

Officials and Select Committees – Guidelines

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Contents

Executive Summary	3
Introduction: The Role of Select Committees	4
Application of these Guidelines	4
Officials and Select Committees: General Principles	5
Officials as Witnesses	6
Departmental officials	6
Officials in the wider State Sector	7
The Provision of Information to Committees	7
Private or Secret Evidence	9
Officials as Advisers	10
Members', Private and Local Bills	11
Attendance by Ministers and the Role of Officials	12
Contempt of the House	12
Misleading a Committee	12
Objections to Answering Questions	13
Threatening or disadvantaging a witness or adviser	13
Access to Counsel	14
Correction of Evidence	14
Natural Justice	14
Financial Veto	14
Attendance in a Personal Capacity	14
Appendix 1 - Natural Justice	15
Alleged Criminal Activity	15
People Whose Reputation May be Seriously Damaged by Committee Proceedings	15
Witnesses	16
Appendix 2 Further References	17

Executive Summary

These Guidelines apply to members, office holders, and committee members in Crown entities and State-owned enterprises, as well as to public servants and personnel in other agencies comprising the State Sector.¹

Select committees have considerable powers at their disposal to summons witnesses and require the production of information. Officials from within the State Sector may be called upon to attend select committees as witnesses (in relation to the Estimates, financial review, petitions or inquiries), or as advisers (the usual position in relation to bills).

The House of Representatives must get free and frank answers and evidence from those who appear before its committees.

Parliamentary proceedings are subject to absolute privilege, to ensure that those participating in them, including witnesses before select committees, can do so without fear of external consequences.

In addition, officials must operate within the framework of accountability to Ministers who are in turn accountable to the House. As a result, there is sometimes a tension between the absolute privilege of the House on the one hand, and the accountability of agency personnel in the State Sector to Ministers on the other.

Pressure must not be placed on those appearing before a select committee, in order to deter them from giving advice or evidence, nor should action be taken against them as a direct consequence of their giving evidence. Conduct in breach of this rule could lead to punishment by the House for contempt.

However, officials from State Sector agencies appear before select committees in support of Ministerial accountability, and their conduct must be consistent with this. Therefore, at a minimum, they have an obligation to manage risks and spring no surprises on the Minister. This is the case even when officials appear on matters which do not involve Ministerial accountability, such as when they exercise an independent statutory responsibility or appear in a personal capacity.

Public service departments must remember that they cannot make a submission on a bill without the specific approval of the Cabinet Legislation Committee. In the case of officials from agencies in the wider State Sector, who wish (or are invited) to make a submission to a select committee on any matter, they are expected to discuss the matter first with the responsible Minister.²

Responsibility for justifying Government policy, explaining how it was developed, or commenting on alternative policy proposals, ultimately rests with Ministers.

¹ The public service departments are listed on the First Schedule of the State Sector Act 1988. The term “State Sector agency” broadly refers to central government agencies which are either owned or controlled by the Crown through Ministers (often referred to as the agency’s appropriate, responsible, or shareholding Minister).

² *Cabinet Manual* 5.74.

Introduction: The Role of Select Committees

- 1 These Guidelines are concerned with the attendance and conduct of officials before select committees. Select committees are key parliamentary institutions with which public servants and those working in the wider State Sector have contact. The committees undertake detailed work on a range of different matters on behalf of the House, and report their findings to it. Their work includes:
 - The detailed scrutiny of bills (except appropriation and imprest supply bills, and those considered under urgency);
 - Examination of the Estimates;
 - The review of departmental and agency performance;
 - International treaty examinations;
 - Petitions; and
 - Conducting inquiries.
- 2 Some select committees have specialised functions in addition to, or instead of those listed above. Examples include the Regulations Review, Officers of Parliament, Finance and Expenditure, Privileges and Standing Orders Committees.³ The House may establish other committees in addition to these if it wishes.
- 3 The House of Representatives has considerable powers of inquiry, including the ability to send for "persons, papers and records".
- 4 Committee membership is drawn from Government and Opposition members of the House of Representatives. Ministers are not normally appointed to Select Committees. The Government does not necessarily have a majority of members on every committee.
- 5 These Guidelines have been revised in response to the recommendations in the Privileges Committee report: Question of Privilege on the Action Taken by TVNZ in relation to its Chief Executive, Following Evidence He Gave to the Finance and Expenditure Committee (October 2006).⁴ The Privileges Committee recommended that the State Services Commission should provide guidance to the boards of Crown entities and State enterprises on their responsibilities to and relationships with Parliament, and that the SSC Guidelines should be revised regarding witnesses who appear before select committees.

Application of these Guidelines

- 6 The previous Guidelines issued by the State Services Commission primarily applied to public servants, with some brief additional material for those working in the wider State Sector who less commonly attend select committees. In these revised Guidelines, the term "officials" refers to both public servants and personnel in agencies in the wider State Sector, unless the specific context indicates otherwise.⁵ For present purposes, "officials" includes board members, office holders, and employees of Crown entities and State owned enterprises. The Guidelines will also be applicable to officials in non public service departments such as the New Zealand Police, as well as being relevant to a diverse range of other agencies in the State Sector.

³ Standing Orders 197 – 199.

⁴ *Public Servants and Select Committees – Guidelines (SSC, 2004)*

⁵ Public service departments are listed in the First Schedule of the State Sector Act 1988. The Crown Entities Act 2004 defines "official" as including members, office holders and employees of Crown entities (s 135).

Officials and Select Committees: General Principles

- 7 Officials appearing before select committees should be alert to the environment in which they operate, particularly the parliamentary environment. Parliament expects, and is entitled to receive, full and honest answers and evidence from those who appear before its select committees.
- 8 Public servants serve the Government of the day, within the framework of the law. Public service chief executives are responsible to the Minister for carrying out the functions of their departments, advising their Minister and other Ministers, and for the general conduct and efficient, effective, and economical management of their Departments (State Sector Act 1988, s 32). Ministers, in turn, are accountable to the House for Government policy and the activity of departments for which they are responsible.
- 9 Officials appearing before a select committee on behalf of a State Sector agency do so in support of Ministerial accountability. They are ultimately answerable to the Minister of the agency, who is in turn accountable to the House for the operations of the agency. Within this accountability framework, the precise relationship between the Minister and the official may vary depending on the type of State Sector agency the official works in, and its enabling Act or constitution.⁶
- 10 In the wider State Sector, the most regular contact agencies have with committees is for financial reviews, inquiries, and occasionally as submitters on bills. The agency's specific obligations to its Minister may depend partly on its enabling legislation or constitution, and partly on convention. Some agencies may be legally responsible for carrying out the functions and powers, distinct from the Crown. In some cases they may be expressly required to carry out these independently of Ministers (eg, Independent Crown entities). Nevertheless, they are generally accountable to a Minister for their operations and performance.
- 11 Officials appearing before select committees have an obligation to manage risks and spring no surprises on the Minister. This is the case even when they appear on matters which do not involve Ministerial accountability, such as when they exercise an independent statutory responsibility or appear in a personal capacity.
- 12 Requests from select committees for officials to provide services, particularly when these fall outside the usual cycle of business between agencies and select committees, should be reported to the Minister, and undertaken only with the Minister's approval.
- 13 Officials must act responsibly and in good faith in relation to select committees, and answer questions truthfully and to the best of their ability. Officials should assist committees by providing complete and accurate information, although the provision of information may be subject to the restrictions discussed in more detail in paragraphs 24 to 34 below. Information should be provided in accordance with the Official Information Act 1982 principle that information shall be released unless there are good reasons for withholding it. However, the OIA does not formally constrain the powers of the House.
- 14 Officials are not ultimately responsible for the release of information to select committees - that is the Minister's responsibility.⁷ Responsibility for justifying Government policy, explaining how it was developed, or commenting on alternative policy proposals, also ultimately rests with Ministers. Officials should not comment on

⁶ Under s 3 of the Crown Entities Act 2004, for example, accountability relationships "between Crown entities, their board members, their responsible Ministers on behalf of the Crown, and the House of Representatives" are recognised.

⁷ Note that, in the case of written answers to financial review questions which are addressed to a chairperson or chief executive of an agency, they should be responded to by that person.

these issues to a select committee unless they have explicit Ministerial approval to do so, or when making such comment clearly comes within their own specific statutory functions or role. In other circumstances, the committee's leave should be sought to obtain the Minister's permission to comment. If, however, a witness has made previous public statements on matters of Government policy, a committee may expect an answer to a question about such statements.

- 15 Officials may be called upon to appear before select committees as witnesses (in relation to the Estimates, financial review, petitions or inquiries), or as advisers (the usual position in relation to bills). Ministers expect that when a select committee is seeking the assistance of officials in relation to a bill it should seek them as advisers and not witnesses. Generally speaking, officials should not appear as both witnesses and advisers on the same matter.
- 16 All officials appearing before a select committee on behalf of a State Sector agency must have sufficient experience and knowledge to satisfy the committee's requirements, within the boundaries set by Ministerial accountability, and must be thoroughly prepared for hearings.
- 17 Departments must also remember that they cannot make a submission on a bill without the specific approval of the Cabinet Legislation Committee. This requirement does not apply when departmental officials provide a report on a bill for which they have been advisers to a select committee. In that situation, officials should advise the Minister in advance of the content of the report. Nor does the requirement apply if an official is acting in a personal capacity (see para 67).
- 18 Representatives from agencies in the wider State Sector who wish (or are invited) to make a submission to a select committee on a bill on behalf of their agency are expected to discuss the matter with their responsible Minister.⁸

Officials as Witnesses

- 19 Officials appear each year as witnesses before committees considering the Estimates, and again to review departmental and other agencies' performance.⁹ They may also be required to appear in other contexts such as inquiries initiated by committees or briefings requested from them.¹⁰ Officials as witnesses will appear in public hearings, where the media is also often present, unless the committee agrees to hear evidence in private or secret (see paragraphs 35-37).¹¹

Departmental officials

- 20 In appearing as witnesses public servants are acting on behalf of their Minister, and assist the Minister to fulfil accountability obligations to the House. Ministers are therefore responsible for the statements made and answers given on their behalf. The Minister ultimately has the right to decide who should represent the Government before a select committee, whether or not a committee has requested attendance of a named official. In practice, the departmental chief executive or his or her delegate will normally judge when it is necessary to consult the Minister, in the absence of any direction from the Minister. Committees normally expect chief executives to appear in person for the Estimates and financial reviews, supported by other staff as necessary.

⁸ *Cabinet Manual* 5.74.

⁹ Standing Orders 336, 337, 340, 342, 343.

¹⁰ Standing Order 191.

¹¹ Standing Orders 220, 221, 224.

- 21 Departmental officials should consult the Minister before a hearing, keeping him or her informed of any significant matters which arise or are likely to do so. In particular, they are expected to immediately notify the appropriate Ministers (through their own Minister), during consideration of the Estimates, of proposals to change the composition of a Vote. Officials should not comment on any such proposal, beyond the technical point that the proposal may have an impact on the fiscal aggregates, requiring Ministerial consideration of the financial veto (see para 66).

Officials in the wider State Sector

- 22 When employees, office holders, and board members in the wider State Sector appear as witnesses, the lines of accountability to the Minister are not generally as direct as with public servants. Nevertheless, a “no surprises” relationship with the Minister must be maintained. At a minimum, Ministers should be kept informed of matters affecting their areas of responsibility, including advance notification of select committee attendances by specific officials. This practice will assist in ensuring that risks are managed and surprises are avoided.
- 23 Enabling Acts or conventions may sometimes provide that agencies in the wider State Sector have other obligations to Ministers. These can arise from Government policy directions authorised by an Act, or from the statement of intent or statement of corporate intent of the particular agency. Some Crown entities, for example, are required to give effect to Ministerial policy directions – namely, Crown agents. This requirement will apply to the content of evidence officials from Crown agents give to select committees.

The Provision of Information to Committees

- 24 Often officials appearing as witnesses provide committees with written material which forms the basis for oral evidence. This material should be cleared at an appropriate level in the administering department or agency and, if necessary, with the Minister.¹²
- 25 Requests from committees must be relevant. The Standing Orders Committee has noted that a committee should ensure that its “inquiries are well focused and do not waste the time or resources of the departments which fall within its jurisdiction”.¹³ If there is a significant or unreasonable cost associated with providing information requested by a committee, it is open to officials to inform the committee of the anticipated costs. This may prompt the committee to revise its request although, if it does not, a request for information held by the agency must be complied with. A committee cannot require officials to undertake new research or analysis, however, since the power to call for papers and records relates to existing material.
- 26 Officials should provide full and accurate information to committees. However, there are some limits to the information which officials may provide to committees. These limitations exist for a variety of reasons. They may apply because certain issues (especially matters of policy) should be reserved for comment by Ministers. Or they may apply to maintain constitutional conventions on giving advice, or because there is a public interest in not having certain types of information made public (such as commercially sensitive information).
- 27 A useful starting point for officials is to apply the criteria in the Official Information Act 1982 on whether information should be made available. Information which would be released under the Act should be provided to select committees on request (albeit with

¹² Committees receive a great deal of information from officials as a matter of course through such mechanisms as annual reports. Parliament also has considerable powers to call for persons, papers and records.

¹³ Report of the Standing Orders Committee On the Review of Standing Orders, 1995, (L18A) p39.

reference to the Minister in sensitive cases or to otherwise comply with the “no surprises” convention).

28 Officials should be clear that, although it is a useful guide, the Official Information Act does not formally constrain the powers of the House. Officials should never refuse to provide information to committees as if the Act does bind the House. Rather, the Act contains an accepted set of interests which may warrant the protection of information (ss 6, 7 and 9) and these are relevant in discussions with committees about their information requests. These include:

- Protecting the security of New Zealand, or the international relations of the Government of New Zealand (including information given in confidence to the Government by governments of other countries);
- Protecting the maintenance of the law;
- Avoiding endangering the safety of any person;
- Preventing serious damage to the economy of New Zealand;
- Protecting the privacy of individuals;
- Protecting commercially sensitive information;
- Protecting information that is subject to legal privilege; and
- Maintaining constitutional conventions relating to the confidentiality of advice, Ministerial responsibility and the political neutrality of officials.

29 Separately from the Official Information Act 1982, a number of conventions have been developed that should be considered before responding to a committee's requests for information. These conventions do not constrain the House's ability to require information to be produced, and will not necessarily bind a committee. The main ones are:

- Ministerial approval should be sought before providing information on the policies, administration and expenditure of a previous administration;
- Cabinet papers should be treated as confidential to the Government. Ministerial approval should be sought before such papers are released to a committee, unless officials are aware that they are already in the public domain. The proceedings of Cabinet or its committees should not ordinarily be divulged;
- Committees have accepted that it may be inappropriate to require the public disclosure of commercially sensitive information;
- Committees have not normally insisted on the presentation in public of information where this would infringe upon the privacy of individuals or of individual bodies, particularly when that information has been given in confidence; and
- Officials are entitled to refuse to disclose opinion or advice given to Ministers without the agreement of the Minister (see para 33 below on seeking leave).

30 Specific restrictions on the disclosure of information contained in particular statutes may also constrain release of such information. Legal advice may need to be sought before responding to a committee in these circumstances. Further, a department proposing to supply a committee with information which relates to another department must first inform that department. When a question is more appropriately addressed to another agency, officials should say so. These are good yardsticks for agencies in the wider State Sector to follow as well.

- 31 In general, committees tend to rely on informal requests for information or attendance, rather than using powers to send for persons, papers and records. This is consistent with the Government's expectation that officials will be as helpful as possible to committees.
- 32 Officials should endeavour to work in a responsive and cooperative way with select committees, meeting the committee's information requests. When there is a legitimate concern about providing requested information to a committee, the concern should be raised with the committee, as it may agree to the official providing the information in a different form. For example, when a committee requests legally privileged information, it may agree to the information being provided in a summary form.
- 33 It is ultimately a Ministerial decision whether to decline to release information within their areas of responsibility. When officials are asked for information they believe should not be released, they should seek leave to obtain the Minister's view on the issue, rather than refuse to answer the committee.
- 34 If an official or Minister refuses to provide information sought by a committee, the committee will consider whether to pursue the matter. A refusal is likely to be regarded seriously.¹⁴ Although select committees do not have the power to punish people who do not satisfy such requests, the House may, after deliberation, require the Minister to produce the information. If the Minister continues to refuse to supply the information, it is open to the House to censure or punish the Minister. This would be a very extreme step which the House is unlikely to contemplate lightly. It would be very unusual for matters to get to this point. It is possible for the House to extend any punishment to officials as well, although the convention of Ministerial responsibility makes this unlikely.

Private or Secret Evidence

- 35 Committees are able to receive evidence in private or secret sessions, and may be willing to do so if the Minister is reluctant to have information publicly disclosed.¹⁵ It is important, however, to clarify the status of any information provided before it is made available to the committee. Evidence provided in private is confidential to the committee until it reports to the House, but subsequently will be publicly available.
- 36 A select committee may declare evidence that it is to receive to be secret evidence. This can only be done by leave of the committee, and in anticipation of receiving the evidence. Committees may take this step if they consider the evidence can be obtained only if they assure the witness or person in possession of the information that it will remain confidential to the committee. Secret evidence might also be an option for a committee to protect a person's reputation. The rules of natural justice may be applied to such evidence.¹⁶ Secret evidence passes into the custody of the Clerk and can only be released by order of the House. The secrecy also binds the person who supplies the evidence. Committees are not likely to hear evidence in secret without good reason.

¹⁴ The Commerce Committee's 2004 report on TVNZ's accountability to Parliament illustrates this. The Committee said: "We believe the matters discussed in this report strike at the heart of the role and function of Parliament. Parliament is ultimately responsible for the expenditure of public monies. For this reason, those departments and other government agencies, charged with the expenditure of public monies, are accountable to Parliament for that expenditure. Their appearance before a select committee for financial review is the hard reality of that accountability. Any attempt to limit or withhold information from a select committee, such as outlined in this report, both lessens that accountability and Parliament's ability to fulfil its responsibility to scrutinise expenditure of public money and is therefore unacceptable to us." <http://www.parliament.nz/en-NZ/SC/Reports>.

¹⁵ Standing Orders 220 – 222.

¹⁶ Standing Orders 236, 239.

37 Classes of evidence that might justify privacy or secrecy include industrial secrets, classified information, self incriminating evidence, matters sub judice,¹⁷ and matters for which a Minister may claim public interest immunity. Serious allegations against third parties may also justify privacy or secrecy, although evidence containing allegations against third parties may be made available to the people concerned.

Officials as Advisers

38 Officials, generally public servants, may be called upon to appear before select committees as witnesses or as advisers. This is usually in relation to bills, though they may also assist a select committee in its inquiries. Public servants from the department of the Minister in charge of a bill frequently act as advisers to a select committee. They assist the committee by providing information about the draft legislation and issues associated with its implementation, commenting on evidence received by the committee, producing departmental reports on submissions, and making recommendations for amendments.

39 Officials sometimes assist with negotiations between the Minister and the committee chairperson on the detailed content of the bill. It is up to the select committee whether it seeks to use officials as advisers, or treats them as witnesses (but see para 15). It may also seek advice from other sources to supplement advice received from officials.

40 It is open to committees to seek advice from officials who are members, employees, or office holders in the wider State Sector, whether on bills or inquiries undertaken by the committees.¹⁸ Potentially committees could rely extensively on other sources of advice for bills rather than on public servants. When officials in the wider State Sector are used they may simply be another source of advice, used in a similar way to public servants. In the event that public servants are invited to comment on or respond to that advice, they may comment on the technical or operational implications of proposals, but on matters of policy should be guided by the general principles concerning commenting on policy set out in paragraph 20 above.

41 A select committee may seek the assistance of officials, including their attendance at any meeting of the committee to assist in its consideration of any matter.¹⁹ Acting as an adviser to a select committee does not change the duties of an official to the Minister and the Government. Ministers are accountable for matters within their portfolios. Therefore, it is ultimately up to the Minister to decide whether officials will be made available as advisers, the form any assistance will take (including what limits there may be to that assistance), and which of them should attend. In practice, the Minister may leave these decisions to the departmental chief executive, or board chairperson. If there are any limitations placed on the involvement of officials these should be made clear to the committee.

42 Officials appearing as advisers on a bill should be clear from the outset about the Minister's position on the bill. They should also be clear on the extent to which there may be latitude in this position, so that they can work constructively with the committee. They must keep their Minister well informed about a select committee's consideration of a bill, and if uncertain about Government policy should seek clarification from their Minister. When an official is uncertain about the Government's view he or she should avoid committing the department, other agency, or the Minister. The Minister may wish

¹⁷ Awaiting judicial decision.

¹⁸ Standing Order 213-214.

¹⁹ Standing Order 212-213.

the official acting as an adviser to a committee to relay the Minister's views to that committee.

- 43 In most cases the bills on which officials act as advisers are Government bills, which means that the Government policy on the bill is reasonably clear. If a committee requires assistance with amendments to a bill which clearly go beyond Government policy, officials should clarify with their Minister the role that they are to play in suggesting amendments to the bill. In general, it will be preferable for these issues to be dealt with on an informal basis.
- 44 Officials should be aware of the potential conflict of interest involved in being an adviser to a committee, and must be competent to manage them. If there is a serious policy disagreement between the committee and the Minister this potential conflict becomes a real one. Officials have played this role, despite the potential conflicts, because it can have significant advantages for the Government and for the committees themselves. It enables the committees to receive technical advice that would otherwise not be available, from people with a detailed knowledge of the legislation and administrative practice.
- 45 Officials are admitted to meetings of committees to which the public are not admitted. They must exercise care with information obtained from such meetings. Standing Orders require that such information remains confidential until the committee has reported to the House.²⁰ Inappropriate disclosure of information or documents can be regarded as a contempt of the House.
- 46 Officials advising committees are representing the Government as a whole. Committees can expect them to undertake consultation with Ministers and other departments to ensure the advice represents Government policy rather than a narrow departmental view.²¹ Officials do not need to obtain committee permission to do this. However, they should ensure that those with whom they consult understand the confidential nature of any committee proceedings under discussion.
- 47 If advisers need to consult or obtain factual information outside the public service, they must obtain the committee's approval before disclosing any committee proceedings. Again, those involved must be cautioned about the confidential nature of committee proceedings.
- 48 When a committee's report to the House proposes an amendment to a bill with implications for the Crown's fiscal aggregates, the advising departmental officials should draw this to the attention of their chief executive, the Minister and the Treasury as a matter of urgency. This is so that the Government has as much time as possible to consider whether it should exercise its right to the financial veto (See *CO [07] 2* and para 66).
- 49 The Office of the Clerk produces a booklet aimed specifically at the core public service and those in the wider State sector who are required to work with select committees. This booklet *Working with Select Committees* provides detailed guidance for advisers, information on the role of select committees and how they progress their business. This booklet is available on the website of the Office of the Clerk.

Members', Private and Local Bills

- 50 Select committees request the help of officials with Members' bills, subject to Ministerial agreement. Advising officials should clarify with the Minister or Cabinet, as appropriate,

²⁰ Standing Order 241.

²¹ Cross-party consultation is undertaken by or under the direction of Ministers' Offices.

the Government's policy toward the legislation, the level of resources to be made available, and the nature of the assistance to be provided. Even when the Government is opposed to the policy in a bill, it may make officials available to assist committees. This is because of the public interest involved in producing good quality legislation.

- 51 The Government may choose to make a submission to a select committee on a Member's bill. As noted earlier, this requires the approval of the Cabinet Legislation Committee. The same considerations apply to Private or Local Bills, particularly when they affect the interests of the Crown.

Attendance by Ministers and the Role of Officials

- 52 Committees can request but not require that a Minister appear before them. Only the House itself can compel members to attend a committee if they do not do so voluntarily.
- 53 Ministers may choose to attend a committee, particularly for its consideration of a bill. When the Minister in charge of a bill attends a committee he or she may take part in the proceedings of the committee, but is not entitled to vote on any question put to the committee.²² Ministers sometimes attend committee meetings as replacement members, in which case they may vote. Officials will be in a secondary, supporting role to their Minister. The exception is when, in keeping with their enabling legislation or constitution, they may attend in the exercise of their functions independently of the Minister.
- 54 Officials and Ministerial offices should clarify with the committee clerk and/or chairperson the purpose of the Minister's attendance. They should also clarify the timing, subject, and scope of inquiry, ensuring that the Minister is well briefed in preparation for the hearing. Officials should check with the Minister what role they would play if they attend a meeting with him or her. The options include simply providing the Minister with information, responding to questions if asked by the Minister, or answering questions put directly by members of the committee. After the Minister has attended, questions unresolved or unanswered at the meeting may need to be followed up by officials.

Contempt of the House

- 55 The House may treat as contempt any act or omission which:
- Obstructs or impedes the House in the performance of its functions; or
 - Obstructs or impedes any member or officer of the House in the discharge of the member's or officer's duty; or
 - Has a tendency, directly or indirectly, to produce such a result. (*SO 399*)

Examples of conduct which may comprise contempt include refusing to answer a question as ordered by the House or a committee, and divulging the proceedings or the report of a select committee or a subcommittee contrary to Standing Order 400.

Misleading a Committee

- 56 Witnesses or advisers who knowingly mislead a committee can be proceeded against by the House for contempt. In addition, committees have the power to receive evidence under oath, which leaves a witness who deliberately misleads a committee open to a charge of perjury under s 108 of the Crimes Act 1961.

²² Standing Order 212(2).

Objections to Answering Questions

- 57 The Government expects officials to cooperate with select committees and to provide full and accurate information to them within the framework (described at paragraphs 7-17 above). However, Standing Orders state that a witness may object on any ground to answering a relevant question from the select committee and will be invited to state the ground of the objection. Grounds for objection might include those set out in paragraphs 28 and 29. The committee may then choose not to press the question. Otherwise, the select committee will consider in private whether to insist upon an answer, having regard to the importance to its proceedings of the information sought.
- 58 The witness will be informed if the committee decides to insist on an answer, and is then formally required to answer the question. The committee may decide that, in the public interest, the answer will be heard in private or in secret (see paragraphs 35 to 37). When a witness declines a formal requirement to answer, the committee may report this fact to the House.²³

Threatening or disadvantaging a witness or adviser

- 59 The House needs to get free and frank answers and evidence from those who appear before its select committees. This is more likely to happen if officials appearing as witnesses or advisers are not in fear of retaliatory action from their employing agency or from their Minister.
- 60 Parliamentary proceedings are subject to absolute privilege, to ensure that those participating in them, including witnesses before select committees, can do so without fear of external consequences. The protection, enshrined in the Bill of Rights 1688, is an essential element in ensuring that Parliament can exercise its powers freely on behalf of its electors. There must be no pressure placed on those appearing before a select committee, in order to deter them from giving advice or evidence, nor should action be taken against them as a direct consequence of their giving evidence. Such conduct could be punished by the House as a contempt. Standing Orders 399-400 set out a general statement and particular, non exhaustive, examples of conduct that may comprise contempt.
- 61 The House's power to punish for contempt is, however, discretionary, and it is not automatic that conduct falling within the Standing Orders will comprise contempt. Committees are likely to take account of the circumstances in which officials give evidence or advise them in determining whether a contempt situation arises. These circumstances could include the conduct of any official in parliamentary proceedings and the nature of the action taken against an official on account of that person's parliamentary conduct.
- 62 The absolute nature of Parliamentary privilege should not be regarded as giving officials any leeway to ignore the processes and expectations for their conduct set out in this Guidance. For example, an official who appears before a select committee on behalf of, or in association with, a State Sector agency and Minister, but who flouts the law and conventions of accountability, can expect that there may be a resulting loss of confidence in him or her. In addition, an official who provides unjustifiable or irresponsible evidence may have it rejected by the committee under the Standing Orders.

²³ Standing Orders 228 and 229. See also Report of the Standing Orders Committee, *ibid*, Chapter VIII.

Access to Counsel

63 Witnesses may be assisted by counsel. Generally speaking, committees would not expect those appearing in an official capacity to seek assistance from counsel, although it is quite appropriate for a departmental or agency solicitor to appear with other officials.²⁴

Correction of Evidence

64 When officials become aware of any inaccuracies in information they have supplied to a committee they must inform the committee of this as soon as possible, and supply the correct information, consulting with the Minister when necessary.²⁵

Natural Justice

65 The Standing Orders provide some protections to people who appear as witnesses before a select committee or whose reputation may be impugned by the proceedings of or evidence given before a committee. These provisions may be relevant to officials when their personal conduct is under scrutiny by the committee. Potentially, this could occur in the context of a committee's review of departmental or agency performance, or when considering a bill, although it is more likely during a special inquiry. The provisions can be found in the guidance published by the Office of the Clerk of the House of Representatives entitled [Natural Justice Before Select Committees: A Guide for Witnesses](#). (An overview of the topics covered by this guidance is given in appendix 1).

Financial Veto

66 Standing Orders enable non-Ministerial Members of Parliament to propose initiatives which have an impact on the total fiscal aggregates (as defined in the Public Finance Act 1989) or the composition of a Vote, and confer powers on the Government to veto such initiatives. Officials should refrain from commenting on any such initiative beyond the technical point that it appears to have an impact on the fiscal aggregates. They must immediately bring to the attention of Ministers any proposal which might affect the fiscal aggregates and thus require consideration by Ministers of the use of the financial veto power when the bill or Vote is subsequently before the House.

Attendance in a Personal Capacity

67 Officials have the same political rights as other members of society, including the right to make submissions to, and appear as witnesses before, select committees. Officials should be careful, however, that their attendance in a personal capacity is consistent with their professional obligations to the Government of the day. In particular, officials who appear in a private capacity should:

- Make it clear to the committee that they appear in a private capacity;
- Avoid commenting on policy issues related to their own department or agency or which they have been professionally associated with; and
- Advise their chief executive, or chairperson of the board, that they will be attending.

²⁴ Standing Order 230.

²⁵ Ruling of the Speaker (5 August 1998), Hansard, Vol 570, p.11043.

Appendix 1 - Natural Justice

The topics referred to in this appendix are covered in the guidance published by the Office of the Clerk of the House of Representatives entitled:

[*Natural Justice Before Select Committees: A Guide for Witnesses.*](#)

The Standing Orders provide some protections to persons who appear as witnesses before a select committee or whose reputation may be impugned by the proceedings of, or evidence given before a committee.

These provisions may be of relevance to officials whose personal conduct is under scrutiny by a committee. It is possible that this could occur in the context of a committee's review of departmental or agency performance, or when considering legislation, although it is more likely during a special inquiry.

Alleged Criminal Activity

A committee cannot inquire into, or make findings in respect of, allegations of crime by people who are "named or otherwise identifiable", without the express authority of the House. However, this does not prevent a committee making general inquiries into alleged criminal activity (*SO 200*).

People Whose Reputation May be Seriously Damaged by Committee Proceedings

The Standing Orders provide certain protections for people whose reputation may be seriously damaged by a select committee inquiry, whether or not that person appears as a witness. Such a person may:

- Complain of apparent bias on the part of a member (*SO 235*).²⁶
- Respond to an allegation by written submission and appearance before the committee (*SO 240*).
- Ask that further witnesses give evidence in his or her interest (*SO 240*).
- Request a copy of all information (except secret evidence) a committee possesses concerning them (*SO 237*).
- Respond to the committee's findings where their reputation would be seriously damaged by those findings, before a committee reports to the House (*SO 249*).

For their part a committee:

- Can hear evidence that may contain allegations or seriously damage a person's reputation in private or secret (*SOs 236 and 221*).
- Will provide or inform a witness of any material in the committee's possession that contains a serious allegation (*SO 237*).
- May return written evidence and request that it be resubmitted without the offending material, expunge that evidence from any transcript of evidence, or seek an order of the

²⁶ Apparent bias occurs when a Member has made an allegation of crime or expressed a concluded view on any conduct of a criminal nature relating to that person (if the complaint is upheld the member will not participate in proceedings relating to that person).

House preventing the disclosure of evidence. This is when the committee believes the evidence is not relevant to its proceedings or that the risk of harm to that person exceeds the benefit of the evidence. (SO 238).

- Must acquaint a person whose reputation may be seriously damaged by the committee's findings, of the nature of those findings, and take into account any response by that person before reporting to the House (SO 249).
- May return to the witness or expunge from any transcript of proceedings any evidence or statement that it considers to be irrelevant to its proceedings, offensive or possibly defamatory (SO 218).

Witnesses

Standing Orders provide a number of protections for witnesses who appear or will appear before a select committee. Witnesses may avail themselves of protections available to people whose reputation may be seriously damaged by committee proceedings, and:

- Complain of apparent bias (SO 235);
- Apply to have some or all of their evidence heard in private or secret, giving reasons for such an application (SO 222);
- Raise matters of concern relating to the evidence they are to give (SO 225);
- Make a written submission before appearing to give evidence (SO 217);
- Be informed of, or request a copy of all material, evidence (except secret evidence), records or other information which the committee possesses concerning that person (SO 237);
- Be accompanied by counsel (SO 230);²⁷
- Object to a question on the grounds of relevance (SO 228);
- Object to answering a question. The committee will invite the witness to give the reasons why they object, and the committee may still require an answer to be given. A refusal to answer may be reported to the House (SO 229); and
- Have the opportunity to correct errors in any transcriptions of their evidence (SO 232).

²⁷ Counsel may:

- Make written submissions to the committee on the procedure to be followed....
- With the committee's agreement, address the committee on the procedure to be followed by the committee before the counsel's client is heard
- Object to a question... on the ground that it is not relevant
- Object to counsel's client answering a question (see SO 229), and when the client's reputation may be seriously damaged, ask that further witnesses give evidence in the client's interest.

Appendix 2 Further References

To access documents listed here that are not available online, contact the publishing organisation or your local government bookshop

Working Under Proportional Representation: An Introduction for the Public Servant

State Services Commission (1996). This booklet focuses on how the public service plays its part in government and what MMP means for public servants. It was prepared as part of preparing the public service for MMP in 1995 and therefore does not reflect the minor alterations to the guidance that have been made since then. The principles behind the guidance remain the same.

Working Under Proportional Representation: A Reference for the Public Service

State Services Commission (1995). This examines the principles of government in New Zealand from the operation of Cabinet through to caretaker governments and government formation.

[Cabinet Manual](#)

Cabinet Office (2001). This is the key guide to central government decision making.

Standards of Integrity and Conduct

State Services Commission (2007). This prescribes minimum standards of integrity and conduct for public servants and State servants in most Crown entities.

Political Neutrality Fact Sheets

State Services Commission (2003). Four question and answer fact sheets on different aspects of the political neutrality principle in practice.

Parliamentary Practice in New Zealand

The Standing Orders of the House of Representatives

(2005).

Voting Under MMP: Everything You Need to Know about New Zealand's Electoral System

Effective Select Committee Membership: A Guide for Members of Parliament

Office of the Clerk of the House of Representatives (2005). Guidance for MPs on select committee processes.

Working with Select Committees: A Guide for Public Service Advisers

Office of the Clerk of the House of Representatives (2005). Guidance for those in public service who are required to work with select committees.

Key Website Addresses are:

- www.ssc.govt.nz (State Services Commission)
- www.parliament.nz/en-NZ/Admin/Agencies/OOC (Office of the Clerk)
- www.dPMC.govt.nz/Cabinet/Manual (Cabinet Office)