

# THE ROLE OF THE SPEAKER IN THE CONSTITUTION OF NIUE

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*The office of Speaker of the Niue Assembly is being considered by the Constitution Review Committee. The background to the existing provision in the Constitution has never been placed on record. This paper fills that gap.*

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## **I THE ROLE OF THE SPEAKER IN A WESTMINSTER CONSTITUTION GENERALLY**

Historically, the Speaker of the House of Commons was appointed from among its members to act as the channel for communication with the Sovereign who still controlled the executive government. The Speaker had to be someone the Sovereign could trust. Gradually, however, the Speaker became Parliament's man, resisting, if necessary, all pressure from the Sovereign.

The next step was for the Speaker to become impartial in conducting the proceedings of the House. That has led to the convention that a Speaker must stand back completely from the political contest within Parliament. He or she is the referee, not a player.

The bigger the Parliament, the easier it is for the member who is elected as Speaker to withdraw from an active part in the debate about policy and the making of laws. That withdrawal has gone further in the UK than it has in NZ. In the UK, the Speaker does not exercise the right to vote.<sup>1</sup>

In the smaller NZ Parliament, the Speaker must act impartially and non-politically. He or she does not take part in the debate, but still exercises the right to vote. The present Speaker has stressed the importance of his role in facilitating Parliament's scrutiny of the executive. Although a member of the governing

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1 <[www.parliament.uk/business/commons/the-speaker/the-role-of-the-speaker/role-of-the-speaker/](http://www.parliament.uk/business/commons/the-speaker/the-role-of-the-speaker/role-of-the-speaker/)>.

majority, the Speaker must stand firm in the face of any pressure that the majority may try to exert.<sup>2</sup>

## **II THE SPEAKER IN THE CONSTITUTION OF NIUE**

In Niue, the Constitution gives the Speaker an important additional role. So far as is necessary, the Speaker in Niue performs the functions that, in New Zealand and elsewhere, would be done by the Governor-General or other representative of the Queen. That innovation was seen as solving several problems in an acceptable way.

### **A The Background**

The Queen in right of New Zealand is the Head of State of Niue and the Governor-General is the Queen's representative in relation to Niue (Constitution, s 1). It was seen as impracticable to provide for the Queen to be separately represented in Niue. In such a small community, that would have been out of proportion, as well as a drain on Niue's human and financial resources.

In addition, when the Niue Constitution was being drafted, there were problems in the Cook Islands about the way in which the Sovereign was at first represented there, and also about the role of the Queen's representative in appointing or dismissing the Premier (now the Prime Minister) and summoning or dissolving Parliament. (Those problems have since largely been solved by a constitutional amendment and also the decisions of the Courts, but it is fair to say that some uncertainty remains, as it does even in New Zealand.) In drafting the Niue Constitution, one aim was to avoid any problems of that kind.

There was, however, still a need to provide for the doing, in Niue, of the things that a resident representative of the Sovereign would ordinarily do, acting on the advice of the Prime Minister or another Minister. In New Zealand, the Sovereign is part of Parliament. Her representative, the Governor-General, summons Parliament to meet, and dissolves Parliament when a general election is required. The Governor-General also signs the Bills passed by Parliament into law. The Governor-General also appoints and dismisses Ministers.

In exercising those powers, the unwritten constitutional conventions require the Governor-General, in most cases, to act in accordance with the advice of the Prime

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2 <[www.parliament.nz/en-NZ/AboutParl/HowPWorks/Speaker/](http://www.parliament.nz/en-NZ/AboutParl/HowPWorks/Speaker/)>.

See also David McGee *Parliamentary Practice in New Zealand* (3rd ed, Dunmore Publishing Limited, Wellington, 2005) Chapter 4. This is available on line: <[www.parliament.nz/enNZ/AboutParl/HowPWorks/PPNZ/5/d/e/00HOOOCPNZ\\_41-Chapter-4-Speaker-of-the-House-of-Representatives.htm](http://www.parliament.nz/enNZ/AboutParl/HowPWorks/PPNZ/5/d/e/00HOOOCPNZ_41-Chapter-4-Speaker-of-the-House-of-Representatives.htm)>.

Minister or other responsible Minister or in accordance with other guiding principles. Usually the Governor-General is satisfied that the recommended action is a proper one. He or she receives a full written explanation about the background to the proposed action. The Governor-General may ask for further information, or discuss the matter with the Minister. As a last resort the Governor-General has drastic legal powers, such as dismissing the Prime Minister. But if, as in Australia, there is argument about whether the dismissal was justified, a constitutional crisis is likely to follow.

### ***B The Approach to Constitution-Making***

For that reason, in making a Constitution for Niue, one objective was to avoid problems arising from the exercise of the powers of the Sovereign's representative. The Governor-General therefore has a limited and uncontroversial role in respect of Niue that can be exercised at a distance. Acting on the advice of the Cabinet tendered by the Premier, the Governor-General appoints Judges of the High Court and Court of Appeal (arts 42, 52, and see also art 45 as to the removal of a Judge of the High Court.) But, unlike his or her role in New Zealand and that of the Queen's Representative in the Cook Islands, the Governor-General, in relation to Niue, plays no part in the executive or the legislature.

Instead, the Constitution itself contains rules about how those two branches of government are constituted and operate. The then recently made Constitution of Nauru was a helpful model, but Nauru is a republic. In Niue, the Queen in right of New Zealand remains the Head of State. The Constitution therefore delegates the Sovereign's executive authority directly to the Cabinet (art 2(2), instead of to the representative of the Sovereign, acting on the advice of Ministers. Other important constitutional powers and duties are laid directly on the Prime Minister and other Ministers (arts 5, 6 and 7) and on the Assembly (arts 4(2), 6(2), 20(4), 22, 28).

There was, however, still a need to provide for a high constitutional officer, resident in Niue, and not personally involved in the cut and thrust of politics, to certify, or in some other way record formally, that all the things required to be done under the Constitution have been duly carried out. The Constitution lays that responsibility on the Speaker of the Niue Assembly. The task is not a just a mechanical one. The Speaker must be satisfied that what is required to be done under the Constitution is in fact done, at the time and in the manner prescribed. That responsibility is a main constitutional safeguard, going well beyond the roll of the Speaker in New Zealand and other Westminster Parliaments.

### **III THE SPEAKER'S ADDITIONAL CONSTITUTIONAL RESPONSIBILITIES**

As well as the duty to preside over meetings of the Assembly, the Niue Constitution lays upon the Speaker the following additional responsibilities:

#### **A *The Executive Branch of Government***

After the Assembly has elected a Premier, and the Premier-elect has nominated the other Ministers, the Speaker appoints the Premier and the other Ministers. The Speaker also receives the resignation of the Premier or a Minister. The Speaker must ensure that any vacancy in either office, or the temporary absence of its holder, is dealt with as the Constitution prescribes.<sup>3</sup>

In that way, the Speaker ensures that the structure of the executive branch of government is maintained.

The Speaker is the keeper of the Seal of Niue (art 15): The Seal of Niue is used to authenticate the most important legal documents binding the self-governing State of Niue. The Speaker must ensure that the Seal is not used improperly.

#### **B *The Legislative Branch of Government***

The Speaker is part of the Niue Assembly (art 16(2)). The provision that the Speaker is a distinct part of the Assembly symbolizes the fact that, in the Constitution as a whole, the Speaker has responsibilities equivalent to those of the absent Sovereign and Governor-General. The provision makes it clear that the Assembly consists of two parts: The elected members and the Speaker. If the office of Speaker is vacant, the Assembly has no power to act except for the purpose of filling the vacancy.

The Speaker appoints the time and place for meetings of the Niue Assembly and for the holding of votes on certain matters.<sup>4</sup>

In certain circumstances the Speaker has a duty to act without (or even contrary to) the request of the Premier. A minority of members of the Assembly can request the Speaker to call a meeting of the Assembly if it has not met for more than six weeks. That is a major constitutional safeguard.

When the Constitution provides that the Assembly must meet in certain circumstances, the Speaker shares with the Premier the responsibility of ensuring compliance with that requirement.

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3 Articles 5 and 8; and see also arts 4(2)(b) and 7.

4 Articles 5(4), 6(2), 22(1).

The Speaker ensures that certain Bills are dealt with only in accordance with the required special procedure:

The Speaker has the responsibility of enforcing the constitutional provisions that forbid the Assembly from proceeding with certain kinds of Bill unless the required procedures are followed.

One requirement is usual in a Westminster constitution. Bills that authorise the spending of public money may not proceed without the consent of a Minister: art 30. The requirement ensures that the Assembly does not authorize expenditure unless it is provided for in the Government's budget.

In the other cases, reports on the implications of the Bill must be given to the Assembly. That rule applies to Bills concerning the conditions of employment in the Niue Public Service: art 32; Bills affecting Niuean land: art 33; and Bills providing for the remuneration of the Premier, other Ministers, other members of the Niue Assembly and the Speaker: art 25(3). The purpose of the required reports is to ensure that the members of the Assembly and the public are fully informed before the Assembly makes laws about those important matters. The need to obtain a report helps to ensure that a majority in the Assembly does not abuse its power.

The Speaker certifies that a Bill or a constitutional amendment has been duly passed by the Assembly and, if necessary, approved in a referendum (arts 34 and 35).

The Speaker's certificate is part of the process of making law, including a law amending the Constitution. It takes the place of the usual constitutional provision that a Bill passed by Parliament does not become law until it has been signed by the Sovereign or the Governor-General. Again, it is implicit that the Speaker must give the necessary certificate only if all the required processes have been fully and properly completed.

All documents signed by the Speaker, including the certificate on a Bill, must be counter-signed by the Clerk of the Niue Assembly: art 20(10). The validity of a Bill duly signed by the Speaker or a Member performing the functions of the Speaker may not be questioned in any court: art 24(1).

The Speaker dissolves the Niue Assembly and sets the date for a general election. Under art 26 the Speaker has the responsibility of dissolving the Assembly in certain circumstances, and appointing the date of the general election that must then be held.

#### ***IV THE SIGNIFICANCE OF THE SPEAKER'S CONSTITUTIONAL ROLE***

The list above shows that, under the Niue Constitution, the Speaker carries out a number of functions that, in New Zealand, are exercised by the Governor-General. Like the Governor-General, the Speaker is sometimes required to act in accordance with the advice, or at the request, of the Premier. But unlike the Governor-General, the Speaker does not have constitutional discretions, except within clear limits or guidelines. The overall effect, however, is that, as well as presiding over meetings of the Assembly, the Speaker in Niue has responsibilities for ensuring that the Constitution works as intended. The Speaker in other Commonwealth monarchies does not have that responsibility.

Accordingly, the Speaker is responsible for the smooth operation of the electoral cycle. If the Premier loses the confidence of the majority, the Speaker must exercise oversight of the prescribed procedures until a government with the necessary majority is again in office. In the Assembly and outside it, the Speaker is responsible for ensuring compliance with important constitutional safeguards against the abuse of the powers vested in the Assembly, in the Cabinet, the Premier or other Ministers.

The Speaker must therefore be able to stand firm in the face of pressures or inertia on the part of the Premier, other members of the executive, or a majority in the Assembly. The Speaker must carry out the duties of the office independently, fearlessly and responsibly, and without any kind of political influence or bias. That independence is one of the checks and balances in the Constitution. It is similar to the independence of the courts.

#### ***V THE CONSTITUTIONAL PROVISIONS FOR THE ELECTION OF THE SPEAKER AND THE EXERCISE OF THE FUNCTIONS OF THE OFFICE***

The Constitution provides that the Speaker cannot remain or become a sitting member of the Assembly. A member of the Assembly may be elected as Speaker, but he or she must then vacate the office of member (art 20(3)). Once elected, the Speaker holds office until a Speaker is newly elected or re-elected after the next general election (art 6 (a)). During that term, the Speaker loses office only if he or she becomes a candidate for election to the Assembly or ceases to have the qualifications for election as a member (arts 20 (6) (b) and (c) and arts 17, 18 and 19). In effect, the Speaker has security of tenure until the Assembly first meets after the next general election.

The Speaker presides at every meeting of the Niue Assembly at which he or she is present: art 22(2). The Speaker does not have either a deliberative or a casting

vote. A member of the Assembly temporarily exercising the functions of Speaker does, however, retain the right to cast a deliberative vote: art 22(5).

Because the Speaker has duties outside, as well as inside, the Assembly, and whether or not the Assembly is meeting at the time, the Constitution contains fail-safe provisions to ensure that, if, at any time, the Speaker is not available, an identifiable member of the Assembly who is not a Minister is able to carry out the Speaker's functions (art 20(7), (8), (9)).

If necessary, the Clerk of the Niue Assembly (or another employee of the Niue Public Service acting for the Clerk) (art 82(3)) must call a meeting of the members of the Assembly (or former members of an Assembly that has been dissolved). At that meeting the normal quorum of ten members does not apply. Those present must elect one of their number to perform the functions of the Speaker until the Speaker is again available. Those provisions have the same purpose as the common provision that the Chief Justice (or next most senior judge) automatically takes the place of a Governor-General or other representative of the Sovereign who is unable to act.

## ***VI WHY THE SPEAKER IS NOT A MEMBER OF THE ASSEMBLY***

As just explained, a member of the Assembly must be authorised to carry out temporarily the functions of an absent Speaker. It is therefore reasonable to ask why, in that case, does the Constitution provide that, if a member of the Assembly is elected and takes office as Speaker, he or she is regarded as having resigned as a member of the Assembly? The answer is simply that it is a matter of degree.

It is one thing to ask a member of the Assembly to exercise the functions of the Speaker temporarily, observing the standards and pattern of behavior already set by the permanent holder of the office, but still retaining the right to cast a deliberative vote. In an Assembly as small as that of Niue, it was thought unreasonable to deprive a member of the right to vote in any circumstances. In every other way, however, the member for the time being performing the functions of the Speaker is expected to uphold the impartiality of the office. That means refraining from any kind of "political" behaviour.

That temporary giving-up of the member's normal freedom of action and expression can be readily accepted. But to give it up permanently, as in New Zealand and, to an even greater extent, in the UK, would severely "cramp the style" of the member who is also the Speaker. In a legislature as small as that of Niue, it seemed more likely that a Speaker who retained all the responsibilities of a member of the Assembly would be under constant pressure to take an active

political role. Any politicization of the office of Speaker would cast doubt on the legitimacy of the law-making processes in the Assembly. Even more importantly, it would put at risk the Speaker's discharge of his or her additional responsibilities for the orderly functioning of Niue's constitutional democracy.

For those reasons, Professor Quentin Quentin-Baxter, the Constitutional Adviser to the Niue Island Assembly, considered that, under the Constitution for self-government, the Speaker should be a person of high standing, chosen by the Assembly, but without the conflicting responsibilities that membership of the Assembly would entail.