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162)

CHAPTER 12

The Opening of Parliament

FIRST MEETING OF A NEW PARLIAMENT

Parliament meets according to the Governor-General's proclamation appointing the place and time for it to convene (see pp 141–143). Seven minutes before the time appointed in the proclamation summoning Parliament the House's Chamber bells are rung for five minutes, and the members elected at the general election assemble in the Chamber of the House and await the Royal commissioners.¹

Commission Opening

There are few times when both elements of Parliament, the Crown and the House of Representatives, come together to discharge their duties. The occasion of the opening of a new Parliament, when the Parliament is declared open before the assembled members, is one of them. In fact, neither the Sovereign nor the Governor-General attends this ceremony in person. Rather, they authorise Royal commissioners to attend on their behalf to declare Parliament open. Until the abolition of the Legislative Council, the commissioners opened Parliament from the Legislative Council Chamber. Now this task is performed in the House's own Chamber. There are three Royal commissioners, who are usually the Chief Justice or another senior judge as chief commissioner and two other judges.

At this time the House has no Speaker. Consequently, the Mace, being regarded as a symbol of the Speaker's authority, is not displayed. It is placed under the Table in the position it occupies when the Speaker leaves the Speaker's Chair and the House goes into a committee of the whole House. The Clerk of the House, as a permanent officer of the House, occupies the Clerk's chair at the Table. At the appointed time the Usher of the Black Rod (an officer who, until the abolition of the Legislative Council, was a permanent official of that Council, but who now performs only ceremonial duties as the Governor-General's messenger in communications with the House) announces the arrival of the Royal commissioners, who enter the Chamber and occupy the chairs at the Table. At the same time the Clerk retires to the upper step to the left of the Speaker's Chair. From that position the Clerk reads the Letters Patent by which the commissioners have been appointed and given the authority to act on behalf of the Governor-General.² Then the chief commissioner reads the proclamation summoning Parliament to meet. The chief commissioner also informs the House that the Governor-General will attend in person to declare to members the causes of Parliament being summoned to meet at that time—that

1 SO 12(a).

2 SO 12(b).

is, to deliver the Speech from the Throne. Before this, however, it is necessary for the House to elect a Speaker, and the chief commissioner indicates that it is the Governor-General's wish that this should be done, and that the House's choice of Speaker should be presented to the Governor-General for confirmation. The Royal commissioners then withdraw.

SWEARING IN OF MEMBERS

By law, no member is permitted to sit or vote in the House until that member has taken the Oath of Allegiance³ or made an affirmation in substitution for the oath.⁴ A member is also not permitted to serve on a committee until that member has taken the oath or made the affirmation required by law.⁵ The oath or affirmation must be taken before the Governor-General or some person authorised by the Governor-General to administer it.⁶ For the purpose of swearing in members at the opening of a new Parliament, the Governor-General issues a commission to the Clerk of the House, giving the Clerk authority to administer the oath or affirmation. Consequently, when the commissioners have left the Chamber, the Clerk reads this commission to the House.⁷ The Clerk then lays on the Table lists (taken from the returns forwarded by the Electoral Commission) of the members who have been elected to the House⁸ and invites members whose names appear on the lists to come forward, up to five at a time, in alphabetical order, to the left of the Table to take the oath or make the affirmation.⁹

The terms of the oath and of the affirmation are set out in law. They may be taken in English or Te Reo Māori.¹⁰ The first member to make an affirmation in Māori did so in 2004.¹¹ If the legally prescribed form is not used, the member will be required to withdraw immediately from the Chamber and return when prepared to make the affirmation according to law.¹² The Standing Orders Committee reviewed the matter in 2011. It took the view that using other wording alters the nature of the solemn promise made and does not fulfil the requirement of the Oaths and Declarations Act 1957 or the Constitution Act 1986. Members can make statements about their beliefs and other complementary allegiances at other times, but not when they are being sworn in.¹³

Aside from allowing for the succession of a new Sovereign,¹⁴ the terms of the oath are as follows:

I, ..., swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors, according to law. So help me God.¹⁵

The equivalent in Te Reo Māori for the oath is:

3 Constitution Act 1986, s 11(1).

4 Oaths and Declarations Act 1957, s 4(1).

5 SO 13(1).

6 Constitution Act 1986, s 11(2).

7 SO 12(c).

8 Electoral Act 1993, ss 185(1)(c) and 193(5)(b); SO 12(d).

9 SO 12(e).

10 Oaths and Declarations Act 1957, s 30A.

11 (27 July 2004) 618 NZPD 14293 (Tariana Turia, Te Tai Hauauro).

12 SO 13(1); (14 July 2011) 674 NZPD 20107–20108 Smith.

13 Standing Orders Committee *Review of Standing Orders* (27 September 2011) [2008–2011] AJHR I.18B at 10–11.

14 Reference is to the "reigning Sovereign", with the name of Her Majesty Queen Elizabeth the Second shown illustratively. Succession would also be recognised in the wording by application of the Constitution Act 1986, s 5(1).

15 Oaths and Declarations Act 1957, s 17.

Ko ahau, ko e oati ana ka noho pūmau taku pono ki a Kuini Irihāpeti te Tuarua me tōna kāhui whakaheke, e ai ki te ture. Ko te Atua nei hoki taku pou.¹⁶

The affirmation is in these terms:

I, ..., solemnly, sincerely, and truly declare and affirm that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her heirs and successors, according to law.¹⁷

The equivalent in Te Reo Māori for the affirmation is:

Ko ahau, ko e kīana i runga i te pono, i te tika, i te ngākau tapatahi me te whakaū anō ka noho piriHonga, ka noho pūmau ki a Kuini Irihāpeti te Tuarua me tōna kāhui whakaheke e ai ke te ture.¹⁸

On occasion the House has given leave for a member, immediately upon being sworn in, to repeat the oath or affirmation in another language.¹⁹ Members swearing the oath generally do so while holding a copy of the Bible, New Testament, or Old Testament, but they may also take the oath in any way that they declare to be binding on them.²⁰ Julius Vogel (who had been raised in the Jewish faith) was sworn in in 1863 on the Old Testament while wearing his hat.²¹ In 2002 a member held the Koran,²² and since that time a number of members have used this or another holy book.

After having sworn or affirmed, members go to the other side of the Table and sign a roll of members. (For members affirming in Te Reo Māori, the written form of the Māori equivalent is used in the roll of members.²³)

When the swearing in of members has concluded, the House proceeds to the election of a Speaker.²⁴

Subsequent swearing in of members

If any other members arrive after the election of the Speaker has commenced, the proceedings are interrupted and the member is invited to come forward to the left of the Table to take the oath or make the affirmation.²⁵

In addition, there are often members who are unable to be present at the first meeting of Parliament, so they are not sworn in on the same day as the other members. These members must be sworn in at a subsequent sitting before they can take their seats in the House. Members elected during the term of the Parliament at by-elections or to fill party list seat vacancies must also take the oath or affirm before they can sit in the House. For the purpose of swearing in members during the term of the Parliament the Governor-General issues a commission to the Speaker, giving the Speaker authority to administer the oath or affirmation that is required by law to be made before members can take their seats. It is also the practice for a similar commission to be issued to allow the Deputy Speaker to act in the Speaker's absence.

Any business in progress may be interrupted at a convenient time for a member to be sworn in.²⁶ All such members must present themselves at the bar of the

16 Oaths and Declarations (Māori Language) Regulations 2004, reg 4(1).

17 Oaths and Declarations Act 1957, ss 4(2) and 17.

18 Oaths and Declarations (Māori Language) Regulations 2004, reg 5(1).

19 (21 October 2014) 701 NZPD 109 (Su'a William Sio granted leave by the House at opening of 51st Parliament).

20 Oaths and Declarations Act 1957, s 3.

21 Raewyn Dalziel *Julius Vogel—Business Politician* (Auckland University Press, Auckland, 1986) at 53.

22 "MP swears on covered Koran" *The Dominion Post* (27 August 2002).

23 Oaths and Declarations (Māori Language) Regulations 2004, reg 6(1).

24 SO 12(f).

25 SO 13(3).

26 SOs 13(3) and 132(e).

House.²⁷ Members are called forward by the Speaker to the Table, at the right of the Chair, for the purpose of being sworn in.

The Speaker is entitled (indeed it is the Speaker's duty) to establish that a person appearing at the bar to take the oath or affirmation has been duly elected as a member of Parliament. The best evidence of this is a copy of the writ for the election endorsed with the member's name on it, in the case of a member elected to represent an electoral district, and the list of those candidates declared by the Electoral Commission to be elected, in the case of party list candidates. The writ and an official list of members elected on a party list are required to be forwarded to the Clerk of the House by the Electoral Commission.²⁸

In the case of a by-election, the member who has been returned may appear at the House before a copy of the writ has been seen by the Speaker. The Speaker has refused to admit a member when no notification of the member's election has been received.²⁹ It is not essential, however, that the Speaker actually receive a copy of the writ before a member can be admitted. It is now the practice for the Chief Electoral Officer to advise the Clerk of the House of the name of the person returned at a by-election by personally delivering the writ, and for the Speaker to read a copy of the writ to the House immediately before swearing in the member. In the case of the filling of a vacancy that arises among the members elected from a party list, the Electoral Commission files a return with the Clerk of the House indicating who has been elected to fill the vacancy.³⁰ The current practice is for the Speaker to swear the member in after the writ or return has been received and notify the House of this at the time. By law a member does not come into office until the day after the return of the writ or return.³¹ Therefore, the soonest a member can be sworn in is the day after the Clerk receives the writ or return from the Electoral Commission.

A member already sworn in as a list member, who subsequently won an electorate seat at a by-election, was not required to be sworn in again. The member's membership of the House was uninterrupted, the member having not resigned as a list member until after taking office as an electorate member.³²

Failure to take the oath

While members of Parliament are paid a salary from the day after polling day, they do not enjoy the privileges of the House until they come into office under section 54 of the Electoral Act 1993, on the day after the return of the writ or return of party list members.³³ Failure to take the oath or make the affirmation prescribed by law does not affect one's status as a member of Parliament, but it does prevent the exercise of the most important incidences of that status, those of sitting and voting in the House of Representatives.³⁴ A member who has not been sworn cannot participate in proceedings of the House that require physical presence and cannot vote in any circumstances. Thus, an oral question cannot be asked by or on behalf of an unsworn member, though an unsworn member may lodge a question for written answer.³⁵

In practice, it is the Speaker's duty to enforce the requirement that members be sworn before participating in proceedings or voting.³⁶ The votes of members who attempted to vote before they had been sworn have been disallowed,³⁷ and

27 SO 13(2).

28 Electoral Act 1993, ss 185(1)(c) and 193(5)(b).

29 (24 June 1858) [1858] 1 JHR 83.

30 Electoral Act 1993, s 138(a).

31 Electoral Act 1993, s 54(1), (2)(a).

32 (28 April 2015) 704 NZPD 2901 (Winston Peters, Northland).

33 (1887) 59 NZPD 359.

34 Constitution Act 1986, s 11(1).

35 (1979) 423 NZPD 800 Harrison.

36 Enid Campbell "Oaths and Affirmations of Public Office" (1999) 25(1) *Monash University Law Review* 132 at 154.

37 (1976) 403 NZPD 9–10.

an unsworn member's vote may not be included in a party's total in a party vote.³⁸ However, the validity of any proceedings of the House is not affected by the fact that a member who has not taken an oath has participated in them.³⁹ The admission of a member to the House in order to take the oath or make the affirmation is regarded as an internal proceeding of the House within the exclusive cognisance of the House itself.⁴⁰ However, if there are any consequences outside the House that turn upon whether a member has taken the oath or affirmation, a court is entitled to make its own enquiry and determine whether a member has actually taken the oath or made the affirmation.⁴¹

Consequences of taking the oath

While any person taking an oath or making an affirmation is expected to do so in good faith, the oath or affirmation of allegiance is not a promise to refrain from advocating a republican or a different system of government. It is a promise of allegiance to the Sovereign established according to law. It is perfectly consistent with the oath for a person to hold views favouring an alternative form of constitutional arrangement, always provided that any change that they support is to be effected lawfully. Nor is a breach of the oath or affirmation in itself a crime. But a consequence of taking the oath or affirmation of allegiance is that it is inconsistent for a member to take a subsequent oath pledging allegiance to a foreign power. To do so will result in the member's seat becoming vacant.⁴²

No new oath or affirmation following the demise of the Crown

It was formerly the law that all members were required to take fresh oaths or affirmations following the demise of the Crown (by the death or abdication of the Sovereign). This is no longer the case. The death or abdication of the Sovereign automatically transfers all obligations of allegiance to the Sovereign's successor, and no special action is required by members to effect this.⁴³

ELECTION OF SPEAKER

The House must, at its first meeting, elect one of its members to be its Speaker.⁴⁴ It proceeds to the election of a Speaker after the swearing in of members is completed.⁴⁵

For the purpose of the election of a Speaker, the Clerk acts as Chairperson.⁴⁶ It was formerly the practice of the Clerk, when calling on a member to speak during these proceedings, to stand and point to the member rather than call the member by name. Now the Clerk calls members to speak and deals with questions of order that relate to the election in the same way that a Speaker would, if the Speaker were presiding. But the Clerk proposes no question for debate on the election of a Speaker and no debate can arise concerning the election.⁴⁷

38 (1994) 539 NZPD 53 Tapsell.

39 Enid Campbell "Oaths and Affirmations of Public Office" (1999) 25(1) *Monash University Law Review* 132 at 154.

40 *Bradlaugh v Gossett* (1884) 12 QBD 271.

41 See, for example: *Haridasan Palayil v Speaker of the Kerala Legislative Assembly* [2003] AIR (Kerala) 328.

42 Electoral Act 1993, s 55(1)(b).

43 Constitution Act 1986, s 5(1).

44 Constitution Act 1986, s 12.

45 SO 12(f).

46 SO 15.

47 SO 16(3).

Nominating a member

The Clerk calls for nominations for election as Speaker.⁴⁸ After the Clerk has called for nominations, any member, on being called by the Clerk, may nominate another member to the House for election as Speaker.⁴⁹ The Clerk will accept a nomination only if it is seconded by another member.⁵⁰ A member who is absent from the Chamber, on account of extraordinary circumstances beyond his or her control, may be nominated provided that the consent to the member to be nominated is produced in writing to the Clerk.⁵¹

Uncontested elections

If there is only one member nominated, the Clerk puts no question to the House; there can be no vote on the nomination, and the member is declared to be elected Speaker.⁵² The member leaves his or her seat and approaches the Speaker's Chair.

On reaching the Chair, the Speaker-Elect (who is not Speaker until confirmed by the Governor-General) addresses the House from the upper step on the right of the Chair, acknowledging the honour conferred by election to this position and advising the House of the member's hopes and aspirations for the discharge of the duties of Speaker. The Speaker-Elect then sits in the Chair and the Serjeant-at-Arms lays the Mace upon the Table.⁵³ Members may then offer their congratulations.

The Government normally announces in advance of the first meeting of Parliament who is to be its nominee for the office of Speaker, and the person so nominated may be elected unopposed. In contrast to the practice in the United Kingdom, there is no tradition, if the Government changes, of re-electing as Speaker the member who held that post in the previous Parliament.⁵⁴ In modern times, the largest party in the House has usually provided the Speaker from among its ranks, although the Speaker from 1923 to 1935 was an independent when he was first elected as Speaker,⁵⁵ and the Speaker from 1993 to 1996 was drawn from the major Opposition party.

Two members nominated

There may be two members nominated for election. There were two candidates for election in 1996, 2002, 2013 and 2014.⁵⁶ Prior to this, the last time there were two candidates (under a different system for electing a Speaker) was in 1923.

If there are two members nominated, a personal vote is held to determine who is to be elected.⁵⁷ For this purpose, the Ayes lobby is used for those voting for the member whose name comes first in the alphabet, and the Noes lobby for those voting for the other member. (See Chapter 17 for personal votes.) No proxies are permitted for this vote.⁵⁸

In the event of a tie on the vote, the Clerk calls for further nominations,⁵⁹ which may include either or both of the members who were first nominated.

More than two members nominated

If more than two members are nominated for Speaker, members initially vote from their places in the House rather than by going into the lobbies as they do on a

48 SO 15.

49 SO 16(1).

50 SO 16(1).

51 SO 16(2).

52 SO 17.

53 SO 21.

54 Electoral Law Committee *Second Report* (25 June 1981) [1981] AJHR I.17 at 40.

55 Kenneth John Scott *The New Zealand Constitution* (Clarendon Press, Oxford, 1962) at 60.

56 (12 December 1996) [1996–1999] 1 JHR 8–9; (26 August 2002) [2002–2005] 1 JHR 8–9; (31 January 2013) [2011–2014] 1 JHR 357; (20 October 2014) [2014–2017] 1 JHR 5–6.

57 SO 18.

58 SO 20.

59 SO 18.

personal vote. The bells are rung for seven minutes and then the doors are locked.⁶⁰ Working alphabetically, members are then asked by the Clerk individually to rise in their places and state which of the nominated members they vote for. Members may record an abstention.⁶¹ No proxy votes are permitted.⁶² If, at the end of this process, any candidate has obtained an absolute majority of the votes of the members voting (that is, excluding any abstentions), that member is immediately declared elected.⁶³ Otherwise, the member with the fewest number of votes drops out and the votes are taken again until only two candidates remain.⁶⁴ If the two candidates with the fewest votes have the same number of votes, the entire vote is taken again. If the two candidates with the fewest votes still have the same number of votes, the Clerk determines which candidate is to drop out by drawing lots.⁶⁵

When, after this process, there are only two candidates remaining, the election is decided by a personal vote.⁶⁶ Again, no proxies are permitted.⁶⁷ In the event of a tie on the personal vote, nominations are called for again.⁶⁸

In 2005, in an election held during the term of Parliament to fill a vacancy arising from the resignation of a Speaker, there were three candidates nominated, and members voted from their places. This was the first time ever that there had been three candidates for Speaker. One candidate obtained an absolute majority of the votes cast on the first vote.⁶⁹

Adjournment of the House following the Speaker's election

When the Speaker-Elect takes the Chair and members have offered their congratulations, the House automatically adjourns under the Standing Orders so that the Speaker-Elect may seek the Governor-General's confirmation of the House's choice of Speaker. The next sitting of the House will be at the time at which the Governor-General has indicated that the Speech from the Throne will be delivered.⁷⁰ If an absent member is elected as Speaker, the House similarly adjourns at the conclusion of the election.

Confirmation

The House's choice of Speaker becomes effective when it is confirmed by the Governor-General.⁷¹ The Governor-General has never refused to confirm a Speaker-Elect, and it is almost inconceivable that this would occur.

The Speaker-Elect, accompanied by the Clerk, the Deputy Clerk, the Serjeant-at-Arms, carrying the Mace in the crook of the arm, and other members, representing the parties in the House, presents himself or herself to the Governor-General at Government House either later on the same day that the election of Speaker was held or on the following day, but, in any case, before the House next sits. If Government House is unavailable, the confirmation may take place in the Legislative Council Chamber.⁷² The Speaker-Elect informs the Governor-General of the House's choice of Speaker and asks for the Governor-General's confirmation of that choice. Immediately the Governor-General confirms the House's choice of Speaker, the Serjeant-at-Arms raises the Mace to the shoulder. The Governor-General may approve special arrangements for confirming the House's choice of

60 SO 19(1)(a).

61 SO 19(1)(b), (c).

62 SO 20.

63 SO 19(1)(d).

64 SO 19(1)(e).

65 SO 19(3).

66 SO 19(1)(f).

67 SO 20.

68 SO 19(2).

69 (3 March 2005) 623 NZPD 18945–18946.

70 SO 22.

71 Constitution Act 1986, s 12.

72 This occurred in 2008, when Government House was undergoing refurbishment.

Speaker and for the House's privileges to be claimed. For example, in the case of illness, the Speaker-Elect may not be able to attend on the Governor-General personally for these purposes.

Claiming the House's privileges

The Speaker's first duty as Speaker is to lay claim to all the privileges of the House, especially to freedom of speech in debate and to free access to the Governor-General whenever occasion may require it. The Speaker also asks that the most favourable construction be put on all the House's proceedings.⁷³ In these claims are echoes of days of conflict and suspicion between the Crown and Parliament. The claim of free access to the Governor-General is for the purpose of the House as a body, headed by the Speaker, to be able to present communications to the Crown by means of an address. It is not intended to give individual members, as members of Parliament, the right to make official approaches to the Governor-General that could cause the holder of that office political embarrassment. There were, in colonial times, numerous communications from the House when the Governor exercised a more personal control of the Government than is exercised today. Now such communications are more standard and formal. The claim for a favourable construction to be put on the House's proceedings is said to be made "merely by courtesy",⁷⁴ and is not of any practical significance.

The Speaker has claimed the House's privileges from the Crown since Speaker Munro, the second Speaker, did so in 1861. The House's privileges are part of the ordinary law.⁷⁵ In general, they are those privileges enjoyed by the House of Commons on 1 January 1865.⁷⁶ The privileges of the United Kingdom House of Commons are also confirmed to the new Speaker on behalf of Her Majesty the Queen, but the privileges of the House of Commons, being part of the law and custom of Parliament, do not depend for their existence on confirmation by the Crown. Confirmation is mainly ceremonial in nature, and the House of Commons would enjoy its privileges even if they were not confirmed. The House of Representatives' privileges, being statutorily based by reference to privileges once enjoyed by the House of Commons, would appear to be in a similar position and not to require the Governor-General's confirmation to be effective.

The Speaker must report to the House the Governor-General's reply to the claim to the House's privileges.⁷⁷

Term of office

If during this term of office the Speaker becomes disqualified from membership of the House, or resigns from the House, the office of Speaker automatically becomes vacant, for the holder of this office must be a member of Parliament. The Speaker can resign office as Speaker at any time and remain as a member of Parliament. In 1972 the then Speaker resigned that office when he was appointed as a Minister of the Crown. In 2005 the Speaker resigned office and continued as a member for some four weeks before he resigned to take up a diplomatic appointment.

Vacancy in the office of Speaker

In the case of a vacancy arising in the office of Speaker during a Parliament, the Deputy Speaker assumes the statutory functions of the office of Speaker (see pp 81–82). However, the House is obliged at its next meeting to choose another member as Speaker.⁷⁸ The Clerk reports the vacancy to the House when it meets.

⁷³ SO 23.

⁷⁴ Gilbert Campion *An Introduction to the Procedure of the House of Commons* (3rd ed, Macmillan & Co. Ltd, London, 1958) at 62.

⁷⁵ Parliamentary Privilege Act 2014, s 8(2).

⁷⁶ Parliamentary Privilege Act 2014, s 8(1).

⁷⁷ SO 24.

⁷⁸ Constitution Act 1987, s 12.

A Minister advises the House that it is the Governor-General's wish that it should proceed to elect a Speaker and present the Speaker-Elect to the Governor-General for confirmation.⁷⁹ The House then proceeds to elect a Speaker in the same way as is prescribed for the election of a Speaker at the opening of Parliament.⁸⁰ Once a Speaker has been elected, the House automatically adjourns until the next sitting day to permit the Speaker-Elect to seek the Governor-General's confirmation.⁸¹ A Speaker elected during a Parliament does not again lay claim to the House's privileges. The Governor-General's confirmation of these at the beginning of the Parliament is regarded as lasting throughout its life.

STATE OPENING OF PARLIAMENT

The Royal commissioners, when opening Parliament, inform the House of when the Governor-General will come before the House to declare to it the reasons for summoning Parliament. This is the occasion when the Governor-General delivers the Speech from the Throne. It is known as the State Opening of Parliament. In fact, in delivering the Speech from the Throne, the Governor-General is not opening Parliament; this has already been done by the commissioners. The Royal commissioners attend to open Parliament only once, at its first meeting following a general election. The State Opening of Parliament is thus the second sitting day of a new Parliament, though it is the first day of any subsequent session of that Parliament that may be held. The Governor-General's Speech from the Throne is not the instrument that actually opens the new session of Parliament. Parliament meets according to the Governor-General's proclamation summoning it to meet. When delivering the Speech from the Throne, the Governor-General is giving members the reasons for the opening of Parliament—an event that has, by then, already occurred.⁸²

Members assemble

On the second day of a new Parliament members assemble in the Chamber at the time fixed by the Governor-General for the delivery of the Speech from the Throne. This may, but does not need to, coincide with the House's ordinary meeting time of 2 pm.

Prayers are read by the Speaker,⁸³ who, in the case of the second sitting day of a new Parliament, has just been confirmed in office and, consequently, appears dressed as Speaker in the House for the first time. The Mace is in position on the Table. The Speaker proceeds to report to the House both the Speaker's confirmation in office by the Governor-General and the Governor-General's reply to the House's claim to its privileges.⁸⁴ The House then awaits a message from the Governor-General requesting its attendance.⁸⁵

Message from the Governor-General

The Usher of the Black Rod, on being commanded to do so by the Governor-General, comes from the Council Chamber, where the Governor-General's party has assembled, to the Chamber of the House to communicate the Governor-General's wish that the Speaker and members join the viceregal party. The door of the House's Chamber is locked as Black Rod approaches. Black Rod has to knock on it three times and is admitted only on the Speaker's command. The bar of the House is in a position that prevents Black Rod from advancing on to the floor of the

79 For example: (31 January 2013) [2011–2014] 1 JHR 357.

80 SO 25(1).

81 SO 25(2).

82 If there were to be multiple sessions, see Chapter 10.

83 SO 14(1)(a).

84 SOs 14(1)(a) and 24.

85 SO 14(1)(b).

House, and is removed only with the Speaker's permission. The rituals of locking the door and putting the bar into position are designed to symbolise the House's independence of the executive, represented by the Crown's messenger. Once the bar has been removed, Black Rod advances into the centre of the Chamber and informs the House that the Governor-General desires its immediate attendance. On receiving this message the Speaker and members leave their places to attend on the Governor-General.⁸⁶

Black Rod leads the Speaker's procession (the Serjeant, with the Mace, and the Speaker), the Clerks, the Prime Minister and the Leader of the Opposition, and the other members out of the Chamber, through the Grand Hall and into the Council Chamber, and into the Governor-General's presence.⁸⁷

Speech from the Throne

When the Speaker and the members have assembled in the Council Chamber, the Prime Minister presents to the Governor-General the speech that is about to be given. The Governor-General then delivers the Speech from the Throne.

The delivery of the Speech from the Throne is one of the principal State occasions. Ambassadors, judges, senior officers of the New Zealand Defence Force, the Mayor of Wellington and other dignitaries are invited to witness it. The State opening occurs in accordance with the Standing Orders, and should any matter of order arise it would be dealt with by the Speaker.⁸⁸ However, the delivery of the Speech from the Throne may also be seen as an exercise of royal prerogative, in association with the prerogative to summon Parliament. The procedure is best described as a meeting of the two constituent parts of the Parliament (the Governor-General and the House), rather than a sitting of the House as such.

The Speech from the Throne is the Crown's explanation to members of the reasons for their being called together in Parliament at that time. It is primarily designed as an outline of the matters that the Government wishes Parliament to consider in the course of the forthcoming session. It is, therefore, an announcement of the Government's legislative programme, and members will be told in the speech that bills on various matters will be introduced in due course. The speech, in this regard, is a statement of present intention; it is not absolutely binding on the Government's future action. The fact that a bill has been mentioned in the speech does not mean that the Government must introduce it. Circumstances may change, causing the legislation to be abandoned before it is introduced, or its introduction may be postponed. Nor does the absence of mention of a bill in the Speech from the Throne mean that such a bill cannot be introduced during that session. The Government can, and does, introduce bills that were not foreshadowed in the Speech from the Throne.

As well as dealing with legislation, the speech will refer to international and domestic affairs, particularly as they involve New Zealand and the policies of the Government. The Speech from the Throne is in the nature of a review of the state of the nation. The broad nature of the speech gives rise to a wide debate in the House shortly afterwards on the motion for an address to be made by the House to the Governor-General in reply to it.

After delivering the speech the Governor-General presents a copy of it to the Speaker. When the Governor-General has left the Council Chamber, members proceed back to their Chamber as part of the Speaker's procession.

As well as the Speech from the Throne being delivered by the Governor-General, it may be delivered by the Sovereign on any occasion on which she is

⁸⁶ SO 14(1)(b).

⁸⁷ During the refurbishment of Parliament House and the consequent unavailability of the Council Chamber in 1991 and 1993, the Speech from the Throne was delivered in the Banquet Hall in the Executive Wing.

⁸⁸ SO 82(4).

present in New Zealand. Her Majesty the Queen has, in fact, delivered the speech at the State Opening of sessions of Parliament held in 1954, 1963, 1970, 1974, 1977 and 1990. The same procedures of the House as apply to a State Opening performed by the Governor-General apply to one performed by the Sovereign or indeed by the Administrator of the Government and by Royal commissioners should the latter be authorised by the Governor-General to perform these functions.⁸⁹

Speech reported to the House

When the Speaker resumes the Speaker's Chair, the Governor-General's speech is formally reported to the House by the copy given to the Speaker being laid on the Table of the House.⁹⁰ The speech is published in both *Hansard* and the *Journals*, and subsequently in the *New Zealand Gazette*.

Business transacted on returning from hearing the Speech from the Throne

Following the formal business of reporting the Speech from the Throne, the Speaker goes through the House's items of opening business: the announcement of the presentation of petitions, papers and bills that have been introduced.⁹¹ There are no oral questions on this day.

While there are severe restrictions on the House transacting business on the day of the State Opening, the House may also wish to appoint its other presiding officers, and this is specifically permitted.⁹² If Government notices of motion for the appointment of a Deputy Speaker and Assistant Speakers have been lodged with the Clerk by 11 am on the day of the Commission Opening of Parliament, they will appear on the Order Paper for the day of the State Opening and can be considered at this point before the House adjourns or the sitting is suspended for the commencement of the Address in Reply debate.⁹³ Similarly, if a notice of motion has been lodged, the House can deal with the reinstatement of business that had lapsed with the dissolution of the previous Parliament.⁹⁴ But the reinstatement of business does not have to be dealt with at this time. It can be attended to later as a Government (or Member's) order of the day.

Adjournment of the House

After considering any Government notices of motion for the appointment of presiding officers and the reinstatement of business, the Standing Orders direct the House to adjourn or, if the sitting is in the morning, it may be suspended by the Speaker to permit the Address in Reply debate to commence later that day at 2 pm.⁹⁵ The Speaker would allow the Address in Reply debate to commence after convening the Business Committee, which may meet after the confirmation of the Speaker on the day of the Commission Opening to consider the business of the House for the day of the State Opening, business to be reinstated, the appointment of select committees, the roster for oral questions, arrangements for other debates and the ongoing sitting programme.

ADDRESS IN REPLY

The Address in Reply debate is, along with the Budget, the most wide-ranging debate held each session. It is the first major debate upon which the House embarks in a new Parliament and in each new session of a Parliament if there is one.

89 SO 3(2).

90 SO 14(1)(c).

91 SO 14(1)(d).

92 SO 14(1)(e).

93 SO 14(1)(e).

94 SO 14(1)(e).

95 SO 14(2).

The Address in Reply itself is adopted as an expression of the House's loyalty and fealty to the Crown and the Crown's representative, the Governor-General. Originally, when taking into consideration the Speech from the Throne, the House debated a motion for an Address in Reply to the speech. This motion answered, point by point, the matters raised in the speech. Debate in the House was not found to be a satisfactory way of considering, amending and redrafting a complex statement such as this, so from 1862 something akin to the present system was adopted. This involved debating a simple motion, that an Address in Reply to the speech be presented to the Governor-General. The details of the address were left to be settled later by a committee.

Nowadays, the Address in Reply debate takes place on a simple motion, "That a respectful Address be presented to [His or Her] Excellency the Governor-General in reply to [His or Her] Excellency's Speech".⁹⁶ This motion provides a vehicle for a wide-ranging debate on the Government's economic or foreign policy, or indeed for any other matters that members wish to raise. It also permits motions expressing lack of confidence in the Government to be moved by way of amendment to the unexceptionable original motion.

Moving for an Address in Reply

The member who has the honour of moving the motion for the Address in Reply is a member of a Government party in his or her first term as a member of Parliament. The member may be chosen for this honour by the Prime Minister or by party colleagues, depending upon the party's or coalition's own internal arrangements. The motion for the Address in Reply may be seconded,⁹⁷ and the seconder is similarly chosen from the ranks of first-term Government backbench members.

It will be apparent that in moving the Address in Reply the mover will also be making a first speech in the House—a "maiden speech". This is regarded as a singular mark of distinction. The mover and seconder may wear formal attire for the occasion (for example, a korowai or clan tartan). The speeches are expected not to contain material of a highly partisan nature so that other members are not tempted or provoked to interject. This does not mean that the speeches must be blandly non-controversial but that they are expected to describe the members' individual beliefs and approach to politics rather than to deal with matters in a party political context.

Address in Reply debate

The Address in Reply debate may commence at 2 pm on the day of the State Opening,⁹⁸ or may be moved on the next sitting day. The debate on the Address in Reply always takes precedence over other Government orders of the day,⁹⁹ and Government orders of the day take precedence over other orders of the day, even on a Wednesday (see p 205), while the Address in Reply debate is before the House.¹⁰⁰ Accordingly the debate is set down as the first major item of business to be considered by the House each day until it is finally disposed of. It may, however, be adjourned after it is reached on a particular day, thus enabling the House to proceed to business further down the Order Paper. Following the speeches by the mover and seconder, the Leader of the Opposition, the Prime Minister and other party leaders may speak.

Leaders of parties with six or more members represented in the House may speak for up to 30 minutes each, members making maiden speeches (including the mover and seconder) for up to 15 minutes, and other members for 10 minutes. The

96 SO 351(1).

97 SO 351(2).

98 SO 14(2).

99 SO 353.

100 SO 76(2).

whole debate is limited to 19 hours, making it the longest debate that the House holds.¹⁰¹ Question time operates as normal while the Address in Reply debate is running, but no general debate is held.¹⁰² The entire debate should occupy about two sitting weeks. It is open-ended as far as relevancy is concerned.¹⁰³

Maiden speeches

As well as the speech of the mover of the Address in Reply motion having the added significance of being a maiden speech, this will also be the case with the seconder of that motion and with all other newly elected members when they come to speak in the debate. In making their maiden speeches on the Address in Reply, members usually try to set out their hopes and aspirations for their careers as parliamentarians. They set out their personal beliefs and describe the character and problems of the electorate that they represent or the sector of society with whose interests they feel most connected. It is customary that other members do not interject in the course of a maiden speech and that the speech itself (being made under this privilege) will not be provocative.¹⁰⁴

Those new members who are unable to participate (for instance, through illness or absence) in the Address in Reply debate, and members elected during the course of a Parliament, may make a maiden statement to the House at a later time.¹⁰⁵ (See pp 268–269.)

Allowing a new member to speak on a bill, or another matter, when the Address in Reply debate has been adjourned does not curtail their opportunity to make a maiden speech of 15 minutes when the Address in Reply debate resumes.¹⁰⁶

Amendments

An amendment raising a question of whether the Government possesses the confidence of the House, in the sense of whether it commands the support of a majority of members, is the archetypal Address in Reply amendment. On most occasions when a Government has fallen as a result of an adverse vote of confidence in the House, the defeat has been on an amendment proposed to the Address in Reply motion. (The last occasion was in 1928.)

Only amendments adding words to the Address in Reply motion may be moved.¹⁰⁷ If an amendment is carried, the words so added must be included in the formal address presented to the House for its approval.¹⁰⁸ In the case of a no confidence amendment, this will include words to the effect that the Government does not possess the confidence of the House. Were the Government to be defeated on such an amendment, it would be expected that the Prime Minister would resign or advise the Governor-General to dissolve Parliament so that a new election could be held.

Adoption of Address in Reply

When any amendments have been disposed of, the question is put on the motion that a respectful address be presented to the Governor-General in reply to the speech. Traditionally there is no vote against this motion. However, a vote has been taken on occasion.¹⁰⁹

When the motion has been carried, the terms of the address itself have to be agreed to by the House, for the House has hitherto been debating the principle of

101 SOs, App A.

102 SO 392(3).

103 (1969) 361 NZPD 1449 Jack.

104 (1977) 410 NZPD 289 Jack.

105 SO 360(1).

106 (9 December 2008) 651 NZPD 125 Tisch (Deputy Speaker).

107 SO 352.

108 SO 169(2).

109 (9 December 2008) 651 NZPD 58.

whether to have an address at all and not the details of that address. An address will, in fact, already have been prepared by the Speaker and this is brought before the House by the Speaker immediately after the motion for an address is passed. An Address in Reply must not contain any words or statements of a controversial nature, except where an amendment has been carried.¹¹⁰

The address usually thanks the Governor-General for the speech and gives assurance that the matters referred to in the speech will receive the House's careful attention. The Speaker reads the proffered address and then puts the question that it be adopted, without any further amendment or debate being permitted.¹¹¹ Once the House has adopted the Address in Reply, it must then be presented to the Governor-General by the Speaker.¹¹² (See p 138.)

110 SO 168(2).

111 SO 168(3).

112 SO 169(1).