

# Chapter 1 - The Parliament of New Zealand

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## Chapter 1

### The Parliament of New Zealand

#### At a glance

The Parliament of New Zealand has gone through significant changes since it began in 1854. The two components that make up the Parliament as we know it today—the Sovereign (who is represented by the Governor-General) and the House of Representatives—have distinct roles. This chapter describes how each operates and how the House of Representatives in particular has evolved into the structure we know today.

#### 1.1 Legislative branch

In New Zealand, public power is shared between three branches of government:<sup>[1]</sup>

- the legislative branch
- the executive branch
- the judicial branch.

Broadly speaking, the legislative branch is responsible for making laws, the executive branch for administering those laws, and the judicial branch for interpreting and applying them. Each branch performs the functions allocated to it and generally does not intrude on or assume the functions of another branch, although in New Zealand there is some overlap between the branches.<sup>[2]</sup> In principle, the separation of public power between the branches is intended to prevent the concentration of power in a single branch, and reduce the potential for abuse of power.

The legislative branch in New Zealand is the Parliament. The concept of Parliament can encompass a number of elements:

- the House of Representatives and its committees
- the legal definition of Parliament as the Sovereign and the House of Representatives, and its power to make law<sup>[3]</sup>
- the physical place—Parliament's buildings and grounds—that is the centre of New Zealand democracy, where political debate takes place and people go to celebrate and protest
- the people, organisations, systems, and resources that support Parliament and enable it to function.

These elements together make up what may be described as the “institution of Parliament”.

## 1.2 Unicameral Parliament

The Parliament of New Zealand met for the first time on 24 May 1854 in Auckland. It had been established under the New Zealand Constitution Act 1852, passed by the Parliament of the United Kingdom, which gave it the official name of “The General Assembly of New Zealand”. The General Assembly consisted of three bodies: the Governor, who exercised powers on behalf of the British Sovereign, a Legislative Council, and a House of Representatives. Only the House of Representatives, the elected component, has continued throughout the history of the Parliament under its original title, although as a much larger body of 120 members now,<sup>[4]</sup> compared with 37 in 1854.

Today the Parliament of New Zealand consists of the Sovereign in right of New Zealand and the House of Representatives.<sup>[5]</sup> The Sovereign was not originally mentioned as part of the General Assembly, so legislation was passed in 1953—marking the first visit to New Zealand of Queen Elizabeth II—to confirm the Sovereign’s ability to exercise Royal powers in this country.<sup>[6]</sup> The Sovereign’s representative, who was accorded the title of Governor-General in 1917,<sup>[7]</sup> exercises the Sovereign’s powers as part of the Parliament. The Legislative Council, which was an appointed rather than elected body, was abolished on 1 January 1951,<sup>[8]</sup> and the Parliament has been a single-chamber or “unicameral” legislature ever since.

## 1.3 Two components of Parliament

### 1.3.1 Sovereign and the Governor-General

The Sovereign in right of New Zealand is the head of State, and is represented in New Zealand by the Governor-General.<sup>[9]</sup> Acting on the Sovereign's behalf in their executive capacity as the head of State, the Governor-General carries out a number of constitutional duties, including appointing Ministers and presiding over the Executive Council (see 5.3). In international relations, the Governor-General represents New Zealand through State visits, attending significant international events, and accepting the credentials of foreign diplomats. The Governor-General also performs other constitutional, ceremonial, and community functions. For example, the Governor-General hosts and attends events and ceremonies, holds a wide range of patronages, and confers New Zealand Royal Honours.<sup>[10]</sup>

During visits to New Zealand, on occasion the Sovereign has personally performed a number of acts as a constituent part of Parliament. These have included:

- giving the Royal assent to bills that have passed through the House<sup>[11]</sup>
- proroguing and summoning Parliament<sup>[12]</sup>
- delivering the Speech from the Throne at the opening of a session of Parliament
- sending messages to the House of Representatives.

The Governor-General, as the Sovereign’s representative in New Zealand,<sup>[13]</sup> naturally plays a more frequent part in the work of Parliament. In this capacity, the Governor-General exercises powers during the electoral cycle to summon and dissolve Parliament,<sup>[14]</sup> and meets directly with the House at the opening of Parliament to deliver the Speech from the Throne (see 7.4.7). During the parliamentary term, the Governor-General sends messages to the House and gives the Royal assent to bills (see 48.2 and 40.6).

If the office is vacant or the Governor-General is for any reason unable to perform the duties of the office, the Chief Justice performs them as Administrator of the Government.<sup>[15]</sup> In the absence of the Chief Justice, the most senior judge available may act as Administrator.<sup>[16]</sup>

### 1.3.2 House of Representatives

The House of Representatives is the popularly elected component of the Parliament; its members are elected for a three-year term. It is this body that people tend to identify with the term “parliament”, although it is in fact only a part of the Parliament.

This book covers all aspects of Parliament, with a focus on the House of Representatives: how that body is formed, administered, and supported; its procedural rules and practices; the types of business it transacts; and its legal relationship with persons and bodies outside Parliament.

## 1.4 Functions of Parliament and the House of Representatives

The functions of the Parliament and of the House are not identical. Each constituent part of the legislature has a different role. The Parliament of New Zealand has only one function, and that is to make laws. Whenever “Parliament” acts, it has the force of law—as an Act of Parliament. The Governor-General and the House of Representatives communicate on matters other than laws, but the two constituents act together as Parliament only to make laws.

Originally the lawmaking function was confined to making laws for the “peace, order and good government of New Zealand”.<sup>[17]</sup> This lawmaking remit was limited by a requirement that New Zealand’s laws not be “repugnant to” the laws of England, with oversight by colonial authorities in London and possible disallowance by the Sovereign.<sup>[18]</sup> It was not until 1947 that New Zealand assumed the right to make its own laws without such limitations.<sup>[19]</sup> After questions were raised about whether the Parliament’s power to make laws could have extra-territorial effect<sup>[20]</sup>—that is, an effect outside New Zealand—Parliament itself extended this lawmaking provision in 1973 to the power to make laws “having effect in, or in respect of New Zealand or any part thereof and laws having effect outside New Zealand”.<sup>[21]</sup> The present legislative description of its law-making power states only that the Parliament has “full power” to make law.<sup>[22]</sup>

The Governor-General, as the Sovereign’s representative in New Zealand,<sup>[23]</sup> has a much wider role than simply that of a constituent part of Parliament (see 1.3.1). The House of Representatives, apart from its lawmaking role in the Parliament, also performs other functions that are important in themselves although they do not lead to an action of the Parliament as such. Indeed, only about half of the working time of the House is spent on its legislative function. However, the House of Representatives differs from the Sovereign in that the House performs all of its functions as part of the Parliament of New Zealand. The House of Representatives has no role outside the life of a Parliament and cannot function once that Parliament has been dissolved or has expired.

Commentators on the House of Representatives differ in the way they classify and describe its functions. The House’s role is not defined anywhere; many generations of members have instead carved out its role, which reflects a range of different influences:

- the legal environment from which the House draws its power (including its privileges)
- expectations (including those of the early parliamentarians) about what members of Parliament ought to do
- the initiative of members themselves in assuming functions that were open to them
- legislation that has given powers to the House on an ad hoc basis (for example, to appoint or remove certain office holders).

The House does not necessarily have an exclusive role in performing any of its functions. For instance, it shares with the Governor-General its legislative role and the task of providing a Government,<sup>[24]</sup> and scrutiny of the Government is undertaken by other democratic institutions, such as the courts and the media, as well as through parliamentary activity.

The following sections outline four major functions that the House performs.

### **1.4.1 Acting as legislature**

The House of Representatives plays a part—clearly the largest and most important part—in Parliament’s role of making laws. An Act of Parliament, a statement of law in its highest form, is a law that both the House of Representatives and the Sovereign or the Governor-General agree to. The most visible part of the process by which a proposed law becomes an Act of Parliament is its consideration by the House. Only once the House has agreed to the proposed law can it be submitted to the Governor-General for their agreement. When the Governor-General gives this agreement and both parts of the Parliament concur on the matter, the proposed law is converted into law as an Act of Parliament (see Chapter 40).

The formal approval by Parliament of a document converts it from a piece of paper with no effect into a statement of rules of binding effect that the State will enforce. It is fundamentally important as a means by which binding rules (laws) can be established and recognised. Contributing to such documents is a primary function of the House and its committees.

### **1.4.2 Providing a Government**

Neither Parliament nor the House governs the country in the sense of having direct control of the civil and military apparatus of the State and making day-to-day decisions on managing and deploying these resources. This is the job of the executive (the Government), which carries out the government of the country after being appointed to do so by the Governor-General.

In effect, the House is an electoral college, which translates the will of the people, as expressed at a general election, into a Government (a “ministry”) composed of a Prime Minister and Ministers. By convention, the Governor-General’s role in the process of government formation is to ascertain where the confidence of the House lies, on the basis of the parties’ public statements, so that a government can be appointed (see 5.2). It is not the Governor-General’s role to form the Government or to participate in any negotiations, although the Governor-General might wish to talk to party leaders if the negotiations were to have no clear result. Accordingly, the Governor-General will abide by the outcome of the Government formation process in appointing a Government, and will also accept the political decision as to who will lead the Government as Prime Minister. There is no legal or political necessity for the House to ratify or confirm these actions when it first meets, although it constantly tests the justification for the choice of the Government throughout the life of the Parliament.

The House thus provides and sustains the Government from among its own members. The Government, although appointed by the Governor-General, remains in office for only as long as it can maintain a majority in the House—that is, as long as it retains the confidence of the House (see 5.7). Where no party has an overall majority in the House, a coalition Government or a minority Government may be formed and sustained in office on the basis of agreements with other parties or members. Whatever the precise arrangements, the factor that determines who will govern is the political situation as represented by the members elected to serve in the House, not the whim or pleasure of the Sovereign. This is a fundamental convention of the constitution.

### **1.4.3 Scrutinising and controlling Government**

Although the Government is appointed from among members of the House based on the result of a general election, the House goes beyond being an electoral college that disperses once it has fulfilled its function of providing a Government. The Government needs the House’s continuing support to stay in office. To maintain that support, it must answer to the House for its stewardship of the executive functions of State. One of the main ways through which the House requires the Government to explain its official actions is the annual process of

granting financial authority—or “supply”—to the Government. In return for the financial authority they consider necessary to carry on governing the country, Ministers must defend their policies and explain the administration of their portfolios to the House. Similarly, when Ministers ask the House to pass legislation, the House may hold them to account for their actions in proposing that legislation.

Many of the procedures of the House are designed specifically to enable the House to play its part in the scrutiny and control of the Government. Such procedures include:

- questions addressed to Ministers
- general and urgent debates
- select committees investigating matters of governmental responsibility and regulations made by the Government under powers delegated by Parliament
- referral of petitions to Ministers for response.

Everything the House does offers it the opportunity to probe and criticise the actions of the Government.

#### 1.4.4 Representing the public

As its name indicates, the essential nature of the House of Representatives is to provide the primary forum for representing the views of the populace. The purpose of the New Zealand Constitution Act 1852, which originally established the House, was “to grant a Representative Constitution to the Colony of New Zealand”.<sup>[25]</sup> The Act was framed on the basis of British constitutional practice for elected representatives to speak on behalf of the voting public. This contrasted with political systems adopted in some ancient Greek city-states that enabled all qualifying male citizens to assemble to express their opinions on public affairs and listen to the opinions of others. That approach was impracticable, given the size and complexity of the modern State.

New Zealand’s constitutional theory works on the basis that the State has a source of authority, the Crown, which carries on the government, but calls its subjects into its presence in Parliament to consult with them and gain their ratification. Because all the subjects cannot attend in person, they attend through representatives elected on a national or a local basis. It is the task of these representatives to represent what the people of the State feel and think about particular matters. Another task of the representatives is to bind the people they represent to the decisions of the Parliament to which those people have sent them. As every person is symbolically present in Parliament through a representative, every person has a share in, and a responsibility for, the actions of that Parliament, and is morally as well as legally obliged to obey the laws that it makes on their behalf.

The House of Representatives, as the elected element of the New Zealand Parliament, fulfils this representative function. It allows members to report and give voice to national, provincial, local, and individual views on matters of State. It also imposes on every inhabitant some responsibility for the ultimate decisions on the law and policy by which New Zealand is governed. It represents the governed to the Government and the Government to the governed.

### 1.5 How the House of Representatives has developed

This book is about the law applying to the House of Representatives and the procedures the House uses today. It is not a comprehensive history of Parliament; it gives only enough background about how the present rules have evolved to help readers understand those rules. A comprehensive history of the House of Representatives, written by Dr John Martin, was published in 2004 to mark the 150th anniversary of the first meeting of the House.<sup>[26]</sup> Previous editions of *Parliamentary Practice in New Zealand* provide a valuable record of the detail of the House's operations as they stood when those editions were published.<sup>[27]</sup>

This section outlines—in very general terms—the main phases the House has passed through in its history, mostly due to political and social changes.

### 1854–1856

The first two years of parliamentary democracy were something of a false start for the House. Although it was a representative institution under the limited franchise that applied at the time,<sup>[28]</sup> it found that it could not control the Government, because the Government was politically responsible to the Governor rather than to the House. That situation changed in 1855 when word was received from London that the Imperial Government endorsed the introduction of responsible government in the colony.<sup>[29]</sup> In April 1856, the House started afresh, with a ministry appointed from among its members and holding office only as long as the ministry retained the confidence of the House.

### 1856–1890

This was a period of consolidation of parliamentary government in the colony. The House's newly won responsibility for providing the government brought about considerable instability, as administrations formed, struggled, and lost the support of the House. During the 1860s, much of this turbulence arose from disputes about the conduct and funding of military campaigns against Māori in the New Zealand Wars, as well as from bitter divisions between provincial factions. In the midst of the turmoil, the General Assembly moved its meeting place permanently from Auckland to Wellington.

Laws passed by the General Assembly during this period included several that enabled the Government and settlers to confiscate or gain possession of whenua and taonga of iwi Māori, disrupt or devastate their communities and economies, suppress their tikanga and reo, punish their resistance, and diminish their mana.

<sup>[30]</sup>

The representation of Māori men—like the non-Māori population, only men could vote or stand for election—was firmly established in the House from 1867.<sup>[31]</sup> However, this representation was much lower than the Māori proportion of the population and remained fixed at four members for more than a century.

In this period, the House asserted its political ascendancy over the Legislative Council, and the council started its long and ultimately terminal decline.

Elections became an important way of changing the Government towards the end of the period.<sup>[32]</sup> Nevertheless, the House was not yet a modern legislature, largely because no comprehensive party system had developed. The fledgling “parties” that existed were parliamentary-based alliances or factions that, while relatively cohesive in parliamentary terms, had little organisation beyond Parliament. The history of this pre-party period was therefore something of a calendar of ins and outs, with much depending on the actions of forceful parliamentary personalities.

### 1890–1935

In this period a more recognisably modern Parliament took shape. Party organisations arose to contest elections and return members on a party ticket. This led to party-based government, although the system of political parties that underpinned it was still developing. There were periods of instability as parties were formed, evolved, and faded from view, reflecting societal changes—the strong temperance movement, conflicting interests between rural and urban dwellers, and a surge of immigration after the First World War. Towards the end of this period, a Government lost the confidence of the House for the first—and, so far, only—time in the party era.<sup>[33]</sup>

The House was a combative institution during this period. Under the influence of the stronger party approach to politics, the House's procedural organisation became firmer and more disciplined, such as with stricter debating and timetabling rules.

Among the most important events during this period were the introduction of women's suffrage in 1893 and eventually, in 1933, the first woman elected to the House. Only once these developments occurred could the House be regarded as moving towards becoming a properly representative legislature.

### **1935–1984**

This period represents perhaps the high point of two-party control of the House. With the election of a Labour Government in 1935, the country entered an extended phase in which one party held power for a considerable period, followed by an even longer period in which the other major party, National, held power. Together, these two parties took almost complete ownership of the seats in the House during this era, and the House adjusted its rules both explicitly and implicitly to reflect this.

Not even the abolition of the Legislative Council at the start of 1951 caused any significant interruption to a remarkably stable period for the House and its procedures. However, some important changes did occur. For example, the Standing Orders were amended in 1962 to improve the procedures for questioning Ministers, establish a Public Expenditure Committee, and strengthen the House's oversight of delegated legislation. Another amendment in 1979 brought about the current routine for most bills to be referred to select committees after their first reading.

### **1985–1996**

A period of reform and transition led into the end of the two-party phase of the House's history. Economic, governmental, and constitutional reforms introduced in New Zealand after 1984—including the enactment of the Constitution Act 1986, the State Sector Act 1988, and the Public Finance Act 1989—strongly influenced the significant parliamentary developments that occurred during this period.

In 1985, the sitting pattern of the House was altered, after remaining unchanged virtually from the beginning, and the full-time, year-round nature of parliamentary work was recognised. The select committee system was remodelled, and select committees were given powers to conduct inquiries on their own initiative rather than relying on the House to refer matters to them. This ability is now taken for granted, but it was a major change in parliamentary culture in 1985. A further important innovation was the establishment of the Regulations Review Committee to focus on the Government's use of lawmaking powers delegated to it by Parliament.

These procedural changes were part of broader reforms to moderate the Government's ability to dominate the legislative branch. Longstanding arrangements where the Government oversaw parliamentary administration were seriously examined for the first time in a century, and completely overhauled. A new body—the Parliamentary Service—was created so that the provision of services to members and Parliament could be transferred from the direct control of the Government and placed under the responsibility of the Speaker acting in consultation with members. The Office of the Clerk was also established during this time, with the Clerk of the House as its chief executive, to place the House's secretariat on a more independent statutory footing.

In 1993, the country voted at a referendum for a change to the electoral system, which brought the mixed member proportional system (MMP) into the House from the 1996 general election. The House adopted extensive changes to its procedures in 1995,<sup>[34]</sup> to prepare for the expected increase in the number of parties in the House and the need to reflect party proportionality in its rules.

### **1996 onwards**

As expected, the change to the MMP electoral system resulted in greater diversity among the House's membership, more parties in the House, and Governments that included, or relied on support from, a number of parties.<sup>[35]</sup> The House also increased in size to its current standard membership of 120 members. A further referendum, held in 2011, resulted in a vote to retain the MMP electoral system.<sup>[36]</sup>

Since 1996, the House has continued to adapt its procedures in response to the practicalities of operating in a multi-party, rather than a two-party, political environment. While the Standing Orders had been completely rewritten in response to the introduction of the new electoral system, parliamentary culture responded more slowly. Over time, however, sustained changes to procedure and more than a quarter of a century of political experience have done much to point the House away from its first past the post pedigree.

During this period, the House has considered many bills to implement deeds of settlement between iwi and the Crown. These bills have provided some redress for breaches of Te Tiriti o Waitangi and, in considering them, the House has contributed to the enhancement of mana for the iwi concerned.

Importantly, the House has embedded the practice of conducting a regular review of its procedures during each term of Parliament, to provide a mechanism for proactively improving the effectiveness of the House and its committees (see 14.3.3). The Business Committee has been accorded very broad powers to arrange the time and work of the House, and this has encouraged a cross-party approach to the trialling of new procedures. Technological and social changes have led to important developments, such as the televising of all sittings, simultaneous interpretation of speeches made in te reo Māori, the establishment of a register of members' pecuniary interests, and broader public engagement. More recent innovations include the live streaming of select committee hearings and remote participation in their meetings, and even the remote participation by members in the House's own sittings. Cumulatively, the reviews and other procedural changes have resulted in substantial shifts in how the House and its committees use their time and transact business.

<sup>[1]</sup> These three branches are reflected in the Constitution Act 1986, pts 2–4.

<sup>[2]</sup> New Zealand follows the Westminster model, where the Ministers who provide political leadership of the executive branch must be members of Parliament, and therefore are also part of the legislative branch (see 5.1).

<sup>[3]</sup> Constitution Act 1986, ss 14 and 15.

<sup>[4]</sup> The membership of the House has exceeded 120 for a number of parliamentary terms since 1996 as a result of the "overhang" (see 2.8.23).

<sup>[5]</sup> Constitution Act 1986, s 14(1).

<sup>[6]</sup> Royal Powers Act 1953.

<sup>[7]</sup> Letters Patent Constituting the Office of Governor-General of New Zealand, 11 May 1917.

<sup>[8]</sup> Legislative Council Abolition Act 1950.

<sup>[9]</sup> Constitution Act 1986, s 2.

<sup>[10]</sup> For more information about the role of the Governor-General, see Alison Quentin-Baxter and Janet McLean *This Realm of New Zealand: The Sovereign, The Governor-General, The Crown* (Auckland University Press, Auckland, 2017) and the website of the Governor-General [www.gg.govt.nz](http://www.gg.govt.nz).



- [11]** Queen Elizabeth II personally gave the Royal assent to at least four New Zealand bills: the Judicature Amendment Act 1954, the Seal of New Zealand Act 1977, the Flags, Emblems, and Names Protection Act 1981, and the Waikato Raupatu Claims Settlement Act 1995.
- [12]** Prorogation is the temporary suspension of Parliament, which precedes the Parliament being summoned to a State Opening (see 6.4).
- [13]** Constitution Act 1986, s 2(2); Letters Patent Constituting the Office of Governor-General of New Zealand 1983, cl 1.
- [14]** The Governor-General also may prorogue Parliament, but this power has not been used since 1991 (see 6.4).
- [15]** Constitution Act 1986, s 3B; Letters Patent Constituting the Office of Governor-General of New Zealand (issued 28 October 1983 and amended in 1987 and 2006), cl 12.
- [16]** For seniority of judges, see the Senior Courts Act 2016, s 121.
- [17]** New Zealand Constitution Act 1852 (UK), s 53.
- [18]** New Zealand Constitution Act 1852 (UK), ss 53 and 56–59.
- [19]** Statute of Westminster Adoption Act 1947; New Zealand Constitution Amendment (Request and Consent) Act 1947; New Zealand Constitution Amendment Act 1947 (UK).
- [20]** *R v Fineberg* [1968] NZLR 119 (SC).
- [21]** New Zealand Constitution Amendment Act 1973, s 2.
- [22]** Constitution Act 1986, s 15(1). See Philip A Joseph *Joseph on Constitutional and Administrative Law* (5th ed, Thomson Reuters New Zealand Ltd, Wellington, 2021) especially chs 7, 15, and 16, for a discussion of legislative power.
- [23]** Constitution Act 1986, s 2(2); Letters Patent Constituting the Office of Governor-General of New Zealand 1983, cl 1.
- [24]** The House provides the Prime Minister and other Ministers from within its own members, and the Governor-General formally appoints them to those roles.
- [25]** New Zealand Constitution Act 1852 (UK), long title.
- [26]** John E Martin *The House: New Zealand's House of Representatives, 1854–2004* (Dunmore Press, Palmerston North, 2004). This work by Dr Martin, the Parliamentary Historian, represented the completion of a project that had begun at the time of the House's centenary, to write the history of the New Zealand Parliament. A previous Parliamentary Historian, Dr AH McLintock, wrote a volume on the establishment of representative government in New Zealand (AH McLintock *Crown Colony Government in New Zealand* (Government Printer, Wellington, 1958)), and co-authored a book about the 19th century Legislative Council (AH McLintock and GA Wood *The Upper House in Colonial New Zealand* (Government Printer, Wellington, 1987)).
- [27]** The first edition was published in 1985, followed by further editions in 1994, 2005, and 2017.

**[28]** The New Zealand Constitution Act 1852 (UK) granted the franchise for both the provincial councils and the House of Representatives to all males—including Māori—who were over the age of 21 and who owned land. In effect, this meant that few Māori men could vote because most land held by Māori was communally held (rather than by individuals) and held in customary title (unregistered). New Zealand women (both Māori and non-Māori) were not granted the franchise until 1893.

**[29]** For more information about responsible government, see 5.1.

**[30]** Examples include the Native Lands Act 1862, New Zealand Settlements Act 1863, Public Works Act 1864, Native Lands Act 1865, Native Schools Act 1867, and Public Works Act 1876, and, later, the Tohunga Suppression Act 1907.

**[31]** Maori Representation Act 1867.

**[32]** John E Martin *The House: New Zealand's House of Representatives, 1854–2004* (Dunmore Press, Palmerston North, 2004) at 82.

**[33]** For more information about confidence of the House, see 5.7.

**[34]** Standing Orders Committee *Review of Standing Orders* (13 December 1995) [1993–1996] 43 AJHR I.18A.

**[35]** From 1996 to 2020, all Governments were either coalitions of parties, or minority arrangements relying on support from non-Government parties, or both. The 2020 general election resulted in the first single-party majority Government under MMP.

**[36]** For more information about the MMP system, see 2.1.4.

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