Constitutional Advisory Panel

Te Ranga Kaupapa Ture

# New Zealand's Constitution

## A Report on a Conversation

## He Kōtuinga Kōrero mō Te Kaupapa Ture o Aotearoa

NOVEMBER 2013

New Zealand Government

# New Zealand's Constitution

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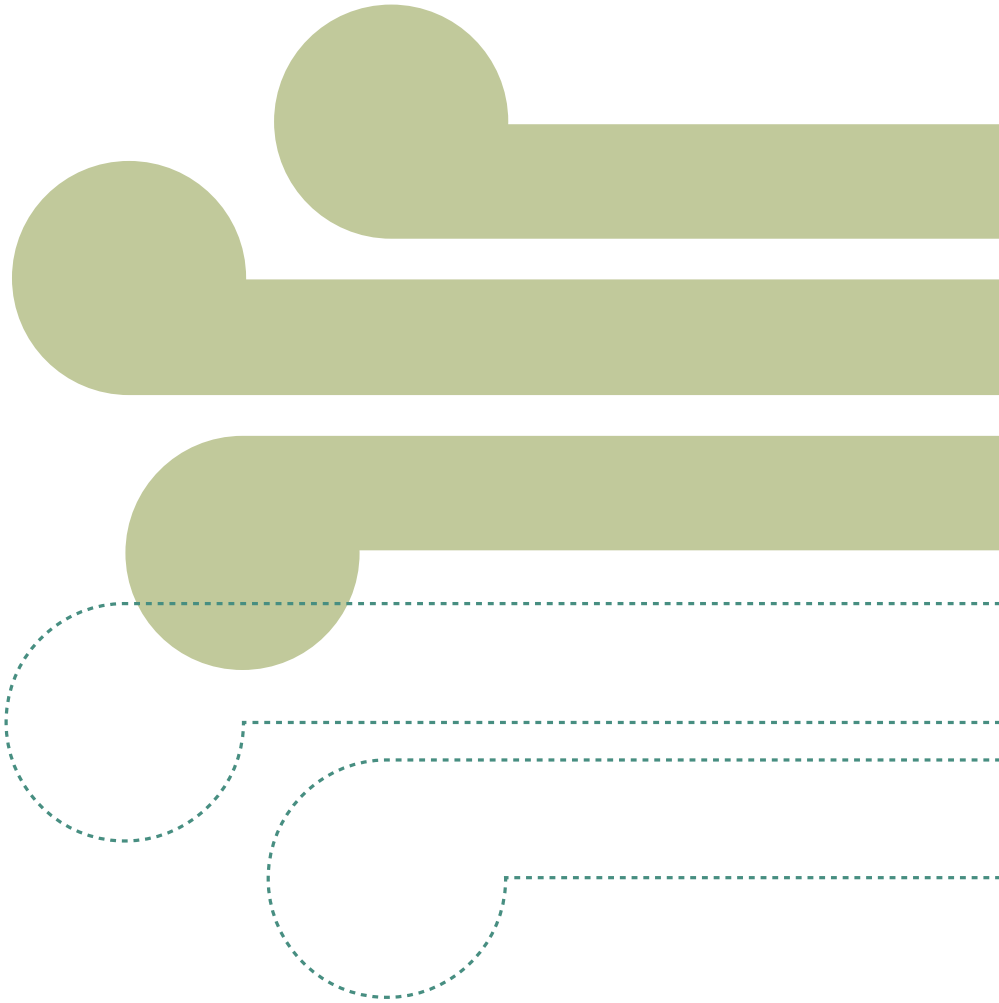

## Ministers responsible for the Consideration of Constitutional Issues

**Hon Bill English**
MP for Clutha-Southland
Deputy Prime Minister

**Hon Dr Pita R Sharples**
MP for Tāmaki Makaurau
Minister of Māori Affairs

29 AUG 2011

Tēnā koutou and welcome

Kei te mihi ki a koutou

Warm greetings to you all

He wero kei te haere mō koutou, ngā kaihautu me ngā kaihoe o tēnei waka. He waka tēnei me eke i te moana pukepuke.

Like the waves which must be navigated by a canoe, there will be many challenges that you as the advisory panel will face.

Kei a koutou te hanga me te hoe i te waka. Mā te tika o te tārai me ngā pūkenga o ngā kaihoe, ka pai te tere o te waka i ngā moana katoa.

It is for you to decide the best form the canoe should take to be able to navigate these waters. By designing and shaping the keel of the waka to perfection, your canoe will overcome obstacles.

Ahakoa he uaua te haere, e whakapono ana māua he mahi whaihua tēnei ki ngā tāngata katoa o Aotearoa.

Although this will be a demanding journey, we believe that it will also be both fruitful and rewarding for all New Zealanders.

Ko te tūmanako, he marino te wai.

May the water that precedes your waka be smooth.

Thank you for agreeing to be part of this significant consideration of New Zealand's constitutional arrangements. We are pleased that you have accepted this opportunity to establish a platform for debate that will inform and stimulate New Zealanders' interest in our constitution.

The history and evolution of New Zealand's constitutional arrangements has been characterised as a "long conversation." Each of you brings valuable skills and experience that will assist New Zealanders to contribute to that conversation. We expect that your work will provide an enduring reference point for New Zealand's constitutional development.

We look forward to working with you.

Hon Bill English
**Deputy Prime Minister**

Hon Dr Pita R Sharples
**Minister of Māori Affairs**

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Constitutional
Advisory Panel

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The Honourable Bill English
*Deputy Prime Minister*

The Honourable Dr Pita R Sharples
*Minister of Māori Affairs*

Tēnā kōrua e ngā Minita,

Tangihia te pō, nau mai e te ao, tihei mauri ora.

*Nāu i whatu te kākahu, he tāniko tāku*

Kai te mihi ki kā ringa hāro muka o neherā, o nāianei.

Kua kōtuia kā muka o te kaupapa ture o Aotearoa, ā, ka whakarākeitia ki kā huatau mō āpōpō.

He kākahu hai tāwharu i kā tāhuhu kōrero, i kā tūmanako, i kā awhero mō tātou, mō kā uri ā muri ake nei.

Kua whatua te kaupapa, mā tātou e tāniko.

*You wove the cloak, I made the border.*[1]

Warm thanks to the people from the past and present who have created the foundations for the conversation about the constitution.

We have woven together the strands of conversation from the past and adorned it with ideas for the future.

A cloak of history, expectations, and aspirations for the generations to come.

It is up to you, and the future generations, to make the final touches.

In accordance with paragraph 15 of the Terms of Reference, we enclose our report: New Zealand's Constitution – A Report on a Conversation, He Kōtuinga Kōrero mō Te Kaupapa Ture o Aotearoa.

When you invited us to undertake this task you noted that as a panel we would face challenges, but ultimately believed the exercise would be fruitful and rewarding for New Zealanders. Having fulfilled our terms of reference we agree. The report provides a snapshot of a developing conversation about New Zealand's constitution. The report summarises the conversation, discusses common themes and makes recommendations on each topic.

In engaging with people on constitutional matters we focussed on collecting a range of views, reflecting the diversity within our nation. The report reflects this range of views, and the advice of the Panel to take the conversation a step further.

The conversation reflected our unique history, people and circumstances. Many people expressed a desire for a range of constitutional changes to reflect this uniqueness. Common themes woven through the topics of conversation included: a sense of belonging, fairness and justice, representation and participation, and checks and balances on power.

[1] Neil Grove & Hirini M. Mead, *Ngā Pēpeha a Ngā Tūpuna* (Wellington, New Zealand: Victoria University Press, 2001) p. 319

The conversations demonstrate people are still developing their ideas and want more information to support future conversations. Our key recommendations are to continue the conversation and to develop a national education strategy for education in schools and in the wider community. The purpose of the strategy would be to raise awareness and understanding of the constitution and to support a more informed conversation about constitutional issues.

The report signposts a way forward for future conversations about the constitution - a conversation that many within our nation are enthusiastic to continue.

We hope this report supports the people of Aotearoa New Zealand in having future conversations about our constitution.

Best regards

**Professor John Burrows**

Co-chair, Constitutional Advisory Panel

Heoi anō, nā

**Sir Tipene O'Regan**

Co-chair, Constitutional Advisory Panel

**Panel members**

**Peter Chin**

**Deborah Coddington**

**Hon Sir Michael Cullen**

**Hon John Luxton**

**Bernice Mene**

**Dr Leonie Pihama**

**Hinurewa Poutu**

**Professor Linda Tuhiwai Smith**

**Peter Tennent**

**Dr Ranginui Walker**

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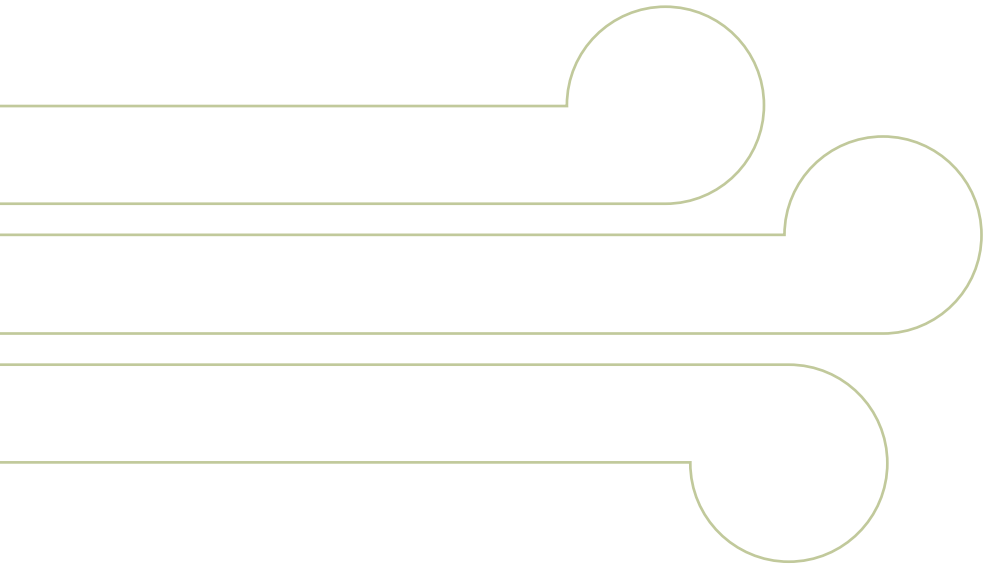
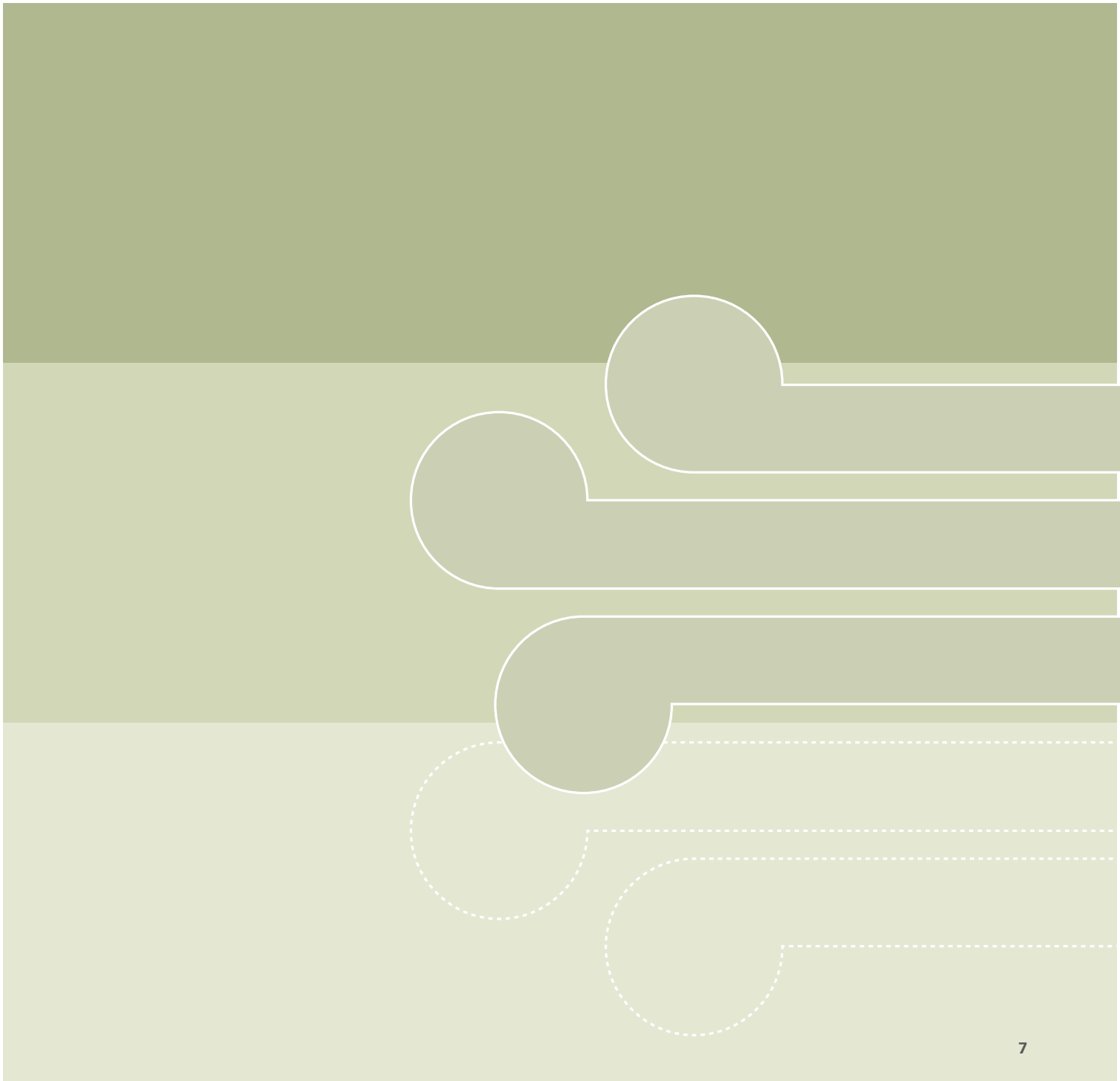


# Overview



# Recommendations

**The Panel recommends the Government:**

- invites and supports the people of Aotearoa New Zealand to continue the conversation about our constitutional arrangements
- develops a national strategy for civics and citizenship education in schools and in the community, including the unique role of the Treaty of Waitangi, te Tiriti o Waitangi, and assign responsibility for the implementation of the strategy
- note the implementation of the strategy could include the co-ordination of education activities; resource development, including resources for Māori medium schools; and professional development for teachers and the media.

# Overview

The appointment of the Constitutional Advisory Panel in August 2011 was another step in a longer and continuing conversation about how to govern the people, land and resources of Aotearoa New Zealand.[2]

The Panel was appointed as part of the Consideration of Constitutional Issues, which was agreed to in the 2008 Relationship Accord and Confidence and Supply Agreement between the National and Māori parties.[3] The Consideration is jointly led by the Deputy Prime Minister and the Minister of Māori Affairs. The Panel was appointed to:

- stimulate public debate and awareness of the current constitutional arrangements
- provide Ministers with an understanding of New Zealanders' perspectives on those arrangements, including the views of Māori
- report to Ministers with advice on the constitutional topics, including any points of broad consensus where further work is recommended.

Furthermore, the terms of reference gave the Māori Co-chair specific responsibility to ensure that the Panel's engagement process was inclusive of Māori, in a manner that reflected the Treaty of Waitangi relationship and responded to Māori consultation preferences.

The Panel's engagement strategy, delivered to Ministers in December 2011, acknowledged Ministers' expectations that the Panel would hear the views of a diverse range of New Zealanders, including a range of Māori. The Panel proposed a citizen-driven engagement process: to support people to engage with the Conversation in the way that best suited them and to be available to meet with people in their own spaces. The Panel proposed multiple ways for people to engage with the Conversation including face-to-face meetings in communities, on social media, in writing and through a website.

The engagement strategy was approved in May 2012. Following approval the Panel started implementation including the design and build of a website and online tools; design and production of information tools and resources to support engagement; design of engagement events; and publicity and media.

A summary booklet about the current constitutional arrangements, *New Zealand's Constitution: The conversation so far,* was published in September 2012 and was made available to inform the conversations.

As part of the development of the process the Panel met with a range of national bodies or organisations with large memberships that represented a range of geographic, demographic and ethnic diversities. These 'early conversations' established links into communities, and provided the Panel with advice about how best to engage specific communities.

[2] Appendix E contains a list of constitutional milestones. See Appendix G for biographies of the Panel members.

[3] Appendix F contains the terms of reference for the Consideration of Constitutional Issues, including the Panel's role.

## The Constitution Conversation

The Constitution Conversation[4] was launched in February 2013. Over the course of the Conversation, Panel members attended, supported and encouraged over 120 hui, community-hosted meetings and independent events such as academic conferences. These events covered the length and breadth of the country, from Kaitaia to Bluff, Gisborne to Taranaki, and Christchurch to Greymouth. Each host was supported to design a forum that best suited their community. The Panel offered funding for venue hire, catering and facilitation and provided event management if requested.

Information resources were developed to assist individuals and collectives making submissions, and to support communities to host their own conversations. These included:

- booklets on each of the topics
- fact sheets in English and te reo Māori
- quizzes in English and te reo Māori
- facilitator's guide to support people hosting conversations
- conversation cards
- a video outlining the Panel's role
- a print version of the video.

A submission guide was also developed to provide participants with brief information about the topics under consideration and guiding questions to assist them to develop submissions. Participants were also encouraged to comment on any other aspect of the topics and raise others if they wished to. Participants were asked to provide reasons for their views. The submission guide was also available in New Zealand Sign Language, Tongan, Cook Island Māori, Samoan, Chinese, Korean and Hindi.

The information resources were made available directly from the Panel's website and hard copies could be requested through a toll-free number. For people interested in delving more deeply into constitutional issues, the website also provided a glossary, bibliography and links to external websites with further information.

A national media campaign in April raised awareness of the opportunity to participate, along with ongoing media releases. A further print and online campaign in July drew attention to the close of submissions at the end of July. The Facebook page received over 6,400 likes and the website 116,000 unique page views.

The Panel received 5,259 submissions from individuals and groups, reflecting a diversity of views. The conversations demonstrated that many individuals and groups were discussing their views with whānau, friends, iwi and communities. Many individual and group submissions represent the views of a range of people or represent views that are still developing as people continue to inform themselves and participate in conversations about our constitutional arrangements.

[4] Appendix A contains more detail about the Constitution Conversation.

# Themes woven through the Conversation

This section records what the Panel considers to be the common themes running through the Conversation, drawing on discussions in meetings, regional hui, submissions and Facebook. They are the factors most people considered and balanced while developing their views on the topics. They demonstrated that the topics within the terms of reference prompted people to talk about and consider more fundamental constitutional questions. People talked not just about pragmatic solutions to what they saw as today's challenges, but also the values and relationships that should be the touchstones for any government and for the building of a nation.

The themes are inter-related and sometimes, if taken to the extremes, contradictory. Different people gave the themes different significance or considered some and not others, and many written submissions gave no real detail of their reasoning. Some engagement events highlighted a level of discomfort. Even so, some clear themes were identified in the Conversation where people gave their views on the topics, their aspirations for Aotearoa New Zealand and how the country should be run. These themes showed a deeper engagement with the Conversation.

Participants' aspirations for the constitution were fairly consistent: to provide for stable, adaptable, legitimate, representative, responsive, principled, considered, accountable, transparent, inclusive government that aspires to ensure people's well-being.

## A unique constitution

Most conversations touched in some way on Aotearoa New Zealand's unique and distinctive history, environment, tikanga, kawa, people and cultural values, and how best to reflect them in our constitution. While people were interested in exploring examples from other countries, they were equally keen to look for unique solutions to local issues.

## A sense of belonging

The diversity of the people living in Aotearoa New Zealand is reflected in the diversity of how they describe their sense of belonging here. For many participants, maintaining social cohesion while addressing this growing diversity was a key element of the Conversation. Some wanted special relationships acknowledged more strongly. Many submissions, particularly clone submissions,[5] highlighted concerns that these different histories may 'privilege' some groups over others. Others noted a clear desire to reflect the uniqueness that is a part of both our historical and contemporary makeup.

Māori are tangata whenua and whakapapa to the land as the indigenous people of Aotearoa New Zealand. A strong view was expressed by many Māori participants that the Treaty of Waitangi both acknowledges and affirms the place of Māori as tangata whenua.

Conversations acknowledged Aotearoa New Zealand is the home of Māori language and culture, but also has become home to many others. The Panel accepts the view that the Treaty, te Tiriti is the original legal basis for the right to live in this country.

Some Pasifika people talked about belonging as citizens of countries within the Realm of New Zealand, (Tokelau, the self-governing states of the Cook Islands and Niue, and territorial New Zealand) and having established historical cultural and political ties here. Descendants of early Chinese settlers talked about their relationship based on a history of discrimination and more

[5] Submissions that were identical or in similar terms.

recent reconciliation. Some descendants of British settlers describe their 'belonging' in terms of the number of generations their ancestors have lived here and the significance of the cultural and political heritage reflected in the way the state operates. Some refer to their status as tangata tiriti, belonging by way of the Treaty. Increasing numbers of people are happy to use the term 'Pākehā.' Newer immigrants of a host of ethnicities see the state as having a role in addressing social exclusion and discrimination, while supporting their connections with their cultures and heritage. Younger generations see the state as the guardian of their future, balancing the needs and rights of older generations with those of generations yet to come.

The Panel heard that the current arrangements do not always fully reflect these different ways to belong and their different histories. Some positions formed around concepts and practices of biculturalism and multiculturalism to protect cultural and political identities from being subsumed: a multicultural society on bicultural foundations. One perspective supported a monocultural society, with a single language.

## Justice and fairness

Justice and fairness is a strong theme in discussions of New Zealand's constitution. In this Conversation, the theme had a number of dimensions including:

- the meaning of equality: two clear understandings of the concept of equality emerged. One view is that equality requires equal administration and application of the law, and any different treatment is discrimination. Another is that achieving equality requires or allows the state to take active measures to achieve equality or prevent the perpetuation of existing injustices and patterns of discrimination
- the integrity of the decision-makers and the level of trust the people have in them
- inter-generational equity, particularly in relation to the environment and economic decisions
- the state's role in ensuring people's dignity and quality of life.

## Having a voice

People want to feel they have a stake in the running of the country and genuinely influence what happens in New Zealand. They want to feel they have been heard. Effective representation and meaningful participation are seen as key factors in giving people this voice.

### Effective representation in decision-making

Effective representation – of electorate constituents, of Māori views, of minority and special interest groups – in the exercise of public power was a strong theme of the Conversation. The nature of representation was contested, particularly around whether representatives should follow majority views in decisions or whether and how they should give weight to minority views and other considerations.

### Meaningful participation in decision-making

Meaningful participation is the other dimension of having a voice. To be meaningful, people say they need both quality information and quality processes.

There was almost universal support for better education and more accessible information about our constitutional arrangements and how decisions are made. People felt the education system does not adequately prepare citizens to fully participate in conversations about our constitution or to assess whether state action is 'constitutional'.

Most participants favoured processes that ensure open, inclusive, considered and accountable government. For some, this meant exploring alternative processes of participating in decision-making outside the electoral cycle. Examples of alternative processes included the more frequent use of referenda for significant decisions, and more consensus building and engagement at the community level. For others, longer-term planning and policy development is required, and greater transparency so people are more aware of the reasons and processes for decisions.

## Checks and balances

Many submissions and conversations touched on the nature and strength of the restraints on power, including whether the existing checks and balances are right. Participants agree power should be separated, but did not agree on the roles of each branch of government. They also agreed the exercise of public power should be subject to effective limits and accountability, but disagreed about what those limits should be and how they should be enforced.

In particular, many people expressed unease – and surprise – that Parliament can pass laws which are contrary to the New Zealand Bill of Rights Act 1990 or the Treaty of Waitangi. The concept that limits on some rights might be justifiable in a free and democratic society was not universally understood. Amending fundamental legislation with a simple majority in Parliament was also noted as a concern, along with the significance of the Executive's majority power within Parliament.

## Processes for constitutional change

The processes for constitutional change was another strong theme, with participants discussing what process should be followed to ensure changes to the constitution are accepted as fair and reasonable.

Commonly expressed elements of legitimate constitutional change included:

- ample time
- a non-partisan, non-political approach
- a membership that represents the Treaty partnership and demography
- a comprehensive information campaign
- inclusive and well-advertised opportunities for public participation and engagement.

Some participants raised these issues by criticising the Panel's membership and process.

The discussions reflected different perspectives about what 'appropriate public participation' would mean. Many submissions support the use of a referendum to endorse significant constitutional change, to ensure the proposals have majority support. There was also support for deliberative and consensus-building processes, which may be more suitable than a referendum to achieve the complex balancing of priorities and interests required and to ensure that minority views are considered. Consulting and engaging with Māori, iwi and hapū was seen as another important factor in a good process.

Suggested institutions to manage any discussions about constitutional change included an independent constitution commission or a parliamentary select committee.

## Approach to preparing advice

This report reflects the views of the people who participated in this conversation and also the advice and recommendations of the Panel in response to those views. The Panel has taken the conversation a step further, in particular by outlining some options for further consideration.

The Panel encouraged participants to provide some clear reasoning behind their views, to assist in identifying consensus and potential options for further work. Therefore, while the number of submissions in support of or rejecting any particular option or perspective influenced the Panel's advice, the reasoning behind the submissions was regarded as more important. A number of organisations and individuals provided reasoned and considered submissions which were of great assistance to the Panel.

The Panel took a positive, future-focused approach to advice about constitutional change in Aotearoa New Zealand. In times of relative calm, conversations about the constitution can take full account of the diversity of beliefs and views, with time to develop mechanisms for addressing divergent views. In this way, we can prevent our constitutional arrangements from becoming disconnected from modern realities. The Panel does not support the view that constitutional change should and can only be forced by a crisis, or when the constitution is 'broke'.

## Reflections

Aotearoa New Zealand has the opportunity to consider our constitutional arrangements in a considered manner, with few countries having this opportunity. The Panel therefore encourages a continued conversation based on good faith and mutual respect.

The Panel identified a broad consensus that we must keep talking about our constitutional arrangements. To support these conversations we need to improve access to information about the Treaty of Waitangi, civics and citizenship in our schools and communities. A healthy democracy depends on engaged, inquiring and well-informed citizens.

Civics education in Aotearoa New Zealand can be described as being about the institutions and processes of government, and the way our democracy is developing and evolving to reflect our unique circumstances. Citizenship education covers the development of skills, attitudes and values that will encourage citizens to participate, to become and remain engaged and involved in society, culture and democracy. To fully reflect our unique circumstances, education in Aotearoa New Zealand would include understanding the rights protected under the Bill of Rights Act and the unique role of the Treaty of Waitangi, te Tiriti o Waitangi.

The settings are already in place for rich and robust civics education programmes in schools, as the 2007 curriculum is founded on promoting 'active citizenship'. Many government and non-government agencies have developed resources to support school students and communities to learn more about our constitutional arrangements. Young people also have opportunities to experience social and democratic processes first-hand in schools, communities, voluntary organisations, and at Parliament, local government and the courts.

The Electoral Commission and a range of non-government agencies provide information for the wider community.[6]

What appears to be lacking, however, is strategic leadership in this field. The existing resources are incomplete and difficult to find, and are prepared separately by individual government and non-government agencies. The Panel identified few resources on constitutional topics that are suitable for Māori medium schools. Some agencies are collaborating and sharing ideas, while others appear to be unaware of related initiatives.

Multiple constitutional accounts and perspectives can be – and should be – reflected in conversations about civics, the Treaty and citizenship. But it seems that the current fragmented approach means that no one agency or group of agencies has taken responsibility for ensuring that New Zealand citizens can easily access information about how our government operates and how to participate effectively.

The Panel therefore recommends that Government develop a national strategy for education about civics, the Treaty and citizenship and assign responsibility for co-ordinating the strategy's implementation.

The implementation of the strategy could have multiple strands, including:

- gap identification and action plans
- research and evaluation
- co-ordination of education activities
- resource development, including resources that reflect a Māori perspective and resources that align with Māori medium education providers such as kura kaupapa Māori, kura ā-iwi, kura reo rua and rūmaki reo
- professional development for teachers and the media.



[6] An illustrative list of existing resources for schools and communities is in Appendix D and is available on the Ministry of Education's curriculum website: http://nzcurriculum.tki.org.nz/Principles/Future-focus/Tools/New-Zealand-s-Constitution.

# Recommendations

This section sets out the recommendations made in the report. The immediate decisions about the recommendations rest with Cabinet, on behalf of all the people of Aotearoa New Zealand. Any significant steps in the constitutional journey will no doubt only be taken following appropriate public participation and deliberation.

The Panel's recommendations are intended to support current and future generations to participate in discussions and decisions about our constitutional arrangements. The people of Aotearoa New Zealand are encouraged to read the submissions, consider them from alternative perspectives and most importantly continue the conversation.

The Panel recommends the Government:

## Overview

- invites and supports the people of Aotearoa New Zealand to continue the conversation about our constitutional arrangements
- develops a national strategy for civics and citizenship education in schools and in the community, including the unique role of the Treaty of Waitangi, te Tiriti o Waitangi, and assign responsibility for the implementation of the strategy
- note the implementation of the strategy could include the co-ordination of education activities; resource development, including resources for Māori medium schools; and professional development for teachers and the media.

## A written constitution

- notes that although there is no broad support for a supreme constitution, there is considerable support for entrenching elements of the constitution
- notes the consensus that our constitution should be more easily accessible and understood, and notes that one way of accomplishing this might be to assemble our constitutional protections into a single statute
- notes people need more information before considering whether there should be change, in particular information about the various kinds of constitution, written and otherwise, and their respective advantages and disadvantages
- supports the continued conversation by providing such information, and notes that it may be desirable to set up a process whereby an independent group is charged with compiling such information and advancing public understanding

## The role of Te Tiriti o Waitangi, the Treaty of Waitangi

- continues to affirm the importance of the Treaty as a foundational document
- ensures a Treaty education strategy is developed that includes the current role and status of the Treaty and the Treaty settlement process so people can inform themselves about the rights and obligations under the Treaty
- supports the continued development of the role and status of the Treaty under the current arrangements as has occurred over the past decades
- sets up a process to develop a range of options for the future role of Treaty, including options within existing constitutional arrangements and arrangements in which the Treaty is the foundation
- invites and supports the people of Aotearoa New Zealand to continue the conversation about the place of the Treaty in our constitution

## Māori representation in Parliament and in local government, the Māori Electoral Option and Māori electoral participation

- notes the Panel's advice that the current arrangements for the representation of Māori in Parliament should remain while the conversation continues
- investigates how Māori representation in Parliament might be improved
- investigates how local government processes and decision-making can better reflect the interests and views of tangata whenua and whether the processes can be made more consistent and effective
- when conducting the investigation into representation in both Parliament and local government has regard to a range of options including Māori political structures, and local and international models

## The New Zealand Bill of Rights Act 1990

- sets up a process, with public consultation and participation, to explore in more detail the options for amending the Act to improve its effectiveness such as:
  - adding economic, social and cultural rights, property rights and environmental rights
  - improving compliance by the Executive and Parliament with the standards in the Act
  - giving the Judiciary powers to assess legislation for consistency with the Act
  - entrenching all or part of the Act

## Size of Parliament

- does not undertake further work on the size of Parliament

## Term of Parliament

- notes a reasonable level of support for a longer term
- sets up a process, with public consultation and participation, to explore what additional checks and balances might be desirable if a longer term is implemented
- notes any change to a longer term should be accomplished by referendum rather than by way of a special majority in Parliament

## Fixed election date

- sets up a process, with public consultation and participation, to explore a fixed election date in conjunction with any exploration of a longer term

## Size and number of electorates

- notes the discrepancy in geographic size affects the representation of people in larger electorates, particularly Māori and rural electorates
- sets up a process, with public consultation and participation, to explore ways to address the discrepancies

## Electoral integrity legislation

- notes a level of concern about MPs leaving the parties they were elected with, especially list MPs, but no consensus about a solution
- notes the Panel makes no recommendation on this topic

## Other issues

The Panel recommends the Government invite and support the people of Aotearoa New Zealand to explore the following topics in any further consideration of our constitutional arrangements:

- the status and functions of local government and its relationship to central government
- the role of He Whakaputanga o te Rangatiratanga o Nu Tireni, the Declaration of Independence
- the role and functions of the public service
- the distinct interests of citizens of countries within the Realm of New Zealand
- the role and functions of the Head of State and symbols of state
- an upper house of Parliament

The Panel recommends the Government invites Parliament to differentiate between types of urgency and to minimise the use of the urgency truncating select committee consideration of bills

# Perspectives and reflections on the topics

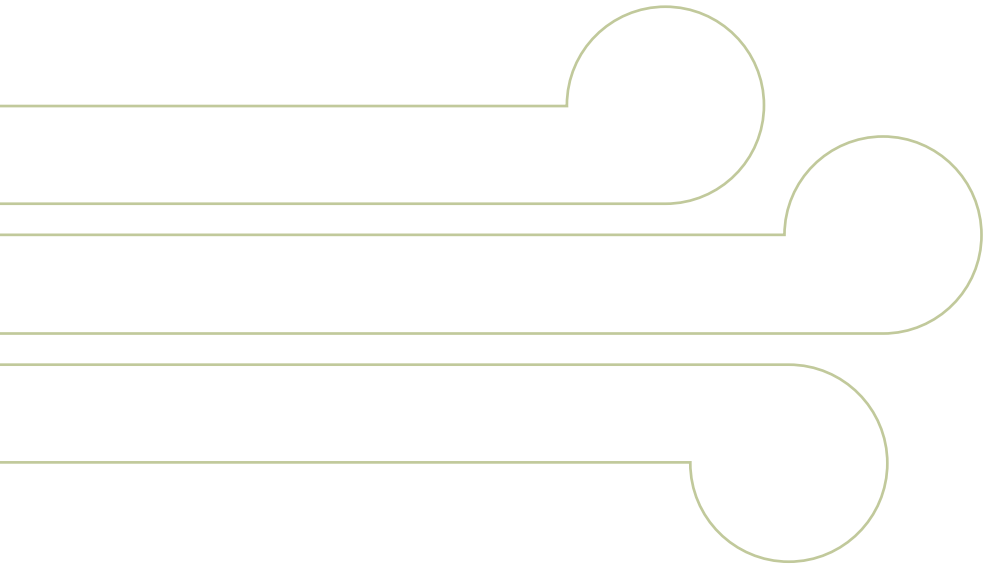
This section is intended to provide Ministers with an understanding of New Zealanders' perspectives on our constitutional arrangements and to provide advice on the topics, including any points of broad consensus where further work is recommended. Under each topic the Panel identifies the range of views heard and then reflects on possible options for further work.

To support people to develop their views on the topics, the Panel's submission guide offered a set of guiding questions.[7] The conversations were not limited to those questions or even to the topics in the terms of reference. Instead, the materials sparked rich, wide-ranging and passionate conversations. It is difficult to do justice in this short report to those conversations.

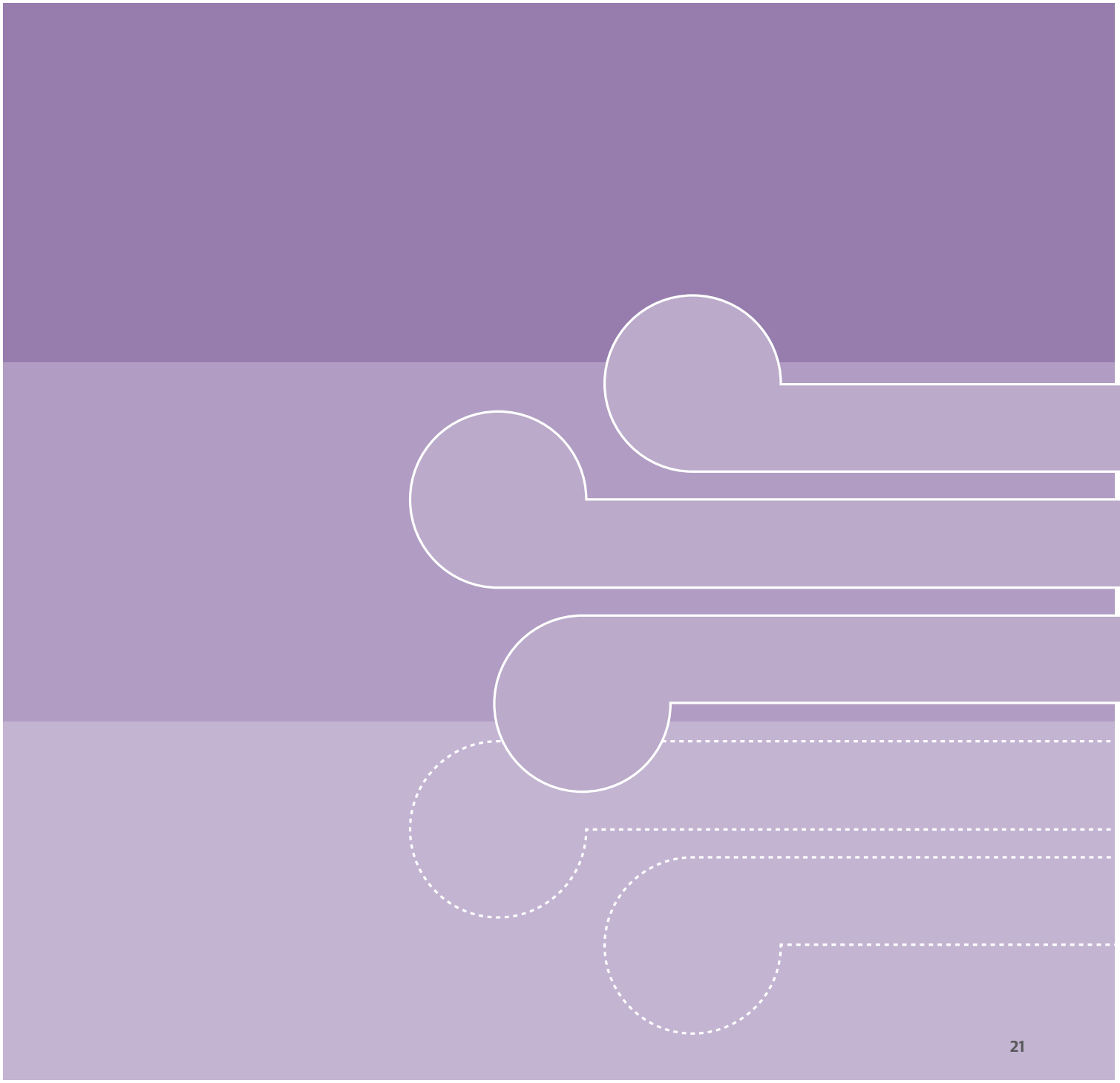
As the Panel has been asked to identify areas of consensus, the perspectives are described at a relatively general level and are arranged in groupings with similar reasoning. Within each perspective there is often a range of views about how a particular outcome can or should be achieved.

During the Conversation the Panel heard many calls for more information, in particular about the history of how the current arrangements evolved. The introduction to each topic therefore provides information to complement the information contained in the Panel's booklet, *New Zealand's Constitution: The conversation so far.* Further details are set out in Appendix E.

[7] Appendix B lists the Guiding Questions.



# A Written Constitution



# Recommendations

**The Panel recommends the Government:**

- notes that although there is no broad support for a supreme constitution, there is considerable support for entrenching elements of the constitution
- notes the consensus that our constitution should be more easily accessible and understood, and notes that one way of accomplishing this might be to assemble our constitutional protections into a single statute
- notes people need more information before considering whether there should be change, in particular information about the various kinds of constitution, written and otherwise, and their respective advantages and disadvantages
- supports the continued conversation by providing such information, and notes that it may be desirable to set up a process whereby an independent group is charged with compiling such information and advancing public understanding

## A written constitution

New Zealand has a constitution – it is just not all written down in a single document. Our constitution determines how we live together as a country, how the country is run and how laws are made. Our constitutional arrangements have evolved over time and will continue to do so.

After the signing of the Treaty of Waitangi, Letters Patent were issued bringing into force the provisions of the New South Wales Continuance Act 1840 (UK), establishing New Zealand as a separate colony. The Constitution Act 1852 established an elected General Assembly (now known as the House of Representatives), an appointed upper house known as the Legislative Council, and provincial governments. The Assembly had the power to make laws for the 'peace, order, and good government of New Zealand', although the Governor retained the right to refuse assent to laws that he found to be 'repugnant' to British law.[8]

Section 71 of the Constitution Act 1852 provided for self-governing Māori districts. Māori attempts to realise this autonomy, such as the Kīngitanga and the Kotahitanga movements, were not recognised by the government. The section was never implemented.

Amendments to the Constitution Act 1852 had to be approved by the Queen. In practice even substantial changes were assented to, including weakening the reserve powers of the Crown and the abolition of the provinces in 1876.[9]

Over the next century Aotearoa New Zealand gradually became more independent from Britain, becoming a Dominion in 1907.[10] Enactment of the Statute of Westminster Adoption Act 1947 meant that the British Parliament no longer had any power to make laws affecting New Zealand's constitutional arrangements.[11]

As the Constitution Act 1852 had become largely obsolete, in 1984 an Officials Committee was convened to look at specific areas of New Zealand's constitutional law.[12] The report led to the enactment of the Constitution Act 1986 which repealed and replaced the 1852 Act.[13]

The Constitution Act 1986 is now New Zealand's principal formal statement of constitutional arrangements.[14] The Act describes the role and powers of Sovereign, the Executive, the Legislature and the Judiciary. It provides that Parliament has the full power to make laws, and that Parliament controls public finances. The Act does not have the status of higher law and can be amended by a majority vote of Parliament.[15]

Our constitutional arrangements also include legislation such as the New Zealand Bill of Rights Act 1990, foundational documents such as the Treaty of Waitangi, and established constitutional principles including that the Government must govern according to the law.[16]

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8 See Appendix E, The Constitution Act 1852.

9 See Appendix E, Abolition of the Provinces Act 1875

10 See Appendix E, Dominion Status Acquired (1907).

11 See Appendix E, Statute of Westminster Adoption Act 1947 and New Zealand Constitution Amendment (Request & Consent) Act 1947.

12 See Appendix E, Officials Committee on Constitutional Reform (1984).

13 See Appendix E, Constitution Act 1986.

14 The Rt Hon Sir Kenneth Keith, 'On the Constitution of New Zealand: An Introduction to the Foundations of the Current Form of Government', *Cabinet Manual* (2008).

15 With the exception of section 17 (term of Parliament) which is entrenched by section 268 of the Electoral Act 1993.

16 A description of the current arrangements can be found in the Panel's information resources.

## Perspectives

While many participants had clear views about whether or not developing a written constitution would benefit New Zealanders, a significant number remained undecided.

Reasons for supporting the current unwritten constitution included:

- it is working well, resulting in stable and effective government
- the current flexibility and ability to adapt to changing circumstances has allowed the country to develop pragmatic solutions to issues as they arise
- the values of government can stay in line with changing social values.

Reasons for supporting the development of a written constitution included:

- to make the constitution more accessible and easier to understand
- to make the constitution a more effective check on state power, in particular by giving the Judiciary the power to assess whether legislation is consistent with the constitution
- to protect important rights, institutions and values vulnerable to change by a majority in Parliament by entrenching the constitution.

Another grouping considered a written constitution was necessary or desirable to achieve particular reforms. Suggestions for reform included a constitution which better reflects the Māori-Crown relationship or which establishes New Zealand as a republic.

For some, the perceived risk of such reforms happening was one reason not to support the development of a written constitution.

# Options and reflections

## Improve accessibility

Almost all of the discussions under this topic and throughout the Conversation touched on the need to make the constitution easier to access and to understand. It was common for people to ask 'do we even have a constitution?' Two clear options for improving accessibility of the constitution emerged: consolidation of the current arrangements into one document, and improving education about the existing arrangements.

### Consolidation

Consolidating existing constitutional laws and principles into a single document was seen as a step towards improving accessibility and making it easier for people to assess whether or not state action and legislation meets constitutional standards.

Some people said that a consolidated constitution would not serve the intended purpose, because it is not possible to express all elements of a constitution in a single document. Written constitutions record high level standards and aspirations, which are implemented in legislation and further developed by the courts. For example, a consolidated constitution is unlikely to include the entire Electoral Act 1993.

Another option might be to consolidate the values and principles of government in New Zealand, for example by developing a preamble to the Constitution Act 1986.

### Improving education

The importance of improving accessibility and understanding of our constitutional arrangements was a strong message from participants. Achieving this aim does not necessarily require legislative change, but can happen with better information resources and education in schools and wider communities.

## Effective checks on state action

### Supremacy: reforming the respective roles of the Judiciary and Parliament

New Zealand's Parliament can make laws about anything if a majority of MPs support the proposal. A 'supreme' written constitution would define the limits on Parliament's law-making power, and could empower the Judiciary to 'strike down' or invalidate any legislation that does not fall within those limits. Alternatively, the courts might have the power to declare legislation to be inconsistent with the constitution without rendering that legislation invalid.

This potential impact on parliamentary sovereignty appeared to be a crucial factor for many submitters. Submissions that rejected a written constitution often raised concerns about judges being unelected and therefore unaccountable to the voters. This group suggested that judges have no mandate to assess whether legislation meets constitutional standards.

There was no significant support for a supreme fully entrenched written constitution, which empowers judges to strike down legislation and that can only be amended through specified processes. Support appears to lie, for now, with contested issues being decided in Parliament through the legislative process or other negotiated processes rather than by the courts.

There may be support for a single written constitution which sets out a short and simple set of standards, but without additional judicial powers. This would leave the Executive and Parliament flexibility to decide which policies, within those standards, best suit the circumstances of the day.

## The respective roles of the Executive and Parliament

Discussions also touched on the powers of the Executive. While in formal terms the Executive and Parliament are separate, in practice the Executive by definition holds the confidence and support of a majority in Parliament: the Government is made up of the group of MPs which holds that support. The Executive therefore has a considerable influence over legislation and can also make significant rules on delegation from Parliament (delegated legislation). Discussions also raised the Executive's powers to appoint certain public officials (including judges) and to develop and implement foreign policy with limited participation by Parliament. The process for entering into free trade agreements was of particular concern.

For some people, a written constitution could be a mechanism (or would be necessary) to rebalance this relationship, placing greater controls on the Executive's powers.

## Change processes

A key reason for supporting a written constitution is that it could be entrenched to protect important rights, principles and institutions. Entrenchment requires a special process for changing the constitution, ensuring that citizens could participate in and endorse any constitutional change, either directly through a referendum or by a special majority, say 75%, of elected representatives.

Options discussed included:

- entrenching specific elements of the existing arrangements, such as the New Zealand Bill of Rights Act 1990 and the Constitution Act 1986
- entrenching a consolidation of existing rules and principles.

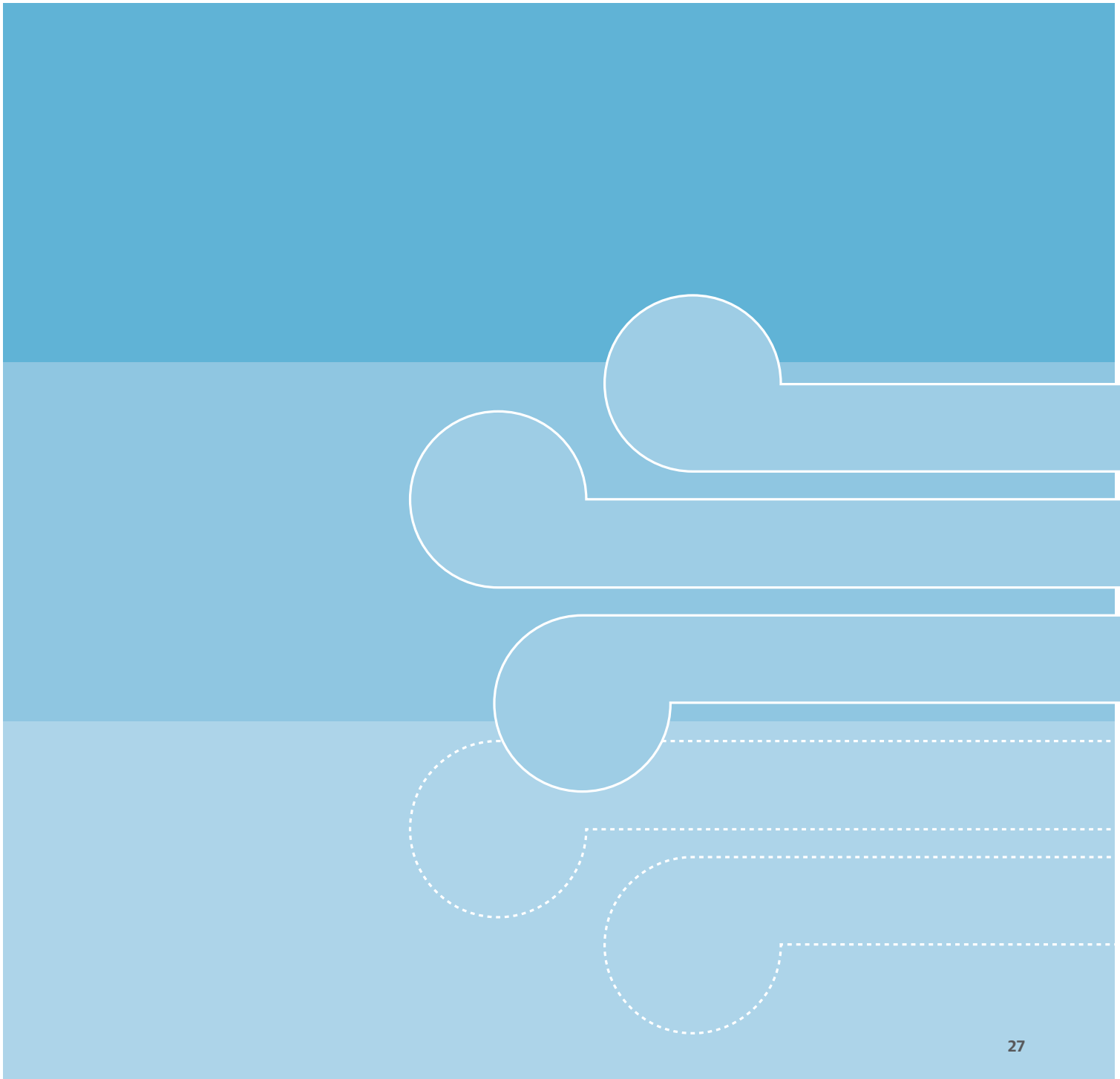
Another grouping preferred retention of the flexibility of the current arrangements. To this grouping, entrenchment could amount to imposing this generation's values on future generations. They suggest that public participation in decisions about constitutional change is already sufficient or can be improved without entrenchment, for example through greater use of referenda or deliberative and consensus-building processes.

## Process of developing a written constitution

The potential effect of drafting a written constitution was another factor participants took into account when developing their views. One grouping suggested that drafting a written constitution could enhance social cohesion, by providing an opportunity to discuss common goals and values and to celebrate Aotearoa New Zealand's diversity and uniqueness. Another grouping saw a risk of exacerbating existing social and political divisions. Submitters who question whether or how to reflect Māori-Crown relationships in a written constitution are particularly concerned about this risk.

There was broad agreement that the process for developing a written constitution should be one that most people accept to be legitimate. The popular endorsement of a written constitution as the fundamental basis of government was of particular interest.

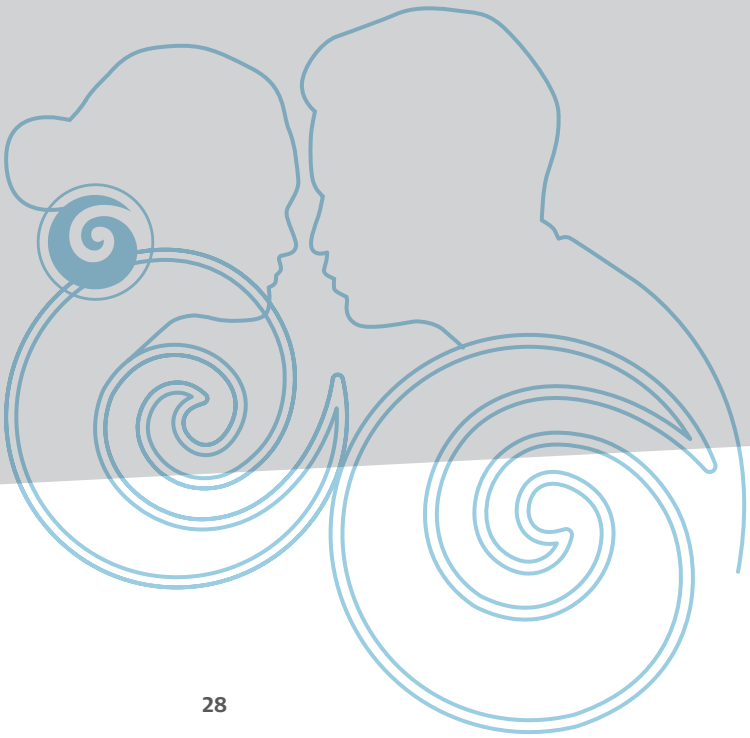
# Te Tiriti o Waitangi, The Treaty of Waitangi



# Recommendations

**The Panel recommends the Government:**

- continues to affirm the importance of the Treaty as a foundational document
- ensures a Treaty education strategy is developed that includes the current role and status of the Treaty and the Treaty settlement process so people can inform themselves about the rights and obligations under the Treaty
- supports the continued development of the role and status of the Treaty under the current arrangements as has occurred over the past decades
- sets up a process to develop a range of options for the future role of Treaty, including options within existing constitutional arrangements and arrangements in which the Treaty is the foundation
- invites and supports the people of Aotearoa New Zealand to continue the conversation about the place of the Treaty in our constitution



## Māori-Crown relationships

The history of Māori-Crown relationships is an important context for any future conversations about how this country is governed. In relation to Māori parliamentary representation the Royal Commission on the Electoral System[17] noted it is:

> ...essential to have a full understanding of the history of Māori representation. [...] Unless decisions concerning Māori representation are made in the context of our history, and with the knowledge of the aspirations of Māori people, past misunderstandings are likely to continue.

The Treaty of Waitangi is the foundation of this Māori-Crown partnership.[18] The text reflects an understanding of the fundamental elements of the relationship and about how iwi and hapū would work with the Crown in developing the country's future.

As the Treaty was prepared in both English and in te reo Māori the wording of the two texts differs in places.[19] About 40 chiefs signed the Treaty of Waitangi on 6 February 1840. By the end of the year about 500 other Māori, including 13 women, had put their names or moko to the document. All but 39 signed the Māori text.[20]

The Māori text of the Treaty, while giving kawanatanga (governance) to the Queen of England, also protected Māori rangatiratanga. Te Tiriti guaranteed Māori 'tino rangatiratanga o o ratou wenua o ratou kainga me o o ratou taonga katoa' or 'absolute authority for chiefs (rangatira) to be chiefs and hold sway in their territories.'[21] The English text is not an exact translation of the Māori text.

Despite the differences between the two texts 'both represent an agreement in which Māori gave the Crown rights to govern and to develop British settlement, while the Crown guaranteed Māori full protection of their interests and status, and full citizenship rights.'[22]

Prior to the signing of the Treaty of Waitangi, Māori were asserting their rangatiratanga with the Crown and organising their own political systems. In 1835, the Northern chiefs as the 'United Tribes' signed the Declaration of Independence.[23]

Māori have advocated for an established political voice in decision-making processes through the development of their own politically autonomous structures and through general institutions. The authority of such structures developed from within a Māori context, for example the Kīngitanga movement[24] and Te Kotahitanga (Māori Parliament)[25], was not recognised by the Crown. Instead, the Crown recognised only the authority of the structures established within the existing arrangements, for example the Māori seats in Parliament and the Māori Council. Many Māori do not see these structures as fulfilling the Treaty's commitments.

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17 Royal Commission on the Electoral System, 'The Report of the Royal Commission on the Electoral System: Towards a Better Democracy' (1986), AJHR H.3, p. 4 (available from www.elections.org.nz)

18 See Appendix E, Treaty of Waitangi.

19 Both texts have been recognised by the New Zealand Parliament by appending them in a schedule to the Treaty of Waitangi Act 1975.

20 Ministry of Culture & Heritage, 'Signing the Treaty', New Zealand History Online (www.nzhistory.net.nz)

21 The Waitangi Tribunal, *The Tāmaki Makaurau Settlement Process Report* (Wellington, New Zealand: Legislation Direct, 2007), p. 6.

22 The Waitangi Tribunal, 'The Meaning of the Treaty' (www.waitangi-tribunal.govt.nz)

23 See Appendix E, Declaration of Independence (1835).

24 See Appendix E, Kīngitanga and the first Māori King (1858).

25 See Appendix E, Opening of the Kotahitanga Parliament (1892)

Successive governments have now acknowledged Crown breaches of the Treaty caused Māori to suffer social, cultural and economic losses. In particular, the alienation and confiscation of large areas of land hampered Māori economic development and fractured social and cultural structures.

These losses are being addressed through the Waitangi Tribunal's jurisdiction to recommend remedies for breaches of the Treaty and the Treaty settlements process. Treaty settlement legislation affirms relationships between iwi and the Crown.

In recent decades the Treaty has had a significant and increasing influence on New Zealand law. The Treaty may be taken into account in public decision-making, but is only required to be taken into account if referred to in legislation. The Treaty's legal enforceability therefore relies on Parliament, in which Māori are a minority, referring to the Treaty or the Treaty principles in legislation.

Partly because of the differences between the texts, and also because of the need to apply the text to modern circumstances, reference is often made to the 'principles' of the Treaty. The President of the Court of Appeal observed in a unanimous decision that the Treaty signified a 'relationship akin to partnership between the Crown and Māori people, and of its obligation on each side to act in good faith.'[26]

About 30 Acts of Parliament require decision-makers to have regard to, or take account of, the Treaty or its principles when exercising powers under the Act. Other legislation recognises the rights of Māori in matters such as education, broadcasting and language, and also recognises rights to be consulted or to participate through advisory boards. Cabinet guidelines for many years have required that Treaty implications be considered when preparing legislation. Since July 2013 proposed legislation is accompanied by a disclosure statement which sets out, amongst other matters, the steps that have been taken to determine whether the policy to be given effect is consistent with the principles of the Treaty.[27]

The Waitangi Tribunal, established in 1975, has played a key role in developing the understanding of the Treaty and its principles in the contemporary context.[28] It can determine the practical application of the principles of the Treaty and whether Crown actions or omissions are inconsistent with those principles. The Tribunal can examine historic and contemporary legislation and government policies and practices for consistency with the Treaty and its principles, and reports its findings and any recommendations to the Crown.

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[26] *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 p 705, See Appendix E

[27] 'Disclosure Statements for Government Legislation: Technical Guide for Departments' (www.treasury.govt.nz)

[28] See Appendix E, Treaty of Waitangi Act 1975, and Treaty of Waitangi Amendment Act 1985

All Treaty settlements are implemented through legislation and therefore many Acts of Parliament now give effect to Treaty settlements. They contain the Crown's acknowledgements of, and apology for, breaching the Treaty of Waitangi. The form of the wording differs from settlement to settlement, though most also contain commitments to work with iwi to build a relationship of mutual trust and co-operation. More recent settlements also expressly state that this relationship will be based on the Treaty of Waitangi and its principles.

Successive governments have also made statements in international forums about the status of the Treaty and indigenous rights. For example, in 2010 the New Zealand Government made a Statement of Support for the United Nations Declaration on the Rights of Indigenous Peoples:[29]

- acknowledging that Māori hold a distinct and special status as the indigenous people of New Zealand, reaffirming the importance of the Treaty of Waitangi as a unique feature of indigenous rights in New Zealand
- affirming New Zealand's commitment to the common objectives of the Declaration and the Treaty of Waitangi, including operating in the spirit of partnership and mutual respect.

## The role of te Tiriti o Waitangi, the Treaty of Waitangi

For many people the Treaty was the focus of the Conversation. The Panel invited people to think about the future when considering the role of the Treaty in our constitution. Participants responded to the guiding questions by expressing values of social justice, fairness, equity, tikanga, manaakitanga, rangatiratanga and mana. The questions also prompted discussions about minority representation, biculturalism and multiculturalism.

## Perspectives

Perspectives on the current and future role of the Treaty in our constitutional arrangements fall into three broad groupings:

- the Treaty is fundamental to how this country is governed
- a Treaty-based multicultural future
- the Treaty has no role in how the country is governed.

The current flexibility of the Treaty's application – it being a 'living document' or its principles being referred to in various Acts of Parliament – is for some a source of concern. There was also uncertainty about what the Treaty's principles are, who should apply them and what the outcomes might be. This perceived uncertainty has made some people apprehensive about the Treaty. Alternatively, for some, the current flexibility allows the Māori-Crown relationship to continue to develop and address issues as they arise.

[29] See Appendix E, New Zealand endorses Declaration on the Rights of Indigenous Peoples (2010)

## The Treaty is fundamental to how this country is governed

This grouping sees the Treaty as the founding document of New Zealand's constitution and a fundamental and inseparable part of our constitution, values, history and culture. For this group of people the Treaty is an agreement to share authority, but this vision of shared authority is yet to be realised. The Panel's conversations suggest a majority of Māori are within this grouping, along with a significant number of communities, organisations and individuals with different ethnic backgrounds.

This view regards the Treaty as a binding agreement to a relationship that brought together two sovereign peoples. The aspiration of this grouping is of a genuine and constructive relationship between tangata whenua and the state, working together in partnership and good faith. This relationship would be an ongoing feature of this country, and would adapt to circumstances as they arise, providing for a unique and distinctive national identity.

Participants saw the Crown's duty of active protection as extending beyond references in legislation, seeing potential in developing existing constitutional institutions to make better provision for tangata whenua in decisions that affect them.

## A Treaty-based multicultural future

This grouping supports the Treaty as both the foundation for the bicultural partnership and the basis for multiculturalism for all New Zealand citizens. The future role of the Treaty is seen as being more about relationships, not just between Māori and the Crown, but also between Māori and all other New Zealand citizens: 'All citizens must feel legitimised in voicing their aspirations for the country's constitutional future.'[30] This grouping also reflects some of the views heard in conversations with New Zealanders of diverse ethnicities, including Pasifika, whether newly immigrated or of long standing in Aotearoa New Zealand.

## The Treaty has no role in how this country is governed

This grouping rejects the very basis of the Māori-Crown relationship and its history, and aspires to a system which pays no heed to a Treaty relationship or to indigenous rights. The suggestion is that the Crown's right to govern the country was established by means other than the Treaty so no enforceable guarantees were made to iwi or Māori. Under this view the Treaty would be nullified, and all references to it in legislation removed. Some suggest that the multicultural nature of New Zealand means the Treaty is no longer relevant and that we are now (or should be) one people. Some say giving the Treaty greater force would lead to an undesirably 'race-based' constitution.

This grouping also includes the view that even if the Treaty was the founding document of government in this country, it can no longer be applied in the complexities of modern New Zealand without undermining social cohesion and creating inequality of access to resources and opportunities. So once the Treaty settlement process has addressed historic breaches of the Treaty, the Treaty should be considered to be only of historic interest.

Participants in this conversation also saw New Zealand's multicultural future as not requiring the bicultural platform the Treaty established, but a fresh start with a multicultural base.

[30] Fiona Barker, 'We, the People: Debating Constitutional Change in New Zealand's Diverse Population', (www.posttreatysettlements.org.nz)

## Options and reflections

It is clear from the conversations that the Treaty is an important document to iwi, hapū and Māori, along with a significant number of New Zealand individuals and organisations. Although ideas about fitting the Treaty within the existing arrangements are relatively well traversed (although by no means at a point where decisions might be made), options starting with the Treaty of Waitangi are only beginning to be developed.

One of the Panel's tasks is to provide advice where further work is required and the Treaty is one such area. While the Panel supports the current fluid development of the Treaty within the constitution, more consideration should be given to Treaty-based options that do not seek to include the Treaty within the current Westminster system. If the country is to have constructive conversations about the constitution, a range of options for its future should be on the table.

A key consideration for the Panel is that Māori are tangata whenua: Māori culture, history and language have no other home. In light of this status, Māori culture, history, and language needs to be used and to be able to develop, regardless of the standing of the Treaty within our constitutional arrangements. All the people of Aotearoa New Zealand have a role in supporting these outcomes.

A broad consensus supports the Government taking active steps to continue the conversation about the Treaty in our constitutional arrangements. A vital step is making available more accessible information about the current arrangements, including commitments made in Treaty settlements between iwi and the Crown and what they mean for the nation. Many submissions appeared to demonstrate a lack of awareness of the significant and good faith efforts by iwi and the Crown to settle their differences through the well-documented Treaty settlement process.

It is timely as historic Treaty settlements draw to a close to look to our history to inform our future. We have an opportunity to go back, examine our history, explore missed opportunities and forge a unique future.

While the various visions for the Treaty were passionately expressed, participants generally offered little in the way of detail about how their vision might be achieved. This uncertainty about what the future might hold appears to lead to a level of apprehension in each of the groupings: some fear the potential undermining or negation of Treaty rights, others fear their implementation.

Further work is therefore required to explore plausible models for the Treaty in our constitutional arrangements. This section sets out the three high-level options that appeared to be forming across the Conversation, and offers advice about which option to pursue. Any of the options would require more discussion before any decisions could be made. The Crown can support this work, although iwi must also have time and space to develop options that reflect tikanga Māori.

The Panel had many conversations about the place of the Treaty within New Zealand's increasingly diverse population, and recommends further consideration of and conversations about a Treaty-based multicultural future. This would include an inclusive conversation to clarify and recognise constitutional relationships and obligations. To this end, information and resources about the Treaty, te Tiriti would be an important element of the education strategy recommended earlier.

This would be a conversation about developing a unique solution to our unique circumstances. The outcome of this conversation cannot be predicted – it could result in support for a transformed constitution or an endorsement of the current arrangements. Matike Mai Aotearoa, on behalf of the Iwi Leaders' Forum, has been working with iwi, hapū and Māori to develop an inclusive constitutional model based on tikanga and kawa, He Whakaputanga, te Tiriti and indigenous human rights. This work will no doubt contribute to the development of the conversation.

A high level description of the topics the conversation is likely to cover is set out below. Other approaches will emerge and develop as it continues, with these offered as a starting point for further discussion.

## A Treaty-based constitution

One option discussed in the Conversation was to discuss placing the Treaty and Treaty relationships at the centre of our constitutional arrangements, rather than attempting to graft them onto existing Westminster arrangements. Models could be drawn from previous attempts by Māori to establish autonomous structures and from a range of international examples including Canada, Bolivia, Norway and the United Kingdom.

## Maintain development of existing arrangements to accommodate Treaty rights and obligations

This option would preserve the current institutions and mechanisms of government. Most Treaty matters would be settled by negotiation between the Government and iwi as the need arises, with the ability to refer specified issues to the courts for resolution if necessary.

This option may be supported by people who see the principles and text of the Treaty as important elements of the constitution but do not consider the Treaty discourse is fully developed enough to include it in a written constitution. In the conversations, some Māori supported this view on the basis that the Treaty is sacrosanct and should be left alone. It would sit outside the legal system in much the same way as does the American Declaration of Independence in relation to the American Constitution, yet its principles inform the development of the law and the nation's constitutional values.

## Take active steps to accommodate Treaty rights and obligations

A range of different options to more proactively recognise the Treaty within the existing constitutional arrangements were raised during the Conversation, including:

- confirming the Treaty as a tool for interpretation, rather than having legal or constitutional force. For example, the Treaty might be added to or referred to in a preamble to the Constitution Act 1986
- making the Treaty one of the standards for good process – the courts could test process rather than outcomes against the Treaty
- making consistency with the Treaty a required consideration in all legislation and government action, for example by making the Treaty supreme law, perhaps along with the rights in the Bill of Rights Act 1990. The requirements could be given force by:
  - establishing a dedicated Treaty court, or increasing the jurisdiction of the Waitangi Tribunal or the general courts, with powers to assess whether legislation is consistent with Treaty principles
  - creating an upper 'Treaty' house in Parliament with 50% Māori membership
- entrenching Treaty rights to reduce their vulnerability to change.[31]

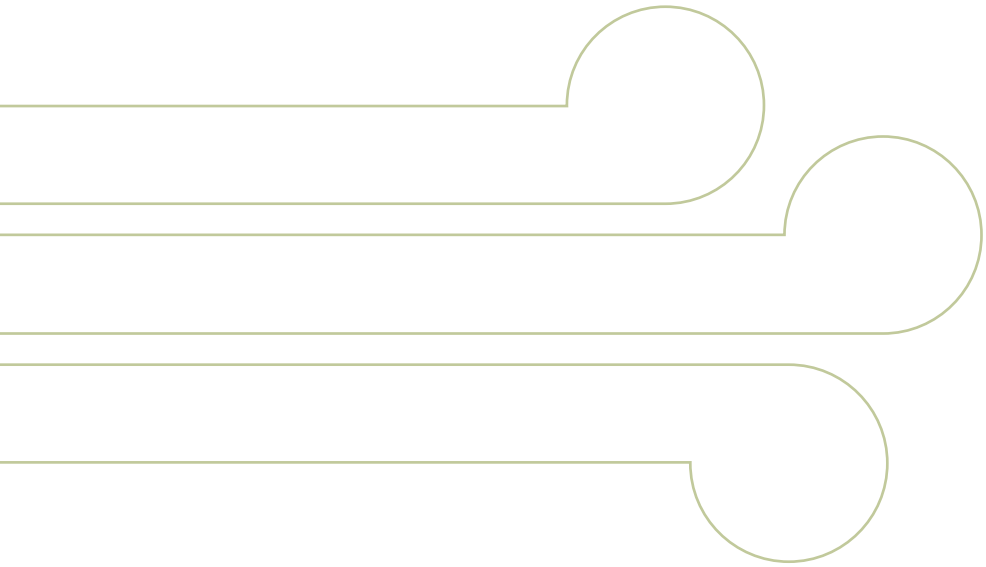
[31] Craig Linkhorn explores some of these options in 'The Treaty in the Constitution Conversation' Māori Law Review, June 2013 (www.Maorilawreview.co.nz)

## A constitution without the Treaty

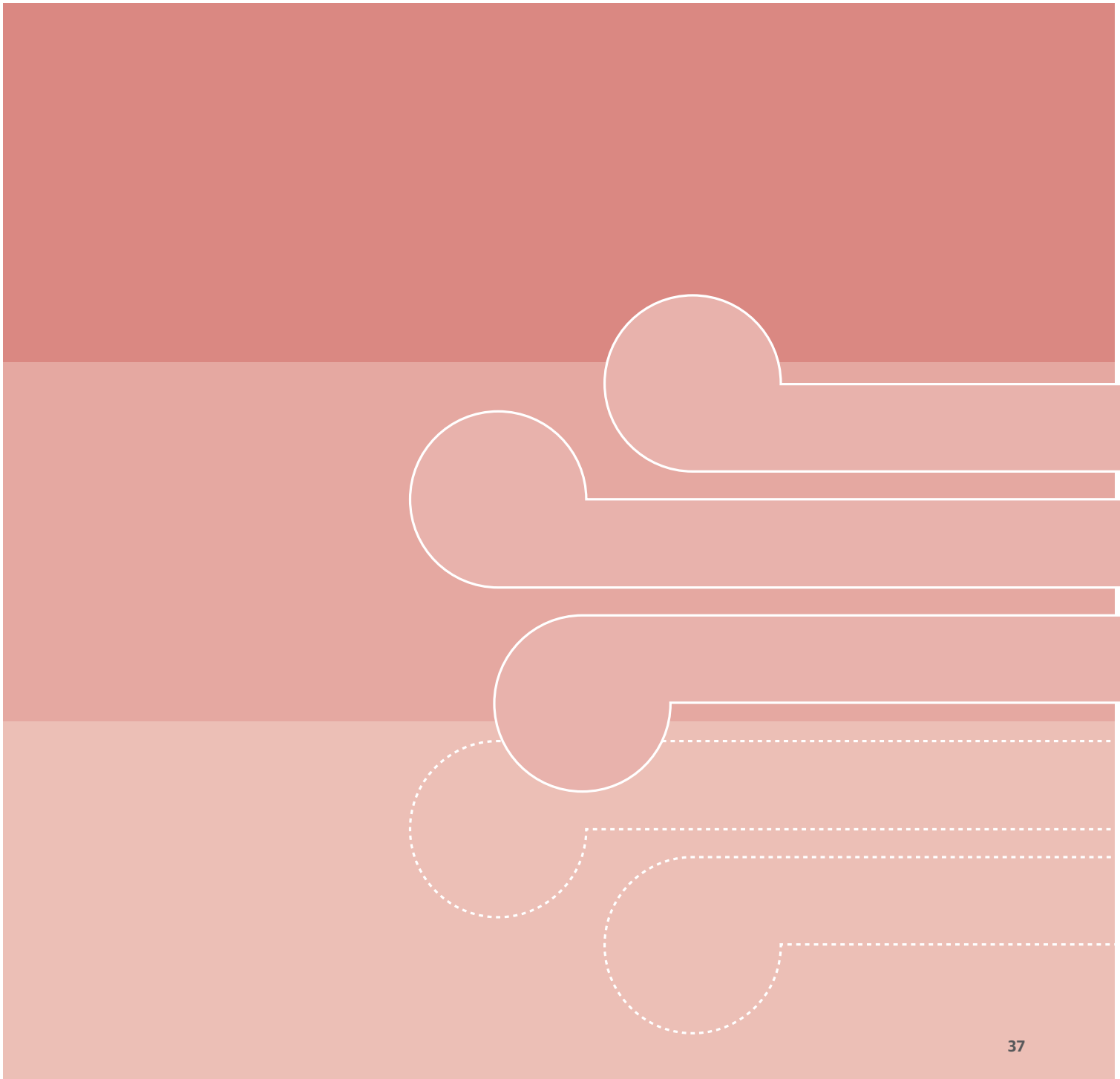
The Panel acknowledges that many New Zealanders remain sceptical that the Treaty can be a constructive element of our constitution and so may be reluctant to participate in a conversation about its future. Based on the Conversation, however, the Panel believes it is not viable to wind back the clock. The Treaty is already a fundamental element of our constitutional arrangements. It would be unfair, unjust and unrealistic to go back on the commitments made to iwi and hapū by successive governments. Nor do the arguments of equality put forward by some proponents of this view sufficiently acknowledge the diversity of this country's people.

The Treaty is not inherently divisive – its purpose was to establish a relationship between two peoples in one nation. Any divisions arise from a failure to meet those obligations, not from meeting them. The question is not just whether the Treaty is part of the constitution, but how it is best reflected and what we want to achieve by reflecting it.

The Crown cannot turn back on the commitments made in the Treaty and subsequently without the risk of social and political tensions. Any decisions made in such a crisis situation are unlikely to be enduring.



# Māori Representation



# Recommendations

**The Panel recommends the Government:**

- notes the Panel's advice that the current arrangements for the representation of Māori in Parliament should remain while the conversation continues
- investigates how Māori representation in Parliament might be improved
- investigates how local government processes and decision-making can better reflect the interests and views of tangata whenua and whether the processes can be made more consistent and effective
- when conducting the investigation into representation in both Parliament and local government has regard to a range of options including Māori political structures, and local and international models

# Māori Representation, Ngā Mangai Māori in Parliament and local government

The Māori seats in Parliament are a unique feature of New Zealand's democratic system. These seats ensure that a guaranteed minimum number of members of Parliament (MPs) can represent Māori views and perspectives in Parliament. There are currently seven Māori seats.

## Perspectives

Three broad groupings of aspirations for Māori representation in Parliament emerged during the Conversation:

- enhancing Māori representation and participation in policy and law-making
- retaining the Māori seats to guarantee a Māori voice
- abolishing separate representation.

### Enhancing Māori representation and participation

This grouping acknowledged existing mechanisms such as the Māori seats as better than having no guaranteed voice, but wished to explore stronger mechanisms to enhance Māori representation in Parliament. The Panel's conversations suggested that a majority of Māori are within this grouping.

### Retain the Māori seats to guarantee Māori voice

During the conversations the Panel heard from Māori, amongst others, that the seats should be retained or increased. This grouping aspires to a Parliament that recognises and takes account of Māori views. To this grouping the Māori seats in Parliament are a significant (although not necessarily sufficient) symbol of the commitments made by iwi and the Crown at Waitangi in 1840, and many submissions explored the historical detail and relevance of the seats.

Māori MPs who are elected to general seats are responsible for representing all their constituents. MPs elected to the Māori seats ensure a distinctive Māori voice in the issues considered by Parliament.

A significant number of individuals and organisations noted that the retention or otherwise of the Māori seats was a matter for Māori people to decide.

### Abolish separate representation

This grouping rejected the concept of guaranteed minority representation, aspiring to 'one law for all'. While many did not provide reasoning for their views, others suggested that separate representation is unfair or undemocratic.

Within this grouping some referred to the report of the 1986 Royal Commission on the Electoral System, which suggested that the Mixed Member Proportional voting system (MMP) would ensure Māori are adequately represented in Parliament so dedicated seats would no longer be required.[32] A common observation was that the number of people who identify as Māori in the current Parliament is roughly equivalent to the percentage of Māori in the population.

[32] Royal Commission on the Electoral System (1986) p. 101.

# Options and reflections

The conversations demonstrated that like the Treaty, Māori representation through the Māori seats is a mechanism that many people are deeply interested in. For some this Conversation was an opportunity to pursue well traversed arguments, and for some it was an opportunity to look to the future.

The Panel is of the view that there is no immediate need to change the current arrangements for Māori representation in Parliament. The Māori seats are effectively self-regulating as Māori can determine, through the Māori Electoral Option, whether or not they continue. The Panel concurs with the views of the 1987 Electoral Law Committee's inquiry into the Royal Commission on the Electoral System which put the decision on the future Māori seats in the hands of Māori,[33] and sees significant support among Māori for the retention of Māori seats.

Further work is required, however, to explore options to enhance representation, including looking at Māori historic initiatives, and to develop something unique that suits our circumstances. International examples such as Canada, Wales, Bolivia and Norway also offer some comparative examples for consideration.

Some participants in the Conversation considered Māori representation, particularly the Māori seats in Parliament, to be a form of apartheid. As the Royal Commission noted, this view is 'plainly wrong':

> Separate Māori representation is not a form of apartheid because the seats are within the *general* Parliament responsible for the *general* law and for supporting the *general* government of New Zealand. Individual Māori people have a choice whether to vote on the Māori roll or the General roll, and can be candidates for election in any seat, Māori or General. In fact, separate Māori representation works in exactly the opposite direction to the measures adopted by the South African regime in respect of the non-white population. The purpose of separate Māori representation is to *prevent* the exclusion of the Māori people from the policy and law-making processes by guaranteeing them representation in the legislature.[34]

The Panel agrees with the Royal Commission and can see no merit in revisiting this point.

The Panel recommends that along with further work in relation to the status of the Treaty, options for Māori representation in Parliament should be explored. The work should take account of the history of Māori representation in New Zealand, including the many Māori initiatives to improve representation and participation.

A high-level description of the options that started to emerge during the Conversation is set out below. Other options will no doubt emerge and develop as the conversations continue, with these offered as a starting point for further discussion.

## Transforming Māori representation

One option discussed in the Conversation was to consider alternative models to enhance Māori representation, drawing on national and international initiatives to create unique mechanisms for New Zealand.

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[33] Electoral Law Committee, 'Inquiry into the report of the Royal Commission on the Electoral System' (1988) AJHR I 17 B p 24 (www.parliament.nz)

[34] Royal Commission on the Electoral System (1986), p. 94.

Some options for enhancement mooted during the Conversation included:

- ensuring equal representation in Parliament of tangata whenua and tangata Tiriti
- creating an upper house with equal representation of tangata whenua and tangata Tiriti
- entrenching the Māori seats so they cannot be removed by a simple majority in Parliament
- revising the formula used for allocating Māori seats. The number of seats would be determined solely by the total Māori population, not by dividing the Māori electoral population by the quota for South Island general electorates
- recasting the Māori electorate boundaries to align more closely to tribal boundaries
- compulsory registration of Māori on the Māori roll with an option to opt off.

***Alternative models of representation***

It is not uncommon in modern democracies for indigenous people and minority groups to be represented through different mechanisms, including multiple sovereignties. Alternative frameworks can ensure minority voices are heard. This section briefly summarises some of the models as a basis for further conversation.

***Indigenous parliaments***: these parliaments can sit alongside western-style parliaments. For the Saami people in Scandinavia indigenous parliaments act in an advisory capacity, with limited legislative authority. Saami parliaments are financially accountable to the state.

***Political parties***: some political parties actively recruit ethnic minorities to widen their support. The Welsh Labour Party and Ontario New Democratic Party have a quota for ethnic minorities. Allowing for a specific quota is up to each political party.

***Constitutional status***: some countries provide for the protection of indigenous people in their constitutions. For example in Slovenia two national communities have the right to veto legislation that directly concerns their communities.

***Creation of a separate territory***: in 1999 the Canadian Parliament established Nunavut, a self-governing territory for the Inuit. The Act establishing the territories was 23 years in the making and was the result of land claim negotiations between the Inuit and federal government. The Legislative Assembly of Nunavut is the territory's Parliament, and decisions are made by consensus. The Assembly elects a single member to the federal House of Commons.

## Retaining the status quo – developing existing mechanisms

This option could see the Māori seats remain indefinitely, fluctuating in number depending on both the Māori population and voter population. As long as Māori opt to retain the Māori seats, through the Māori Electoral Option, they would remain.

This option could also include considering ways to improve participation suggested during the Conversation, including greater promotion of the Māori Electoral Option and better education about the current arrangements.

## Remove the Māori seats

Although the Panel received a large number of submissions supporting the removal of the Māori seats this option is not recommended. It is inappropriate for longstanding rights of a minority to be taken away simply because that minority is outnumbered. The existence of the Māori seats does not impede or limit the rights of other New Zealanders to exercise their vote.

For the same reason the Panel does not support the view it heard that a general referendum should be held on the retention or abolition of the Māori seats. The question about options for the Māori seats and Māori representation requires a more nuanced decision-making tool that takes account of minority views. The Panel agrees that the decision about the future of Māori seats should remain in the hands of Māori.

## Māori Representation in local government

Historically iwi exerted kaitiakitanga, managing all of New Zealand's natural resources. Māori and the Crown agreed, through the Treaty, that Māori would maintain control over their taonga, including natural resources. Now much of the management and regulation of these resources is the responsibility of local government. Iwi therefore have a close interest in local government to ensure their views and perspectives are represented in the management of natural resources. The nature and extent of both iwi and Māori elected representation and participation in local government decision-making varies across the country.

### *Māori representation*

The Local Electoral Act 2001 provides councils with an opportunity to create Māori wards by resolution.[35] A poll of voters is taken on the implementation of the resolution if a sufficient number of people seek it. Māori wards, like the Māori seats in Parliament, guarantee that a Māori perspective is represented in the work of local government.

### *Participation in decision-making*

In order to recognise and respect the Crown's responsibility to take appropriate account of the principles of the Treaty of Waitangi, the Local Government Act 2002 requires local authorities to facilitate Māori participation in decision-making processes.[36] The Act also requires a local authority, if making a significant decision on land or a body of water, to take into account the relationship Māori have to their ancestral land, water, sites, wāhi tapu, flora and fauna, and other taonga. Consultation on local matters would necessarily involve consultation with the iwi and hapū who have customarily exercised authority within a particular area (mana whenua).

Under the Resource Management Act 1991, local authorities are required to have regard to the exercise of guardianship in accordance with tikanga Māori (kaitiakitanga) of mana whenua. Most councils consult to some degree with mana whenua, although the nature and extent of consultation varies region by region.

The current mechanisms providing for iwi participation with local authorities therefore require the combining of two different world views. A recent report of the New Zealand Productivity Commission noted:

> [A]ppropriately recognising the relationship of Māori to environmental features involves effectively meshing two different systems of governance—local representative democracy, and the tikanga and kawa of local iwi. Put another way, it calls for the reconciliation of kāwanatanga and rangatiratanga. At present, this governance or 'system' issue is left largely up to local authorities to resolve. The best English term available for what needs doing is establishing a 'partnership' – the language of Treaty responsibilities.

[35] See Appendix E, Local Electoral Act 2001.

[36] See Appendix E, Local Government Act 2002.

Local authorities and iwi are best placed to work out their relationship at the local level, but there are real questions about whether the current legislative framework best enables that relationship.[37]

Mana whenua can currently participate in management of local resources through:[38]

***Iwi management plans***: the Resource Management Act requires local authorities to take these plans into account

***Statutory consultation***: where statute establishes specific structures, for example Auckland's Independent Māori Statutory Board

***Māori committees***: the Local Government Act 2002 sets out requirements to include Māori in decision-making and to build Māori capacity to do so. Establishing a Māori committee is a common solution to achieving this objective

***Joint management agreements***: such agreements create joint mana whenua and local authority management of natural features, for example the Waikato River Authority established under Treaty settlement legislation.

# Perspectives

The perspectives on representation in local government were broadly similar to those on Māori representation in Parliament.

## Enhancing Māori representation

This grouping considered Māori are underrepresented in local government, even though the legislative framework provides ways for councils to address representation. Consequently a Māori perspective is often not reflected within a regional authority at a strategic level and operational policy flowing from a set strategic direction is not reflective of tikanga Māori. The Productivity Commission identifies the common problem of 'insufficient capacity to actually participate in the process as currently designed.'[39]

The Waitangi Tribunal has articulated what rangatiratanga means in respect of mana whenua involvement in the management and control of local resources.[40] People who shared this view thought the current legislative provisions did not sufficiently empower local iwi and authorities to work towards a relationship to reflect rangatiratanga.

This grouping generally supported regulatory or legislative change to impose on councils a legislative imperative to engage with mana whenua in all stages of council business. This imperative would require local authorities to engage with iwi rather than leaving them with a discretion.

An alternative view was for legislation to empower local authorities and iwi to come up with a framework that reflects the Treaty partnership. The Bay of Plenty Regional Council was cited in conversations as a positive example of a council and iwi working together to ensure iwi and Māori views are represented within the council – local people creating local solutions that work.

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[37] New Zealand Productivity Commission, 'Towards Better Local Regulation' (May 2013), (www.productivity.govt.nz)

[38] Ibid.

[39] Ibid.

[40] The Waitangi Tribunal, He Maunga Rongo: Report on Central North Island Claim: Stage 1 (Wellington, New Zealand: Legislation Direct, 2008) p. 1241

### Maintaining the present position

Another grouping supported the present position, with the Resource Management Act 1991 and Local Government Act 2002 placing obligations on local authorities to consult with iwi. The tool through which the Acts are given effect on the ground is up to iwi and local authorities. This grouping thought it appropriate for Māori wards only to be created if a vote is taken and the majority determines there is a need for them.

### Remove separate representation

This grouping held the view that separate representation of Māori is undemocratic and that Māori should have the same opportunities as others in the community to be heard and elected onto a council.

## Options and reflections

Unlike representation in Parliament, the relevant statutes provide no consistent mechanisms for elected Māori representation in local government or for the relationship between iwi and councils.

The Panel recommends further work to find effective ways of involving iwi in local authority decision-making. Iwi history and tradition are based in the lands they have occupied for generations. The challenge is to investigate how the views of mana whenua with a direct whakapapa connection to the land or region in question can be heard and considered effectively.

Delegated authority through legislation and the relationship between central and local government were key factors in the conversations about Māori representation. The Resource Management Act 1991 and Local Government Act 2002 impose certain positive obligations and responsibilities on local authorities, but the Crown as Treaty partner retains responsibility to iwi.

Councils are under no imperative to engage with iwi and hapū. Iwi representation, even by the creation of Māori wards, is reliant on individual personalities within each council. It is undesirable that Māori representation in local government continue in this ad hoc manner.

Each local authority may determine the mechanisms for fulfilling their obligations to consult iwi. While this approach enables flexibility to find a solution which fits local conditions, it means that there are considerable differences across the country. Such inconsistency can lead to impressions of unfairness and inequality.

Because of feelings that local governments have failed to satisfy Māori expectations about the implementation of these provisions, Māori have increasingly turned to central government to seek (through the Treaty settlement process) greater involvement in local decision-making about natural resource management.

The Panel supports further consideration of this issue to try to find a better solution. The options for further work mirror those discussed in parliamentary representation, but the imperative is stronger in light of the need for a measure of consistency across the country and the significance of the direct interests of mana whenua. Options and solutions should be developed in consultation with mana whenua.

### Alternative models for Māori representation in local government

One option discussed in the Conversation was to consider alternative models to guarantee iwi representation, drawing on national and international initiatives to create something unique for New Zealand.

Through Treaty settlement legislation, Parliament has established iwi statutory bodies to engage with local authorities. A recent example of this is the Ngāi Tāmanuhiri Claims Settlement Act 2012, which establishes a Local Leadership Body as a joint committee of the council to contribute to the sustainable management of natural and physical resources.

Another example is the Waikato-Tainui (Raupatu Claims) Settlement and Ngāti Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Acts 2010 which established a co-governance framework for the Waikato River. The framework consists of a single co-governance entity, Waikato River Authority, who set the direction for improving the health and well-being of the Waikato and Waipa Rivers. The Waikato River Authority has 10 members appointed on a 50:50 basis by the Crown and Waikato River iwi. The co-management arrangements include joint management agreements between the iwi and their local authority.[41]

Another example is the Local Government (Auckland Council) Act 2009, which established the Independent Māori Statutory Advisory Board members. Board members comprise seven mana whenua and two mataawaka representatives.

The Panel acknowledges the success of these mechanisms depend in large part on the commitment of the individuals involved to make them work.

### Retaining the status quo

This option would preserve the existing flexibility, without any consistent or guaranteed representation. Existing mechanisms could potentially be developed or enhanced by looking at innovative ways to engage under-represented communities. Some would argue the current approach allows local iwi and councils to develop the right mechanisms to suit the local community without central government imposing fixed models.

### No separate representation

The Panel does not recommend exploration of this option. The Crown has made co-governance commitments to iwi and hapū in Treaty settlements legislation. Co-management arrangements reflect Treaty principles and the Māori-Crown relationship and it is not realistic to undo this progress.

[41] 'Co-governance and Co-management Arrangements for the Upper Waipa River: Regulatory Impact Statement' (2010), www.treasury.govt.nz.

## The Māori Electoral Option and Māori electoral participation

The Māori Electoral Option provides Māori with a choice between being enrolled on the Māori electoral roll or the general electoral roll. Electoral participation tended to be less of a focus of conversations, but it is linked to broader questions about the Treaty of Waitangi and Māori representation generally.

If Māori do not see their views reflected within institutions or see their views consistently disregarded, participation is likely to be lower. Participants suggested changes to the mechanics of the Māori Electoral Option including:

- compulsory registration of Māori on the Māori roll with an option to opt on to the general roll
- an option to enrol on the Māori roll prior to each election, not only after the Census.

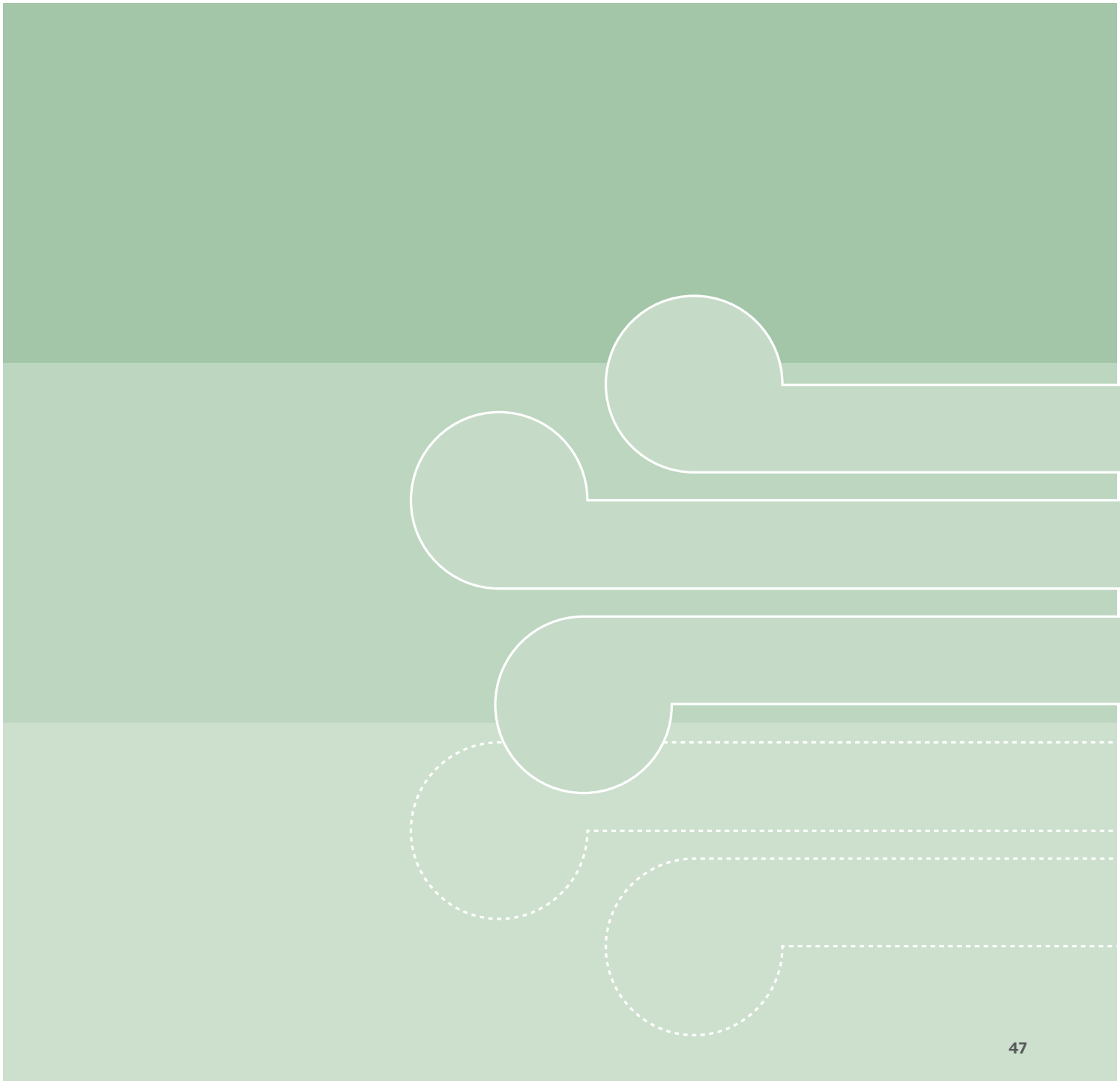
Other suggestions for encouraging Māori electoral participation included:

- improved civics and Treaty education programmes
- active encouragement of Māori to stand as candidates in local body and general elections
- creating mechanisms for engaging youth such as engagement through social media
- addressing underlying socio-economic issues.

Māori-led initiatives were generally seen as likely to be more effective.

Many people who participated in the Conversation noted that both central and local government need to look for innovative ways to engage their constituents, with the use of social media being a recurring theme. Other suggestions included more frequent use of questionnaires or establishing representative advisory committees (youth, Pasifika, disability, rural).

# The New Zealand Bill of Rights Act 1990



# Recommendations

**The Panel recommends the Government:**

- sets up a process, with public consultation and participation, to explore in more detail the options for amending the Act to improve its effectiveness such as :
  - › adding economic, social and cultural rights, property rights and environmental rights
  - › improving compliance by the Executive and Parliament with the standards in the Act
  - › giving the Judiciary powers to assess legislation for consistency with the Act
  - › entrenching all or part of the Act

## The New Zealand Bill of Rights Act 1990

The New Zealand Bill of Rights Act 1990 affirms, protects and promotes civil and political rights and freedoms in New Zealand. The Act sets the minimum standards for all public decision-making: Parliament must have regard to these rights when making laws, the Executive must observe these rights in their actions and policy decisions and, where reasonably possible, the Judiciary must apply laws in a way that is consistent with the Act. People can go to court if they believe government has acted contrary to their rights.

Rights protected under the Act include:

- the right to life and security of the person
- democratic and civil rights, such as electoral rights, freedom of expression and freedom of religion
- non-discrimination and minority rights
- search, arrest and detention rights, such as the right to be free from unreasonable search and seizure
- fair hearing rights, particularly in the criminal trial process.

Many of the rights in the Act already existed in common law and statute. For example, clause 29 of the Magna Carta 1297 contains due process rights, including rights to a fair trial. The Bill of Rights 1689 limited the power of the monarch by setting out civil and political rights, including the freedom of speech and the freedom of election. Both remain part of New Zealand law, through the Imperial Laws Application Act 1988.[42] The Act also affirms New Zealand's commitment to the International Covenant on Civil and Political Rights.

The Act recognises, like other modern Bills of Rights, that not all rights are absolute so sometimes limits on rights might be justified. The rights can be limited only to the extent demonstrably justifiable in a free and democratic society (section 5). Ultimately, Parliament can choose to legislate in a way that is contrary to the Act, and is accountable to voters for that decision about what limits are justifiable.

The 1985 White Paper 'A Bill of Rights for New Zealand'[43] proposed a supreme and entrenched Bill of Rights which would incorporate rights under the Treaty of Waitangi. As enacted, the Act can be amended by simple majority in Parliament, the courts cannot strike down legislation found to be inconsistent with the Act and it does not refer to the Treaty.

[42] See Appendix E, Imperial Laws Application Act 1988.

[43] New Zealand Parliament 'A Bill of Rights for New Zealand: A White Paper' (1985) AJHR A6.

## Perspectives and options

Across the Conversation the New Zealand Bill of Rights Act 1990 was seen as a fundamental and enduring part of our constitutional arrangements.

One grouping of participants felt the effectiveness of the Act could be improved. Perspectives of those participants included:

- the Act is not comprehensive enough, so important rights are not being protected, respected or fulfilled
- it is too easy to pass legislation that is inconsistent with the Act
- the Act is too easy to change.

Another grouping felt the Act was working satisfactorily and should be left as it is to avoid the risk of uncertainty. They believe human rights in New Zealand are protected, respected and fulfilled appropriately.

## Adding rights to the Act

Adding rights to the Act is seen by one grouping as a way of improving the scrutiny of legislation, by requiring Parliament to take account of a wider range of rights than under the current Act. Affirming these rights in the Act would ensure government would be required to consider whether and how decisions and legislation affect and fulfil those rights.

### Economic, social and cultural rights

The state's role in fulfilling people's social, cultural and economic well-being was a common theme of the Conversation. To several groupings, affirming social, cultural and economic rights in the Act would ensure decision-making takes account of this responsibility. Others said that fulfilling these rights is vital to the fulfilment of civil and political rights.

The aims for including these rights were described in different ways including:

- reducing the gap between rich and poor
- ensuring people receive an income that meets essential needs
- guaranteeing access to high quality education, health care, food, housing and affordable energy
- fostering a peaceful society, with better control on drug use, reduced child abuse and family violence
- building communities and local self-determination
- supporting economic development
- strengthening labour rights and reducing unemployment, including individual and on collective bargaining
- fulfilling the rights of children, including addressing child poverty

In particular, participants suggested implementing the International Covenant on Economic, Social and Cultural Rights and ratifying the Optional Protocol to the Covenant to allow for complaints to be made to the United Nations.

There was some discussion about whether or not these rights should be justiciable (capable of being enforced by the Courts) or aspirational (with political and moral force rather than legal force).

## Property rights

Property rights are affirmed in New Zealand's common law, the Public Works Act 1981 and the Resource Management Act 1991.[44] The Universal Declaration of Human Rights also provides 'Everyone has a right to own property alone as well as in association with others. No-one shall be arbitrarily deprived of his property.'

The addition of property rights to the Act was discussed during the Conversation. A common reason for affirming and defining the right was to ensure consideration of the impact of legislation on collective and individual property rights. The aims of including the right varied and included:

- guaranteeing access to material things needed to sustain life and participate in civic life
- enhancing personal liberty and protecting the results of economic activity from appropriation (or 'taking') by the state
- reflecting Article 2 of the Treaty of Waitangi.

Participants noted that a major obstacle to the affirming a right to property is reaching agreement about what is meant by 'property' and also whether and how remedies might be determined. One grouping suggested affirming property rights might worsen inequalities or negatively affect the environment.

## Environmental rights

The preservation and protection of New Zealand's natural environment and resources was a strong theme across the Conversation, especially but not exclusively amongst young people. Some people took a rights-based approach, suggesting the Act should be amended to reflect environmental goals. Options discussed included:

- affirming rights of the environment itself, for example by placing obligations on the state and citizens to protect Papatūānuku, Mother Earth, Mother Nature or the biosphere[45]
- affirming a human right to a clean and healthy environment[46]
- referring to environmental protection as part of a right to intergenerational equity.[47]

Other groupings had proposals with similar aims but using different mechanisms:

- a general constitutional requirement to pursue sustainable development
- reforming existing legislation with the aim of strengthening environmental protection
- making 'kaitiakitanga' (guardianship) a core constitutional principle.

These groupings saw the preservation of the natural environment as fundamental to our economy and way of life. The environment forms part of the core identity of New Zealand for this grouping and they wish to see it recognised at all levels of policy planning and decision-making.

Another grouping suggested environmental rights already receive sufficient protection at a cost to rights such as property.

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[44] See Appendix E, Public Works Act 1981, and Resource Management Act 1991.

[45] References to a state duty to protect the environment can be found in 27 national constitutions, while a duty for everybody to respect their environment can be 59 national constitutions. See Christopher Jeffords, 'Constitutional Environmental Human Rights: A Descriptive Analysis of 142 National Constitutions' The Human Rights Institute, University of Connecticut, Economic Rights Working Paper Series, Working Paper 16 (2011) pp 17, 23.

[46] References to a human right to a healthy environment can be found in 60 national constitutions, see Jeffords, *op cit*, pp 17, 23.

[47] Reference to protecting the environment for future generations can be found in 35 national constitutions, see Jeffords, *op cit*, p 21

## Privacy rights

Article 12 of the Universal Declaration of Human Rights and Article 17 of the International Covenant on Civil and Political Rights affirm the right to privacy:

> No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

During the Conversation discussion of the right to privacy was often linked with discussions of central government's surveillance powers. One grouping was particularly concerned about protecting the privacy of people's communications, particularly the collection of people's private information. Information sharing between agencies to improve social outcomes was also discussed, with some believing it was positive and others being concerned about its impact on people's private lives.

## Equality

Many participants addressed and supported a right to equality, although by no means in the same terms. Some participants called for the state and the law to treat every person equally. Others see a right to equality as requiring state action on behalf of specific groups, to address specific issues such as socio-economic equality, gender equality, racial equality and the rights of the disabled.

## Rights of persons with disabilities

Discussions of the rights of persons with disabilities raised concerns that legislation does not address the needs of this group. Some participants voiced the need for a strong disability clause to be included in this Act. Specific issues relating to education, accessibility to exercise voting rights,[48] and employment were raised areas that need to be addressed. Developing an education strategy was considered to be an effective means to improving participation for this community.

Increasing the level of representation for disabled people in Parliament that is reflective of population numbers was also seen as important. An example is the establishment of a disabilities parliament that would sit once a year, feeding back to MPs.

Care of persons with disabilities, whether residential or otherwise, was another perspective discussed. One grouping felt support for the care of people with disabilities was insufficient, and could be addressed by adding a right for people with disabilities to promote the issue and to better fulfil their rights.

## International agreements

Some participants suggested that more commitments from New Zealand's international human rights agreements should be included in the Act such as:

- the rights in the International Covenant on Civil and Political Rights that are not already in the Act (for example Article 17 which prohibits interference with privacy, family, home or correspondence and Article 26 which includes property, language and social origin as prohibited grounds of discrimination)
- the International Covenant on Economic, Social and Cultural Rights
- the Declaration on the Rights of Indigenous Peoples

[48] The Electoral Commission is developing a Long Term Disability Engagement Strategy and a Disability Action Plan for the 2014 General Election to improve access for disabled people, www.elections.org.nz/resources-learning/voters-disability.

- the International Convention on the Elimination of All Forms of Racial Discrimination
- the Convention on the Elimination of All Forms of Discrimination Against Women
- the Convention on the Rights of Persons with Disabilities
- the Convention on the Rights of the Child.

Participants said affirming these agreements would be consistent with New Zealand's history of leading the world in human rights conversations. Another grouping suggested that the implications of affirming the agreements are not well known and that it would be sensible to wait and see how they operate in other countries.

## Indigenous rights and tikanga Māori

One grouping suggested recognising collective indigenous rights and tikanga Māori within the Act. For many within this grouping, affirmation of these rights would be in addition to a stronger role for the Treaty in Aotearoa New Zealand's constitutional arrangements. Others saw an opportunity to promote the importance of Māori culture, such as rights supporting the use and development of te reo Māori.

## Remedies

Some participants said the Act should set out remedies for breaches of the Act that affect individuals. The courts can already impose remedies such as the exclusion of 'tainted' evidence, issuing a stay of proceedings, or reducing an offender's sentence. The courts have also in a few cases awarded financial compensation for breaches of the Act. In practice, few claims for compensation have been successful.

## Responsibilities

Some participants suggested amending the Act to provide that only people who fulfil specified civic responsibilities can expect their rights to be protected and fulfilled or enacting a Rights and Responsibilities Act. On this view, citizens having rights without being required to fulfil civic responsibilities can lead to a sense of entitlement. One grouping saw civics and citizenship education as a means of instilling a sense of civic responsibility, instead or as well as amending the Act. Examples included not observing the rights of people convicted of serious crimes, or promoting a responsibility to help others and be a positive part of the community.

Others took an approach based on the Universal Declaration of Human Rights[49]: human dignity is inherent and human rights are inalienable.

## No additional rights

Another grouping suggested additional rights would over-complicate the Act, specific rights would not have sufficiently widespread support, and it is important to focus on protecting and fulfilling the rights and freedoms already in the Act.

[49] See Appendix E, New Zealand adopts the Universal Declaration of Human Rights (1948)

# Improve compliance with the standards set by the Act

Across the Conversation participants acknowledged New Zealand's relatively positive human rights record, but also noted that the current arrangements might be vulnerable. Parliament's ability to amend the Act or to pass legislation contrary to the Act with the support of a simple majority of Parliament was of particular concern. This discussion also covered the power of the Executive within Parliament. The Panel heard a broad consensus that human rights need to be considered at all levels of government, though different groupings had different ideas about how best to protect them.

Participants discussed a range of options for improving the Executive's and Parliament's compliance with the standards set in the Act including:

- improving parliamentary scrutiny of proposed legislation
- improved public participation in the development of policy and legislation
- increased judicial powers.

## Improved parliamentary scrutiny

One option proposed was to improve Parliament's ability to scrutinise draft legislation. MPs, as representatives of the people, are seen as having the democratic mandate to make decisions about the appropriateness of the impact that legislation has on rights.

Suggestions included:

- strengthening the select committee process by establishing a committee with specific responsibility for human right issues
- ensuring Parliament and the public have access to complete information about rights implications of legislation, for example by requiring section 7 advice and reporting on substantive Supplementary Order Papers (SOPs), by section 7 reports being made more accessible, or by waiving legal privilege on Bill of Rights Act advice (subject to other requirements under the Official Information Act 1982).

## Improved public participation

The Panel regularly heard New Zealanders want to participate more effectively in the development of legislation that affects human rights. Legislation being passed under urgency and bypassing public submissions was of particular concern. Options to improve public participation in law making included:

- ensuring public submissions can be made on any bills affecting human rights, including SOPs which are currently not covered by the section 7 reporting requirements
- improving education so public scrutiny is better informed and more effective
- more frequent use of referenda and deliberative tools.

### Increased judicial powers

Another proposal for improving compliance with the Act was to make it supreme law, giving the courts powers to assess whether legislation meets the standards set in the Act. What the effect of a negative assessment should be was a key question for participants, with many rejecting the concept of a supreme law Act on the basis that Parliament's sovereignty must be preserved. The three most common consequences proposed were:

- the legislation (or the part of it that is inconsistent) would be unenforceable or 'struck down'
- the legislation would remain in force if declared to be inconsistent. Government could be required to report to Parliament in response to the court's declaration, as in the current New Zealand Human Rights Act 1993
- allowing the courts to strike down legislation while preserving Parliament's power to enact legislation for a limited time 'notwithstanding' any inconsistency (the Canadian model).

Reasons for supporting greater judicial powers over legislation with rights impacts included that the courts:

- are independent, impartial and fair decision-makers
- are better at protecting minority rights than majoritarian parliaments
- have expert knowledge about human rights issues
- provide an independent check on Parliament.

Arguments against the Act being supreme law were generally based on the understanding the courts would have a power to strike down legislation. They included:

- Parliament is accountable to and representative of voters, and so is best placed to decide what limits on rights are justifiable in a free and democratic society
- a perceived risk of politicising judicial appointments: the appointing government might try to influence the approach of the courts by choosing people of particular political views.

Another grouping had a broader objection to the concept of supreme law, saying that all laws should have equal status, as giving one law supremacy could diminish the importance of other laws.

### Include the Act in a written constitution

One grouping of views who supported a more important role for the Act suggested including the Act in a single written constitution. Within this grouping people saw the Act as the basis for a new constitution or as one part of it.

## Entrench the Act

The Bill of Rights Act 1990 can be amended by a simple majority in Parliament. Entrenchment would mean that a special process would be required to change the Act, such as a special parliamentary majority (for example, three-quarters of MPs) or majority support in a referendum of voters. The entrenching provision can also itself be entrenched. This is known as 'double entrenchment.'

One grouping of views expressed concern about the ease with which the Act can be amended, saying that changes should only be made with broad support. For this grouping, the Act expresses important human rights values which should only be amended if significant support can be demonstrated in Parliament or by voters.

Another grouping felt that it was important to be able to amend the Act to keep pace with society's wishes, or that a level of flexibility was healthy for any law. Concern was also apparent that making the Act supreme or entrenched would make it hard to pass potentially important law. Allowing values to evolve over time was seen, under this view, as essential for the Act to be most effective.

A small number of participants did not feel entrenching the Act was necessary to protect the rights affirmed in the Act. Under this view, the rights pre-date the Act and would continue to exist even if it was repealed or amended.

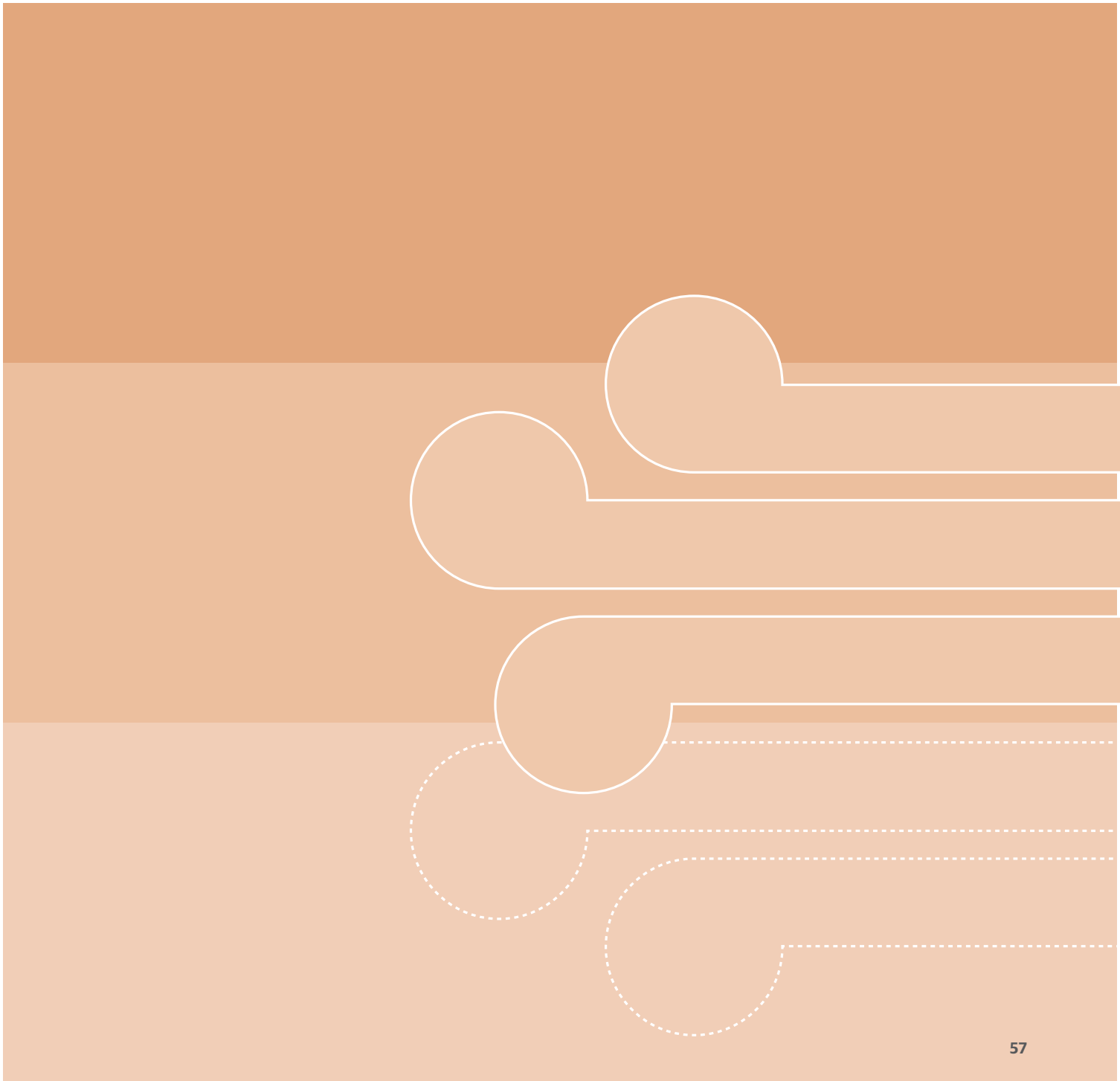
## Reflections

The conversations demonstrate broad support for exploring change to the Bill of Rights Act and enhancing mechanisms for ensuring compliance with the standards set in the Act. The public want access to more information about their rights under the current Act and more time to participate in informed and deliberative conversations on the future of the Bill of Rights Act.

New Zealanders identify the Act as one of the primary means of protecting human rights, but have mixed thoughts on whether Parliament is giving due consideration to it. The different options for the distribution of power between the different branches of state in relation to the Act provide a possible framework for future conversations.

Granting courts the power to strike down legislation has support but is explicitly rejected by a significant grouping. Support can be seen for exploring increased judicial powers that preserve parliamentary sovereignty, new means of public participation and improving parliamentary scrutiny to ensure legislation is consistent with the Act.

# Electoral Matters



# Recommendations

**The Panel recommends the Government:**

**Size of Parliament**

- does not undertake further work on the size of Parliament

**Term of Parliament**

- notes a reasonable level of support for a longer term
- sets up a process, with public consultation and participation, to explore what additional checks and balances might be desirable if a longer term is implemented
- notes any change to a longer term should be accomplished by referendum rather than by way of a special majority in Parliament

**Fixed election date**

- sets up a process, with public consultation and participation, to explore a fixed election date in conjunction with any exploration of a longer term

**Size and number of electorates**

- notes the discrepancy in geographic size affects the representation of people in larger electorates, particularly Māori and rural electorates
- sets up a process, with public consultation and participation, to explore ways to address the discrepancies

**Electoral integrity legislation**

- notes a level of concern about MPs leaving the parties they were elected with, especially list MPs, but no consensus about a solution
- notes the Panel makes no recommendation on this topic

# Electoral matters

New Zealand has held regular elections since 1853.[50] Following the signing of the Treaty of Waitangi, the New South Wales Continuance Act 1840 (UK) and Letters Patent of 16 November 1840 created an Executive Council and a Legislative Council for New Zealand.[51] The Constitution Act 1852 established an elected House of Representatives with a five-year term. Elections for the House of Representatives were first held between 14 July and 1 October 1853. The Legislative Council became the upper house of the General Assembly. Members were at first appointed by the Governor on his own and eventually on the advice of the premier. The Legislative Council was abolished in 1950.[52]

Regular amendments to electoral legislation since 1853 have resulted in a system of free and fair elections which are internationally respected.

The New Zealand Parliament has a minimum of 120 members. MPs are elected through the Mixed-Member Proportional (MMP) voting system, which was voted for in a referendum in 1993 and affirmed in another referendum in 2011. Parliament can run no longer than three years after an election. The date of the election is set by the Prime Minister and can be triggered at any time during that three-year period.

# Size of Parliament

Thirty-seven members were elected to New Zealand's House of Representatives in 1853. Membership increased steadily and reached 95 by 1881 before it was reduced to 74 for the 1890 election. It held at 80 from 1900 until 1969 when it began to slowly trend upwards again. The Legislative Council began with 11 appointed members then fluctuated between 35 and 50 members until its abolition in 1950.

Today New Zealand's Parliament has a minimum of 120 seats: 63 general electorate seats, seven Māori electorate seats, and 50 list seats. A citizens' initiated referendum on the size of Parliament was held in 1999. The turnout was 84.8% with a result of 81.5% in favour of reducing the number of MPs and 18.5% against.

# Perspectives

## Reduce the number of MPs

Reducing the number of MPs to 100 or fewer was a popular option, with reasons given including:

- Parliament has too many MPs relative to the current population
- the results of the 1999 referendum should be implemented
- to reduce the cost of Parliament
- to ensure MPs work effectively and efficiently
- to return to a first past the post system by removing the list seats, which are seen by some as having less of a mandate from the public
- to remove the Māori seats.

A strong theme of trust ran through these discussions. Many participants supported fewer MPs because they did not trust politicians to represent them with integrity.

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[50] See Appendix E, First general election held (1853)

[51] See Appendix E, New South Wales Continuance Act 1840 (UK), and Letters Patent & Royal Instructions (1840)

[52] See Appendix E, Legislative Council Abolition Act 1950.

### Retain the status quo

Another significant grouping supported leaving the membership of Parliament at 120, with reasons including:

- allowing the business of the House to run smoothly
- maintaining the proportionality and diversity of representation
- maintaining a talent pool for members of select committees and Cabinet Ministers.

This grouping included the view that the number of MPs will need to increase over time to match the growing population.

### Increase the number of MPs

A small grouping suggested that an increase in the number of MPs would:

- allow electorate workloads to be spread more evenly
- broaden the talent pool for Cabinet and allow members to dedicate themselves to select committee work
- contribute to a more efficient use of resources
- improve communication and the responsiveness and accountability of Parliament.

### Ratio of list to electorate MPs

Discussions of this topic also touched on the current population growth trajectories which would result in a steady decline in the number of list MPs relative to the number of electorate MPs. Suggestions to address this change ranged from removing list MPs altogether to fixing the ratio to prevent a reduction in their overall proportion.

### Change the structure of parliamentary representation

Amendments to parliamentary structures were also discussed. A common example was the reinstatement of an upper house of Parliament as an additional level of scrutiny on legislation.

## Reflections

Discussions about the size of Parliament tended to focus less on whether the current numbers are right for what Parliament does, and more on whether what Parliament does is right. The discussions also disclosed a level of mistrust or misunderstanding of the role of list MPs and the Māori seats.

The list seats are fundamental to the proper functioning of the MMP voting system that was affirmed by a majority of voters in 2011. As discussed earlier, the Māori seats remain an important part of our democracy.

The Panel is not convinced of any immediate need to increase or decrease the size of Parliament on the basis of population. The Justice and Electoral Select Committee's report on the 2006 Electoral (Reduction in Number of Members of Parliament) Amendment Bill indicated that New Zealand's MP per population ratio was average by international standards.[53]

The discussion of this topic demonstrates the limitations of a referendum for deciding policy issues with a number of dimensions. The topic prompted discussions of important issues such as

[53] Justice and Electoral Committee, 'Electoral (Reduction in Number of Members of Parliament) Amendment Bill: Report of the Justice and Electoral Committee' (2006) AJHR I 23-1, pp. 7-9.

the purpose of Parliament, the nature of representation and the role of the list and Māori seats. Reducing these rich discussions to a binary decision between 99 and 120 members could give results that would be difficult to interpret. Rejection or endorsement of a larger Parliament could be based on a wide range of different reasons that would not necessarily be addressed by changing the number of members. These issues may be better addressed directly and deliberatively.

## Length of parliamentary term

Parliament can run no longer than three years after an election[54] and a General Election must be held once the term has ended. Limiting the term of Parliament means voters regularly get a chance to elect MPs. The maximum length of the term of Parliament is entrenched so can only be amended following a referendum of voters or with the support of 75% of MPs.[55]

Since the first election in 1853 the period between elections has changed on several occasions. The Constitution Act 1852 established a five-year term for the House of Representatives. The term was changed to three years in 1879, largely due to a desire to increase voter control on central government following the abolition of the provinces in 1875.[56] The term of Parliament was extended by cross party agreement during both World Wars. A general extension in 1934 was unpopular and was reversed in 1937.[57] Referenda on the term of Parliament in 1967 and 1990 saw large majorities opposed to extending the term to four years.[58]

## Perspectives

The conversations fell into two groupings: support for, or rejection of increasing the current three year term to a four or five year term. A reasonable proportion of the people who commented on this topic supported a longer term.

Reasons for supporting a longer term included:

- giving government more time to plan and implement policy, improve the quality of policy and provide better information for voters to make decisions
- reducing the frequency of changes to policy and legislation.

People who rejected a longer term suggest elections are the best of means for voters to hold government to account and should not be made less frequent. This grouping may be willing to explore a longer term if it is preceded by consideration of additional checks and balances to compensate for the reduction in voters' power.

[54] Constitution Act 1986, s. 17(1)

[55] Electoral Act 1993, s. 268

[56] See Appendix E, Triennial Parliaments Act 1879.

[57] See Appendix E, Electoral Amendment Act 1934, and Electoral Amendment Act 1937.

[58] See Appendix E, Referendum on the term of Parliament (1967), and Referendum on the term of Parliament (1990)

### Planning and implementing policy

The ability to take more time to develop and implement policy was a key reason for supporting a longer term of Parliament, as it would give governments more time to consider their policies and test whether they are fit for purpose. This could result in the public having better information about the intention of a policy, to weigh the pros and cons, and see the results.

Another grouping suggested that a longer term would simply increase the quantity of bad policy. Others suggested MPs taking a co-operative approach would be more likely than a longer term to improve long-term outcomes.

### Certainty and stability

The three-year term was seen as reducing certainty as policies are perceived to change every three years, resulting in significant compliance costs. A longer term could also result in more frequent single-term governments, defeating the purpose of the change.

### Voters' power to choose representatives

This conversation on the term of Parliament clearly demonstrated that New Zealanders value their ability to elect their representatives. Conversations regularly highlighted that any extension to the term of Parliament would need to be counter-balanced by mechanisms to improve law-making and accountability.

The grouping that rejected a longer term generally suggested the current three-year term provides an effective balance between being able to implement policy and allowing regular democratic participation to maintain the accountability of MPs and the Government.

Proposals to offset any reduction of voters' power to choose representatives include more direct democracy measures such as the use of referenda or deliberative processes, better scrutiny of legislation with human rights impacts, and more reliable exploration of long-term economic and environmental implications of policies. Another suggestion is to establish an upper house before extending the term of the House of Representatives.

## Reflections

As in the discussion of the size of Parliament the length of the parliamentary term raised questions that would not necessarily be addressed by changing the term of Parliament. The call for improved policy development and increased checks on power match submissions on the written constitution and the Bill of Rights Act. Support for a longer parliamentary term is more likely if additional checks and balances are put in place.

Given the importance placed on voters' power to choose representatives, a referendum to gain the consent of the people is likely to be considered more legitimate than Parliament giving itself a longer term through a special majority in Parliament.

# Fixed election date

The Prime Minister decides when the term of Parliament will end and the date of the election. He or she can choose to trigger a General Election at any time by advising the Governor-General to dissolve Parliament and bring the term to an end. The Governor-General will act on the Prime Minister's advice so long as the Government appears to have the confidence of the House and the Prime Minister maintains the support as the leader of that Government. A vote of no confidence in the Government does not necessarily lead to an election being held: a new Government may be appointed from the existing Parliament if a Government can be formed which has the confidence of the House.

# Perspectives

## Fix the date

Those favouring change suggested that a fixed election date would increase fairness by reducing the perception the date can be manipulated for political gain. Certainty about the date of the election was also seen as desirable.

Codifying the current practice of holding the election on a Saturday towards the end of November was the most common option. A key consideration was the impact on the turnout. Another option considered was to retain the Prime Minister's discretion to set the election date but only within, for example, the last year of the term.

The discussion also touched on the need to provide for an early election if the Government were to lose the confidence of the House, especially given the tendency for MMP elections to result in multi-party governments.

## Status quo

Those favouring the status quo pointed to the flexibility and responsiveness of the current system, and disagreed with the approach that the discretion was so unfair that it affected the quality of democracy. They also noted that elections are usually well signalled and have rarely been held outside the three-year cycle. Changing the method of setting the date would not on its own significantly improve the electoral system.

A flexible election date can respond to internal and external events, including the Government losing the confidence of the House. Another view was that a fixed election date could increase the potential for manipulation by well-resourced interest groups who could plan campaigns well in advance.

## Alternatives

Alternative methods for setting the date included:

- establishing a cross-party group to set the date of the election through consensus, removing the perception of political manipulation of the election date
- giving the Governor-General sole power to decide the date
- allowing the Judiciary to decide based on a set of criteria set out in law
- letting the public decide through online voting mechanisms.

## Reflections

If the Government decides to invite New Zealanders to consider a longer term, exploring a fixed election date may also be useful. While there is support for fixing the election date on the grounds of fairness, fixing the date of the election would not on its own address concerns about the checks and balances on power. Fixing the date is unlikely to be considered a sufficient trade-off for extending the parliamentary term.

A referendum or the support of over 75% of MPs would be required if proposed amendments affected section 17 of the Constitution Act 1986.

## Size and number of electorates

The process for deciding the number and size of electorates supports our right to free and fair elections. The number of electorates is determined based on two main factors:

- the South Island always has 16 electorates
- every electorate has about the same number of people living in it.

As a principle every electorate should have nearly the same total population. Where this cannot be achieved, electorates can differ in size from each other by plus or minus 5%. This is called a 'tolerance' and means an electorate can have a population total that is up to 5% more or 5% less than the average electorate size.

The Representation Commission then uses the social, cultural and geographic criteria set out in the Electoral Act 1993 to decide exactly where the boundaries will go. For example, the Commission will try to avoid putting a boundary through a community of interest. The Commission consults with the public on the proposed electorate names and boundaries before making final decisions.

The geographic size of each electorate is not taken into account when deciding the number of electorates. There is a big difference in area between the smallest and the largest electorates.

## Perspectives

Although there was relatively little interest in exploring changes to how the electorates are determined, the importance of local representation is a common theme across the Conversation.

As with other electoral topics, this topic prompted discussion of the MMP voting system. One grouping argued for list MPs to be removed to spread the electorate workload and to restore the status of the electorate MP. Another view was that list MPs had local responsibilities as well, but these were not sufficiently understood or promoted.

Another grouping suggested MMP had made electorates redundant because party votes endorsed ideas rather than people and so were more likely to produce quality representation.

### Balancing geography and population

The principle that electorates should contain roughly the same number of people has strong support. For one grouping, the current 5% tolerance threshold for population differences between electorates was seen as an appropriate means of achieving this.

Another grouping was concerned the principle results in a disparity in physical size between electorates. Māori and rural electorates are seen as disproportionately large, making it difficult

for the electorate MP to meet with and represent their constituents. One option discussed for addressing this disparity was to change the tolerance threshold to between 10% and 15%, although it was acknowledged that this change would not fully address the issue.

### Communities of interest

The idea that electorates ought to consist of voters with similar interests was also discussed. Urban and rural interests were seen as distinct. Iwi boundaries were also noted as an important indicator of a community of interest.

### Other factors considered

Other proposed considerations included basing the decision on internet and communications coverage, a formula based on cost efficiency, or that race should not be considered as a factor. The conversations endorsed a politically neutral process for determining the size and number of electorates, regardless of the specific criteria used for determining the boundaries themselves.

## Reflections

The discrepancy in geographic size may create difficulties for both MPs and voters, particularly in Māori and rural electorates. Some submissions noted the growing influence of new methods of communication on engaging with constituents, whether through social media or video conferencing. These tools may provide a means of overcoming some of the difficulties posed by geographically large electorates.

## Electoral integrity legislation

After the first MMP election a number of list and electorate MPs left their parties but remained as MPs. In response the Electoral (Integrity) Amendment Act 2001 was enacted.[59] The Act enabled the Speaker to declare a seat vacant if an MP parted ways with their party or their party leader reasonably considered the member had distorted the proportionality of representation in Parliament. The Act contained a sunset clause which meant that it expired in 2005. An MP who parts way with his or her party can now choose to stay in Parliament.

## Perspectives

Discussions about electoral integrity legislation mainly covered the role of list MPs, whether an MP is elected to represent a party view or to exercise his or her own judgment, and who should have the power to decide the membership of Parliament.

### MPs elected to represent party

This grouping considered that an MP is elected to represent a party, so should be required to leave Parliament if they can no longer be a member of that party. To some this requirement should apply to all MPs. To others it would apply only to list MPs, who are seen as only representing their party with no personal mandate once he or she parts ways with the party. To this grouping, electorate MPs have a personal mandate that would allow them to remain in Parliament.

[59] See Appendix E, Electoral (Integrity) Amendment Act 2001

### Individual conscience

Those in favour of the status quo tended to support it on the basis that the decision whether to part ways with a party and whether to leave Parliament should be left to MPs' individual consciences. They often felt it was important to allow MPs to vote differently from their party and were concerned that if they could be expelled from Parliament as well as the party then they would no longer feel confident in speaking out against their party on moral grounds, if required.

Some submissions rejected the notion that list MPs ought to be treated differently to electorate MPs. MPs are elected to undertake a series of duties and responsibilities which were not fundamentally different whether they were on the list or whether they represented an electorate.

### Difficult to legislate practicably

Some submissions pointed out that MPs leave their parties for a range of different reasons. The difficulty in deciding which factor had contributed to an MP leaving the party would make it complicated to draft legislation which adequately addressed any effects on the proportionality of Parliament.

### Lack of a systemic problem

This grouping suggested that electoral integrity legislation would be a disproportionate response to a rare event. Party defections occurred relatively frequently during the first two terms of MMP government, but since then have been rare. Since the electoral integrity legislation expired in 2005 there have only been four cases of an MP leaving their party but remaining in Parliament. The lack of a problem meant that the proportionality of Parliament, the key reason for implementing electoral integrity legislation, was not under threat.

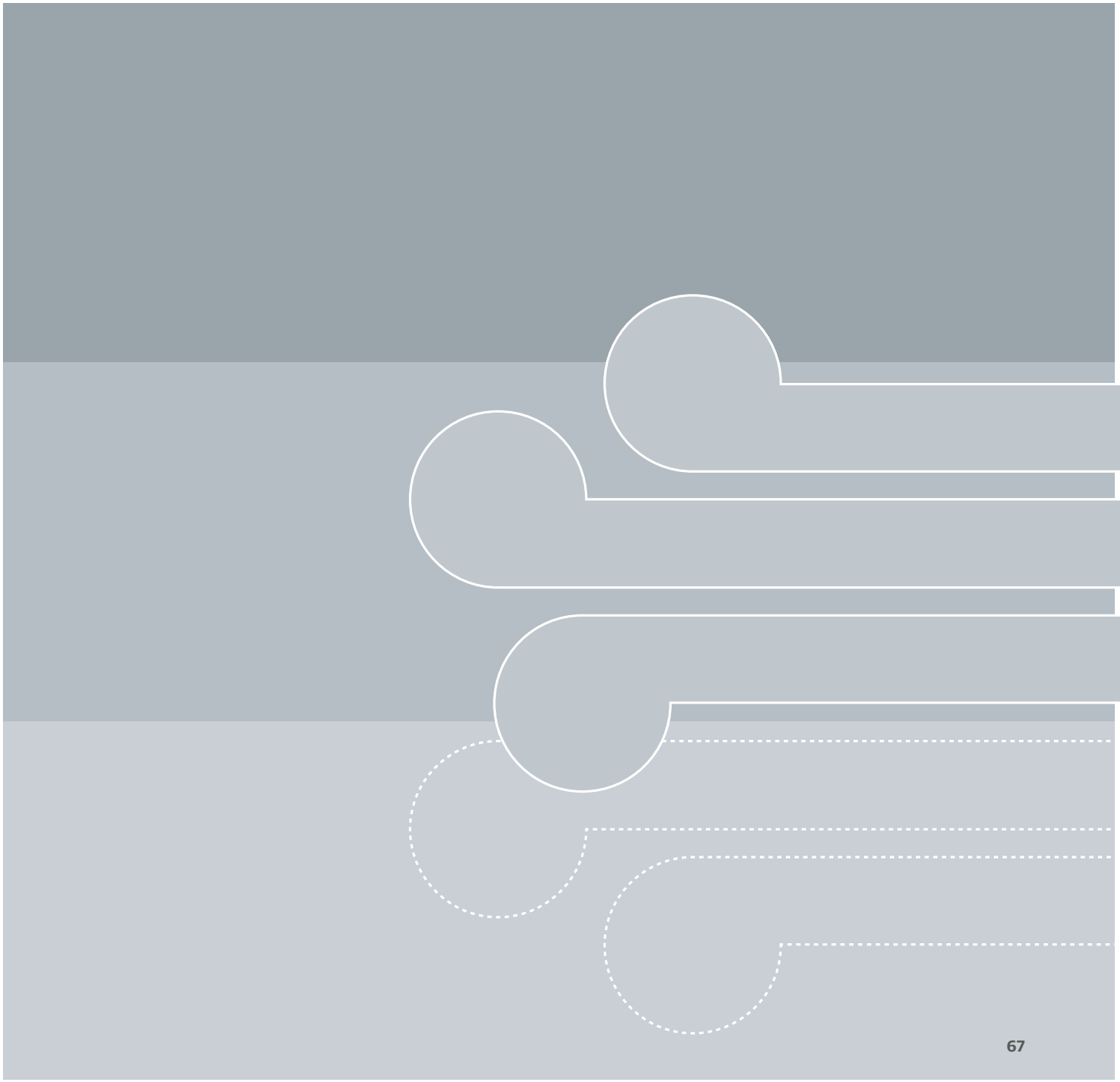
### Who should decide membership of Parliament

One grouping suggested that if an MP is seen as losing his or her mandate, effectively giving decisions about Parliament's membership to party leaders or the courts may be even less consistent with democratic principles.

## Reflections

The Panel could not see a consensus about how to resolve this issue. There are a range of reasons an MP might part ways with his or her party, not all of which would necessarily warrant their seat being declared vacant. Although an MP leaving their party affects the proportionality of Parliament, legislation designed to address what can be seen as internal party politics can be problematic. The Panel therefore makes no recommendation on this point.

# Other Issues



# Recommendations

**The Panel recommends the Government:**

- invite and support the people of Aotearoa New Zealand to explore the following topics in any further consideration of our constitutional arrangements:
  - the status and functions of local government and its relationship to central government
  - the role of He Whakaputanga o te Rangatiratanga o Nu Tireni, the Declaration of Independence
  - the role and functions of the public service
  - the distinct interests of citizens of countries within the Realm of New Zealand
  - the role and functions of the Head of State and symbols of state
  - an upper house of Parliament
- invites Parliament to differentiate between types of urgency and to minimise the use of the urgency truncating select committee consideration of bills.

# Other issues

As envisaged in the Panel's terms of reference, participants in the Conversation took the opportunity to comment on a range of issues that did not fall within the topics. This section provides an overview of some of the other issues the people of Aotearoa New Zealand raised.

# Status of local government

The role and functions of local government in New Zealand are established by statute, so can be amended by a simple majority in Parliament. One grouping proposed local government be given constitutional recognition, to protect its democratic elements and to ensure that its functions are stable and enduring. For this grouping constitutional recognition of local government could address:

- the expense and potential instability that can result from Parliament's power to amend or disestablish local government powers and functions by a simple majority
- the important role local government plays in the exercise of public power
- the positive impact of local government on communities and on levels of democratic engagement
- the desirability of decentralising power and of decisions being made by the level of government closest to the communities that are affected by those decisions (known as the principle of subsidiarity)
- the role local government plays in representing Māori views in local matters and the views of the diversity of communities in the region.

Options for consideration could include:

- entrenchment of the Local Government Act 2002 or development of a parliamentary convention of taking a consensus approach to changes to this Act
- referring to local government in a written constitution or in an amendment to the Constitution Act 1986.

Participants expressed caution about making any such provisions judicially enforceable or supreme, due to the risk of creating a more litigious relationship between local and central government.

Discussions of the status of local government are connected with other topics, including Māori representation, quality of life, environmental protections, democratic engagement and the call for longer-term planning. The Panel therefore recommends that the role and functions of local government and its relationship with central government should be part of any further consideration of constitutional issues.

## He Whakaputanga o te Rangatiratanga o Nu Tireni, the Declaration of Independence

He Whakaputanga o te Rangatiratanga o Nu Tireni, the Declaration of Independence, was signed by thirty-four northern rangatira (chiefs) on 28 October 1835.[60] The gathering of rangatira are commonly referred to as the Confederation of United Tribes of New Zealand. James Busby, the official British Resident in New Zealand, had called the meeting in response to increased lawlessness, as well as concern that France and the United States might try to claim New Zealand.

The Declaration, written in te reo Māori, declared that New Zealand was an independent state, and that sovereignty was held by the rangatira.[61] It also said that the huihuinga (congress) would meet annually, welcomed southern tribes to join the congress, and that a copy of the Declaration would be sent to the King.[62] Britain recognised the Declaration in 1836.[63]

The role of the Declaration was raised by a range of participants. Some participants suggested the Declaration should be seen as a foundational document along with the Treaty of Waitangi.

The Waitangi Tribunal as part of its stage 1, Te Paparahi o te Raki district inquiry, heard evidence from iwi and hapū about He Whakaputanga and is now preparing its report. The Tribunal's report will usefully inform this aspect of the conversation.

## The Realm of New Zealand

Territorial New Zealand is a member of the Realm of New Zealand, along with Tokelau, the Ross Dependency and the self-governing states of the Cook Islands and Niue.[64] People from the Realm nations are citizens of territorial New Zealand.

Participants in the conversation saw their status as separate and distinct from those of other Pacific nations, and suggest the unique relationship with this country should be better recognised in New Zealand's constitution.[65]

## The public service

The New Zealand public service consists of 29 central government departments.[66] The wider state sector includes the public service, as well as Crown entities and state-owned enterprises.[67] The public service's role is to design, implement and monitor public policy through the provision of free and frank advice to Ministers,[68] and to co-ordinate the delivery of services to the public.

One grouping expressed the view that a politically neutral, capable, ethical and intellectual public service is an important component of our constitutional arrangements. Participants explored

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[60] Basil Keane, 'He Whakaputanga – Declaration of Independence - Background to the declaration' *Te Ara - the Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/he-whakaputanga-declaration-of-independence/page-1)

[61] Ibid.

[62] Ibid.

[63] Ibid.

[64] See Letters Patent Constituting the Office of Governor-General of New Zealand 1983

[65] For further discussion see Appendix A 'Pasifika engagement'

[66] State Services Commission, 'New Zealand's State sector – the organisations' (www.ssc.govt.nz/state_sector_organisations)

[67] Richard Shaw & Chris Eichbaum, *Public Policy in New Zealand* (Rosedale: Pearson Prentice Hall 2009), pp. 94-107

[68] Shaw & Eichbaum (2009) pp. 91-93

whether the role and ethics of the public service, including the obligation to provide Ministers with free and frank advice, are sufficiently protected in our constitutional arrangements.

A particular concern is that under successive governments the public service has become overly focused on implementing the expectations of the government of day, at the expense of building capacity to plan for the needs of future generations.

# The Head of State

New Zealand is a constitutional monarchy, with the Queen of New Zealand as the Head of State. She is represented in New Zealand by the Governor-General. The Head of State and the Governor-General act in accordance with New Zealand law and on the advice of the Prime Minister and Ministers.

Two distinct issues arose in discussions:

- whether to retain the constitutional monarchy or move to a presidential republic
- the Head of State as a national symbol.

## Whether to retain the constitutional monarchy or move to a presidential republic

One grouping suggests that under a system of constitutional monarchy New Zealand has had a stable, well-functioning democracy. Change is not desirable to this grouping because there is no certainty that another model would operate as effectively.

Another grouping suggested a republican model of government, for example with an elected president, would better reflect democratic ideals. The power of government may be more clearly derived from the citizens, rather than being (symbolically) derived from the powers of the sovereign. The arrangements are therefore likely to be stable.

A number of technical matters were touched on, including what a president's powers might be and whether and how he or she would be appointed or elected.

Participants also noted that decisions about the process of any change would be important. Factors which might affect the process include timing, any impact on Treaty relationships and the status of the Head of State within the Realm of New Zealand.

The Panel did not identify strong support for a change to a presidential republic.

## Symbol of national identity

The current arrangements are seen by one grouping as properly reflecting New Zealand's culture, traditions and historical ties with Britain. This grouping included people who saw the Crown's identity as a party to the Treaty of Waitangi as a reason for retaining the current arrangements.

Another grouping suggested the current arrangements do not adequately reflect bicultural and multicultural New Zealand and its independent status.

Similar issues were raised in discussions about other symbols of state including the honours system, flags, national anthems, parliamentary oaths and oaths of citizenship, currency and the coat of arms.

# Reform of parliamentary processes

Conversations touched on a variety of reforms of existing parliamentary processes. Proposals ranged from minor adjustments in procedure to a broader restructure of Parliament.

## An upper house of Parliament

One grouping supported the reinstatement of an upper house of Parliament. Conversations across several of the topics noted potential benefits from another House taking a second look at proposed law. For this grouping the current arrangements concentrate power in a single House and does not offer enough checks and balances, particularly on the power of the Executive within Parliament. A bicameral legislature could provide a considered check and balance on government. For example, an Upper House could check the use of urgency and help to ensure legislation is consistent with the Treaty of Waitangi.

## The use of urgency

Another grouping of people focused on the use of urgency in Parliament, particularly when urgency bypassed public submissions on legislation. Suggested limitations on the use of urgency included:

- not being permitted to use urgency when legislation has human rights implications
- requiring a larger majority in Parliament to approve the use of urgency
- limiting the use of urgency to officially declared states of emergency.

These submissions often confuse three things:

- motions instructing select committees to truncate the time to consider bills
- urgency motions which enable Parliament to move from one stage of a bill to another in one sitting
- urgency motions which make more sitting time to enable bills to be passed.

The Panel suggests Parliament consider in particular how to differentiate better the latter two forms of urgency, perhaps by renaming the second. The Panel also recommends Parliament minimise the use of the first kind of motion.

## Transparency

One view was that parliamentary transparency is currently insufficient and that access to information about and held by Parliament needed to be increased.

# Other topics

Other topics discussed in the Conversation include the separation of church and state, economic policy and its relationship to constitutional arrangements, and the MMP voting system.

# New Zealand's Constitution

## A Report on a Conversation

## He Kōtuinga Kōrero mō Te Kaupapa Ture o Aotearoa

# Appendices

# Appendix A:

## The Constitution Conversation Te Kaupapa Ture

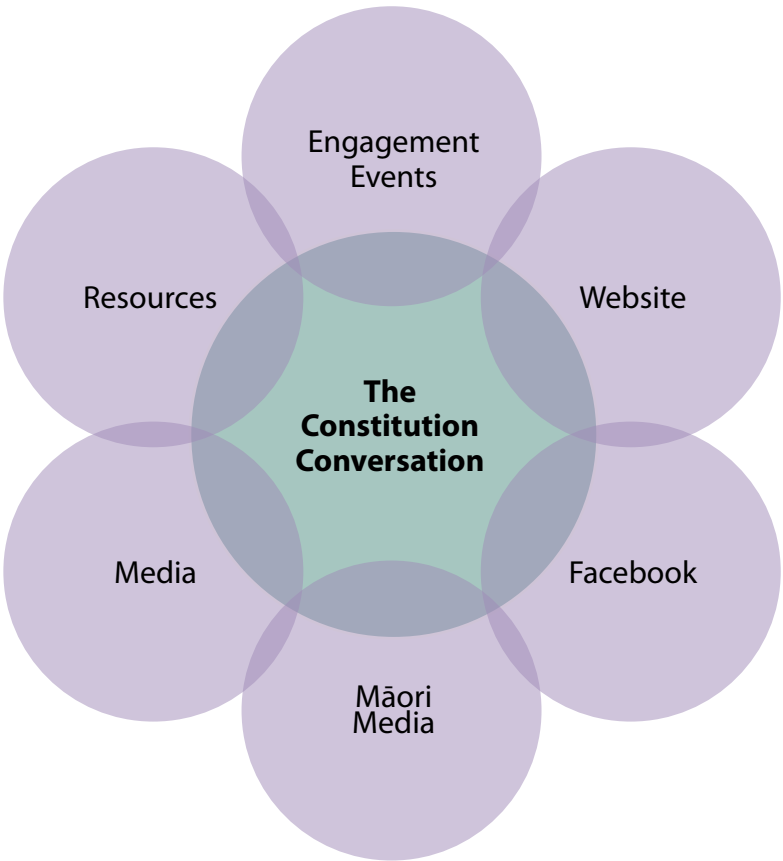
### The Engagement Strategy

The Constitutional Advisory Panel was asked to inform and engage with New Zealanders on constitutional issues. In particular, the Panel was to stimulate public awareness of constitutional issues by providing information about New Zealand's constitutional arrangements.

In engaging with Māori on the constitution the Māori Co-chair was responsible for ensuring the Panel undertook an appropriate consultation process with Māori, who have long expressed a desire for consultation to take place kanohi ki te kanohi (face-to-face). The 13 regional hui were excellent examples of the well-established tradition of Māori political and legal engagement.

The Panel recognised that engaging the people of Aotearoa in a national conversation about the current constitutional arrangements would need a range of approaches. New Zealanders have different preferences for public engagement. The variety of consultation preferences and complexity of some of the subject matter meant the Conversation would be an enormous exercise.

The Panel itself is diverse, and has wide experience as the members come from many walks of life, different ethnicities and regions. The Panel drew upon this diversity to invite a wide range of New Zealanders to engage in the Constitution Conversation.



To address the size of the task, the Panel's main focus was to support people to hold their own conversations, in their own communities, in their own way. The Panel developed information resources, and created a website to host these and encourage people to make submissions. The Panel had conversations in communities, on the marae, online through social media, and in the traditional media. Māori media outlets were enthusiastic in promoting the Conversation.

Together these different forms of communication formed a Conversation which was more than the sum of its parts. Supporting New Zealanders to host their own conversations in the way they felt most comfortable created a positive environment in which to discuss our constitutional arrangements. The different forms of engagement all overlapped, generated interest, and helped to light the spark for ongoing conversations.

The Panel's approach to engaging with the people of Aotearoa New Zealand about our current constitutional arrangements was new and innovative. The Panel's citizen-driven engagement was divided into five stages:

- Stage One: Whakaoho i ngā tāngata – Preparing the Ground
- Stage Two: Whakamārama – Understanding
- Stage Three: Wānanga – Thinking Together
- Stage Four: Wānanga – Deliberation
- Stage Five: Pūrongo – Reporting.

## Stage One: Whakaoho i ngā tāngata – Preparing the Ground

To build participation in the Conversation the Panel sought, facilitated and built relationships with those potentially affected by or interested in its outcomes. The Panel wanted to ensure that New Zealanders, including a wide range of Māori groups (iwi and hapū), had many opportunities to engage with and learn about constitutional issues.

The Panel also established an interim website in mid-2012 to house key documents including the engagement strategy, terms of reference, and minutes from Panel meetings. The information from the interim website formed the basis for the Panel's governance website: www.cap.govt.nz.

### New Zealand's Constitution: The conversation so far

The Panel's focus was to ensure New Zealanders had access to information about the country's constitutional arrangements. The Panel drafted an information booklet *New Zealand's Constitution: The conversation so far*. The plain language summary of the current constitutional arrangements was designed to support people to have conversations about the Constitution among their whānau, communities, friends, hapū and iwi.

Eight expert academics were invited to review the draft booklet, checking for accuracy of information and providing general advice on the approach to the information in it.

### Early conversations

The focus of the Panel's initial engagement was to raise awareness and prepare the ground for future engagement by hosting early conversations with a range of umbrella organisations which had networks within a diverse range of communities.

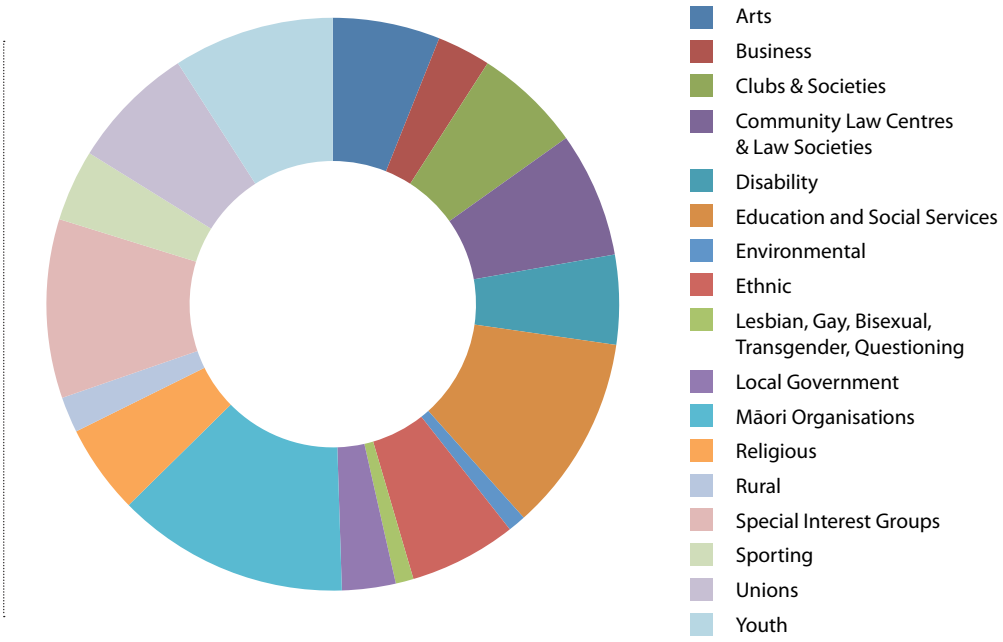
During the months of June to October 2012, the Panel identified 86 such organisations and it was committed to meeting as many of them as possible. In total the Panel met with 56 organisations from Wellington, Auckland, Hamilton and Christchurch, and together they potentially provided it with access to almost 1.5 million members and supporters.

Questions provided to the organisations in advance were designed to gauge both their members' likely interest in participating in a national conversation about our constitution, and sought their advice about the best ways of engaging with people from their communities. Organisations that were unable to attend a meeting were invited to provide their responses in writing.

The Panel received consistent messages about how to approach engagement:

- the supporting information needs to be clear, uncomplicated and digestible
- the topics being discussed need to be relevant to people's day-to-day lives
- people need to know that their involvement will make a difference, and their opinion and ideas are valued and necessary.

*Figure 1: Participants in the early conversations – a break-down by organisation type*




In addition to the early conversations, the Panel began planting the seeds of engagement with the academic community, iwi and hapū. The Co-chairs wrote to 139 academics, 82 heads of school from universities and Wānanga, and 143 iwi organisations to raise awareness and invite participation. During the first stages of engagement the Panel contacted 141 Rūnanga and Trust Boards, raising awareness about the Constitution Conversation and seeking to engage with iwi and hapū within their rohe (tribal area) and at a time that was suitable to them.

The Panel invited participation from umbrella organisations such as trade unions, educational institutions, youth groups, religious bodies and ethnic councils. The Panel also engaged with Māori organisations such as Te Kohanga Reo Trust Board, the National Urban Māori Authority, Te Mana Ākonga, the Federation of Māori Authorities, Te Hunga Roia Māori and the Māori Women's Welfare League.

The Panel was mindful of other government initiatives with constitutional implications and did not duplicate or undermine these. These early conversations therefore laid the foundation for the Panel's engagement with the people of Aotearoa New Zealand.

**The Constitution Conversation**

The creative concept for the engagement campaign 'The Constitution Conversation' was tested by three focus groups, with positive results.

The Panel developed questions on each topic listed in the terms of reference. The questions were designed as conversation starters, to guide people's conversations on each topic. Eight focus groups tested the constitutional questions to be asked during the Conversation, and they were held across the country and included a diverse cross-section of New Zealanders.

# Stage Two: Whakamārama – Understanding

This stage of the strategy was comprised of kōreromai/promoting and communicating whakamārama/information to support participation and engagement in the Constitution Conversation. In effect Stages Two and Three overlapped.

## Information to support participation

One of the primary aims of the resources kits was to empower New Zealanders to facilitate and participate in their own community and public conversations. Early in the Panel's work it became clear that New Zealanders did not feel that they had enough information to participate in a conversation on our constitutional arrangements. Creating accessible, understandable and educational resources was therefore a clear priority.

The majority of the resources were available in both English and te reo Māori. Ensuring access to resources in te reo Māori was important to the Panel. The resources were translated by a native speaker of te reo Māori, and fluent second language learner, resulting in accessible user-friendly resources. In translating the resources the Panel was conscious of the difference between translating word for word English to Māori, versus thinking about the content from a Māori perspective and translating the text from there.

Some of the resources were also available in a range of other languages and those chosen were recommended by experts – Korean, Chinese (Mandarin), Hindi, Samoan, Tongan, Cook Island Māori.

Resources designed to support individuals and collectives included:

***Fact sheets (bilingual)***: basic two-page documents with factual information on each topic in the terms of reference for accessible learning about constitutional issues

***Quizzes (bilingual)***: questions and answers on each topic in the terms of reference to allow New Zealanders to test their knowledge

***Submission guide (multilingual including sign language and easy read)***: information about how to make a submission, including the Guiding Questions and a submission form

***Topic booklets***: a more in-depth discussion of the topics in the Constitution Conversation, which include a variety of perspectives from commentators and a broader look at New Zealand's constitutional history and how it compares to overseas.

Resources to support people hosting conversations included:

***Facilitator's guide***: information on hosting a conversation, including ideas for a meeting agenda and ways to use the different resources

***Conversation cards***: small hand-held cards with different perspectives on topics in the Constitution Conversation designed to encourage discussion

***Invitation flyer***: basic information about the constitutional topics up for consideration, the role of the Constitutional Advisory Panel and how to make a submission

***Poster***: welcome poster with the invitation questions and some basic information about the Constitution Conversation

***Postcards***: an easy way for the public to complete, hand in or post to the Panel as a brief submission on the invitation questions

***'Getting the Constitution Conversation Started' video***: an introduction to the Constitution Conversation featuring Panel member Bernice Mene and entertainer Pio Terei

***Storyboard of 'Getting the Constitution Conversation Started'***: a low-tech introduction to the Constitution Conversation for those without access to a computer or audio visual equipment.

All the resources were accessible as pdf or plain text word documents and could be printed directly from the engagement website (www.ourconstitution.org.nz). Hard copies of the resources in te reo Māori and English could be requested through a toll free 0508 phone number.

The Panel hopes that the resources will continue to be used by New Zealanders in their future constitutional conversations.

## Promoting and communicating

The Panel promoted the Conversation through social media, Māori and English medium news media, and a bilingual website.

The Panel encouraged journalists and political commentators to write about the Constitution Conversation, hosting a media lunch in Wellington and Auckland and ensuring a regular information flow in the form of press releases. The Panel also advertised the Conversation on English medium television, Māori Television, regional and local newspapers, iwi radio and Facebook.

### *Websites*

Establishing an online presence and ensuring access to the Panel's resources was fundamental to its engagement campaign. The Panel established two websites, one focused on the Panel itself as well as its early work (www.cap.govt.nz), and the second to promote engagement with the Conversation and allow people to submit (www.ourconstitution.org.nz).

Ourconstitution.org.nz was the main online driver of the Constitution Conversation, and was offered in both te reo Māori (www.kaupapature.org.nz) and English. The website also included material in New Zealand Sign Language (NZSL) through a link to www.seeflow.co.nz, a website dedicated to providing NZSL resources.

Between 26 February and 1 August 2013 the engagement website had 166,887 page views. A total of 127,336 (76.3%) of these were unique, meaning that 23.7% of visits to the page were repeat visitors. On average, people spent one minute and 42 seconds on each page of the website. The amount of page views and the time spent reading the information on the page demonstrates that New Zealanders are willing to spend time thinking about constitutional matters when they are provided with the information to do so.

The website was a central repository for the Panel's resources and allowed people to make submissions. People were able to upload submissions as word, video or sound files. Many people took the opportunity to submit through the website, some on multiple occasions.

### *Facebook*

New Zealanders increasingly expect social media engagement when consulting with the Government. Facebook also commonly engages a different demographic to other forms of public engagement such as face-to-face meetings. The page also provided another medium to encourage submissions.

The Constitution Conversation Facebook page had 6,414 'likes' by the end of the engagement period on 31 July. The number of likes exceeded initial expectations of about 2,000, given the complexity and breadth of the issues. The high number of likes is a promising sign for future Constitution Conversations. There is now an established network to engage New Zealanders with the ongoing conversation.

Likes are only one facet of engagement with the Facebook page and they do not translate directly to active engagement. Approximately 13,700 individual users were actively involved with the page over the course of the campaign, generating a total of around 25,600 stories.

The main users of the page were young and urban. Auckland, Wellington and Christchurch were the top three centres of engagement followed by Hamilton, Dunedin, Rotorua, Tauranga and Palmerston North. People under the age of 45 formed 82.5% of those liking the page. The single largest age group were those aged between 18 and 24 years old, with 30% of the total likes.

Creating a space where people feel able to put their point of view forward is one of the critical factors in fostering meaningful online discussions. The goal was to gradually build interest in the Constitution Conversation by sharing information on New Zealand's constitutional arrangements. For example, a video post of Panel Co-chair Professor John Burrows discussing the role of the Panel, and quizzes on basic constitutional questions, were used to promote the Conversation and spark interest.

Once the overview had been provided, each week looked to focus on a different topic from the terms of reference. The cycle of topics was repeated after all topics had been covered. Discussing and revisiting each issue in the terms of reference on its own allowed for a focused conversation and for people to develop their views over time.

Conversations between New Zealanders evolved throughout the campaign as new topics were shared and new people joined the page. Posts requesting feedback regarding New Zealanders' aspirations for society initially met with criticism, but over time people began to open up and become less guarded about sharing their dreams and aspirations. An evolution of views is uncommon in online forums because most people tend to stick to spaces which reinforce their own beliefs and values. By creating a neutral space people with very different perspectives were able to engage and share their views.

### *Media summary*

The Panel generated media coverage across the country in a range of media. This was not an easy task, with many big issues garnering substantial media attention and the potential lack of information and interest in constitutional issues before the Conversation.

A total of 842 media reports mentioned the Constitutional Advisory Panel between 14 January and 31 July 2013. Press publications produced the most coverage, with 326 reports (38.7% of total coverage). Internet followed next (244 reports, 29% of total coverage), with radio close behind (225, 26.7%) and television providing the least (47, 5.6%).

Material released by the Panel generated 100 items of coverage (12% of total coverage). Targeted regional releases in January and February 2013 prompted proactive discussion of the Conversation before the official launch on 26 February 2013.

Interest in the Panel itself generated a further 142 media reports (17% of total coverage). Direct Panel engagement with the media tended to consist of radio and television interviews. The Panel focused largely on explaining the terms of reference, with an emphasis on its role and purpose.

Several of the regions contributed passionately to the Conversation. Bay of Plenty (including Rotorua) produced the most press coverage (51 reports, 15.6% of press). The content in Bay of Plenty press coverage was largely public-driven, with over half coming from letters to the editor and other user-generated content. Manawatu and Whanganui produced a significant amount (37, 11.3% of press) which was only just less than Auckland (38, 11.7% of press). Auckland did, however, have a significant proportion of broadcast content due to its combination of commercial media and Māori and Pacific Island community radio.

The Panel also approved a paid media campaign using television, radio, print and online advertising to reach a broad demographic of New Zealanders. The campaign took place in two stages near the beginning and end of the submissions period.

The first stage began on 7 April 2013 with television advertising going to air and press advertisements appearing in a range of newspapers. The aim of this stage of the national media campaign was to raise awareness of the Constitution Conversation and encourage people to participate.

The national television campaign reached an estimated 71% of New Zealanders with an average of over four views per person, mainly at peak times. Print media achieved similar results, with an estimated reach of 69.13% of New Zealanders and providing multiple opportunities to view the advertisement. The second stage of the national paid media campaign ran between 27 and 31 July 2013. The goal of this stage was to remind and encourage New Zealanders to make submissions. Online advertisements and press coverage were targeted at community publications in keeping with the Panel's focus on community conversations. The Panel also featured in interviews on TV33 Chinese Television.

### *Māori medium media*

The Conversation has had comprehensive coverage on Māori Television and through the iwi radio stations. 'He Kaupapa Nui, He Kaupapa Ture – The Constitution Conversation' was advertised on 22 Māori radio stations from Kaitaia to Invercargill.

Prior to each regional hui the radio station ran an awareness-raising campaign including scripted ad lib mentions by radio announcers and interviews with either Panel members or well-known locals.

The advertisements on Māori Television were shown during programmes with high viewership including Code and Te Kaea. The Panel also participated in a debate on Native Affairs and promoted Te Kaupapa Ture on Te Tepu.

The focus for both the television and radio campaigns was the Panel's key messages about New Zealand's constitution, the Panel's role, the questions the Panel was asking, and information about how to be part of the Conversation.

At the completion of Stage Two a good level of awareness of the Constitution Conversation was achieved through community networks, media activities, the Panel websites, monthly updates to the Secretariat's contact database, and Panel members' own networks.

## Stage Three: Wānanga – Thinking Together

The focus of this stage of engagement was for all people of Aotearoa New Zealand to have deeper conversations about constitutional matters with their existing networks, whānau, organisations, hapū and iwi.

### General approach

The Panel undertook an inclusive and multi-faceted approach to engaging the people of Aotearoa New Zealand. Advice received through the early conversations was that 'town hall' style meetings do not encourage conversation, but are instead captured by loud voices and can be polarising. The Panel obtained support from a diverse range of communities, organisations, Rūnanga and institutions to host conversations within their own communities.

It was important to the Panel that people felt free to express their ideas in a safe environment. The citizen-driven engagement allowed communities to have a conversation in their own place and in a manner that supported their needs.

### Hosting a conversation

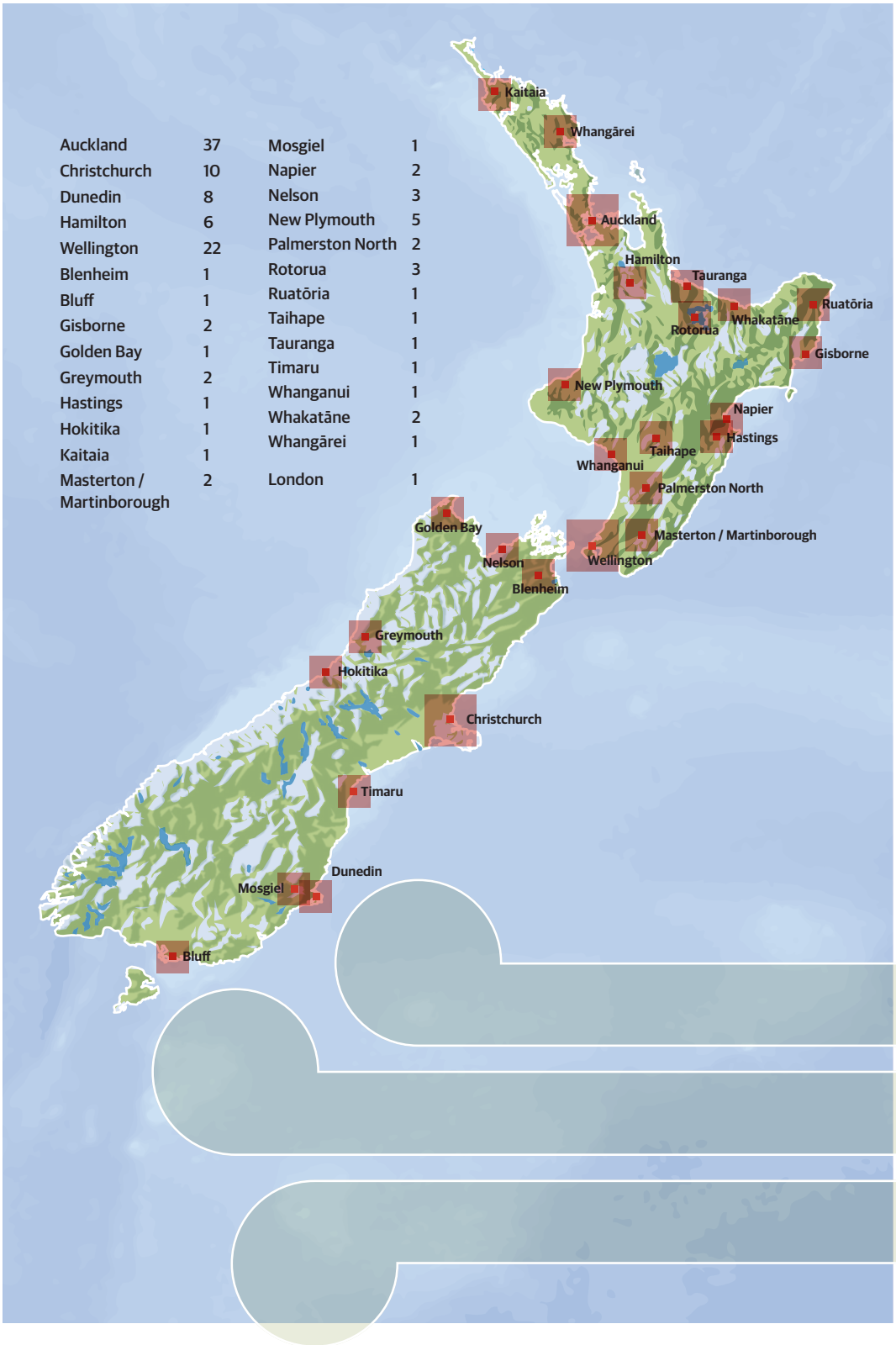
Individuals and collectives were encouraged to be part of the Conversation. The Panel started with the list of people who participated in the early conversations. Its approach was to provide multiple avenues for participation, encouraging communities and a cross-section of society to get involved in it. The Panel acknowledged however that this approach would not, in the time available, connect with every New Zealander.

The Panel invited people to host their own hui and if appropriate invite the Panel to attend. It also supported as many hui and community meetings as possible, either by providing resources, facilitators or assisting with venue hire. This offer of support was provided not only to Māori hui, but all groups who sought the Panel's support to host a Constitution Conversation within their community.

### Geographic and sector spread

The Panel attended 104 engagement events, meeting with 107 organisations and communities who were representative of the diversity of Aotearoa New Zealand. Particular communities, including Tauranga and Gisborne, were actively interested in promoting and hosting conversations.

## GEOGRAPHIC SPREAD OF ENGAGEMENT EVENTS:



**The Conversation participants included:**

- Action Stations
- Amnesty International Youth Group
- Amnesty Skill Share Day
- Association of Non-Governmental Organisations of Aotearoa
- Auckland City Community Planning Committee
- Auckland Disability Law
- Auckland Regional Hui
- Avondale College
- Baywide Community Law Centre – Tauranga and Whakatane
- Bilingual Samoan School
- Binding Referenda
- Birkenhead College
- Blenheim Community Meeting
- Bluff Regional Hui
- Canterbury Law Society
- Canterbury University College House
- Christchurch Regional Hui
- Civics Education Action Group & Nelson Community Law Centre
- Community Patrols Conference
- Diocesan School for Girls
- Environment Canterbury
- Ephesus Group
- Ethnic Leaders Forum (Christchurch)
- Gisborne Community Meeting
- Gisborne District Council
- Gisborne Regional Hui
- Hamilton Chartwell Parish Public Meeting
- Hamilton Regional Hui
- Hamilton West National Party
- Hastings Regional Hui
- Hato Petera College
- Hawkes Bay Regional Council
- Institute for Governance and Policy Studies
- Institute of Public Administration New Zealand
- Kaitaia Community Meeting
- Lincoln University Students' Association
- Local Government NZ Māori Sub-Committee
- Lower Hutt Regional Hui
- McGuinness Institute
- Māori Law Review Symposium
- Māori Women's Welfare League
- Marlborough Law Society
- Maxim Institute
- Mosgiel Rotary
- National Council of Women – Nelson Branch
- Nelson Regional Hui
- Network Waitangi Otautahi
- New Plymouth District Council
- Ngā Tapuwae School
- Ngāti Porou Hui ā-Iwi
- NZ ACT Party Auckland
- NZ Chinese Association
- NZ Council of Civil Liberties
- NZ Expats in London
- NZ Federation of Multicultural Councils
- NZ Human Rights Symposium
- NZ Māori Council
- NZ University Students' Association – Auckland, Christchurch, Dunedin, Rotorua, Wellington
- Ormiston Senior College
- Otago Law Society
- Otago University Politics Department
- Pasifika Community Meeting – Dunedin

Pasifika Consultation Central Auckland, Manukau, Mt Roskill

Public Service Association

Pukekura Rotary

Red Cross

Remuera Community Law Centre

Remuera Rotary

Rotorua Regional Hui

Rural Women Annual Conference

Russell McVeagh

Safer Aotearoa Family Violence Prevention Network

Start Youth Services

Taradale Rotary

Taranaki Law Society

Taranaki Regional Hui

Te Arawa FM

Te Kura Kaupapa Māori o Hoani Waititi

Te Mana Ākonga

Te Rūnanga Nui o ngā Kura Kaupapa Māori o Aoteaora

Te Rūnanga o Ōtākou

U3A – Auckland, Golden Bay, Timaru

University of Canterbury Law Faculty

University of Otago

UN Youth New Zealand

Waikato Bay of Plenty Law Society

Waikato University

Wairarapa Community Law Centre

Wellington and Lower Hutt Community Law Centre

Wellington Law Society

West REAP

Whakatāne Regional Hui

Whanganui Greypower

Whanganui Law Society

Whanganui Museum

Whanganui Regional Hui

Whangārei Regional Hui

## Māori engagement – by Sir Tipene O'Regan (Māori Co-chair)

The Panel was collectively committed to engaging with iwi and hapū. As Māori Co-chair I was responsible for ensuring the Panel undertook appropriate consultation with Māori, but the responsibility for encouraging iwi and Ngāi Māori participation in Te Kaupapa Ture, The Constitution Conversation, was jointly held.

A number of different avenues for engaging iwi and hapū in the Conversation were explored including:

- direct correspondence with iwi Trust Boards, and Rūnanga chairpersons and chief executives
- hosting regional hui
- organising accessible resources and a website in te reo Māori
- promoting the Conversation through Māori Television and iwi radio
- actively encouraging people who were unable to attend hui to conversations through the Panel's monitored facebook page
- engaging directly with rangatahi through kura kaupapa and wharekura.

In addition, the Panel met with the Iwi Chairs' Forum and Aotearoa Matike Mai, and sought to engage with representatives from Rātana and the Kīngitanga.

### *Regional hui*

One of the key principles of successful engagement between the Crown and Māori is expressed as a key principle in the Panel's engagement strategy that engagement be kanohi ki te kanohi.

The Panel supported Māori community hui throughout the country. The hui were located broadly within the regions identified by Te Puni Kōkiri. The Panel received advice from Te Puni Kōkiri noting the importance of hosting hui in Taranaki and Whanganui enabling iwi in these regions to be consulted within their tribal rohe. It was also considered advisable to host more than one hui in the South Island, not only because of the geographic size, but to ensure Te Tau Ihu and Ngāi Tahu iwi were consulted. We were also advised to hold hui in Kaitaia and Whangārei.

In total the Panel held 13 regional hui in: Whangārei, Auckland, Hamilton, Whakatāne, Rotorua, Taranaki, Gisborne, Hastings, Whanganui, Wellington, Nelson, Christchurch and Bluff. It also supported additional hui hosted in Kaitaia and Rotorua. Over 130 separate organisations, agencies, rūnanga, iwi and hapū were represented at the regional hui. The number of people attending them ranged from 15 in Whakatāne to 110 in Gisborne.

The numbers attending the hui are less important, however, as the Panel were reminded in Taranaki. One participant noted that although the numbers attending ā-tinana (in person) were few, in ā-wairua (in spirit) there were many. Each person present was part of a wider community network representing various organisations, whānau and tūpuna.

Broadly speaking, Māori are prepared to have conversations about our constitutional arrangements. Iwi and Māori have also been engaging with the Crown in a meaningful way for decades. For many the Conversation is not new, but iwi and hapū need time to consider the topics as a collective. The regional hui provided an opportunity for people to wānanga all the topics and provide oral submissions to the Panel.

Participants at the regional hui were clear that they expected their views to be recorded at the hui. Providing for oral submissions was an important aspect of engaging with Māori in accordance with their engagement preferences. A summary of the conversations recorded the thoughts, values and ideas shared at the hui, and it has been treated as formal submissions as requested.

The Panel recognises the conversations with iwi were limited by the timeframes. Ideally, the Panel would have hosted more hui throughout the country, ensuring all iwi had an opportunity to participate in the Conversation within their rohe.

## Pasifika engagement

The Pasifika community is a growing demographic in New Zealand's population, and is increasingly seeking to be actively involved in discussions about this country's future. During the early conversations representatives of the Pasifika community identified that they were keenly interested in participating in conversations about the constitution. The Ministry of Pacific Island Affairs also provided the Panel with advice on how best to engage with Pasifika communities.

The Constitution Conversation demonstrated the Pasifika community's commitment to active participation, which the Panel supported. Community groups hosted three conversations in Auckland, one seeking the views of the academic community. Other events were designed to encourage input from community leaders in hosting Constitution Conversations in Auckland, Dunedin and Christchurch.

Pasifika conversations highlighted New Zealand's place as a Pacific nation, geographically and culturally. The Pasifika community consistently emphasised that New Zealand's relationships with its Pacific neighbours and its growing population within this country require more attention and care going forward.

Pasifika people's relationship with the Treaty of Waitangi was also a common topic of conversation. The community was often supportive of an ongoing constitutional role for the Treaty in New Zealand, but were concerned that the dialogue about the Treaty did not embrace new migrants.

Other specific themes arising from the conversations relating to New Zealand as a Pacific nation included:

- ***Citizenship***: particularly the desire for recognition of the unique status of Niueans, Cook Islanders and Tokelauans as part of the Realm of New Zealand. For members of the Realm complex questions about the difference between 'citizen' and 'migrant' were posed, with members of the Pasifika community often feeling automatically cast as the latter despite New Zealand citizenship at birth. For citizenship purposes New Zealand includes the Cook Islands, Niue and Tokelau – people from the Realm nations are its citizens by birth
- ***Security***: the strong desire for employment, health and economic security including full superannuation portability afforded to all New Zealand citizens residing in the Realm countries
- ***Representation***: appropriate recognition and representation of people from Pasifika nations, including the Realm countries, within New Zealand's constitution and more consultation going forward with Pacific communities and the island nations
- ***Electoral reform***: there was a preference to establish one elected Pacific ward seat in Auckland Council and one Pacific parliamentary seat in Auckland
- ***Recognition***: of Pacific peoples in the New Zealand Human Rights Act 1993 by including Pacific peoples in the preamble to ensure they have a rightful place in New Zealand statute.
- ***Education***: Pasifika communities identified a knowledge gap which can be harmful to meaningful participation in government. For instance, New Zealand's constitutional arrangements can be confusing for new migrants from Pacific countries and not enough effort is made to assist them in understanding the current situation.

Pasifika communities will want to be part of ongoing conversations about New Zealand's constitutional arrangements and Pasifika youth wanted more information, education and to be involved in further consultation.

## Ethnic engagement

New Zealand's demographics are changing rapidly, and the Panel saw engaging with growing ethnic communities as a priority.

The NZ Federation of Multicultural Councils was an enthusiastic participant in the Conversation. The Federation was one of the first groups to host a conversation with the Panel. The Panel also attended an event with ethnic leaders organised by the Department of Internal Affairs and the Chinese Association Conference in Wellington. The Federation emphasised their aspiration 'to feel included and accepted as equal and legitimate citizens' as being of central constitutional importance. They felt merging ethnic communities would need access and acceptance into New Zealand society.

The Federation was also concerned that a largely bicultural institutional dialogue was excluding other ethnic groups who formed a significant part of New Zealand's changing demographics. The Treaty of Waitangi offered strong multicultural potential and, along with robust ethnic community engagement and development, would be critical to achieving access and acceptability in New Zealand.

## Youth engagement

Although youth are traditionally considered hard to reach, the Panel's efforts to support conversations with young New Zealanders about the constitution were received enthusiastically. The Panel viewed the Constitution Conversation as part of a longer conversation about our constitution, one that would continue into the future. With the future in mind, engaging with young people was a priority for the Panel.

Young people often identified strongly with the Panel's high-level question about their aspirations for Aotearoa and tended to shy away from the specific technical legal questions. Young people do, however, expect that their dreams and expectations will be listened to. Engagement with young people demonstrated that many of them have a clear vision for the future and they want to see concrete action undertaken to achieve their high-level aspirations.

## Auckland schools and young people's initiatives

The Panel supported three complementary initiatives to engage with youth in Auckland. The initiatives sought engagement with young people through three different avenues.

### *YouthLaw workshops*

The first initiative was driven by YouthLaw in partnership with the Panel. YouthLaw participated in the early conversations and were active in promoting the Conversation, and their work has helped to spark an interest in ongoing Constitutional Conversations.

The initiative involved engaging directly with young people through local school holiday programmes, peer support groups, marae and church networks, and Youthline youth councils. There were 10 workshops held between April and June and 170 young people participated in them. Of the participants, 31 were under 18 years old and the remaining young people were aged between 19 and 24.

During these workshops the young people produced 156 individual written items including postcards, mind maps on A3 paper, and 28 video submissions. With the written submissions, participants were given the option to include their names and many chose not to. The video submissions often demonstrated a highly creative approach to the Conversation, including several different types of performance.

The main themes raised in the workshops included:

- ***Employment***: as it improves pathways to employment
- ***Education***: improved access to secondary and tertiary schools and more public education about politics, law and government
- ***Representation***: more young people in government and lowering of the voting age to 16
- ***Poverty***: equal access to healthcare and legal services
- ***Identity and discrimination***: address the problem of racism against migrants and ethnic minorities and more pride in Māori culture and New Zealand identity.

### *Online survey*

The Collaborative Trust facilitated and developed the second initiative: an online survey of young people aged 12–25. Over 1,000 young people from diverse backgrounds participated in the survey. The 20 survey questions were divided into six topics: Electoral Matters, New Zealand's Constitution, the Bill of Rights Act, the Treaty of Waitangi, Māori Representation and Other Representation.

Popular themes arising from the Conversation included:

- fairness and equality
- democratic representation
- transparency and accountability
- empowerment through opportunity.

### *School workshops*

The third initiative saw young people engaged in the Conversation through their schools during school hours. Two hundred and eleven students from Avondale College, Birkenhead College, Diocesan School for Girls, Hato Petara College, Te Kura Kaupapa Māori o Hoani Waititi, Te Kura Māori o Ngā Tapuwae, and Ormiston Senior College participated in workshops. Themes arising from these workshops included:

- te Tiriti o Waitangi
- te reo Māori
- civics education
- equity and fairness
- access to education, housing and food
- environmental sustainability
- participation in decision-making
- minority representation
- the importance of healthy lifestyles and sport.

## UN Youth New Zealand

The Panel attended workshops at this year's UN Youth Declaration in Auckland. Approximately 144 young people participated. Twelve focus groups facilitated discussions about the Panel's aspirational questions.

The final 2013 Declaration was presented to the Panel as a submission on behalf of the participants. The Declaration covered most of the Panel's terms of reference as well as a range of other issues. Particular emphasis was given to stronger methods for upholding human rights, protection of the environment, respect for the principles of the Treaty of Waitangi, increasing transparency and accountability in government, and the promotion of civics education in schools.

## Start Youth Services

The Panel attended a full day workshop run by Start Youth Services in Palmerston North. The engagement was focused primarily on young people in alternative education programmes, although the facilitators had extended a broader invitation to other schools in the region.

Participants at the workshop were not generally familiar with constitutional issues. Early activities and discussions during the day focused on building confidence to participate and communicating the basics of what a constitution does. Later in the day the facilitators ran innovative activities in smaller groups, with young people participating in creating artistic, musical and interview based conversations about New Zealand's constitution. This event was followed by an art and film exhibition at Te Manawa Museum of Art, Science and History in Palmerston North.

Themes arising from the Start Youth Services workshop included:

- participation – the importance of rangatahi having a voice in initiatives like the Constitution Conversation, and for older New Zealanders to create opportunities for young people to have their say
- representation – youth representation within Parliament and government was seen as necessary to ensure young people were appropriately consulted
- healthy communities – participants were particularly concerned with the lack of focus on local communities and not enough emphasis on promoting human well-being
- the need to accommodate diverse learning styles and needs in the education system, limited job opportunities and the high cost of living
- the harmful effects of synthetic drugs on youth and the community, discrimination and negative police experiences were also key issues for young people.

## New Zealand University Students' Association

NZUSA ran a series of workshops across university and polytechnic campuses in Invercargill, Dunedin, Lincoln, Wellington, Rotorua and Auckland. The Panel were invited to present to the students at the workshops.

The Panel also targeted youth through the social media, in particular through Facebook pages managed by groups such as the Youthline youth council.

### Disability communities

The Panel held early conversations with a range of other organisations working with the disabled community including:

- Association of Blind Citizens of New Zealand
- Deaf Aotearoa
- Royal Foundation of the Blind.

The Panel supported a workshop with the disabled community in Auckland. The meeting was facilitated and arranged by Auckland Disability Law (ADL), which provided the Panel with the notes from the workshop with a clear expectation that they would be treated as a submission on behalf of the 40 participants.

### Feedback from the engagement events

Participants in the Conversation were invited to complete a survey rating the engagement events. Overall, participants were satisfied with these events and resources produced by the Panel to support the Conversation. People reacted positively to the Conversation and wanted extra time to have more detailed conversations. Some people commented the events could be better advertised and there should have been more of them.

## Stage Four: Wānanga – Deliberation

The Panel made the difficult decision not to hold deliberative forums. It was led to the decision to extend the submission period by the sheer number of people who wanted more time to have the Conversation and extra time to write their submission.

## Stage Five: Pūrongo – Reporting and feedback

Throughout the engagement period the Panel provided the public, Responsible Ministers, and the Cross-party Reference Group of MPs with regular updates.

The Panel has also recommended to the Government that all the submissions be publically released at the same time as the report.

# Appendix B:
## The Guiding Questions

The Panel's Submission Guide included these guiding questions to assist participants to develop submissions.

### Share your aspirations

Q] What are your aspirations for Aotearoa New Zealand?
He aha ō tūmanako mō Aotearoa?

Q] How do you want our country to be run in the future?
Ki a koe me pēhea te whakahaere i tō tātou whenua?

### New Zealand's Constitution

Q] Do you think our constitution should be written in a single document? Why?
Ki ō whakaaro me whakatakoto te kaupapa ture o Aotearoa ki te tuhinga kotahi? He aha ai?

Q] Do you think our constitution should have a higher legal status than other laws (supreme law)? Why?
Ki ō whakaaro me whakanui ake te mana o te kaupapa ture i ētahi atu o ngā ture (kia nui ake tōna mana i ētehi atu ture o te whenua)? He aha ai?

Q] Who should have the power to decide whether legislation is consistent with the constitution: Parliament or the Courts? Why?
Kei a wai te mana hei whakatau mehemea he rite te rārangi ture ki te kaupapa ture: kei te Pāremata, kei ngā kōti rānei? He aha ai?

### The New Zealand Bill of Rights Act 1990

Q] Does the Bill of Rights Act protect your rights enough? Why?
Kei te pai te tiaki a te Ture Rārangi Tika i ō tika? He aha ai?

Q] What other things could be done to protect rights?
He aha ake ka taea te mahi hei tiaki i ngā tika?

Q] Do you think the Act should have a higher legal status than other laws (supreme law)? Why?
Ki ō whakaaro me hiki te mana o te Ture Rārangi Tika ki runga i ētahi atu ture (arā hei ture matua) He aha ai?

Q] Who should have the power to decide whether legislation is consistent with the Act: Parliament or the Courts? Why?
Kei a wai te mana hei whakatau mehemea he rite te rārangi ture ki te Ture Rārangi Tika Tangata: kei te Pāremata, kei ngā kōti rānei? He aha ai?

Q] What additional rights, if any, could be added to the Act? Why?
Ko ēhea ētahi atu tika, mehemea rā ētahi, me whakauru ki te Ture Rārangi Tika Tangata.
He aha ai?

### Treaty of Waitangi

Q] Thinking of the future, what role do you think the Treaty of Waitangi could have in our constitution?
Whakaarohia ngā tau e heke mai nei, ki a koe he aha koa te wāhi o Te Tiriti o Waitangi i roto i tā tātou kaupapa ture?

Q] Do you think that the Treaty should be made a formal part of the constitution? Why?
Ki ō whakaaro me whakauru te Tiriti ki roto i te kawanga o te kaupapa ture? He aha ai?

### Māori Representation

Q] How should Māori views be represented in Parliament?
Me pēhea te tāpae i ngā tirohanga Māori ki te Pāremata?

Q] How could Māori electoral participation be improved?
Me pēhea te whakapai ake i te wāhi pōti ki ngāi Māori?

Q] How should Māori views and perspectives be represented in local government?
Me pēhea te tāpae i ngā tirohanga me ngā whakaaro Māori ki te kāwanatanga ā-rohe?

### Electoral Matters

Q] How many members of Parliament should we have? Why?
Ki a koe kia hia kē ngā mema o te Pāremata? He aha ai?

Q] How long should the term of Parliament be? Why?
Ki a koe kia pēhea kē te roa o te wā o te Pāremata? He aha ai?

Q] How should the election date be decided? Why?
Me pēhea te whakarite i te rā mō te pōti? He aha ai?

Q] What factors should be taken into account when the size and number of electorates are decided? Why?
He aha ngā mea hei whakaaro ka whakaritea ana te rahi me te nama o ngā rohe pōti? He aha ai?

Q] What should happen if a member of Parliament parts ways with the party from which he or she was elected? Why?
Me aha ki te whakarērea e tētahi mema Pāremata te rōpū nāna anō a ia i pōti? He aha ai?

### Other Issues

Q] Do you have any other comments or suggestions about New Zealand's constitution?
He kōrero ake anō āu, he tohutohu rānei mō te kaupapa ture o Aotearoa?

# Appendix C:

## Aspirations for Aotearoa New Zealand

The Panel asked people to share their aspirations for Aotearoa New Zealand and how they want our country to be run in the future. These questions elicited a range of eloquent and inspiring responses, some in the form of draft preambles. A selection is set out below.

We, the people of the nation of New Zealand grant ourselves the following Democratic Constitution which embraces the Treaty of Waitangi:

*Art. 1. The nation of New Zealand*

The People resident in the lands known as New Zealand form the nation of New Zealand.

*Art. 2. Purpose*

1. The nation of New Zealand shall protect the liberty and the rights of the people, and shall ensure the independence and security of the country.
2. It shall promote the common welfare, the sustainable development, the inner cohesion, and the cultural diversity of the country.
3. It shall ensure equal opportunities for all citizens to the fullest extent possible.
4. It shall strive to secure the long-term preservation of natural resources, and to promote a just and peaceful international order.

*Art. 3. National Languages*

The National languages are English, Māori, and New Zealand Sign Language.

*Art. 4. Rule of Law*

1. The state's activities shall be based on and limited by the Rule of Law.
2. State activity must be in the public interest and proportional to the goals pursued.
3. State organs and private persons must act in good faith.
4. The nation of New Zealand shall respect international law.

*Art. 5. Individual and Social Responsibility*

All persons are responsible for their own lives and actions and shall make use of their abilities to contribute to achieving a better society.

- An open, inclusive, socially cohesive, cultural vibrant, well educated, community based participatory constitutional MMP democracy which outlines responsibilities and respects human and individual rights, harnesses difference and diversity, and includes a clear vision for its long-term future that sustainably manages the environment and economy to ensure the interests of future generations are not compromised, and has a clear vision of its place in the world and its desire to act as an international advocate.

- [The Constitution] should have the power to inspire and to unify, yet at the same time be reflective of the ethnic and cultural diversity inherent within our population makeup. It needs to be accessible in both language and tone, to all educational stratus of our society, and to possess the power of durability down through the generations. At the same time, it needs to reflect broadly the philosophical and ideological values that have endured from our earliest inhabitants through to the present day. This is of particular importance, as a document that does not in tone reflect the inherent characteristics that constitute and underpin what has contributed to our 'New Zealand-ness', has little prospect of standing the test of time.

- My aspiration for New Zealand is that it becomes a truly democratic, multicultural nation-state, in which all citizens will enjoy equal rights and responsibilities; where our history can be acknowledged, but not control us; where we can be 'New Zealanders' rather than Māori and non-Māori (and where the use of the term 'Pakeha' can be discouraged): in other words, the country manages to achieve a level of political and social maturity, which is currently sadly lacking. Government must be strong and unified, with enough checks and balances to keep it honest. It must serve, but not dictate to the people, whether or not they voted for it; binding referenda and citizens' assemblies must become part of the political landscape, and civil control should be achieved through a greater emphasis on reward, and lesser reliance on punishment. Above all, our nation needs to cherish its freedoms, which means that the fewer laws we have, the better.

- Now anyone, anywhere in the world can directly engage with Government on any piece of legislation that interests them without having to travel or go to any real expense because of the electronic processes that are now available. This reflects a very significant step forward in the ability for ordinary people (or businesses) to express a democratic voice.

- To understand what was brings clarity to what is happening for all of us now, it is important for us to move forward but equally important not to forget the past. The past should be acknowledged and understood by all, not a select few, so that we can understand how we all came to be in our awesome country, where we want to be as a nation and our identity as New Zealanders today. It should unite us as one, not separate us.

- [I]f Te Tiriti is the founding document as so many say it is then we will need to consider what sort of constitution might be founded upon it. The issue is then not how the Treaty might fit into a constitution but how a constitution might be based upon it.

- A written constitution gives us opportunity to record those things which we value and aspire to. It is an opportunity to do a 'national stock-take' and in so doing allow us to identify those things we wish to protect. Recognition of the values which we hold in high regard as a nation could be recorded in a written New Zealand constitution....We need considered constitutional crafting that encompasses, protects and promotes the interests of all peoples within the nation of New Zealand in a constructive way for current and future generations.

Our whenua, Aotearoa New Zealand, exists to preserve and protect the interests of the People in equal dignity, promoting our life in this land, through:

1. Mana, dignity and tolerance;
2. Kaitiakitanga, sustainability, durability and continuity;
3. Fairness, equality and accessibility;
4. Accountability, transparency, respect and legitimacy;
5. Liberty, freedom and opportunity.

These values, we agree, shall never be infringed upon by prejudice, fashion or ideology. Acknowledging our whakapapa, we give life to and endorse this, our Constitution.

Ko te mea nui, ko te Atua. Nana nei ngā mea katoa. Te kairahi hei manaaki i tiaki tātou katoa.

Ko te Amorangi ki mua, ko te hapai kei muri. Hei hapai ngā ture wairua o te Atua.

First and foremost we acknowledge God our Creator The Maker, and Provider and Protector of all. God as our Leader and to the fore and we behind to uplift and embrace the Spiritual Lore and principles of the Creator.

**Ngā Ture Wairua/Spiritual Principles**

**Aroha**

To demonstrate unconditional and unselfish love and respect toward all living beings and our natural world

**Whanaungatanga**

To create families and communities that holistically embrace and demonstrate a sense of togetherness that cares and looks after one another

**Manaakitanga**

To holistically show hospitality and caring toward all peoples

**Kaitiakitanga**

To be guardians and protectors of people, animals and our natural environment and natural resources within our respective tribal regions (Mana Whenua) and residing regions and nation as a whole.

**Whakapapa**

To protect and preserve the holistic sacredness of our genealogies and future generations.

**Tino Rangatiratanga**

Full recognition of and adherence to Ngā Ture Wairua (Spiritual Lore).

The values which will direct and govern practices are:

- Fairness, such that all people have constitutionally protected rights
- Justice, where all people are protected by the timely availability of access to courts
- Inter-generational respect for the planet and all natural things, with appropriate environmental safeguards being enshrined in law
- Cooperation, achievable through consensus decision making
- Integrity, stemming from transparent accountability
- Compassion, demonstrated by concern for all people
- Dignity, shown in demonstrable respect for all people
- Liberty, where the individual liberty of all people, particularly the most needy, is protected by the Constitution
- Security, where the State protects actively all people's rights

We, the people of Aotearoa-New Zealand, in order to live together in freedom and work together for the common good, respecting the rights of all, and respecting the planet, and in order to play a responsible role within the community of nations, hereby establish this Constitution for Aotearoa-New Zealand; and in the following Introduction, we identify the values that bind us together as a society that seeks to live under a single Constitution and that give the institutions and laws set out in the Constitution their intended purpose and meaning.

By respecting the Treaty of Waitangi, we recognise the rights of the Māori people as the first people of this land, and now their right to the protection of the Crown; as well as the rights of all who now form one nation with them.

We remember with gratitude the men and women who have given their lives defending our nation, and other nations against false ideologies, injustice and aggression. [...]

My aspiration for Aotearoa New Zealand is that there are honourable and just relationships amongst all New Zealanders. These relationships must be based on the aspirations and intent of the Treaty of Waitangi. In my experience, the Treaty provides a forward thinking framework, unique to Aotearoa New Zealand, for relationship advancement, and power sharing between the Crown (representing all non-Māori citizens), and Tangata Whenua (diverse iwi and hapū).

# Appendix D:

# Civics, Treaty and Citizenship Education

## List of resources and history

**Civics and citizenship education in New Zealand**

In 2005 the Constitutional Arrangements Select Committee recommended the fostering of greater understanding of our constitutional arrangements through improved civics and citizenship education in schools, in order to give young people the knowledge and skills to become responsible and engaged citizens.[69] In its response the Government agreed that more should be done to continue to improve civics and citizenship education in schools. The response noted that:

> In 2000, the Ministry of Education initiated a stocktake of the New Zealand curriculum. The stocktake concluded that there should be more emphasis in the curriculum on citizenship (local, national and global).
>
> In March 2003, the Government agreed to the establishment of the New Zealand Curriculum Project to address the recommendations in the stocktake report. This project is redeveloping the national curriculum so that the values, understandings and competencies for New Zealand students are clearly articulated and there is clear focus on the quality of teaching. Through this process citizenship education will be made more explicit in the national curriculum. Schools will be consulted in 2006 and the new curriculum will be implemented in 2007.
>
> Strengthening citizenship education in schools is one way that the Government can ensure that young people have the knowledge needed to become responsible and engaged citizens. The Government is also committed to continuing to assess what more it can do in other forums to strengthen civic awareness among our young people, for example, celebrations of national events, open days at courts and citizenship ceremonies.

The 2007 curriculum acknowledges the principles of the Treaty of Waitangi, the bicultural foundations of Aotearoa New Zealand and the need to ensure that young people have the knowledge to become responsible and engaged citizens. The social studies curriculum in particular provides the opportunity for students to 'explore how societies work and how they themselves can participate and take action as critical, informed and responsible citizens' (page 17) and 'develop the knowledge and skills to enable them to: better understand, participate in, and contribute to the local, national, and global communities in which they live and work' (page 30).

In 2008 the Commission for Financial Literacy and Retirement Income launched a national strategy for financial literacy. In Australia and the United Kingdom, financial literacy is linked with the concept of the citizenship on the basis that it enables people to have a voice both as consumers and as citizens.

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[69] *Inquiry to Review New Zealand's Existing Constitutional Arrangements*, Report of the Constitutional Arrangements Committee (2005). The ACT New Zealand member on the committee dissented from public education proposals which he considered 'susceptible to partisan promotion.'

New Zealand's performance in civics education was found to be mixed in a study published by the Ministry of Education in July 2012.[70] In particular:

- teachers had a moderate level of confidence teaching topics linked with legal, political and constitutional issues
- Year 9 social studies classrooms tended to focus on topics of social justice including gender equality, care for the environment, and rights and responsibilities, with less focus on the workings of institutions supporting civil society
- a survey of 123 principals found that the top three (of 10) aims for civic and citizenship education in New Zealand were:
  - promoting students' critical and independent thinking
  - promoting knowledge of citizens' rights and responsibilities
  - promoting students' participation in the local community
- the report concluded that it was unclear whether there was a consistent view across New Zealand schools about what civics and citizenship education should entail. Overall, schools aligned most closely with a goal of developing 'personally responsible citizens' and, to a lesser extent, 'participatory citizens'.

In July 2013 the Government announced,[71] in response to the Justice and Electoral Select Committee's report on the 2011 election, that it would consider:

- requesting the Electoral Commission to liaise with the Ministry of Education on the feasibility of, including resourcing implications, incorporating ongoing comprehensive civics education into the New Zealand school curriculum
- supporting the Electoral Commission to expand the public civics education programme, resources permitting.

One of the Electoral Commission's statutory functions is to 'promote public awareness of electoral matters by means of the conduct of education and information programmes or by other means' (section 5(c) Electoral Act 1993). The Electoral Commission's participation strategy for 2014[72] includes three key streams of work to address this statutory obligation:

- starting a national discussion on the implications of declining voter participation
- providing public information and education resources that facilitate participation
- research on what affects participation.

[70] *Participating and Contributing? The Role of School and Community in Supporting Civic and Citizenship Education* is an analysis based upon the work of the International Civic and Citizenship Education Study (ICCS).

[71] www.beehive.govt.nz/release/government-responds-2011-election-report

[72] www.elections.org.nz/voters/participation-2014-and-beyond

## Māori medium education

Te Marautanga o Aotearaoa, the Māori medium curriculum, is not a direct translation of the English medium curriculum, but sets the direction for learning in a Māori context from a tangata whenua perspective. It recognises that Māori ways of learning are essential to Māori medium education.

The development of a national Māori medium curriculum started in late 1992 when the Ministry of Education began to contract individual Māori educationalists to co-ordinate writing groups for each of the seven learning areas then recognised under the national curriculum.[73]

In drafting Te Marautanga the goals were for Māori within the education system to:

- be able to live as Māori
- be healthy, wealthy and successful
- actively participate as citizens of the world without sacrificing their Māori identity.

During 2008 and 2010 the Māori medium schools focused on the implementation of Te Marautanga. Its recent implementation presents a good opportunity for the development of resources that align with its core objectives. The Panel's existing resources may support the development of appropriate resources for Māori medium education.

In addition, some schools are developing their own curriculum. For example, Te Rūnanganui o ngā Kura Kaupapa Māori o Aotearoa is currently developing Te Marautanga Aho Matua.

[73] www.nzcer.org.nz/system/files/nga-wawata-o-nga-whanau-wharekura.pdf

# Existing teaching resources and accessible information about our constitution

## Overview of resources

'On the Constitution of New Zealand: An Introduction to the Foundations of the Current Form of Government', by The Rt Hon Sir Kenneth Keith, *Cabinet Manual* (1990, updated 2008), www.cabinetmanual.cabinetoffice.govt.nz/introduction

'Constitution', www.teara.govt.nz/en/constitution

### Legal studies curriculum guides for senior secondary students

Under the legal studies programme students explore the role of law in society and New Zealand's laws and legal system. Law and the systems that support it are dynamic; they impact on and are influenced by the cultural, moral, ethical, environmental, political, social and economic values of the day.

To be informed citizens, young people need an understanding of the concepts, principles, and processes that provide the foundations for our legal system and of the issues that confront it. Legal studies offer students the opportunity to gain such understanding in a New Zealand and a global context.

In legal studies students explore major issues such as citizenship, cultural diversity, our country's bicultural foundation, sustainability and the environment, and work and enterprise.

http://seniorsecondary.tki.org.nz/Social-sciences/Legal-studies

### www.lawaccess.govt.nz

LawAccess provides easy-to-read information on areas of New Zealand law where people often experience problems. The site is a starting point to search for information about the law and legal issues. Includes a section on Law, Government and Rights.

www.lawaccess.govt.nz/Category/6-Law,-Government-and-Rights

### DecisionMaker 2006

Provides a comprehensive overview of government processes and decision-making.

Worksheets for Years 9-12.

www.decisionmaker.co.nz/guide2003/education/educationindex18july.html

### Citizens Advice Bureau

Information pages on New Zealand Government processes, an introduction to specific laws, legal services, Treaty of Waitangi, citizenship and immigration, courts, rights of the individual, law enforcement.

www.cab.org.nz

### YouthLaw

YouthLaw offers nationwide free education sessions to groups of children and young people or those working with them. It also offers schools assistance with curriculum implementation in the following areas:

- human rights elements of the New Zealand curriculum
- legal and citizenship elements of the New Zealand curriculum.

### Māori medium resources

The Ministry of Education manages a catalogue of resources for Māori medium schools. Some of the resources on Māori constitutional topics include:

- *Te Wharekura* journals 47, 77, 85, www.tki.org.nz/r/Maori/wharekura/index_m.html
- hard copy resources *Ngā Tongi o Tawhiao* (Tāwhiao's Prophetic Sayings) and *Te Kauhanganui o Tāwhiao* (Tāwhiao's Parliament).

### Constitutional Advisory Panel

The Constitutional Advisory Panel was appointed by the Government to lead a conversation with New Zealanders about our constitutional arrangements. The Constitution Conversation ran from February to July 2013. The Panel reports to Ministers at the end of 2013 on New Zealanders' views and whether further work is desirable. During the Constitution Conversation, the Panel published a set of information resources about this country's existing constitutional arrangements including:

- *New Zealand's Constitution: The conversation so far* – a description of the current arrangements and a summary of the discussions leading up to the Panel's work
- a set of information booklets, factsheets, perspectives cards and quizzes about the topics under consideration in English and te reo Māori.

The information resources can be downloaded from the Panel's website: www.ourconstitution. org.nz and www.kaupapature.org.nz.

The Panel also commissioned a set of teaching resources to support teachers to use the information resources developed for the Conversation. Although these were not able to be finalised during the Constitution Conversation, teachers may wish to draw on them to integrate the information resources into their teaching. The teaching resources are linked to the Level 5 social studies curriculum. They are being issued as drafts as they have not yet been tested in the classroom.

## Head of State

Government House provides educational tours for school students where they learn about the constitutional, civic and community roles of the Head of State. Classes often combine the tour with a trip to Parliament and the Constitution Room at Archives New Zealand.

- *New Zealand's Governor-General, Representing our Queen and Our Country: An Educational Resource,* https://gg.govt.nz/content/educational-resources
- *The Role of the Monarch in New Zealand,* www.royal.gov.uk/MonarchAndCommonwealth/NewZealand/NewZealand.aspx

## Parliament

### Role and functions of Parliament

The Parliamentary Service's strategy includes a commitment to ensuring Parliament is accessible to members of the public (Statement of Intent 2013-2016). As part of this goal the Service produces educational resources and runs educational tours of Parliament. The resources are linked to the curriculum to better support teachers to educate their students on Parliament and democracy in New Zealand. These teaching resources for primary and secondary English and Māori medium schools are expected to be available at the end of 2013.

Existing resources (as at August 2013):

*How Parliament works:* find out about our system of government, what Parliament does, how we choose our MPs, and how laws are made. Discover the important jobs people do in Parliament and what special rules, privileges and powers apply,

www.parliament.nz/en-nz/about-parliament/how-parliament-works/

*Understanding Parliament:* an interactive website, www.explore.parliament.nz/

*Virtual tour of Parliament:* the tour takes in a number of key rooms in Parliament with information about the functions of each room, www.parliament.nz

*Teaching resources:* www.parliament.nz/en-NZ/AboutParl/Education/Resources/

From November 2013, resources will be available that are aimed at increasing understanding of the work of Parliament and how it relates to students lives and encouraging participation. The printed resources will be available on request.

For English medium schools:

- a set of 10 themed cards called 'Explore Parliament' with a separate teacher's guide aimed at students Years 5-8
- a set of 10 themed cards called 'Explore Parliament' with a separate teacher's guide aimed at students Years 9-10
- a guide for teachers outlining how to run a role play of a parliamentary debate in the classroom (also part of the 'Explore Parliament' suite of resources).

For Māori medium schools:

- a set of six themed cards and teachers guide (the resource is bilingual) which cover the role of Parliament and encourage active citizenship.

There will also be an interactive timeline available on the website (www.parliament.nz) available in 2014 which has information and images about 100 dates in the history of the New Zealand Parliament.

***Youth Parliament:*** every three to four years the Ministry of Youth Development co-ordinates New Zealand's Youth Parliament. Young people are selected by MPs to take part in debates in the Chamber and hold youth select committee meetings,

www.myd.govt.nz/young-people/youth-parliament/index.html

### Electoral system

One of the Electoral Commission's statutory functions is to 'promote public awareness of electoral matters by means of the conduct of education and information programmes or by other means' (section 5(c) Electoral Act 1993). The Commission focuses on increasing voter participation.

*Your voice, your choice:* learning units for schools and communities engage people in how they can have a say on the decisions that affect their lives,

www.elections.org.nz/resources-learning/

*Kids voting programme:* students from all over New Zealand took part in the 2011 General Election and Referendum on the Voting System. Students voted for real candidates, on a real ballot paper, and compared the results of their classroom's election with the results of the real election, www.kidsvoting.org.nz/background/

## Executive (Ministers and government departments)

***Cabinet Manual:*** an authoritative guide to central government decision-making for Ministers, their offices, and those working within government. It is also a primary source of information on New Zealand's constitutional arrangements as seen through the lens of the Executive branch of government. The *Cabinet Manual* guides Cabinet's procedure, and is endorsed at the first Cabinet meeting of a new government to provide for the orderly re-commencement of the business of government, www.cabinetmanual.cabinetoffice.govt.nz

***Young people and the Police:*** www.communitylaw.org.nz/community-law-library/

## Judiciary (courts)

Courts have a wide variety of functions. They include enforcing the criminal law, resolving civil disputes amongst citizens, upholding the rights of the individual, ensuring that government agencies stay within the law, and explaining the law.

***The role of the courts:*** www.courtsofnz.govt.nz/about/system/role/overview

***How the justice system works – teaching resources:*** www.justice.govt.nz/services/access-to-justice/civics-education-1/civics-education-1

## Local government

***What is local government?:*** www.localcouncils.govt.nz/lgip.nsf/wpg_URL/About-Local-Government-Local-Government-In-New-Zealand-Index?OpenDocument

***Taking action in my community:*** www.kapiticoast.govt.nz/Your-Council/The-Role-of-Council/Resources-for-Teachers/

More than 40 youth councils are run throughout New Zealand through Local Government New Zealand. They include youth in planning and decision-making through youth forums, www.myd.govt.nz/young-people/youth-councils-local-government.html

## Te Tiriti o Waitangi, The Treaty of Waitangi

***Treaty2U:*** Lessons and interactive resources for Levels 8-13 on the Treaty of Waitangi, www.treaty2u.govt.nz/education-resources/index.htm

***Te mana i Waitangi: Human Rights and the Treaty of Waitangi:*** www.hrc.co.nz/human-rights-and-the-treaty-of-waitangi/human-rights-and-the-treaty/

***Waitangi Tribunal:*** www.waitangi-tribunal.govt.nz/resources/

***He Tirohanga ō Kawa ki te Tiriti o Waitangi – A Guide to the Principles of the Treaty of Waitangi as Expressed by the Courts and the Waitangi Tribunal:*** www.tpk.govt.nz/en/in-print/our-publications/publications/he-tirohanga-o-kawa-ki-te-tiriti-o-waitangi/

***Treaty of Waitangi education kits:*** teaching guides and resources to support Treaty education, http://akoaotearoa.ac.nz/ako-hub/ako-aotearoa-northern-hub/resources/pages/treaty-education-kit

***Treaty of Waitangi web resources:*** developed by Veronica Tawhai for the New Zealand Commission for UNESCO. http://unesco.org.nz/priority-areas-/to-promote-dialogue-and-strategies-for-sustainable-futures

## Human rights

***Information and documents about domestic and international human rights instruments and procedures important for ensuring respect for human rights in New Zealand*:** www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights

***Information about human rights and legislation:*** www.hrc.co.nz/human-rights-environment

### Rights Education Project

The Rights Education Project (REP) aims to equip young people in Wellington with knowledge and about their legal rights and responsibilities. The REP is a project of Community Law Wellington and Hutt Valley and the Community Justice Project (Victoria University law students), supervised by education staff at Community Law Wellington and Hutt Valley.

Topics presented are Employment, Tenancy, Consumer Law, Police, Family Law, and Sex, Health and the Law: www.wclc.org.nz/the-rep-rights-education-project/ and http://wellingtoncjp.org/education

## Identity: Culture, history and demographics

***Resources for junior social studies and history, and NCEA Levels 1-3:*** www.nzhistory.net.nz/the_history_classroom

***Te Ara – Encyclopaedia of New Zealand:*** http://www.teara.govt.nz/en

***Resources for exploring statistics drawn from the census:*** www.statistics.govt.nz/tools_and_services/schools_corner.aspx

## Citizenship

***Exploring rights and responsibilities of citizenship:*** http://education.citizenship.govt.nz/

***Information for new citizens:*** www.ssnz.govt.nz/living-in-new-zealand/information-resources/

***Taxation and citizenship:*** teaching units for Levels 4 and 5 with supporting resources and covers topics such as What is tax for?, How do decisions about spending tax get made in our community? and What's fair?, http://taxcitizenship.tki.org.nz/

***Becoming an active citizen:*** www.familyservices.govt.nz/my-family/community-life/becoming-an-active-citizen.html

## Financial literacy

***Teaching resources for the social studies curriculum about taking part in economic communities,*** www.cflri.org.nz/financial-literacy/financial-education

## Active participation

***The Aotearoa Youth Voices toolkit:*** a practical guide filled with tools and ideas on how young people can participate in decision-making, www.myd.govt.nz/resources-and-reports/publications/aotearoa-youth-voices-toolkit.html

***UN Youth New Zealand:*** with the values of the United Nations as an example, UN Youth seeks to engage and equip young New Zealanders as global citizens who can meet the challenges of the 21st century, www.unyouth.org.nz

***Archives New Zealand:*** The Constitution Room at Archives New Zealand houses some of our nation's most important documents including the 1840 Treaty of Waitangi, the 1835 Declaration of Independence and the 1893 Women's Suffrage Petition.

## Environment

### Enviroschools Foundation

A not-for-profit trust that supports children and young people to be active citizens, contributing to ecological regeneration and the creation of healthy, resilient and sustainable communities: www.enviroschools.org.nz/about-the-enviroschools-foundation

## Resources in other jurisdictions

### Australia

The Australian Federal Department of Education, Employment and Workplace Relations provides civics and citizenship resources for schools across the country.

> Civics and citizenship education promotes students' participation in Australia's democracy by equipping them with the knowledge, skills, values and dispositions of active and informed citizenship. It entails knowledge and understanding of Australia's democratic heritage and traditions, its political and legal institutions and the shared values of freedom, tolerance, respect, responsibility and inclusion.
>
> www.civicsandcitizenship.edu.au/cce/about_civics_and_citizenship_education,9625.html

The Australian Curriculum Assessment and Reporting Authority is currently (as at August 2013) consulting on the curriculum:

> Civics and citizenship education is uniquely positioned to provide opportunities for young Australians to become active and informed citizens in a global context [and to help] citizens to participate in and sustain their democracy.
>
> www.acara.edu.au/curriculum_1/learning_areas/humanities_and_social_sciences/civics_and_citizenship.html

**United Kingdom**

In 2002 compulsory lessons on citizenship were introduced into secondary schools in England following the recommendations of an advisory group chaired by Bernard Crick: www.educationengland.org.uk/documents/pdfs/1998-crick-report-citizenship.pdf

The current national curriculum programmes of study for citizenship at key stages 3 and 4 have been disapplied with effect from 1 September 2013 and are no longer statutory. This means that schools are free to develop their own curricula for citizenship that best meet the needs of their pupils, in preparation for the introduction of the new national curriculum from September 2014. Citizenship remains a compulsory national curriculum subject at key stages 3 and 4. New statutory programmes of study will be introduced from September 2014.

**Teaching resources**

> www.teachingcitizenship.org.uk/
>
> www.education.gov.uk/schools/teachingandlearning/curriculum/secondary/b00199157/citizenship

The Department for Education is currently (as at August 2013) consulting on a new national curriculum, which includes a citizenship section, aiming to ensure pupils:

- acquire a sound knowledge and understanding of how the United Kingdom is governed, its political system and how citizens participate actively in its democratic systems of government
- develop a sound knowledge and understanding of the role of law and the justice system in our society and how laws are shaped and enforced
- develop an interest in, and commitment to, volunteering that they will take with them into adulthood
- are equipped with the financial skills to enable them to manage their money on a day-to-day basis and plan for future financial needs.

www.gov.uk/government/consultations/national-curriculum-review-new-programmes-of-study-and-attainment-targets-from-september-2014

# Appendix E:

# Constitutional Development

## New Zealand Milestones and Overseas Examples

This appendix discusses further the notion of constitutional change. Examples of constitutional evolution in New Zealand are set out in chronological order in the first section. Several examples of other countries are also provided in the second section.

The trend is for public participation to be required to legitimate the process of constitutional change. If constitutions are indeed a 'human habitation' then it seems to follow that they must also make way for the public to determine which things need to change, and which ought to stay the same.[74] The same study, which found that the median lifespan of all national constitutions between 1789 and 2005 was 19 years, made the assertion that 'constitutions are more likely to endure when they are flexible, detailed, and able to induce interest groups to invest in their processes.'[75]

### NEW ZEALAND

The story of New Zealand's constitutional development has been described as 'pragmatic evolution.'[76] The chronological list of statutes, court decisions, proposed legislation and various reviews tries to tell some of that story. The list is not exhaustive, and there is a much richer story still to tell. It does track, however, some of New Zealand's major constitutional milestones and the Panel hopes that it will be a useful resource in supporting future conversations.

#### Declaration of Independence (1835)

On 28 October 1835 James Busby, the British Government's official Resident in New Zealand, called a meeting at Waitangi. Thirty-five chiefs gathered to sign the Declaration of Independence of New Zealand which Busby had drafted, seeing it as a mark of Māori identity and a means to prevent other countries from making formal deals with Māori.[77] These chiefs came to be known as the Confederation of United Tribes of New Zealand.[78] By 1839 a total of 52 chiefs had signed the Declaration which was acknowledged by the British Government.

The Declaration consisted of four sections: the first proclaimed the Independent State of the United Tribes of New Zealand, the second stated that sovereign power in New Zealand resided exclusively in the chiefs, the third said that the chiefs would meet annually in autumn to pass laws, and the fourth asked the King of England to be the parent of their 'infant state' and to protect it from any threats to its independence.[79]

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[74] R.Q. Quentin-Baxter, 'The Governor-General's constitutional discretions: an essay toward a redefinition' *Victoria University of Wellington Law Review,* Vol. 10, No. 4, 1980, p. 290.

[75] Zachary Elkins, Tom Ginsburg & James Melton, *The Endurance of National Constitutions* (New York: Cambridge University Press, 2009), p 89.

[76] Constitutional Arrangements Committee, '2005 Report of the Constitutional Arrangements Committee', p 37.

[77] The Waitangi Tribunal, *The Kaipara Report* (Wellington, New Zealand: Legislation Direct, 2006) p. 348; Ministry of Culture & Heritage, 'The 1835 Declaration of Independence', *New Zealand History Online* (http://www.nzhistory.net.nz/) .

[78] Ministry of Culture & Heritage, 'The 1835 Declaration of Independence'.

[79] Matthew Palmer, 'Constitution – Constitutional Relationships Between the Crown and Māori', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/zoomify/35910/the-declaration-of-independence-1835); Ministry of Culture & Heritage, 'The 1835 Declaration of Independence'.

### Treaty of Waitangi (1840)

In 1839 the British Government decided to formally acquire sovereignty of New Zealand, appointing naval captain William Hobson as Consul.[80] The European population in New Zealand had been rising swiftly, and increased lawlessness threatened the safety of both Māori and European inhabitants.[81] The New Zealand Company was also looking to secure land in order to begin settlement.[82] British authorities felt they could no longer justify a non-interventionist policy.

The Secretary of State for the Colonies, Lord Normanby, wrote to Hobson on 14 August 1839 providing him with instructions and guidance. In his despatch he affirmed that New Zealand had been recognised as a sovereign state and that the rights of Māori were binding on the Crown.[83] Hobson was instructed to negotiate for the recognition of British sovereignty over New Zealand, and to formally establish a British colony.[84]

On 6 February 1840, Lieutenant-Governor William Hobson representing the British Crown, and some 40 chiefs representing Māori tribes of the northern parts of New Zealand, signed Te Tiriti o Waitangi, the Treaty of Waitangi.[85] Copies were then taken around the North Island and South Island for signatures. In the end 512 chiefs, including men and women, put pen to paper and agreed to the terms of the Treaty.

The Treaty of Waitangi is not one large sheet but a collection of nine documents. Eight of the nine sheets signed were written in te reo Māori. Only 39 chiefs signed the English text presented at Manukau Harbour.

The Treaty is generally regarded as New Zealand's founding document and influences the relationship between Māori and the Crown. Today, the Treaty is one of the factors taken into account when Parliament makes laws or when the courts interpret laws that refer to the Treaty. It also influences public decision-making when there is a specific reference to the Treaty in legislation.

### New South Wales Continuance Act 1840 (UK)

The Act authorised New Zealand to become a colony in its own right, separating it from New South Wales.[86] Britain's Colonial Office had decided in January 1839 that New Zealand should be acquired as British territory, and Letters Patent had been issued in June that year to extend the territory of New South Wales to include any part of New Zealand over which British sovereignty might be acquired.[87]

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[80] Claudia Orange, 'Treaty of Waitangi – Creating the Treaty of Waitangi', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/treaty-of-waitangi/page-1).

[81] Constitutional Arrangements Committee (2005) p 40.

[82] Claudia Orange, *An Illustrated History of the Treaty of Waitangi* (Wellington, NZ: Bridget Williams Books, 2004), p 18.

[83] K. A. Simpson, 'Hobson, William', *The Dictionary of New Zealand Biography, Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/biographies/1h29/hobson-william).

[84] Claudia Orange, 'Treaty of Waitangi – Creating the Treaty of Waitangi'; Ministry of Culture & Heritage, 'Making the Treaty of Waitangi: Drafting the Treaty', *New Zealand History Online* (http://www.nzhistory.net.nz/politics/treaty/read-the-treaty/drafting-the-treaty).

[85] Constitutional Arrangements Committee (2005) p 37; Claudia Orange (2004) pp 13-16; Ministry of Culture & Heritage, 'Treaty of Waitangi', *New Zealand History Online* (http://www.nzhistory.net.nz/politics/treaty-of-waitangi).

[86] Constitutional Arrangements Committee (2005) pp 41-42.

[87] Ibid.

### Letters Patent & Royal Instructions (1840)

Letters Patent of 16 November 1840, also known as the 'Charter for Erecting the Colony of New Zealand' brought the provisions of the New South Wales Continuance Act 1840 (UK) into force and led to the official proclamation of the new colony of New Zealand on 3 May 1841.[88] Letters Patent are issued by a monarch granting a right, monopoly, title or status to an individual or a body corporate.[89]

In this instance they constituted an Executive Council and a Legislative Council for New Zealand.[90] The Executive Council was a small group consisting of the Colonial Secretary, the Attorney-General and the Colonial Treasurer.[91] Those three would also sit on the Legislative Council with the Governor and three Justices of the Peace.[92] The Letters Patent also empowered the Governor to constitute courts and appoint judges to administer justice in the colony.[93]

### The Supreme Court Ordinance 1841

An Ordinance for establishing a Supreme Court was passed by the Legislative Council on 22 December 1841, providing the beginnings of a domestic legal system.[94] On its creation the court would be comprised of one judge, called the Chief Justice of New Zealand, with further appointments to follow as advised.[95] It was modelled on the higher courts in the United Kingdom, except that it had a broader jurisdiction allowing it to preside over matters of equity as well as common law.[96]

### Resident Magistrates Court Ordinance 1846

This Ordinance was passed in 1846, establishing a lower court system 'for the more simple and speedy administration of Justice in the Colony of New Zealand.'[97] Resident magistrates could decide a limited range of criminal cases and civil claims which would ease the burden on New Zealand's two judges of the Supreme Court.[98]

### The Constitution Act 1846 (UK)

During the 1840s, settlers to New Zealand had increasingly been demanding a say in the affairs of government. The United Kingdom Parliament passed the New Zealand Constitution Act 1846 in answer to this pressure.[99] The Act established two provinces of New Zealand, New Ulster (the

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88 Ibid.

89 Ministry of Culture & Heritage, 'History of the Governor-General', *New Zealand History Online* (http://www.nzhistory.net.nz/politics/history-of-the-governor-general/patriated).

90 A. H. McLintock (ed.), 'New Zealand Becomes a Colony', Te Ara – *The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/1966/history-constitutional/page-2).

91 Anthony H. Angelo, *Constitutional Law in New Zealand* (Alphen aan den Rijn, The Netherlands: Kluwer Law International, 2011) p 16.

92 Ibid.

93 Philip A. Joseph & Thomas Joseph, 'Judicial System - History of the Courts', Te Ara – *The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/judicial-system/page-4).

94 An Ordinance for establishing a Supreme Court, 22 December 1841.

95 Ibid.

96 Philip A. Joseph & Thomas Joseph, 'Judicial System – History of the Courts'.

97 Resident Magistrates' Courts Ordinance 1846, 10 Vict 16.

98 Courts of New Zealand, 'The History of the Court System', http://www.courtsofnz.govt.nz/about/system/history/overview last accessed 23 October 2013. [see footnote 53]

99 A. H. McLintock (ed.) 'Early Constitutions', Te Ara – *The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/1966/history-constitutional/page-3).

North Island) and New Munster (the South Island), as well as a complex three-tiered system of government.[100] Under the Act there was provision for municipal corporations, provincial assemblies, and a General Assembly.[101] This would have been an extremely intricate system of government, but in the end it was never fully implemented. Governor George Grey suspended the Act's introduction, successfully arguing that a population of 13,000 settlers could not be trusted to govern in the interests of the more numerous Māori population.[102] Legislation was passed in 1848 delaying the implementation of the provisions of the Constitution Act 1846 relating to provincial and general assemblies.[103]

### The Constitution Act 1852 (UK)

Twelve years after the signing of the Treaty of Waitangi, the Constitution Act 1852 established a system of representative government in New Zealand. Governor George Grey, who had delayed the implementation of the Constitution Act 1846 passed by the British Parliament, was the driving force behind the legislation.[104]

The legislation created six provinces with their own elected superintendents and provincial councils. This consisted of a Legislative Council appointed by the Crown and a House of Representatives, which was to be elected every five years by males aged over 21 who owned, leased or rented property of a certain value.[105]

Section 71 of the Constitution Act 1852 provided for the creation of self-governing Māori districts.[106] Māori attempts to realise this autonomy, such as the Kingitanga and the Kotahitanga movements, were not recognised by the government with the result being that section 71 was never implemented.

Responsible government in New Zealand initially had several restrictions on it. Section 53 of the Act provided for the General Assembly to make laws for the 'peace, order, and good government of New Zealand', but only where those laws were not 'repugnant' to British law. The Governor, on behalf of the Crown, retained the power under section 58 of the Act to disallow legislation. Other sections of the Act also contained the power for the Governor to reserve legislation for the Queen's pleasure rather than assent to it themselves.[107] Section 56 contained a discretionary formulation of the reserve power, while section 68 obliged the Governor to reserve legislation which would amend the Constitution Act 1852 itself. The Governor would also retain control of native land sales and external affairs.[108]

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[100] Wendy McGuiness & Diane White, Nation Dates: Significant Events That Have Shaped the Nation of New Zealand (Wellington, NZ: McGuiness Institute, 2012) p 23.

[101] Ibid.

[102] Ministry of Culture & Heritage, 'NZ Constitution Act Comes Into Force', New Zealand History Online (http://www.nzhistory.net.nz/proclamation-of-1852-constitution-act).

[103] Ibid.

[104] Ibid.

[105] Ibid.

[106] W. David McIntyre, 'Self-Government and Independence – Constitution Act 1852', Te Ara – The Encyclopedia of New Zealand (http://www.teara.govt.nz/en/self-government-and-independence/page-2).

[107] Philip A. Joseph, Constitutional & Administrative Law in New Zealand (Third Edn) (Wellington, NZ: Brookers Ltd, 2007) p 114.

[108] W. David McIntyre, 'Self-Government and Independence – Constitution Act 1852'; Joseph (2007) p 114.

### First general election held (1853)

Having passed the Constitution Act 1852, the institutional framework for elections was properly in place. Between 14 July and 1 October in 1853, New Zealand's first general election took place. Thirty-seven members were elected to the General Assembly, which sat for the first time on 24 May 1854.[109]

### Select Committee on the Constitution Act (1856)

New Zealand's Constitution Act 1852 had not long been in place before it was placed under review. On 9 May 1856 it was moved that a select committee 'be appointed to consider and report as to the changes which it may be desirable to make in the Constitution Act, and the best mode of effecting the same.'[110]

The select committee abstained from considering many issues connected to the Constitution Act 1852, but did make some recommendations concerning the regulation of elections. The first of their three main recommendations was to reform the provisions for the making up of the electoral roll which was, in their judgement, 'far from complete or accurate.'[111] Secondly, they recommended the introduction of voice voting instead of written voting, in order to protect against impersonation. Thirdly, a Bill titled *Purity of Elections* was appended to the select committee's report aimed at preventing bribery but it lapsed in the Legislative Council.[112]

### New Zealand Constitution Amendment Act 1857 (UK)

The Act repealed section 68 of the Constitution Act 1852, which obliged the Governor to reserve legislation for the Queen's pleasure that would amend the Constitution Act.[113] The General Assembly was now able to amend or repeal all but 21 sections of the Act, although the Governor retained their discretionary powers of reservation and disallowance under sections 56 and 58.[114]

### English Laws Act 1858

This law was passed to give clarification to the status of English common and statute law in New Zealand.[115] It stated that all English law as existing on 14 January 1840 and applicable to this country's context was inherited by New Zealand. The reservation about the applicability of laws to the New Zealand context created ongoing confusion, which would last until the passage of the Imperial Laws Application Act 1988. The Act enumerated that specific laws, such as the Magna Carta 1297 and the Act of Settlement 1701, were incorporated into New Zealand law.[116]

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109 Ministry of Culture & Heritage, *'First Sitting, 1854 – House of Representatives', New Zealand History Online* (http://www.nzhistory.net.nz/politics/history-of-parliament/first-sitting-1854).

110 Select Committee on the Constitution Act, 'Report of the Select Committee on the Constitution Act' (1856) AJHR D-No.28.

111 Ibid.

112 Ibid.

113 Joseph (2007) p 114.

114 Ibid.

115 Lewis Evans, 'Law and the Economy – Setting the Framework', Te Ara – *The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/photograph/25612/english-laws-act-1858).

116 McGuiness & White (2012) p 27.

### Kīngitanga and the first Māori King (1858)

The Kīngitanga movement is an enduring Māori political movement which emerged in the early 1850s and led to the crowning of King Potatau Te Wherowhero in 1858. Tamihana Te Rauparaha and Matene Te Whiwhi introduced the idea of a single Māori nation in 1852, and although the idea did not have the support of all iwi it did gather momentum by the late 1850s.[117]

### Native Land Act 1862

The Act waived the Crown's right of pre-emption and established the Native Land Court to decide the ownership of Māori land.[118] The Act's purpose was to attempt to formally define titles to Māori land in terms of private ownership in order to more closely assimilate ownership practices with British law. The courts were always to be presided over by a European magistrate, but otherwise left the details of membership up to the Governor.[119] Due to the ongoing New Zealand wars the Act was not fully implemented.[120] Courts operated primarily in Northland, along with a select few other areas.[121]

### Establishment of the Court of Appeal (1862)

Before the Court of Appeal was established, appeals from the then Supreme Court (now the High Court) were taken to the Privy Council in London.[122] However, this was beyond the financial reach of many people and so it was determined that a new appellate court was necessary. Originally there were no permanent sitting judges on the Court of Appeal. Justices from the Supreme Court would hear appeals on a rotational basis.[123]

### Colonial Laws Validity Act 1865 (UK)

The Act was passed by the British Parliament to 'remove Doubts as to the Validity of Colonial laws.' It sought to remove inconsistencies between colonial and imperial (British) legislation by providing that any law properly passed by colonial legislatures was to have full effect unless it was inconsistent with British legislation.[124] This confirmed that the New Zealand Parliament had the power to make its own laws, but only in so far as those laws were consistent with British law.

### Native Lands Act 1865

The Act was a much more comprehensive piece of legislation than the 1862 Act it replaced. In place of the slightly ad hoc appointment of courts, it established a formal court of record that would be presided over by the principal drafter of the Act, Francis Dart Fenton, as the first Chief Justice of the Court.[125]

The intent of the Act, however, remained much the same. In the preamble to the legislation it made it clear that its purpose was to consolidate laws related to land governed by Māori proprietary customs, determine who the owners were under those customs, and to 'encourage the extinction of such proprietary customs' in favour of Crown title.[126]

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117 Ibid.

118 Ranginui Walker, *Ka Whawhai Tonu Matou: Struggle Without End* (Auckland, New Zealand: Penguin Books, 1990), p 135.

119 Native Lands Act 1862, s. 4, 5 & 6.

120 Richard Boast, 'Te Tango Whenua – Māori Land Alienation – Establishing the Native Land Court', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/te-tango-whenua-maori-land-alienation/page-5).

121 Ibid.

122 Courts of New Zealand, 'The History of the Court of Appeal' (http://www.courtsofnz.govt.nz/about/appeal/history).

123 Ministry of Justice, 'New Zealand Court of Appeal' (http://www.justice.govt.nz/courts/court-of-appeal).

124 Joseph (2007) pp 115-116.

125 Richard Boast, 'Te Tango Whenua – Māori Land Alienation – Establishing the Native Land Court'.

126 The Waitangi Tribunal, *Report of the Waitangi Tribunal on the Orakei Claim* (Wellington, New Zealand: Brooker & Friend Ltd, 1987).

### Māori Representation Act 1867

In the 19th century, the right to vote in New Zealand was based on individual land ownership and most Māori did not qualify. To counteract their effective exclusion from the political process, Māori sought to gain political representation in Parliament as well as advocating for political autonomy. In response to this pressure from Māori, and also from the Colonial Office in England, four Māori seats were established by Parliament under the Māori Representation Act 1867.

### Regulation of Elections Act 1870

Since 1858 New Zealand had used a verbal voting system. Each voter was required to state the name of a candidate out loud to a polling official, who would record the vote in a poll book that was then signed by the voter.[127] The Act reversed this by introducing the secret ballot which provided that ballots would be printed, each voter would record their vote in a private booth, and then they would deposit the ballot in a secure ballot box. Introduction of the secret ballot was seen as an important step in reducing undue influence over people's votes as well as in treating voting as a right rather than a matter of public trust or privilege.

### Abolition of the Provinces Act 1875

The Act was a major constitutional stepping stone for New Zealand where the power of central government greatly increased. Under the Constitution Act 1852, the six provincial governments had full legislative powers, forming a quasi-federal system of government.[128] There were some exceptions to their law-making powers including in the spheres of justice, customs, postal services, and the disposal of Crown land.[129]

Premier Julius Vogel was the driving force behind the change. Originally a strong supporter of the provinces he gradually changed his mind, believing that New Zealand required strong central government, largely to help further his infrastructural projects.[130] The Act, 'notwithstanding a very strong and persistent opposition', passed the House of Representatives 52 votes to 17 and the Legislative Council by 23 votes to four.[131] Most of the Act did not come into force until 1 November 1876 in order to allow for the upcoming general election to act as something of a ratification for the decision.[132]

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127 Ministry of Culture & Heritage, 'Cleaning Up Elections', *New Zealand History Online* (http://www.nzhistory.net.nz/politics/election-day/under-the-influence).

128 A. H. McLintock (ed.), 'Foundation of System', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/1966/provinces-and-provincial-districts).

129 Ibid.

130 Ministry of Culture & Heritage, 'New Zealand in 1870 – the Vogel Era', *New Zealand History Online* (http://www.nzhistory.net.nz/politics/the-vogel-era/the-1870s); Ministry of Culture & Heritage, 'Julius Vogel', *New Zealand History* Online (http://www.nzhistory.net.nz/people/julius-vogel).

131 Governor the Most Hon. The Marquis of Normanby, 'Abolition of the Provinces Act 1875' (1876) AJHR A-2A

132 A. H. McLintock (ed.) 'Foundation of System', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/1966/provinces-and-provincial-districts)

### Māori seats extended indefinitely (1876)

1876 provided lots of debate on the future of Māori representation in Parliament. A Bill extending the legislative provision for the Māori seats indefinitely was proposed and defeated and 400 members of the Ngāti Kahungunu iwi petitioned Parliament on the issue, effectively calling for proportional representation.[133] Later in the year, the provision for Māori seats in the Māori Representation Act 1867 was extended indefinitely, largely due to fears amongst European members that abolishing the seats would mean more Māori voting in the general electorates, potentially lessening those members' chances of re-election.[134] From this point, the statutory rules concerning the Māori seats would not be substantively altered for almost a century.

### Public Works Act 1876

The common law principle of due process for the taking of land dates back to at least the Magna Carta 1297, which states that 'No free man shall be ... disseised of his freehold or liberties or free customs but ... by the law of the land.'[135] The Public Works Act 1876 was the first comprehensive, central source of law affecting the taking of lands for public works.[136] It was also intended to give road boards more direct power.[137] Under section 40, land not needed for the purposes for which it was taken had to be offered back to the original owners, although the Crown often failed to apply this section.[138]

### Wi Parata v Bishop of Wellington (1877)

This case is a famous legal dispute about one piece of land on the Whitireia peninsula near Porirua which resulted in a Ngati Toa chief, Wiremu Parata Te Kakakura, taking the Bishop of Wellington, the Rt Rev. Octavius Hadfield, to court in 1877. While the facts of the case are not well known, Chief Justice Prendergast's dismissal of the Treaty of Waitangi as 'a simple nullity' made the decision a landmark in New Zealand legal history.[139]

The Treaty, he believed, promised more than it could deliver, in so far as it purported to cede sovereignty of New Zealand to the British Crown. Māori tribes, he further noted, did not constitute a state capable of exercising rights of sovereignty and of entering into international treaties.

### Qualification of Electors Act 1879

This legislation was a step towards universal franchise, extending the ability to vote to all adult British male citizens aged 21 years or over, after 12 months' residence in New Zealand or six months' ownership of freehold property. The Act repealed the Miners Franchise Act 1860 and the Lodgers

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133 M. P. K. Sorrenson, 'A History of Māori Representation in Parliament', in *Report of the Royal Commission on the Electoral System: Towards a Better Democracy*, The Royal Commission on the Electoral System 1986, Appendix B, p B-24; Parliamentary Library (2003), p 16.

134 Ibid, p 10.

135 Magna Carta 1297, s. 29 (http://legislation.govt.nz/act/imperial/1297/0029/latest/DLM10929.html); Russell Davies, 'History of Public Works Acts in New Zealand, Including Compensation and Offer-Back Provisions, July 2000 (http://www.nztopo50.co.nz/docs/miscellaneous/pwahistory.pdf) p 7.

136 Davies (2000) p 7.

137 Ibid.

138 Rāwiri Taonui, 'Te Ture – Māori and Legislation – Administering Māori Land', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/te-ture-maori-and-legislation/page-4).

139 David V. Williams, *A Simple Nullity? The Wi Parata Case in New Zealand Law and History* (Auckland, NZ: Auckland University Press, 2011) pp 1-2 (http://www.press.auckland.ac.nz/webdav/site/press/shared/all-books/pdfs/2011/williams-simplenullity-websample.pdf).

Franchise Act 1875 which had extended the franchise to male miners and to ratepayers who had lived in houses valued at more than 10 pounds sterling a year for more than 12 months.[140]

In 1878 two alternative Bills were presented to Parliament seeking to simplify the complex system of different franchises which had proved unworkable.[141] Both Bills failed to pass, but when there was a change in government in 1879 Frederick Whitaker, who had proposed one of the initial Bills, managed to have the Act passed in December that year.[142] There was an immediate impact, with the level of registered voters increasing from 82,271 (around 71% of the adult male population) in 1879 to 120,972 (around 91%) at the next election in 1881.[143]

### Triennial Parliaments Act 1879

The Act amended the Constitution Act 1852 and introduced the three-year parliamentary term to New Zealand. The Constitution Act 1852 had fixed the maximum term of Parliament at five years, although in practice the terms had been more variable. Abolition of the provinces in 1875 had created some concern over the power of central government, with a reduction in the maximum term length considered an appropriate counter-measure.[144]

### Representation Act 1887

The Act established a Representation Commission to review New Zealand's electoral district boundaries. The duty of the Commission was to divide the colony into 91 electorates, exclusive of the four Māori seats elected under the Māori Representation Act 1867.[145] Each electorate was required to contain no more or less than 750 people than the average quota.[146]

### Royal Instructions to Governor (1892)

Pursuant to the Constitution Act 1852 the Royal Instructions to the Governor were altered in 1892. The new version restricted the powers of reserving legislation, while still preserving several grounds for the Governor-General to reserve assent for the Sovereign.[147] The grounds for reserving legislation were now limited primarily to imperial matters, with practically all local issues falling to the Governor-General to assent to on the advice of Ministers.

### Opening of the Kotahitanga Parliament (1892)

During the 1890s the political aspirations of many Māori crystallised into the formation of a Māori Parliament,[148] which consisted of 96 members representing eight districts, six in the

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140 Angelo (2011) p 60; Auckland Libraries, 'New Zealand Voting Rights Timelines' (http://www.aucklandlibraries.govt.nz/EN/heritage/familyhistory/nzvoting/Pages/nzvoting.aspx); The Lodgers' Franchise Act 1875, s. 1–3 (http://paperspast.natlib.govt.nz/cgi-bin/paperspast?a=d&d=ODT18780322.2.17).

141 Neill Atkinson, 'Voting Rights – Male Suffrage', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/voting-rights/page-3).

142 Ibid.

143 Ibid.

144 Royal Commission on the Electoral System, p 155.

145 Representation Act 1887, s. 3(1)

146 Ibid, s. 3(5)

147 Earl of Onslow 'Colonial Secretary, Royal Instructions to Governor, 26 March 1892' (1893) AJHR A2 at 2; John E. Martin, 'Refusal of Assent – A Hidden Element of the Constitutional History in New Zealand', *New Zealand Parliament* (http://www.parliament.nz/en-nz/about-parliament/how-parliament-works/fact-sheets/00PlibFactsheetRefusalAssent1/refusal-of-assent-a-hidden-element-of-constitutional).

148 Ranginui Walker, *Ka Whawhai Tonu Matou: Struggle Without End* (Auckland, NZ: Penguin Books, 1990) p 165.

North Island and two in the South Island. The establishment of the parliament was said to be justified by the Declaration of Independence, the Treaty of Waitangi, and section 71 of the New Zealand Constitution Act 1852.[149]

### Electoral Act 1893

The passing of the Act extended the right to vote in parliamentary elections to women, and gave New Zealand fully representative government. This event made New Zealand the first self-governing nation to enfranchise all adult women.

During the late 19th century a broad movement for women's political rights, including the right to vote, had developed in Britain and its colonies as well as the United States and in northern Europe.[150] The campaign in New Zealand was largely driven by the local branch of the American-based Women's Christian Temperance Movement (WCTU) which was established in New Zealand in 1885.[151] Kate Sheppard, who headed the franchise and legislation department of the WCTU in this country, emerged as an iconic figure in the campaign for women's suffrage. Their efforts on petitions calling for women's suffrage helped increase signatories from 9,000 in 1891, to 20,000 in 1892, to nearly 32,000 in 1893.[152]

From 1887 five Bills promoting voting rights for women went to Parliament.[153] The first two failed to pass through the House of Representatives, while the 1891 and 1892 Bills passed through it but were defeated in the Legislative Council.[154] Finally, on 8 September 1893 the Electoral Bill was passed by the Council (20 votes to 18) and women, including Māori, achieved the right to vote.[155] With only six weeks until the next election 109,461 women enrolled to vote and 90,290 turned out to do so, in what was described as the 'best-conducted and most orderly' election ever held.[156]

### Māori women gain right to vote and stand for Te Kotahitanga (1897)

Many Māori women had been active in the suffrage movements of the late 19th century. As they fought alongside organisations such as the WCTU for the right to vote for the House of Representatives, they also sought the right to vote for the Māori parliament, Te Kotahitanga.[157]

Women had attended Te Kotahitanga in roughly equal numbers to men, but were initially unable to vote or stand as candidates for the parliament. After less than a year after the opening of Te Kotahitanga, a motion was put to it seeking to grant women the right to vote. This initial motion was abandoned, but women gained the right to vote and stand in 1897.[158]

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149 Constitutional Arrangements Committee (2005) p 50.

150 Neill Atkinson, 'Voting Rights – Votes for Women', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/voting-rights/page-4).

151 Ministry of Culture & Heritage, 'Brief History – Women and the Vote', *New Zealand History Online* (http://www.nzhistory.net.nz/politics/womens-suffrage/brief-history); Neill Atkinson, 'Voting Rights – Votes for Women'.

152 Neill Atkinson, 'Voting Rights – Votes for Women'.

153 Ibid.

154 Ibid.

155 Ibid.

156 Ibid; Ministry of Culture & Heritage, 'Brief History – Women and the Vote'.

157 Ministry of Women's Affairs, 'Māori Women and the Vote' (http://mwa.govt.nz/m%C4%81ori-women-and-vote).

158 Leonie Pihama, 'Tihei Mauri Ora: Honouring Our Voices. Mana Wahine as a Kaupapa Maori Theoretical Framework', *University of Auckland*, 2001, p 235.

### Representation Act 1900

The Act increased the number of seats in the General Assembly to 76, so including the Māori seats this meant total membership of 80 seats. The Act also provided that a Commission would determine how many of the six additional seats would be allocated to the North and South Islands respectively.

### Māori Councils Act 1900 and Māori Land Administration Act 1900

The Māori Councils Act 1900 established a form of local government for Māori in response to ongoing conversations concerning the Kingitanga and Kotahitanga movements. The District Māori Councils were empowered particularly to control the 'health and welfare and moral well-being' of Māori. The Councils were to operate at a regional level, with an ability to pass bylaws within their boundaries, which were designed to reflect tribal boundaries.[159]

Meanwhile the Māori Land Administration Act 1900 created a Māori Land Administration Department and several Māori Land Councils.[160] The Act allowed for Māori landowners to form committees to administer their land, and for the Land Councils to recognise some areas of Māori land as papakāinga blocks, which could never be sold.[161]

District Māori Councils and Maori Land Councils were under-resourced and lacked the full support of either Māori or settlers.[162] Both types of Councils have been viewed variously as an effort to counteract Māori exclusion from political processes, and an attempt to counteract pan-Māori movements such as the Kotahitanga Parliament and work towards assimilation.[163]

### Dominion status acquired (1907)

Following the 1907 Imperial Conference, the New Zealand House of Representatives passed a motion respectfully requesting that His Majesty the King 'take such steps as he may consider necessary' to change the designation of New Zealand from the 'Colony of New Zealand' to the 'Dominion of New Zealand'.

A Royal Proclamation granting New Zealand Dominion status was issued on 9 September 1907 and took effect on 26 September 1907. Complete autonomy in foreign affairs was the only substantive feature of independence that the proclamation did not grant to New Zealand.[164]

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159 Richard S. *Hill, State Authority, Indigenous Autonomy: Crown-Māori Relations in New Zealand/Aotearoa 1900-1950* (Wellington, NZ: Victoria University Press, 2004) p 50.

160 Mere Whaanga, 'Te Kooti Whenua – Māori Land Court – The 'Taihoa' Policy, 1900-1920', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/te-kooti-whenua-maori-land-court/page-4).

161 Constitutional Arrangements Committee (2005) p 52; Mere Whaanga, 'Te Kooti Whenua – Māori Land Court – The 'Taihoa' Policy, 1900-1920'.

162 Ibid.

163 http://nzetc.victoria.ac.nz/tm/scholarly/tei-HillStat-t1-body-d2-d4.html; Nan Seuffert, *Jurisprudence of National Identity: Kaleidoscopes of Imperialism and Globalisation from Aotearoa New Zealand* (Burlington, UK: Ashgate Pub, 2006) pp 65-67; Tina R. Makereti Dahlberg, 'Māori Representation in Parliament and Tino Rangatiratanga', He Pukenga Kōrero, Vol. 2, No. 1, 1996, p 64.

164 Parliamentary Library, 'New Zealand Sovereignty: 1857, 1907, 1947, or 1987?', *Parliamentary Library Research Paper,* August 2007, p 5 (http://www.parliament.nz/NR/rdonlyres/54A39A34-32AA-4C23-AD7B-73BAB5624651/147179/NewZealandSovereignty185719071947or1987_3.pdf); Peter Marshall, 'The Balfour Formula and the Evolution of the Commonwealth', The Round Table, Vol. 361, 2001, p 542.

### Commissions of Inquiry Act 1908

The Act sets out the powers and functions of commissions of inquiry in New Zealand. Statutory commissions of inquiry were originally established under the Commissioners' Powers Act 1867, which was extended in 1872 and replaced in 1903.[165] The 1908 Act retained much of the framework of the 1903 legislation but consolidated it with amendments made in 1905.[166]

Commissions of inquiry are appointed by the Governor-General through an Order in Council and may inquire into the administration of the Government, the working of any existing law, the necessity or expediency of any legislation, the conduct of any officer of the Crown, any disaster or accident putting members of the public in danger and, since 1970, any other matter of public importance.[167] Although their findings are not binding on government, they are the most powerful and prestigious means of inquiry into matters of public importance and have contributed to significant policy changes on several occasions.[168]

### Public Service Act 1912

The Act created the broad framework for the public service which would last until the major reforms of the 1980s.[169] It established a unified, politically neutral public service with security of tenure and a pension on retirement.[170] Four distinct roles of the public service were also established: administrative, professional, general and clerical.[171] Public servants became the responsibility of a statutory officer, the Public Service Commissioner (now the State Services Commissioner), who was given authority over the whole public service.[172]

Prior to the Act, there had often been substantial interference in the public sector by members of the governing party and serious concerns about the efficiency of the service.[173] In 1866 a Royal Commission was appointed to inquire into the efficiency of the public service, which had led to the never enforced Civil Service Act 1866. Another Royal Commission was appointed in 1880, which also examined the efficiency of the public service, and yet again did not produce a comprehensive drive for change. Only when a third Royal Commission was established in 1912 to inquire into and report on the unclassified departments did major reform occur. This Royal Commission had the benefit of operating in an environment where the public service was becoming larger and gradually more efficient, while public and political opinion had shifted to be much more supportive of a comprehensive reform package.[174]

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165 New Zealand Law Commission, 'A New Inquiries Act', *New Zealand Law Commission Report 102,* May 2008, p 29.

166 Ibid.

167 Ibid.

168 Ibid, p 4.

169 Public Service Association, 'A Brief History of the PSA: 1913-2011' (http://psa.org.nz/Libraries/PSA_Document_2/PSA_History_1913-2013.sflb.ashx) p 1.

170 Ibid.

171 Ibid.

172 Ministry of Culture & Heritage, 'Public Service Act Passed into Law', *New Zealand History Online* (http://www.nzhistory.net.nz/page/public-service-act-passed-law).

173 Ibid.

174 A. H. McLintock (ed.),'Staffing the State Services', *Te Ara – the Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/1966/government-administrative-system/page-9).

### Letters Patent Constituting the Office of the Governor-General (1917)

Letters Patent dated 11 May 1917 reconstituted the Office of the Governor as the Governor-General to reflect New Zealand's increasing self-governance.[175] This change largely brought around the modern role of the Governor-General and would be the last change of substance to the office until 1983 when the office was patriated even further. Patriation is a process of constitutional change where a country gains or regains offices and powers which make it more independent.

### Ratana movement begins (1918)

The Ratana movement was founded by Tahupotiki Wiremu Ratana who gained a reputation as a visionary and a faith healer.[176] The movement gained momentum throughout the 1920s and developed a distinct political dimension to add to its original religious focus. In a by-election in 1932 a Ratana candidate, Eruera Tirikatene, won one of the four Māori seats in the House of Representatives.[177] He was joined in 1935 by Haami Tokouru Rātana. By 1943 Ratana candidates held each of the four Māori seats available at the time.[178] Their alliance with the Labour party, cemented in 1936 when Wiremu Ratana presented Prime Minister Michael Joseph Savage with a series of gifts symbolising their relationship, meant that they exercised significant influence over national politics and Māori constitutional dialogue from that time.[179]

### Women's Parliamentary Rights Act 1919

This short piece of legislation made it possible for women to stand as candidates to become MPs. Three women contested seats in 1919 but none were successful.[180] It would not be until 1933 that a woman would be elected to the House of Representatives, when the Labour party's Elizabeth McCombs won a by-election in the seat of Lyttelton.[181]

### Electoral Act 1927

The Act was the first consolidation of electoral laws in New Zealand. Before 1927 electoral law had been contained in a variety of electoral legislation.

### Public Safety Conservation Act 1932

The Act is often cited as an example of one of the largest delegations of authority from Parliament to the Executive branch of government. The Act gave Cabinet the power to declare a state of emergency and make regulations it deemed necessary to ensure public safety during that time.[182] Reasons for this change included Depression-induced riots and two major earthquakes in 1929 and 1931.[183] These powers were used for the first time at the outbreak of World War II and, more

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175 Constitutional Arrangements Committee (2005) p 54.

176 McGuiness & White (2012) p 68.

177 Claudia Orange (2004) pp 123-124.

178 McGuiness & White (2012) p 68.

179 Claudia Orange (2004) pp 123-124.

180 Ministry of Culture & Heritage, 'Women's Suffrage Milestones – Women and the Vote', *New Zealand History Online* (http://www.nzhistory.net.nz/politics/womens-suffrage/suffrage-milestones).

181 Ibid.

182 Matthew Palmer, 'Constitution – The Rise and Bridling of Executive Power', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/document/35921/public-safety-conservation-act-repeal-act-1987).

183 Ministry of Civil Defence, 'Civil Defence in New Zealand: A Short History' (http://www.civildefence.govt.nz/memwebsite.nsf/Files/Short%20Historyof%20Civil%20Defence/$file/Short%20Historyof%20Civil%20Defence.pdf) p 3.

controversially, during the waterfront dispute of 1951.[184] When negotiations between shipping companies and the waterside workers broke down, the Government declared a state of emergency and granted itself very broad powers, including the ability to deregister unions.[185]

### Electoral Amendment Act 1934

The Electoral Amendment Act 1934 amended the Electoral Act 1927 by extending the parliamentary term to four years.[186]

### Electoral Amendment Act 1937

The Electoral Amendment Act 1937 repealed the amendments to increase the parliamentary term and restored the three-year electoral cycle.[187] It also provided for Māori to vote by secret ballot if they could answer a series of questions to ensure their eligibility.[188] Secret ballot voting had been in place since 1870 in non-Māori seats. The change had an immediate impact, with an 18.3% increase in the turnout for the Māori seats in the 1938 election than in 1935.

### Te Heuheu Tukino v Aotea District Māori Land Board (1941)

This is a well-known case concerning a commercial agreement. The Privy Council ruled that the Treaty of Waitangi was enforceable only when referred to in legislation. This was seen as an affirmation of a long-held position, with the Law Lords saying; 'It is well settled that any rights purporting to be conferred by such a treaty of cession cannot be enforced in the Courts, except in so far as they have been incorporated in the municipal law.'[189] This remains the current position in New Zealand's legal system.

### New Zealand joins the United Nations (1945)

New Zealand was a foundation member when the United Nations was formally established at San Francisco in 1945.[190] Despite its small size, this country had played a valuable role in the establishment of the UN, with Prime Minister Peter Fraser devoting a substantial amount of attention to it. New Zealand's work with the UN represents its commitment to the principles of multilateralism, collective security, the international rule of law and dispute settlement.[191]

### United Nations Act 1946

The Act gave the Governor-General, by Order in Council, the power to make regulations bringing into force Article 41 of the Charter of the United Nations. Article 41 provides that the United Nations Security Council 'may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the members of the United Nations to

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184 Matthew Palmer, 'Constitution – The Rise and Bridling of Executive Power'.

185 J.F. Northey, 'The Dissolution of the Parliaments of Australia and New Zealand', *The University of Toronto Law Journal*, Vol. 9, No. 2, 1952, p 296.

186 Electoral Amendment Act 1934

187 Electoral Amendment Act 1937.

188 Ibid; Parliamentary Library, 'The Origins of the Māori Seats', *Parliamentary Library Research Paper,* November 2003 (updated May 2009) p 13.

189 *Te Heuheu Tukino v Aotea District Maori Land Board* [1941] NZLR 590.

190 Ministry of Culture & Heritage, 'New Zealand and the United Nations', *New Zealand History Online* (http://www.nzhistory.net.nz/politics/new-zealand-and-the-united-nations).

191 New Zealand Ministry of Foreign Affairs & Trade, 'The United Nations: New Zealand and the United Nations' (http://www.mfat.govt.nz/Foreign-Relations/2-International-Organisations/United-Nations/index.php).

apply such measures.'[192] Section 2(2) of the Act states that regulations made under the Act cannot be deemed unlawful because of inconsistency with any other Act of Parliament.[193]

### Statute of Westminster Adoption Act 1947

The Act meant that New Zealand adopted full constituent powers which gave the ability to amend, suspend and repeal its own constitution. The Statute of Westminster 1931, passed by the British Parliament, made this possible in saying that 'No Act of Parliament of the United Kingdom passed after the commencement of the Act shall extend or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.'

### New Zealand Constitution Amendment (Request & Consent) Act 1947

By enacting the Statute of Westminster Adoption Act 1947 New Zealand gained the ability to request and consent to the power to amend its own constitution.[194] It did this via the Constitution Amendment (Request & Consent) Act 1947. The Act requested, and consented to, the United Kingdom Parliament's enacting legislation 'in the form or to the effect of' the draft Bill set out in the schedule to the Act. The New Zealand Constitution (Amendment) Act 1947 (UK) provides: 'It shall be lawful for the Parliament of New Zealand by any Act or Acts of that Parliament to alter, suspend, or repeal, at any time, all or any of the provisions of the New Zealand Constitution Act, 1852; and the New Zealand Constitution (Amendment) Act, 1857, is hereby repealed.'

### New Zealand adopts the Universal Declaration of Human Rights (1948)

The Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly on 10 December 1948. It sets out fundamental rights and freedoms, some of which are now regarded as having achieved the status of customary international law including the right to life, freedom from slavery, freedom from torture and the right to a fair trial.

As with the founding of the UN in 1945, New Zealand had played an active role in drafting the UDHR.[195] Peter Fraser's government established a Human Rights Committee to consider the draft Declaration and used the Committee's work as the basis for the Government's comments on that draft.[196] New Zealand remains strongly committed to the protection and promotion of human rights as embodied in the UDHR and other key international human rights treaties.[197]

### Legislative Council Abolition Act 1950

The Legislative Council was New Zealand's Upper House of Parliament from 1854 to 1950. Originally it had been intended to act like the British House of Lords, but after trying to play an active role in

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192 United Nations Act 1946.

193 Ibid, s. 2(2).

194 Philip A. Joseph, 'Foundations of the Constitution', *Canterbury Law Review,* Vol. 4, 1989, p 58.

195 Human Rights Commission, 'Universal Declaration of Human Rights' (http://www.hrc.co.nz/human-rights-environment/resources-2).

196 Human Rights Commission, 'New Zealands Contribution to the Early Post-War Development of International Human Rights' (http://www.hrc.co.nz/human-rights-environment/resources-2/new-zealands-contribution-to-the-early-post-war-development-of-international-human-rights).

197 New Zealand Ministry of Foreign Affairs & Trade, 'Human Rights: New Zealand and Human Rights' (http://www.mfat.govt.nz/Foreign-Relations/1-Global-Issues/Human-Rights/0-overview.php).

the 1860s and 1870s this input had diminished significantly.[198] Because members were appointed rather than elected doubts about its efficacy grew. Having acquired full constituent powers to amend its constitution in 1947, the New Zealand Parliament was able to abolish the Legislative Council.[199] This it did with the Legislative Council Abolition Act 1950, meaning that New Zealand became a unicameral legislature. Since then, Parliament has consisted only of the House of Representatives and the Governor-General.

### Constitutional Reform Committee (1952)

As part of the abolition of the Legislative Council, Prime Minister Sidney Holland had promised to set up a constitutional reform committee to explore an alternative to the Council.[200] The committee reported in 1952, recommending a senate of 32 senators to be selected by party leaders proportional to the parties' share of the seats in Parliament. Their proposal did not include giving the senate powers to act as a final arbiter on legislation, but they were to have the ability to delay legislation for up to two months.[201] In the end, the proposal to establish a new second House was never implemented.

### Parliamentary Commissioner (Ombudsman) Act 1962

In 1962 New Zealand became the first English-speaking common law country and the fourth overall (after Sweden, Finland, and Denmark) to establish the Office of Ombudsman,[202] which holds the important function of scrutinising the Executive and holding it to account.[203] This legislation provided for a Commissioner to be appointed in the first or second session of Parliament, and would remain in that office until a successor could be appointed.

The principal function of the Commissioner would be to investigate any decision or recommendation made, or any act done or omitted, relating to a matter of administration.[204] Investigations could take place on the basis of a complaint or on the initiative of the Commissioner themselves. Originally, the legislation provided only for investigations into central government departments and organisations.[205]

### Māori Welfare Act 1962

The Māori Welfare Act 1962 (now the Māori Community Development Act 1962) established the New Zealand Māori Council, a national body which could provide advice on policy.[206] Some of the Council's general functions are to 'to consider and discuss such matters as appear relevant to the social and economic advancement' of Māori, to promote harmonious race relations, to preserve

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198 Ministry of Culture & Heritage, 'Legislative Council Abolished', *New Zealand History Online* (http://www.nzhistory.net.nz/legislative-council-abolished); New Zealand Parliament, 'Evolution of Parliament: Legislative Council' (http://www.parliament.nz/en-nz/about-parliament/history-buildings/history/evolution/legislative-council/00PlibHstBldgsHistoryEvolutionLC1/legislative-council).

199 Philip A. Joseph, *Constitutional and Administrative Law in New Zealand* (2nd Edn) (Wellington, NZ: Brookers, 2001) p 139.

200 Jon Johansson, *The Politics of Possibility: Leadership in Changing Times* (Wellington, NZ: Dunmore Publishing, 2009) p 65.

201 Ibid.

202 Constitutional Arrangements Committee (2005) p 58; Office of the Ombudsman, 'History' (http://www.ombudsman.parliament.nz/about-us/history).

203 Joseph (2001) p 139.

204 Parliamentary Commissioner (Ombudsman) Act 1962 (http://www.nzlii.org/nz/legis/hist_act/pca19621962n10421/).

205 Office of the Ombudsman, 'History'.

206 Māori Community Development Act 1962; Ministry of Culture & Heritage, 'Treaty Events Since 1950 – Treaty Timeline', *New Zealand History Online* (http://www.nzhistory.net.nz/politics/treaty/treaty-timeline/treaty-events-1950).

Māori culture, and to work with various state departments and other Māori organisations.[207] The Act also replaced tribal committees with committees representing broader Māori groups and areas based upon Māori Land Court jurisdictions.[208]

### Referendum on the term of Parliament (1967)

Legislation passed in 1967 set up a referendum on whether the term of Parliament ought to be three years or four years. This was a non-binding referendum with no provisions in the legislation which would have been triggered in the instance of a specific result.[209] Turnout for the vote was 69.7%, with the three-year term receiving 68.1% of the vote compared to the four-year term which received 31.9%.[210]

### Race Relations Act 1971

The Race Relations Act 1971 was the first legislation to explicitly introduce anti-discriminatory principles into New Zealand's legal framework.[211] It prohibited discrimination on the grounds of race, nationality or ethnic origin. The Act also established the office of Race Relations Commissioner and created a formal process for laying complaints about racial discrimination.[212] This legislation would later be joined by the Human Rights Commission Act 1977 and would eventually be superseded by the Human Rights Act 1993.

### New Zealand Constitution Amendment Act 1973

The Act sought to address a gap in Parliament's law-making authority. Although full constituent powers had been acquired with the passage of the Statute of Westminster Adoption Act 1947 and the New Zealand (Constitution) Amendment Act 1947 (UK) this gap was identified in a 1968 High Court case.[213] Specifically, it addressed the question of whether the New Zealand Parliament had the ability to make laws with effect outside of New Zealand's territory.[214]

Section 53 of the New Zealand Constitution Act 1852 (UK) authorised the General Assembly to 'make laws for the peace, order, and good government of New Zealand.' Following the 1968 High Court decision, a Law Reform Committee on Admiralty Jurisdiction suggested that the words 'peace, order, and good government of New Zealand' in section 53 imposed 'a legislative restraint in the absence of clear language to the contrary elsewhere.'[215] The New Zealand Constitution Amendment Act 1973 therefore declared the validity of legislation passed after 1947 and changed the wording of section 53 to 'The General Assembly shall have full power to make laws having effect in, or in respect of, New Zealand or any part thereof and laws having effect outside New Zealand.'[216]

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[207] Māori Community Development Act 1962, s. 18.

[208] Basil Keane, 'Kotahitanga – Unity Movements – Kotahitanga Movements in the 20th and 21st Centuries', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/kotahitanga-unity-movements/page-4).

[209] http://www.parliament.nz/en-NZ/AboutParl/HowPWorks/PPNZ/0/9/3/00HOOOCPPNZ_411-Chapter-41-Referendums.htm

[210] Electoral Commission New Zealand, 'Referenda' (http://www.elections.org.nz/voting-system/referenda).

[211] State Services Commission, 'The Gender Pay Gap in the New Zealand Public Service: 2.1 The Legislative Framework' (http://www.ssc.govt.nz/node/7426).

[212] Human Rights Commission, 'Chapter 18: Human Rights and Race Relations Te tika tangata, me te whakawhanaunga a iwi', *Human Rights in New Zealand Today Ngā Tika Tangata O Te Motu* (http://www.hrc.co.nz/report/chapters/chapter18/race01.html).

[213] *R v Fineberg* [1968] NZLR 119.

[214] Ibid.

[215] New Zealand Constitution Amendment Bill 1973, Explanatory note.

[216] Jerome B. Elkind, 'A New Look at Entrenchment', *The Modern Law Review,* Vol. 50, No. 2, 1987, p 158.

### Royal Titles Act 1974

This legislation was passed in a single sitting of Parliament, and changed the title of the New Zealand monarch to 'Elizabeth the Second, by the Grace of God Queen of New Zealand and Her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith.'[217] Previously, the title had been 'Elizabeth II, by the Grace of God of the United Kingdom, New Zealand and Her Other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.' This move was seen as a symbolic move to make the New Zealand Head of State more uniquely our own. [218]

### Electoral Amendment Act 1975

The Act introduced a new method of calculating the Māori electoral roll through the Māori Electoral Option,[219] which allows for electors of Māori descent to choose whether to be enrolled on the general or Māori roll. The Māori Electoral Option occurs after every census. It is the only time when Māori voters can opt to switch between the general and Māori rolls.

In a general election, voters enrolled on the Māori electoral roll may only vote for a candidate standing in the Māori electorate in which they are enrolled. Voters on the general electoral roll may vote only for a candidate standing in the general electorate in which they are enrolled. Candidates who identify as Māori may choose whether to stand as candidates for Māori or general electorates.

### Ombudsmen Act 1975

The Act sought to consolidate and extend the functions of the Ombudsman's Office, and allowed for the appointment of more Ombudsmen and extended the Office's jurisdiction to include local government agencies.[220]

### Treaty of Waitangi Act 1975

Passed in 1975, the Act established the Waitangi Tribunal to report on and suggest settlements for breaches of the Treaty of Waitangi and to ensure that future legislation was consistent with the Treaty.[221] Not only was this a major practical development in addressing historical grievances, it also had significant symbolic value as a means of bringing the Treaty closer into New Zealand's constitutional arrangements. The Act's opening paragraph describes the law as 'An Act to provide for the observance, and confirmation, of the principles of the Treaty of Waitangi', which has left room for an evolution of understanding of where the Treaty lives within the constitution.[222] Initially however, the Waitangi Tribunal had no jurisdiction to review claims of past grievances.[223]

### Human Rights Commission Act 1977

The Act established the Human Rights Commission. At the time the main functions and powers of the Commission were heavily focused on the need to promote respect for human rights through education. The Commission also had an important 'watch dog' role, which included receiving and encouraging engagement with the public on human rights and making public statements on human

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[217] Royal Titles Act 1974, s. 2.

[218] Joseph (2007) p 584.

[219] Parliamentary Library (2003) p 16.

[220] Office of the Ombudsman, 'History'.

[221] Ministry of Culture & Heritage, 'Waitangi Tribunal Created', *New Zealand History Online* (http://www.nzhistory.net.nz/the-treaty-of-waitangi-act-passes-into-law-setting-up-the-waitangi-tribunal).

[222] Treaty of Waitangi Act 1975.

[223] Ministry of Culture & Heritage, 'Waitangi Tribunal Created'.

rights matters.[224] Originally, the Commission also had a limited role relating to privacy consisting of enquiring and reporting, but with no investigative powers.[225] Its privacy role, as well as its other functions, would later be substantially amended through the Privacy Act 1993 and the Human Rights Act 1993.

### New Zealand ratifies the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (1978)

The United Nations General Assembly adopted the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) on 16 December 1966. Often known as the twin covenants, they both came in to force a decade later in 1976. New Zealand was signatory to both treaties in 1968 and ratified each one in 1978.

### Cabinet Manual published (1979)

In 1979 the *Cabinet Office Manual* (now the *Cabinet Manual*) was published, bringing together for the first time a comprehensive description of Cabinet procedures.[226] Since then it has come to be regarded as the authoritative guide to decision-making for Ministers and their staff, and for government departments.

### Public Works Act 1981

The Act provides for compensation for losses arising from the acquisition of land by the Crown.[227] Fair compensation may not necessarily be limited to the value of the land acquired or taken. In addition to the value of the land taken, the Public Works Act entitles fair compensation for losses including permanent depreciation in the value of any retained land, damage to any land, and disturbance resulting from the acquisition.[228] One of the most significant changes the Act introduced was that land could now be acquired compulsorily only if it is for an essential work. An essential work is defined in the Act, although there is also a provision enabling the Governor-General to declare any specified work to be essential.[229]

### Official Information Act 1982

The Act reversed the logic of the Official Secrets Act 1951, promoting the principle that all official information should be made public unless there is a good reason to withhold it.[230] In 1978 the government established the Committee on Official Information which would produce two reports in 1981 that advocated for major reforms.[231] The Committee's first report said that open government 'rests on the democratic principles of encouraging participation in public affairs and ensuring the

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[224] The Hon. Justice Wallace, 'The New Zealand Human Rights Commission', *The Nordic Journal of International Law,* Vol. 58, No. 2, 1989, pp 156-157.

[225] Wallace (1989) p 158.

[226] Rebecca Kitteridge, 'The Cabinet Manual: Evolution with Time', *Annual Public Law Forum,* 20-21 March 2006, p 1 (http://www.dpmc.govt.nz/sites/all/files/reports/the-cabinet-manual-evolution-with-time.pdf).

[227] Land Information New Zealand, 'Landowner's Rights – Compensation' (http://www.linz.govt.nz/crown-property/public-works/guide/compensation).

[228] Ibid.

[229] The Waitangi Tribunal, *Te Maunga Railways Land Report* (1994) pp 17, 44-46.

[230] Constitutional Arrangements Committee (2005) p 65.

[231] Nicola White, 'Freedom of Official Information – From Secrets to Availability', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/freedom-of-official-information/page-1).

accountability of those in office.'[232] The Act reflected this logic, outlining its purpose in section 4 as being to promote public participation and governmental accountability through the progressive increase in the availability of official information, provided that release was consistent with the public interest and personal privacy.[233]

The Act allows people to request information from government agencies, orally or in writing.[234] Those agencies are required to respond to a request as soon as reasonably practicable, but not later than 20 working days after the day the request is received.[235] If a person is not satisfied with the response that they receive, they can request that the Ombudsman investigate the decision.[236]

There is general agreement that the Act has had a major impact on the day-to-day workings of the public sector.[237] Large amounts of official information are made available as a matter of routine, and it is often suggested that the quality of advice and decision-making at all levels of government has improved as a result of closer scrutiny.[238]

### Letters Patent Constituting the Office of the Governor-General (1983)

The 1983 Letters Patent Constituting the Office of the Governor-General replaced the 1917 Letters Patent and had two objects: to update the office and to patriate it. They changed the constitution of the office to 'Governor-General and Commander in Chief who shall be Our Representative in Our Realm of New Zealand' from the 1917 Letters' designation of 'Governor-General and Commander-in-Chief in and over Our Dominion of New Zealand.' The Letters also formalise New Zealand's right to conduct its own foreign policy.[239]

### Officials Committee on Constitutional Reform (1984)

This review was established by the incoming Labour Government to appraise New Zealand's constitutional law. It owed significant motivation to the 1984 constitutional crisis where the outgoing Prime Minister refused to implement the advice of the incoming Government to devalue the currency to prevent a run on the dollar. The Officials Committee released two reports, the recommendations of which would lead to the enactment of the Constitution Act 1986. The White Paper on a Bill of Rights for New Zealand was also a by-product of the Committee's work.

### Select committee reforms (1985)

During the 1960s select committees had begun to take on a greater workload in legislative scrutiny, and in the 1970s they had become more open to the public and the media.[240] In July 1985 the Standing Orders were amended and completely reorganised the select committee system. This

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[232] Committee on Official Information, 'Towards Open Government: Vol. 1: General Report' (Wellington, NZ: Government Printer, 1981) p 14.

[233] Official Information Act 1982, s. 4.

[234] New Zealand Law Commission, 'The Public's Right to Know: Review of the Official Information Legislation', *Report 125* (Wellington, NZ: New Zealand Law Commission, 2012) pp 18-20.

[235] New Zealand Law Commission (2012) pp 18-20.

[236] Nicola White, 'Freedom of Official information – The Official Information Act in Operation', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/freedom-of-official-information/page-2).

[237] Nicola White, 'Freedom of Official Information – What Has the Official Information Act Achieved?', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/freedom-of-official-information/page-3).

[238] Ibid.

[239] Joseph (2007) p 736.

[240] John E. Martin, 'Parliament – Reform, 1980s Onwards', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/parliament/page-8).

greatly enhanced the scope of their powers and strengthened the accountability of the Executive to Parliament.[241] The new system established 13 subject select committees and, for the first time, allowed members of the public to be present at the hearing of evidence on a Bill or any other matter.[242] Not only did the amount of legislation they scrutinised increase, but they were also enabled to initiate inquiries into matters related to their subject areas.

### Treaty of Waitangi Amendment Act 1985

This legislation gave the Waitangi Tribunal the retrospective power to consider alleged past breaches of the Treaty of Waitangi since 1840. In introducing the Bill the Minister of Māori Affairs said that it was intended to address 'mounting tension in the community that springs from the sense of injustice that is harboured about the grievances that are outstanding.'[243] In 2006, the Treaty of Waitangi Act 1975 was again amended to set a closing date of 1 September 2008 for the submission of new historical claims or historical amendments to contemporary claims.[244]

### Royal Commission on the Electoral System (1985-1986)

In 1985, the fourth Labour Government implemented a two-time election promise and appointed a Royal Commission on the Electoral System. There had been growing discontent with the First Past the Post (FPP) voting system following the 1978 and 1981 elections, where the National party received less overall votes than Labour but retained a majority of seats in the House. The Royal Commission reported back in December 1986, recommending that New Zealand adopt the Mixed Member Proportional (MMP) system. It also recommended that the size of Parliament increase to 120 MPs regardless of which electoral system was chosen.

### Constitution Act 1986

Passed unanimously on 13 December 1986, the Act repealed the Constitution Act 1852 and removed the ability for the United Kingdom to pass laws for New Zealand without the consent of the New Zealand Parliament. It is described as the 'principal formal statement' of New Zealand's constitutional arrangements in the introduction to the *Cabinet Manual.*[245] It brings together key legal provisions regarding the institutions and procedures for the exercise of public power.[246]

The Act comprises five parts which deal with the Sovereign, the Executive, the Legislature, the Judiciary and Miscellaneous Provisions. It provides that Parliament has the full power to make laws, and that it controls public finances.[247] Although it brings some of New Zealand's core constitutional arrangements into a single Act, it does not have a higher law status and can be amended by a majority vote of Parliament.

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241 New Zealand Parliament, '25th Anniversary of the Select Committee System' (http://www.parliament.nz/en-NZ/Features/5/2/9/00NZPHomeNews230720101-25th-anniversary-of-the-select-committee-system.htm).

242 Ibid.

243 New Zealand Parliament, *Parliamentary Debates (Hansard),* Vol. 495, p 1359.

244 The Waitangi Tribunal, 'Frequently Asked Questions' (http://www.waitangi-tribunal.govt.nz/about/frequentlyaskedquestions.asp#22).

245 The Rt. Hon. Sir Kenneth Keith, 'On the Constitution of New Zealand: An Introduction to the Foundations of the Current Form of Government', *Cabinet Manual* 2008 (http://cabinetmanual.cabinetoffice.govt.nz/node/68).

246 Matthew Palmer, 'Constitution – What is a Constitution?', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/constitution/page-1).

247 The Rt. Hon. Sir Kenneth Keith (2008)

### State sector reform (1986-1989)

In 1986 a range of reforms to the public service were initiated to promote greater efficiency and accountability. Economic and political conditions had combined to make reform not only possible, but bold and far-reaching as well.[248]

Major reforms to the public service began with the State-Owned Enterprises Act 1986 which transformed five state-owned corporations into nine new state enterprises.[249] State-owned enterprises were required to operate as profitably and efficiently as comparable businesses, to be a good employer, and to exhibit a sense of social responsibility to the community they operated within.[250] Responsibilities were restructured, with managers controlling inputs, boards being responsible for pricing and marketing, and shares held by the Minister of Finance and the Minister for State-Owned Enterprises.[251]

The next major piece of legislative reform was the State Sector Act 1988 which redefined the relationship between Ministers and their departments. The Act made chief executives of departments responsible to their Ministers and fully accountable for managing their organisations. All public servants were now employed by the heads of their departments and employment conditions were governed under the same employment law as other professions.[252] This meant that the State Services Commission became responsible only for the appointment of chief executives instead of the entire public service. The Commission continued to be responsible for maintaining the non-partisan nature of the public service and would serve as an independent adviser on the management of the state sector.[253]

The last of the major public sector reforms of the 1980s was the Public Finance Act 1989. This legislation aimed to transform the framework for the financial management of the public sector as well as improving its reporting to Parliament.[254] Before the Act was passed departmental budgets were based on inputs, such as overheads and salaries, with little attention given to multi-year expenses.[255] The Act, however, changed the focus to outputs and outcomes, meaning departments became funded according to the cost of the goods and services they produced.[256] The Act also requires the Crown, departments and Crown entities to adopt and adhere to Generally Accepted Accounting Practices (GAAPs), where previously it was largely held that it would be too difficult for government to keep pace with modern accounting practices.[257]

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248 State Services Commission, 'The Spirit of Reform: Managing the New Zealand State Sector in a Time of Change', 1996 (http://www.ssc.govt.nz/spirit-of-reform).

249 Geoffrey Palmer & Matthew Palmer, *Bridled Power (4th Edn)* (South Melbourne, Australia: Oxford University Press, 2004) p 110.

250 State Services Commission, 'New Zealand's State Sector Reform: A Decade of Change', 1998 (http://www.ssc.govt.nz/decade-of-change).

251 Ibid.

252 Mark Prebble, 'State Services and the State Services Commission – The Merit Principle', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/state-services-and-the-state-services-commission/page-2).

253 Ibid, p 70.

254 Constitutional Arrangements Committee (2005) p 70.

255 Richard Shaw, 'Public Service – Revolution, 1980s and 1990s', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/public-service/page-4).

256 Ibid.

257 Geoffrey Palmer & Matthew Palmer (1997) p 103.

### New Zealand Māori Council v Attorney-General [1987] 1 NZLR 641

The landmark decision of the Court of Appeal in this case, commonly known as the Lands Case, was the first to define the principles of the Treaty of Waitangi in some detail.[258] In 1987 a case was brought by the New Zealand Māori Council, led by its Chairman Sir Graham Latimer, to challenge whether the Government was able to transfer land which was subject to Treaty claims to state-owned enterprises.[259]

The Court held that section 9 of the State-owned Enterprises Act 1986 placed certain obligations or duties under the Treaty of Waitangi on the Crown. Consequently, protections and guarantees must be afforded to Māori in the transfer of Crown land to state-owned enterprises. [260]

Some of these protections and guarantees were outlined through what Cooke P referred to as the 'spirit' of the Treaty. The Court's definition of the Treaty principles, articulating that spirit, remains highly influential. They identified the duty to act reasonably and in good faith, active Crown protection of Māori interests, informed Crown decision-making, remedies for past breaches, and the right of the Crown to govern as some of the most important principles of the Treaty.[261]

### Māori Language Act 1987

The Act declared the Māori language to be an official language of New Zealand, and conferred the right to speak Māori in certain legal proceedings, and to establish Te Taura Whiri i te Reo Māori and define its functions and powers.

### Imperial Laws Application Act 1988

The Act sought to clarify which aspects of British statute and common law were to be part of New Zealand law as well. Amongst other laws, it incorporated the Bill of Rights 1689, the preamble and chapter 29 of Magna Carta 1297, the Act of Settlement 1701, and the Habeas Corpus Acts of 1640, 1679 and 1816.

### Treaty of Waitangi (State Enterprises) Act 1988

Arising out of the Court of Appeal decision in the Lands Case, amendments to the powers and functions of the Waitangi Tribunal were made through the Treaty of Waitangi (State Enterprises) Act 1988. This legislation amended the Treaty of Waitangi Act 1975 and the State-owned Enterprises Act 1986. The amendments increased the Tribunal's membership to 17 and gave it binding powers to recommend that land transferred to state-owned enterprises should be transferred back to Māori.[262]

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[258] Janine Hayward, 'Principles of the Treaty of Waitangi – Ngā mātāpono o te tiriti – Treaty Principles Developed by Courts', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/principles-of-the-treaty-of-waitangi-nga-matapono-o-te-tiriti/page-2).

[259] Janine Hayward, 'Appendix: The Principles of the Treaty of Waitangi' in the Waitangi Tribunal *Rangahaua Whanui National Overview Report* (Wellington, NZ: GP Publications, 1997) p 477 (http://www.teara.govt.nz/en/principles-of-the-treaty-of-waitangi-nga-matapono-o-te-tiriti/page-2).

[260] John McSoriley, 'The New Zealand Constitution', *Parliamentary Library,* 15 February 2000 (updated 3 October 2005) p 5.

[261] Janine Hayward, 'Principles of the Treaty of Waitangi – ngā mātāpono o te tiriti – Treaty Principles Developed by Courts'; Janine Hayward (1997) pp 477-479.

[262] Nicola Rowan Wheen, Janine Hayward & Michael Belgrave, *Treaty of Waitangi Settlements* (Wellington, NZ: Bridget Williams Books, 2012) p 257.

### Regulations (Disallowance) Act 1989

Before widespread reforms in the 1980s substantial amounts of policy and law-making were found in regulations rather than statutes. Regulations are authorised by Acts of Parliament, but are made by the Governor-General in Council based on advice from Ministers of the Crown.[263] Although regulations are generally thought desirable only for minor or technical legislative needs, successive governments had used them to achieve more substantive changes.

In response to this problem the Act was passed, allowing complaints about delegated legislation to be made to Parliament's Regulations Review Committee.[264] This committee scrutinises all regulations, investigates complaints about regulations, and examines proposed regulation-making powers in Bills to ensure that the delegated law-making powers are being used appropriately.[265]

### New Zealand Bill of Rights Act 1990

Although the idea of a Bill of Rights Act for New Zealand had been around for some time it was not until 1990 that the legislation was finally passed, although in a different form than previously proposed. Sir Geoffrey Palmer's 1985 *White Paper: A Bill of Rights for New Zealand* had proposed that the Act would require a 75% majority in Parliament or a 50% majority in a referendum to amend its provisions, incorporate the Treaty of Waitangi, and that the Judiciary would be able to invalidate laws that were contrary to the rights contained in the Bill. These changes were considered too far-reaching at the time and the Act that was eventually passed had none of the features listed above.

The Act sets out New Zealanders' fundamental rights and freedoms. It contains important rules about the relationship between the state and the people in this country. It helps us to know what our rights are and to decide whether the state has protected them properly. We can go to court if we think the Government has acted contrary to our rights set out in the Act. Parliament has to think about our rights in the Act when it makes new laws.

### Referendum on the term of Parliament (1990)

As in 1967, legislation was passed in 1990 setting up a referendum on the length of the parliamentary term. Like the 1967 referendum, it was non-binding and offered voters a choice as to whether they preferred the status quo of a three-year term or the longer four-year term. In a turnout of 85.2% of voters, 69.3% voted to retain the three-year term, while 30.7% voted for an extension to four years.[266] As a result, no changes were implemented.

### Resource Management Act 1991

The Resource Management Act 1991 is the main piece of legislation governing the management of the environment and natural resources In New Zealand.[267] The Bill was originally introduced to Parliament in late 1989 and was considered by a select committee for eight months before it was reported back and was referred to a review group in November 1990. The group was asked to make

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263 Geoffrey Palmer, 'Law – Legal Review', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/law/page-10).

264 E.M. Thomas, ''Tinkering in the Constitutional Shed': The Regulatory Standards Bill and Legislative Quality in New Zealand' (http://www.otago.ac.nz/law/research/journals/otago036335.pdf) p 5.

265 New Zealand Parliament, 'The Role of the Regulations Review Committee' (http://www.parliament.nz/en-NZ/Features/a/8/0/00NZPHomeNews201204161-The-role-of-the-Regulations-Review-Committee.htm).

266 Electoral Commission New Zealand, 'Referenda'.

267 Ministry of Business, Innovation & Employment, 'The Role of the Resource Management Act' (http://www.med.govt.nz/sectors-industries/energy/energy-environment/the-role-of-the-resource-management-act).

recommendations to secure clarity on the Act's effect while retaining a commitment to participation and the principle of sustainable management. After consultation, the group reported back with proposed amendments in February 1991.[268]

### Electoral Act 1993

The Act sets out the rules for free and democratic elections in New Zealand.[269] It replaced the Electoral Act 1956 after the results of the constitutional referendum in 1993 which endorsed a change in the electoral system. As a result Parliament became larger (increasing from 99 MPs to 120). It also introduced the MMP voting system where parties' shares of seats in Parliament would reflect their share of the nation-wide vote.

### Citizens Initiated Referenda Act 1993

Brought in as part of a wide range of reforms in the early 1990s, The Act encourages the use of referenda as a means of promoting direct participatory democracy.[270] The Act obliges the Government to hold a referendum on an issue if a petition proposing the referendum has gained the support of 10% of the electorate. Unlike those in some countries, citizens initiated referenda are indicative rather than binding, meaning that the Government of the day does not necessarily have to act upon the results of any given referendum.

### Human Rights Act 1993

The Act consolidated and amended the provisions of the Race Relations Act 1971 and the Human Rights Commission Act 1993.[271] As with those Acts its focus was mainly on the prohibition of discrimination, including the addition of new grounds of prohibited discrimination.

Under the Act, it is unlawful to discriminate on the grounds of gender, religious belief, race, ethnicity or nationality, disability, age, political opinion, employment status, marital status, family status and sexual orientation.[272] Exceptions are available in certain circumstances, such as the exemption from employment discrimination where a position may be available in an organised religion or work involving national security.

Like the Bill of Rights Act 1990, the Human Rights Act 1993 is not supreme law and cannot be used to strike down legislation. The Human Rights Review Tribunal can, however, issue declarations of inconsistency between the Act and other legislation.

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[268] Janet McLean, 'New Zealand's Resource Management Act 1991: Process With Purpose?', *Otago Law Review,* Vol. 7, No. 4, p 538.

[269] Ministry of Justice, 'Constitutional Policy and Human Rights' (http://www.justice.govt.nz/policy/constitutional-law-and-human-rights).

[270] Joseph (2007) pp 24-25.

[271] State Services Commission, 'Human Rights Act 1993' (http://www.ssc.govt.nz/node/8518).

[272] Ibid.

### Privacy Act 1993

The Act controls how agencies collect, use, disclose, store and give access to personal information.[273] It applies only to the personal information of identifiable individuals, not to companies or organisations.[274] There are 12 privacy principles which form the core of the Privacy Act 1993 which include collection of personal information, storage and security of personal information, requests for access to personal information, accuracy of personal information, retention of personal information, and the use and disclosure of personal information.[275] When it was enacted, the Privacy Act 1993 replaced the parts of the Official Information Act 1982 that dealt with access to personal information with a comprehensive regime for access to such information across the public and private sectors.[276]

### Simpson v Attorney-General [1994] 3 NZLR 667

Also known as Baigent's Case, *Simpson v Attorney-General* was a significant case where the Court of Appeal held that effective and appropriate remedies are available for breaches of the Bill of Rights Act 1990.[277] The plaintiffs sought damages arising out of the obtaining and execution of a search warrant in respect of their residence which was based on incorrect information.[278] Despite no express provision in the Bill of Rights Act 1990 for compensation, the majority of the Court of Appeal held that the Crown was liable for the conduct of the Police and that the breach entitled the plaintiffs to claim for damages.[279]

### First general election under MMP (1996)

The Electoral Act 1993 changed the voting system following referenda in 1992 and 1993 where New Zealanders voted for the introduction of a new electoral system, and specifically for MMP.[280] The first general election under MMP was held on 12 October 1996. Until 1996, parliamentary representation was determined by the FPP system where all MPs were elected from particular electorates. MMP entitles voters enrolled in a general or a Māori electorate to each cast two votes: one for an electorate MP and the other for a political party.

Under MMP, the proportionality of Parliament has increased, meaning that a much more diverse range of MPs exists from across gender and ethnic spectrums. They have also increased the frequency of minority governments, where no one political party has won an outright majority in Parliament. This has meant that every government since 1996 has been comprised of parties in coalition with each other, albeit in different forms, which has changed the nature of decision-making.

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273 Office of the Privacy Commissioner, 'Privacy Act & Codes: Introduction' (http://privacy.org.nz/the-privacy-act-and-codes/privacy-act-and-codes-introduction/).

274 Keeping It Legal, 'Privacy' (http://keepingitlegal.net.nz/learn-more/privacy/).

275 Office of the Privacy Commissioner, 'Privacy Act & Codes: Introduction'.

276 Nicola White, 'Freedom of Official Information – The Official Information Act in Operation'.

277 Ministry of Justice, 'The Guidelines on the New Zealand Bill of Rights Act 1990: A Guide to the Rights and Freedoms in the Bill of Rights Act for the Public Sector: Part IV Remedies Under the Bill of Rights Act', November 2004, (http://www.justice.govt.nz/publications/global-publications/t/the-guidelines-on-the-new-zealand-bill-of-rights-act-1990-a-guide-to-the-rights-and-freedoms-in-the-bill-of-rights-act-for-the-public-sector/part-iv-remedies-under-the-bill-of-rights-act).

278 Petra Butler, '15 Years of the Bill of Rights: Time to Celebrate, Time to Reflect, Time to Work Harder?', *Victoria University Human Rights Research,* 2006, p 7 (http://www.victoria.ac.nz/law/centres/nzcpl/publications/human-rights-research-journal/publications/vol-4/Butler.pdf).

279 New Zealand Law Commission, 'Crown Liability and Judicial Immunity: A Response to Baigent's Case and Harvey v Derrick' *Report* 37, 1997, p 4. (http://www.lawcom.govt.nz/sites/default/files/publications/1997/05/Publication_40_104_R37.pdf).

280 John Wilson, 'Nation and Government – The Electoral System', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/nation-and-government/page-5).

Single parties can no longer decide on their own what laws are to be passed. They have to negotiate and build support amongst their coalition partners, or even parties in opposition, meaning that laws require more consensus.

### Referendum on the size of Parliament (1999)

Two referenda were held in conjunction with the 1999 general election. One concerned reform of the justice system to focus more closely on victims and the other asked whether the number of MPs should be reduced from 120 to 99. The turnout was 84.8%, with a result of 81.5% in favour of the reduction and 18.5% against.[281] Because the referendum was indicative the results were not binding and the size of Parliament remained unchanged.

### Local Electoral Act 2001

The purpose of the Act is to modernise the law governing the conduct of local elections and polls, and it was partly designed to give 'fair and effective representation for individuals and communities.'[282] The Act extended the Bay of Plenty model, which guaranteed a minimum number of Māori Councillors to represent Māori views on the Council.[283] The Local Electoral Act 2001 provides opportunities to increase Māori participation in local government decision-making through the creation of Māori wards and an option to adopt single transferable voting.

### Electoral (Integrity) Amendment Act 2001

Following the first MMP election, a number of list and electorate MPs left their parties, but remained as MPs. These actions, known colloquially as waka-jumping or party-hopping, were seen by some people as bringing Parliament into disrepute and undermining the proportionality voted for at the general election. In response the Electoral (Integrity) Amendment Act 2001 was enacted which enabled the Speaker to declare vacant the seat of an MP:

- who has notified the Speaker that he or she has ceased to be a member of the political party that he or she stood for at the last election, or
- if a leader of a parliamentary party gives written notice to the Speaker that they reasonably believed that the member has acted in a manner that distorts the proportionality of representation in Parliament as determined in the preceding general election.

The legislation does not directly affect MPs' ability to cross the floor to vote with another party on particular issues, although political party rules may provide that an MP who does so can be expelled from his or her party.

The Act had a sunset clause in recognition of the German experience which suggested defections would decline substantially as MMP became established. The Electoral (Integrity) Amendment Bill 2005 proposed to reinstate the Act following its expiry in 2005. The Bill was not passed, following the Justice and Electoral Committee's recommendation it not proceed.

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281 Electoral Commission New Zealand, 'Referenda'.

282 One of the principles the Act is designed to implement: see Local Electoral Act 2001, s. 4.

283 Bay of Plenty Regional (Māori Constituency Empowering) Act 2001.

### MMP Review Select Committee (2001)

The Electoral Act 1993 had made provision for a parliamentary select committee review to report on MMP before 1 June 2002. The cross-party committee decided to operate on a unanimity, or near unanimity, basis.[284] They were able to reach such consensus on a number of issues which would maintain the status quo. There were, however, a range of issues the committee could not reach agreement on. These included the retention of MMP, the number of MPs, whether there should be another referendum to decide if we keep this electoral system, whether the Māori seats should be abolished, retained, or entrenched, reducing the party vote threshold for parliamentary representation, and the one-seat threshold. The Government response noted the difficulty in gaining consensus, and noted that without this it would not progress any changes.[285]

### Local Government Act 2002

The Act replaced the Local Electoral Act 1974. The decision to review local government legislation was made in May 2000 following election promises by the Labour party to modernise local government legislation.[286] The review led to the introduction of the Local Government Bill on 18 December 2001.[287] The proposed legislation reflected a growing focus on relationships and networks between local government, central government and the public.[288]

The Act sets out the purpose of local government and the role, powers and principles that local authorities 'must' and 'should' comply with, including providing opportunities for Māori to contribute to its decision-making processes.[289] The Act also requires local government to establish and maintain processes to provide opportunities for Māori to contribute to decision-making, to consider ways it may foster the development of Māori capacity to contribute to decision-making,[290] and to be properly consulted.[291]

### Supreme Court Act 2003

This legislation removed the British Privy Council as the final court of appeal for New Zealand and replaced it with a Supreme Court located in Wellington. The idea was to make the final level of appeal more accessible to New Zealanders and to show that New Zealand would have a judicial system fully independent of Britain.[292]

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284 Elizabeth McLeay, 'Building the Constitution: Debates; Assumptions; Developments 2000-2010' in Caroline Morris, Jonathan Boston & Petra Butler (eds.) *Reconstituting the Constitution* (London, UK: Springer, 2011) p 21.

285 New Zealand Government, 'Government Response to Report of MMP Review Committee on Inquiry into the Review of MMP November 2001' (http://www.justice.govt.nz/publications/publications-archived/2001/government-response-to-report-of-mmp-review-committee-on-inquiry-into-the-review-of-mmp-november-2001/recommendations-and-government-response).

286 Department of Internal Affairs, 'Hon. Chris Carter – Local Government Bill: Third Reading Speech', 20 December 2002 (http://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Legislative-Reviews-Local-Government-Act-Review-Local-Government-Bill-Third-Reading-Speech?OpenDocument).

287 Department of Internal Affairs, 'Local Government Act 2002' (http://www.dia.govt.nz/DIAWebsite.nsf/wpg_URL/Legislative-Reviews-Local-Government-Act-Review-Index?OpenDocument).

288 Andy Asquith, 'The Role, Scope and Scale of Local Government in New Zealand: Its Prospective Future', *Australian Journal of Public Administration,* Vol. 71, No. 1, p 77.

289 Local Government Act 2002, s. 14.

290 Ibid, s. 81

291 Ibid, s. 82

292 Hon. Dame Silvia Cartwright, 'Our Constitutional Journey', *Speech to the Legal Research Foundation, Auckland,* 9 May 2006 (http://gg.govt.nz/node/574).

A discussion document issued in 2000 led to two years of public consultation and policy development, culminating in the introduction of the Supreme Court Bill in 2003.[293] The discussion document prompted approximately 70 submissions, which were evenly divided between support and opposition to the proposal to end appeal rights to the Privy Council.[294]

Passing the Supreme Court Act 2003 meant that no appeal could be made to the Judicial Committee of the Privy Council on any civil or criminal decision made after the Act's passage. By creating a locally operated two-tier appellate system, the Act also brought New Zealand into line with comparable Commonwealth nations. The new Supreme Court began its formal operations from the 1 January 2004.

### Crown Entities Act 2004

Crown entities are the most numerous types of central government organisations and are typically created through a specific Act of Parliament. By the late 1990s concerns emerged that fragmentation of the public sector was making co-ordination difficult.[295] Reform of Crown entities was seen as a positive step to improving co-ordination and consistency of objectives across the public sector.[296]

The Crown Entities Act 2004 was enacted to provide a consistent framework for the establishment, governance and operation of Crown entities as well as to clarify the relationships between Crown entities, their board members, responsible Ministers and Parliament.[297] Section 7 outlines the five different types of Crown entity and establishes a different governance framework for each type. Differences in Crown entities usually involve the appointment and removal of board members, and whether the entity is required to *have regard* or *give effect* to government policy. Crown entities must produce statements of intent that set out their goals and funding, which are agreed with the responsible minister at the start of each financial year. Each Crown entity reports on their achievements to Parliament in their annual report.[298]

### Constitution Amendment Act 2005

In 2003 the Standing Orders Committee had made a range of recommendations related to the business of the House of Representatives. Two of these uncontroversial, but fairly significant, recommendations were implemented through the Constitution Amendment Act 2005.[299] It was passed as part of a Statutes Amendment Bill which made textual amendments to 20 Acts of Parliament.

The first of these changes altered the rules about parliamentary business (mainly Bills and petitions) lapsing between sessions of Parliament and for when it dissolves preceding a general election. It clarified that business before the House did not lapse between sessions of a Parliament, but that it did lapse upon its dissolution. However, the legislation provided for the House to reinstate the business by resolution when it next convened.

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[293] Advisory Group, 'Replacing the Privy Council: A New Supreme Court: Report' (Wellington, NZ: Office of the Attorney-General, 2002).

[294] Ibid, p 14

[295] Review of the Centre Advisory Group, 'Report of the Advisory Group on the Review of the Centre', November 2001, p 5.

[296] Ibid, pp 5-6.

[297] State Services Commission, 'Crown Entities Act 2004 and Amendment Act 2013' (http://www.ssc.govt.nz/node/8517).

[298] Rob Laking, 'Crown Entities – How Are Crown Entities Governed?', *Te Ara – The Encyclopedia of New Zealand* (http://www.teara.govt.nz/en/crown-entities/page-3).

[299] Morris, Boston & Butler (2011) p 21.

The second of the changes related to the 'financial veto' of the Crown.[300] Section 21 of the Constitution Act 1986 provided that the 'House of Representatives shall not pass any Bill providing for the appropriation of public money or for the imposition of any charge upon the public revenue … unless it had been recommended by the Crown.'[301] This effectively meant that the Executive could veto any expenditure that Parliament voted for if it did not support the measure. The Constitution Amendment Act 2005 repealed section 21 and the financial veto is now governed under Standing Orders.[302]

### Report of the Constitutional Arrangements Committee (2005)

In 2004 a committee was established to undertake a review of New Zealand's constitutional arrangements. Its main focus was on the constitutional developments since 1840, the key elements in the constitutional arrangements, the process other countries had followed in undertaking constitutional reviews, and what an appropriate process for any constitutional change in New Zealand would look like.[303]

The committee was made up of seven members from different political parties, with United Future Leader Peter Dunne as the chairperson. In 2005 it released a report documenting its findings on its terms of reference. Its main findings included the importance of the social acceptance of constitutional arrangements, the need for understanding of what elements are indeed constitutional, and for increased public understanding of the current arrangements through greater capacity for paying attention to constitutional issues. Another major conclusion was that 'New Zealand's constitution is not in crisis', which meant that although there were isolated issues there was no clamour for major change.

### Regulatory Responsibility Bill 2007

In 2007 a private member's Bill in the name of ACT Leader Rodney Hide was drawn from the ballot and was sent to the Commerce Select Committee for consideration. The purpose of the Bill was to improve statutes and regulations in New Zealand by specifying principles of responsible regulatory management and by applying reporting requirements to the Crown with respect to these. It focused in particular on the taking of people's property or impairment of their common law rights without due reason.[304] The committee recommended that an expert taskforce be established to 'consider options for improving regulatory review and decision-making processes, including legislative and Standing Orders options, but not limited to the options that were placed before us.'[305]

### New Zealand endorses Declaration on the Rights of Indigenous Peoples (2010)

The United Nations General Assembly adopted the Declaration on the Rights of Indigenous Peoples in September 2007.[306] It sets out a framework of minimum standards for the survival, dignity, well-being and rights of the world's indigenous peoples.[307] New Zealand had originally voted against

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[300] Ibid, p 21.

[301] New Zealand Constitution Act 1986, s. 21 (repealed) (http://www.nzlii.org/nz/legis/hist_act/ca19861986n114215/).

[302] Constitution Amendment Act 2005, s. 5.

[303] Constitutional Arrangements Committee (2005) p 6.

[304] Report of the Commerce Committee, 'Regulatory Responsibility Bill', *New Zealand House of Representatives,* 2008, p 2.

[305] Ibid, p 3.

[306] Human Rights Commission, 'United Nations Declaration on the Rights of Indigenous Peoples' (http://www.hrc.co.nz/human-rights-and-the-treaty-of-waitangi/united-nations-declaration-on-the-rights-of-indigenous-peoples).

[307] Ibid.

supporting the Declaration, but in 2010 made a statement of support. The Government expressed that New Zealand had developed a distinct range of approaches to recognising indigenous rights that would inform this country's engagement with the aspirational elements of the Declaration.[308]

### Head of State Referenda Bill 2010

Green MP Keith Locke entered a private member's Bill into the ballot where it sat for seven years until it was drawn in 2010. It provided for a process of two referenda, with the second dependent on the result of the first.[309] In the first ballot, New Zealanders would choose between three options: the present system, with the monarch remaining as our Head of State; a New Zealand Head of State determined by a 75% majority vote in Parliament; or a New Zealand Head of State directly elected by the people via the single transferable vote preferential system, where the successful candidate would be the first to reach 50% of the votes as the preferences are distributed.

Had a majority of voters in referenda voted to retain the status quo, no further referenda would have taken place. If it did not secure a majority, it would have triggered a second referendum between the two most popular options. This was the first time that Parliament had considered legislation which would have fundamentally altered the status of the constitutional monarchy in New Zealand. The Bill did not progress to select committee, with 53 votes in favour and 68 opposed to its progression.[310]

### Review of Standing Orders (2011)

On 5 October 2011 the House of Representatives agreed a motion adopting a series of significant reforms to the Standing Orders of the House of Representatives. These reforms emerged from the regular review conducted by the Standing Orders Committee. During its review, the committee received a number of submissions from MPs, political parties, select committees, organisations and members of the public.

Some of the major themes guiding the reforms were methods to allow an increase in House time without requiring urgency, improving the procedures for scrutinising legislation, making more efficient use of sitting hours, and principles of openness, transparency, accessibility and public participation in the House's work.[311]

The main recommendations of the Standing Orders Committee were the extension of potential sitting hours that did not require urgency, the requirement that a Minister moving urgency state why it was necessary, making instructions to select committees debatable if they shorten the time for a committee to consider a Bill to four months or less, allowing MPs an opportunity to promote and gain support for their member's Bills, and updating several other elements of the parliamentary process.[312]

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[308] Hon Dr Pita Sharples, 'Statement by Hon Dr Pita Sharples, Minister of Maori Affairs, 19 April 2010', *Ninth Session of the United Nations Permanent Forum on Indigenous Issues, 19-30 April 2010* (http://www.mfat.govt.nz/Media-and-publications/Media/MFAT-speeches/2010/0-19-April-2010.php).

[309] Head of State Referenda Bill, Explanatory Note (http://www.legislation.govt.nz/bill/member/2009/0092/5.0/DLM2456310.html).

[310] House of Representatives, 'Head of State Referenda Bill – First Reading', *Parliamentary Debates (Hansard),* Vol. 662, p 10373 (http://www.parliament.nz/mi-NZ/PB/Debates/Debates/0/1/7/49HansD_20100421_00001343-Head-of-State-Referenda-Bill-First-Reading.htm).

[311] Standing Orders Committee, 'Review of Standing Orders: Report of the Standing Orders Committee', *Presented to the House of Representatives,* Forty-ninth Parliament, September 2011, p 8.

[312] Ibid.

### Wai 262: Ko Aotearoa Tēnei (2011)

Ko Aotearoa Tēnei was the Tribunal's first whole-of-government inquiry.[313] Originally lodged on 9 October 1991, the Tribunal's report was released on 2 July 2011 following an extremely broad and complex inquiry in an ever-changing political and legal environment.[314] The report concluded by saying that it 'is time to move forward. As a nation we should shift our view of the Treaty from that of a breached contract, which can be repaired in the moment, to that of an exchange of solemn promises made about our ongoing relationships.'[315]

Some of the Tribunal's recommendations included: the establishment of new partnership bodies in education, conservation, and culture and heritage; a new commission to protect Māori cultural works; improved support for te reo Māori alongside other aspects of Māori culture and traditional knowledge; and amendments to laws covering Māori language, resource management, wildlife, conservation, cultural artefacts, environmental protection, patents and plant varieties, and more.[316]

### Referendum on the Voting System (2011)

The Electoral Referendum Act 2010 was passed unanimously by Parliament, legislating that there would be an indicative (non-binding) referendum on New Zealand's voting system to coincide with the 2011 general election. In the referendum, New Zealanders were asked whether they wanted to keep MMP and, second, if the system did change which system they would prefer. In Part A, 56.17% of voters chose to keep MMP, while 41.06% of voters wanted to change the voting system. In Part B, more voters chose FPP than the other voting systems. Because over half of voters opted to keep MMP, there was an independent review of MMP in 2012 to recommend any changes that should be made to the way it works. The Electoral Commission conducted the review, which included public consultation.[317]

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313 The Waitangi Tribunal, *Ko Aotearoa Tēnei: A Report into Claims Concerning New Zealand Law and Policy Affecting Māori Culture and Identity* (Wellington, NZ: Legislation Direct, 2011) p 18.

314 The Waitangi Tribunal, 'Time to Move Beyond Grievance in Treaty Relationship, Tribunal Says', 2 July 2011 (http://www.waitangi-tribunal.govt.nz/news/media/wai262.asp).

315 The Waitangi Tribunal (2011) p 247.

316 Ibid, pp 56-57.

317 Electoral Commission New Zealand, 'About the 2011 Referendum on the Voting System' (http://www.elections.org.nz/events/past-events-0/2011-referendum-voting-system/about-2011-referendum-voting-system).

## OVERSEAS

The international experience has often differed from New Zealand's. Sweeping constitutional changes have occurred in a way that this country simply has not experienced in its relatively short history.

In the last few decades all countries have modified their constitution in some way, shape, or form. In that same time, countries from every continent have substantially altered or reframed their constitutional arrangements.[318] Some regions have experienced this more than others. Over the last two decades, for example, Latin America has seen almost every country adopt new constitutions or significantly alter existing arrangements.[319]

Research done on the endurance of constitutions has found the median lifespan of constitutions from all countries to be only 19 years.[320] Substantial outliers exist on either side of this margin. The Constitution of the United States of America has the longest life of all current national constitutions, having lasted since 1787. France, meanwhile, has had 14 constitutions since their first one in 1791.[321] Others have had even more regular comprehensive constitutional revisions or upheavals.

It is therefore possible to view New Zealand's 'pragmatic evolution' as more similar to the overall experience of constitutional change than might immediately be thought. But the constitutionally established mechanisms for change are more carefully delineated.

Much of the difference between New Zealand and the rest of the world stems from this country's lack of entrenched or supreme law. By 2011, 83% of countries had empowered their courts to scrutinise the implementation of the constitution and to strike down legislation that was inconsistent with it.[322] Many countries also define the procedures for constitutional amendment and may require specific procedures to alter their constitutional arrangements.

The summaries below outline a selection of constitutions from overseas. They include details on why the constitution was developed, how it was developed, and significant changes or amendments to it. Because of the written nature of most of the constitutions under discussion, less attention has been paid to the development of constitutional principles and conventions in these overseas examples. This is not to deny the role that these forces play. For example, the constitutional arrangements in the United States are not limited to 'the constitution', as statutes are developed and interpreted within their institutional structures.

The examples below seek to draw out the nature of constitutional dialogue in a select range of other countries.

### Australia

On 6 February 1890 representatives from each of Australia's colonial parliaments (New South Wales, Victoria, Tasmania, South Australia, Queensland and Western Australia), as well as delegates from New Zealand, gathered at the Australasian Federation Conference in Melbourne.[323] There they

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318 Nora Hedling, 'A Practical Guide to Constitution Building: Principles and Cross-cutting Themes', p v.

319 Schilling-Vacaflor (2011) p 3.

320 Tom Ginsburg, James Melton & Zachary Elkins, 'The Endurance of National Constitutions', *John M. Olin Law & Economics Working Paper No. 511 (2nd Series),* 2010, p 2.

321 Ibid, p 1.

322 Ibid, p 2.

323 Parliamentary Education Office, 'Closer Look: A Short History of Parliament' (http://www.peo.gov.au/students/cl/shorthistory_colonial-parliaments-australia.html); http://www.peo.gov.au/students/cl/federation_federation_conventions.html).

resolved to hold a national convention to draft a constitution to unite them, as separates states, as the Commonwealth of Australia.[324] Representatives of all those parliaments gathered again in March and April of 1891, spending five weeks discussing and drafting a constitution.[325] They then took the document back to their respective parliaments for consideration, where progress stalled largely due to economic depression.[326]

Over the next few years the federation movement managed to secure renewed momentum for the creation of the Commonwealth of Australia, specifically through instigating a second convention for 1897. Neither New Zealand nor Queensland was represented at the 1897 convention, the latter having failed to pass enabling legislation. Delegates were popularly elected and seen as possessing the sufficient legitimacy to draft a constitution for Australia. Their draft was considered by all of Australia's colonial parliaments, and was amended at further sessions of the convention in September 1897 and January 1898. The last session between 20 January 1898 and 17 March 1898 produced the version that the convention adopted.[327]

After the convention, a series of referenda were held by some of the colonial parliaments. New South Wales' referendum failed to gain a majority of voters and the six colonies met again in Melbourne to make amendments to the proposed legislation in January 1899. Following these changes, referenda were held in five states and secured majorities in all by September. Western Australia did not hold its referendum until 31 July 1900 where its voters would also approve the constitution.[328]

The Commonwealth of Australia Constitution Act 1900 was passed by the British House of Commons and the House of Lords, and received the Royal Assent on 9 July 1900. Amending legislation passed in August 1900 allowed Western Australia to be included as an original state despite its initial delay. Queen Victoria further signed a proclamation that would establish the Commonwealth of Australia as of 1 January 1901.[329]

The Commonwealth of Australia Constitution Act 1900 is the supreme law of the Federation of Australia and can only be amended through a public referendum. The first three chapters of the Act set out that Australia is a constitutional monarchy and details the role and structure of the two Houses of Parliament, the Executive and the courts. Later chapters detail the role of and interaction between the different states, for instance, that trade commerce, and intercourse among the states shall be absolutely free and all citizens have the right to freedom of religion. Chapter Six allows for the admission of new states into the Commonwealth of Australia, although this has never been used. The constitution sets out a very limited number of rights such as a right to compensation in the compulsory acquisition of property, a guarantee of trial by jury on indictment, a right to vote, and a prohibition on the establishment of a national religion. These provisions affect the Commonwealth Parliament, but do not affect state legislatures, meaning that there is no Australia-wide Bill of Rights.

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[324] Parliamentary Education Office, 'Closer Look: Federation' (http://www.peo.gov.au/students/cl/federation_federation_conventions.html).

[325] Ibid.

[326] Ibid.

[327] Chief Justice Robert French, 'Liberty and Law in Australia', *School of Law, Washington University, St Louis, USA*, 14 January 2011, p 6.

[328] Ibid, p 7.

[329] Ibid, pp 7-8.

In 1991 a Constitutional Centenary Conference was held to acknowledge the passing of 100 years since the National Australasian Convention of 1891 where the first draft of the Australian constitution was agreed to. One of the major outcomes of the conference was the establishment of the Constitutional Centenary Foundation, a body which was given the task of facilitating a public process of education, review and development of the Australian constitution. Throughout the centenary decade, the Foundation collected and distributed information about the constitution, arranged and participated in meetings across the country, and supported the work of other groups undertaking similar tasks.

Between 2 and 13 February 1998, a constitutional convention was held to discuss whether or not Australia should become a republic with 152 delegates from around the country. After the deliberations the convention voted 89:52 in favour of the proposition 'that this Convention supports in principle Australia becoming a republic.' The Australian public voted against the republican proposal in a referendum in 1999. In 2000 the Constitutional Centenary Foundation released *A Report on a Decade of Experience 1991-2000*.

Over several decades Aboriginal and Torres Strait Islander leaders have called for constitutional recognition. Holding a referendum on this issue has gradually become a common policy platform amongst the major parties. In 2010 the Prime Minister Julia Gillard formed a government with promises to hold a referendum on the matter before the 2013 election. An expert panel was appointed to advise on the process. Throughout 2011 they conducted a wide-ranging national consultation and engagement programme and reported back to the Government in 2012.

Later in 2012 the Labor Government delayed the referendum due to a low level of public awareness and proposed an Act of Recognition to Parliament, with a sunset clause of two years so that there would be a call to action within that time. Meanwhile, a grassroots movement has continued to call for the constitutional recognition of indigenous people through a referendum.

### Bolivia

During the 1990s, Bolivia saw an increase in the scale and influence of the indigenous movement for social change to address longstanding issues of exclusion and inequality in the country.[330] In 2005, President Evo Morales and the Movement Toward Socialism won the national elections having promised constitutional change to address many of the social challenges.

In 2006 members of the public elected a Constituent Assembly, which was responsible for producing a draft constitution. The Assembly encouraged participation, set up special committees to collect public input, and created a website where those with internet access could go to read about the history and purpose of the review. The constitution that emerged from this process showed a particular focus on indigenous rights, the responsibilities of the state, sovereignty over resources, workers' rights, environmental rights and gender rights. It was affirmed in a national referendum on 25 January 2009, with 61.43% of registered voters in favour.

Bolivia's 2009 constitution, enacted after a prolonged push for constitutional change, is the highest law of the land. Amendments can only be made through a referendum on a particular issue, or through a referendum which establishes a Constituent Assembly where the proposed changes affect the fundamental principles of the constitution. The preamble emphasises the centrality of Bolivia's indigenous culture.

Two changes of substantial note have taken place since Bolivia's new constitution was enacted.

[330] ConstitutionNet, 'Constitutional History of Bolivia' (http://www.constitutionnet.org/country/constitutional-history-bolivia).

The first came about in 2010 when the Bolivian National Congress passed legislation creating an independent justice system for indigenous communities.[331] The second significant amendment was a successful 2013 law change enabling current President Evo Morales to run for re-election in the elections scheduled for December 2014.[332] In 2013 Bolivia's Constitutional Tribunal ruled the two-term limit for presidents was not retroactive, meaning that Morales' term before the passage of the new constitution did not count for the purposes of the term limit.

### Canada

The British North America Act 1867 (UK) united the British colonies of North America into one Dominion with responsible self-government. This legislation followed decades of political tension, including rebellions in 1837 and 1838, and increased calls from the 1850s onwards for a federal union of British colonies in North America.[333] In 1864 the Charlottetown Conference and Quebec Conference both produced resolutions that would set out the basis for the 1867 Act.

In 1967, one of Canada's constitutional scholars argued that there was a need to patriate the Canadian constitution to give the country full control over its own law-making abilities.[334] The Constitution Act 1982 was the tool used to bring about this patriation. The Act sets out that the Constitution of Canada is made up of the Canada Act 1982 (including the Constitution Act 1982), legislation referred to in the Constitution Act (including the Constitution Act 1867), and any amendments made to those. In the same section it is explicitly stated that the constitution is the supreme law of the land.

The first 35 sections of the Constitution Act 1982 are known collectively as the Canadian Charter of Rights and Freedoms. The Charter begins with the enumeration of 'Fundamental Rights' which include freedom of conscience, freedom of religion, freedom of expression and freedom of association. It also enumerates the right to vote, to life, liberty and security of person, freedom from cruel and unusual punishment, and the right to be presumed innocent until proven guilty. Later sections detail Canada's federal arrangements and oblige the branches of state, at national and provincial levels alike, to promote equal opportunities for all Canadians, furthering economic development to reduce disparities and providing essential public services.

There are several different procedures for amending the constitution depending on what type of change is proposed. For example, provinces almost always must agree through their legislatures to constitutional change that affects them.

The Canadian constitution has been amended substantively on 10 occasions since 1982. The first amendment came in 1983, adding a provision to the Constitution Act 1982 which committed, but did not require, federal and provincial governments to consult with aboriginal communities on constitutional amendments related to their communities. [335] Further amendments included the

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331 Jurist, 'Bolivia Parliament Advances Indigenous Justice System Bill', 9 June 2010 (http://jurist.org/paperchase/2010/06/bolivia-congress-advances-indigenous-rights-bill.php).

332 Jurist, 'Bolivia Lawmakers Approve President's Third Term', 17 May 2013 (http://jurist.org/paperchase/2013/05/bolivia-lawmakers-approve-presidents-third-term.php).

333 Canada in the Making Project, '1837-1839: Rebellion' (http://www.canadiana.ca/citm/themes/constitution/constitution10_e.html); Canada in the Making Project, '1850-1867: On the Road to Confederation' (http://www.canadiana.ca/citm/themes/constitution/constitution12_e.html).

334 Neil Boyd, 'The Constitution of Canada: The British North America Act, the Constitution Act, and the Future of Federalism' in Neil Boyd (ed, *Canadian Law: An Introduction* (Toronto, Canada: Harcourt Brace & Company Canada Ltd, 1995) p 89.

335 Royal Commission on Aboriginal Peoples, '5 – Constitutional Amendment: The Ultimate Challenge' *Volume 5 - Renewal: A Twenty-Year Commitment*, 1996, p 113 (http://caid.ca/RRCAP5.5.pdf).

addition of a new section entrenching bilingualism in New Brunswick in 1993, the 1991 amendment to the Constitution Act 1867 ensuring the Territory of Nunavut's representation in the Senate and the House of Commons, and the 2001 amendment which changed the name of the 'Province of Newfoundland' to the 'Province of Newfoundland and Labrador'.[336]

Two major attempts to amend the constitution were unsuccessful. The first of these is commonly referred to as the Meech Lake Accord, named for the location at which the negotiations took place. The meeting sought to comprehensively address the question of how to include Quebec fully into the renewed constitutional arrangements of 1982.[337] At a second meeting on 2 and 3 June 1986 the First Ministers of the provinces reached agreement on the Accord. The main provisions of the communiqué announcing the accord included the recognition of Quebec as a 'distinct society' within Canada, greater co-operation between federal government and the provinces over immigration, entrenching the Supreme Court along with greater input from the provinces into its composition, and effectively granting each province a veto over major constitutional change.[338]

The Meech Lake Accord, however, failed when it did not secure the support of the provinces of Manitoba and Newfoundland even though it had been approved twice by the House of Commons and by eight other provincial legislatures.[339] Another attempt in 1992, known as the Charlottetown Accord, was rejected in a Canada-wide referendum[340] but contained a broad set of significant proposals. Some of these included redefining the responsibilities of the federal and provincial governments with regard to a range of industries, a right to compensation for provinces who opted out of constitutional amendments transferring provincial powers to federal government, and creating a social charter to promote a range of social, economic and cultural rights.[341]

### Ecuador

Ecuador had for some time experienced a widespread drive for social change, led in particular by movements in favour of indigenous rights and social justice leading up to their constitutional reforms. President Rafael Correa had campaigned on addressing political, social and economic challenges through constitutional reform, and a 2007 referendum showed that 81.72% of registered voters were in favour of electing a Constituent Assembly to rewrite the constitution.[342]

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336 Parliament of Canada, 'The Constitution Since Patriation: Chronology' (http://www.parl.gc.ca/parlinfo/compilations/constitution/ConstitutionSincePatriation.aspx).

337 Richard Simeon, 'Meech Lake and Shifting Conceptions of Canadian Federalism', *Canadian Public Policy/Analyse de Politiques,* Vol. 14 (Supplement), 1988, p 9.

338 First Ministers' Meeting on the Constitution, 'Meech Lake Communiqué', 30 April 1987 (http://www.originaldocuments.ca/api/pdf/1stMinistersConfMeechCom1987Apr30.pdf); Jenny Higgins, 'Meech Lake' *Newfoundland and Labrador Heritage Web Site* (http://www.heritage.nf.ca/law/wells_gov_meech.html).

339 Peter W. Hogg, 'Formal Amendment of the Constitution of Canada', *Law and Contemporary Problems,* Vol. 55, No. 1, 1992, p 260 (http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4131&context=lcp),

340 Royal Commission on Aboriginal Peoples (1996) p 109.

341 Gerald L. Gall, 'The Charlottetown Accord', *The Canadian Encyclopedia* (http://www.thecanadianencyclopedia.com/articles/the-charlottetown-accord).

342 The Carter Center, 'Report on the National Constituent Assembly of the Republic of Ecuador' No. 1, January 2008 (http://www.cartercenter.org/resources/pdfs/news/peace_publications/americas/English_The_Carter_Center_Report2_Ecuador_Constituent_Assembly_January08.pdf) p 1; The Carter Center, 'Final Report on Ecuador's September 30, 2007, Constituent Assembly Elections', 20 June 2008 (http://www.cartercenter.org/resources/pdfs/peace/americas/Ecuador_Carter_Center_Electoral_Report_FINAL_website.pdf) p 3.

The Constituent Assembly and its various Working Groups made themselves open to dialogue with various social sectors and also showed willingness to modify its proposals based on ongoing public consultations and demonstrations. Part-way through January 2008 the Assembly had already heard from around 6,000 individuals as well as over 500 organisations, groups and government authorities.[343]

One of the constitution's most publicised features was that it was the first constitution to create legally enforceable rights of nature.[344] There are also provisions relating to the right to food and restrictions on international investment. It also created two new branches of state, an Electoral Branch and a Transparency and Citizen Monitoring Branch, in addition to the pre-existing Executive, Legislative and Judicial branches. In a 2008 referendum 64% of voters endorsed the proposed constitution and it was subsequently enacted.

Ecuador's constitution was approved in 2008 by 64% of voters in a referendum. The constitution is supreme law, with the Constitutional Court having the power to strike down laws or state action that are inconsistent with the principles of the constitution. There are three different amendment procedures, all of which include a public referendum.

### France

The Constitution of the Fifth Republic of France was enacted following a public referendum on the text drafted by Michel Debré, who would become the first Prime Minister of the Fifth Republic, and designed by the President Charles de Gaulle.

Prior to 1971 the Constitution was not considered supreme law. However, in a significant decision in 1971 the Constitutional Council, using the references and wording within the Preamble as justification, effectively turned the constitution into higher law that legislation could be reviewed against. Amending the constitution requires special processes which differ depending on the scale of change. Super-majorities in one or both Houses of Parliament and the use of referenda are part of these rules. France's republican form of government cannot be amended under the constitution.

In the rest of the constitution the structure of Parliament, the Executive and the Courts are laid out, rights to universal, secret and free voting are established, and government is declared to be of the people, by the people and for the people. There are also provisions which set out France's relationship with the European Union and rules around the incorporation and supremacy of international treaties.

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[343] The Carter Center, 'Report on the National Constituent Assembly of the Republic of Ecuador' No. 2, January 2008 (http://www.cartercenter.org/resources/pdfs/news/peace_publications/americas/English_The_Carter_Center_Report2_Ecuador_Constituent_Assembly_January08.pdf) p 4.

[344] Ibid, p 9.

### Iceland

Iceland had lived under Danish rule since the late 14th century and Norwegian rule for almost a century before that.[345] Independence movements had some success as early as 1809, with a brief period of independence achieved, but would not develop strong support until the 1830s.[346] Denmark's transition to a constitutional monarchy in 1849 sparked a significant and ongoing political dispute between Iceland and Denmark, which led to King Christian IX of Denmark presenting a constitution to Iceland in 1874.[347]

Although this constitution provided the Althingi (Parliament) of Iceland with legislative powers in domestic affairs, the country's struggle for greater self-determination continued.[348] In 1918 Iceland was granted sovereignty and equal status in union with Denmark under the same king, ratified under the Union Act 1918 which was approved by national referendum.[349] The Act also promised negotiations between the countries in 1940 concerning the future of the union. Iceland adopted its own constitution in 1920, which transferred supreme judicial powers and the technical control over foreign affairs to Iceland, moving it further towards independence.

German occupation of Denmark in 1840 severed much contact between the countries and Iceland took over all powers that had previously been exercised on its behalf.[350] It became apparent that the Union Act 1918 was not likely to be renewed and a cautious program of constitutional reform was laid out, mainly focused on amending the 1920 constitution to provide for a president in place of a monarch.[351] These amendments were ratified in a national referendum by approximately 95% of the population with a turnout of over 98% of voters.[352] The new constitution took effect on 17 June 1944.

Iceland suffered a significant collapse of its banking industry at the onset of the global financial crisis, which led in turn to large-scale protests about the country's constitutional arrangements. One of the most common demands was to draft a new constitution.In November 2010 an election was held for a Constitutional Assembly whose appointment was confirmed by the Althingi (Parliament) but a Constitutional Council was introduced instead, following some technical difficulties around the election. Specifically tasked with seeking public input, the Council subscribed itself to popular social media websites Youtube, Flickr, Facebook and Twitter. They used these platforms to post updates, minutes, interviews with Council members and videos of their deliberations.

The draft constitution created by the Council contained several important changes, most of which increased the potential for direct democracy through the use of referenda. It was given general approval by registered voters in a referendum in October 2012, but progress stalled before the April 2013 elections.

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345 Björg Thorarensen, 'Constitutional Reform Process in Iceland: Involving the People in the Process', *Oslo-Rome International Workshop on Democracy,* 2011, p 2.

346 Gunnar Karlsson, 'The Emergence of Nationalism in Iceland' in Sven Tägil (ed.), *Ethnicity and Nation Building in the Nordic World* (Illinois, USA: Southern Illinois University Press, 1995), p 39.

347 Thorarensen (2011) p 2.

348 Ibid.

349 Ibid.

350 Ágúst Þór Árnason, 'Colonial Past and Constitutional Momentum: The Case of Iceland', *Nordicum-Mediterraneuum: Icelandic E-Journal of Nordic and Mediterranean Studies,* Vol. 8, No. 2, 2013 (http://nome.unak.is/nm-marzo-2012/vol-8-no-2-2013/58-conference-paper/425-colonial-past-and-constitutional-momentum-the-case-of-iceland).

351 Ibid.

352 Thorarensen (2011) p 3.

### Israel

Israel does not have a constitution contained within a single document, despite a provision in its Proclamation of Independence that this should have been done by 1948. Instead of developing a comprehensive constitution, Israel's first Prime Minister, David Ben-Gurion proposed that the country enact Basic Laws as consensus was found on specific constitutional areas.[353] This proposal was accepted by the Knesset (Parliament) and the process for Israel's constitutional development to date was established.[354] Some of these Basic Laws are:

- Basic Law: The Knesset (1958) which sets out the role and composition of the Knesset
- Basic Law: The State Economy (1975) which contains rules around taxes and the budget process
- Basic Law: Human Dignity and Liberty (1992) which serves the function of a Bill of Rights containing rights securing life, body and dignity, personal liberty, and the right to privacy.

Although there is no specific legislative provision of the supremacy of these laws, the judicial interpretation has effectively made the Basic Laws supreme, binding the legislative functions of the Knesset.[355] Most laws are simply subject to majority amendment in the Knesset. However, some of Israel's Basic Laws contain entrenched provisions regarding a special majority in the Knesset to amend.[356] For instance, sections 44 and 45 of the Basic Law: The Knesset (1958) require 80 members (two-thirds) of the Knesset to amend. Clauses Five and Six of Basic Law: Jerusalem, Capital of Israel (1980) are also entrenched, but require the passage of a Basic Law passed by a majority of the Knesset.

### Kenya

Kenya had a long build-up to the enactment of its new constitution in 2010. Following decades of one-party rule, the political process gradually became more accessible during the 1990s.[357] Dissatisfaction with the country's constitutional arrangements remained, however, and from the late 1990s there were a series of initiatives aimed at bringing about constitutional reform.

In 1997 an Inter-Party Parliamentary Group considered reforms but no major change emerged. Between 2001 and 2002 the Constitution of Kenya Review Commission carried out an information gathering, public education and basic drafting process.[358] Shortly after, a constitutional conference took place at the Bomas of Kenya in Nairobi. The conference was plagued by political disputes and many delegates abandoned the process, although a draft constitution was eventually produced. That draft was revised by the Government and taken to a referendum where it was rejected by the Kenyan people.

Violence in the wake of the 2007 elections prompted calls for a new constitutional review process. A new Committee of Experts for Constitutional Review was established in 2008 to hold a civic education campaign, consult with the public and, alongside a parliamentary select committee, draft

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353 Daniel J. Elazar, 'The Constitution of the State of Israel', *Jerusalem Center for Public Affairs,* Daniel Elazar Papers Index (http://www.jcpa.org/dje/articles/const-intro-93.htm).

354 Ibid.

355 Justice Aharon Barak, 'A Constitutional Revolution: Israel's Basic Laws', *Constitutional Forum,* Vol. 4, No. 3, 1993, p 83.

356 Michael Tamir, 'A Guide to Legal Research in Israel', August 2006 (http://www.nyulawglobal.org/globalex/israel.htm).

357 Bobby Mkangi & Nyambura Githaiga, 'Kenya's New Constitution and Conflict Transformation', *Institute for Security Studies Paper,* No. 232, February 2012, p 7.

358 Alicia L. Bannon, 'Designing a Constitution Drafting Process: Lessons from Kenya', *The Yale Law Journal,* Vol. 116, 2007, p 1824.

a new constitution.[359] The draft that the Committee of Experts submitted to the National Assembly in 2010 went to a referendum where it was endorsed by 67% of registered voters and enacted shortly after.

The 2010 constitution is Kenya's supreme law, meaning that laws which are inconsistent with the constitution can be struck down by the courts. One of the major changes was to curtail the powers of the presidency while strengthening the powers of Parliament. Kenya now formally acknowledges socio-economic rights within its constitution in a range of 'second generation' stated rights, including healthcare, food, education and housing.[360] Freedom from discrimination on an ethnic basis is also enshrined in the new constitution and political parties must adopt a national character, meaning that they cannot be formed on a demographic basis. Kenya's constitution also created an independent ethics and anti-corruption commission.

Constitutional amendments can be proposed in either House of Parliament and must be passed by both before going to the president for assent. Alternatively amendments can be initiated by the will of at least one million registered voters. Majority approval in a referendum is required for final confirmation of any substantial amendment.

### South Africa

South Africa's 1996 constitution brought in several major reforms following the social and political changes that had swept the country. One of these major shifts was moving from the doctrine of parliamentary sovereignty to a constitution which has higher legal status than other laws. All amendments to the constitution require a super-majority in the National Assembly of either two-thirds or three-quarters and may also require the consent of six out of the nine provincial legislatures as well.

The Constitution of the Republic of South Africa has 14 chapters and a total of 243 provisions. There are also several schedules appended to the main chapters. It includes founding provisions asserting that South Africa is a sovereign, democratic state founded on values of human dignity, equality, non-racialism and non-sexism, supremacy of the constitution and rule of law, and universal suffrage. Following those provisions is a Bill of Rights which protects rights of human dignity, security of the person, equality, freedom of expression, education, health and food, privacy, and access to official information.

Later chapters set out the structure of the state, principles for the civil service, public finances and international laws. Chapter 12 recognises the status of traditional leaders and customary law, and the courts are enabled to recognise customary law in so far as it does not conflict with the constitution.

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[359] Democracy Reporting International, 'Lessons Learned from Constitution-Making: Process with Broad Based Public Participation', Briefing Paper No. 20, 2011 (http://www.democracy-reporting.org/files/dri_briefingpaper_20.pdf) p 7; Committee of Experts on Constitutional Review, 'Final Report of the Committee of Experts on Constitutional Review', 11 October 2010 (http://www.mlgi.org.za/resources/local-government-database/by-country/kenya/commission-reports/CoE_final_report.pdf) p 32.

[360] Eric Kramon & Daniel N. Posner, 'Kenya's New Constitution', *Journal of Democracy,* Vol. 22, No. 2, 2011, pp 89-103.

### United Kingdom

The United Kingdom is one of three countries, along with Israel and New Zealand, that does not have a constitution found in a single document. There are no laws with higher legal status than other laws and Parliament is able to amend laws by a majority vote of its members. Constitutional principles include established conventions of the constitutional monarchy, the fusion of the legislative and executive branches of government where the government must be drawn from MPs, and representative and responsible government. Formal sources of the constitution can also be found in a range of Acts of Parliament, key decisions of the courts, and authoritative written material concerning the United Kingdom's constitutional arrangements.

The Commission on a Bill of Rights was established by the government in 2011 to investigate the possibility and desirability of creating a United Kingdom Bill of Rights. The Commission was explicitly tasked with public consultation on its terms of reference. They conducted two rounds of consultation, including visits all over the United Kingdom, public seminars, meetings with the Judiciary and posting information on their website.

In December 2012, the Commission released a comprehensive report on the topic of adopting a Bill of Rights.[361] On the core issue of whether the time was right to create a United Kingdom Bill of Rights, there was no unanimous agreement amongst the members of the Commission. There was greater agreement on other issues, for instance, that if there were to be a Bill of Rights or something similar it should include the concept of responsibilities and could take on a broader scope than the Human Rights Act 1998.

### United States of America

Perhaps the most well-known constitution in the world and the oldest modern constitution, the Constitution of the United States of America, was signed on 17 September 1787 in Philadelphia, Pennsylvania after a prolonged period of political and military conflict.

Growing resentment against British colonial policy had led to protests such as the Boston Tea Party in 1773, and the British response punishing those actions had only heightened the tension. The First Continental Congress was held in 1774 which initiated a trade boycott with Britain and made provision for a Second Continental Congress.

This Second Continental Congress began meeting on 10 May 1775, soon after the outbreak of the American Revolutionary War against the British Empire. The Second Continental Congress moved to support independence from Britain, particularly through its adoption of the Declaration of Independence on 4 July 1776. Doing so committed those leading the revolution to expel the British military power and, just as importantly, to establish the institutional arrangements of self-government.[362] The Second Continental Congress also passed the Articles of Confederation in 1781 which provided the basis for American government until the passage of the Constitution in 1787.

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[361] Ministry of Justice (UK), 'Commission on a Bill of Rights' (http://www.justice.gov.uk/about/cbr).

[362] Ben Baack, 'Forging a Nation State: The Continental Congress and the Financing of the War of American Independence', *Economic History Review,* Vol. 54, No. 4, 2001, p 639.

The Treaty of Paris in 1783 ended the American Revolutionary War, with the United States achieving international recognition of their independence. Between 25 May and 17 September 1787 the 55 delegates from all 13 states, except for Rhode Island, met at the Constitutional Convention in Philadelphia.[363] There they debated, drafted and ultimately ratified the Constitution of the United States of America.

This constitution is the country's supreme law and its provisions are difficult to amend. Amendments may be proposed in two ways, but the only method that has been used is through ratification by two-thirds of both houses of the United States Congress. The first three articles set out the different roles, powers and responsibilities of the Legislative, Executive and Judicial branches of government, while Article Four articulates the role and relationship of the different states.

Since the constitution was enacted there have been 17 amendments passed; the first 10 amendments were ratified simultaneously in 1791 and are known as the Bill of Rights. These rights include freedom of religion and assembly, that government must follow due process of law, and freedom from cruel and unusual punishment. Other constitutional amendments include the 1865 Thirteenth Amendment which abolished slavery, the Eighteenth Amendment of 1919 which brought in prohibition of alcohol and which was later repealed in 1933 by the Twenty-First Amendment, and the 1951 Twenty-Second Amendment limiting the President to two terms in office.

[363] John R. Vile (ed.), *The Constitutional Convention of 1787: A Comprehensive History of America's Founding, Volume 1* (Santa Barbara, California: ABC-CLIO Ltd, 2005) p 215.

# Appendix F:

## Terms of Reference
## Consideration of Constitutional Issues

### TERMINOLOGY

**Panel:** the Constitutional Advisory Panel

**Responsible Ministers:** the Deputy Prime Minister and the Minister of Māori Affairs

**Secretariat:** Ministry of Justice

### Background

1. The Relationship and Confidence and Supply Agreement between the National Party and the Māori Party (16 November 2008) agreed to establish a group to consider constitutional issues, including Māori representation.

### Ministerial responsibilities

2. The Deputy Prime Minister and the Minister of Māori Affairs will jointly lead a Consideration of Constitutional Issues. They will consult with a Cross-party Reference Group of Members of Parliament on major findings and reports before reports are made to Cabinet.
3. The Deputy Prime Minister and the Minister of Māori Affairs will oversee a programme of engagement with the public. That programme will include the appointment of one or more advisory panels to provide expert and community perspectives on matters of substance and process.
4. The Deputy Prime Minister and the Minister of Māori Affairs may also receive and consider research and recommendations from officials, experts and the public on New Zealand's current constitutional arrangements, and possible areas for reform.
5. The Deputy Prime Minister and the Minister of Māori Affairs will report to Cabinet on the Consideration of Constitutional Issues and will be supported by a senior officials group including the Ministry of Justice (leading the Secretariat), Treasury, the Department of the Prime Minister and Cabinet (including the Cabinet Office), Te Puni Kōkiri, Department of Internal Affairs and Crown Law. Support will include administration services and policy advice.
6. The Deputy Prime Minister and the Minister of Māori Affairs will submit a final report to Cabinet by early 2014, with advice on the constitutional topics, including any points of broad consensus where further work is recommended.

## Programme of engagement

7. Engagement and information sharing are important precursors to any discussion on changes to New Zealand's constitutional arrangements. Public understanding and acceptance is needed for enduring constitutional arrangements that reflect the values and aspirations of New Zealand as a society.
8. To facilitate the Consideration of Constitutional Issues, the Deputy Prime Minister and the Minister of Māori Affairs will oversee a programme of engagement with New Zealanders.
9. The purpose of the programme of engagement is to inform and engage New Zealanders on constitutional issues. In particular, it is to stimulate public debate and awareness of constitutional issues by providing information about New Zealand's constitutional arrangements.
10. The programme is intended to provide the Deputy Prime Minister and the Minister of Māori Affairs with an understanding of New Zealanders' perspectives on this country's constitutional arrangements, topical issues and areas where reform is considered desirable. The Deputy Prime Minister and the Minister of Māori Affairs will then recommend to Cabinet whether any further consideration of particular issues is desirable.

## Subject matter of the Consideration of Constitutional Issues

11. The Consideration of Constitutional Issues will include the following topics:

**Electoral matters**

- Size of Parliament
- The length of the term of Parliament and whether or not the term should be fixed
- Size and number of electorates, including changing the method for calculating size
- Electoral integrity legislation

**Crown-Māori relationship matters**

- Māori representation, including Māori Electoral Option, Māori electoral participation, Māori seats in Parliament and local government
- The role of the Treaty of Waitangi within our constitutional arrangements

**Other constitutional matters**

- Bill of Rights issues (for example, property rights, entrenchment)
- Written constitution.

12. Other issues are likely to arise during public engagement. The Deputy Prime Minister and the Minister of Māori Affairs will report to Cabinet on these matters, advising whether the issue appears to be of widespread interest and merits further consideration.

13. The Deputy Prime Minister and the Minister of Māori Affairs will be mindful of other Government initiatives with constitutional implications, and will aim not to duplicate or undermine these initiatives. The Deputy Prime Minister and the Minister of Māori Affairs will also keep their ministerial colleagues informed on progress with the Consideration of Constitutional Issues with the aim of ensuring wider Government initiatives with constitutional implications are cognisant of progress.

## Constitutional Advisory Panel

14. The Constitutional Advisory Panel (Panel) is an independent group established to implement the initial stage of the Consideration of Constitutional Issues. The initial stage will involve:
    a. preparing and commissioning opinion pieces on the topics within the scope of the Consideration of Constitutional Issues; and
    b. establishing a forum for sharing information and ideas on those topics amongst New Zealanders.

**Responsibilities**

15. The specific responsibilities of the Panel are to:
    a. report, by December 2011, to the Responsible Ministers on a proposed strategy for implementing the initial stage of the Consideration of Constitutional Issues;
    b. report, by December 2011, to the Responsible Ministers on a proposed strategy to manage interaction with other government projects;
    c. establish a forum for developing and sharing information and ideas on the topics within the scope of the Consideration of Constitutional Issues, to seek the views of all New Zealanders including Māori, in a manner that is reflective of the Treaty of Waitangi relationship and responsive to Māori consultation preferences;
    d. report, in the period September 2013 to 14 December 2013 (depending on the level of demand for engagement), to the Responsible Ministers with advice on the constitutional topics, including any points of broad consensus where further work is recommended;
    e. provide regular updates (at least every 6 months) to the Responsible Ministers and the Cross-party Reference Group of Members of Parliament throughout the Consideration of Constitutional Issues; and
    f. provide input to monitoring and evaluating the Consideration of Constitutional Issues.
16. The Panel will report through the Panel Co-chairs to the Deputy Prime Minister and Minister of Māori Affairs.
17. The Māori Co-chair of Panel is responsible for ensuring that the Panel undertakes appropriate consultation processes with Māori, and will report to the Deputy Prime Minister and the Minister of Māori Affairs (the Responsible Ministers) about that process on an ongoing basis.

### Form

18. The Panel will comprise a maximum of twelve members, including the two Co-chairs, chosen and appointed by the Responsible Ministers on the basis of their knowledge of the constitutional topics and their ability to articulate the issues to a wide audience.
19. The Panel is convened by the Responsible Ministers and its Terms of Reference and deliverables have been determined by Cabinet. The Panel is not a legal entity and does not have the power to contract in its own name.

### Support

20. The Panel will be supported by a secretariat based in the Ministry of Justice which will provide project management support including budget management, and manage access to governmental and external expertise.

### Amendment to terms of reference

21. These terms of reference may be amended only with the agreement of the Responsible Ministers and the Co-chairs. The Responsible Ministers may need to seek Cabinet agreement to any proposed change.

# Appendix G:
# Biographies of the Panel

## Co-chairs

**Emeritus Professor John Burrows QC (Co-chair):** Professor Burrows, who has just completed a term as a Law Commissioner, has led or jointly led several Law Commission reviews including the Presentation of New Zealand Statute Law, Privacy, the Official Information Act 1982 and Tribunals in New Zealand. He has extensive legal experience and is the author of the leading text Statute Law in New Zealand.

A law lecturer for many years, Professor Burrows is a well-known commentator on New Zealand's legal system. He enjoys presenting legal topics to both lawyers and the general public.

**Sir Tipene O'Regan (Co-chair) (Ngāi Tahu):** Perhaps best known for leading the negotiations for two of the largest Treaty settlements (Māori Fisheries and Ngāi Tahu), Sir Tipene O'Regan also has extensive governance and commercial experience. He was deputy chairperson of Transit NZ, a director of TVNZ, chairperson of Sealord and has served on boards in England, Norway and Australia.

He holds two honorary doctorates in commerce and one in literature. He was the assistant Vice-Chancellor at the University of Canterbury and is currently chairperson of New Zealand's Indigenous Centre of Research Excellence. With an insatiable appetite for knowledge and strategic development, Sir Tipene is a sought-after public speaker.

Sir Tipene brings more than 40 years of governance to the Co-chair's role and visionary leadership.

## Panel members

**Peter Chin:** Peter Chin is a first generation, New Zealand-born Chinese and lived all his life in Dunedin. He served as a city councillor for 15 years including six years as mayor. Mr Chin practised law for more than 45 years and has been actively involved in the community including the performing arts; education, community welfare, Rotary and the Chinese community. He formerly chaired the Gambling Commission, and currently serves as a trustee of Asia New Zealand Foundation and the Chinese Poll Tax Heritage Trust.

Mr Chin's New Zealand heritage and work with the Chinese community introduces an understanding of the cultural diversity of New Zealand to the Panel.

**Deborah Coddington:** Deborah Coddington who is based in the Wairarapa has a long-established journalism career, including feature writing for North & South and Metro magazines. Education and child abuse are issues that capture her attention as well as finance and business. As a journalist Ms Coddington is a generalist with a broad knowledge of New Zealanders. She gained political experience serving as a list MP, learning the mechanics of government and representing individuals' needs and concerns.

Understanding how to connect with a reader in plain language, enables Ms Coddington to bring to the Panel an ability to engage everyday New Zealanders in the constitutional review.

**Hon Sir Michael Cullen:** Sir Michael is currently the chair of New Zealand Post and principal Treaty Claims negotiator for Ngāti Tūwharetoa. As a long-serving member of Parliament, including Deputy Prime Minister, Attorney-General, Minister in Charge of Treaty of Waitangi Negotiations, Minister of Finance and Leader of the House – Sir Michael has an intimate knowledge of how the machinery of government operates.

His extensive experience as a politician brings practical knowledge of constitutional matters to the Panel's work.

**Hon John Luxton:** Mr Luxton, a former Minister and electorate MP, is currently a farmer, company director and consultant. He has expertise in government, governance, Crown-Māori relations and community connections. Mr Luxton has experience in co-management, as co-chair of the Waikato River Authority and representing farming, as chairman of DairyNZ, and other interests alongside Māori interests.

With a practical and pragmatic background in business and government, Mr Luxton sees a need to ensure New Zealand has a shared vision for the future with democratic principles at the heart of that vision.

**Bernice Mene:** Bernice Mene is a qualified secondary school teacher and represented New Zealand at an OECD education forum as a guardian for the Secondary Futures Education project. Other work encompasses career counselling for tertiary students and elite athletes and project management for sporting organisations. Ms Mene received a MNZM for services to netball, having played ten years for the Silver Ferns and working within the media, public speaking, and television presenting as well as governance work for community groups.

Ms Mene's passion and work centre on young people, education and health, and her strong public profile connects her with many different communities.

**Dr Leonie Pihama (Te Ātiawa, Ngā Māhanga a Tairi, Ngāti Māhanga):** Dr Leonie Pihama is a mother of six and a grandmother of two. Dr Pihama is currently an Associate Professor and the Director of Te Kotahi Research Institute at the University of Waikato. She has worked as a senior lecturer in Education at the University of Auckland, teaching in the fields of policy analysis, Māori women's issues, and the politics of representation of indigenous peoples. Dr Pihama served on Māori Television's establishment board and worked in film and media production. She completed a Fulbright scholarship with the University of Washington.

Dr Pihama's expertise connects her with a wide-range of communities and iwi, which enables her to relate to people throughout Aotearoa New Zealand.

**Hinurewa Poutu (Ngāti Rangi, Te Āti Haunui a Pāpārangi, Ngāti Maniapoto):** Hinurewa Poutu is a doctoral student at Massey University and a teacher at Te Kura Kaupapa Māori o Mana Tamariki. She is a graduate of kura kaupapa Māori, with an academic and work record in studying, researching and teaching te reo Māori. She taught media studies in Māori while working as a presenter and Māori language consultant on various television projects. The content focused on children, youth, sport and cultural diversity.

As the youngest member Ms Poutu adds a youthful, vibrant and bicultural perspective to the Panel.

**Professor Linda Tuhiwai Smith (Ngāti Awa, Ngāti Porou):** Linda Tuhiwai Smith is Professor of Education and Māori Development and Pro-Vice Chancellor Māori at the University of Waikato. Her academic work focusses on education and health, as well as kaupapa Māori research. Professor Smith has published widely in journals and books, including writing *Decolonising Methodologies Research and Indigenous Peoples*.

She was a joint director of Ngā Pae o Te Maramatanga, New Zealand's Māori Centre of Research Excellence and a Professor of Education at the University of Auckland.

Professor Smith's confidence in the power of young people and their aspirations, and her negotiating experience will engage communities and help them see the benefits of participation..

**Peter Tennent (Te Aupōuri):** Peter Tennent is a former mayor of New Plymouth and encourages community involvement and public engagement. He was nominated for World Mayor in 2010 and judged to be in the top ten world community leaders. Mr Tennent was pivotal in rejuvenating New Plymouth economically, socially, environmentally and culturally – negotiating with all parties to find a pathway forward from significant historical issues. He trained as an accountant at Massey University and spent much of his life as an hotelier and in public roles.

Mr Tennent's leadership, drive and enthusiasm for New Zealand add positive energy to the Panel.

**Dr Ranginui Walker (Te Whakatōhea):** Dr Ranginui Walker was a member of the New Zealand Māori Council and the World Council of Indigenous People. He has written six books, including the best-selling *Ka Whawhai Tonu Ake: Struggle Without End*. He was professor of Maōri Studies at the University of Auckland and retired as Pro Vice-Chancellor (Māori) in 1997. He has extensive experience as an auditor of tertiary educational organisations for the New Zealand Universities Academic Audit Unit and the New Zealand Qualifications Authority and is currently a member of the Waitangi Tribunal. Dr Walker was awarded the DCNZM in 2000 and received the Prime Minister's Award for Literary Achievement in non-fiction in 2009.

Dr Walker brings to the Panel considerable experience of working with people at all levels of society as well as a deep knowledge of New Zealand and Māori history.

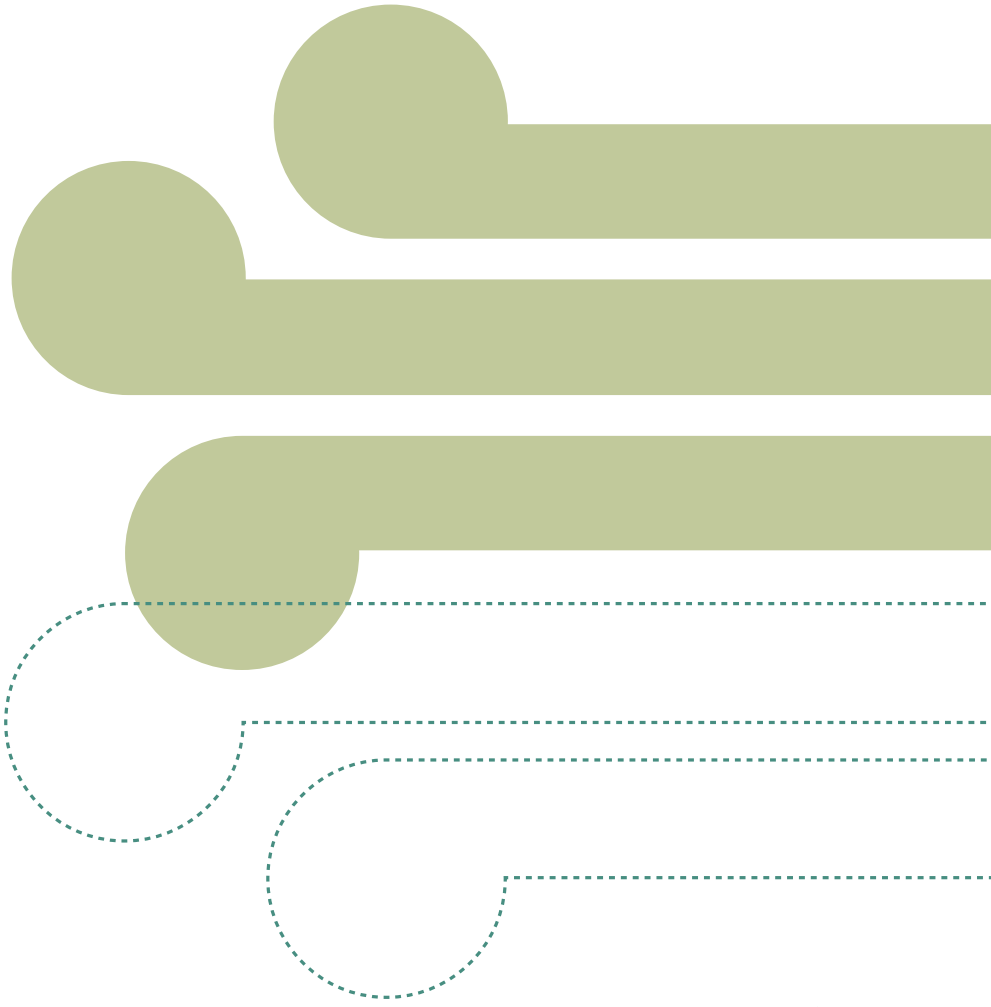
Appendix H:

# Engagement Strategy for the Consideration of Constitutional Issues

MAY 2012

# Table of Contents





# SECTION ONE:

## INTRODUCTION

1. The engagement strategy will inform and engage New Zealanders on constitutional issues. Public understanding and participation is needed for enduring constitutional arrangements that reflect the values and aspirations of New Zealanders.
2. The Constitutional Advisory Panel (the Panel) will lead the engagement process. It will report to the responsible Ministers on what it has heard from a wide range of New Zealanders.
3. The engagement strategy is presented in the following sections:

   **Section One** – Introduction

   **Section Two** – Principles and goals

   **Section Three** – Engagement focus

   **Section Four** – Engagement with Māori

   **Section Five** – Engagement phases

   **Section Six** – Communication strategies.

# SECTION TWO:

## NGĀ MĀTĀPONO ME NGĀ WHAINGA/ PRINCIPLES AND GOALS

### Strategy principles

4. Our engagement strategy is guided by the following principles.

   Whakamāramatanga – we will provide people with the information they need to participate in a meaningful way.

   Whakawhanaungatanga – we will seek out, facilitate and build relationships with those potentially affected by or interested in the outcomes of the work.

   Whakamana i te tāngata/empower the people – we will inform and be informed by others, paying respectful attention of their views; and will communicate to people how their input will be used by the Panel.

   Rangatira ki te rangatira – we will engage chief-to-chief.

   Kanohi ki te kanohi – we will engage face-to-face.

   Manaakitanga – we will care for others and ensure they feel welcome and included in the conversation.

### Engagement goals

5. We will succeed when:
   - We have heard the views of a wide range of New Zealanders on constitutional issues.
   - We have heard the views of a wide range of Māori groups (iwi and hapu) and citizens (individuals and interest groups) on constitutional issues.
   - New Zealanders have had a wide range of opportunities to engage with and learn about constitutional issues.
   - Based on the above successes, we have reported accurately and fairly to Ministers on New Zealanders' views, with any recommendations we may have.

### Panel leadership

6. The Panel itself is diverse and has wide experience. We will draw on this to invite a wide diversity of New Zealanders to engage in the processes that we will facilitate.
7. We will strive to ensure we hear from a wide range of New Zealanders, and we will take measures to ensure that we record people's thoughts in their own words, to give justice to the full flavour of New Zealanders' views.

# SECTION THREE:

## WHAKAWHITKŌRERO/ ENGAGEMENT FOCUS

### Starting the conversation

8. From the outset, we will establish a website for sharing information and ideas on constitutional issues amongst New Zealanders. We will update the website frequently, with information on current constitutional arrangements, and with summaries of New Zealanders' ideas as these are expressed through the engagement process.

### Engaging a broad and diverse range of New Zealanders

9. New Zealanders are likely to be diverse in the levels of interest and familiarity that they already have with constitutional issues.

#### People who are passionately interested

10. Engaging with groups, individuals, experts and stakeholders who are already deeply interested in the Consideration of Constitutional Issues is likely to be relatively straightforward. Before and during the engagement process, the Panel will seek the assistance of people with these deep interests. This type of assistance could be used for a variety of purposes, such as to test ideas and resources that the Panel is developing for the purpose of engaging with New Zealanders in general.

#### People who are connected to active networks, and may or may not be interested

11. Some groups and individuals are members of active networks or groups. These groups are very diverse and are spread throughout the country. They include: church groups, sports groups, social services groups, disability groups, business networks, professional organisations, Māori organisations (e.g. iwi authorities, marae committees, the Māori Women's Welfare League and urban Māori organisations), student groupings (e.g. secondary schools and tertiary institutions), parents' groups, unemployed workers' groups, networks of people with disabilities, women's groups, rural networks, senior groups, professional, industry and trade organisations, and many others. Such groups have existing organisational structures and means of communicating with their members, and in many of these groups at least some of their members will know one another.
12. We are identifying some of the many ways in which New Zealanders are diverse, including some of the many ways in which Māori are diverse. We propose to identify a set of existing groups that collectively range over a full set of diversities, both amongst New Zealanders in general and amongst Māori specifically. We also propose to invite each of these networks, groups, and organisations to host a conversation on constitutional issues.
13. We will support each conversation that an invited group has, with resources and materials including professional facilitation and note-taking for the meeting, and information on current constitutional arrangements and on what New Zealanders have been saying so far in the engagement process. Each of these hosted meetings will have four aspects:
    1. Kōreromai / Invite: we will invite New Zealanders to talk to us about their interests and views related to constitutional issues.

2. Whakamarama / Inform: we will inform and be informed by New Zealanders regarding where their thoughts fit with what other New Zealanders have said so far in the process, and about where their ideas fit with current constitutional arrangements.
3. Whakarongo / Listen: we will listen to New Zealanders, and be attentive to any views about the future of our constitutional arrangements.
4. Pūrongo / Report: in our final report to Ministers, we will summarise the range and patterns of New Zealanders' views on constitutional issues, and we will make any recommendations we might have for further work.

14. In addition to the hosted engagement events that will ensure the Panel hear from a diverse range of New Zealanders, the Panel will make its information resources available for all New Zealanders to use as they choose in their own thinking and group discussions. If they find this material helpful, these groups and their individual members may then wish to use it to inform any input they choose to have to the Panel through the web-based or discussion document processes that the Panel will run, as detailed further below.
15. We propose to establish an active online presence as a central feature of our engagement strategy. We propose that this include a website with a discussion facility (e.g. as used during the Welfare Working Group process), and social media components (e.g. Twitter, Facebook, and YouTube). These pathways will be widely open and accessible to individuals and groups, and may be especially appealing to young New Zealanders. As with both the hosted meeting processes and the paper-based processes, the Panel will support these online fora with frequently updated summaries of what New Zealanders are saying, and with information on where New Zealanders' ideas fit with current constitutional arrangements.

**People who may not be connected to active networks, and may or may not be interested**

16. The Panel proposes to provide a range of engagement opportunities for New Zealanders who may or may not be connected to active networks, and who may or may not have pre-existing interest in constitutional issues. We will make the online aspects of the engagement process as attractive as possible to those who happen to visit our site casually or by accident, and to those who connect to it from other sites that are related to it in some way. We will also aim to create a buzz that may engage people who have not previously had an interest in constitutional issues, through contributions to various media.

## Project stages

17. The Panel's work has five stages.

| Stage | Engagement focus | Timing |
|---|---|---|
| **Stage One**<br>**Whakaoho i te tāngata/ Preparing the Ground** | ›› Prepare resources, tools and plans for the engagement process, including the website.<br>›› Test with individuals and groups the engagement questions and approaches the Panel has developed.<br>›› Build relationships with partners and experts. | March 2012 to July 2012 |
| **Stage Two**<br>**Whakamārama/ Understanding** | ›› Start building understanding of the current constitutional arrangements and issues.<br>›› Build participation in the conversation about constitutional arrangements. | July 2012 to November 2012 |
| **Stage Three**<br>**Wānanga/ Thinking Together** | ›› Secure the engagement of a broad and diverse range of networks, communities and whānau to be involved in conversations on the current constitutional arrangements and the issues to be considered. | December 2012 to June 2013 |
| **Stage Four**<br>**Wānanga/ Deliberation** | ›› Give a cross section of New Zealanders the opportunity to work together to consider the information provided by New Zealanders in the earlier phases of the process. | July and August 2013 |
| **Stage Five**<br>**Pūrongo/ Reporting** | ›› Keep the responsible Ministers informed at regular intervals throughout the engagement process.<br>›› Provide feedback to the public so they are able to see the contribution of others.<br>›› Present the final report to the responsible Ministers. | September-December 2013 |

## Question focus

18. Members of the public may wish to engage with a range of questions at different points in the process. We will be led by the public on this, but matters may unfold as follows.

| Stage | Key questions focus | Supporting questions |
|---|---|---|
| **Whakamārama/ Understanding** | Context: think about New Zealand in the future.<br>What opportunities does the Treaty of Waitangi offer for our country? | ›› What is important to you?<br>›› What makes our country work?<br>›› What values reflect the spirit of our country?<br>›› How would you like New Zealand to look in 2050? |
| **Wānanga/ Thinking together** | How are our values reflected in our constitutional arrangements?<br>What opportunities does the Treaty of Waitangi provide for our future constitutional arrangements?<br>In our constitutional arrangements for future generations, what are the key elements to keep, change or create? | ›› What are the most critical elements to have in our constitutional arrangements?<br>***Electoral matters***<br>›› Size of Parliament?<br>›› Length of term of Parliament?<br>›› Size and number of electorates?<br>›› Electoral integrity legislation?<br>***Crown-Māori relationship matters***<br>Māori representation, including Māori Electoral Option, Māori electoral participation, Māori seats in Parliament and local government?<br>***Other constitutional matters***<br>›› Written constitution?<br>›› New Zealand Bill of Rights Act 1990?<br>›› Other constitutional issues raised by New Zealanders? |
| **Wānanga/ Deliberation** | What are our reflections on the contributions we have received from people across New Zealand? | ›› How do our constitutional arrangements reflect our values?<br>›› What are the key elements of the constitutional arrangements we should keep, change or create for the future? |

# SECTION FOUR:

## ENGAGEMENT WITH MĀORI

19. This section brings together in one place the strategy's specific engagement with Māori.
20. We will ensure that iwi and Māori are key participants.
21. Various approaches are proposed including direct engagement through hui, meetings, kanohi ki te kanohi sessions including rangatira ki te rangatira, social media and Māori media.
22. Iwi and Māori participation includes:

| Stage | Iwi and Māori engagement focus |
|---|---|
| **Stage One**<br>**Whakaoho i te tāngata/**<br>**Preparing the Ground** | ›› Focus on early conversations with iwi and Māori leaders, iwi and Māori groups and networks, Māori constitutional academics and commentators, and educators.<br>›› Iwi and Māori leaders and organisations may wish to advise the Panel on how best to engage their groups and communities, and may also connect the Panel to other Māori stakeholder groups and individuals.<br>›› There will be a particular emphasis on identifying Māori who may not initially be interested in thinking and talking about constitutional arrangements but may have views and opinions to inform the thinking of the Panel.<br>›› Key information resources will be translated into te reo Māori. |
| **Stage Two**<br>**Whakamārama/**<br>**Understanding** | ›› Participation opportunities highlighted in media, including Māori radio stations and Māori panui.<br>›› Key online and hard copy resources will be published in te reo Māori. |
| **Stage Three**<br>**Wānanga/**<br>**Thinking together** | ›› We will invite New Zealanders, including Māori, to participate in deeper conversations.<br>›› We will engage with iwi and Māori through:<br>– engagement hui, which may include hui in association with iwi and Urban Authority leaders<br>– seeking involvement in iwi and Māori events, such as the Ratana annual celebrations, Koroneihana celebrations, iwi Hui ā-Tau and Te Matatini<br>– meeting with Urban Māori Authorities, community and lobby groups, sports clubs and specific interest groups<br>– contributions to iwi and urban Māori radio stations and other Māori media, such as Mana, Tū Mai and Spasifik<br>– online discussions, blogs and social networking sites. |
| **Stage Four**<br>**Wānanga/**<br>**Deliberation** | ›› Iwi and Māori citizens will be invited to participate in wānanga/deliberative fora hosted by the Panel. |
| **Stage Five**<br>**Pūrongo/**<br>**Reporting** | ›› The Panel's final report will be informed by the public-driven engagement process, including the public-driven engagement with Māori. |

# SECTION FIVE:

## ENGAGEMENT PHASES

### Approach to the engagement process

23. The previous sections have set out the main elements of the engagement strategy. This section (Section Five) gives details usually seen in an action plan. We will revisit these details if emerging public needs or interests call for this during the engagement process. In this respect, we are ready to adapt and respond. We will be ready to adapt and respond if, for example, some processes are working well and need extra resources, or if some are working less well and need to be revised or discontinued.
24. The Panel's engagement process from early 2012 to September 2013 has five stages. In practice, elements from distinct stages will often occur together. For example, when an existing active group hosts an engagement event, participants will develop their understanding, think together, and deliberate together – all within a single meeting. Groups that meet early in the engagement process will generate and engage with one another's ideas; groups that meet later in the process will do the same, and will also have the opportunity to be informed by the larger set of ideas that earlier groups have generated.

### Stage One: Whakaoho i te tāngata/Preparing the ground

*March 2012 to July 2012*

25. Good planning and resource preparation will be important in this phase. Information resources will need to be clear and key documents prepared in plain language, including key material in te reo Māori. Accessibility in other languages, such as Samoan, Tongan, Chinese, Arabic, and Hindi will also be considered.[364]
26. Early conversations will develop relationships with stakeholder groups. The Panel will seek input on appropriate engagement processes for particular groups and communities (such as iwi and Māori).
27. There will be early engagement with iwi and hapū and other Māori stakeholders. Some of this contact may be sought, for example, through mandated iwi authorities, the Iwi Leaders Forum and other groupings that represent iwi and hapū interests, such as rūnanga, Māori Trust Boards, post-settlement entities, land trusts, Māori Incorporations, Māori citizens, and marae committees.
28. We will test with a range of individuals and groups the broad questions with which we wish to invite all New Zealanders to participate in the engagement process, together with the key information resources we are preparing, and our initial ideas about how the engagement meetings that are to be hosted by a range of existing groups might run. Pre-testing ideas and approaches will allow us to check our initial thinking and approach for practicality with a range of New Zealanders who do not necessarily have an active interest in constitutional issues.
29. The Panel will host one or more framing workshops involving academics, commentators, iwi, Māori and community leaders to consider:
    - the key constitutional issues to be considered
    - how best to achieve engagement in practice in diverse settings.

[364] A full list of other languages can be identified further following discussion with the Office of Ethnic Affairs.

30. Selected academics and commentators may be invited to support the work of the Panel by offering reviewer responses to information resources developed by the Panel.
31. Communications and media plans will be refined to identify the key messages, information, needs, resources, contingencies, questions and opportunities.
32. A website will be established as one anchor of the engagement process. The website will:
    - provide information on the current constitutional arrangements
    - enable people to ask questions and provide comments
    - profile engagement activities
    - link to social media activity and updates
    - contain a 'see, click, learn and comment' crowd-sourcing feature linked to improving or commenting on current constitutional arrangements.
33. Engagement resources and opportunities will be designed so that they can be used by:
    - individuals
    - social groups
    - whānau
    - clubs
    - networks
    - organisations
    - schools.

## Stage Two: Whakamārama/Understanding

*July 2012 to November 2012*

34. This stage will be publicly launched by the Panel to raise the profile of the engagement process and to generate participation.
35. This part of the process will generate participation from a wide range of New Zealanders, both those who are engaged in active networks and those who are not, and both those who do and those who may not have a pre-existing interest in constitutional issues.
36. This phase of the strategy will access a wide range of active networks. It will also advance widely open and accessible public engagement through new media and through more traditional paper-based (e.g. discussion document) processes.
37. Engagement with Māori groups (iwi and hapu) and other citizens (individuals and interest groups) will be conducted in a manner reflective of the Treaty of Waitangi relationship, and reflecting Māori engagement preferences.
38. This stage of the strategy will comprise kōreromai/promoting and communicating, whakamārama/information to support participation, and engagement with all New Zealanders.

***Kōreromai/Promoting and communicating***

39. Kōreromai will provide the opportunities to participate in the conversation. It will be undertaken by:
    - Active networkers who will have opportunities to initiate conversation starters and study circles. The networkers will be provided with resource material for these conversations, which give guidance about managing face to face sessions on educating groups on the current constitutional arrangements.
    - Social media activity.

***Whakamārama/Information to support participation***

40. To support engagement processes, whakamārama will be delivered through publication of online and hard information, and provision of other web-based resources.

***Engagement with all New Zealanders***

41. We will engage with all New Zealanders through opportunities to 'see, click, learn and comment' on the existing constitutional arrangements using a one page summary of the arrangements, and a paper-based discussion document and submissions process.

## Stage Three: Wānanga/Thinking together

*December 2012 to June 2013*

42. The focus of this stage is for New Zealanders to have a deeper conversation about constitutional issues with people in their existing networks, communities, whānau and groups.
43. All participant groups will be the focus for engagement during this phase.
    - *People who are passionately interested* – through hui and meetings with iwi and Māori leaders, key constitutional academics and commentators and key community leaders.
    - *People who are engaged in active networks* – supporting others to host constitutional conversations using Panel information resources.
    - *People who may not be engaged in active networks* – through the promotion of social media, and by providing opportunities for engagement through web-based and discussion document processes.
44. This stage of the strategy will comprise:
    - *Promoting and communicating* the opportunity to participate in the conversation.
    - *Open engagement* – there are a range of opportunities for engaging Zealanders. For iwi and Māori, consultation hui will enable iwi and Māori to engage face-to-face with Panel members. Other options to be considered for holding conversations with Māori include:
    - seeking involvement in iwi and Māori events, such as the Ratana celebrations, Koroneihana celebrations, Iwi Hui ā-Tau and Te Matatini
    - contributions to Māori media such as the Māori radio stations Mana, Tū Mai and Spasifik
    - contributions to online discussions, blogs and social networking sites.
    - *Specifically invited engagement* – the Panel will invite a wide range of groups, both general and Māori, to host engagement conversations that will be attended by at least one Panel member, and that will be professionally facilitated based on the Panel's 'Invite, Inform, Listen, Report' format.

45. This phase will be used in part to inform the final deliberation phase. The website will continue to be updated with the latest information.

## Stage Four: Wānanga/Deliberation

*July and August 2013*

46. The objective of this phase of the strategy is to invite a cross-section of New Zealanders to reflect on the feedback provided in the previous phases and to deliberate on constitutional issues.
47. In this phase, the Panel will:
    - host a small number of wānanga/deliberative fora to reflect on insights from the feedback received and deliberate on the constitutional issues from a range of perspectives. Participation will be generated through specific invitation and random selection of some participants to participate in the event
    - offer resources to the other organisations and communities who may wish to host conversations in their own communities.
48. These final engagement events will inform the Panel's final report and assist with the teasing out of contested issues that have been raised during the engagement process. The website will continue to be updated with the latest information.

## Stage Five: Pūrongo/Summary reporting and feedback

*September-December 2013*

49. Throughout the public engagement process, the Panel will provide the responsible Ministers, and the Cross-Party Reference Group of Members of Parliament, with regular updates at least every six months and more frequently as and when significant matters arise.
50. The Panel will present its final report to the responsible Ministers in the period September 2013 to 14 December 2013 (depending on the level of demand for engagement).

# SECTION SIX:

## COMMUNICATION STRATEGIES

### Inviting New Zealanders to engage

51. The engagement approach is designed to:
    - aromai – build interest in the constitutional conversation over the span of the project
    - whaiwhaimai – build participation and contribution to the conversation
    - kōreromai – generate dialogue among people with differing views and life experiences.
52. The public process will provide a diverse range of engagement opportunities and information (in written hard copy, online and in conversation). It will start by asking commonsense and inviting questions, and by linking these in to conversation on constitutional issues. The idea is to invite and to foster New Zealanders' engagement.
53. The key elements of this approach are to:
    - **Start simple and build**: The information approach is to build participation and relationships first and ask questions on the issues that people are already experts on. A richer understanding of the current constitutional arrangements will then be built through the initial engagement, relationship building, and feedback.
    - **Create a buzz**: Conversations build when a buzz has been created. This can be achieved by doing things in fresh ways. We consider that our proposed strategy does this.
    - **Make it easy**: Barriers to engagement include: lack of time, other things competing for people's time and attention, and perceived or real lack of knowledge. The range of in-person, online and written options for engagement that the Panel will offer will include ways to contribute five minutes, ten minutes or a few hours at a time to make it easy for busy people to contribute their thinking.

### Collection, compilation, analysis and reporting of feedback

54. We will ensure that New Zealanders' views are understood and reflected in our analysis by recording their views in summary form.

### Managing the risks

55. The following list contains key risks for the proposed engagement strategy, and actions to mitigate these:

    - ***Risk:*** That we fail to hear the views of the wide range of New Zealanders, including a wide range of Māori.

      ***Mitigation:*** We are identifying diversities, and we will specifically invite a number of groups that collectively reflect those diversities to host engagement events. This will assist us to ensure we do hear from a full diversity of New Zealanders. This will be in addition to our online and paper-based engagement processes that are open and accessible to all New Zealanders.

    - ***Risk:*** That the public engagement process becomes less of a people's process and more of a process informed by a narrow range of perspectives.

      ***Mitigation:*** Our commitment to the open, pluralistic and public-driven nature of the engagement process infuses all details of our strategy.

- ***Risk:*** That the process produces reactive, polarised or divisive responses rather than producing engagement with other people's interests, values and views.

  ***Mitigation:*** The design of all our processes, the information resources we are preparing, and the fresh ways we are creating to invite New Zealanders to listen to and engage with one another's ideas will reduce these risks to a minimum.

- ***Risk:*** That the process is perceived to be not genuine – for instance, the Panel or the Government may be thought to have its own fixed priorities or plans.

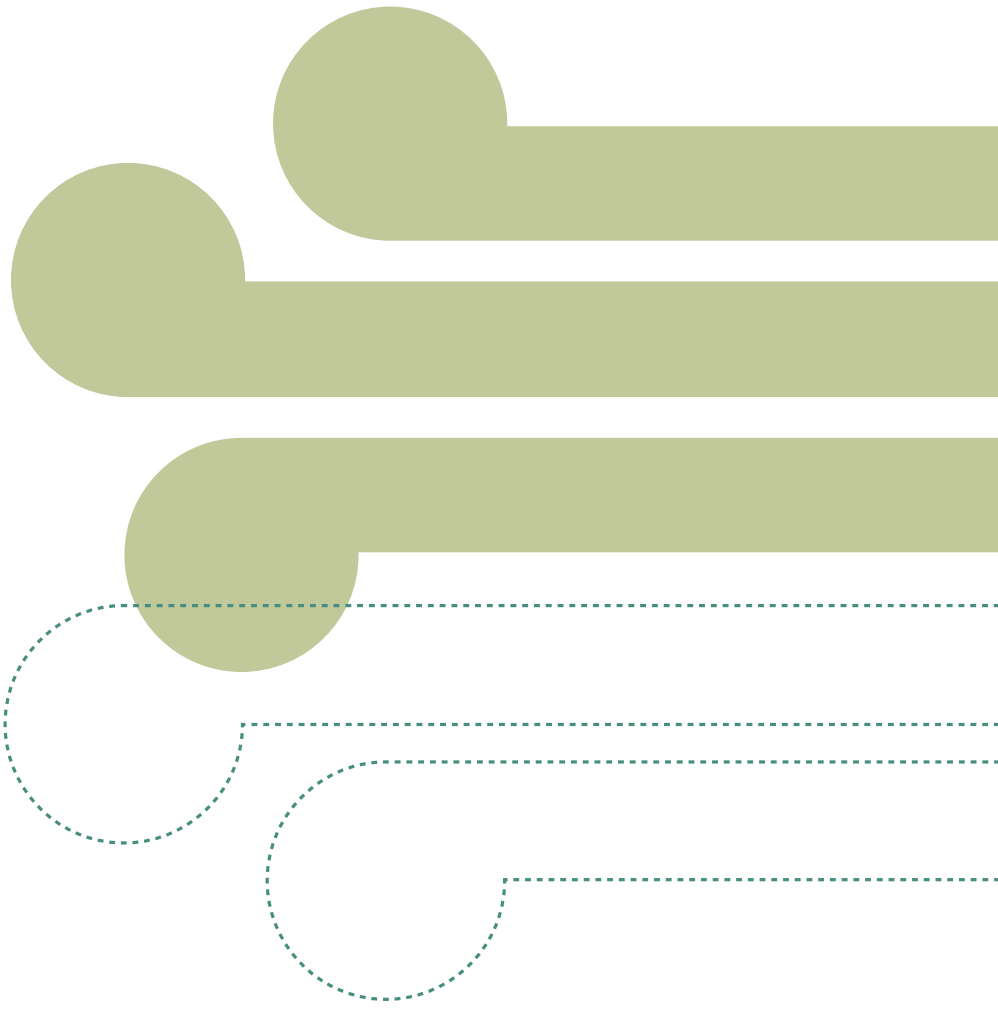
  ***Mitigation:*** We will demonstrate, by the openness of our process and the design of our information resources, that the process is public-driven.

- ***Risk:*** That the public engagement process, or the Consideration of Constitutional Issues more generally, is perceived as being controlled by Wellington.

  ***Mitigation:*** We will demonstrate, by the openness of our process and the design of our materials, that the process is public-driven and taking place across the regions of New Zealand. We will demonstrate this same commitment through our attendance at engagement events across the country.

## Budget

56. We will deliver our independent engagement programme and advice to Ministers within the funding allocated to our work. We understand this funding is managed for us by the Ministry of Justice.
57. We understand the Consideration has been allocated funding of $2.1 million within Vote Justice baseline, and that Ministers have agreed to allocate $2 million within Vote Māori Affairs to support robust and inclusive engagement on constitutional issues.



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