



Government of the Cook Islands  
PARLIAMENT OF THE COOK ISLANDS



# **HANDBOOK FOR THE PARLIAMENT OF THE COOK ISLANDS**




## **Acknowledgements**

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In particular, John Patterson and Dyfan Jones of UNDP have worked tirelessly with Parliament staff to ensure that the final handbook is a concise guide to the way that the Parliament functions.

The Parliament is also grateful for the input from the Parliament of Western Australia and to their ongoing partnership with the Cook Islands Parliament through the twinning arrangement.



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# Foreword



The purpose of this *Handbook*, which appears in the 51<sup>st</sup> year of our country's self-government, is to provide a brief introduction to the functions of parliament. It is designed for the use of all citizens. I believe however that students and teachers, new MPs, government staff, and the staff of parliament will find it particularly useful.

The *Handbook* is not designed to be an exhaustive, technical compendium of parliamentary procedure. We have that in the *Standing Orders of the Parliament of the Cook Islands*, the document that guides parliament's work. Rather the *Handbook* is an introductory and straightforward description of the parliamentary context and the main jobs of parliament and parliamentarians. While written in plain English, it is inevitable in a document describing the work of parliament that some specialist vocabulary is used. Wherever possible this has been kept to an absolute minimum and a short glossary is attached to assist where terms are not explained in the text.

The *Handbook* will be updated periodically, not least because our intention is that parliament should undergo a process of continual improvement. Last year, I organized a seminar for Members of Parliament in collaboration with parliamentary experts from the United Nations Development Programme (UNDP) and our twinning partners in the Parliament of Western Australia. This was designed to sharpen participants' appreciation of the powers of parliament, its role in the overall government of our country, and the responsibilities of parliamentarians. I believe it succeeded in those aims and you will find a report of that seminar attached.

But we are not stopping there. This year, in partnership with the UNDP and again with the assistance of our twinning partners in the Parliament of Western Australia, we are set to embark upon a three-year program of examining our procedures and administration against best practice. I am confident that we will make improvements as necessary alongside activities designed to support our Members in developing their parliamentary roles.

I hope that you find this *Handbook* useful and instructive.

A handwritten signature in blue ink, reading "Nikki Rattle".

**Honorable Nikki Rattle**

**Speaker of Parliament**

**March 2016**

# Section 1

## GOVERNANCE CONTEXT OF PARLIAMENT

The Cook Islands Parliament is a key part of the country's overall formal governance structure, the State. This section places parliament in its constitutional context by identifying the different parts of the State and outlines parliament's functions.

### *Head of State and Queen's Representative*

The Cook Islands is a self-governing parliamentary democracy having the Queen of the United Kingdom as Head of State represented by the Queen's Representative (QR).<sup>1</sup> The QR carries out his functions acting on the advice of the executive government.<sup>2</sup>

### *Executive Council*

The Executive Council is the supreme decision-making body of Government and comprises the QR (as Chair) and all Cabinet Ministers which includes the Prime Minister. Members of the Executive Council are appointed by the QR on behalf of The Queen. Its principal purpose is to advise the QR on matters relating to administering government in the Cook Islands. In most matters, other than those matters reserved solely for a decision by the QR, the QR will act on the advice of the Executive Council. The most common form of this advice is a recommendation that the QR agree ('assent') on behalf of The Queen to legislation passed by parliament so that it becomes law.<sup>3</sup> In addition, the Executive Council has the responsibility of advising the QR in making senior appointments, such as certain judges.<sup>4</sup>

### *House of Ariki*

There is a House of Ariki to which parliament may submit questions concerning the 'welfare of the people' and on which the House makes recommendations.<sup>5</sup>

### *'Free Association'*

The Cook Islands is in what is often termed 'free association' with New Zealand. Some features of this relationship are that Cook Islanders have New Zealand citizenship; and that New Zealand has responsibilities towards the Cook Islands for external affairs and defence. These confer no right of control and may be acted upon only after consultation with the government of The Cook Islands.<sup>6</sup>

There are three parts of the State:

1. The Legislature
2. The Executive (Government)
3. The Judiciary

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<sup>1</sup> Arts 2, 3, *Constitution of The Cook Islands*.

<sup>2</sup> Art 5(1)

<sup>3</sup> Art 44

<sup>4</sup> Art 52

<sup>5</sup> Art 9

<sup>6</sup> The Cook Islands Constitution Act 1964 (N.Z.), s.5.

## Legislature

Part III of the *Constitution of The Cook Islands* establishes a parliament for the country and sets out its functions,<sup>7</sup> primarily the making of laws and oversight of government.<sup>8</sup> There are 24 members of parliament elected by majority vote and by secret ballot for single-seat constituencies in ten islands, island groups, and areas.<sup>9</sup> General elections must be held every 4 years and everyone over the age of eighteen who is a Cook Islander, New Zealand citizen or permanent resident, and has resided in the country at some time for a period of not less than twelve months, may vote.<sup>10</sup>

While the constituency and committee work of Members of Parliament continues all year, Parliament must sit only once a year.<sup>11</sup> Subject to this provision, the decision that parliament shall sit or be dissolved is made by the QR on the advice of the Prime Minister.<sup>12</sup>

An extremely important power and responsibility of parliament is that of making and maintaining *Standing Orders*. These are the detailed rules of order, procedure and behavior by which the legislature and its members perform their constitutional functions. In addition to the right to make, amend and repeal Standing Orders Article 34 of the *Constitution* sets out legal requirements such as who shall preside over a sitting of parliament, how voting is carried out and the minimum number of members required to carry out business.<sup>13</sup> These rules are not arbitrary but are designed for the 'orderly conduct' of parliament's proceedings and the 'dispatch' of business.

The *Constitution* describes parliament as 'sovereign' i.e. supreme, and it may be said to be so in several ways. Firstly, by virtue of its law-making powers; secondly, because it is to parliament that the executive government is answerable or responsible to between general elections; and thirdly, because parliament may amend the *Constitution*. Parliament is therefore in constitutional terms the center of the political life of the nation, and the place in which matters of the greatest importance to people are raised, debated, and resolved.

## Executive government

The second branch of the State is the executive government. The executive government is formed by the political party or coalition of parties which have the largest number of seats in parliament. The Prime Minister is normally the leader of this grouping of members of parliament. The QR on the advice of the Prime Minister appoints a Cabinet (Executive) of not more than 6 ministers having responsibility for the 'general direction and control' of the country's executive government and is responsible to parliament. The executive government is dependent for its continued existence on maintaining the confidence of the legislature. It is important to make a distinction between members of the executive government (Cabinet) and those members not part of executive government but who support it. The former, i.e Cabinet members, are often termed 'members of the government' and are a subset of the party or grouping of parties holding the majority of seats

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7 Schedule to the 1964 Act. The Constitution came into force on 4 August 1965.

8 Art 39; the Cabinet is responsible to parliament, Art 13(1).

9 Art 27(2)

10 Art 28

11 Art 29(1)

12 Arts 5(1), 29, 37(3); see Standing Order 54 for parliament's current weekly sitting timetable.

13 Art 34(5)



in the Parliament. The latter are often termed ‘government members’ who support and vote with the executive but remain private members of the parliament.

## ***Judiciary***

The third branch of the State is the judiciary. This comprises the courts - a High Court and Court of Appeal, presided over by judges as well as Justices of the Peace who also act as judicial officers, the decisions of whom are appealable to the High Court. Judges of the High Court are appointed by the QR on the advice of the Executive Council. In the case of the appointment of the Chief Justice, the Prime Minister tenders this advice through the Executive Council. In the case of other judges the Chief Justice makes the recommendation.<sup>14</sup> Judges may be reappointed for renewable terms of office of 3 years.<sup>15</sup> Appeal from decisions of the Court of Appeal is to the United Kingdom Privy Council.<sup>16</sup> Justices of the Peace sit to hear less serious cases.<sup>17</sup>

## ***Human rights***

The *Constitution of The Cook Islands* explicitly recognizes fundamental human rights and freedoms such as:

- The right to life, liberty, and security
- Equality before the law
- Freedom of thought, conscience, religion, speech, peaceful assembly and association

Discrimination on the grounds of race, national origin, color, religion, opinion, belief, or sex is banned.<sup>18</sup>

## ***Conclusion***

Each part of the State - legislature, executive government, and judiciary - works under the important principle of the separation of powers and operates within its own circumscribed area as laid down by the *Constitution*. Each of these constituent parts of the State is equally a part of the country’s overall governance system. The relationship of each to the other parts is controlled and mediated by the *Constitution*, the application of law and the norms of parliamentary democracy. The efficiency and effectiveness with which governance generally is conducted depends upon the satisfactory working of each and a mutual acceptance of the limitations and scope of operation of each part.

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<sup>14</sup> Art 52

<sup>15</sup> Art 53(2)

<sup>16</sup> Formally called, ‘Her Majesty the Queen in Council’, Art 59(2); such cases would be heard by the Judicial Committee of the Privy Council.

<sup>17</sup> Art 62

<sup>18</sup> Art 64



# Section 2

## PARLIAMENT'S PURPOSE AND THE FUNCTION OF MEMBERS

The *Constitution* defines parliament as the members collectively. The Members are parliament. In the absence of Members a parliament simply cannot exist.

The *Constitution* grants the parliament the power to make laws for the 'peace, order, and good government of the Cook Islands'.<sup>19</sup> The process of law-making in a parliamentary democracy requires members to represent the interests of their communities and the nation as a whole, to scrutinize proposed laws, the operation of the bureaucracy and to hold the government to account in parliament for its decisions and actions. The capacity of a parliament to operate effectively therefore hinges crucially upon the manner in which individual members of parliament go about their duties, their ability to cooperate for the good of the country, their professional and individual capacities, and their grasp of parliamentary life and procedure.

The functions of the individual members mirror the functions of parliament:

- Contributing vigorously and creatively to the law-making process;
- Probing the policies and operations of government and by doing so acting to improve government service delivery for citizens;
- Articulating the challenges faced by their constituents, and seeking relevant solutions where possible, while always balancing their constituency interests with that of the national interest.

Only where Members are able to function well in all three areas is parliament's purpose as set out in the *Constitution* able to be fulfilled.

The remainder of this section identifies a number of important aspects of being an MP in the Cook Islands. These include the exemplary ethical behavior expected of Members, the procedural context of a Member's parliamentary work, the detail of the law-making process, and some of the tools required to enable the Member to oversight the actions of the executive government and hold it to account on behalf of electors. A Member's representational functions, whether in their constituency or abroad, take place largely outside parliament and are not dealt with in detail here. However, these functions often overlap with effective law-making and oversight.

Finally, while the 'how' of parliamentary functions are frequently technical, the end to which all are directed is straightforward and readily appreciated, namely, progressively better government for all the citizens of the country.

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<sup>19</sup> Art 39(1)





## DEMONSTRATING HIGH ETHICAL STANDARDS

### ***Conduct***

Along with the freedoms, legal protections, and privileges that allow MPs to undertake their duties effectively, go fundamental rules of ethical behavior that Members must demonstrate in conducting their public and private lives.

Virtually all parliaments require their Members to adhere to high ethical standards in recognition of the close connection between these attributes in a person and the effective discharge of public service. The need for MPs to avoid circumstances where their private interests conflict with their public duty is a fundamental ethical principle, the breach of which can have reputational consequences not only for the member concerned but also to the parliament.

Parliaments frequently provide the opportunity for members to make personal statements.<sup>20</sup> The usual function of these statements is for Members who have transgressed the rules to apologize to parliament. This procedure recognizes the damage that can be done to the institution of parliament by the actions of its Members and allows the transgressor to take public corrective action. The Cook Islands Parliament is no exception and its *Standing Orders* provide Members with the opportunity to explain matters of a personal nature.<sup>21</sup>

The basic reason for the requirement that MPs should demonstrate a high ethical standard of behavior is that in its absence the public's confidence in an MP's capacity to undertake the duties for which she or he was elected is undermined. As a result the public's trust in the MP to discharge their public duties is severely damaged. An important aspect of an MP's job is to be a role model and positively represent the Cook Islands. In order to carry out both roles credibly an MP requires a sound ethical and moral compass.

The need for high ethical standards also recognizes the extremely serious negative 'knock-on' effects on public institutions in the event that unethical behavior on the part of Members and government officials is exposed. Diminished trust in Members of parliament often means diminished trust by the public in the very institution of parliament, something that may call democracy into question.

### ***Code of Conduct for Members***

In the Oath of Allegiance taken by all those elected to parliament, each person swears to 'justly and faithfully carry out my duties as a member of Parliament of the Cook Islands.'<sup>22</sup> These duties include adhering to the 'Code of Conduct for Members' set out as Part XLV of the *Standing Orders* and related provisions.

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<sup>20</sup> In the UK House of Commons the most common reason for a Member to use the opportunity to make a personal statement is: 'to give an explanation of conduct which might appear to have offended against the dignity, privileges or traditions of the House and perhaps to offer an apology...', Evans, P. *Dods Handbook of House of Common Procedure*, (8th ed), Dods, 2011, p. 59, 7.6.9. In addition, when members of the Cabinet resign they may use the procedural device of the personal statement to explain their reasons for leaving government.

<sup>21</sup> SOs 90 and 161

<sup>22</sup> Art 30



Members of the Parliament of the Cook Islands must in general:

- Maintain the highest standards of ethical behavior to protect and maintain [the] integrity of Parliament (SO 393).

In particular, Members should:

- Declare any financial interest that may conflict with the public interest (SO 394(4)(c)).
- Demonstrate respect for the law and uphold the laws of the Cook Islands (SO 394(2))
- Not take any fee or reward in connection with any matter subject to plenary or committee consideration (SO 383).

Elsewhere, the Standing Orders provide that Members must not vote where they have a financial interest (SO 146).

While presently short in length, it bears repeating that the ‘Code’ is an immensely important part of the life of parliament and its Members. Failure to adhere to its spirit and concrete provisions will lead not only to the incapacity of Members to fulfill the duties for which they were elected, but are likely to seriously damage the institution of parliament.

In addition to the ‘Code’, section 18(1) of the *Civil List Act 2005* obliges the Speaker and all Members to make an annual declaration of financial or other interests held in a company; and section 19 places a duty of propriety on Members:

- To avoid private pecuniary interests in conflict with their public duty
- Not to use official information for private interests
- Not to use official influence for private purposes
- Not to use her or his official position in support of a candidate for employment or promotion in the Public Service
- Not to accept any favor from those in or seeking a contractual, proprietary, or pecuniary relation with government

Plans are currently underway by the Legislative Service of Parliament to review and update the present ‘Code of Conduct’ drawing on the work of the Commonwealth Parliamentary Association (CPA) and others.<sup>23</sup>

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<sup>23</sup> Commonwealth Parliamentary Association, *Recommended Benchmarks for Codes of Conduct applying to Members of Parliament*, (2015); Lord Nolan, *Standards in Public Life*, First Report of the Committee on Standards in Public Life (Vol. 1)(1995), Cm 2850-I; for a description of the Legislative Service’s function see Section 3.

### **‘Honorable Members’**

Underlying the role of an MP is a presumption that members will behave ‘honorably’. Many parliaments enforce a rule that during plenary debates members address each other using the phrase ‘the honorable member for X constituency’. While the term may seem old fashioned and designed to set MPs apart, its use reinforces fundamental expectations about the way Members should behave on the part of the general public that remain relevant today. Standing Order 157 applies this convention to Members of the Cook Islands Parliament.

### ***Privilege***

In carrying out parliamentary duties MPs rely on certain freedoms and legal protections and, additionally, are provided with a range of procedural tools discussed below. The freedoms and legal protections noted briefly below are traditionally, though somewhat misleadingly termed ‘privileges’, and have a very specific ownership and purpose. The privileges are ‘owned’ jointly by parliament as a whole and by each Member individually.

The classic general statement of privilege for parliaments based upon the Westminster system of government, including those of Cook Islands, Australia, New Zealand and Canada, is that contained in *Erskine May*, as: ‘the sum of the peculiar rights enjoyed by each House collectively....and by the members of each House individually, *without which they could not discharge their functions*, and which exceed those possessed by other bodies or individuals (emphasis added).’<sup>24</sup>

It is important to understand that the freedoms and legal protections afforded to parliament and the Members of Parliament are provided for the *specific* purpose of enabling Members to carry out their constitutional duties and not for any other reason.

In the Cook Islands, the main legal protection is contained in Article 36 of the *Constitution* guaranteeing Members of Parliament freedom of speech and the freedom to vote without fear of challenge in the law courts:


‘No member or Speaker of Parliament and no person entitled to speak therein shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in Parliament or in any committee thereof.’<sup>25</sup>

The purpose of this immunity is to forestall any attempt to prevent a Member from raising a matter in the course of legitimate parliamentary duties whether in plenary sitting or when sitting on a committee of parliament. Without this immunity the courts could be used to sue members

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<sup>24</sup> *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, (24th ed.), LexisNexis, 2011, p.203. Usually referred to ‘Erskine May’, this book contains the basic procedure of the UK Parliament and is the source of much of the procedure for parliaments in the democracies within the Westminster tradition; for the position in Australian, New Zealand, and Canadian parliaments, *May*, f.2, p.221.

<sup>25</sup> See also *Standing Orders* 383, 384; 393-396; and [Parts 1 and 4] *Legislative Assembly Powers and Privileges Act 1967*.



for remarks considered defamatory or members could be subject to an injunction to prevent them raising in parliament particular matters of public importance. This would have a chilling effect on the operation of parliament and if such actions could be taken then neither the Member in question nor parliament could carry out their constitutional duties.

The immunity from the court's jurisdiction is therefore a keystone of democracy and is a longstanding feature of democratic assemblies.<sup>26</sup> Protections are also afforded by the *Constitution* to parliament's papers, procedure, conduct of business, and the maintenance of order by the Speaker and officers of parliament. All these are in place similarly to ensure that parliament may do its job and that the terms of the *Constitution* are not frustrated.

### ***Demonstrating High Ethical Standards: Conclusion***

In the absence of high ethical standards on Members' part, and clear parliamentary 'privileges' allowing them to carry out their functions, neither Members nor parliament would be able to carry out the 'core functions' of the institution with confidence and credibility.

## **'CORE' PARLIAMENTARY DUTIES**

The 'core' duties or functions of an MP are those noted earlier of passing laws, to oversight the decisions and actions of the government, and to represent their constituents. The latter is conducted largely though not exclusively outside parliament. This section identifies the main procedures of parliament before summarizing the first two 'core' functions and their related parliamentary procedure.

## **PROCEDURE**

In undertaking their first two duties MPs require a sound understanding of the way parliament makes laws and permits oversight through the tools of procedure set out in the *Standing Orders of the Parliament of the Cook Islands*.<sup>27</sup> The Cook Islands system of democracy stands within the Westminster tradition and the Standing Orders reflect this by allowing recourse as required to those *standing orders* in force for the New Zealand House of Representatives and the UK House of Commons (SO 2).

### ***Main procedures***

There are many procedural tools available to all Members to fulfill their 'core' parliamentary duties and these are set down in the *Standing Orders*. The main tools are as follows:

- Questions to Ministers (SO 92)
- Questions to Members (SO 93)

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<sup>26</sup> Codified for English speaking jurisdictions in Article IX of the English *Bill of Rights* (1689), 1 Will and Mary sess 2, c 2: that 'the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.'

<sup>27</sup> See further Section 1.

- Tabling a motion (SO 102)
- Participating in plenary debates (SO 155)
- Introducing draft legislation (a Bill) (SO 219)
- Speaking to a Bill (SO 230)
- Proposing amendments to a Bill (SO 241)
- Serving on a select committee (SO 318)
- Serving on a standing committee (SO 360)
- Questioning witnesses giving evidence to committees (SO 371)

It is self-evident that the vast majority of these procedural devices by which Members may contribute to the creation of law, conduct oversight of the government, and fulfill their constituency duties, depend upon: (a) parliament sitting for sufficient time to enable Members to undertake their duties adequately; and (b) MPs being willing and able to use the tools available to them in the *Standing Orders* effectively.

The more active parliament is, the more adept MPs become in the exercise of their duties, and the better the system of democratic governance works. An MP's capacity to operate effectively is related directly to the degree of practice in the variety of techniques she or he is able to use to prosecute their political objectives and fulfill their constitutional duties: including the key oversight mechanisms of questioning Ministers in plenary and serving on committees.

In addition, the more a parliament sits, the more accustomed and skilled executive government becomes in responding openly and creatively to the contribution of parliament as a whole. This benefits the entire governance system and the service it provides to the people. The capacity and skill of MPs may be enhanced through external support, training, and examples from abroad but there is no substitute for 'training on the job'.

## MAKING LAWS

The *Constitution* gives to Parliament the power to make laws under Article 39, the only one of the three 'core' functions specifically mentioned there.

### ***Pre-parliamentary process***

Bills (proposed laws) do not appear from thin air. The vast majority of Bills are the product of a process in which the executive government has created and consulted more or less widely upon governance measures for a particular social, economic, political, or administrative area or topic. Concrete proposals in general language (policy) are formulated and that policy, often after a lengthy period of gestation, is recast in legal language as a draft law, a Bill. Processing Bills through the legislature is the 'bread and butter' of government's relation with parliament.

The main *Standing Orders* directly relevant to law making are:

- Part XXXI: Bills - Standing Orders 219–280
- Part XXXII: Private Bills - Standing Orders 281-286
- Part XXXIII: Committees of the Whole House - Standing Orders 287-301
- Part XXXIV: Money Grants and Taxation - Standing Orders 302-303
- Part XXXV: Estimates and Financial Procedure - Standing Orders 304-311

### ***The rights of Members***

Article 42 of the *Constitution* and SO 219 specifically provide that ‘any member of Parliament may introduce any Bill’ to parliament.

### ***‘Money Bills’***

However, the power in Article 42 must be read with Article 43. This effectively provides a restriction on the capacity of a private member of parliament on introducing a Bill or proposing amendments to a Bill that imposes or alters taxation or imposes or alters a charge on the public finances of the Cook Islands. It does this by requiring that before the parliament may proceed with such a Bill, the Queen’s Representative (QR) must recommend its introduction. This constitutional requirement effectively reserves the right to introduce such so-called ‘money bills’ to the Prime Minister and Cabinet as the QR invariably acts on the advice of Ministers (Article 5(1)). The reservation of the initiative in matters of public finance to the executive government is normal and found in the majority of Westminster style systems. (Please see ***Oversight of Government*** below for a separate description of the legislative stages of a ‘money bill’)

### ***Types of Bill***

There are three types of Bill. Firstly, a ‘Public Bill’, which is a Bill relating to matters of ‘public policy’ and of general public interest and application if passed in parliament and assented to. Secondly, there is a ‘Private Bill’, one proposing powers or immunities for (usually) a body corporate and that is designed in excess or in contradiction to the general law. These are rare. Thirdly, there is a ‘Private Member’s Bill’ which is a Bill that shares the characteristic of a Public Bill by proposing a change in general law i.e. it is applicable to everybody, but is being proposed by a ‘backbench’ Member, i.e. not a member of the executive government.<sup>28</sup> Provision exists for the executive government to ‘adopt’ a private member’s Bill with the Member’s agreement. This is not infrequently the case in other parliaments where a Member’s Bill may cover an important area of policy not specifically in the government’s legislative program but has the support of the government.

The overwhelming majority of Bills considered by parliament are ‘Public Bills’ and the procedure described below is confined to these Bills.

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<sup>28</sup> SO 3; SO 219(2)



## *Bill procedure in parliament*

There are a number of parliamentary 'Stages' through which a Bill must pass in order to reach the point where it passes to the Queen's Representative for her or his 'Assent' (agreement) and passing into law: Introduction, First Reading, Second Reading, Committee of the Whole House, and Third Reading stages. All but the first stage occurs in public in parliament.

### *Introduction<sup>29</sup>*

The **Introduction** rules deal with preparatory issues requiring action prior to the Bill being presented in parliament. The Bill must be explained in an 'Explanatory Note' (SO 220); there is a requirement for publication of the long title of the Bill in the official *Cook Islands Gazette* (SO 221); the Members should have copies of a Bill before the sitting of parliament at which it will be presented (SO 222). There is provision for urgent Bills that bypass the normal notice procedure but these require a certificate from the Speaker (SO 223). If a Bill is not an urgent Bill it cannot be introduced into parliament without notice (SO 224, 281).

This stage sets the scene for the Bill's consideration by parliament and seeks to ensure that there is sufficient preparation time for Members of Parliament and other stakeholders, including specialist interest groups such as civil society organizations, lobbyists, and the general public. The requirements in the Standing Orders provide the materials and opportunity for Members and stakeholders to consult on the proposed law, formulate arguments in favor or in opposition to the Bill or aspects of it and to draft any amendments that they believe will improve the policy or effectiveness of the Bill if it becomes law. By requiring these steps to be taken, the Standing Orders ensure that lawmaking is an orderly process and no one is taken by surprise.

### *First Stage<sup>30</sup>*

The so-called **First Stage** (alternatively termed **First Reading**), follows the Introduction but is the first stage of the Bill in parliament in public session. This is the stage at which the Bill is included in the list of parliamentary business. This occurs by the person responsible for the Bill's progress through parliament (almost always a Minister, but occasionally a Private Member where it is Private Member's Bill)<sup>31</sup> standing in their place when Presentation of Bills is called by the Speaker and handing a copy of the Bill to the Clerk of Parliament (SO 227). The Clerk is required to read the Short Title of the Bill (SO 228) after which the First Stage concludes.

As the procedures stand currently, there are three points to note. First, the 'First Stage' is actually the second stage as the Introduction precedes it, but it is the first public stage of the Bill's passage through parliament. Second, it is what is termed a formal stage, i.e. there is no question put by the Speaker and no debate and no vote. Third, the alternative name for this stage (First Reading) arises from the Clerk 'reading' out the Short Title of the Bill at the sitting of parliament in which it is presented. Historically, this derives from the practice in the early parliaments of England when

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<sup>29</sup> SOs 219–226

<sup>30</sup> SOs 227 – 228

<sup>31</sup> The title for such a Member is the 'Member in charge'.



most MPs were illiterate and the Clerk actually first read the Bill in its entirety so members knew what they were considering.

### *Second Stage*<sup>32</sup>

The **Second Stage** (alternatively termed **Second Reading**), which is the third stage after Introduction but the second in parliament in public session, may then take place. The date on which that stage takes place is at the initiative of the Minister or ‘Member in Charge’ with the proviso that it should not be more than one month after the date of the First Reading. The Second Reading may follow on immediately at the same sitting of parliament from the First Reading (SO 229).

The purpose of this stage is to examine the main reasons for the Bill in general. This is termed debating the Bill’s ‘principles and general merits’ (SO 230). It is designed to probe how good the arguments are for the Bill in general and how well thought through the legislative initiative may be. As most Bills are government Bills, as well as being a central part of the law-making process, this Stage is therefore also a vital aspect of oversight of the government because it goes to the heart of what will most likely be a part of the program or ‘policy platform’ on which the government has been elected.

The debate on the second reading is initiated by a ‘motion’, which is in its essence a type of proposal common in parliaments and taking the form: ‘I move that....’. The ‘mover’ is always the Minister or representative of executive government if it is an executive government Bill, or the Member in charge otherwise. The motion is required to be ‘seconded’ after the mover has made the motion (SO 230) which is done by another Member rising in her or his seat and saying: ‘Seconded’. The Speaker is then able to ‘put the Question’ on the motion – simply a means of asking Members if they agree to the proposal encapsulated by the motion. This is done by the Speaker saying: ‘The Question is, That the Bill be now read a second time’ (SO 230).<sup>33</sup> At that point a debate on the principles and general merits of the Bill ‘may’, but implicitly need not, arise (SO 230). The absence of debate, however, would be almost unthinkable though technically it would make little or no difference to the Bill’s progress unless the second reading question is resolved in the negative.

The rules of debate applicable at second reading debates are those set out at SOs 155 – 201. The rules on the time limits of speeches in Part XLIV, SO 391 apply.<sup>34</sup> Only limited amendment to the Question “That the Bill be now read a second time” are permitted. One permissible amendment is to stop the Bill proceeding altogether by omitting the word “now” and adding the words “upon this day six months”. After the debate on this amendment the Speaker puts the Question (to ‘negative Bill on second reading’ - SO 231). Any other amendment to the second reading question must be ‘otherwise relevant to the principles of the Bill’ (SO 232).

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<sup>32</sup> SOs 229 – 235

<sup>33</sup> The rules for ‘putting the Question’ are SOs 116-119.

<sup>34</sup> In the CWH, each Member has 3 speeches of 10 minutes each on short title, clause, schedule of a Bill. Any extension allowed for speeches normally does not exceed 50% of the normal time limit.

Note also that SO 235 permits the Second Stage debate to be bypassed if the Bill is to be referred to a select committee of parliament or the House of Ariki. This is done by moving the motion for the Second Reading '*pro forma*', i.e. as a formality and with no expectation of debate. However, this must be considered an unusual procedure because SO 235 stipulates that notice of the intention of moving the *pro forma* motion is to be made at the time of fixing a date for the second reading or 'not less than two clear sitting days' before this date. Again the requirement for notice provides time for members to raise objections to this proposed course of action and to prepare amendments to the *pro forma* motion to reflect these objections.

At the conclusion of the second reading debate, the Speaker puts the question and the parliament votes on whether to agree to the principles and general merits of the Bill. If there is agreement the Clerk reads the long title of the Bill and it then may proceed to the next stage.

### *Committee*<sup>35</sup>

Upon agreement to the second reading the Bill then moves to **Committee**. This is the fourth parliamentary stage through which the Bill will pass but the third in the public forum of parliament. The technical term for the Bill moving from Second Reading to Committee is that the Bill is 'committed' from the former to the latter.

Having had its principles and merits examined during the Second Stage debate, the purpose of Committee Stage is for the Bill and its individual clauses to be examined in detail. There are three options open to parliament to achieve this:

- First, it may be considered by a meeting of all the MPs together. Because they are acting in the manner of a committee examining detail, such a meeting is called a 'Committee of the Whole House' (CWH). In some parliaments it is the Deputy Speaker or other elected official who chairs such a committee;<sup>36</sup> in others it is the Speaker who retains the chair.<sup>37</sup> In the Cook Islands Parliament the Speaker is to preside but may ask the Deputy to chair.<sup>38</sup>
- Second, any Member may put down a motion that the Bill shall stand committed to a select committee, or to the House of Ariki (SO 234). Any decision on the latter course would require notice to be taken of the powers of the House of Ariki set out in Article 9 (a) and (b) of the *Constitution*.
- Third, SO 361 provides for a Bills Committee, chaired by the Prime Minister and consisting of two Ministers and two other Members, to consider Bills referred to it under SO 259. This provision does not appear to preclude referral to another select committee (SO 259). The rationale for a 361 referral is not entirely obvious and would appear to be contrary to the almost universal practice in Westminster parliaments that Ministers should not sit on committees examining government legislation.


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<sup>35</sup> SOs 236–268

<sup>36</sup> For example, the UK House of Commons, Erskine May, p.565.

<sup>37</sup> For example, the Solomon Islands, *Standing Orders of the National Parliament of Solomon Islands*, Paper No 41 of 1981, SO 51(1).

<sup>38</sup> SO 19 (2)



It should be noted that if a Bill is sent to a select committee, Bills Committee, or the House of Ariki, then the plenary cannot proceed until a report has been received (SO 259). There are strict time limits on reporting a Bill out of a select committee with a maximum of 6 months being permitted before proceedings may be restarted in the plenary sitting (SOs 260, 261). There are no specific rules set down for consideration of Bills in select committee or the House of Ariki.

In the Westminster tradition, the Committee of the Whole House (CWH) has traditionally been used for Bills of major constitutional significance, or emergency, or Bills of an uncontroversial nature. In the Cook Islands, committal of Bills to the CWH is the default course under the Standing Orders and unlike committal to a select committee, Bills Committee, or the House of Ariki, does not require a separate motion.

The CWH procedure at Committee Stage is that each part of the Bill is examined in turn, as follows (SO 240):

- Clauses as printed
- Postponed clauses
- New Clauses
- Schedules
- New Schedules
- Preamble
- Long title

The CWH Chair reads each clause of the Bill, or part of the schedule and, unless any amendment or new clause is proposed, puts the Question (SO 242): ‘That clauses X to X stand part of the Bill.’ Members may place amendments on the Order Paper by passing them in advance to the Clerk (SO 244), but advance notice of any proposed amendment is not mandatory (SO 243).

Any Member may propose an amendment during the consideration by the CWH of each part subject to the following criteria (SO 241):

- Relevance
- Consistency
- Intelligibility
- Being within the ambit of the Long Title of the Bill
- The form of amendments must conform to the rules set out in Part XXVII of the *Standing Orders*<sup>39</sup>

On the cessation of proceedings, the Chair then puts the Question: ‘That the X Bill be reported to Parliament with [or without] amendments.’ This Question is neither debatable nor amendable (SO 252). If agreed to, the Minister or Member in charge then ‘reports’ to parliament that the Bill

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<sup>39</sup> SOs 122–140

has passed committee with or without amendment. The Speaker then puts the Question: 'That the report on the Bill be adopted.' This Question, too, is neither debatable nor amendable (SO 253).

At this point, two courses for the Bill are open to the parliament: to move to Third Reading or for the Bill to be recommitted in whole or part to the CWH. A recommitment of a Bill requires a motion that may be moved without notice. The purpose of the procedure is to reconsider, delete or amend a provision in the Bill (SO 254). This may be required due to it becoming apparent during the CWH stage that clauses already considered and agreed to require changes, for example, due to a provision not having been thought through and further consideration is therefore required. The former is the more normal course and results in the Bill moving to its final parliamentary stage.

### *Third Reading and Passing<sup>40</sup>*

**Third Reading** is the Bill's overall fifth stage since Introduction and the fourth parliamentary stage in public. Third Reading may be taken straightaway after the report on the Bill from the CWH has been 'adopted' (SO 269). The purpose of this stage is to agree to the Bill in the form in which it emerged from the CWH stage. The Minister or Member in Charge of the Bill moves the motion: 'That X Bill be now read a third time.' A seconder is required. No amendments of a 'material character' are in order at this stage except for two:

- A motion to negative the entire Bill under SO 231, as was possible at First Reading (SO 271); and
- Amendments for 'the correction [of] errors or oversights' with the permission of the Speaker (SO 270).

The debate on the Third Reading stage is a narrow one. New debatable matters cannot be introduced. Although Members may advance general arguments as to why the Bill should or should not pass, they must confine themselves to the form of the Bill as it emerged from the CWH. Debate is limited to what is actually contained in the Bill rather than what might or should have been included (which is the purpose of the second reading and CWH stage debate). Furthermore, Members may not go through the Bill clause by clause and give detailed arguments on its contents, as the third reading debate is in the nature of a summing up.

When the third reading question is put by the Speaker and agreed to the Clerk reads the long title of the Bill. This usually concludes the passage of the Bill through the parliament.

### *Bill procedure after parliament: Assent by the Queen's Representative*


While the Bill may have passed through parliament it is not yet law. The Queen's Representative (QR), acting on the Prime Minister's advice, is required by the *Constitution* to agree to a Bill before it may pass into law.<sup>41</sup> The technical expression for such agreement is 'assent'.

On receipt of a Bill for signature, the QR has two options: signing the Bill whereupon it becomes

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<sup>40</sup> SOs 269–274

<sup>41</sup> Art 44(1)(2)



law on commencement; or summoning the Executive Council if she or he does not sign.<sup>42</sup> The Executive Council may then decide not to return the Bill to parliament in which case it proceeds into law.<sup>43</sup>

Alternatively, the Executive Council may return the Bill to parliament for reconsideration with or without amendments.<sup>44</sup> Where Parliament passes the Bill with the amendments proposed, or in its original form, the QR will sign the Bill into law.<sup>45</sup> Where Parliament passes the Bill with new amendments originating in Parliament then the Bill proceeds to the QR as if it were a new Bill.<sup>46</sup>

The new law commences either on the date of assent or another date specified in the Bill.<sup>47</sup>

### ***Withdrawing Bills, Reviving Bills ('carry over')***

The Minister or Member in charge of a Bill may withdraw it and this may take place without notice at the commencement of any stage (SO 278).

There is provision for 'carry over' i.e. the resumed consideration of a Bill that has not been completed at the end of a session when parliament is prorogued to end a session (breaks without being dissolved before a general election).<sup>48</sup> However, the process of restoring a Bill to the business of parliament after a prorogation is not available when there is a dissolution of the parliament and the commencement of a new parliament following a general election. In these circumstances the Bill can no longer be considered ('dies' using parliamentary language) (SO 279).

### ***Bills to amend the Constitution***

Parliament is sovereign and has the power to amend the Constitution by means of legislation and has done so by means of *Constitution Amendments Acts* on numerous occasions.<sup>49</sup> Two votes in parliament of not less than 90 days apart are required with not less than two thirds of members assenting in both. The Speaker must certify this result.<sup>50</sup>

However, in respect of changes to or provisions inconsistent with, sections 2 to 6 of the 1964 Act and Article 2 of the *Constitution* (The Queen as Head of State), a referendum of electors with not less than two thirds of votes supporting any change is required additionally.<sup>51</sup>

### ***Making Laws: Conclusion***

Law-making is the primary function of a Member of Parliament. If the Member is a Minister, this will entail raising and guiding the draft legislation for which she or he is responsible in executive

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42 Art 44(2)

43 Art 44(4)

44 Art 44 (3)(a)(b)

45 Art 44(5)(6)

46 Art 44 (7)

47 Art 45


48 In the UK House of Commons 'carry over' was not possible until relatively recently: SO 80A, enables a Minister to move a motion to that effect, *Standing Orders of the House of Commons*, Public Business, 2015.

49 Art 27(1); Art 41

50 Art 41(1)(a) and (b)

51 Art 41(2)(b)(c)(d)





government through parliament and seeing it into law. A good example is the *Family Law Bill 2014* being examined currently by a select committee. If the Member is not in executive government, her or his role will be testing that proposed legislation at all stages of its consideration in order to prove it is fully fit for the purposes for which it is intended. Both activities are essential to the production of worthwhile legislation.

Bill procedures constitutes the tool by which this advocacy and testing process is pursued and consequently a sound grasp of this procedure, and an eye for its constant improvement, is a requisite for success. The Bill procedures as set out in the *Standing Orders* at any one time should balance the government's legitimate need to get its business through parliament with the Opposition's equally legitimate desire for a reasonable length of time to examine the Bill from all aspects.

It follows that in law-making timing considerations loom large. A well-known aphorism is 'Make haste and repent at leisure'. The better the balance between the time needed to consult, advocate and test a draft law and the government's desire to achieve its stated legislative objectives within a reasonable timeframe lies at the heart of good legislative process. When these are in appropriate balance the better the finished law is likely to be.

## OVERSIGHT OF GOVERNMENT

The word 'oversight' is nowhere mentioned in the *Constitution*. However, it is clearly prefigured in the oversight functions of motions, debates and petitions set out in Article 42, which directly addresses the functions of parliament and the regulation of these by Standing Orders.

### *Nature of oversight*

The electors hold the executive government directly accountable at general elections held at not more than four yearly intervals.<sup>52</sup> Oversight in parliamentary terms is the process, by and through which the executive government is held accountable to parliament for its plans and completed actions between general elections. Together with law-making, oversight of the executive government is considered one of the two main functions of and justifications for a modern parliament.

It is noteworthy that while we normally think of the oversight process as one in which the Opposition holds the government to account, it is as true to describe it as one in which the executive government willingly submits its proposals to general examination. This scrutiny has as its objective the improvement of laws and is the responsibility of all members of Parliament, including members who support the government but who are not in the Cabinet. The 'give and take' between political opponents, in public and behind the scenes, recognizes the degree to

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<sup>52</sup> Art 37 (5)



which mutual political respect, restraint, compromise, and consensus are emblems of a healthy parliamentary life and are prominent features of well-functioning parliamentary democracies.

It follows that oversight has forward and backward looking aspects. In the former, parliamentary oversight entails the examination of policies proposed by the government on a wide range of social and economic matters for future implementation, for example, the budget proposed for the next year, or the regulation of some sector of the economy. In the latter, it entails consideration of matters which are complete and finished, for example, the expenditure of public money for infrastructure or programs of social assistance, the procurement of some service, or the capacity of the tax collecting regime. In the oversight of what the government proposes for the future, the objective will be to test the proposal against a number of criteria including fitness for purpose and implementation effectiveness. When looking at what the government has done in the past, the objective is to draw lessons from what has passed with the objective of applying them in future to ensure, for example, better value for money, or more efficient service delivery.

The oversight process, though often ‘rough politics’, is therefore fundamentally a highly constructive activity, one designed to enhance the quality of overall governance.

The legislative process generally may, in part, be considered a form of oversight, at least so far as the role of Opposition challenge to government Bills is concerned. This is evident, particularly at Second Reading debate where the policy on which the Bill is based is subjected to test. But general law-making is held to be constitutionally separate from oversight and is in any case relatively complex and specialized so it is convenient to have this subject considered separately.

There is, however, one significant special exception: the annual Estimates and Appropriation process. Here, the parliament has the opportunity to challenge and to reduce, if it so decides, the government’s assessment of its financial requirements for the coming year and is dealt with separately rather than under legislation due to its specialized nature. This illustrates a general point that many aspects of modern parliamentary life contain elements of oversight but may also serve other purposes, such as business management or the passing of legislation.

## ***Oversight procedures***

### *Relevant Standing Orders*

The main Standing Orders relevant to oversight of government are, in order:

- Part XIX: Petitions - Standing Orders 76-83
- Part XXI: Ministerial Statements - Standing Orders 87-89
- Part XXIII: Questions to Ministers and members - Standing Orders 92-100
- Part XXIV: Motions - Standing Orders 101-115
- Part XLVI: Convention to Standing Orders - Standing Order 397
- Part XXVII: Amendments - Standing Orders 122-140
- Part XXXV: Estimates and Financial Procedure - Standing Orders 304-311
- Part XXXVII: Select Committees - Standing Orders 315-358

## ***Petitions: Standing Orders 76-83***

### ***Specific rules***

Petitions are one of the few means of oversight to receive mention in the *Constitution*. A member of the public may present a petition to parliament. There are specific but straightforward rules as to the form a petition must take (SO 76) which are that the petition:


- Must be written clearly
- Must have no erasures or interlineations
- Must be respectful, decorous, temperate concluding with a prayer, i.e. the main body of the text, stating the general object of the petitioner
- Must be signed by at least one person on every sheet on which the prayer is written
- May have signature sheets but only when the prayer is included
- Can be signed or marked only by the petitioners, except in the case of sickness
- Has the seal affixed if a corporation petition (and has a seal)
- May be in Maori or English and accompanied by a translation
- May not have attachments to the petition
- May not make reference to any debate in parliament

The Clerk of Parliament must endorse the petition as having fulfilled these requirements (SO 76). The subject matter is unrestricted except that petitions may not include requests in relation to public financial measures as set out in Article 43 of the *Constitution*. Petitions may not be made on matters having judicial remedies (SO 83).

Here there are two points to note. First, a member of the public cannot petition parliament directly but only through a Member (SO 78). Second, petitions are not ‘papers’ for the purposes of the *Standing Orders* (SO 64 (k)(l)) and so are not caught by the restrictions set out at SO 71 that only the Speaker, a Minister or the chair of a committee may present papers to parliament.

The Member then ‘presents’ the petition by which is meant that he gives it to the office of the Clerk for inclusion on the Order Paper. It would be in order for the procedures set out in Standing Order 72(1) to apply as far as required. At the appointed time, the Member presenting the petition may make a restricted oral statement, i.e. with conditions noted including reading the petition (the conditions are set out in SO 80) and then move that it may be read. A seconder is required and, if forthcoming, the Question is then put immediately with no debate.

If it is agreed, the Clerk is required to read the petition out (SO 81). At that point the petition is considered referred to a select committee appointed by parliament without further procedure. Note this may be a select committee established for this purpose or another select committee. The reference in Standing Order 82 to the petition being ordered to ‘lie upon the Table’ indicates that the matter raised in the petition has not yet been resolved.



On referral of the petition to, the select committee it would make inquiry using the general powers available to it as set out in Standing Orders, including examining the actions (or inactions) of government if appropriate, before reporting back to parliament on its findings and any recommendations for further action.

### *Commentary*

There are two points of note. First, a petitions system is primarily a way of exposing issues in the national forum that would otherwise go unnoticed. This is frequently all that is required for those responsible – most often, and quite naturally, the executive government - to take remedial action or otherwise address the matter. In terms of such exposure this may have been achieved simply by the reading of the petition in parliament in public.

Second, what happens thereafter and the vigour with which a petition is pursued depends on the approach of the select committee concerned. There is no specific requirement in the *Standing Orders* for a Minister or the government generally to respond to a select committee if it has raised a petition with a department.

### *Background*

Public petitions to parliaments are of great antiquity and so far as the UK Parliament is concerned were a noteworthy part of business prior to the modern growth of government demands on parliamentary time starting in the 1840s. This resulted in petitions becoming less relevant, though they never disappeared.<sup>53</sup>

There is currently a renaissance of interest in (particularly electronic) petitions systems in many countries where it is seen, in part, as one possible way to reengage people with parliament and the political process generally. A recent example widely considered successful is that operated by the Scottish Parliament, one of the first to have an e-petitions platform.<sup>54</sup> While there is debate about the effect of such systems,<sup>55</sup> the UK House of Commons created a Petitions Committee in 2015 to administer the new joint UK government/UK Parliament e-petitions platform was launched in July.<sup>56</sup> In the South Pacific region, the Parliament of Fiji has a strong petitions system. There is mandatory reporting from the committee to which a petition has been referred<sup>57</sup> and a requirement on the government to respond to any such report that is chosen for debate in parliament.

## ***Ministerial Statements: Standing Orders 87-89***

### *Specific Rules*

Ministerial Statements are an important source of authoritative information and are dealt with early in the parliament's Order of Business (at SO 64(g)). It is a measure of the importance such Statements are accorded that the debate on any Question may be interrupted by leave of the Speaker for a Ministerial Statement to be taken (SO 88).

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<sup>53</sup> *Erskine May* (24th ed.) 2011, p.483.

<sup>54</sup> *Standing Orders of The Scottish Parliament* (4th ed.), 2014, 6.10.

<sup>55</sup> Wiersma, W. 'Digital Democracy: Political Participation and Citizen Engagement through the Internet', House of Lords, LLN 2015/035.

<sup>56</sup> *Standing Orders of the House of Commons*, Public Business, 2015, 145A (1); Kelly, R. and S. Priddy, 'e-Petitions', House of Commons Briefing Paper 06450, 20:10:2015.

<sup>57</sup> *Standing Orders of The Parliament of Fiji*, 2014, 37(5).

A Minister may make a Statement on the following specified topics (SO 87):

- Government policy
- Domestic issues
- Matters of national and international interest
- Legislative proposals
- Arrangement of business and sittings

These categories encompass the vast majority of government business and follow the pattern of parliaments elsewhere. Nevertheless, so far as the procedure's relation to oversight is concerned, if parliament is unable to raise debate and question the Minister on such Statements then it is difficult to see them as a procedure for oversight. There is however provision for such debate:

A debate on a Ministerial Statement may be secured in three ways:

- At the time the Statement is made by leave of the Minister (SO 89)
- At the time the Statement is made by motion moved without notice (SO 89)
- At a later time - by motion without notice that the Statement should be printed and laid on the Table as 'a paper for consideration'.

If a motion to have a statement printed and laid on the Table is agreed to it may be considered during 'Consideration of Papers' under SO 74(1). This procedure allows a Member seeking to debate the paper to move a motion relevant to the paper when the number of the paper is called by the Speaker.

### *Commentary*

The essence of the Ministerial Statement is that it will be of immediate or/and topical importance and this level of relative urgency or interest may justify some relaxation in normal procedural rules. For example, debate in parliament normally requires a Question but in the first two situations where a Ministerial Statement may be debated immediately this is considered unnecessary given the importance of and 'perishable' nature of such Statements. In any case, by practice elsewhere (see below), Ministers have a prerogative right to make statements in parliament arising from the fact that they are Executive Officers of the Crown, i.e. a right or privilege exercisable separately from parliament arising from the common law rather than a matter within the jurisdiction of parliament and governed by *Standing Orders*.

A separate issue for Ministers regarding Statements is whether to make such announcements in parliament or elsewhere. Choosing parliament may be thought to enhance the institution's position as the centre of national debate, and this is the view of some Speakers.<sup>58</sup> However, Ministers sometimes take the contrary view that the press provide a preferable alternative.

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<sup>58</sup> *Erskine May* (24th ed.) 2011, p.371.

## Background

The procedure here is more cautious than in the UK House of Commons where it is considered perfectly normal to follow up a Ministerial Statement with a period in which Members may respond and which includes questions to the Minister. The length of the period allowed is a matter for the judgement of the Speaker and will depend on the interest in and perceived importance of the Statement. There are no provisions in Standing Orders for such Statements in the House of Commons, and Ministers make such Statements as of right.<sup>59</sup> As here, when necessary, Statements may be made at several different times in the sitting day.<sup>60</sup>

By contrast, in the Scottish Parliament, Ministerial Statements are the subject of clear Standing Order rules. Notice is normally given in advance, but in cases of urgency and with the permission of the Presiding Officer, a Statement might be ‘made and debated’ on the same day.<sup>61</sup> So, despite the difference in procedural approach, the end result is similar.

## Parliamentary questions: Standing Orders 92-100

### Specific rules

Questions are a prime means for Members to exercise oversight of government. Questions may be addressed to Ministers only about their portfolio responsibilities (SO 92). Questions may also be addressed to Members concerning any parliamentary responsibilities (‘Bill, motion, or other public matter’) they may have (SO 93).

Questions are of two sorts: with and without notice. It is the Speaker’s responsibility to ensure that 30 minutes is set aside on sitting Mondays, Tuesdays, Wednesdays, and Fridays for questions without notice; and for one hour on sitting Thursdays to process questions with notice (SO 66(a) (b)).

The Speaker decides on all matters of admissibility of questions (SO 95). She or he does so using criteria set out in SO 94. Questions must not contain:

- Extraneous references (names or statements)
- Statements that cannot be substantiated
- Arguments, inferences, opinions, imputations, epithets, or contentious, ironical, or offensive expressions
- Reference to debates of the current session
- Reference to proceedings in a committee which have not been reported to parliament
- Attempts to seek confidential material
- Reference to matters *sub judice*
- Threatening references to the judiciary or personal attacks
- Attempts to elicit opinions, solutions to abstract legal cases, answers to hypothetical opinions

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<sup>59</sup> *Dods Handbook of House of Commons Procedure*, (8th ed), 2011, p.57, 7.6.1.

<sup>60</sup> *Erskine May* (24th ed.) 2011, p.372.

<sup>61</sup> *Standing Orders of The Scottish Parliament* (4th ed.), 2014, 13.2.



- Focus on private character or conduct of any person
- Information that is readily and authoritatively available elsewhere
- Repeat requests that have been answered completely during the same meeting

### *Questions with notice*

One hour is set aside on sitting Thursdays for questions with notice and responses (SO 97(1)).

The rules for 'putting down' (notifying parliament formally of) questions with notice are:

- Notice of at least 2 'full' days i.e. counting only days on which parliament sits, is required for such questions (SO 97(2)(a))<sup>62</sup>
- Notice of a question is given:
  - o When parliament is sitting, by handing it to the Clerk sitting at the Table in the well of the chamber (SO 97(3)(a))
  - o When parliament is not sitting, by handing it in to the office of the Clerk (SO 97(3)(b))

The question is placed on the Order Paper for answer on the first available sitting Thursday. At the time allotted for questions (SO 64(i)) the Speaker is responsible for calling those Members with questions on the Order Paper to rise in their places and read their question out (SO 99), after which it is the responsibility of the Minister to rise and answer the Member's question.

The question put down is not lost if the Member is unavoidably not present as substitution by any other Member is permitted (SO 99(3)). Similarly, a Minister or Member nominated by the responsible Minister, if she or he is absent, may read the answer (SO 100(1)).

The Minister hands a written copy of the answer to the Clerk who ensures that both question and answer are recorded in the Minutes of parliament; the Member is also entitled to a copy of the answer (SO 100(2)).

Any Member is entitled to raise a supplementary question without notice after their question has been answered. The supplementary is for the 'further elucidation of any matter of fact referred to in the answer' and cannot be used to raise a new subject (SO 100(4)).

### *Questions without notice*


Thirty minutes is set aside on sitting Mondays, Tuesdays, Wednesdays, and Fridays for such questions (SO 96(1)).

The rules for questions without notice are:

- Members indicate to the Speaker their desire to ask a question at the commencement of

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<sup>62</sup> In the UK House of Commons the earliest deadline a Member can ask for an answer is 3 sitting days from putting down the written Question, *Dods*, pp. 72-3, 8.3.9).



the period set aside on the Order Paper for that purpose and the Speaker calls Members in the order she or he determines (98(1)(2)). This procedure implies that Members need to notify the Speaker through the office of the Clerk well in advance.

- Where in the Speaker's opinion a meaningful answer cannot immediately be provided the question is withdrawn and included in the procedure for Questions with notice (SO 96(1)(2)).
- Questions that proceed but are not reached before the thirty-minute point are held over to the next available sitting day (SO 98(4)).

### *Commentary*

The arrangements for questions create a natural division into questions that are initially oral (without notice); and questions that are written (with notice i.e. placed on the Order Paper). Both will be recorded of course in the Official Record of parliament, and the Minutes of proceedings.

The classic rationale for questions within the Westminster system is to (1) seek information or (2) press for action. However, there is frequently pressure, strongly resisted by the chair, to break through these bounds and use questions for more contentious purposes.

Questions without notice equate in the UK Parliament to 'topical questions' for which there is no notice of the text (though, as here, Members are required to note their names). In general, an oral question lacking topicality has a higher chance of being moved to the questions with notice process than one that is of current interest. There is no provision in the Standing Orders for urgent questions, as has been found to be necessary elsewhere. This suggests that the question without notice procedure covers the requirement.


## ***Motions and 'Convention to the Standing Orders'***

### *Specific rules*

Motions are linked closely to debate in parliament, which occupies the lion's share of its time and is, in turn, linked intimately to oversight activity. The process of debate includes not only setting forth views on policy and legislative proposals but challenging and probing the opponent's point of view. The way in which a motion is framed is important as it determines the scope and relevance of the debate on the proposition put forward by the motion. A motion at its most basic level is a subject for debate set out in an agreed and consistent form of words.

### *Motions with notice*

Most (not all) motions require a period of notice before being brought forward for debate because the process of debate requires a period of preparation for the participants. The length of the notice is 2 full (i.e. sitting) days (SO 106(a)), and notice is given by handing the sheet with the motion written out and signed to the Clerk at the Table in the well of the chamber when parliament is sitting, and to the office of the Clerk when parliament is adjourned (SO 102). In exceptional cases, motions may be debated after 24 hours if proposed by a Minister; however this also triggers the suspension of any period of notice for amendments to the motion (SO 106(b)).



The Member moving the motion i.e. introducing the subject of debate, says: 'I beg to move [that the Bill be read a second time/that this chamber...]'. The Member then makes her or his speech after which the Speaker or chair rises to propose the Question on the motion i.e. ask parliament for its decision using the words: 'That the Bill be now read a second time/that this chamber...]. Once the question is proposed by the Speaker general debate may take place.

Debates are virtually always subject to a timetable and the extent to which this is done, who is responsible for setting the limit in particular cases of debate e.g. the Speaker, or parliament, and the consequent time limits imposed, reflects the need to balance time considerations with thoroughness. The main rules are set out in SOs 200, 201, and 391).

Once the debate is concluded, the Speaker or chair 'puts the Question', i.e. asks for a decision and reminds the chamber of the Question before it: 'The question is [whatever is on the Order Paper]'. She or he then 'collects the votes' by calling out: 'As many as are of that opinion say 'Aye' – at which those supporters call 'Aye'. The Speaker then says: 'As many as are of the contrary opinion say 'No' - at which those opposing call 'No'. The Speaker will then make a determination on the voices as to whether the Ayes or the Noes 'have it' – that is, which of the groupings of voices has, in the Speaker's view, the majority. The rules are contained in Part XXVI, Standing Orders 116 – 119. If the decision of the Speaker is challenged by a Member then the question is decided by a division (SO 119). A division is a formal count of those Members present and voting and is a means by which Members can ensure that their vote is publicly recorded alongside their name.

The process described above is for a debate upon a 'substantive' motion, i.e. which is designed to bring parliament to a decision concerning a precise 'Question', usually on the stages of Bills, approving statutory instruments, or to introduce a Bill. It is in the context of debating the Question arising in this form of motion that Members exercise their oversight function.


### *Motions without notice*

Other motions perform different functions for which lengthy debate may be unnecessary or even undesirable. Examples of such motions are set out in SO 101 (a)-(y) and many serve the following conditions:

- Where the smooth flow of business is particularly important – for example, that a Member be no longer heard (g)
- Dealing with a non-contentious matter - such as correction of printer's errors (q)
- A situation that could not reasonably have been anticipated –such as suspension of a Member (h)

There are many more such motions that are normally taken without notice where circumstances dictate that having a notice period would defeat the object of arriving at a speedy decision.

There are two motions without notice that provide important opportunities for Members to hold the government to account: the urgent (SOs 59 and 60), and non-urgent adjournment motions



(SO 62). In theory, debates on adjournment motions involve a parliamentary chamber deciding whether or not it should adjourn but in modern parliaments this has evolved into a procedural device to permit various forms of debate.

Standing Order 62 determines that at 12.30pm on sitting Fridays, 30 minutes after the resumption of business on Fridays as set out in Standing Order 54(3), a Minister shall move a motion for the adjournment of parliament. The motion is open to debate and allows for ‘any matters to be discussed’. There is a time limit of 10 minutes on any Member’s speech (SO 62(2)). Debate ceases at 2 pm (SO 54(3)). This provides 90 minutes for members to use to raise matters relevant to oversight if they wish.

An urgent debate applying the rules under Standing Order 59 is by its nature exceptional, arising from the requirement to discuss ‘a definite matter of urgent public importance’ (SO 60). The motion may be moved without notice only by the Prime Minister or another Minister (SO 59(1) and (2)) and there are other restrictions (SO 60). Even so debate, disciplined by time limits, is permitted, and this places some brake on governmental initiative allowing Members the opportunity for debate and inquiry into an exceptional measure.

### *Confidence and No Confidence*

Finally, it is worth noting that the rules for motions of Confidence and No Confidence are not contained in Part XXIV along with the Orders relating to other motions but appear in Part XLVI (‘Convention To Standing Orders’) at SO 397(3):<sup>63</sup>

- (3) No motion of confidence or no confidence shall be moved and seconded unless 6 months has expired after the previous one had been tabled in Parliament and the following conditions to apply:
  - (a) A Minister must attach his written resignation with the motion
  - (b) Two weeks’ notice must be lodged with the Speaker before such a motion can be moved and seconded
  - (c) Such notice shall be placed on the Order Paper

Motions of confidence and no confidence are motions with notice. They are debatable and as such are perhaps best described as a potential culmination of oversight because a motion of no confidence may result in the fall of the government. It is entirely proper given that the executive government is responsible to the parliament, that the parliament may test whether the government retains its support between general elections. This right is tempered by significant conditions that protect the process from abuse.

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<sup>63</sup> Part XLVI was introduced into the Standing Orders many years previously. The nomination of a candidate for Speaker by the Prime Minister in 2014 was challenged by the Opposition on the grounds that he did not have the confidence of the House and they sought to nominate their own candidate whereupon a Minister moved a motion of confidence in the Prime Minister which was carried, (a), (b), and (c) being disregarded as being irrelevant in the absence of the circumstances envisaged by SO 397 (3).

## Commentary

Debate is rightly considered the ‘main business’ of a parliament;<sup>64</sup> and the rules for motions which give rise to these debates are therefore important for members to master.

## Legislative procedure for Estimates and Appropriations

### Specific rules

As noted earlier, any Bill with public financial implications cannot be considered by Parliament except with the assent of the Queen’s Representative, i.e. only the Government can introduce so-called ‘money bills’.

The procedure for the main financial legislation, the annual Estimates of Expenditure and the Appropriation Bill, setting out what financial resources the Government considers it will require for the forthcoming year, broadly follows the path for Public Bills described in the earlier section. However, there are some special features, mainly set out in Standing Orders 304 – 311, and reflecting Article 43 of the *Constitution* that need to be noted. The Appropriation Bill is the most important legislation of a routine nature parliament is required to pass as it provides the means by which the government’s activities in that particular financial year are funded.

### First Stage

The **First Stage or First Reading** of the Bill proceeds as for a Public Bill (SO 305(1)). Estimates of Expenditure and the Financial Statement (Budget) are presented to parliament following the Bill’s First Reading and before 15 November (SO 304). In practice this has been done much earlier, usually in the middle of the year, in order to ensure that financial provision is in place in good time for the start of a new financial year. The procedure for presentation to parliament of papers (of which the Bill is an important example) is set out in Standing Orders 71, 72, 73. Copies should normally be available for all Members in the office of the Clerk, notice of presentation is to be made in the Order Paper, and the Minister in charge of the Bill is to lay the Bill on the Table at the sitting of parliament at the appropriate point in proceedings (SO 64 (k)).

### Second Reading

The Minister moves a motion for the **Second Reading** just as for a Public Bill and in this case: ‘Debate thereon shall be confined to the financial and economic state of the Cook Islands and the Government’s financial policy’ (SO 305(2)). This approximates the ‘principles and merits’ approach of other Public Bills.


### Committee

Once the second reading debate is completed, the Bill stands referred to the ‘**Committee of Supply**’ - the ‘Committee of the Whole House’ by another name and with precisely the same purpose, i.e. the review of the detail in the Bill and Estimates (SO 306).<sup>65</sup> The Committee achieves

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<sup>64</sup> Dods, p. 9, 2.1.1

<sup>65</sup> What is to be ‘supplied’ are of course the financial resources that the government is seeking the permission of parliament to ‘appropriate’. This Bill provides Parliamentary authority for funds requested by the Government. It is part of what is called ‘supply procedure’ i.e. how Parliament grants the Government’s requests for resources and which has the effect of permitting the Ministry of Finance to draw on funds from the Consolidated Fund for the purposes for which these have been appropriated.



this by considering each 'Vote', i.e. the executive government's estimated requirements for each department. It should be noted that while under SO 308(1) it is for the Minister in charge of the Bill to decide the order in which the departmental Votes will be 'taken' i.e. considered, the current practice is for the Speaker to determine the order by leave of the House.

The 'Votes' are contained in Schedules to the Bill and these are taken before the clauses of the Bill, the reverse procedure with other Public Bills. The Chairman reads the title of the Vote and proposes, 'That the sum of X for the X Department stand part of the Schedule.' Debate may then take place and amendments to reduce the Vote may be taken from any Member (SO 308 (4)). Members seeking to reduce a Vote are confined to 3 speeches of 10 minutes (SO 391).

Any amendments to increase a 'Vote' may be moved only by the Minister as a part of the executive government's monopoly of public financial initiative but notice of 'at least' 1 day must be given after agreement by the Queen's Representative (SO 308(6)). Amendments to increase a Vote take precedence over amendments to reduce a Vote (SO 308 (7)). After debate on each Vote the Chairman puts the Question, 'That the sum (reduced or increased) of X for the X Department stand part of the schedule.'

### *Third Reading*

Once all the Votes contained in the Schedule have been decided, the Question is put that the Schedule 'stand part' of the Bill i.e. be a part of the final Bill in the form passed. The clauses of the Bill are then dealt with and on completion the Bill is 'reported' from the Committee. If the report of the committee is adopted the motion on the **Third Reading** is made immediately with no debate or amendment being permitted. The parliamentary process of the Bill is then complete.

### *Commentary*

#### *General*

There are two points to note. First, Appropriation Bills take precedence over all other Bills (SO 310). This reflects the paramount importance to the country of the executive government not running out of financial resources.


Second, supplementary Estimates and Appropriation Bills if required at any time are subject to the same procedure as described for the main annual Bill (SO 311).

#### *Time*

Perhaps the most significant issue, however, is the time rules applying to the Estimates and Appropriations Bill.

The first point concerns the 10 sitting day rule which is set out in Standing Order 307(1) which is that: 'A total of ten sitting days shall be allocated for consideration of the draft Estimates and Appropriation Bill in the Committee of Supply.' There is no elasticity in this rule. Given that this Bill is the most important Bill in the calendar it is easy to appreciate the rationale for the rule.





When considering any motion to suspend Standing Order 307(1) under Standing Order 4(1), the normal route to vary the Orders, the Speaker must in the case of Standing Order 307(1) ‘take cognizance’ of Part XLVI (‘Convention to Standing Orders’) of the *Standing Orders* which at Standing Order 397(2) states: ‘No motion to stop debate in the Committee of Supply of any Appropriation Bill shall be moved before the 10 days period provided has expired.’ At that point, leave of the chair might be sought to suspend Standing Order 392(2) allowing, in turn, a motion to suspend Standing Order 307(1) that, if passed, would have the effect of reducing the 10 days of debate.

The chair might rule such a motion out of order on a number of grounds: first, the importance of the Bill and its paramount importance; second, precedence; third, that the ‘Convention’ takes precedence to Standing Order 4 as being intended by parliament to apply to the situation arising from the application of Standing Order 4 to Standing Order 307(1). Consequently any motion to suspend Standing Orders 307(1) and 397(2) before the passage of the 10 days would fail. This outcome would be particularly likely if the motion to suspend was brought without notice (SO 4(1)).

A more orderly course in circumstances where the 10-day rule was considered onerous might be to refer the matter to the Standing Orders Committee for consideration by means of a motion under Standing Order 112. Short of that, the length of each sitting day as set out in Standing Order 54 may be set and altered by parliament;<sup>66</sup> while the same Order provides the Speaker with powers to suspend a sitting at any time (SO 54(6)). These options may provide sufficient flexibility in practice. Finally, given the instance in the Standing Orders of the ‘10 day rule’ it is noteworthy that the rule has been more honored in the breach than in the observance by successive governments.<sup>67</sup>

Second, is the matter of the time limits for debates on particular Votes. While the order in which Votes are to be debated is a matter for the Minister, Standing Order 307 is also noteworthy for giving the Speaker wide latitude over the timetabling of the debate on Votes within the 10-day period.

This discretion is subject to the following criteria (SO 307(3)(a) and (b)):

- The size of the Vote
- The amount of public interest in the Votes

With the exception of the limits to the time of speeches seeking to reduce a Vote (SO 391), the Speaker may apply the time limits as she or he sees fit while having regard to the criteria above and taking account of Standing Order 201 which provides time limits on the length of speeches in debate. Implied in her or his exercise of powers under 307, is that the Speaker will consult widely and in good time with the executive government and the Members generally to arrive at a timetable that takes full account of the Bill as drafted and fulfills the letter and spirit of the Order.

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<sup>66</sup> The present sitting rules would enable parliament to consider the Bill for a maximum of 70 hours over 10 sitting days.

<sup>67</sup> This suggests that the rule requires priority reconsideration by the Standing Orders Committee.

## Parliamentary committees

### Specific rules

The most obvious and potentially high profile form of oversight of government in a modern parliament is the parliamentary 'select committee' ('select' because selected from amongst the body of Members to serve).

The *Standing Orders* divide committees into 'Select' and 'Standing' but this is largely (not entirely) a convenience so far as creation and mode of operation is concerned. Indeed, standing committees are treated as select committees for the purpose of the *Standing Orders* (SO 3).

The main distinction drawn between the two groups arises from their respective purposes: one group having responsibilities in respect of certain subject areas: economic, social, legal, and others (SO 316); the second group having responsibilities intrinsic to parliament's operation (SOs 359-361).

### Subject committees

The following are the select subject committees listed in SO 316(2) along with the subordinate areas of responsibility of each:

- **Commerce Committee:** business development, commerce, communications, consumer affairs, energy, information technology, insurance, and superannuation
- **Education and Science Committee:** education, industry training, research, science, and technology
- **Finance and Expenditure Committee:** audit of the Crown's and departmental financial statements, review of departmental performance, Government finance, revenue and taxation
- **Foreign Affairs, Immigration, and Trade Committee:** customs, defence, disarmament and arms control, foreign affairs, immigration and trade
- **Land, Local Government, and Cultural Affairs Committee:** land, Outer Islands, local government, culture, language, traditional affairs
- **Law and Order Committee:** courts, prisons, police
- **Labour Committee:** labour, employment relations, occupational health and safety
- **Privileges Committee:** powers, privileges, and immunities of Parliament and its members
- **Social Services, Health, and Environment Committee:** housing, senior citizens, social welfare, work and income support, public health, environment, conservation.

In the setting up and composition of these or any subject committees are entirely matters for the government in whose hands rests the responsibility for moving motions to establish those listed in SO 316(2) under SO 316(1) and to appoint the membership (SO 318). However, this formal process would be preceded by informal discussions between the executive government and opposition. The government is not compelled to ask parliament to create committees but 'may' do so (SO 316). Once established and unless parliament decides otherwise the committees continue until parliament's dissolution (SO 316(2)).



It would be within the government's power to move a motion for the creation of a committee not listed currently in SO 316(2)(b) and within parliament's competence to consider such a motion. Committees not listed in that Order could be appointed by applying SO 315 and SO 318.

The Speaker may sit on a committee but the decision is a matter for her or him. If appointed, and not an MP, the Speaker cannot vote (SO 320).

The purpose of select committees as stated in the *Standing Orders* is to be 'responsible' for certain specified subject areas of State activity. This is to be understood in the sense of being responsible for inquiry into and oversight of government responsibilities in the various areas. The main powers enabling committees to achieve this are set out in SO 335(1) and (3):

'(1) All select committees shall have power to send for persons, papers, and records.'

'(3) Any select committee may upon motion require any Government department concerned to submit a report explaining any Bill, motion or other matter which may be under consideration or to depute a representative to appear as a witness for the purpose of explaining such Bill, motion, or other matter.'

In addition, the chairs of committees are able to write to Ministers and Members to 'request' their attendance as a witness (SO 364(2)). Refusal on the part of the Minister or Member triggers a report to parliament. Such a refusal would however seem inconceivable.

These powers, taken together, permit the select committees to monitor government departments and conduct enquiries into topics relevant to their subject areas in a manner that is analogous to that of other democratic parliaments.

In pursuit of those functions, the committees would be free to operate as follows:

- Deliberate on, decide and publish annual work plans setting out proposed inquiries into government policy or other topics and, referring to any plans of government for legislation, anticipating Bills that might be referred to them.
- Hold hearings in public to take oral evidence from government, civil society, and members of the public on their inquiries into government policies, Bills and other matters.
- Seek and publish written evidence on the subject of their inquiries.
- Obtain expert assistance in carrying out their inquiries.
- Produce and publish a report with findings and recommendations.
- Require the executive government to address the recommendations in any report made, reply to the committee formally, and publish the government's reply.

Part XXXVII of the *Standing Orders* sets out procedural instruments to guide the committees in fulfilling such a program of work.



### *Non-subject committees (Standing committees)*

The three non-subject committees must be created, and in that respect are treated differently from the subject committees. In other respects they are procedurally similar, though, while also ‘select’, their membership is set out on the face of the *Standing Orders*: Government Caucus Committee (SO 359); Standing Orders Committee (SO 360); and Bills Committee (SO 361).

#### Government Caucus Committee

*See Section 3 of this Handbook*

#### Standing Orders Committee

*See Section 3 of this Handbook*

#### Bills Committee

The Prime Minister chairs the Bills Committee, with two other Ministers and two non-Ministers making up the membership (quorum 3).

Bills are by default considered by the Committee of the Whole House (CWH) at ‘committee stage’ with alternative routes by leave of parliament to a select committee of the House of Ariki (SO 259). Public Bills may be referred to this committee for consideration under the provisions of SO 259, and Private Bills under SO 285. The committee is required to report to parliament after deliberating on any Bills referred to it.

### ***Conclusion***


The select committee is a means for Members to become expert in particular areas. In so doing, their capacity to undertake informed oversight is developed. Institutionally, the committee is one of the most powerful tools a modern parliament is able to deploy in pursuing its oversight responsibilities. Agile, focused, and relatively cheap to deploy, the select committee complements weightier plenary processes. Where the country is scattered over a wide area and communications are relatively expensive it can be a thoroughly cost effective way of ‘bringing parliament to the people’.

This was demonstrated well in late 2015 when the Family Law Bill Select Committee conducted a wide-ranging program of consultation on the Bill in several parts of the country. The consultation template established by this committee is likely to influence future inquiries.

### ***Oversight: Conclusion***

Much of the effectiveness of Members in carrying out their oversight functions, and the reputation of parliament generally for effectiveness, relates to two factors:

- First, to her or his knowledge of the procedural tools available for the various functions of parliamentary oversight. Such knowledge is gained primarily by undertaking parliamentary oversight duties on a regular basis and working alongside more experienced Members, but also by participating in any professional development program run by parliament.

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- Second, the capacity and willingness on the parts of parliament and executive government to organize appropriately to discharge parliament's constitutional role. For example, by ensuring ample resources for select committee inquiries, the willingness of executive government to cooperate with committee inquiries into Bills, public policies and finance, and a well-resourced and highly motivated Legislative Service.

# Section 3

## MAKING PARLIAMENT WORK

### *Responsibilities*

The responsibility for ensuring that parliament operates efficiently and effectively day to day in order to fulfill its constitutional role is a shared one. The Speaker, all Members, the Minister for Parliamentary Services and his officials in the executive government, and the officials of the Legislative Service of parliament all have a role to play.

Members have the main responsibility through being diligent and acting ethically in discharging their responsibilities as elected representatives in legislating, the oversight of executive government, their constituency work outside parliament and for maintaining the institution's high reputation. Those Members who are part of the executive government are in addition responsible for ensuring that parliament is appropriately funded to enable it to fulfill its constitutional responsibilities.

Parliament is a reflection of society and as society evolves people's expectations of parliament change also. Parliament needs to be agile in responding creatively to this process. There is a responsibility therefore on those charged with the leadership of parliament to keep its capacity to respond to such challenges in good working order.

### *Political parties*

Members of parliament are members of political parties having distinct policy platforms on which they were elected every 4 years in a general election or, where a single seat has fallen vacant, through a by-election. The largest party normally forms the government of the country, the others forming the opposition to the government in parliament.<sup>68</sup>

Parliament operates on the principle that the party in government has been granted a mandate by the electors to carry out its program of legislative business, being the party that has won the largest number of seats in the general election. The official opposition has the counter-balancing obligation of challenging and testing the government program and to offer an alternative administration to electors at the next general election. Both make use of the procedural rules of parliament in ways described earlier to carry out these functions.

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<sup>68</sup> 'Opposition' means that group of members whether of one or more political parties opposed to the government; 'Leader of the Opposition' means that member who (a) commands the support of the majority of members of the opposition; or (b) commands the support of the majority of members opposed to government.' (s.3 Civil List Act 2005).



## ***A. Present parliamentary landscape***

There are a number of key political and official posts and bodies in almost all 'Westminster style' parliaments and those in the Cook Islands are summarized below:

### **Key posts in Parliament**

**Speaker of Parliament:** The MP or non-MP elected by Members to preside impartially over sittings of parliament.

**Deputy Speaker:** Member elected by Members from their number to preside when called upon to do so by the Speaker.

**Clerk of Parliament:** Chief Executive and principal procedural advisor to the Speaker and Members.

**Minister for Parliamentary Services:** Minister responsible for parliament's resources.

**Leader of the House:** (When appointed by the Prime Minister) the Minister and MP primarily responsible for managing the government's business in parliament.

**Whips:** Facilitate the work of the parties in parliament by marshalling the votes of their particular party.

**Prime Minister:** Member who leads the largest party in parliament and therefore forms the government.

**Leader of the Opposition:** MP leading the second largest party in parliament or who commands the majority of MP's opposing the Government.

**Ministers and Associate Ministers:** Members of government having departmental responsibilities.

**Legislative Service:** Parliamentary officials, otherwise often called 'Clerks'.

**Government Caucus Committee:** Determines the business of parliament.

**Standing Orders Committee:** Reviews the *Standing Orders of Parliament*.



## *Speaker of Parliament*

Articles 31, 32 and 34 of the Constitution set down the arrangements for the post of Speaker.

### *Article 31*

- Article 31 makes parliament's first duty after a general election or any vacancy in the office of the Speaker the election of a Speaker and sets the criteria for nomination, appointment, and other arrangements:
- The nomination for the post lies in the hands of the Prime Minister, or where there is no Prime Minister the person otherwise commanding the majority in parliament.
- Candidates may be MPs, or individuals qualified to be MPs, but cannot hold Ministerial office.
- The person elected is required to take the Oath of Allegiance before starting her or his duties.
- The Speaker's salary is a matter for legislation.

### *Article 32*

- This Article sets the criteria for leaving office:
- On the dissolution of parliament.
- On being appointed to Ministerial office.
- If the Speaker is an MP, when she or he ceases to be an MP.
- If the Speaker is not an MP, when she or he ceases to become eligible for election as an MP.
- On the passage in parliament of a resolution voted by an absolute majority requiring the Speaker's removal from office.

### *Article 34*


This article sets down the arrangements for the Speaker to vote in parliament:

- Where the Speaker is an MP, she or he has a deliberative vote and a casting vote.
- Where the Speaker is not an MP she or he has a casting vote but only where there is an equality of votes.

### *Standing Orders*

- The detailed arrangements for the election of a Speaker and reporting to the Queen's Representative are contained in *Standing Orders*, Part III (SOs 6-12).
- Part V, Standing Orders 18-20 contain the duties of the Speaker which are to 'preside over every sitting of Parliament' (SO18 (1)); and to 'preside over every committee of the whole House' (SO 19 (1)).

The Speaker is required, when she or he is present in parliament, to be in the chair for votes; the Deputy Speaker is not permitted to substitute temporarily for the Speaker in the chair for the purpose of a vote (SO 18(3)).



In circumstances where the Speaker and the Deputy Speaker are both absent, then parliament elects a Member to chair proceedings for that sitting and that person is invested with all the Speaker's powers for the purpose (SO 18(5)). The election is on a motion that, although not specified, would be similar to the motion to elect the Speaker, and would be moved by the executive government.

### *Legislative Service Act 1968-69*

- Control of the Legislative Service of parliament is vested in the Speaker by section 5 of the 1968-69 Act.
- Where there is no Speaker or the Speaker is absent from the country, control vests temporarily in the Clerk of Parliament (Section 6(1)); but this does not prevent the Speaker exercising control when she or he is abroad (Section 6(2)).
- The powers of the Speaker, for the purposes of the Act, are not generally delegated to the Deputy Speaker, and in particular the Deputy Speaker does not have a role in controlling the Legislative Service (Section 7).
- The Speaker may exercise a general or particular power of delegation of her or his powers with full rights of reversion (Section 12).

### *Remuneration (Speaker's Salary and Allowance) Amendment Order 2013*

The 2013 Order sets the current remuneration for the Speaker.

### *Commentary*

The Speaker holds the leadership of Parliament by virtue of two powers: first, the power to preside over parliament; and, second, control in law over the Legislative Service.

On presiding, two further points are noteworthy. First, intrinsic to the power of a Speaker or Presiding Officer during a sitting of parliament is the power to rule what is 'in order', i.e. in compliance with the *Standing Orders of Parliament*. This power is recognized explicitly in Standing Order 203. However, while the Speaker's power to determine what is orderly is strong it is not unlimited or final and may be challenged in a motion with notice (SO 203). Because the challenge is by means of a motion with notice a period of 2 full days would need to elapse before any debate meaning that the business in which the point arose may *in practice* have been determined.

Second, the power of the Government Caucus Committee in Standing Order 259 to determine the business of parliament is subject to 'the power of the Speaker to determine which matters may properly be introduced into parliament' (SO 359(4)(b)). The question is by what criteria the Speaker is to judge what matter may properly be introduced? It is normal practice to develop a database of 'Speaker's Rulings' that may assist the chair in such circumstances.

So far as the Legislative Service is concerned, the legal right to control is clear but it should be noted that the final appointment of staff does not rest in the Speaker's hands; and of course the financial resourcing of parliament rests with the executive government.

## ***Deputy Speaker of Parliament***

### ***Article 33***

Article 33 of the *Constitution* sets down the arrangements for the post of Deputy Speaker:

- Parliament ‘may’ elect a Deputy Speaker who is required to be an MP.
- The Deputy Speaker may assume the duties of the Speaker (Standing Orders 18-20), subject to any provisions set out in *Standing Orders*.

The Deputy Speaker should vacate office:

- On the dissolution of parliament
- If she or he ceases to be a member of parliament
- On becoming a Minister
- On becoming Speaker
- On a resolution of parliament passed by an absolute majority requiring her or his removal from office

### ***Standing Orders***

The detailed arrangements for the election of a Deputy Speaker are contained in *Standing Orders*, Part IV (SOs 13-17). Any Member may nominate a Member for election to the post by motion without notice (SO 15). When occupying the chair the Deputy Speaker is invested with all the powers of the Speaker (except when a vote is to be taken) (SO18 (3)).

### ***Legislative Service Act 1968-69***

The powers of the Speaker are not generally delegated to the Deputy Speaker and in particular the Deputy Speaker does not have a role in controlling the Legislative Service (Section 7).

## ***Minister for Parliamentary Services***

The executive government funds parliament’s expenses and the responsible Minister is the Minister for Parliamentary Services.

- Section 4 of the *Legislative Services Act 1968-69* provides for the Prime Minister having control of parliament’s expenditure and related estimates; the Prime Minister may delegate such control to any Minister under the terms of Article 16 of the *Constitution*.
- Section 8 of the 1968-69 Act enables the appropriation of money for the purposes of the Act covering the salaries, wages, allowances, other entitlements and expenses of the employees of the Legislative Service.

## ***Clerk of Parliament***

### ***Article 38(1)***

Article 38(1) of the *Constitution* establishes the Clerk of Parliament. The duties of the Clerk are to keep a record of proceedings and to transmit the record to the Queen’s Representative.

### ***Standing Orders***

- Part XII, Standing Orders 40-46 and Part XIV, Standing Order 53, sets out a comprehensive list of duties for the Clerk including:

- Providing a Business Paper seven days before each meeting subject to practicability and Supplementary Business Papers when required (SO 40)
- Providing an Order Paper setting out the day's business (SO 41)
- Maintaining an Order Book listing matters intended for discussion at meetings (SO 42)
- Having custody of all parliamentary records (SO 43)
- Keeping a Minute of proceedings in Maori and English and circulating it to Members (SO 44)
- Keeping a record of Members (SO 45)
- Having authority to destroy certain old records (SO 46)
- Sending to Members notice of a new meeting of parliament not less than 7 days prior to the meeting (SO 53)

### *Legislative Service Act 1968-69*

Section 13 of the 1968-69 Act establishes the arrangements for the Clerk's appointment by the Queen's Representative on the recommendation of the Speaker made after consultation with the Prime Minister.

The Clerk does not control the Legislative Service. That is a function exercised by the Speaker, but where there is no Speaker, or the Speaker is absent from the country, control vests temporarily in the Clerk (Section 6(1)).

### *Legislative Service*

The Legislative Service of parliament is legally separate from the Cook Islands Public Service (the civil service of the government) and is established by Section 3 of the 1968-69 Act.

The Act also establishes a number of key senior posts in the Service, in particular, the Clerk-Assistant (Section 14);<sup>69</sup> and Editor of Debates (Section 15).<sup>70</sup> Other officers may be appointed by virtue of Section 16.


Part III of the Act sets out the duties and functions of the Service to:

- Act impartially (Section 24)
- Provide a number of specified administrative, broadcasting and advisory services to parliament (Section 25)
- Review the Standing Orders of Parliament, provide related reports to the Standing Orders Committee; and advise Members (Section 26)
- Prepare the Official Report of parliament's proceedings (Hansard debates) (Section 27)
- Keep the 'Journals' of parliament i.e. the minutes of votes and proceedings (Section 28)<sup>71</sup>

<sup>69</sup> The more usual modern term is Deputy Clerk but the older term remains in use currently elsewhere, e.g. in the UK Parliament.

<sup>70</sup> The Editor is responsible for the production of the Official Record of proceedings (debates) in parliament often called 'Hansard' after the Official Record in the UK Parliament

<sup>71</sup> Journals are not mentioned in the Standing Orders (Part XII).

- 
- Be responsible for the distribution of Acts and Statutory Instruments in Maori and English (Section 29)
  - Secure all original documents; and documents having Royal Assent (Sections 30 and 31)
  - Administer this Act and certain other Acts e.g. in connection with the payment of Members (Section 34)
  - Establish, operate and expand a Library Service 'for the benefit of Members and officers of the Service' (Section 35)

The Service sets out annually the financial and other requirements of parliament in a submission called a Business Plan forwarded to the government as a contribution to the preparation of the annual appropriation and estimates.

### ***Whips***

Section 2 of the *Civil List Amendment Act 2007* provides for Whips and defines their functions as: 'a member of Parliament who is appointed by the Prime Minister and the Leader of the Opposition to facilitate the work of the members of the same political party in parliament.' (2(2)).

### ***Commentary***

The function of Whips varies between parliaments often depending on parliament's size. Traditionally their role has involved maintaining party discipline; ensuring good communications between the front bench (government) and government supporters on the backbenches; and negotiating with opposite numbers in other parties over the management of business in parliament. All parliaments operate consensually and the essence of the Whip's role is the ability to negotiate keeping a balance between party interest, consensus, and procedural propriety.

### ***Government Caucus Committee (GCC)***

The GCC is established as a standing committee under Part XXXVIII, Standing Order 359. The role of the GCC is critical to the operation of parliament as it is the body responsible for setting the business of parliament.



## **Determining Parliament's Business**

### *359. Government Caucus Committee –*

*(1) This sub clause establishes a committee of Parliament for the duration of each Parliament to be called the Government Caucus Committee.*

*(2) Each Government Caucus Committee shall consist of a Chairman, being the Prime Minister for the time being, and other members, being members of Parliament for the time being, [...] supporting the Government.*

*(3) Each committee shall –*

*(a) Determine the business of Parliament for each sitting day and the order in which it shall be taken;*

*(b) Consider and report on any Bill referred to it under Order 234 or 284;*

*(c) Perform such other functions as Parliament may from time to time refer to it.*

*(4) The power in sub clause (3)(a) is subject to -*

*(a) Part XVII of these Orders; and*

*(b) The power of the Speaker to determine which matters may properly be introduced into Parliament*

*(5) Except for Orders 315 to 322, and 328, every order that applies to a select committee shall, unless the context otherwise requires, apply to a Government Caucus Committee as if it were a select committee.*

*(6) A Government Caucus Committee may elect a Minister to act as Chairman pro tempore in the absence of the Prime Minister.*

*(7) The first Government Caucus Committee shall be dissolved with Parliament is dissolved. Each subsequent Government Caucus Committee comes into being immediately after the completion of the proceedings specified in Order 5 following a general election, and shall similarly be dissolved when Parliament is dissolved.*

*(8) The membership of a Government Caucus Committee changes in accordance with sub clause (2) when there is a change of Prime Minister or a change in the Members of Parliament supporting the Government.*

## Commentary

The key GCC features are:

- Chaired by the Prime Minister or another Minister and consists exclusively of government members
- Decides the business of parliament for each sitting day
- Decides the order of business for each sitting day subject to:
  - o Standing Orders 64-70 determining the Arrangement of Business; and
  - o What is termed the ‘power of the Speaker to determine which matters may properly be introduced in to Parliament’.

The power to allocate time for business is one of the key powers in parliament and parliaments have adopted different approaches to the management of time. In some, there is a committee made up of representatives of parties in parliament that is responsible for deciding the business on the Order Paper.<sup>72</sup> In other parliaments, the time may be split between the government and the backbenches.<sup>73</sup> The former has more potential for negotiation than the latter.

### ***B. Planning for the future***

The parliamentary landscape is constantly changing. Most parliaments have internal mechanisms responsible for ensuring that parliament is kept up to date with modern requirements and thus able to discharge its constitutional functions appropriately.

### ***Procedural matters: Standing Orders Committee***

On the procedural side of parliament, the main instrument for ensuring a modern parliament is a well-functioning, active Standing Orders Committee.

SO 360 enjoins the appointment of this committee ‘as soon as may be’ after the commencement of a new parliament. The committee is established by a motion moved by the government under SO 318. The Speaker chairs the committee and the other members are the Deputy Speaker (chair in the absence of the Speaker), Prime Minister, two Ministers, and two non-Ministers (quorum 4).

The function of the committee is to consider any amendment proposed in parliament to the *Standing Orders* by means of SO 112. SO 112 enables a member to draft and propose a change or changes and move a motion to seek parliament’s agreement which, if successful, triggers a referral to the committee. After such consideration the committee is to report to parliament. While not spelt out in SO 360, the report would presumably include any recommendation for change in the form of a draft standing order for consideration by parliament through a motion with notice moved by the Deputy Speaker or other MP on the committee.

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<sup>72</sup> The Parliamentary Bureau is chaired by the Presiding Officer, *Standing Orders of The Scottish Parliament* (4th ed.), 2014, 5.1, 5.2

<sup>73</sup> As in the UK House of Commons, for example, where the Backbench Business Committee allocates time on 35 days per session over which it has control, *Dods*, p. 10, 2.1.6 and 2.4.



## Commentary

The committee has no powers under SO 360 to initiate changes on its own initiative, and this might be considered restrictive. Under Section 26 of the *Legislative Service Act 1968-1969*, however, parliament's Legislative Service shall:

‘As the need arises and without limiting the powers of the Assembly, review the Standing Orders and submit reports to the Standing Select Committee on Standing Orders on any proposals for amendment or reform.’

As a matter of routine procedural housekeeping, it would seem sensible that the Service kept the *Standing Orders* under regular review and for the committee to be made aware of perceived problems. This appears to be the objective of the 1968-69 Act. The matter of resolving issues arising formally could be achieved through recourse to SO 112, if a revised, less restrictive remit for the committee was considered desirable.

## Background

Parliaments invest considerable routine efforts in keeping procedures up to date. For example, in the Session 2014-15 the Procedure Committee of the UK House of Commons - the UK equivalent of the Standing Orders Committee - published 7 reports. These covered subjects like motions, the consent of the Queen and Prince Charles (to the legislative process), 2 responses by government to committee reports on e-petitions and sittings in the subordinate chamber of the Commons, Westminster Hall, 22 volumes of written evidence (including on parliamentary questions, revisions to the Standing Orders, e-petitions, and motions), and 8 exchanges of correspondence with government, MPs, and others on matters like the allocation of time on the floor of the House.

Such routine work is in addition to one-off comprehensive investigations such as that of the Governance Committee in 2014 (HC 692).

## Administration of Parliament

Keeping the internal governance structures of parliament and the various roles and responsibilities of key officials there under review is also necessary to ensure operational modernity and value for money. Many parliaments have a formal management board with financial and other responsibilities chaired by the Speaker. Governance arrangements are often highly transparent.

While in the past it was commonplace for the Executive to have charge of the personnel and finance functions of parliament this has changed recently and in line with Commonwealth Parliamentary Association (CPA) guidelines:

‘Given that one of the key purposes of Parliament is to hold the executive to account, there is a compelling argument that Parliament should be able to discharge its constitutional responsibilities free from government interference. The drive for independence should not be seen as an aggressive action, but a necessary prerequisite to good parliamentary governance. Also operational autonomy should not act as a barrier to the fostering of

good relations with the executive, which is essential if legislation and public sector policies are to be fit for purpose.<sup>74</sup>

While there is no ‘one size fits all’ arrangement here, there is a compelling logic to the CPA case. Several parliaments are in the process of examining how what is termed ‘functional autonomy’, that is parliament having control over its staffing and budget, may be implemented. Many more already have this in place.

Increasing self-governance has brought the requirement for professional comprehensive planning processes and the implementation of strategic planning such as is now seen in parliaments and assemblies of all sizes, including Bougainville, Solomon Islands, Scotland, UK, New Zealand and the Australian parliaments. The Business Planning process already in place is an excellent basis on which to examine what more might be done.

## **Gender**

We are fortunate to have not only 4 women MPs (17% of the membership), one of whom is Leader of the Opposition, but also a woman as the Speaker of Parliament. However, there are only slightly more men than women (100.1 men per 100 women) in the Cook Islands so there is still some way to go before there is fair gender representation. The face of the country as represented in parliament should demonstrate equal representation. Disappointingly, the number of women candidates for parliament fell from 10 in the 2010 general election to 7 in 2014.<sup>75</sup>

Parliament is an institution for the people of the country as a whole and so in all its work - legislation, consideration of policy, select committee inquiries - parliament needs to take account of the concerns and needs of women equally with men by virtue of Article 64 of the *Constitution*. Parliament should be a focus for work within the international framework for gender equality.<sup>76</sup>

There are many ways for parliament to pursue this goal. For example, Bills might routinely contain gender impact assessments building on the present requirements of Standing Order 220. This is a matter for executive government action in respect of Public Bills but could be made mandatory by parliament. Select committees could ensure that when reaching conclusions on inquiry matters, the views and voices of women are heard and taken equally into account with those of men as a matter of habit and routine. Consideration might be given to a change to the *Standing Orders* reflecting a general requirement to balance the interests of the sexes through parliament’s work.

## **Reaching out: parliament in the public space**


The key measure of a parliament’s effectiveness is the degree to which it fulfills its constitutional functions. It is not a world apart but a service for the citizen just as much as law and order, justice, and health.

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<sup>74</sup> ‘Administration and Financing of Parliament’, Commonwealth Parliamentary Association, 2005, p. 2

<sup>75</sup> Government of the Cook Islands and Secretariat of the Pacific Community, *Cook Islands 2012 Gender Profile*, (January 2015), pp.6, 47.

<sup>76</sup> Op cit, p.46; for Cook Islands accession in 2006 to the *Convention on the Elimination of All Forms of Discrimination Against Women*, see, Forster, C. *Advancing the Implementation of CEDAW in the Cook Islands: Good Practice Approaches to Civil Family Law* (UNDP Pacific Centre, 2011), p. 29, 1.5.



Beyond the letter of the constitution, however, there is an expectation that a modern parliament will reach out to citizens and actively seek to involve them in parliamentary life. This is a natural outgrowth of the evolving relationship between parliaments and electors. Parliament is not the passive seat of government; but an equal partner with government in national governance.

There are a number of innovative ways in which the involvement of the public may be harnessed and increased:

- Imaginative programs led by select committees whose work is particularly amenable to public involvement. Public hearings held in the course of the committee's core work on oversight of government departments, policy and draft legislation are the most obvious examples. Others may include informal meetings and forums led by the committee on subjects within its remit which can engage the people and help carry forward the national dialogue on important subjects.
- Many parliaments invest in outreach and inward visit programs, frequently led by the Speaker, through which parliament's relationship with the people can be explored and developed, particularly through the involvement of young people. Such programs are increasingly considered an essential part of parliamentary life and help maintain parliament's vigor and relevance to the life of the country and its relationship with present and future electors.
- Parliament is our place of national assembly and its precincts should be available to the people, always taking care to preserve its dignity and to give precedence to its constitutional functions. Therefore, we shall:
  - o Continue to hold Women's Mock Parliaments in partnership with the Cook Islands National Council of Women.
  - o Review our communications strategy, including visits to schools, seminars for older students on parliament, the production of pamphlets explaining key aspects of parliament, join the Education Careers Exhibition, seek out opportunities in mainstream media – newspapers, radio, and television – to ensure every practical opportunity is taken to explain the importance of parliament for our democracy.
  - o Review our parliament strategy to ensure that our administration is as efficient and effective as possible and provides value for money.
  - o Review our operating guidelines for the core business of parliament – the *Standing Orders* – to ensure that these are fit for purpose in the 21st century.

# Annex 1

## Digest of Parliamentary Terms

**Act of Parliament:** When a Bill has received Royal Assent it becomes an Act of Parliament and has the force of law.

**Adjournment of meetings:** between sessions (see *Session*) parliament may adjourn for such periods as it sees fit.

**Adjournment motion:** technically a motion moved for the purpose of bringing a sitting of parliament to a conclusion; now used as a procedural means of enabling a general debate.

**Adjournment sine die ('without limit of time'):** parliament adjourns without having set the date and time for the next meeting triggering a summons by the Queen's Representative (Standing Order 52).

**Ambit:** see Bill.

**Amendment:** a proposal to alter a Bill or change a motion.

**Assent:** the agreement of the Queen's Representative to a Bill (Article 44, Constitution).

**Backbencher:** a Member who holds no official position in her/his party i.e. is not a Minister or an Opposition opposite number.

**Bill:** a proposal for legislation (a draft Act).

- o **Long title** (if used) – the description of the Bill that follows it. The ambit of a Bill is its scope.

- o **Short title** – the title by which a Bill is known.

**By-election:** election in a single constituency to fill a vacancy caused by the death, resignation or disqualification of the Member.

**Clause:** a part of a Bill.

**Clerk of Parliament:** parliament's record keeper and principal procedural advisor on parliamentary law, practice and procedure.


**Code of Conduct for Members:** Part XLV of the *Standing Orders of the Parliament of the Cook Islands*.

**Constituency:** one of the geographical divisions of the country, each one of which elects a Member.

**Dissolution:** the ending of a parliament by the Queen's Representative at the expiry of 4 years from the previous general election, or otherwise by him or her under the terms of Article 37(3) of the *Constitution*.

**Division:** the means by which parliament or a committee determines those Members for and those against a proposition.





**Estimates:** the form in which the executive government presents its requests to parliament for resources required for recurrent expenditure.

**Frontbencher:** a Minister or her or his opposite number.

**General election:** triggered by the dissolution of parliament in which all seats in parliament are vacated and elections held in every constituency for a new Member.

**Government Bill:** a Public Bill introduced to parliament by a Minister.

**Hansard:** the Official Record of parliament setting out a near verbatim record of proceedings.

**Member:** Member of Parliament, or MP.

**Member in charge:** the Member who introduces a Bill to parliament. A Minister introducing a government Bill is technically Member in charge but is described for the purpose as Minister.

**Money Bill:** a Bill concerned with raising or spending public money.

**Order:** (1) a reference to the *Standing Orders*; (2) on parliament agreeing to the question put on a motion it becomes an 'order' of parliament, hence the *Standing Orders*.

**Order paper:** the paper produced each sitting day by the Clerk listing the business before parliament (the agenda of parliament).

**Paper:** a written document which may be laid on the Table or deposited with the office of the Clerk in accordance with Standing Orders in Part XVIII and Standing Order 64.

**Parliamentary Question:** a question addressed to a Minister or Member orally or in writing.

**Point of Order:** a request by a Member to the chair for clarification of procedure.

**Plenary:** meeting of parliament in the chamber of Parliament House.

**Prerogative:** actions that can be taken by the executive without sanction of parliament e.g. making of treaties with foreign governments.

**Privilege:** a right or legal protection enjoyed by parliament collectively and/or its Members individually for the purposes of discharging their parliamentary duties.

**Prorogation:** the end of a session not ended by dissolution.

**Question:** when capitalized, indicates a proposition before parliament for decision.

**Schedule:** detailed provisions expanding provisions set out in the clause or clauses of a Bill. For example, the *Cook Islands Constitution* comprises the Schedule to the *Constitution of the Cook Islands Act 1964 (N.Z.)*

**Section:** part of an Act.

**Session:** the period of parliament's sitting up to when it is prorogued or dissolved.

**Select committee:** a committee comprising Members 'selected' for a specific purpose.



**Sitting:** a single meeting of parliament or a committee ended by adjournment.

**Sitting Day** – a day on which parliament sits.

**Speaker:** the impartial presiding officer of parliament.

**Standing Orders:** the rules set by parliament to regulate its proceedings.

**Table:** the desk in front of the Speaker's seat in the chamber of parliament on which papers may be 'tabled' when parliament is sitting. When parliament is not sitting, papers for 'tabling' are deposited in the office of the Clerk.

**Westminster system of government:** modeled on the Parliament of the United Kingdom at Westminster in which, crucially, the government are Members of the legislature.

## Annex 2

### List of Key Reference Documents

- o Constitution of the Cook Islands Act 1964 (N.Z.)*
- o Cook Islands Constitution (with amendments reprinted as at 2009)*
- o Legislative Assembly Powers and Privileges Act 1967*
- o Legislative Service Act 1968-69 No.29*
- o Legislative Service Amendment Act 1992-93 No.18*
- o Joint Centenary Declaration of Principle between New Zealand and the Cook Islands (11 June 2001)*
- o Electoral Act 2004 No.11*
- o Civil List Act 2005 No.14*
- o Civil List Amendment Act 2007 No.9*
- o Remuneration Tribunal (Queen's Representative and members of Parliament Salaries and Allowances) Order 2009*
- o Remuneration Tribunal (Queen's Representative and Members of Parliament Salaries and Allowances) Order 2010*
- o Remuneration (Speaker's Salary and Allowances) Amendment Order 2013*
- o Standing Orders of the Parliament of the Cook Islands (n.d.)*
- o Family Law Bill 2014*

## Annex 3

### Report of MPs seminar: Parliament House October 2015

**Parliament of the Cook Islands**  
**Report on a Seminar for Members of Parliament**  
**5th – 7th October 2015**

#### ***Summary***

1. A highly successful procedural seminar chaired by the Hon Rose Brown MP, Deputy Speaker, was held in the Chamber of Parliament from 5th to 7th October to assist new and returning Members.

2. The seminar was organized by the UNDP and was designed to coincide with a visit by the President of the Legislative Council and the Speaker of the Legislative Assembly and senior staff of the Parliament of Western Australia, Cook Islands Parliament's twinning partner<sup>77</sup> In addition to those from Western Australia, who took a full part in presenting throughout, the seminar benefitted from the contributions of two New Zealand Parliament Members, one of whom is a Cook Islander. The UNDP's Parliamentary Development Specialist facilitated throughout. The seminar program (with presenters) appears in the Annex attached.

#### ***Seminar structure***

3. The seminar was designed as a basic introduction to the fundamentals of parliamentary life and was structured around five topics, each of which occupied one session of between 1.5 and 2 hours in length including time for lively Q and A, with the sixth and final session being devoted to a forward look to development opportunities for parliament:

- Cook Islands Governance System
- Key positions in Parliament
- Approving laws
- Oversight role of Parliament
- Representation and Ethics
- Improving the effectiveness of the Cook Islands Parliament

4. Snapshots summarizing the main features of each session are set out below.


#### ***Session 1: Cook Islands Governance System***<sup>78</sup>

5. The structure and nature of Cook Islands (CI) governance as an example of the 'Westminster

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<sup>77</sup> This seminar comprised Activity 1.1 of Output 1 (Capacity of Members of Parliament to fulfill their roles increased of the UNDP's *Support to the Pacific Parliamentary Development Project – Initiation Plan* (SPPDP – IP).

<sup>78</sup> Power point presentation distributed to participants.



system' was reviewed as laid out in the *Constitution*. The Cook Islands relationship with New Zealand was introduced. The separation of powers and the roles of legislature, judiciary, and executive were noted together with the powers of the Queen's Representative. The nature of parliamentary sovereignty as set out in Article 27 of the *Constitution* was discussed. The constitutional provisions designing the Cook Islands Parliament were reviewed. Presentations followed illuminating the topics raised by reference to the Western Australian jurisdiction, covering the use of standing orders of parliaments, and drawing comparisons between the bicameral Western Australian and the unicameral Cook Islands and New Zealand parliaments.

### **Session 2: Key positions in parliament**

6. This session was aimed at introducing the ways in which key players contributed to parliamentary life and how their different roles interacted with each other to establish a stable structure for parliament designed to enable it to pursue its core functions of legislation, oversight and representation. The President and Speaker shared their experience leading the Council and the Assembly respectively. This was followed up by an introduction to the role of the officials of parliament complementing that of elected members. The way in which the system of democratic parties fitted into the institutional framework of parliament was touched on through a discussion of the functions of caucus and party whips. Finally, the extraordinary variety of a backbench MP's life was set out in a way that illuminated the importance of the MP's function of connecting the institution of parliament and the party with the daily lives of the electorate.

### **Session 3: Approving laws**<sup>79</sup>

7. This session was aimed at describing the law making process and relating that process to specific provisions of the *Constitution* and the *Standing Orders of the Cook Islands Parliament*. The design of the CI system as a variety of the Westminster process was noted, as were the different main categories of Bills (i.e. Public, Private, Private Member's). The origin of the process by which policy results in a Bill was touched on, and the main stages that Bills require to undergo inside parliament were rehearsed. Special attention was given to the process of finance Bills in the Cook Islands and Western Australia due to the prominent place those have within the Cook Islands jurisdiction. The important role played by the committee system and citizens involvement in the legislative process was spelled out with reference to the New Zealand jurisdiction, and the opportunities for


Members to put forward their own legislative proposals was illuminated by reference to Western Australia.

### **Session 4: Oversight role of parliament**

8. The critical importance of oversight by parliament of government was the theme of this session, a concept that is not specifically spelt out in the parliamentary provisions of the *Constitution*. The rationale for parliamentary oversight in holding the government to account and thereby

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<sup>79</sup> Power point presentation distributed to participants.



improving governance for citizens was illuminated through the direct experience of presenters in their jurisdictions. The role of the various main techniques through which parliaments enable Members to perform their oversight functions were explored comparatively: specialized committee inquiries, written questions to Ministers, oral questions to Ministers – in particular the often rumbustious Prime Ministers Question Time a regular, if controversial, feature of the weekly parliamentary calendar; the detailed scrutiny of government legislation, and the special importance of the scrutiny of government finance in concert with the Auditor General function. The importance to citizens' sense of being connected directly to government by having access to a system of petitions in which, through parliamentary representatives, local concerns could be brought to government was discussed.

### **Session 5: Representation and Ethics**

**9.** The complexities of MPs' representational functions were drawn out by a discussion of the different 'levels' at which representation operated: international, national, constituency, party, individual citizen. The vital importance generally to good governance of an MP representing all those for whom she or he were responsible, and not only those who had supported their election was stressed. Representation involved MPs maintaining a variety of strong links to all parts of government and civil society in order to intervene effectively in cases brought to them by constituents. MPs' international and national representational duties were as important as their local work because the interconnectedness of the world community meant that decisions made on those levels often had strong local impacts.

**10.** The President and Speaker drew out the fundamental importance of integrity and an appreciation of ethical behavior to Members' effectiveness. Members could not operate well if their reputations were at risk. Charting an ethical course relied on published codes of behavior and conduct to guide and protect Members though these were sometimes over-complex; but it also rested on the innate moral sense of the Member. The privileges enjoyed by parliamentarians in the course of their duties (e.g. freedom of speech and protection from arrest) were summarized, and a draft Cook Islands *Code of Conduct for members of Parliament*, commissioned by parliament earlier in the year, was presented and distributed.

### **Session 6: Improving the effectiveness of the Cook Islands Parliament**

**11.** This was a wide-ranging wrap up session in which several matters arose.

**12.** The general feeling was that improvements were required to enhance parliament's effectiveness, in particular in respect of supporting new Members in understanding and developing their basic roles and responsibilities. The *Parliamentary Handbook*, commissioned recently by parliament from the UNDP, was expected to play a role in improving this aspect of Members' work. A mentoring system for new Members was suggested also.

**13.** Members raised the relative shortness of the occasions on which parliament sat, the need for select committees to work effectively, the absence of advice on practical matters such as how to





draw up a motion. Reports were tabled in parliament but there appeared often to be too little time to debate them.

**14.** One of the strongest pleas was for more time for Members to contribute meaningfully within the legislative making process, especially as it applied to the annual *Appropriation Bill*. If Members received draft legislation and other papers with insufficient time to read and understand them then parliament could not perform its function of adding value through scrutiny of proposals and oversight generally.

**15.** The state of the current *Standing Orders* was also a feature of discussion with a view that the clarity of the present text could be improved and updating was needed. Procedural support for MPs required to be strengthened, and this was related, in turn, to the ability of MPs to realize the legitimate role and powers of parliament.

**16.** The importance of a parliamentary program or calendar was raised, as was MPs having administrative support for their work, and parliament having a modern building from which to operate for both practical and presentational reasons.

**17.** Members strongly supported the idea of a workshop similar to the Seminar a week prior to each sitting of parliament to refresh and refocus in preparation for the work ahead.

### ***Attendance and participation***

**18.** Attendance at the Seminar by Members of Parliament (out of a total possible of 24 Members of Parliament):

- 5 October: 14 Members.
- 6 October: 15 Members.
- 7 October: 14 Members.

Members were highly motivated and participated fully in every session.

### ***Evaluation: quantitative***

**19.** 10 Members completed the evaluation sheets distributed. **All Members gave the Seminar the highest ratings in the 3 categories tested:**

- Usefulness ('very useful')
- Quality and expertise of the presenters ('very good')
- Content ('very relevant')

### ***Evaluation: comments***

**20.** Members' comments to the 2 questions on the Evaluation Form demonstrated the urgency of their wish to improve and develop their own professional skills and parliament's position generally. Here is a small selection:



*Q1: For future seminars for Members of Parliament, which topics would you like to cover?*

- 'A transparent way of dealing with Bills in Parliament and also a easy way of understanding Standing Orders.'
- 'Parliamentary process, motions, detailed analysis [from] start to finish of a Bill...'
- 'Rules of debating'
- The formation of select committees and role and functions and responsibilities.'

*Q2: Any other comments on the seminar or future possible UNDP support to Parliament?*

- 'Repetition is the key to our learning, in the absence of sittings having regular workshops will assist members to up-skill themselves in all facets of their responsibilities.'
- 'Very educational needs more seminars...'
- 'More training seminars.'
- 'Providing technical development training for PAC [Public Accounts Committee] committee.'