

A New Constitution Act

DR WAYNE MAPP*

I INTRODUCTION

Over the last 30 years, New Zealand has transformed its constitutional framework. This has been a quiet revolution. The cumulative effect of this transformation has been to create a distinctive set of constitutional arrangements for New Zealand. However, despite all the changes, many New Zealanders are dissatisfied with their constitutional structure. This is why the Government established the Constitutional Advisory Panel in 2010. There is a sense that more needs to be done to bring together the important elements of the constitution.

The establishment of the Panel has provided the opportunity to advocate for a more comprehensive Constitution Act to replace the existing legislation, which was enacted in 1986 as an initiative by Deputy Prime Minister Geoffrey Palmer.¹ The public consultation being undertaken by the Panel has given me the opportunity to revisit the Member's Bill that I had drafted as a Member of Parliament in the National Opposition in 2004. The updated draft Bill is appended to this article.

II THE CONSTITUTIONAL ADVISORY PANEL

At the end of 2013, the Constitutional Advisory Panel will make recommendations to Government for changes that should be made to New Zealand's constitutional arrangements. While these issues are rarely at the forefront for most people, the Panel has sought to engage the public and is looking to make recommendations that can be implemented. The Panel is the second formal constitutional committee to be established in the last decade. A Parliamentary Committee had been established in 2004. It was unable to advance the case for further change, but it did record the nature of the dynamic changes that had been made to New Zealand's constitutional framework during the preceding decades and envisaged that there would be more change to come.

The Parliamentary Committee did not arise without precedent. It had its antecedents in the "Building the Constitution" conference organised by the Institute of Policy Studies in 2000 and held in the Legislative Council Chamber. The conference was notable for the range and depth of the contributions, which were subsequently published.

The Constitutional Advisory Panel's remit is broad, covering the size

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1 Constitution Act 1986.

of Parliament, the length of the parliamentary term, Māori representation, the role of the Treaty of Waitangi, Bill of Rights issues and a written constitution. The Panel is widely representative and has two Co-Chairs, Sir Tipene O'Regan and Professor John Burrows QC. It is likely to be more successful than the Parliamentary Committee. The Panel actively reaches out to a wide range of New Zealanders and has generated a number conferences and symposia to consider the relevant constitutional issues.

One of the more interesting of these was the forum of young New Zealanders organised by the McGuinness Institute. The participants set themselves the task of drafting a constitution. The two Co-Chairs of the Constitutional Advisory Panel both contributed to the forum. The draft prepared by the forum is an indication of the interest that young New Zealanders have in a constitution that is more accessible than the plethora of documents that currently make up the New Zealand constitution.

III TRANSFORMING THE CONSTITUTION

Consideration of the key legislative changes over the last 30 years indicates the scope and breadth of constitutional change. Only one of these, the introduction of the Mixed Member Proportional (MMP) electoral system, was seen as sufficiently important to require the approval of the people through a referendum. The salient legislative changes have been:

- The Treaty of Waitangi Act 1975, establishing the Waitangi Tribunal and incorporating the Treaty in the statute, in both Māori and English languages;
- The State-Owned Enterprises Act 1986, especially s 9;
- The Constitution Act 1986;
- The New Zealand Bill of Rights Act 1990;
- The Human Rights Act 1977 (replaced in 1993);
- The Electoral Act 1993, establishing MMP; and
- The Supreme Court Act 2003.

In addition, there has been other significant legislation affecting the rights of citizens, including the Official Information Act 1982 and the Privacy Act 1993. New Zealand has established a range of official bodies to hear grievances, such as the Ombudsman, the Privacy Commissioner and the Commissioner for the Environment. The function of these bodies is to act as a restraint on the powers of the state.

Just as Parliament has been busy, so too have the Courts. The key constitutional decision of the last 30 years is *New Zealand Maori Council v Attorney-General*.² There are, of course, other constitutional decisions, but none are as important as the *New Zealand Maori Council* case, which has

² *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641 (CA).

importance beyond identifying the principles of the Treaty of Waitangi. It established for contemporary New Zealand the paramount role of the courts to provide the definitive interpretative approach to constitutional issues.

While our courts do not have the formal powers of courts in the United States to overturn legislation, they are now seen as fundamental actors in the Constitution. Parliament might be formally supreme, but governments are now much more aware of the power, authority and the respect in which the courts are held.

IV THE CONTINUING DEBATE

Despite the amount of change over the last 30 years there is a general perception that in some fundamental way our constitutional framework is deficient. In my view, there are three reasons why there is continuing interest in constitutional change.

The first is that New Zealand is a constitutional monarchy. While there may be little popular pressure for change, there is general recognition that the current situation is not sustainable over time. Knowing that the status quo is unsustainable creates a sense of dissatisfaction in the quality of the existing arrangements. While the Head of State might not be the issue that is seen to require immediate change, it creates an environment for a wider questioning of our constitutional arrangements. Whilst successive Prime Ministers over the last 30 years have at various times publicly stated that New Zealand will become a republic, only one, Prime Minister Bolger, actively campaigned for change. His statements caused a slight shift in public opinion, from 25 per cent in support of a republic to a high of 35 per cent. Since then the level of support for a republic has fallen back to 25 per cent.³

Although governments have not been able to inspire a mood for change regarding New Zealand's Head of State, a number of developments have occurred that give rise to a more distinctive sense of national identity. In particular, these have occurred in respect of the symbols of nationhood. Prime Minister Bolger changed the Honours system from the imperial system with its KBEs, OBEs and MBEs to the current system of the New Zealand Order of Merit. This is still a Royal Honours system, because New Zealand remains a constitutional monarchy. Prime Minister Clark continued the symbolism. Knighthoods were abolished in 2000, only to be restored in 2009. It is questionable whether they will be quickly abolished with a change of government, as occurred in Australia with the election of the Hawke government. Royal portraits were removed from Embassies and High Commissions in 2000 and were not reinstated when the government changed.

Progressively, the Governor-General has come to be increasingly viewed as an indigenous Head of State, less obviously the representative

3 "New Zealand Election Study" <www.nzes.org>.

of the monarch and more like the representative of the New Zealand people. This perception is more than the holder of the office simply being a New Zealander. The increasing identification of the Vice Regal office as a New Zealand institution has been dependant on successive office holders conspicuously acting as our national representative, rather than a representative of the monarchy.

Beyond the symbolic changes, more substantial changes have occurred. In 2004, the Clark administration established the New Zealand Supreme Court to replace the Privy Council as the highest appellate court. It was immediately apparent that once appeals to the Privy Council were abolished, there could be no going back. The National Opposition understood this situation within a very short time. The construction of a substantial and significant building as the home of the Court reinforces the status of the Supreme Court in the Constitution. Its location, opposite Parliament and the Executive, strengthens its role as the third branch of constitutional government.

The Supreme Court is undoubtedly a constitutional court. The *New Zealand Maori Council v Attorney-General* decision in 2013 demonstrated that the Court had the power to give the definitive determination of the meaning of the relevant statute.⁴ This was understood and accepted by all parties to the litigation.

The second and more compelling reason for the continuing debate about the constitution is the status of the Treaty of Waitangi. The Treaty is now widely accepted as one of the foundations of the constitution. But its legal status remains uncertain. In theory, it can only have force if incorporated into statute. It is this uncertainty that has led to “the role of the Treaty of Waitangi within our constitutional arrangements” being one of the eight topics to be considered by the Constitutional Advisory Panel.⁵ So long as the status of the Treaty remains unclear, we will not have a settled constitution.

Nevertheless, there is now greater acceptance that Parliament should not act contrary to the principles of the Treaty of Waitangi. In 2012, the State-Owned Enterprises Act was amended to remove certain companies from the legislation to enable their partial privatisation.⁶ The political debate that ensued meant that s 9 of the State-Owned Enterprises Act 1986 was carried over to the new legislation to continue the Crown’s obligations under the Treaty. The Public Finance Act 1989 was amended by inserting a new Part, which applied to the mixed ownership model for the companies. Section 45Q(1) provided that:⁷

4 *New Zealand Maori Council v Attorney-General* [2013] NZSC 6, [2013] 3 NZLR 31.

5 Cabinet Paper and Minute “Consideration of Constitutional Issues: Constitutional Advisory Panel” (18 April 2011) CAB Min (11) 16/17 at 8.

6 State-Owned Enterprises Amendment Act 2012.

7 Public Finance Act 1989, s 45Q(1).

Nothing in this Part shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

It is hard to imagine that a contemporary New Zealand Parliament would deliberately pass law that is in direct contravention of the Treaty of Waitangi. The passage of the Foreshore and Seabed Act 2004 provided a salutary political lesson of the cost of doing so.

The third reason why we remain dissatisfied with the constitutional framework is because of our intuition that it is incomplete. New Zealand is one of three countries that does not have a comprehensive written constitution that is superior law. The weakness is not just that the Constitution Act 1986 lacks status as supreme law. It is that the key elements of the constitution are not contained in a single statute, even if that Act is not overriding.

Over the last 30 years New Zealand has shown a capacity to modify and improve our constitutional arrangements. The Treaty of Waitangi is now recognised as part of the constitutional framework. Further, our democracy is now more representative, largely due to the introduction of MMP. Our government is much less susceptible to the excessive concentration of power into a single party, dominated by a strong leader. The New Zealand Bill of Rights Act 1990 has strengthened the rights of citizens to express themselves and has given greater protection to the rights of those accused of crimes. Our court system is now fully indigenous and is all the more important for that reason.

All these changes were made without affecting the fundamental character of New Zealand's parliamentary democracy. The last 30 years has also demonstrated that we are able to make changes that will improve our constitutional framework. Few New Zealanders would consider that the constitutional structure that existed in 1975 is superior to that which we have now.

V A NEW CONSTITUTION ACT

The legislative starting point for a more comprehensive constitutional statute is the Constitution Act 1986. The purpose of this act was to ensure that New Zealand would be responsible for the development of its constitution by providing that no act of Parliament of the United Kingdom passed after the commencement of the 1986 act shall extend to New Zealand as part of its law. The Act made reference to many of the fundamental elements of the constitution including the role of parliament, the term of parliament and the election of members to it. However, the Act is silent on many important constitutional issues, including the existence and functions of cabinet and the role of the judiciary.

Many commentators, notably Philip Joseph⁸ and Paul McHugh,⁹ have observed that the Act provided the opportunity for an indigenous constitution to grow. It is possible to improve the comprehensiveness and the status of the Constitution Act 1986. This does not require a constitutional revolution. It is not the case that the only alternative to the existing statute is the creation of a written constitution as fundamental law. New Zealand constitutional change is more incremental than that.

I was not surprised that the Young Person's Forum focussed on the constitution as the most appropriate area for development. The limited and obviously incomplete nature of the 1986 Act is an open invitation for change. My draft Bill was intended to serve the same basic purpose as the 1986 Act, but the Bill is intended to provide a much more comprehensive explanation of our fundamental constitutional arrangements. However, the key point is that the new Act would be an ordinary act of parliament in the same manner as the existing Constitution Act 1986.

The intended result is that the Constitution Act would be restructured so that it would bring together all the fundamental elements of New Zealand's constitutional framework. It would therefore need to cover the role and purpose of Parliament and the election of members to it; the role and membership of Cabinet; the Head of State and the function of the superior courts. The Bill as initially drafted also included the key provisions of the New Zealand Bill of Rights Act 1990, in the same manner as other national constitutions typically do. The inclusion of the fundamental provisions of the Bill of Rights has required considerable analysis since then.

After consideration, it was decided that the inclusion of a Bill of Rights as part of a new Constitution Act is not appropriate, since New Zealand already has the well-established New Zealand Bill of Rights Act 1990. Introducing the same rights into a Constitution Act could cause confusion and uncertainty because there is already substantial case law on the New Zealand Bill of Rights Act 1990. However, the option remains for the key provisions of the Bill of Rights Act to be included in the proposed Constitution Act if that is considered desirable. Alternatively, the Bill of Rights Act 1990 could be referenced in the Constitution Act.

The new Constitution Act would be structured along the lines of other national constitutions, such as those of Australia, Canada, the United States and South Africa, shorn, of course, of their Federal elements. However, these constitutions all have the status of fundamental law and are therefore the source of their nations's constitution. In the New Zealand situation the Constitution Act, both in its current form and that which I have proposed, does not and would not actually establish the powers, rights and responsibilities of government. The institutions of government and their powers already exist.

8 Philip A Joseph *Constitutional & Administrative Law in New Zealand* (3rd ed, Thomson Brookers, Wellington, 2007) at [5.3].

9 PG McHugh "Tales of Constitutional Origin and Crown Sovereignty in New Zealand" (2002) 52 *UTORLJ* 69 at 95.

The proposed Constitution Act would become the most accessible source of the existing constitutional framework.

The proposed Constitution Act also includes a preamble, setting out the aspirations and unifying beliefs that are common to all New Zealanders. The South African constitution includes such a preamble. A similar passage was also proposed for the Australian constitution in 1999, but this proposal failed to gain the support of the people through the required referendum. Comprehensive preambles are now a feature of New Zealand legislation. The Treaty Settlement Acts provide particularly extensive preambles, which set out the history and aspirations of the Iwi who are completing the settlement. In these cases, the preamble sets out in narrative form the historical reasons leading to the settlement.

One of the difficult issues for a New Zealand Constitution Act is the Treaty of Waitangi. Is it sensible to include the Treaty within such an Act? Will this enhance or detract from the Treaty of Waitangi? In my draft Bill, I referred to the Treaty of Waitangi in the preamble, noting its role as a founding document. I did not include reference to the Treaty in the clauses, nor did I include it as a schedule. However, both options are possible. In the nearly ten years since I drafted the Bill, there has been a greater acceptance of the role of the Treaty of Waitangi in our constitutional arrangements.

The public debate over the partial privatisation of state owned enterprises that led to the inclusion of the Treaty clause into the relevant legislation was instructive. Essentially the Government accepted that it is no longer reasonable to pass legislation that is inconsistent with the principles of the Treaty of Waitangi. This could be a working principle of the Constitution Act. Such a provision would require its own Part. As a consequence, I have included a provision that the Government shall not act in manner that is inconsistent with the Treaty of Waitangi in the proposed Constitution Act.

The constitution that was proposed by the Young Persons Forum wrestles with the same issues as my proposed Bill. Although it is clearly a more radical document than I believe is viable, it does recognise as a fundamental principle of our constitutional arrangements that Parliament, as an expression of the peoples will, is our supreme law making body. The final clause of the Bill from the Young Persons Forum specifically states that: "Nothing in this Constitution gives the Judiciary the power to declare any enactment to be invalid."¹⁰ A similar provision is also included in my proposed Constitution Bill.

VI A CONSERVATIVE UNDERTAKING

The making of a constitution, in New Zealand's circumstances, should necessarily be a conservative undertaking. New Zealand is not in need of a

10 Young Persons Forum "Draft Constitution for the 21st Century" (29 August 2012) McGuinness Institute <www.mcguinnessinstitute.org>

constitutional revolution. Radical upheaval of a nation's constitution is one of the fruits of revolution. Unlike the Middle East, New Zealand is not in this situation. But the ongoing evolution of our constitutional arrangements is one of the functions of representative democracy.

A new constitution should therefore not be seen as an opportunity to radically transform New Zealanders's understanding of the role and functions of government, or of the rights and duties of citizens. Neither should we overturn our understanding of parliamentary democracy by trying to establish the Constitution Act as supreme law. Over time a comprehensive Constitution Act will gain its own authority in the same way as the New Zealand Bill of Rights Act. An attempt to establish a Constitution Act as superior law will fail, since it will not gain the consent of the people, or the consent of Parliament. But progress can be made. The last 30 years has demonstrated that New Zealand is open to the ongoing development of our constitutional arrangements. The Constitutional Advisory Panel has the opportunity to meet the expectations of New Zealanders that the constitution should be open, accessible and incorporate the principles that unify us a nation. In this way, such changes will be sustainable and enduring.

This article includes the proposed Constitution Bill to ensure completeness. It is only by reading the Bill, along with the Explanatory Note, that the scope of this proposal, including its limited aims, can be fully understood.

NEW ZEALAND CONSTITUTION BILL

Explanatory Note

New Zealand's constitution is contained in various statutes, conventions, customs, practices and other sources. There is no single source where it is possible to see the structure of government, the roles, functions, powers and responsibilities of the branches of government, or the rights of the people. The Constitution Act 1986 does not achieve this purpose, even though it does contain some important constitutional principles. There are a number of Acts of Parliament relevant to the New Zealand constitution, including the Constitution Act 1986, the New Zealand Bill of Rights Act 1990, the Electoral Act 1993 and the Supreme Court Act 2003. None of these statutes operates as a constitution. The Treaty of Waitangi/Te Tiriti o Waitangi brought about the formation of the modern state of New Zealand, initially as a crown colony and ultimately as an independent sovereign nation. While the Treaty is an extremely important constitutional document, it is not, of itself a constitution.

This Bill sets out our constitutional framework in a readily accessible format. It is not intended to be supreme law overriding other Acts of Parliament and its amendment is not subject to special entrenchment. It also does not purport to be the source of the law that makes up the constitution. Instead, it brings together in a single statute the most important constitutional principles, including those already contained in the Constitution Act 1986. The new Act will enable people to understand readily the overall structure of government, the division of roles, functions, powers and responsibilities and the fundamental rights of the people in a single instrument. It will also mean that the workings of government are accessible to all New Zealanders.

This Bill will replace the Constitution Act 1986 and will set out the constitutional position in a more comprehensive and clear manner. There will be a need for companion legislation, to pick up remnant provisions from the Constitution Act 1986 that will still be required to fulfil necessary, if minor, constitutional purposes.

A Bill of Rights is not included in this Bill, since the New Zealand Bill of Rights Act 1990 is sufficient to uphold these rights. Including it in this Bill may lead to further confusion given that the New Zealand Bill of Rights Act 1990 has its own legislative history and case law.

This Bill also includes a Preamble, setting out the values that underpin our nation and that we New Zealanders strive for as a people. The Preamble will contribute to the understanding and interpretation of the Act. It draws from our own national experiences as well as the wider democratic heritage to which we belong and which has played such an important part in the nation's development.

NEW ZEALAND CONSTITUTION BILL

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Preamble

It is desired to bring together the important elements of the New Zealand constitution for the governance of New Zealand and for the protection of the rights and freedoms of the people of New Zealand, in recognition of the following values:

- a. Upholding the commitment of New Zealanders to democratic values, the rule of law, and personal freedom;
- b. Endorsing New Zealand's commitment to human rights and responsibilities;
- c. Affirming individual dignity and worth, so that all people may strive for their aspirations;
- d. Further affirming the dignity and value of the different communities that make up this nation;
- e. Recognising the unity of all people of New Zealand in this independent nation;

- f. Honouring the Treaty of Waitangi/Te Tiriti o Waitangi as a founding document of the nation;
- g. Acknowledging that Māori were the first people to arrive in New Zealand;
- h. Acknowledging the worth of all people to this nation and their contribution to this nation's identity;
- i. Recognising the uniqueness and beauty of the natural environment of New Zealand and the role of all New Zealanders as guardians of it for future generations;
- j. Remembrance of past generations for the sacrifices they made in defending the nation's liberty and freedoms; and
- k. Emphasising the spirit of this nation in times of triumph and adversity.

The Parliament of New Zealand therefore enacts as follows:

1. Title

This Act is the New Zealand Constitution Act 2013.

2. Commencement

This Act comes into force on the day after the date on which it receives the Royal Assent.

3. Purpose

The purpose of this Act is to bring together the important elements of the New Zealand Constitution for the governance of New Zealand for the protection of the rights and freedom of the people of New Zealand.

PART 1

GOVERNMENT OF NEW ZEALAND

4. Branches of government

The government of New Zealand comprises the head of state, the legislature, the executive and the judiciary.

5. Head of State

The head of state is the Sovereign in right of New Zealand.

6. The Legislature

The legislature is the Parliament of New Zealand and consists of the head of state and the House of Representatives.

7. The Executive

The executive consists of the Prime Minister and other persons appointed to hold office as Ministers of the Crown or Parliamentary Under-Secretaries.

8. The Judiciary

The judiciary comprises the Judges of the Supreme Court, the Court of Appeal, the High Court, and every other Court that is a court of record.

PART 2

HEAD OF STATE

9. Governor-General

- (1) The Governor-General appointed by the Sovereign in right of New Zealand is the Sovereign's representative in New Zealand.
- (2) In absence of the Governor-General, the Administrator of the Government may perform a function or duty imposed on the Governor-General, or exercise a power conferred on the Governor-General.

10. Exercise of royal powers by the Sovereign or the Governor-General

- (1) Every power conferred on the Governor-General by or under any Act is a royal power which is exercisable by the Governor-General on behalf of the Sovereign, and may accordingly be exercised either by the Sovereign in person or by the Governor-General.
- (2) Every reference in any Act to the Governor-General in Council or any other like expression includes a reference to the Sovereign acting by and with the advice and consent of the Executive Council.

11. Executive Council

Every power that is to be exercised, or function or duty performed, by the Governor-General in Council is to be exercised or performed with the advice and consent of the Executive Council.

12. Royal assent to Bills

A Bill passed by the House of Representatives becomes law when the Sovereign or the Governor-General assents to it and signs it in token of such assent.

PART 3

THE LEGISLATURE

13. Legislative Supremacy

The Parliament of New Zealand has full power to make laws.

14. Term of Parliament

- (1) The term of Parliament shall, unless Parliament is sooner dissolved, be 3 years from the day fixed for the return of the writs issued for the last preceding general election of members of the House of Representatives, and no longer.
- (2) Section 268 of the Electoral Act 1993 shall apply in respect of subsection (1).

15. Summoning, proroguing, and dissolution of Parliament

- (1) The Governor-General may, by Proclamation, summon Parliament to meet at such place and time as may be appointed therein, notwithstanding that when the Proclamation is signed or when it takes effect Parliament stands prorogued to a particular date.
- (2) The Governor-General may, by Proclamation, change the place of meeting of Parliament set out in the Proclamation summoning Parliament if that place is unsafe or uninhabitable.
- (3) The Governor-General may, by Proclamation, prorogue or dissolve Parliament.
- (4) A proclamation summoning, proroguing, or dissolving Parliament shall be effective—
 - (a) On being gazetted; or
 - (b) On being publicly read, by some person authorised to do so by the Governor-General, in the presence of the Clerk of the House of representatives and 2 other persons,—

whichever occurs first.

- (5) Every Proclamation that takes effect pursuant to subsection (4)(b) shall be gazetted as soon as practicable after it is publicly read.

16. First meeting of Parliament after general election

After any general election of members of the House of Representatives, Parliament shall meet not later than 6 weeks after

the day fixed for the return of the writs for that election.

17. House of Representatives

The House of Representatives comprises persons who have been or are elected from time to time in accordance with the Electoral Roll 1956 or the Electoral Act 1993, and who are known as "members of Parliament".

18. Parliamentary control of public finance

The appropriation of public money, the imposition of any charge upon the public revenue, and action by the Crown to levy a tax or raise a loan or receive any money as a loan from any person is not lawful except by or under an Act of Parliament.

PART 4

THE EXECUTIVE

19. Executive Authority

The executive must comply with the law, in the exercise of its responsibility for the government and administration of New Zealand.

20. Cabinet

Cabinet comprises some Ministers of the Crown and it is the central decision making body of the executive.

21. Executive Council

- (1) The Executive Council comprises all Ministers of the Crown.
- (2) The role of the Executive Council is to advise the Sovereign and the Governor-General on legal and other formal implementation of government decisions.

22. Ministers of the Crown to be Members of Parliament

- (1) A person may be appointed and hold office as a Minister of the Crown only if that person is a Member of Parliament.
- (2) Notwithstanding subsection (1),—
 - (a) a person who is not a member of Parliament may be appointed and may hold office as a member of the Executive Council or as a Minister of the Crown if that person was a candidate

for election at the general election of members of the House of Representatives held immediately preceding that person's appointment as a member of the Executive Council or as a Minister of the Crown but shall vacate office at the expiration of the period of 40 days beginning with the date of the appointment unless, within that period, that person becomes a member of Parliament; and

- (b) where a person who holds office as a member of Parliament and as a member of the Executive Council or as a Minister of the Crown ceases to be a member of Parliament, that person may continue to hold office as a member of the Executive Council or as a Minister of the Crown until 28 days after the day on which that person ceases to be a member of Parliament.

23. Appropriation and expenditure of public money

The executive must present to the House of Representatives not less than once a year Bills providing for appropriation and expenditure of public money.

PART 5

THE JUDICIARY

24. Role of judiciary

The courts resolve disputes and administer justice in cases coming before them. In doing so, the courts—

- Apply and interpret the laws enacted by Parliament; and
- Apply and administer the common law.

25. Appointment of Judges

Judges are appointed as provided by enactment.

26. Salaries of Judges not to be reduced

The salary of a judge of the High Court shall not be reduced during the continuance of the Judge's commission.

27. Removal of Judges

A judge may be removed from office only by the Sovereign or the Governor-General, acting upon an address of the House of Representatives. Such address may be moved only on the grounds of that judge's misbehaviour or of that judge's incapacity to discharge the functions of that judge's office.

PART 6

TREATY OF WAITANGI/TE TIRITI O WAITANGI

28. The Crown shall not act in a manner that is inconsistent with the Principles of the Treaty of Waitangi/Te Tiriti o Waitangi.

PART 7

MISCELLANEOUS PROVISIONS

29. Imperial laws

The only imperial laws to still apply in New Zealand are those included in Schedule 1 and Schedule 2 of the Imperial Laws Application Act 1988.

PART 8

REPEALS AND AMENDMENTS

30. Repeal of the Constitution Act 1986

The Constitution Act 1986 is repealed.

31. References to Constitution Act 1986 and New Zealand Bill of Rights Act 1990

References in other enactments to the Constitution Act 1986 or as a provision in those enactments, must be read, so far as applicable, as references to the New Zealand Constitution Act 2013 or to a corresponding provision of that enactment.

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