

## Legislature (pillar 1)

### Summary

Parliament is central to New Zealand's constitutional arrangements. Historically, the accessibility of members of Parliament (MPs) to their constituents contributed to public confidence in the legislative process. Politicians were generally held in high regard. However, during the 1980s and early 1990s, there was a rapid erosion of public trust and confidence in politicians and in the first-past-the-post electoral system that had been in place since the previous century. Politicians of both main parties were widely perceived to have broken important election promises when in governmental office. Moreover, in the general elections of 1978 and 1981 first-past-the-post had failed to deliver an allocation of parliamentary seats that reflected voters' preferences.<sup>112</sup>

Responding to the growing public discontent with first-past-the-post, the fourth Labour government, which came into office in 1984, established a royal commission to examine electoral options. This body recommended the adoption of the German system known as mixed member proportional representation (MMP). A non-binding referendum in 1992 revealed an overwhelming majority in favour of electoral change, and in a binding referendum in 1993, 54 per cent of voters supported a change to MMP. This report is, in part, an assessment of how Parliament has evolved under this electoral system.

The introduction of MMP has changed the balance so that the parliamentary branch is a more effective check on executive power. But the extent of this checking capacity can depend on the nature of the government make-up and the state of the opposition parties.<sup>113</sup> Because Parliament's legislative work slowed down and a backlog of draft legislation built up under the new voting system, Standing Orders have been amended to extend parliamentary sitting time. Efforts have been made through the Legislation Act 2012 to streamline the consideration of "revision" bills that are not politically contentious. This legislation will take effect in the next parliamentary term.

Parliament has robust integrity systems. While formal regulation is sparse by international standards, in practice the House of Representatives has clear rules for the conduct of MPs, which are fairly applied and generally successful in ensuring ethical behaviour. On the other hand, the Parliament seems reluctant to support changes in the law to address new integrity risks and rising integrity expectations in society at large. Parliamentarians have not adopted a formal code of conduct, and Parliament has recently declined proposals for legislation to regulate lobbying or for independent oversight of MPs travel expenses.

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<sup>112</sup> In 1978, the Social Credit Party won about 21 per cent of the popular vote but gained only two seats; three years later, the New Zealand Party won 12 per cent of the vote but failed to gain a single seat.

<sup>113</sup> Ryan Malone, *Rebalancing the Constitution: The challenge of government law-making under MMP* (Wellington: Institute of Policy Studies, 2008).

Transparency is high but could be enhanced through the extension of the Official Information Act 1982 (OIA) to the officers of Parliament, Parliamentary Counsel Office, Office of the Clerk and Parliamentary Service, and the Speaker. The House has adequate powers for holding the executive to account through the requirement that all draft legislation be examined by select committees (except for bills accorded urgency or Imprest Supply Bills) as well as by the House itself, cross-examination of ministers through oral and written questions, close engagement in the budget process, and the scrutiny of public sector spending and regulation. Against current international good practice, Parliament's oversight of fiscal management is judged as only moderately good, and there is a low level of direct public engagement in the budget process.

Parliament has become a more effective check on the executive in the two decades since MMP began. It is now more representative of the community with multi-party governments (either coalition governments or minority governments that rely on support parties to govern), ensuring the interests of smaller parties are better considered. However, inter-party contestation dominates the parliamentary culture to the detriment of other important parliamentary roles. Many interviewees feel the strengthening of Parliament, therefore, remains a work in progress. Areas of priority for the strengthening of Parliament are:

- enhancing scrutiny of the executive by creating a cross-cutting specialist committee for all public accounts and providing it with independent analytical support
- strengthening the quality of Parliament's law making by creating a specialist select committee for treaties
- reviewing existing procedures to ensure Parliament is better aware of the human rights implications of legislation
- enhancing the quality of legislation with more pre-legislative public disclosure of draft bills and the adoption by select committees of tests for legislative quality to complement the executive's recent adoption of *Disclosure Statements for Government Legislation*.<sup>114</sup>

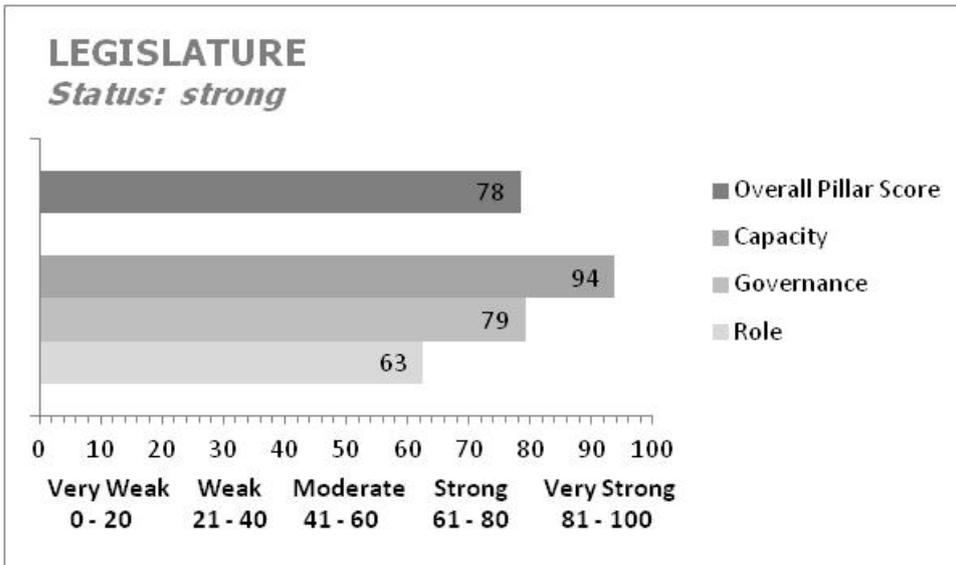
The New Zealand Parliament is representative and generally transparent in its legislative processes, and the public has excellent opportunities to participate in the work of select committees. Some further strengthening of Parliament's role as a check on the dominance of the executive is necessary. The relative dominance of the executive is a significant theme in this report (discussed further in Chapter 6). A lack of transparency in the administration of Parliament (as distinct from its legislative work) is also a concern.

These elements lead to the recommendations in Chapter 6 calling for a stronger structure of select committees and better committee support, measures to improve the quality of legislation, extending OIA coverage to the administration of Parliament and its officers, more transparency about lobbying of MPs, and the introduction of a code of conduct for MPs.

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<sup>114</sup> Treasury, *Disclosure Statements for Government Legislation: Technical guide for departments* (Wellington: Treasury, 2013).

Figure 3: Legislature scores



Source: Transparency International New Zealand, 25 October 2013.

### Structure and organisation

New Zealand has a constitutional monarchy in which Parliament is the supreme legislative power.<sup>115</sup> Parliament comprises the Sovereign (represented by the Governor-General) and the House of Representatives.<sup>116</sup> Members of the House are elected in accordance with the Electoral Act 1993, and each Parliament has a term of three years, unless it is earlier dissolved. The Governor-General has the power to summon, prorogue, and dissolve Parliament. The Constitution Act 1986 provides for Parliament to have full power to make laws; a bill passed by the House becomes law when the Sovereign or Governor-General assents to it. The Crown may not levy taxes, raise loans, or spend public money except by or under an Act of Parliament.<sup>117</sup>

The Sovereign’s functions are to give the royal assent to bills, call Parliament to meet and dissolve Parliament, deliver the Speech from the Throne, call elections, consent (by means of a “message”) to bills affecting the powers and prerogatives of the Crown, and (by means of “address”) authorise the House’s approval of proposed estimates for the offices of Parliament. These functions are carried out on the advice of ministers of the Crown (the government). The Sovereign plays no other active role in parliamentary

<sup>115</sup> New Zealand Parliament, “How our Parliament works: Fact sheets”. [www.parliament.nz/en-nz/about-parliament/how-parliament-works/fact-sheets](http://www.parliament.nz/en-nz/about-parliament/how-parliament-works/fact-sheets)

<sup>116</sup> Sir Kenneth Keith, “On the constitution of New Zealand: An introduction to the foundations of the current form of government”, Cabinet Office, *Cabinet Manual 2008* (Wellington: Department of the Prime Minister and Cabinet, 2008). <http://cabinetmanual.cabinetoffice.govt.nz/node/68>.

<sup>117</sup> No single document is the constitution and parts of the constitution are unwritten. Constitutional arrangements are contained in a variety of documents, including several Acts of Parliament such as the Legislature Act 1908, Constitution Act 1986, New Zealand Bill of Rights Act 1990, and Electoral Act 1993. These Acts include provisions on elections, the term and powers of Parliament, the formation of the government, and individual rights, and have their roots in the English Parliament’s struggle to constrain the actions of the sovereign and place political power in the hands of representatives elected by, and accountable to, the people.

work. The supremacy of Parliament over the Sovereign was established in England by the Bill of Rights 1688. This remains part of New Zealand's law today.<sup>118</sup>

Since 1950, New Zealand's Parliament has had only one chamber, the House of Representatives.<sup>119</sup> Its main functions are to provide representation for the people, pass the legislation by which the country is governed, scrutinise the activities of the government, and approve the supply of public funds to the government.<sup>120</sup>

Following the Westminster form, the government is led by the Prime Minister and the Cabinet, who are chosen from the House of Representatives. Parliament has 121 members, elected from 7 Māori and 62 general constituencies, with additional list members for proportionality. Members of Parliament vote to elect the Speaker, nominated by government at the start of each new Parliament (after every general election).

### 1.1.1 Resources (law)

**To what extent are there provisions in place that provide the legislature with adequate financial, human, and infrastructure resources to effectively carry out its duties?**

Score: 5

*The laws and processes for resourcing Parliament are adequate to enable it to carry out its duties effectively.*

Parliament is resourced under the terms of the Public Finance Act 1989. For the purposes of the Act, the Speaker of Parliament is the "responsible minister" of the Parliamentary Service and the Office of the Clerk and in practical terms negotiates Parliament's resource bid with the Minister of Finance and Treasury, in the same way as ministers do. Expenditure is also made under permanent legislative authority, covering, for example, the salaries and allowances of ministers and other members of Parliament, and the salaries of the Ombudsmen and the Controller and Auditor-General.

In determining the resource bid, the Speaker can draw on the advice of the Parliamentary Service Commission, which the Speaker chairs and which comprises representatives of the political parties represented in Parliament. The Speaker is also free to engage other advisers for this purpose. In practice the Speaker's main source of budgetary advice tends to be the Clerk of the House and the General Manager of Parliamentary Services.

The Parliamentary Service Act 2000 obliges the Speaker to establish an appropriations review committee every three years and once during the life of each government to review the funds appropriated by Parliament for administrative and support services for

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<sup>118</sup> Office of the Clerk of the House of Representatives, "Parliamentary privilege", *Parliament Brief*, February 2007. [www.parliament.nz/resource/0000021626](http://www.parliament.nz/resource/0000021626) and the Imperial Laws Application Act 1988.

<sup>119</sup> Until 1950 the Parliament was bicameral with an upper house known as the Legislative Assembly.

<sup>120</sup> Geoffrey Palmer and Matthew Palmer, *Bridled Power*, 4th ed. (Melbourne: OUP, 2004), p. 158.

the House of Representatives and MPs and for entitlements for parliamentary purposes.<sup>121</sup> The scope of such triennial reviews is at the Speaker's discretion.

Crucial to resourcing is the number of MPs available to carry out the parliamentary functions. By the standards of comparable developed countries, New Zealand has few parliamentarians.<sup>122</sup> Comparing lower houses alone, New Zealand has fewer parliamentarians and fewer MPs per 100,000 citizens than Ireland, Sweden, Finland, Norway, and Denmark<sup>123</sup> without counting their upper house parliamentarians. This difference is further highlighted if one takes into account the demand on MPs because New Zealand's population is dispersed over a large land area, and that out of the 121 MPs, a comparatively high number, about 30, are taken out to form the political executive.

### 1.1.2 Resources (practice)

**To what extent does the legislature have adequate resources to carry out its duties in practice?**

Score: 4

*Parliament is adequately funded for its current activities. However, if it is to address weaknesses in the review of bills and the oversight of the executive, reprioritisation and new resources will be required.*

The funds appropriated to the Parliamentary Service, the Office of the Clerk, and the permanent legislative authorities totalled NZ\$138,329,000 for 2012/13,<sup>124</sup> covering:

- Parliamentary Service departmental appropriations for running and maintaining the parliamentary precincts and employing MPs' support staff
- non-departmental appropriations to cover the funding entitlements for Parliament including MPs' salaries, allowances, and entitlements (permanent legislative authority)
- provision for funding MPs' out-of-Parliament offices
- funding for the Office of the Clerk of the House of Representatives for secretariat services to the House and services related to inter-parliamentary relations (permanent legislative authorities).

The salaries and allowances for MPs come to a total of about NZ\$20 million per year. Basic salaries, as at 1 July 2012, range from NZ\$419,300 for the Prime Minister, NZ\$262,700 for ministers, and NZ\$182,800 for MPs. Annual non-reimbursable allowances range from NZ\$21,400 (for the Prime Minister) to NZ\$16,100 (for MPs).

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<sup>121</sup> For example, New Zealand Parliament, *Report of the Fourth Triennial Parliamentary Appropriation Review*, June 2010.

<sup>122</sup> Interview of Jonathan Boston with author, 30 June 2013.

<sup>123</sup> Feargal McGuinness, "Number of parliamentarians: International comparisons – Commons Library standard note", 2010. [www.parliament.uk/briefing-papers/SN05690](http://www.parliament.uk/briefing-papers/SN05690).

<sup>124</sup> *Estimates of Appropriations 2012/13: Vote Parliamentary Service* (Wellington: Treasury, 2013).

The funding for the Office of the Clerk, which includes, among other things, staffing and specialist consultancy support for select committees, is NZ\$20.38 million for 2012/13.

The Parliamentary Counsel Office, which drafts most legislation and publishes the final versions and is resourced under Appropriation or Imprest Supply Acts, had a budget of NZ\$21.304 million for 2012/13. The Responsible Minister is the Attorney-General.<sup>125</sup>

The Remuneration Authority determines the remuneration of parliamentarians – resourcing under these arrangements is regarded as adequate. MPs are well paid by local standards. The level of resources provided for select committees through the Office of the Clerk and the officers of Parliament is also regarded as adequate for current purposes.<sup>126</sup>

The resourcing of Parliament is under the terms of the Public Finance Act 1989. Theoretically this could open Parliament to interference by the executive, but in practice this does not seem to be a problem because of the standing of the office of the Speaker, the role of Parliamentary Services (which in allocating resources and services is accountable to the Parliament rather than the executive) and the scrutiny of MPs. The level of resourcing for the legislature is mainly determined by incremental adjustments to the historical status quo. Where a Speaker seeks to lead step improvements in the parliamentary process in such areas as information technology, extending the televising of proceedings, or strengthening the investigatory resources for select committees – it is a challenging process.<sup>127</sup>

An important resource-allocation matter is how long Parliament sits.<sup>128</sup> The Business Committee recommends a sitting programme to the House each year. Normal sitting hours are Tuesdays and Wednesdays 2–6pm and 7.30–10pm and Thursdays 2–6pm. For 2013, there are 93 scheduled sitting days.

A review by the Standing Orders Committee in 2011<sup>129</sup> amended Standing Orders to speed up consideration of non-controversial bills and provide more time for the scrutiny of legislative proposals. These measures included the extension of sitting hours, clearer criteria for the use of urgency, and a more active role for the Business Committee (which has cross-party membership) in planning the business of the House. The Legislation Act 2012 makes provision for the streamlining of the consideration of “revision” legislation, the content of which is largely technical rather than political. This Act will begin to impact on draft legislation in the next session of Parliament.

Another potential resourcing issue is the level of analytical and research support for select committees. Some interlocutors said the committees should be better and more independently resourced to improve the review of legislation and scrutiny of government. Former Clerk of the House David McGee agrees that select committees

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<sup>125</sup> *Estimates of Appropriations 2012/13: Vote Parliamentary Counsel* (Wellington: Treasury, 2013).

<sup>126</sup> Interview of David McGee, former Clerk of the House with author, 5 February 2013.

<sup>127</sup> Interview of Margaret Wilson, former Speaker with author, 22 January 2013.

<sup>128</sup> According to the Schedule of Bills at 2 August 2013, 75 government bills, 25 members' bills, 4 local bills, and 1 private bill are under consideration by the House of Representatives or select committees.

<sup>129</sup> Standing Orders Committee (Dr Rt Hon. Lockwood Smith, Chair), *Review of Standing Orders*, 49th Parliament (New Zealand Parliament, 2011).

should be strengthened, but says current incentives on the committees to do so are weak. His proposal, discussed below, is that some key committees should first be reorganised.<sup>130</sup>

### 1.1.3 Independence (law)

#### **To what extent is the legislature independent and free from subordination to external actors by law?**

Score: 5

*Parliament is constitutionally supreme. It is independent in its oversight of the executive. However, its role in reviewing legislation could be enhanced with more use of specialist select committees on issues of constitutional and cross-cutting importance.*

Parliament by law is dissolved at the end of a government's electoral term<sup>131</sup> or when prorogued by the Governor-General. The Governor-General has the formal power to dissolve, prorogue (that is, discontinue without dissolving) and summon Parliament under the Constitution Act 1986.<sup>132</sup> By convention these actions are taken on the advice of the Prime Minister. When the term of Parliament ends, or Parliament has been dissolved, a general election is held to determine the composition of the House from which the new government will be formed.<sup>133</sup>

The basic principle of the system of responsible government is that the government must have the confidence of the House to stay in office. Where a government loses the confidence of the House, the Prime Minister will, by convention, advise that the administration will resign and in this case a new government may be elected from within the House (if the administration has its confidence) or a new election may be called.<sup>134</sup>

Parliament is free to decide when it can meet. Each year the parliamentary Business Committee recommends the sitting programme for the following year for adoption by the House. The sessions cover almost the whole year and extend for the parliamentary term.

While Parliament is constitutionally supreme, its composition and processes and New Zealand's constitutional tradition ensure a close and largely supportive relationship with the executive. By international standards the executive has fewer checks on its powers than do most comparable countries (because of the partially unwritten constitution, unicameral legislature and absence of constitutional protection of the powers of local government).

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<sup>130</sup> Interview of David McGee, former Clerk of the House with author, 5 February 2013.

<sup>131</sup> Defined as three years from the date fixed for the return of the writs issued for the previous general election: in *Cabinet Manual*, 2008: para. 6.2.

<sup>132</sup> Constitution Act 1986, section 18.

<sup>133</sup> *Cabinet Manual*, 2008: paras. 6.2–6.4.

<sup>134</sup> *Cabinet Manual*, 2008: paras. 6.53–6.54.

Three important factors contribute to the independence of Parliament. The first factor, is the status and capacity of the office of the Speaker. The Speaker is the highest-ranking officer elected by the House. The Speaker may maintain links with his or her political party but must not show political bias while chairing the House. The Speaker speaks for the House to the Crown, chairs meetings in the House, chairs three select committees, acts as landlord for Parliament's buildings, and represents the House to international and other important visitors.

The second factor is the control of Parliament's business. The Order of Business is decided by the Business Committee chaired by the Speaker with representation from the political parties in Parliament. It operates by consensus ("near unanimity") as determined by the Speaker.<sup>135</sup> Disagreements are settled between the Leader of the House and party Whips. The Business Committee sits privately and its proceedings are not recorded.

The third factor is the role of select committees. Membership of select committees is decided by Parliament on the recommendation of the Business Committee. Representation of parties is proportional. Some select committees are chaired by opposition MPs (on agreement between parties) but on a less than proportional basis.

Select committees carry out the intensive legislative, financial, scrutiny, or investigatory work of the House. According to the Office of the Clerk, "Whereas debate in the House is confined to MPs, select committees directly involve the public in their work. This interchange between parliamentarians and the public, particularly as part of the legislative process, is a distinctive<sup>136</sup> feature of New Zealand's parliamentary system".<sup>137</sup>

There are 13 subject-specific committees and five specialist committees – the Business, Officers of Parliament, Privileges, Regulations Review, and Standing Orders Committees.<sup>138</sup> The Business Committee decides the size and composition of the other committees with a view to overall proportionality of representation by political parties.<sup>139</sup>,<sup>140</sup> Chairs and deputy-chairs are generally selected by committee

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<sup>135</sup> The committee reaches decisions on the basis of unanimity or, if unanimity is not possible, near-unanimity, having regard to the numbers in the House represented by each of the members of the committee.

<sup>136</sup> The distinctiveness lies in the ready access for those making submissions to appear in person before the committees.

<sup>137</sup> New Zealand Parliament, "Office of the Clerk: About – Select Committee Services Group", 2013. [www.parliament.nz/en-nz/parl-support/agencies/ooc/who/00CLOOCAdminAgenciesOOCWhoRoleSelect1/select-committee-services-group](http://www.parliament.nz/en-nz/parl-support/agencies/ooc/who/00CLOOCAdminAgenciesOOCWhoRoleSelect1/select-committee-services-group) [accessed 10 July 2013].

<sup>138</sup> Subjects are defined on the basis of sectors and (ministerial) portfolios. Standing Order 186(2): "The subject select committees may receive briefings on, or initiate inquiries into, matters related to their respective subject areas."

<sup>139</sup> The Business Committee facilitates House business, decides the size and composition of select committees, grants extensions to the report dates for bills before committees, and grants permission for members' votes to be counted when they are absent from the House. The Officers of Parliament Committee makes recommendations to the House on the appropriations and the appointments of the Auditor-General, Ombudsmen, and Parliamentary Commissioner for the Environment. The Regulations Review Committee examines the legal instruments variously known as "regulations", "delegated legislation", and "subordinate legislation" made under delegated powers in an Act of Parliament. The Standing Orders Committee reviews House procedures and practices.

members.<sup>141</sup> Select committees have considerable latitude in how they pursue their roles and may pursue inquiries that are unwelcome from the government's perspective. Critical to the government's political management are the numbers on each committee, that is, does the opposition have more votes than the government or support party members have to initiate the inquiries? On some committees there will be a government majority, and on some the government will be in a minority.<sup>142</sup>

The 13 subject-specific committees are organised on a portfolio basis. Unlike the United Kingdom, Canada, and Australia, New Zealand does not have a public accounts committee covering the use of, and accounting for, all public funds and resources (the Finance and Expenditure Committee chooses to fulfil only some of these functions<sup>143</sup>).

With a small number of MPs to cover many committees, any change requires reconfiguring committees rather than adding new ones. The advantage of specialist committees is the capacity for coherent oversight of important and sensitive policy areas. They offer incentives for committee members to build profile and depth of expertise in the area in question.<sup>144</sup> Interviewees suggested that New Zealand would benefit from a UK-style public accounts committee (which deals with all the executive's accounts), a treaties committee<sup>145</sup> to deal with all international treaties, and a human rights committee. Such committees could support the independent role of Parliament by reducing the opportunity for the executive to indulge in "forum shopping", that is, to send legislation to the committee most likely to support the executive's policy.<sup>146</sup>

#### 1.1.4 Independence (practice)

##### Is the legislature free from subordination to external actors in practice?

Score: 5

*Parliament is generally free from subordination in practice. However, the quality of its oversight of the executive could be improved if it developed a more "parliamentary" culture by devoting new attention to the role and status of the Speaker, the control of parliamentary business, and the organisation of select committees.*

The operation of select committees is important to the independence of Parliament's role. In general, the select committee system is not organised to promote consensus among committee members from different parties.<sup>147</sup> The majority rules with no obligation or practice for committees to reach consensus on their reports to Parliament. Such reports regularly include dissenting views on a party basis. One consequence,

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<sup>140</sup> Standing Orders Committee, "First report", *Appendices to the Journals of the House of Representatives*, I.14, July 1985, para. 4.4.3.4.

<sup>141</sup> The Speaker chairs the Officers of Parliament Committee.

<sup>142</sup> See Malone, 2008: 148–167.

<sup>143</sup> The Estimates for all Votes stand referred to the Finance and Expenditure Committee, but the committee generally refers them and the subsequent financial review to relevant subject committees.

<sup>144</sup> Interview of David McGee, former Clerk of the House, with author.

<sup>145</sup> Treaties are dealt with by the relevant sectoral committee.

<sup>146</sup> As the Public Accounts Committee has in the United Kingdom.

<sup>147</sup> Interview of David McGee, former Clerk of the House, with author.

however, of this approach is that on some select committees the government and its coalition and support party allies do not have a majority. For example, in the 2002–2005 and 2005–2008 Parliaments, the Labour-led government was in the minority on 10 of the 13 subject select committees.<sup>148</sup> In this situation, the select committee is effectively independent of the executive in the recommendations it makes on bills and budgets and in any inquiries it undertakes.

In the constitutional arrangements Parliament is supreme, but the former first-past-the-post electoral system, provided the government of the day with a great deal of influence over Parliament for much of the time. This contributed to a situation in which many felt laws were made too quickly and with insufficient consideration. MMP changed the political dynamic because more political parties were represented, and because coalition governments, or minority governments backed by support parties, became the norm. MMP, in making it necessary for the government to win some cross-party support in order for Parliament to pass its legislation, has indeed strengthened the independence of Parliament.<sup>149</sup> But the logic of this reform has not been fully followed through. Political contestation remains the dominant driver of parliamentary outcomes, primarily because this culture is deeply imbedded in the way Parliament operates.<sup>150</sup>

Legislative proposals developed by the executive, dominate the parliamentary agenda. The processes of Parliament provide limited opportunity for other matters to be debated in the House, and individual MPs are provided with a narrow window for bringing matters to the attention of the House. A challenge for Parliament is how to maintain sufficient independence to assure the public that its laws are coherent and constitutional, to approve the raising of revenue, and to scrutinise the efficiency and effectiveness of spending and regulation. At present, the parliamentary culture is not strongly supportive of these roles. Improvement would require new attention to the role and status of the Speaker, the control of parliamentary business, and the organisation of select committees.

The New Zealand Public Health and Disability Amendment Act 2013, considered in all stages under urgency, enables family carers of people with disabilities to be paid less than other carers and prohibits new claimants from seeking legal redress. It was enacted despite advice from the Attorney-General that it breaches the New Zealand Bill of Rights Act 1990.<sup>151</sup> In this case, Parliament failed to protect the quality of legislation that citizens have the right to expect.

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<sup>148</sup> Malone, 2008: 152.

<sup>149</sup> Malone, 2008: 232: “[I]t is possible to conclude that MMP has produced a significant rebalancing of the constitution. The obligation on ministers to consult within and between multiple parties and to accommodate the policy preferences of those parties into governmental decision-making has significantly restricted executive power. New Zealand’s executive-dominated constitution is now a creature of the past. In its place is a better-balanced constitution, in which the ideal of limited government promoted by the doctrine of separation of power is more tangible than before. If New Zealand ever was an elective dictatorship under [first-past-the-post] as some critics claimed, it is no longer, and simply cannot be in a multi-party government situation.”

<sup>150</sup> Interviews with Sir Geoffrey Palmer and David McGee, 11 July and 5 February 2013.

<sup>151</sup> David Beetham, *Parliament and Democracy in the 21st Century: Creating a guide to good practice* (Geneva: International Parliamentary Union, 2006), p. 4: “For the people to have any influence over the laws and policies to which they are subject requires the guarantee of basic rights ... It is this framework of rights that also secures

### 1.2.1 Transparency (law)

**To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?**

Score: 4

*Law and formal processes provide adequately for the transparency of Parliament except that the Official Information Act 1982, despite its centrality in the constitutional arrangements, does not extend to Parliament's own administration.*

There are a wide range of formal transparency provisions for parliamentary proceedings. These measures, which are spelt out in Standing Orders, include the right of the public and the media to attend parliamentary sessions; the television, internet, and radio broadcast of parliamentary debates; and the publication of *Hansard* with a verbatim record of what is said in the House. There are also provisions to publish reports considered by the House and its committees and to make draft and final legislation public.

Parliament is financed under the Public Finance Act 1989, and its budgeting and reporting processes are in accordance with that Act, which, as covered in the public sector pillar report, is rated as highly transparent by international standards.

Since 2006, there have been major improvements<sup>152</sup> in the transparency and credibility of the processes around MPs' pay and terms and conditions. This is a major step forward from the situation recorded in the 2003 National Integrity System. Salaries are set on a transparent and independent basis by the Remuneration Authority. Processes in the Parliamentary Service have been upgraded to ensure more clarity of and compliance with the rules on MPs' allowances and expenses.

The OIA does not extend to the legislature's own administration. The public cannot access information on the proceedings of some select committees, or on general parliamentary administration. The Law Commission recently recommended<sup>153</sup> extending the OIA to the officers of Parliament, Parliamentary Counsel Office, Office of the Clerk, Parliamentary Service, and Speaker of the House.<sup>154</sup> The government rejected this on the grounds that New Zealand has an open Parliament by international standards and it already makes a great deal of information available. The

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for them the further democratic principle of being treated as equals without discrimination ... While respect for these rights is the responsibility of all citizens, it is the particular responsibility of parliament as the legislative power to ensure that their formulation and mode of protection in practice conform to international human rights standards, and that they are not undermined by other legislation."

<sup>152</sup> The 2003 New Zealand NIS recommended improvements in this area.

<sup>153</sup> Law Commission, *The Public's Right to Know: Review of the official information legislation*, NZLC R125 (Wellington: Law Commission, 2012).

<sup>154</sup> Committee on Official Information (chaired by Sir Allan Danks), *Towards Open Government* (Wellington: Government Printer, 1981).

government<sup>155</sup> considered that Parliament was itself better able to develop appropriate rules for the access and use of information.

The OIA has become, in the words of the Law Commission, “central to New Zealand’s constitutional arrangements”.<sup>156</sup> It is anomalous that the principle of open government is not applied to all aspects of the resourcing and management of the Parliament.

### 1.2.2 Transparency (practice)

**To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?**

Score: 4

*The public can and does obtain relevant and timely information on the activities and decision making of Parliament.*

The formal transparency provisions all appear to function well. Public and media attendance in the House is well established, the media take an active interest in parliamentary proceedings, the various publications and free public broadcasting of proceedings are timely and well presented, and the Office of the Clerk produces publications and runs an excellent website on the history and organisation of Parliament. All draft legislation is made publicly available online and in hard copy, and final legislation is made available to the public in an accessible and comprehensible form.

In general, Parliament (through the Office of the Clerk) is proactive in making the proceedings of the House available to the public.<sup>157</sup> It is regarded as exhibiting international good practice in the guidance and support it gives to those members of the public who wish to make submissions before select committees.<sup>158</sup>

### 1.2.3 Accountability (law)

**To what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?**

Score: 5

*Overall, there is ample legal provision for Parliament to report on and be answerable for its actions. Parliamentary accountability for legislation could be strengthened by the adoption of a code of legislative standards. All MPs face general elections (or selection as list MPs) every three years or more frequently. This is the most basic accountability mechanism for the legislature. Each parliamentary term, the Standing Orders Committee takes public submissions and reviews the rules and practices of Parliament.*

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<sup>155</sup> New Zealand Government, *Government Response to Law Commission Report on The Public’s Right to Know: Review of the official information legislation* (Wellington: House of Representatives, 4 February 2013). [www.justice.govt.nz/publications/global-publications/g/government-response-to-law-commission-report-on-the-publics-right-to-know-review-of-the-official-information-legislation](http://www.justice.govt.nz/publications/global-publications/g/government-response-to-law-commission-report-on-the-publics-right-to-know-review-of-the-official-information-legislation) [accessed 16 July 2013].

<sup>156</sup> Law Commission, NZLC R125, 2012.

<sup>157</sup> Interview of David McGee, former Clerk of the House, with author.

<sup>158</sup> Beetham, 2006.

*There have been occasional ad hoc reviews of Parliament, most recently following the introduction of MMP.*<sup>159</sup>

New Zealand's system of parliamentary democracy not only provides for citizens to elect their representatives, but also allows citizens to have a say in shaping the laws that affect them. The system of public input into legislative proposals is an important element in the parliamentary process. Submissions are also received on parliamentary inquiries and other matters before a select committee.

Internal scrutiny and regulation of parliamentary behaviour is provided through the Office of the Speaker, the Privileges Committee, and the Standing Orders Committee. MPs are shielded by absolute parliamentary privilege only when they make speeches to the House. Every New Zealand citizen has the right to petition the House to address a grievance or change a policy. Petitions are considered in the first instance by select committees, which may refer the issue to the House for action. In 1892, a petition with 30,000 signatures initiated the process whereby New Zealand became the first country to extend the vote to women.<sup>160</sup> In the last 10 years, Parliament has received over 500 petitions.

All legislation can be scrutinised and reported on by the New Zealand Law Commission, an independent statutory body<sup>161</sup> to promote the systematic review, reform and development of New Zealand law. The commission advises Responsible Ministers on possible changes to the law, and its major reports are placed before the House of Representatives.

Some prominent commentators have seen weaknesses in how Parliament considers legislation. Sir Geoffrey Palmer points out that Parliament spends about two-thirds of its time on legislation despite that no more than 15–20 per cent of such legislation is controversial between the parties.<sup>162</sup> He adds that “[despite] great amounts of urgency taken in the life of the Parliament that expired in 2011, in 2013 the Parliament is in the midst of a massive legislative logjam”.<sup>163</sup>

Other commentators agree that MMP has slowed down the legislative process<sup>164</sup> and that many bills stay on the Order Paper for too long, and can become outdated. Statutory changes needed by departments are consequently delayed or denied to them.<sup>165</sup> There were complaints from opposition parties before the last general election that the back-log enabled the government to avoid dealing with opposition party

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<sup>159</sup> Rt Hon Sir Geoffrey Palmer QC "Reform of Parliament", Address to the New Zealand Chapter of the Australasian Study of Parliament Group Seminar, *A Vision for New Zealand's 60th Parliament*, Wellington 17 February 2013.

<sup>160</sup> Office of the Clerk of the House of Representatives, "Petitioning Parliament", *How Parliament Works*.

<sup>161</sup> Law Commission Act 1985.

<sup>162</sup> Rt Hon Sir Geoffrey Palmer QC "Reform of Parliament", Address to the New Zealand Chapter of the Australasian Study of Parliament Group Seminar, *A Vision for New Zealand's 60th Parliament*, Wellington 17 February 2013.

<sup>163</sup> The size of the backlog, according to the Schedule of Bills at 2 August 2013, appears roughly the same as in 2011 and 2012.

<sup>164</sup> Malone, 2008. See also David McGee, "Concerning legislative process", *Otago Law Review* vol. 11, 2007, p. 417.

<sup>165</sup> Email correspondence with Ryan Malone, 9 July 2013.

members' bills before the election.<sup>166</sup> There are concerns too that the situation means that politically topical legislation gets priority over necessary technical and law reform legislation.<sup>167</sup>

These problems are being addressed. The 2011 Standing Orders amendments provided for more time for the consideration of some legislation and limited the capacity to resort to "urgency" when the real problem was lack of parliamentary time. Urgency is now used less frequently, albeit sometimes controversially. The Legislation Act 2012 has addressed the problem of a build-up of technical and law reform legislation by making provision for a fast-tracked process for the consideration of non-controversial "revision" bills. These changes will begin to impact on legislation from the next parliamentary term.<sup>168</sup>

Where accountability should lie for improving the quality of legislation is not straightforward. Ministers, the public service, and Parliament each have a role, and there are systemic issues such as the possibility of too low a threshold for proposing new legislation and/or that its generation at departmental level is wastefully fragmented.<sup>169</sup> A recent report of the UK House of Commons concludes that "the majority of poor quality legislation results from either inadequate policy preparation or insufficient time being allowed for the drafting process, or a combination of the two. This is not to point the finger at the Office of the Parliamentary Counsel, which neither produces policy nor determines the speed with which policy is to be transformed into legislative proposals".<sup>170</sup>

This committee recommended that the UK parliament should adopt a Code of Legislative Standards, and create a Joint Legislative Standards Committee to oversee the application of the code.<sup>171</sup> The committee also recommended that the Parliament and the executive should agree on a test to determine whether legislation has constitutional implications.

There is a good case for New Zealand to have similar measures to improve law making. One important step was recently taken by the executive with the requirement for government departments to complete a disclosure statement for all draft government legislation.<sup>172</sup> This statement, which the chief executive of the department concerned must certify personally, aims to ensure that government policies are translated into legislation that is "robust, principled and effective".<sup>173</sup>

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<sup>166</sup> "Backlog of bills causing problems in Parliament", *Stuff*, 24 March 2008. [www.stuff.co.nz/national/328624](http://www.stuff.co.nz/national/328624)

<sup>167</sup> Sascha Mueller, "Where's the fire? The use and abuse of urgency in the legislative process", *Canterbury Law Review* vol. 17(2), 2011, p. 316.

<sup>168</sup> A particularly controversial use of urgency was the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010.

<sup>169</sup> Interview with Sir Geoffrey Palmer, 11 July 2013.

<sup>170</sup> House of Commons, *Ensuring Standards in the Quality of Legislation* (UK: Political and Constitutional Reform Committee, House of Commons, 2013), summary p. 3.

<sup>171</sup> House of Commons, 2013.

<sup>172</sup> Treasury, 2013.

<sup>173</sup> These requirements are in addition to existing *Cabinet Manual* and Legislation Advisory Committee provisions on legislative quality.

Parliament would do well to complement these regulations with their own set of standards for good parliamentary law making. In the light of serious regulatory failures (covered in the public sector pillar report) there has been public consideration to a Regulatory Responsibility Act.<sup>174</sup> A new Act has not found political support, but Treasury is developing administrative measures that could strengthen the select committee processes dealing with regulation.

#### 1.2.4 Accountability (practice)

**To what extent do the legislature and its members report on and answer for their actions in practice?**

Score: 4

*Parliament and its members are answerable for their actions in practice because Parliament's transparency creates considerable public engagement and because of the frequency of general elections.*

Parliament is accountable to the public because of the frequency of general elections. Historically, citizens have had a close relationship with their constituency MPs,<sup>175</sup> and this is regarded as an essential underpinning of the New Zealand's formal constitutional arrangements.

However, this may be changing. Some consider the introduction of list MPs has diluted the power of constituencies and increased the influence of parties.<sup>176</sup> At the same time, party membership is falling (covered in the political parties pillar report). While voter turnout for general elections has been high by international standards, the 2011 general elections recorded the lowest turnout in 126 years with a decrease of over 10 per cent from a decade earlier (from 85 per cent to 74 per cent of electors).<sup>177</sup> Given the importance of direct popular engagement as the invisible glue of New Zealand's governance, this drop in voter turnout warrants attention.

#### 1.2.5 Integrity (law)

**To what extent are there mechanisms in place to ensure the integrity of members of the legislature?**

Score: 4

*The conduct of parliamentarians is covered by criminal law, the provisions of Standing Orders, and the Speaker's rulings. However, Parliament lacks a single, formal code of conduct. The adoption of such a code could encourage more attention to the development of the ethical framework as risks and community standards change.*

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<sup>174</sup> For example, Graham Scott, "The Regulatory Responsibility Bill: Some issues in the debate", *Policy Quarterly* vol. 6(2), 2010, p. 58.

<sup>175</sup> Interview with Elizabeth McLeay, 14 February 2013.

<sup>176</sup> Interview with Hon. Templeton, 5 July 2013.

<sup>177</sup> Not counting the 1978 elections where the official turnout is regarded as understated because of technical problems.

Various rules of conduct are contained in Standing Orders and Speakers' Rulings, and are enforced by the Privileges Committee and the Speaker. For example, bribery of MPs, as well as being a crime, is covered by the concept of contempt of Parliament.<sup>178</sup> An MP (or outsider) judged by the Privileges Committee to have committed a contempt can be punished by censure, a fine, or (notionally) up to three years in jail.

MPs are covered specifically by criminal law prohibiting bribery and corruption.<sup>179</sup> In these areas they are not protected by parliamentary privilege, as this can be invoked only where the MP is acting in a parliamentary rather than a personal role.<sup>180</sup> Whether an MP's actions are or are not covered by parliamentary privilege is decided by the Privileges Committee. Actions by Parliament or parliamentarians outside the House must comply with the law.

All MPs must disclose their financial interests in the Parliamentary Register of Pecuniary Interests, which is administered by the Registrar of Pecuniary Interests, who is appointed by the Clerk of the House.<sup>181</sup> This information is available to the Office of the Auditor-General and is regularly published in summary form. MPs are also obliged to disclose to the Registrar if they have any pecuniary interest in a matter before the House in which they are involved.<sup>182</sup>

As covered in the political executive pillar report, New Zealand, unlike comparable administrations, does not have laws or regulations covering the lobbying of parliamentarians or provisions covering post-government employment from the perspective of avoiding conflicts of interest; nor does there appear ever to have been a prosecution for misconduct in public office.<sup>183</sup>

In 2007, four minor parties drafted and signed a voluntary code of conduct and urged other parties to do likewise. This code, which was placed in the custody of the Speaker, has not attracted the support of the bigger parties. It is nevertheless an evergreen topic. The then Speaker acknowledged in a speech to an international parliamentary conference that most professional bodies have such codes and there is a general trend for ethical matters to be part of the decision making in the public and private spheres.<sup>184</sup> However, while acknowledging that the issues would not go away, the Speaker noted: "The New Zealand Parliament ... has a long history of resisting regulatory intrusions into matters that govern the working of Parliament and the conduct of members. Short of the matter becoming subject of a coalition agreement, it

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<sup>178</sup> *Standing Orders*, 2011, Standing Order 407.

<sup>179</sup> Crimes Act 1961, section 103.

<sup>180</sup> In 2008, a member of Parliament was charged with bribery and corruption. The High Court rejected an appeal for immunity, and the member was subsequently convicted on several charges and sentenced to six years' imprisonment.

<sup>181</sup> New Zealand Parliament, "Register of pecuniary and other specified interests of members of Parliament", 2013. [www.parliament.nz/resource/0000262069](http://www.parliament.nz/resource/0000262069) [accessed 16 July 2013].

<sup>182</sup> New Zealand Parliament, "Parliamentary privilege", House of Representatives, *Standing Orders of the House of Representatives*, Chapter 8, Standing Order 399, 2011. [www.parliament.nz/en-nz/pb/rules/standing-orders](http://www.parliament.nz/en-nz/pb/rules/standing-orders).

<sup>183</sup> See annex to Public Sector Pillar 4

<sup>184</sup> Speaker of the House of Representatives, "A code of conduct for members of Parliament: Is the time ever right?", speech to the 38th Presiding Officers and Clerks Conference, Rarotonga, Cook Islands, July 2007. [www.parliament.nz/en-nz/about-parliament/how-parliament-works/speaker/speeches/48Speakspeech130720071/a-code-of-conduct-for-members-of-parliament-is-the-time](http://www.parliament.nz/en-nz/about-parliament/how-parliament-works/speaker/speeches/48Speakspeech130720071/a-code-of-conduct-for-members-of-parliament-is-the-time).

is unlikely that the New Zealand Parliament will be subject to a formal code of conduct”.<sup>185</sup>

This opinion should not stand as the last word. It is by no means clear that a code of parliamentary conduct for MPs can be accurately described as a “regulatory intrusion”. It would be rather a voluntary action by parliamentarians to show the public they apply the same standards to themselves as do other important institutions. A code bringing together the rules on integrity could also encourage more attention to the development of the ethical framework as risks, and community standards, change.

### 1.2.6 Integrity (practice)

#### To what extent is the integrity of legislators ensured in practice?

Score: 4

*In a moderate number of cases parliamentarians have broken the law and integrity rules. Sanctions have been applied effectively and without favour.*

The parliamentary environment exposes MPs to public scrutiny, and political parties in Parliament face strong incentives to ensure their members meet public expectations of conduct. New Zealand parliamentarians live in a fish-bowl-like environment with high media interest and under close scrutiny. Even relatively minor transgressions can have disproportionate consequences for the miscreant if the action puts the government or the party in a bad light.<sup>186</sup>

There have been a moderate number of cases over recent years of MPs’ misbehaviour. The most serious were in 2009 when an MP was convicted for corruption and the perversion of justice and sentenced to six years in prison,<sup>187</sup> and in 2006 when an MP was imprisoned for almost three years for using documents with intent to defraud and intent to pervert the course of justice.<sup>188</sup> Most other cases related to the misuse of the perks of office, conflicts of interest, and personal misbehaviour. The materiality of fraud in these other cases was at the lower end of the scale.<sup>189</sup>

There is no evidence that MPs are treated more leniently or are less liable to prosecution than other citizens. To the contrary, precisely because they are the elected representatives of the people, the standards of expected behaviour are arguably much higher than those that would apply to the general public in respect of their personal and professional lives.

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<sup>185</sup> Speaker of the House of Representatives, 2007.

<sup>186</sup> See the Aaron Gilmore case: “Gilmore: ‘I’m not surrendering, I’m retreating’”, *TVNZ*, 14 May 2013. <http://tvnz.co.nz/politics-news/gilmore-i-m-not-surrendering-retreating-5435981>

<sup>187</sup> A former Mangere MP was found guilty of 11 charges of bribery and corruption and 15 charges of attempting to obstruct or pervert the course of justice: “Taito Phillip Field guilty of 26 charges”, *TVNZ*, 4 August 2009. [tvnz.co.nz/national-news/taito-phillip-field-guilty-26-charges-2886924](http://tvnz.co.nz/national-news/taito-phillip-field-guilty-26-charges-2886924)

<sup>188</sup> Donna Awatere Huata, a list MP, was convicted of fraud in relation to a government-funded charity and of attempting to pervert the course of justice. Serious Fraud Office, *Report of the Serious Fraud Office Annual for the Year Ended 30 June 2006*, 2006.

<sup>189</sup> Compared with the revelations about members of Parliament in the House of Commons.

### 1.3.1 Oversight of the executive

#### To what extent does the legislature provide effective oversight of the executive?

Score: 4

*Parliament provides effective oversight of the executive through the scrutiny of reports and the questioning of ministers in select committees and the House of Representatives and through the reports of the officers of Parliament. However, to date, Parliament has not given systematic attention to the impact of the government's policies and services.*

Ministers are responsible to Parliament both collectively and individually. As a consequence, the executive is required to be accountable to the House.<sup>190</sup> Five elements are key to the structure of the government's accountability to the House.

The first element is the appropriation and supply of public funds. Parliament must approve public funds under the Constitution Act 1986 and the Public Finance Act 1989. A government cannot remain in office if it fails to obtain supply. Normally, government expenditure cannot be authorised more than a year ahead.<sup>191</sup> This ensures government spending is kept under constant scrutiny.

The formal budget process through Parliament comprises the Appropriation (Estimates) Bill, the Budget Speech by the Minister of Finance, and the Estimates. Standing Orders provide for these "set pieces" to take precedence over other business. Substantial time is allocated for their presentation and debate in the House and for their scrutiny by select committees.

The annual Financial Review Bill provides an important opportunity for the House to examine the spending of ministers and their agencies in the previous financial year. Officials are required to provide detailed financial information to Parliament's select committees and to appear before the relevant committee in person to answer oral questions from committee members.

Parliamentary questions are the second element. An hour is allocated from 2pm every sitting day of a parliamentary session for 12 principal oral questions to be put to, and answered by, ministers. The opportunity to ask such questions is equally shared among MPs, excluding ministers. This is an opportunity for Parliament to hold ministers accountable for policy choices and actions under intense opposition pressure and concentrated media coverage. Any MP may also submit written questions, and ministers have six days in which to respond. Approximately 20,000 written questions are asked of ministers each year. Each question and response is published on the parliamentary website.<sup>192</sup>

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<sup>190</sup> New Zealand Parliament, "Government accountability to the House", *How Parliament Works* (Office of the Clerk of the House of Representatives, 2010). [www.parliament.nz/resource/0000195068](http://www.parliament.nz/resource/0000195068)

<sup>191</sup> David McGee, "Appropriations and authorisations", *Parliamentary Practice in New Zealand*, Chapter 32, 3rd ed. (Wellington: Dunmore Publishing, 2005). [www.parliament.nz/en-nz/about-parliament/how-parliament-works/ppnz/00HOOOCPNZ\\_321/chapter-32-appropriations-and-authorisations](http://www.parliament.nz/en-nz/about-parliament/how-parliament-works/ppnz/00HOOOCPNZ_321/chapter-32-appropriations-and-authorisations) [accessed 16 July 2013].

<sup>192</sup> [www.parliament.nz/en-nz](http://www.parliament.nz/en-nz)

Debates in the House make up the third element. An hour is set aside every Wednesday for general debate in which members are free to raise any matters of concern. If the Speaker agrees that a particular matter needs urgent attention, 90 minutes can be set aside for it to be debated.

The executive can be held to account in the Address in Reply Debate, in which Parliament responds to the Speech from the Throne<sup>193</sup> by the Governor General at the beginning of each parliamentary session. In years with no Speech from the Throne, the Prime Minister's opening statement to the House provides an opportunity for a wide-ranging policy debate among MPs from all sides of the House.

The fourth element is select committees. Scrutiny of the executive occurs in select committees where ministers and officials attend public hearings and answer questions about their performance and policy intentions. If a select committee makes a recommendation to the government, the government must respond to Parliament within 90 days.

The fifth element is the officers of Parliament. The primary function of an officer of Parliament is to act as a check on the executive as part of Parliament's constitutional role of ensuring the accountability of the executive.<sup>194</sup>

Parliament has a comparatively limited role in the appointment of officials. It is required by statute to recommend on the appointment of officers of Parliament. There are only a few statutory officers whose appointment requires Parliament's recommendation or endorsement.<sup>195</sup> The appointment of senior government officials and board members is almost entirely within the exclusive domain of the executive.

As covered in the public sector pillar report, New Zealand has been a world leader in its legislation and performance on fiscal transparency, but international standards in this area are rising. The Open Budgeting Initiative (which recently adopted the High Level Principles on Fiscal Transparency, Participation and Accountability promulgated by the Global Initiative on Fiscal Transparency (GIFT)) asserts both a citizen right to information on fiscal policies and a citizen right to direct participation in public debate on fiscal policy.<sup>196</sup>

The Open Budgeting Initiative's Open Budget Survey 2012 found that the strength of legislative oversight of fiscal policy in New Zealand was only moderate, as was the level of public engagement in fiscal policy.<sup>197</sup>

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<sup>193</sup> The government's programme for the coming session

<sup>194</sup> Leslie Ferguson, "Parliament's watchdogs: New Zealand's Officers of Parliament", paper for Parliamentary Law, Practice and Procedure, 2008.

<sup>195</sup> Peter Waller and Mark Chalmers, *An Evaluation of Pre-Appointment Scrutiny Hearings* (London: Liaison Committee, House of Commons, 2010).

<sup>196</sup> The UN General Assembly endorsed the GIFT high-level principles in December 2012. GIFT is a multi-stakeholder initiative lead by the International Monetary Fund, the World Bank, the International Budget Partnership, the governments of Brazil and the Philippines, and other official sector and civil society entities. The principles are available from the GIFT website, [fiscaltransparency.net](http://fiscaltransparency.net)

<sup>197</sup> "Public participation in the budget process", *Open Budget Survey 2012*, Chapter 4 (Washington D. C.: International Budget Partnerships, 2012).

From a comparative OECD perspective, the New Zealand legislature's role in the budget process looks "weak" because there is no upper House and Parliament has restricted authority to amend the budget.<sup>198, 199</sup> There is no parliamentary budget office or other independent source of advice on fiscal policy,<sup>200</sup> and no provision for public submissions on the annual budget.

Such comparisons do not take account of the very positive impact of highly transparent and frequent general elections that characterise New Zealand public governance, but it would be risky to dismiss them on the basis of New Zealand's self-perceived constitutional exceptionalism. The public sector pillar report observes that while the executive has accounted to the legislature on the use of funds and powers for outputs, reporting on the impact of policies and services has been sparse and unsystematic. There has been little evaluation of the impact of major public management policies despite their importance to citizens and future governments.

With scarce analytical resources of its own, the result is that Parliament has addressed such matters only if third parties report them. Recent changes to the Public Finance Act 1989<sup>201</sup> cover impact reporting and the policy and regulatory stewardship responsibilities of the public service,<sup>202</sup> which should, when implemented, enable Parliament to strengthen the monitoring of government effectiveness.

### 1.3.2 Legal reforms

#### **To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?**

Score: 3

*Parliament has effective processes for addressing instances of corruption, but it does not use its select committees to give appropriate oversight and priority to bribery and corruption and to the promotion of national integrity at home and abroad.*

Parliament combats public sector corruption through questions in the House, the scrutiny of the select committees, and the activities of the parliamentary officers: the

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<sup>198</sup> Standing Orders 318–322 provide that an individual member of Parliament or a select committee may propose amendments to the Budget, but that the Government may veto any amendments that, in its view, would have more than a minor impact on the fiscal aggregates or on the composition of a Vote. See House of Representatives, *Standing Orders of the House of Representatives*, 2011. [www.parliament.nz/en-nz/pb/rules/standing-orders](http://www.parliament.nz/en-nz/pb/rules/standing-orders)

<sup>199</sup> No amendments to the government's budget proposal have been approved in recent years. This is not to imply that Parliament should be able to significantly amend the budget in a Westminster system. What authority a legislature should have to amend the Executive's budget proposal is a fundamental issue of constitutional choice, and no position is being taken on that here. However, the weakness of amendment authority perhaps reduces the incentives of parliamentarians to engage in in-depth analysis and debate on the Budget.

<sup>200</sup> The Finance and Expenditure Committee of Parliament is responsible for oversight of fiscal management and is chaired by a member of the governing party. The committee has not sought independent advice on fiscal policy in recent years, although funding is available for it to do so and it has done so with respect to monetary policy.

<sup>201</sup> Public Finance (Fiscal Responsibility) Amendment Bill.

<sup>202</sup> Described in the public sector pillar report (pillar 4).

Auditor-General and the Ombudsmen with the support of the Official Information Act 1982.

The fight against corruption has not had high priority for Parliament in recent decades. However, the global financial crisis, some relaxation of regulatory oversight, and the diversification of the economy and society have given rise to new risks and problems, including fraud, fiduciary failures, and tax evasion.

New Zealand's business interests are becoming increasingly global. As shown recently in China,<sup>203</sup> illegal actions by foreign subsidiaries of New Zealand firms can have a wider impact on New Zealand's national brand. There is evidence that the relative ease of company registration in New Zealand has been exploited for fraudulent purposes by international actors. The government is addressing this problem through the Companies and Limited Partnerships Amendment Bill, which the Commerce Committee is considering.

In 2002, Cabinet authorised New Zealand to sign the UN Convention against Corruption, subject to Parliament examining the convention and the passage of necessary legislation. The Foreign Affairs and Trade Select Committee completed its examination of the convention in May 2012 and reported it had no issues to raise with the House. Parliament has already completed some convention obligations by passing the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 and the Criminal Proceeds (Recovery) Act 2009. However, amendments are needed to the Crimes Act 1961, Secret Commissions Act 1910, and Mutual Assistance in Criminal Matters Act 1992, if New Zealand is to meet convention obligations.<sup>204</sup>

New Zealand is a party to the OECD's Anti-Bribery Convention, and, in response to it, the Crimes Act was amended in 2001 to make bribery of a foreign public official an offence.<sup>205, 206</sup>

Several domestic commentators have raised concerns about the risks of rising corruption in New Zealand society and observed the lack of a focused official response.<sup>207</sup> There is concern that New Zealand's excellent ranking in Transparency International's Corruption Perceptions Index is inducing a misguided sense of complacency. While specific cases of corruption increasingly feature in parliamentary debates, it is not evident that Parliament uses its select committee process to give bribery and corruption and the promotion of national integrity, the oversight and priority it deserves.<sup>208</sup>

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<sup>203</sup> Fonterra's problems of subsidiaries selling contaminated milk "Fonterra's Chinese Milk Scandal" *The New Zealand Herald* website August to November 2013.

<sup>204</sup> New Zealand Government, *International Treaties List as at July 2012* (Wellington: Ministry of Foreign Affairs and Trade, 2012). [www.mfat.govt.nz/downloads/treaties-and-international-law/ITL-International-treaties-list-july-2012-edition.pdf](http://www.mfat.govt.nz/downloads/treaties-and-international-law/ITL-International-treaties-list-july-2012-edition.pdf)

<sup>205</sup> The Crimes Act 1961 was amended by the Crimes Act Amendment Act 2001.

<sup>206</sup> Transparency International New Zealand has done several biennial assessments of New Zealand's enforcement of the convention. This is discussed in the law enforcement pillar report (pillars 5 and 9).

<sup>207</sup> For example, Deloitte, "Bribery and corruption: Exposure, enforcement and accountability key risks for New Zealand organisations", press release, 13 September 2012.

<sup>208</sup> Transparency International New Zealand, "Still not enough action on foreign corruption by New Zealand", press release, September 2012.

### 1.4.1 Treaty of Waitangi

**The Treaty of Waitangi can be understood to create obligations of partnership, respect and participation. What does the legislature do to partner with Māori, to respect and affirm Māori rights to make decisions, and to enhance Māori participation in its field of activity? In particular, where the legislature has legal rights and obligations in this respect given to it by the Crown, how well does it honour them, including any Treaty obligations passed on by the Crown?**

*Parliament is directly and continuously engaged in Treaty of Waitangi matters. It appears to give effect to its spirit and principles.*

The Treaty of Waitangi looms large in the business of Parliament. In 1985, Parliament passed legislation to allow the Waitangi Tribunal to investigate claims of breaches of the Treaty that had occurred from as early as the signing of the Treaty in 1840. The last phase of a claim settlement is legislation. The first settlement bill was passed in the 1990s, and as time has passed the flow of finalised settlements has increased. Five settlement bills are before the Parliament at present, and many more are in the pipeline.<sup>209</sup> The final process is nicely captured in the following description from the Parliament website.<sup>210</sup>

Sometimes the signing of settlement documents takes place in Matangireia (the former Māori Affairs Committee Room in Parliament House), under the gaze of early Māori members of Parliament whose portraits adorn the walls alongside a large reproduction of the Treaty of Waitangi.

Treaty settlement legislation usually contains a Crown apology for historic Crown actions and omissions that were in breach of the treaty, and a package of cultural and commercial redress. In combination, the redress aims to recognise the claimants' historical grievances, restore the relationship with the Crown, and contribute to their economic development.

The passage of settlement legislation usually enjoys strong support across the House. The conclusion of that passage is a momentous occasion. Members of the claimant communities travel to Wellington to witness and celebrate the historic event.

Te reo, the Māori language, came into Parliament with the first Māori MPs in 1868. Māori language was permitted and interpreters were provided – but not encouraged. The understanding was that statements in Māori should be brief. Parliament made Māori an official language in 1985. *Hansard* is published in both Māori and English, and parliamentary broadcasts include Māori to English translation.

In 1996, under the mixed-member proportional representation voting system, 15 Māori MPs entered Parliament – the highest number in its history. Parliament appoints a kaumātua (elder), who manages the Māori components of all formal and important ceremonies and events for the Speaker and the Speaker's departments, the Office of

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<sup>209</sup> March 2013.

<sup>210</sup> New Zealand Parliament, "Treaty of Waitangi Settlements and the House of Representatives", 16 July 2012. [www.parliament.nz/en-nz/features/00NZPHomeNews201207161/treaty-of-waitangi-settlements-and-the-house-of-representatives](http://www.parliament.nz/en-nz/features/00NZPHomeNews201207161/treaty-of-waitangi-settlements-and-the-house-of-representatives)

the Clerk, and the Parliamentary Service.<sup>211</sup> The kaumātua supports the kaiwhakarite (functions coordinator) for the Parliamentary Service, and advises on Māori protocol, procedures, and policies relating to te reo and tikanga (Māori law, rules, and practice).

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