Māori Television Service was taken to involve the ministerial or administrative responsibility of the Government, even though it was not a Crown entity or yet established by statute, due to the funding source for the service and the legislation proposed to establish it.


6. Mt Eden Corrections Facility is managed by a private provider but the prisoners remain the ultimate responsibility of the State … It is absolutely critical that the public has confidence in our corrections system. (Application approved for debate on allegations about prisoner activities at Mt Eden Corrections Facility.)

Particular case of recent occurrence

1 A proposal to discuss a continuing problem such as increasing unemployment is not one contemplated by [Standing Order 389] in that it is not a particular case of recent occurrence nor does it require the immediate attention of the House.

2 The accumulation of information in regard to an issue is not itself a particular case of recent occurrence.

3 The requirement of recent occurrence refers to when the member became aware of the matter rather than when it actually occurred as it may have occurred but not been discovered for some time. *(Where a member based his application on documents he had received a week previously, his proper course would have been to raise the matter at that stage.)*

4 An application for an urgent debate does not have to be lodged on the first sitting of the House after the event occurs in order to be considered. While not raising a matter at the first opportunity will considerably weaken the case for accepting an urgent debate application, such an application should not automatically be rejected.

5 If a member does not raise a matter at the earliest opportunity that may well be taken as an indication that the matter is not of sufficient importance or urgency to qualify under [Standing Order 389], but it is not automatically ruled out in such circumstances if the particular case is itself of recent occurrence.

6 In ruling on an application for an urgent debate the Speaker has to determine not when an announcement is made but when a particular case of recent occurrence occurs. This may actually be some time after the event on which it is based occurs, if members could not reasonably have found out about it at the time. If something occurs in secret it only becomes an event for the purposes of the Standing Order when it becomes publicly known.
The urgent debate procedure is a means of debating matters that have occurred. It is not a means of debating matters that might or might not occur in the future.

For there to be a particular case of recent occurrence there must be either a new situation of importance or a new development in an existing situation of sufficient importance in itself to warrant a debate being held.

The absence of action on the part of the Government is not a particular case of recent occurrence which can be raised under [Standing Order 389].

The making of allegations, as such, is not a particular case for which there is ministerial responsibility.

Allegations can never constitute a particular case of recent occurrence.

An urgent debate cannot be granted on the basis of newspaper speculation. An event occurs at the point in time when a decision is publicly announced.
A particular case under [Standing Order 389] must have arisen before the House meets to qualify for debate.

1988, Vol. 493, p. 7408. Burke. (Ministerial statement at the beginning of that day’s sitting did not give grounds for debate in that sitting.)

1999, Vol. 576, p. 15957. Kidd. (Report presented to the House by the Speaker at that day’s sitting.)


Requires immediate attention of the House

The test for whether a particular case requires the immediate attention of the House is a high one. *(Leak of a Cabinet document a sensitive matter but in itself lacked the exceptional policy substance necessary for a debate.)*


(1) It is relevant, when considering whether a matter requires the urgent attention of the House, to consider whether the matter proposed to be discussed must come before the House reasonably soon in the form of legislation; (2) though the fact that the House was to take an adjournment soon, and that that was likely to delay legislative action to some extent, was relevant.


Motion accepted although Government action not required for six weeks, where there was no reasonably foreseeable opportunity for the important and controversial matter to be debated in a proper manner in the House.


The business of the House should not be set aside just because a ministerial announcement has been made, even though it may be important. There must be such an element of urgency that the matter must take precedence over other business.


2013, Vol. 692, p. 12532. Carter. (Agreement on a new contract to continue operation—regular opportunities to review and debate its operation.)

The report relates to important aspects of health sector governance that are of considerable public interest. I accept that it requires the urgent attention of the House.

1 Application related to an announcement of Government policy on the sale of State enterprises. Not every ministerial announcement will give sufficient grounds for an urgent debate to be held. In the instant case, however, the announcement related to an important aspect of Government policy towards all State enterprises and foreshadowed a possible future new development of considerable public interest. Therefore, the application was accepted. 1988, Vol. 486, p. 2235. Burke.

2 One factor in deciding whether to allow an urgent debate is that the intelligence and security agencies are subject to very little parliamentary scrutiny. 2015, Vol. 709, p. 7751. Carter.

3 An announcement that prosecutions are not to be authorised does not contain any substantive policy change that requires the immediate attention of the House. The Law Commission is to consider a review. It can be considered over a longer time frame than today. The applications are therefore declined. 2007, Vol. 643, p. 12994. Wilson.

4 The House has only recently considered the issue in principle. Every subsequent decision made under the legislation will not necessarily be of sufficient importance to justify setting aside the business of the House. I am not persuaded that the matter deserves the immediate attention of the House by way of an urgent debate today. There will be other occasions on which it can be debated. (Commissioning of a new prison under legislation passed five months earlier.) 2010, Vol. 662, p. 10251. Smith. 2013, Vol. 688, p. 8395. Carter.

5 This is a particular case of recent occurrence involving ministerial responsibility that requires the immediate attention of the House. However, as the House has given leave to extend the time for the Prime Minister’s statement today, along with the comments of other party leaders on the statement, I am not persuaded that the business of the House should be further set aside today. (Establishment of a Cabinet committee on Canterbury reconstruction following major earthquakes.) 2010, Vol. 666, p. 13684. Smith.
1 The fact that another parliamentary means of debating the subject of the urgent debate is available is a relevant consideration for the Speaker to take into account in deciding whether to accept the application.


2 The fact that the matter can be raised on a general debate—such as the Budget—is a relevant factor to be considered. However, a Budget or Address in Reply debate does not in all circumstances preclude an application being accepted.


3 An urgent debate is not an appropriate means of exploring a question of confidence. The House’s procedures provide regular opportunities to test for confidence in a Government.


4 The matter raised may well be considered by the Privileges Committee inquiry, the report on which will be debated by the House in due course. There are other avenues for which to pursue the matter.


5 The big hurdle to get over in applications for urgent debates is whether the matter has reached the stage where the business of the House ought to be set aside. Every allegation or television programme cannot be the basis for debate, even though, on the face of it, it is important.


6 While the release of a report may warrant an urgent debate, this must be exceptional, especially where working through a report’s recommendations will take some time.


7 Not all ministerial resignations or dismissals will lead to an urgent debate. (Debate not accepted where Minister not in Cabinet and the issue that led to the dismissal was to be debated in the House shortly in any case.)

Debate

1 It is quite possible that a member can put in for an urgent debate, that it can be considered and a decision can be made, and that if the member is not here for any reason, it can equally be moved by somebody else.


2 The second call in an urgent debate goes to a Minister, regardless of who initiates the debate. The House’s rules are designed to ensure that the Minister speaking for the Government has an extra period to respond.


OFFICERS OF PARLIAMENT (SOs 395–396)

3 The proposed process for consultation on the operating intentions of Offices of Parliament is:

- The Speaker will refer any draft information about an Office of Parliament’s future operating plans required by section 45F of the Public Finance Act 1989 to the Officers of Parliament Committee for consideration
- The Officers of Parliament Committee will communicate its views directly to the respective offices to enable them to finalise their future operating plans.


4 The proposed process for consultation on draft regulations and instructions for reporting standards for Offices of Parliament is:

- Following presentation to the House by the Speaker of draft regulations or instructions under section 82(1)(b) of the Public Finance Act 1989 prescribing the minimum requirements for the publication of information required under the Act and the non-financial reporting standards that an Office of Parliament must apply and the form in which those Offices must provide information to the House of Representatives, the draft will be referred to the Officers of Parliament Committee for consideration
- The Officers of Parliament Committee will seek comment from the subject select committees that review the performance of the Offices and communicate its own views, and those of the subject select committees, directly to the Minister
- The Minister seeking to implement a regulation or issue an instruction will do this by notice of motion and the affirmative resolution procedure will apply accordingly.

1 A committee to which a report stands referred under [Standing Order 396(1)] should consider requesting a briefing from the Officer of Parliament and, if applicable, from Government officials or spokespeople from a local authority.

CHAPTER 8
PARLIAMENTARY PRIVILEGE

RAISING A MATTER OF PRIVILEGE (SOs 401–412)

1  (1) A breach of privilege must be brought forward at once; (2) no notice of motion is required if the breach be brought up at once; but (3) if 24 hours or a considerable interval be allowed to elapse without any notice being taken of the breach, it cannot be brought forward without previous notice.
   (1) 1879, Vol. 34, p. 896. O’Rorke.
   (3) 1879, Vol. 34, p. 896. O’Rorke.

2  If no notice is taken at the time of an alleged breach of order, it cannot afterwards be raised as a matter of privilege.
   1895, Vol. 91, p. 117. O’Rorke.

3  Members must raise matters of privilege before the House next meets. Obviously, if a breach occurs in secret and no one can appreciate it at the time, members can raise it when they become aware of it. But members must raise a breach as soon as the event occurs. Members can lodge a complaint and follow it up later with further particulars.

4  If any person commits a breach of privilege by writing defamatory words about a member, it is open for any other member to bring that breach of privilege before the House. There is nothing in the Standing Orders that compels the redress of such a wrong to be left entirely in the hands of the member whose actions are so impugned.

5  To wait until the sixth day after an incident before raising a matter of privilege does not seem to indicate the immediacy one would expect or the Standing Orders contemplate where members feel their privileges have been attacked. In such a case, if the member proposed to proceed with the matter the member should give the appropriate notice.
1 Matters of privilege may be raised in two ways. First, forthwith or as soon as reasonably possible after the facts have become known to the person raising the matter. Alternatively, on motion, and unless they are raised suddenly or as soon as is reasonably possible to the person raising the matter, then they have to be raised on motion.


2 A member does not have to raise a matter of privilege with the Speaker. If the member wants it to have precedence the only way in which it can achieve precedence is if the Speaker accepts that there is a question of privilege involved in the matter raised. The member can still raise the matter by notice in the House after the Speaker has declined it or may raise it in the House on notice without referring it to the Speaker at all. In these cases, however, the matter is accorded no precedence over other business.


3 Where a committee resolves that the chairperson should raise a matter of privilege with the Speaker, the chairperson, in raising it, does so voluntarily in his or her capacity as a member of Parliament. The chairperson is not obliged to raise a matter of privilege and no committee has the power to direct a chairperson to do so. The other members of the committee are not parties to the raising of the matter unless they address letters to that effect to the Speaker in their own names.

*Question of privilege on the action taken by TVNZ in relation to its Chief Executive, following evidence he gave to the Finance and Expenditure Committee, Interim report of the Privileges Committee, April 2006 (I.17A), p. 3.*

4 A member moving that a breach of privilege has been committed must state in the motion what constitutes the breach of privilege.


5 Once a matter of privilege has been raised with the Speaker it is out of order to refer to it in debate in the House.


6 Once the matter [of privilege] is before the Speaker, then it is inappropriate for it to be raised in the House in any way whatsoever until the Speaker has made the relevant decision on the matter. There is nothing wrong with these matters being raised by a notice of motion instead of referring them to the Speaker [or] after the Speaker has decided the matter. But while the Speaker is considering a matter it is not to be dealt with in that way (that is, by lodging a notice of motion).

1 Serious charges against members made by a newspaper or by someone outside the House are a matter of breach of privilege and should not be discussed or explained in the course of debate, but should be brought forward as a matter of privilege in the proper constitutional way.


2 A suggestion of bribery of members is a matter of breach of privilege and should be brought up as a matter of privilege, not referred to in the course of debate.


3 While there is nothing to stop members circulating a letter to the Speaker raising a matter of privilege, such a circulation is not protected by parliamentary privilege.


4 It would be my preference that [a matter of privilege that has been raised with the Speaker but not yet determined] is not discussed in the media. If members are serious about issues of privilege, it is my view that they should not try to make a case to influence the decision of the Speaker one way or the other in the public media. To some extent, it is a measure of the seriousness of these issues. Where members do try to gain political coverage for them in the media, it is hard to then treat them with the same seriousness as a case that is laid before the Speaker in a serious manner without trying to make the case for it in front of the media.


5 If members say outside the House that they intend to raise a matter of privilege that is up to them—the Speaker cannot stop them.


Determination

6 If a member were to raise a matter [that is subject to court proceedings], contrary to the advice of the Speaker, the Speaker would be in an informed position to deal with the matter immediately in the House. It would also be appropriate for the Speaker to consider whether to report to the House that the member’s conduct should stand referred to the Privileges Committee, without requiring the raising of a matter of privilege by another member. This approach is possible under [Standing Orders 406 and 407].

1 Since 1979 the practice has been to write to the Speaker giving the substance of the complaint. In respect of matters that the Speaker does not consider involve a question of privilege, no details of the basis of the decision are reported to the House or to the member complaining. However, the Speaker does have authority to refer the matter to the House if it involves an important point.


2 The House’s power to punish for contempt is not a power to punish for the sake of punishing. It is a power to take corrective action in its own interest. If there is no need to take corrective action because the matter has been resolved, the Speaker is fully justified in refusing to find that there is a question of privilege even if the facts would otherwise support one.


3 Standing Order 406 and parliamentary privilege generally are designed to protect the integrity of the parliamentary process. Actions that obstruct or impede the House “in the performance of its functions” may be a contempt. If a member of Parliament accepts a benefit for actions that a member has taken, or is to take, in respect of proceedings in the House or at a committee, that would be a contempt.

If any evidence had been presented to me showing … parliamentary processes—such as a question or debate [had been used]—to advance the immigration applications, a question of privilege would then arise. But no such evidence has been presented … Interventions appear to have been confined to making submissions to Ministers—a common practice amongst members. As the services … received are not linked to the parliamentary process, there is no question of privilege on which I can act.

The allegations … really amount to questions about the general standard of conduct expected of someone who holds the office of member of Parliament. Parliamentary privilege covers some of this ground, but by no means all. Privilege does not, for example, extend to most of a member’s interactions with constituents … Only where interactions lead a member to take a parliamentary action—such as lodging a question or speaking in debate—is privilege engaged. Nor does privilege extend to other activities engaged in by members outside the House. Thus, in recent years, members have been charged with crimes or found in contempt of court without any question of parliamentary privilege being involved.

1 The House, not the Speaker, decides whether a breach of privilege has been committed, and affirms, amends, or rejects any motion made on the subject.

1890, Vol. 69, p. 156. O’Rorke.

2 The Speaker cannot inquire into the validity of evidence presented on a matter of privilege being raised; that is the function of the Privileges Committee. The Speaker must not usurp the committee’s functions by conducting an inquiry of the Speaker’s own, provided the evidence is submitted in good faith.


3 The Speaker does not consult with members in ruling on a matter of privilege. It is the responsibility of the member who raises a matter of privilege to draw the attention of other members involved in it to the matter. Those other members may then make representations to the Speaker.


4 Where a member publicly releases details of a complaint of privilege involving another person it is only fair that the Speaker should advise that other person of the outcome of the complaint.


5 Normally, when an incident occurs at a select committee that may involve a matter of privilege, it is raised with the committee. A holding complaint may be lodged with the Speaker to comply with the obligation to raise it at the first opportunity. The member thereby keeps open the option of having it dealt with by the Speaker while it is being considered by the committee. *(Where a matter was raised with the Speaker without also being raised with the committee, the Speaker wrote to the committee asking for its advice as to how it was proposing to proceed.)*

1 If the Speaker finds that no question of privilege is involved in a matter raised, the member who raised it will be notified and that is the end of it as a matter of privilege with precedence over other matters. The member may still lodge a motion drawing the matter to the attention of the House; if the Speaker finds that a question of privilege is involved the member who raised it will be told that the Speaker proposes to report it to the House.  

2 Each breach of privilege should be taken separately, but if the newspaper paragraphs complained of are the same in more than one newspaper they may be taken together.  

3 While it is clear that evidence given before a select committee cannot be admitted into legal proceedings, conduct revealed in the parliamentary evidence would not be immune from investigation or action by other authorities simply because it was the subject of evidence to a committee. A civil action or criminal prosecution would still need to be supported by evidence obtained outside Parliament. But in these circumstances a person could not be said to have been “disadvantaged” and no contempt would be committed. 

Question of privilege on the action taken by TVNZ in relation to its Chief Executive, following evidence he gave to the Finance and Expenditure Committee, Final report of the Privileges Committee, October 2006 (I.17B), p. 5.

Examples

(Until 1979 the Speaker was required to determine whether a prima facie breach of privilege had been made out.)

4 Privilege may be regarded as a group of rights or rules that are designed to enable the legislature to function properly. The constitution of a breach of privilege requires one of a number of things such as the molestation or threatening of a member, or blackmailing or frustration of a member in one of a number of ways that impair the member’s freedom of speech and action and hence the proper carrying out of the member’s duties, or the holding up of a member to public ridicule in such a degree as to impair the performance of the member’s or the House’s duties. (No prima facie case where Minister referred to private air travel arrangements of members. The matter was one of courtesy and discretion, not privilege.)  
1 Parliamentary privilege is concerned with protecting the integrity of the House. Any attack on what is to happen, is happening, or has happened in the House—including in a select committee—may constitute a contempt. But outside their strictly parliamentary duties members are in the same position as any other citizen and are not protected by parliamentary privilege, though they may have other legal protections on which they can rely.

Members engage in public debate outside Parliament on public issues. This is right and proper, but it does not attract the protection of parliamentary privilege, which operates to protect the parliamentary process—a much narrower range of activity than that engaged in by members generally.


2 There can be no interruption to the proceedings of the House so as to constitute a contempt if a celebratory contribution is made from the galleries with the authority of the Speaker and within the terms agreed by the Speaker. An interruption, to constitute a contempt, must be a hostile interruption.


3 The fact that a member has given notice of intention to ask a question does not prevent any reference to the subject matter by any person outside the House. (No prima facie breach by a publication of a police report on a matter which was the subject of a question by a member which had not yet been answered.)


4 These are the first matters of privilege raised with the Speaker in relation to compliance with a member’s obligations under Appendix B of the Standing Orders dealing with pecuniary interests. [Standing Order 410(g) and (h)] establishes that the House may treat as a contempt a member knowingly failing to make a return of pecuniary interests by a due date, or providing false or misleading information in a return.

The allegations are serious ones and the standard of proof required reflects this. Knowingly providing false or misleading information is a significant test. A member’s return must be inaccurate in a material matter that the member knew to be incorrect at the time, or at least ought to have known.


5 Ruled no prima facie breach for a newspaper to speculate or comment on what might happen when matters are considered by a select committee.

1 If it happened that a document or statement intended for first promulgation
in Parliament was improperly obtained or intercepted and then published
before its promulgation in Parliament, or if an embargo were broken with a
similar effect, then it might well be argued that there had been a breach of
parliamentary privilege. *(Found no prima facie case to answer based on the
improper or premature obtaining of the Budget.)*


2 While the committee expects that, in the normal course of events, reports
which there is a statutory obligation to lay before Parliament will be presented
to the House before being made generally available, it recommends that the
House not treat the premature release of a parliamentary paper as a contempt.

*Report of the Standing Orders Committee on the Law of Privilege and Related

3 Members have the opportunity to raise, as a matter of privilege, remarks made
about them outside the House, notwithstanding that they could seek a remedy
in a court of law.


4 For a statement to constitute a contempt by reflecting on members it would
have to allege corruption or impropriety on the part of members in their
capacity as members. Hard-hitting and contentious statements, to which
members might well object, fall within the boundaries of acceptable political
interchange.


5 There is nothing improper in members seeking to influence other members.
That is what most do when they speak in debates in the Chamber. There is no
breach of privilege in respect of pressure being brought to bear on members
unless there is evidence that that pressure was accompanied by threats or
intimidation or amounted to slander or libel.


6 A statement of opinion of the effect of a committee’s decision is not a false
or misleading account of the committee’s proceedings. Only a statement that
purports to be a factual description of committee proceedings could constitute
a contempt under [Standing Order 410(r)].

1 Where a member is accused of a breach of privilege by misleading the House, the misleading must be deliberate. There must be an intent to mislead, and the facts before the Speaker must lead to that possibility. The Speaker must consider the evidence and decide whether the facts alleged indicate, not a remote possibility, but a reasonable possibility.


2 In an allegation of breach of privilege by deliberately misleading the House, there must be something peculiar to the making of the incorrect statement that can be reasonably regarded by the Speaker, on the face of it, as indicating that the member may have been intending to mislead the House. Remarks uttered in the hurly-burly of debate can rarely fall into that category; nor can matters about which a member is likely to be aware only in an official capacity. Usually only in situations in which the member can be assumed to have personal knowledge of the facts contained in a statement, and when that statement is made in a situation of some formality in the House [for example, by way of personal explanation], can a presumption that the member intended to mislead the House arise.


3 The contempt of deliberately misleading involves the conveying of information to the House or a committee that is inaccurate in a material particular and which the person conveying the information knew was inaccurate at the point at which it was conveyed, or, at least, ought to have known was inaccurate.


4 There is a point where strictly accurate replies can be misleading by suppressing relevant information.


5 When a member questions a Minister particularly over information given, and in reply to a very clear question gets a repeat of the same information, which can later be shown to be false, that is starting to get close to where the bar is set around issues of privilege. I am concerned that information should not be used recklessly in this House.

A member who accurately reads a public document to the House cannot thereby be guilty of a breach of privilege by deliberately misleading the House. If the member added something to the report or put the report into his own words it might be different. But a member who reads a report accurately to the House does not mislead the House. It is for members to decide whether they accept the report’s conclusions.


If a member is given leave to table a document and deliberately misleads the House by delivering to the Clerk a totally different document from that for which leave was granted, a contempt would be committed.


It is incumbent on persons who mistakenly give wrong information to the House or a committee—whether as members or witnesses—to clear it up as soon as they realise their error. If full information is not in the member’s or witness’s hands when the error is appreciated, the House or the committee should still be alerted to the error with a promise of a full explanation when all of the information is available.


Parliamentary privilege exists to protect the integrity of the parliamentary process. In that process members of select committees deliberate amongst themselves on the evidence that they have heard, and draw up a report to the House that embodies their conclusions. This process is seriously undermined if drafts that are to be submitted to the committee for inclusion in its report can, with impunity, be released to all and sundry.

It is one thing for members to say in advance of a select committee meeting that they intend to argue for inclusion of a particular point of view in the committee’s report. That is quite acceptable. But it is another thing altogether for members to draw up a document that purports to embody the views of a minority on a select committee—views that are clearly put forward as those members’ contribution to the drafting of the committee’s report—and that are in fact subsequently laid before the committee.

Such a document is clearly one that should be conveyed to the committee first, so that it can consider it in its deliberations. To release it prior to its consideration could pre-empt deliberation and prejudice the proper functioning of the select committee process. Anything that has a tendency to prejudice the select committee process can be regarded as a contempt of the House.

The deliberations of the members of a committee and any draft report are not available for release and any unauthorised disclosure of them is a breach of privilege. This is not a mere technical rule. It is essential, if members are to work well together on a committee, that the integrity of the process be maintained by respecting each other’s confidences. Furthermore, the House is entitled to the first advice of the conclusions of one of its committees in a report rather than individual members of the committee taking it upon themselves to communicate committee decisions to individual journalists.


It is central to the democratic idea that the purpose of elected public office is to serve the public, not to enrich the office-holder or his or her personal connections. It is important for members to ensure that they do not use their position to influence the legislative process for their own advantage or that of someone with whom they are connected.


Members should be careful to keep their official and private capacities quite separate in any of their business dealings. If they do not, misunderstandings may result. (No question of privilege where member had signed a business letter as a member of Parliament since the letter did make the member’s private interests clear.)


To attempt to bribe a member of Parliament is a breach of privilege only if the bribe relates to the member’s conduct in respect of business before the House or to be submitted to the House. However, it may also be a criminal offence under section 103 of the Crimes Act 1961 and this provision may be wider than the equivalent privilege rule.


Given the seriousness of an allegation of bribery, the standard of proof needed to make it out must be at least as high as that required to demonstrate that a member has misled the House—that is, proof of a very high order.


It is not a contempt to solicit public funds for programmes in return for one’s vote [“pork-barrel politics”]. But it is a contempt to seek a benefit for oneself or for other persons close to oneself as the price of one’s vote.

1 Any improper attempt to induce a member to resign his or her seat would constitute a contempt.

Punishment

2 Any committal for contempt would be terminated by the prorogation of Parliament.
CHAPTER 9
PECUNIARY AND
OTHER SPECIFIED INTERESTS

(Appendix B of Standing Orders)

1 Members must make an honest attempt to return all of the pecuniary interests they hold. They are obliged to turn their minds to the interests they have. The onus is on them to determine and declare relevant pecuniary interests.

*Question of privilege relating to compliance with a member’s obligations under the Standing Orders dealing with pecuniary interests, Report of the Privileges Committee, September 2008 (I.17D), p. 20.*

2 All distinct interests must be declared, regardless of whether they are channelled through a trust or third party. The fact that a third party is involved makes no difference to the member’s obligation to declare pecuniary interests. The approach should be “If in doubt, declare it”. Arrangements that allow members to avoid the knowledge of pecuniary interests are no longer sustainable.

*Question of privilege relating to compliance with a member’s obligations under the Standing Orders dealing with pecuniary interests, Report of the Privileges Committee, September 2008 (I.17D), p. 20.*

3 Revealing a request to the Registrar for inquiry into another member’s return, publically, before the Registrar has had an opportunity to consider the request and conclude whether an inquiry is warranted, does not comply with Standing Orders, and does not serve either the interests of natural justice or the integrity of the inquiry process.

*Request by Denise Roche MP for inquiry into the Hon Peter Dunne MP’s compliance with the requirements of Appendix B of the Standing Orders, Report of the Registrar of Pecuniary and Other Specified Interests of Members of Parliament, May 2014 (J.7A), p. 5.*

4 If members feel there is an issue with another member’s pecuniary interests, it should not be raised on the floor of the House; it should be raised directly with the Registrar of Pecuniary and Other Specified Interests of Members of Parliament.

CHAPTER 10
RULINGS ON STATUTORY AND
NON-STANDING ORDERS PROCEDURES

GENERAL

1 The House is bound by a statutory obligation, just as it is bound by every other provision of the law. The House and its members are not above the law, although certain laws do not apply in their full rigour in respect of parliamentary proceedings. It is the duty of the Chair to ensure that, so far as possible, the House complies with its legal obligations and in presiding over the House the Speaker will attempt to see that that is done.


APPOINTMENTS

2 As appointments to the Intelligence and Security Committee are made on the nomination of the Prime Minister and the Leader of the Opposition and are submitted to the House for endorsement only, the House cannot amend the nominations. The motion could be severed so as to allow members to vote on each nomination separately.


3 The process of nomination [for appointments to the Intelligence and Security Committee] is a statutory one. The Speaker has no part in the statutory process but obviously has a concern to ensure that the House operates within the law. Members may move to omit a name of a nominee but they cannot move amendments. The House does not make the appointments. It merely confirms the nominations. It is always open for the House not to endorse a nomination. If this were to happen the Act provides for further consultation or a new nomination to be made to the House.


4 In respect of statutory appointments or endorsements that have consultation procedures, the Speaker has a role in ensuring that those procedures have been followed. A condition of a notice of motion for one of these appointments being placed before the House is that the statutory consultation has been undertaken. If it appears to the Speaker that it has not been carried out, the notice of motion should be ruled out of order. The member lodging the motion will have to satisfy the Speaker that consultation has taken place, even where the consultation is the responsibility of another member.

It is well established that consultation involves more than simply informing the person being consulted of a decision that has already been made. The consulter must give the person being consulted an opportunity to be heard. But members should not be too precious about what constitutes consultation in a political context. Ultimately, the House makes the decision and it is on the floor of the House that members can make their case.


The Speaker does not have a role to set what is required by way of consultation. That is a matter for the law. The Speaker’s only role is to determine whether the notice of motion would be ruled out of order. The House cannot by resolution right a failure to comply with the law.


What is usually accepted is that persons will be informed and have an opportunity to be heard. There is no expectation of agreement. There is, after all, the opportunity to put one’s case in debate in the House and ultimately the House could decline to endorse a nomination, the consequence of which would be the recommencing of the statutory process, including consultation.


In the case of appointments to the Electoral Commission to represent the Government and Opposition parties for the purposes of allocating electoral broadcasting time, the member nominated for the Government represents members of the governing party and independent members holding ministerial office. The member nominated for the Opposition represents all parties in Opposition. One would expect some preliminary consultation but, unlike what is required for the Intelligence and Security Committee, it is not essential and the matter is determined politically on the floor of the House.

CROWN ENTITIES ACT 2004

1 The proposed process for consultation on Minister of Finance instructions to Crown entities is:

- Following presentation to the House by the Speaker of draft instructions under section 175 of the Crown Entities Act 2004 prescribing the non-financial reporting standards that a Crown entity must apply and the form in which those entities must provide information they are required to present to the House of Representatives, the draft will be referred to the Finance and Expenditure Committee for consideration.

- The Finance and Expenditure Committee will disseminate the draft instructions to other subject select committees and coordinate responses.

- The Finance and Expenditure Committee will communicate its own views, and those of any other subject select committee, directly to the Minister of Finance.


CROWN’S CONSENT

2 There is a great distinction between a recommendation of the Crown and the consent of the Crown. The consent of the Crown is only given where, by inadvertence, we stumble up against the prerogatives of the Crown and, in order to allow us to proceed, the consent of the Crown is given.


3 It is not competent for the House, even by unanimous consent, to pass without the recommendation of the Crown a bill affecting the rights of the Crown.


4 The recommendation of the Crown is required for a bill alienating Crown lands.


ELECTORAL ACT 1993

5 Until a resignation is actually placed in the Speaker’s hands, the Speaker knows nothing of it. As soon as the Speaker receives the written resignation the step is irretrievable.

1 The Speaker will always give every leeway to a member before taking the drastic step of declaring a seat to be vacant. In a doubtful case that will involve consideration by the Privileges Committee and the House.


2 The Electoral Amendment Act 2002 has reposed a duty on the Speaker, when the Speaker is satisfied that a vacancy exists, to notify that vacancy in the Gazette without delay. The Speaker is not necessarily the person who decides that a vacancy actually exists. Rather, the Speaker is taking the consequential action to fill a vacancy that has already occurred, and that could be established as a matter of law independently of any action of the Speaker.


3 Reports of judges on election petitions are, by statute, entered on the Journals. No notice is required for such a motion.


4 In respect of proposals in Electoral Amendment bills that affect the reserved provisions of the Electoral Act, the 75 percent vote is required at the point at which the relevant clause is being considered in the committee of the whole House. A 75 percent vote is not required at any other stage of debate on the bill.


5 When dealing with the entrenched provisions of the Electoral Act, there is no authority whatsoever for applying [section 268] to any part of a motion other than an entrenched provision. The section cannot be used to defeat a provision which is not reserved. In such a case the whole motion is not lost—only that part of it dealing with an entrenched provision.


6 Where reserved provisions in a clause are capable of being separated from the rest of the section, they should be taken separately.

1 If a vote is taken it is necessary in order to carry the question that 75 percent or more of the total membership vote “Aye”. If the question is carried on the voices it is deemed to be carried unanimously, and no question arises as to the number present. If no vote is called for it is presumed that all members have acquiesced.


See also GENERAL PROVISIONS (SOs 264–275), New Zealand Bill of Rights

PARLIAMENT HOUSE

2 Members are provided with office accommodation and support services to assist them in carrying out their parliamentary responsibilities. Those responsibilities are necessarily quite wide and varied and can include support for matters having a commercial or business orientation. Indeed there are specific functions held, with approval, in the parliamentary complex that can be regarded as promotional activities for particular commercial initiatives hosted by a member of Parliament. An example would be a regional promotion from an area where business and other opportunities may well be highlighted and advanced.

However, having said that, it is certainly not envisaged that a member’s office should become a place of business as distinct from a place where business issues may well be discussed. Members should be careful to draw the distinction in their dealings with constituents and others who might seek the provision of assistance in this building.


3 The ordinary law as to the exhibition of films and videos applies in Parliament House as it applies outside these buildings. Thus any approvals required under the [Films, Videos, and Publications Classification Act 1993] must be obtained if a film or video is to be shown here. The only exception to this is in the case of a film or video exhibited to the members of a select committee as part of a committee investigation. In such a case, the exhibition, as part of a proceeding in Parliament, can proceed if there is good reason for it to do so, even if there has been no approval. Invitations to a screening must emanate from the member who booked the theatrette and be in the member’s name. Members are responsible for the use of facilities that are booked in their names.

1 The custom has always been that when the Speaker is proceeding from the Chamber to the Speaker’s office, or vice versa, the Speaker’s corridor—which includes the entrance at the back of the House—is blocked off by the messengers so that the Speaker can return unimpeded by members, members of the public, and staff.


PUBLIC AUDIT ACT 2001

2 The proposed process for the Auditor-General’s annual plan is:

- The Auditor-General will send all Ministers and select committees a preliminary draft annual plan in December, with an offer to brief and discuss the preliminary draft with those interested.
- The Auditor-General will ask for any comments on the preliminary draft to be provided directly to the Auditor-General [either individually by Ministers or members or by select committees] by the end of February.
- The Auditor-General will consider any comments received, and prepare the statutory draft annual plan for submission to the Speaker in March; the Speaker will then present the statutory draft annual plan to the House.
- After presentation, the Finance and Expenditure Committee will circulate the draft annual plan to select committees for comment; the Finance and Expenditure Committee will coordinate responses from the other committees.
- The Speaker and the Finance and Expenditure Committee will forward their responses to the Auditor-General by 30 April and the Auditor-General then will amend the draft annual plan as appropriate.
- Before the beginning of the financial year, the Speaker will present the completed annual plan to the House of Representatives.

Special report of the Finance and Expenditure Committee, December 2002 (1.22A).
PUBLIC FINANCE ACT 1989

1 The proposed process for consultation on draft regulations and instructions relating to reporting standards for departments or organisations described or named in Schedule 4 of the Public Finance Act is:

- Following presentation to the House by the Speaker of draft regulations or instructions under section 82(3) of the Public Finance Act 1989 prescribing the non-financial reporting standards that must apply to Ministers, departments, and organisations named or described in Schedule 4 of that Act and the form in which they must provide information to the House of Representatives, the draft will be referred to the Finance and Expenditure Committee for consideration.

- The Finance and Expenditure Committee will disseminate the draft regulations or instructions to other subject select committees and coordinate responses.

- The Finance and Expenditure Committee will communicate its own views, and those of any other subject select committee, directly to the Minister of Finance.

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