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How Parliament works
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Parliament Brief: What is Parliament?

This *Parliament Brief* explains the difference between and the distinct functions of the institutions of Parliament, Government, and the **House of Representatives**. It also explains the 'separation of powers' – the relationship between Parliament, executive government, and the judiciary (courts) within **New Zealand's** constitutional framework.

- Parliament makes the **laws**.
- The Government administers the **laws**.
- The judiciary (the courts) interprets the **laws**.

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Constitutional monarchy

New Zealand's system of government is described as a constitutional monarchy. It means that, while our Head of State is a hereditary monarch (the Sovereign), the powers and functions of the Sovereign are exercised within constitutional constraints.

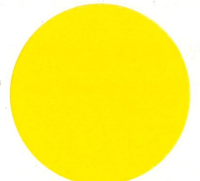
While **New Zealand** has no single document that is a constitution, the elements of our constitutional arrangements are contained in several Acts of Parliament, such as the Legislature Act 1908, the Constitution Act 1986, the **New Zealand** Bill of Rights Act 1990, and the Electoral Act 1993. These **laws** include provisions on how we vote, the term of Parliament, the powers of Parliament, the formation of the Government, and individual rights.

The function of these Acts is to constrain the actions of the Sovereign and place political power in the hands of **representatives** elected by the people and accountable to the people. They are based on centuries of hard-won struggles that have gradually transferred power to the people, both in **New Zealand** and Britain, from where our system is derived. Our parliamentary system is known as the Westminster model after the British system based at Westminster in London.

Parliament

Parliament is the supreme legislative power. It has two constituent parts:
The Sovereign (represented in **New Zealand** by the Governor-General)

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- the **House of Representatives** (see below).

The Sovereign's functions in relation to Parliament are to give the Royal assent to bills, call Parliament to meet, dissolve Parliament, and call an election. These functions are carried out on the advice of Ministers of the Crown (the Government). The Sovereign plays no other active role in parliamentary work.

In fact, the Sovereign is traditionally barred from entering the **House of Representatives**. This dates back to events in 17th-century England when, at a time of conflict between the King and Parliament, King Charles I himself entered the debating chamber to arrest members who had offended him. 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 (see *Parliament Brief*, 'Parliamentary Privilege' and the Imperial **Laws** Application Act 1988).

New Zealand's Parliament was bicameral with an upper **house** known as the Legislative Council until 1950. Now it is unicameral. This means it has only one chamber (the **House of Representatives**) and there is no upper **house** such as a senate.

The four main functions of Parliament are:

- to provide representation for the people
- to **pass** the legislation (law) by which the country is governed
- to scrutinise the activities of the Government
- to approve the supply of public funds to the Government.

House of Representatives

Every time there is a general election or a by-election, voters elect members to the **House of Representatives**. The functions of the **House** are set out below.

Provides a Government from among its members

The Government is made up of members of the **House of Representatives** appointed by the Governor-General as Ministers of the Crown. The **House** must have 'confidence' in the Government for it to continue in office. This is known as 'responsible government'. The Government (also known as the Executive) is then responsible for day-to-day administration of the country.

Since the introduction of the mixed member proportional (MMP) voting system, it is unlikely that any one party will have a majority of seats in the **House**. In these circumstances, different parties are likely to negotiate with each other to obtain the support necessary to form a Government. The Government's composition can take any of the following forms:

- single party majority – one party has more than 50 percent of the seats in the **House**
- majority coalition – two or more parties with a combined total of more than 50 percent of the seats join together to form a Government
- single party minority – one party with 50 percent or fewer of the seats forms a Government, with an agreement with another party/parties on confidence votes
- minority coalition – two or more parties with a combined total of 50 percent or fewer of the seats join together to form a Government, with an agreement with another party/parties on confidence votes.

For example, the National Government formed in 2008 is a minority government. It has agreements on confidence and supply with the Māori Party, United Future, and ACT. It also has a memorandum of understanding with the Green Party to establish a good faith working relationship.

A defeat for the Government on a vote in the **House** is rare. But in itself a defeat does not mean that the **House** has lost confidence in the Government. It simply means there is insufficient support in the **House** for that proposal. If, however, a particular vote is identified as a confidence issue, a lost vote could lead to another party forming a Government or the need for an election.

Matters relating to 'supply' of public funds would generally be regarded as matters of confidence because without funds for public expenditure the Government cannot function.

Acts as a legislature

One of the most important and visible functions of the **House** is to **pass** the legislation (**laws**) by which the country is governed. It does this by examining and amending bills (proposed **laws**) introduced by its members. In recognition of the Government having the confidence of the **House**, and therefore the right to govern (see above), **House** procedures provide more time for processing Government bills than for non-Government bills. However, procedures are in place to ensure individual members other than Ministers can introduce bills. Such bills occasionally **pass** into law (see *Parliament Brief*, 'The Legislative Process').

Observing the House in session

The public are welcome to observe Parliament at work. You can visit the **House of Representatives** in session, watch the **House** from your computer or on television, and tune in to radio broadcasts.

Provides representation

New Zealand's system is representative. It provides for the people to be represented in Parliament's decision-making processes because it is quite impractical for everyone to participate in person. Parliamentary debate is one means by which members of Parliament formally carry out this representative function. Another is to present petitions to the **House** from members of the public asking the **House** to act on a matter of public policy or law, or to put right a local or private concern (petitions are made once legal remedies have been exhausted).

Each member has the dual role of representing the people's views to the **House** and the Government and of representing the actions of the **House** and the Government to the people. This is the connection between each individual voter and the actions that affect the way the country is governed. If individual voters do not like what they hear they can exercise their votes at the next election to change their representation to better reflect their interests and expectations.

Seating in the Chamber

In the Chamber of the **House of Representatives** seats are allocated on a 'block basis' depending on the number of seats each party holds. Members of Parliament sit in blocks allocated to their political party. The parties decide where each member will sit within their block. The most senior members usually sit in the front (the front benches) while junior members sit towards the back (the back benches).

Government parties sit on the Speaker's right. Opposition parties sit on the Speaker's left. The Prime Minister and the Leader of the Opposition traditionally sit opposite each other across the table.

Consents to taxation and public expenditure

There is a well-established democratic principle that there should be no taxation without representation. It is therefore illegal for the Government to impose a tax without parliamentary authority given in the form of legislation agreed by Parliament. This is affirmed in the Bill of Rights 1688.

The Government regularly requires the House's approval for supply of public funds to run the country. Its annual Budget is subject to **House** approval and the Government obtains interim finance by occasional passage of an Imprest Supply Bill (see *Parliament Brief*, 'Government Accountability to the **House**'). These must be debated in the **House** and each debate represents an opportunity for the **House** to renew its confidence (or otherwise) in the Government.

Failure to obtain supply would almost certainly lead to either a change of Government or a general election because this would be an indication that the **House** had lost confidence in the Government. Without supply the Government would be unable to pay its creditors, including its employees. Denial of supply is an ever-present danger for any Government, especially one that depends on other parties to obtain it. If the power to approve supply were eroded, the **House** could be rendered ineffective as a control on the Government.

Scrutinises the Government's activities

The **House** has several processes by which it holds the Government to account. Perhaps the most visible of these is question time. Members question Ministers on their management of the **country's** affairs. This can be a very powerful means of extracting information that might bring into question the performance of individual Ministers or the Government as a whole.

Another significant means of scrutinising the Government is the ability of select committees to initiate their own inquiries. If necessary, witnesses can be compelled to attend and the production of documents can be required. There are several other mechanisms built into **House** procedures. In fact, anything the **House** does lends itself to scrutiny of the Government (see *Parliament Brief*, 'Government Accountability to the **House**').

Distribution of functions

To maintain a democracy, power cannot be concentrated entirely in one place. Before the development of parliamentary democracy, such concentrations of power existed. They still exist today in some parts of the world. The 'separation of powers' ensures that no single arm of government can exercise undue power in relation to the others. Here are some examples of why separation needs to be maintained:

- Without a judiciary independent of executive government, citizens could not have confidence in obtaining justice in the face of an overzealous bureaucracy.
- If the courts could intervene in the legislative process, action could be taken to prevent elected **representatives** passing **laws**.
- If the **House of Representatives** debated a particular court case, it could undermine a fair trial by unreasonably influencing a judge or jury.
- If the Government could change statute law by executive decree, that law would neither receive public scrutiny nor benefit from the rigours of parliamentary debate and detailed examination.

New Zealand's Westminster model fuses the executive and the legislature to some extent in that Ministers (the Government) must first be elected members of the **House of Representatives**. This has the benefit of ensuring they are routinely held directly accountable to the **House**. When they are acting in their executive roles they are quite separate from Parliament. In summary, functions in relation to the law are distributed as follows to ensure no single arm is able to abuse its power.

Parliament is recognised as sovereign (the highest authority) in the law-making process because it is accountable to the people. However, it is not the sole lawmaker. The courts need to establish what is known as the 'common law' or 'judge-made law' to fill gaps where existing law is not clear. The courts are responsible for interpreting the **laws** made by Parliament.

When passing **laws** Parliament also delegates some secondary law-making powers to the Government. This is known as delegated legislation (see *Parliament Brief*, 'The Legislative Process'). Parliament's law-making role therefore involves a need for careful scrutiny of the Government's legislative proposals. Parliament is unlikely to agree to sweeping provisions that empower the Government to make law that is so significant in its application that it ought to be made in Parliament itself. To do so would place disproportionate power in the hands of executive government.

Historical background

The Westminster system of parliamentary representation can be traced back to 13th-century England. In 1295 King Edward I summoned the Model Parliament, generally regarded as the first representative assembly, to Westminster.

The Bill of Rights 1688 established Parliament's role in law-making, taxation, and supply. It confirmed absolute freedom of speech in Parliament, and provided for free elections and for Parliaments to be held frequently.

The first legal step towards representative government in **New Zealand** required a British Act of Parliament, the Constitution Act 1852. **New Zealand's** first **House of Representatives** met in 1854. However, it was not wholly representative because not everyone could vote. Nor was there responsible government, as the Government then did not need to have the confidence of the

House. Executive government stayed with appointed officials at first but the first responsible government was established soon afterwards in 1856.

Until 1950 the **New Zealand Parliament** consisted of the Sovereign, the Legislative Council (upper **house**), and the **House of Representatives** (lower **house**). Membership of the Legislative Council was by appointment rather than election. It was not a popular component of the Parliament. Eventually appointees were chosen to ensure there were sufficient of them to support legislation abolishing the Council. This took effect at the end of 1950.

Throughout most of the latter half of the 20th century the **House** was dominated by two parties, either of which could expect to obtain a majority of seats at an election. Without even the constraint of an upper **house**, this provided a form of government that was easily able to dominate Parliament. It eventually led to pressure to change the electoral system from the 'winner takes all' first past the post electoral system to a proportional system. Since 1996 the **House** has been elected on a mixed member proportional (MMP) basis. This has placed increased emphasis on parliamentary processes through which the Government needs to work to implement its policies. This is because no single party can expect to have sufficient members to control the **House** without seeking agreements and co-operation from members of other parties.

Further reading

All *Parliament Briefs* are available free of charge at: <http://www.parliament.nz/en-NZ/AboutParl/HowPWorks/FactSheets>.

McGee, David, *Parliamentary Practice in New Zealand*, 3rd edition, Dunmore Publishing, Wellington, 2005.

Martin, John E, *The House: New Zealand's House of Representatives 1854–2004*, Dunmore Press, Palmerston North, 2004.