Table of Contents

Executive Summary 2

Introduction 3

The Role of Select Committees 3

Scope of these Guidelines and Relationship to Other Guidance 3

Application of these Guidelines 4

Officials and Select Committees: General Principles 4

Officials as Witnesses 6

Departmental officials 6

Officials in the wider public sector 6

The provision of information to committees 7

Access to counsel 9

Correction of evidence 9

Objections to answering questions 10

Private or secret evidence 10

Preparing to appear as a witness 11

Officials as Advisers 11

Members', private, and local bills 15

Attendance by Ministers and the Role of Officials 16

Contempt of the House 16

Misleading a committee 17

Threatening or disadvantaging a witness or adviser 17

Natural Justice 17

Financial Veto 18

Attendance in a Personal Capacity 18

Appendix 1 Further References 19

Executive Summary

These Guidelines are concerned with the attendance and conduct of officials before select committees.

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

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

Parliamentary proceedings are subject to parliamentary 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 parliamentary privilege of the House on the one hand, and the accountability of agency personnel in the public 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.

Officials from public 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 public 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.

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

Introduction

The Role of Select Committees

1. Select committees are key parliamentary institutions with which public servants and those working in the wider public 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 those not referred to select committees such as 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. A specialist Petitions Committee oversees the consideration of petitions. 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 non-Government 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.

Scope of these Guidelines and Relationship to Other Guidance

5. These Guidelines are concerned with the attendance and conduct of officials before select committees. They describe how officials should behave when interacting with select committees and how these interactions relate to their accountability to Ministers. This guidance is issued to support the Public Service Commissioner's integrity and conduct mandate.

6. These Guidelines complement the following guidance:

   - The Office of the Clerk's Parliamentary Practice in New Zealand guide. This guide describes the operation of Parliament, including select committees (Part 4). Chapter 30 of the guide focuses on consideration, advice and confidentiality, which are of particular relevance to these Guidelines.
   - The Parliamentary Counsel Office's Turning Policy into Law is a guide (and

includes FAQs) for officials instructing the Parliamentary Counsel Office during legislative processes, including when bills are at select committee.

7. Appendix 2 below lists other resources describing parliamentary practice in New Zealand and the work of select committees.

Application of these Guidelines

8. These Guidelines are issued by the Public Service Commissioner under section 19(1) of the Public Service Act 2020. They apply to public servants working in public service departments and departmental agencies. They also apply to staff and board members of Crown entities (excluding Tertiary Education Institutions, Crown Research Institutes and their subsidiaries, and School Boards) and Public Finance Act 1989 Schedule 4A companies to the extent relevant. In these Guidelines the term "officials" includes staff and board members of the agencies covered.

9. Staff, office holders and board members of other public sector agencies may also wish to consider these Guidelines when they engage with select committees.

Officials and Select Committees: General Principles

10. 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 select committees.

11. Public servants serve the Government of the day, within the framework of the law. Among other things, public service chief executives are responsible to the appropriate Minister for carrying out the functions of their departments, advising Ministers, and for the general conduct and efficient, effective, and economical management of their departments (Public Service Act 2020 section 52). Ministers, in turn, are accountable to the House for Government policy and the activity of departments for which they are responsible.

12. Officials appearing before a select committee on behalf of a public service department do so as part of the Government's accountability to the House and, when applicable, to support the legislative process. They are ultimately answerable to the responsible or appropriate Minister, who is in turn accountable to the House for the department's operations. Public service officials can appear before select committees either as witnesses or advisers. Officials play a key role as advisers to select committees considering legislation.

13. In the wider public sector, the most regular contact agencies have with committees is for annual reviews, briefings, inquiries, and occasionally as submitters on bills (see paragraph 20 below). An 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 functions and powers, distinct from the Crown. In some cases they may be expressly required to carry these out independently of Ministers (e.g. Independent Crown entities). Nevertheless, they are generally accountable to a Minister for their operations and performance.

14. Departmental 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.

15. 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.

16. 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 27 to 37 below. Information should be provided unless the release of information would not be in the public interest. The Official Information Act 1982 does not constrain the powers of the House, though the grounds set out in it may provide a useful checklist when considering the public interest. Where there are concerns about the disclosure of information, officials should work constructively with the committee that made the request to see if there is a way for its information needs to be met while appropriately balancing those concerns. Officials are not ultimately responsible for the release of information to select committees – that is the Minister's responsibility.[1]

17. Responsibility for justifying Government policy ultimately rests with Ministers. Officials may comment on the policy development process and the alternative options considered but should be careful to avoid justifying or appearing to justify policy choices. If a committee wishes to understand why a policy decision was made by the Government, then officials may suggest that the committee seek comment from the responsible Minister.

18. Officials may be called upon to appear before select committees as witnesses (in relation to the Estimates, annual reviews, review briefings, 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.

19. All officials appearing before a select committee on behalf of a public 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

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

hearings.

20. Departments must also remember that they cannot make a submission on a bill without the specific approval of the Cabinet Legislation Committee (Cabinet Manual 7.118 - 7.122 refers). This requirement does not apply if an official is acting in a personal capacity (see paragraph 87). When departmental officials provide a report on a bill for which they have been appointed as advisers to a select committee, they should advise the Minister in advance of the content of the report.

21. Representatives from agencies in the wider public 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 (Cabinet Manual 7.121).

Officials as Witnesses

22. Officials appear each year as witnesses before committees considering the Estimates, and again to review departments' and other agencies' performance as part of the annual review process. They may also be required to appear in other contexts, such as inquiries or briefings, or when committees are hearing evidence on petitions or international treaty examinations. Officials as witnesses will appear in public hearings that are live-streamed to the Parliament website, and where the news media is also often present, unless the committee agrees to hear evidence in private or in secret (see paragraphs 42 – 45).

Departmental officials

23. 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 can ultimately determine 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 their delegate will normally judge when it is necessary to consult the Minister, in the absence of any direction from the Minister.

24. Departmental officials should consult the Minister before a hearing, keeping them informed of any significant matters which arise or are likely to do so. In particular, during consideration of the Estimates they should consult the relevant Minister(s) on how to respond to any proposal to change the composition of a Vote. Officials should not comment, without Ministerial approval, 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 paragraph 86).

Officials in the wider public sector

25. When employees, office holders and board members in the wider public 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 that surprises are avoided.

26. Enabling Acts or conventions may sometimes provide that agencies in the wider public 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 that officials from Crown agents give to select committees.

The provision of information to committees

27. 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.[2]

28. Requests from committees must be relevant, although it is not for the agency concerned to decide what is relevant for this purpose. If an agency is concerned that a request is not relevant to the business at hand, it should raise these concerns with the chairperson. 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."[3] 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.

29. Officials should provide full and accurate information to committees, though there are some limits to the information that officials may provide. 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 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).

30. The criteria in the Official Information Act 1982 provide some guidance on whether information should be made available (although, as noted in paragraph 16, the Act does not constrain the powers of the House). Information which would be released under the Act should be provided to select committees on request (albeit with referral to the Minister in sensitive cases or to otherwise comply with the "no surprises" convention).

31. Officials should be clear that, although it is a useful guide, the Official Information Act 1982 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

[2] 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.

[3] Standing Orders Committee, Review of Standing Orders, (I.18A) 1995, p 39.

contains an accepted set of interests which may warrant the protection of information (sections 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 professional privilege; and
- Maintaining constitutional conventions relating to the confidentiality of advice, Ministerial responsibility and the political neutrality of officials.

32. 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 key conventions 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 they have already been proactively released or 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 would not be expected to disclose opinions or advice given to Ministers without the agreement of the Minister (see paragraph 36 below).

33. 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 relating 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 guidelines for agencies in the wider public sector to follow

as well.

34. In general, committees rely on requests for information or attendance, rather than formally requiring answers or seeking the issue of a summons. This is consistent with the Government's expectation that officials will be as helpful as possible to committees.

35. Officials should endeavour to work in a responsive and cooperative way with select committees, meeting committees' 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 officials providing the information in a different form. For example, if a committee requests legally privileged information, it may agree to receive information prepared to directly respond to the committee's needs that is not legally privileged. A committee may also consider whether to receive information in private or in secret, if it would not be in the public interest for the information concerned to be publicly disclosed (see paragraphs 42 – 45 below).

36. It is ultimately a Ministerial decision whether to decline to release information within their areas of responsibility. When officials are asked for information that they believe should not be released, they should indicate to the committee that they will seek the Minister's view on the issue, rather than refuse to answer the committee.

37. 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.[4] Although select committees do not have the power to punish people who do not satisfy such requests, they can apply to the Speaker for a summons or the House may order the Minister to produce the information.

Access to counsel

38. 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.

Correction of evidence

39. 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.

[4] 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 scrutiny] 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."

Objections to answering questions

40. The Government expects officials to cooperate with select committees and to provide full and accurate information to them within the framework described at paragraphs 10 – 21 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 31 and 32. 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 of the information sought for its proceedings.

41. 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 42 – 45). When a witness declines a formal requirement to answer, the committee may report this fact to the House.

Private or secret evidence

42. Committees are able to receive evidence in private or in secret (note the differences between private and secret below) and may be willing to do so if the Minister has good reasons for not having the information publicly disclosed. It is important to clarify the status of any information provided before it is made available to the committee.

43. Evidence can be provided in private by leave agreement without dissent of the committee. Private evidence is confidential to the committee until it reports to the House, but subsequently will be publicly available.

44. A select committee may declare evidence that it is to receive to be secret evidence. This is done by leave of the committee, in anticipation of receiving the evidence. Committees may take this step if they consider the evidence can only be obtained 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. 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.

45. Classes of evidence that might justify privacy or secrecy include industrial secrets, classified information, self-incriminating evidence, matters *sub judice* (awaiting judicial decision) 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.

Preparing to appear as a witness

46. Officials appearing as witnesses before a select committee must be well prepared to answer the committee's questions and support its scrutiny role. What constitutes appropriate preparation will depend on the type of hearing being conducted, the responsibilities and size of the agency, and the wider context in which the committee is conducting its business.

47. Committees normally expect chief executives to appear in person for the Estimates and annual reviews, supported by other staff as necessary. In deciding who else should appear in person at a committee meeting, chief executives should think carefully about the committee's likely interests, and what questions are best answered by those with more direct knowledge of and responsibility for the matter. Chief executives must achieve a balance of providing the committee with access to expertise, while ensuring that those appearing in front of a committee are appropriately accountable, and experienced in speaking on behalf of the agency.

48. All witnesses must be thoroughly across the details of projects and functions under their responsibility. Senior officials need to be well prepared to address any matter a committee may raise, including operational or technical details that they would not ordinarily be expected to have immediate command of in the course of their day-to-day duties.

49. Officials should prepare for a wide range of possible questions from the committee. To inform this preparation, they should consider the specific priorities of the committee, any recent information requests from members, and areas of general media or public interest. Officials should also prepare for how they will respond to questions if they do not know the answer, or if answering may reveal confidential or sensitive information. Officials can offer to respond to the committee later in writing, or to provide evidence in private or in secret (see paragraphs 42 to 45).

Officials as Advisers

50. Officials, generally public servants, may act as advisers to select committees. This usually occurs in relation to bills, though they may also provide advice on other types of parliamentary business such as inquiries. Public servants from the department of the Minister in charge of a bill normally act as advisers to a select committee considering that bill. It is also common for officials from a relevant government agency (e.g. a Crown entity regulator) to act as advisers alongside the departmental advisers. Officials assist the committee by providing information about the draft legislation and its implementation, commenting on evidence received by the committee, producing departmental reports on submissions, and making recommendations for amendments. Officials sometimes assist with negotiations between the Minister and the committee chairperson on the detailed content of the bill.

51. It is up to the select committee whether it seeks the assistance of officials as advisers or treats them as witnesses (but see paragraph 18). The select committee seeks advisers by writing to the relevant Minister, who then responds by offering the advisers. Departments

generally make informal contact with the clerk of the committee once the bill is referred to the committee, and work with the relevant Minister's office to facilitate the committee's request and Minister's agreement to provide relevant advisers.

52. The committee may also seek advice from independent advisers to supplement advice received from officials. Committees could potentially rely extensively on other sources of advice for bills rather than on public servants.

53. It is also open to committees to seek advice from officials who are employees or office holders in the wider public sector, whether on bills or inquiries undertaken by the committees. When officials in the wider public 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 should be guided by the general principles concerning commenting on policy set out in paragraph 17 above.

54. 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 of any assistance (including what limits there may be to that assistance), which of them should attend, and whether their agreement to provide advisers is to be withdrawn. 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.

55. 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, they should avoid committing the department, other agency, or the Minister. The Minister may ask the official acting as an adviser to a committee to relay the Minister's views to that committee.

56. 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 that clearly go beyond Government policy, officials should clarify with their Minister the role that they are to play in developing amendments to the bill, including advising on the practicality of the direction the committee is heading or working on any alternative approaches the committee is considering. In general, it will be preferable for these issues to be dealt with on an informal basis. If officials wish to recommend an amendment to a bill that requires Cabinet approval, or the Minister decides that the Government's policy approach to proposed amendments needs to be determined through consultation with other Ministers or Cabinet consideration, officials should ensure this can occur in line with the committee's timetable. It is important to remember that the select committee's report and any amendments it proposes are a matter for the committee, and that the committee is not bound by Government policy.

57. Officials should be aware of the potential conflict of interest involved in being an adviser to a committee and meeting their responsibility to their Minister, and must be competent to manage the conflict. If there is a serious policy disagreement between the committee and the Minister, this potential conflict becomes a real one. Officials play this role, despite the potential conflict, because it can have significant advantages for the Government and for the committees themselves. It enables committees to receive technical advice that would otherwise not be available, from people with a detailed knowledge of the legislation and administrative practice.

58. Where there is a serious policy disagreement between the committee and the Minister, it is usually desirable for the Minister to become involved directly. Under the House's rules, the Minister in charge of a bill has the right to attend and participate in any committee meeting at which that bill is being considered, although the Minister cannot vote when attending in that capacity. In the event that the Minister wishes to attend, their office should contact the clerk of the committee to make arrangements. If the disagreement persists, the Minister may, ultimately, choose to withdraw officials from their role as advisers to the select committee.

59. While recognising the potential for conflicts of interest and their responsibility to the Minister, officials must ensure that they act in good faith, fairly, honestly and impartially. In summarising submissions, officials must provide full and accurate information, whether or not these matters align with Government policy. A committee may release a report summarising submissions for the purpose of receiving public feedback, and this can provide a check on these summaries.

60. Comments on all relevant issues raised in the hearing of evidence and written submissions must be included in the departmental report. Officials must not mislead a committee, knowingly hide relevant information, or distort the content or tenor of submissions for any reason.

61. In some situations, departments may outsource or use digital tools (including the application of artificial intelligence-based technologies) for summarising submissions. Departments must have policies and controls in place for these approaches to ensure the product delivered to committees is accurate and unbiased. Departments need to understand all the risks involved in such approaches, including privacy, security and accuracy, and ensure that these are robustly managed. In this regard, the digital.govt.nz website has information for departments on the benefits and risks of using digital tools in their work. For transparency, the departmental report should describe how submissions were summarised, including any tools and approaches used and how relevant risks have been managed. Where a department outsources the work of summarising submissions, information about this outsourcing should be disclosed to the committee, including about the provider of the service. The department must ensure any such provider understands and complies with the Standing Orders relating to the confidentiality of select committee proceedings.

62. Bills are often informed by legal advice. An assessment is made by officials (including by the department's legal team) of what is included in departmental advice to select committees regarding that legal advice. Information is provided to the extent possible,

sometimes summarised in writing or provided verbally, in such a way that it does not impinge on legal professional privilege. The issue of legal privilege does not often arise in these circumstances. Occasionally select committees may request legally privileged communications or information. Legal professional privilege can still be claimed in these circumstances and the communications or information should not be provided if doing so would amount to a waiver of the Crown's legal professional privilege (e.g. for communications with legal advisers). It would be for the Attorney-General to decide whether a waiver is appropriate in the circumstances.

63. When acting as an adviser to a select committee, a department legal adviser should be aware of the need to maintain legal professional privilege or, where appropriate, consider seeking a waiver from the Attorney-General. A department legal adviser can state the department's or Minister's position on a matter without breaching legal privilege, but should not reference that it is based on or comprises legal advice. A department legal adviser cannot give legal advice to a select committee.

64. 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. Inappropriate disclosure of information or documents can be regarded as a contempt of the House.

65. 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.[5] Officials do not need to obtain the committee's permission to do this. However, they should ensure that those with whom they consult understand the confidential nature of any committee proceedings under discussion.

66. 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. A committee may also agree to advisers engaging directly with a submitter, most commonly after the submitter has completed giving oral evidence to the committee. Again, those involved must be cautioned about the confidential nature of committee proceedings.

67. Officials support committees and should recognise that committees may propose amendments that go beyond the Government's policy position. Officials should instruct those drafting a bill in accordance with the position authorised by the committee. Where a committee appoints an independent adviser, possible advice should be shared and aligned as much as, so the committee is not receiving different advice. Officials should liaise with the clerk of the committee before contacting an independent adviser, as the clerk is responsible for managing the independent adviser's work for the committee.

68. 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

[5] Cross-party consultation is undertaken by or under the direction of ministers' offices.

of urgency. This is so that the Government has as much time as possible to consider whether it should exercise its right to use the financial veto or other approaches (See Cabinet Office circular CO (07) 2 and paragraph 86).

69. The Office of the Clerk publishes *Parliamentary Practice in New Zealand*, which includes chapters designed to inform public servants and officials from the wider public sector who are required to work with select committees. This work is fully available online[6] and also as a book that can be purchased from the Parliament shop. In particular, Chapter 30[7] sets out detailed information about committee consideration, advisers, and confidentiality.

Members', private, and local bills

70. Select committees request the help of officials with Members' bills, subject to Ministerial agreement. As appropriate, advising officials should clarify with the Minister or Cabinet, 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.

71. Officials' primary responsibility remains to the Minister, even when providing advice to a select committee. That said, officials must act responsibly and in good faith, and must answer questions truthfully and to the best of their ability.

72. Officials' role on a Member's bill is to help the select committee understand how the bill intersects with, and will change, the regulatory framework.[8] The committee will determine whether that change is beneficial. Where there is no government policy on the bill, officials will not have a view on the bill or its underlying policy rationale but may engage Ministers to determine whether a policy position is taken.

73. Depending on the terms of engagement set by the Minister, officials' role on a Member's bill may be limited to describing the bill's interaction with the regulatory framework, or it might be to advise the select committee to consider amending the policy of the bill. If advisers consider committee expectations are overstepping the limits placed on them by the Minister, they can remind the committee of those limits.

74. If a committee wants assistance with amendments to a bill which clearly go beyond the existing regulatory framework, officials should clarify with the Minister whether they want officials to play any role in advising on possible amendments to the bill or on the scope or practicality of what is proposed.

75. 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. Similar considerations to those set out here apply to Private or Local Bills, particularly

[6] https://www.parliament.nz/en/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand/
[7] https://www.parliament.nz/en/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand-2023-by-chapter/chapter-30-consideration-advice-and-confidentiality/
[8] See also the Legislation Act 2019 section 130(c) in regard to the Parliamentary Counsel Office's role

when they affect the interests of the Crown. Officials should be aware of the procedural requirements for the different types of non-Government bills.[9]

Attendance by Ministers and the Role of Officials

76. 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. Ministers are expected to make themselves available when invited by a committee.[10]

77. 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. 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.

78. 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 are expected to play if they attend a meeting with them. 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

79. 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 417)*

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 418.

[9] Standing Orders 2023 including 262, 277-279, 282, 283, 285-290 and 321, and Parliamentary Practice in New Zealand 2023 37.10

[10] Speakers' Rulings 96/1 - Attendance by Ministers.

Misleading a committee

80. 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 section 108 of the Crimes Act 1961.

Threatening or disadvantaging a witness or adviser

81. 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.

82. Parliamentary proceedings are subject to parliamentary 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,[11] 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 417 – 418 set out a general statement and particular, non- exhaustive, examples of conduct that may comprise contempt.

83. It is not automatic that conduct falling within the Standing Orders 417 - 418 will comprise contempt. The House has a discretion about what conduct counts as contempt and whether to find a person in 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.

84. 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 public 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 them. In addition, an official who provides unjustifiable or irresponsible evidence may have it rejected by the committee under the Standing Orders

Natural Justice

85. 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

[11] Bill of Rights Act 1688, article 9 Freedom of speech, as part of the laws of New Zealand under section 3(1) and Schedule 1 of the Imperial Laws Application Act 1988

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. Detailed guidance about natural justice can be found in Chapter 31 of *Parliamentary Practice in New Zealand.*

Financial Veto

86. 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

87. 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. However, officials should be careful 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.

Appendix 1 Further References

Cabinet Manual

Cabinet Office

The Code of Conduct for the Public Sector

Public Service Commission Te Kawa Mataaho

Parliamentary Practice in New Zealand

Office of the Clerk

Turning Policy into Law

Parliamentary Counsel Office

Standing Orders of the House of Representatives

New Zealand Parliament

Effective Select Committee Membership: A Guide for Members of Parliament

Office of the Clerk

Select Committees

New Zealand Parliament

Key websites are:

- www.publicservice.govt.nz (Public Service Commission Te Kawa Mataaho)
- www.parliament.nz/en/footer/about-us/office-of-the-clerk (Office of the Clerk)
- www.dpmc.govt.nz/our-business-units/cabinet-office (Cabinet Office)