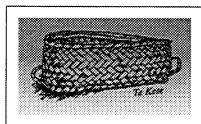


Democracy in New Zealand

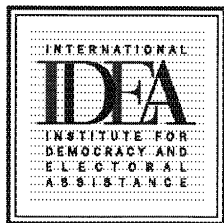
International IDEA Country Study

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List of abbreviations

ACC	Accident Compensation Corporation
ACT	Association of Consumers and Taxpayers
ANZUS	Australia–New Zealand–United States (military alliance)
APEC	Asian Pacific Economic Cooperation
BSA	Broadcasting Standards Authority
CAN	Coast Action Network
CCMAU	Crown Company Monitoring Advisory Unit
EEZ	Exclusive Economic Zone
FPP	First-Past-the-Post
GCSB	Government Communications Security Bureau
IDEA	Institute for Democracy and Electoral Assistance
ILO	International Labour Organisation
IMF	International Monetary Fund
IRD	Inland Revenue Department
MMP	Mixed Member Proportional
MP	Member of Parliament
NZDF	New Zealand Defence Force
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
OIC	Overseas Investment Commission
OSH	Occupational Safety and Health Service
SIS	Security Intelligence Service
SOE	State-owned enterprise
STV	Single Transferable Vote
TI	Transparency International
TVNZ	Television New Zealand
UNHCR	United Nations High Commissioner for Refugees
WTO	World Trade Organisation

Introduction to country reports for the International IDEA State of Democracy Project

David Beetham

This report on the condition of democracy in New Zealand forms part of a much larger research project established by the International Institute for Democracy and Electoral Assistance (IDEA) in Stockholm, Sweden. The aim of the project, called *The State of Democracy*, is to initiate a global survey of the condition of democracy and its progress, both on a country-by-country basis and also comparatively.

A key feature of the project has been the development of an original research framework and method for the systematic assessment of any country's democracy, to be used by partners in the country concerned. The framework and method were evolved with the assistance of international experts from every region of the world, and are intended to be as applicable to long-established democracies as to developing or transitional ones. They have now been successfully tested in a pilot phase in eight countries from Africa, Asia-Pacific, Europe and Latin America; this report on the state of democracy in New Zealand forms one of these first assessments.

Why conduct democracy assessments?

With the widespread establishment or re-establishment of democratic forms of government in all regions in the 1990s has come a desire to assess how well they are doing and how much progress has in fact been made. What are the key problems faced by recently established democracies? Can some aspects of the democratic process be more easily introduced and become rooted than others and, if so, which? What are the distinctive features of democratic development in individual countries? Such questions are given added urgency by a common perception among electorates that their democratic arrangements have not delivered anything like what they have promised, and that the global triumph of democratic norms has not been matched by comparable changes in governmental practice.

A similar feeling of disillusionment with the political process has also been prevalent in longer established democracies, as evidenced by declining electoral turnouts, declining membership of political parties and other indicators. Governments often appear to be more concerned with presentation than performance and to be remote from citizens' daily concerns. In all countries people have come to feel that many of the decisions that matter for the quality of

their lives are no longer within the competence of the elected government, but have escaped beyond the borders of the nation state, to international organisations, transnational companies, or the imperatives of globalisation and international markets.

It is in this context of a general commitment to the norms of democracy, but of worries about their practical realisation, that the idea of democracy assessment should be located. This idea involves a systematic assessment by its own citizens of a country's political life to answer the question: how democratic is it in practice? Where is it satisfactory from a democratic point of view and what features should be a cause for concern? How far have we progressed and what remains still to be done? How can we improve on what we have already achieved? Such an assessment can serve a number of purposes. From the perspective of a country's citizens it can:

- raise public awareness about what democracy involves, and public debate about what standards of performance people should expect from their government;
- provide systematic evidence to substantiate popular concerns about how they are governed and set these in perspective by identifying both strengths and weaknesses;
- contribute to public debate about ongoing reform and help to identify priorities for a reform programme;
- provide an instrument for assessing how effectively reforms are working out in practice.

In all these ways a democracy assessment through its publication and dissemination can make a contribution to a country's democratic advance, whether in developed, developing or transitional democracies.

From a more comparative perspective, democracy assessments can also:

- highlight common problems shared by a number of countries;
- help identify what is distinctive about a given country's situation or democratic institutions, by comparison with others;
- bring to light examples of good practice or innovative problem solving.

So, as well as this assessment report on New Zealand, International IDEA will also be publishing a comparative volume on the overall results of the pilot phase, comprising summaries of all the country assessments, a series of comparative tables and some tentative conclusions about the condition of democracy worldwide.

What is distinctive about International IDEA's assessment framework and method?

With the worldwide expansion of democracy in the 1990s and its promotion by international institutions, there have been many attempts to assess its progress. International IDEA's assessment framework and method have aroused widespread interest because of a number of distinctive features, which are exemplified in this assessment report. These distinctive features can be summarised as follows:

- **clarity of principles**—rather than offering an arbitrary checklist of items, the method derives the institutions and criteria for assessment in a systematic manner from basic democratic principles and values;
- **comprehensiveness**—the framework provides the most comprehensive overview of the essential features of democracy, while encouraging a differentiated assessment of strengths and weaknesses in each area, rather than aggregating them into a single conclusion or numerical “score”;
- **flexibility of assessment**—within a common framework of analysis, country experts should be able to determine their own standards and comparators for assessing progress or the lack of it, and their own selection of appropriate evidence, according to their country's specific situation;
- **country ownership of the assessment process**—a basic assumption is that the right people to assess a country's democracy are its own citizens, rather than outsiders sitting in judgment upon it; and that any assessment should facilitate wider public involvement and debate;
- **range of use**—old as well as new democracies can and should be subject to a similar framework and method of assessment.

These features merit further explanation, as they have determined the shape and content of the individual country reports.

Clarity of principles

Democracy is usually defined as a set of governmental institutions or processes, but people rarely stop to think what it is that makes these institutions *democratic*. Thus when these institutions are used, as they frequently are, for *undemocratic* purposes, the automatic association of them with democracy simply results in democracy itself being given a bad name. The assessment framework being used here starts from the proposition that democracy should be defined in the first instance by its basic principles or values. It is these that make particular institutional arrangements democratic and they provide the litmus test of how democratic they are in practice.

What are these principles? They are twofold: *popular control* over public decision making and decision makers; and *equality between citizens* in the exercise of that control. Insofar as these principles are embodied in governing arrangements we can call them “democratic”. These are the principles that democrats in all times and places have struggled for: to make popular control over public decisions both more effective and more inclusive; to remove an elite monopoly over decision making and its benefits; and to overcome obstacles such as those of gender, ethnicity, religion, language, class, wealth, etc., to the equal exercise of citizenship rights. Democracy is thus not an all-or-nothing affair, but a matter of degree—of the degree to which the people can exercise a controlling influence over public policy and policy-makers, enjoy equal treatment at their hands and have their voices heard equally.

These principles are broad and strong, but they require more precise specification in the context of a system of representative government in which the people assign to others the right to decide public policy on their behalf. So we need to identify a set of mediating values through which these two principles are realised in practice. These mediating values are *participation*, *authorisation*, *representativeness*, *accountability*, *transparency*, *responsiveness* and *solidarity*. It is from these values that the familiar institutions of representative government derive their democratic character and it is these values that can be used in turn to assess how democratically they actually work in practice. So, for example, it is through their *participation* in the electoral process that the people *authorise* politicians to act on their behalf and that they choose a *representative* assembly that they can hold *accountable* through the sanction of future electoral dismissal. These values are what make elections democratic. Yet we also need to ask of any given electoral system or process: how much popular participation does it actually encourage? how directly and effectively does it authorise government? how representative is the assembly of the citizen body that it produces and how equally are votes treated in practice? how credible is its accountability to the people through the sanction of future dismissal?

It is this two-way relationship between values and institutions that gives the democracy assessment process its intellectual foundation and validity. The relationship is illustrated in the following table. The first column of the table lists the main mediating values that derive from our two democratic principles. The second column sets out what is required for these values to be made effective. The third column lists the typical institutions through which these requirements can be met in a system of representative government. Together they build up the main features of what is to be assessed and the criteria by which that assessment is to be made.

Democratic principles and mediating values

Basic principles

- **popular control** over public decision making and decision makers
- **equality** of respect and voice between citizens in the exercise of that control

Mediating values	Requirements	Institutional means of realisation
participation	<ul style="list-style-type: none"> • rights to participate • capacities/resources to participate • agencies for participation • participatory culture 	<ul style="list-style-type: none"> • civil and political rights system • economic and social rights • elections, parties, non governmental organisations • education for citizenship
authorisation	<ul style="list-style-type: none"> • validation of constitution • choice of office holders/ programmes • control of elected over non-elected executive personnel 	<ul style="list-style-type: none"> • referenda • free and fair elections • systems of subordination to elected officials
representation	<ul style="list-style-type: none"> • legislature representative of main currents of popular opinion • all public institutions representative of social composition of electorate 	<ul style="list-style-type: none"> • electoral and party system • anti-discrimination laws • affirmative action policies
accountability	<ul style="list-style-type: none"> • clear lines of accountability, legal, financial, political, to ensure effective and honest performance civil service and judicial integrity 	<ul style="list-style-type: none"> • rule of law, separation of powers • independent auditing process • legally enforceable standards • strong Parliamentary scrutiny powers
transparency	<ul style="list-style-type: none"> • government open to legislative and public scrutiny 	<ul style="list-style-type: none"> • freedom of information legislation • independent media
responsiveness	<ul style="list-style-type: none"> • accessibility of government to electors and different sections of public opinion in policy formation, implementation and service delivery 	<ul style="list-style-type: none"> • systematic and open procedures of public consultation • effective legal redress • local government close to people
solidarity	<ul style="list-style-type: none"> • tolerance of diversity at home • support for democratic governments and popular democratic struggles abroad 	<ul style="list-style-type: none"> • civic and human rights education • international human rights law • United Nations, other agencies • international non governmental organisations

Comprehensiveness of the framework

The assessment framework employed in the individual country reports comprises 14 sections covering every aspect of democracy. Following the logic of the value-based diagram, it begins with the citizen and his or her rights, moves on to the institutions of decision making, representation and accountability, examines the contribution of civil society to the realisation of democratic values and concludes with the democratic profile of the country internationally. An overview of the framework with its 14 sections and their leading questions is given in the following table.

The different sections should be seen as interrelated, since democracy is a matter of relationships rather than isolated institutions. Thus governmental accountability depends on the independence of the courts, on the media, on popular participation and so on, not just on the integrity of office holders or the rules governing their performance in office. At the same time these different aspects of democratic life have to be treated separately for effective analysis and assessment, and that is what is done in the following report. There is another reason for treating them in this way, and that is that it allows for a differentiated judgment, since a country may perform better in some areas than others, or in some respects than others. Not all the democratic values or practices necessarily fit neatly together. An electoral system may produce a highly representative legislature, but one that is also less clearly accountable to its electorate. A legislature may have strong checking powers over the executive, but the executive may have difficulty in achieving the policy programme on which it was itself elected. Government may be highly responsive to the public, but some sections of the public may have disproportionate influence over it. And so on. The framework's structure allows these differentiated judgments to be made.

Overview of the assessment framework

I. Citizenship, law and rights	II. Representative and accountable government	III. Civil society and popular participation	IV. Democracy beyond the state
<p>1.0 Nationhood and citizenship Is there public agreement on a common citizenship without discrimination?</p> <p>2.0 The rule of law and access to justice Are state and society consistently subject to the law?</p> <p>3.0 Civil and political rights Are civil and political rights equally guaranteed for all?</p> <p>4.0 Economic and social rights Are economic and social rights equally guaranteed for all?</p>	<p>5.0 Free and fair elections Do elections give the people control over governments and their policies?</p> <p>6.0 Democratic role of political parties Does the party system assist the working of democracy?</p> <p>7.0 Government effectiveness and accountability Is government accountable to the people and their representatives?</p> <p>8.0 Civilian control of the military and police Are the military and police forces under civilian control?</p> <p>9.0 Minimising corruption Are public officials free from corruption?</p>	<p>10.0 The media in a democratic society Do the media operate in a way that sustains democratic values?</p> <p>11.0 Political participation Is there full citizen participation in public life?</p> <p>12.0 Government responsiveness Is government responsive to the concerns of its citizens?</p> <p>13.0 Decentralisation Are decisions taken at the level of government which is most appropriate for the people affected?</p>	<p>14.0 International dimensions of democracy Are the country's external relations conducted in accordance with democratic norms, and is it itself free from external subordination?</p>

Much more could be said here about the content of the framework, but that is best left to a reading of the report itself. Two aspects of the framework, however, deserve comment, since they are more contested than others. The first is the inclusion of a section on economic and social rights alongside the more usual civil and political ones. Many political scientists take the view that democracy is about the processes of public decision making rather than its outcomes; and that the delivery of economic and social rights is only one possible outcome of government, which is contested between different political parties in their policy programmes. Our view, in contrast, is that the inclusion of an economic and social rights audit is justifiable in terms of both process and outcome. As regards *process*, it is a necessary condition for the exercise of civil and political rights that people should be alive to exercise them and should have the capacities and resources to do so effectively. As regards *outcome*, people rightly judge the quality of a democracy in terms of its ability to secure them the basic economic and social rights on which a minimally decent life depends. If democracy cannot deliver better outcomes in this respect than authoritarianism, why should they support it? Such considerations have been especially strongly urged by our partners in the south.

They have similarly argued for the inclusion of a further section, on the international dimensions of democracy. Its rationale is that countries do not form isolated units, but are mutually interdependent, especially in their degree of democratic progress. So it is entirely relevant to consider how far the external profile of a country's policy is supportive of democracy abroad. By the same token, the extent to which a country's internal policy is determined by unaccountable external powers is also highly pertinent to an assessment of its democratic condition and its capacity to be truly self-governing.

Flexibility of the assessment

How, then, have the assessors in each country gone about their task of conducting an assessment of each of these 14 areas of their country's democratic life? As should be evident from a reading of the report, each of the sections contains a number of assessment questions, which are designed to concentrate attention on the key democratic issues in the particular area. All the questions are phrased in the comparative mode—*how much? how far? to what extent?* etc.—to reflect the view that democracy is a matter of degree, not all or nothing. They are also all designed to point in the same direction, so that an answer which amounts to “very much” will show a clearly democratic situation. A final question in each section aims to assess the situation dynamically by identifying reform measures currently being implemented.

The framework also gives some guidance in how an answer might be approached and what sort of data would be relevant to answering each question. Typically we need to know, first, the legal position in a given area; then how effectively the law is implemented in practice; then any positive or negative indicators which are relevant to the question. So, for example, in answering a question about the freedom of assembly, we would need to know what rights are guaranteed in the country's laws and constitution, and any legal restrictions on their exercise. We would then need to know how effectively these rights are upheld in practice, and how any restrictions are interpreted, and at whose discretion. Finally we would need to examine data on meetings or assemblies refused permission, or disrupted officially or unofficially, on levels of violence, injuries or deaths incurred, etc., and assess their incidence and significance in relation to those allowed and held peacefully.

Within these parameters of the framework, the country assessors have had considerable discretion as to how they have constructed their answers and what kinds of answer they have given. An assessment is essentially a matter of judgment. This is especially so in respect of deciding what counts as a *good* standard of achievement and what are the appropriate comparators against which a country's performance should be assessed. Even when all the evidence is in, it is still a matter of judgment whether a country is doing well in any particular aspect of democracy. Should the standard of assessment be progress from a country's own past, or a comparison with the performance of its neighbours, or the expectations of its citizens, or some international norm of best practice? Most of our country assessors have wanted to refer to the past, both as a measure of progress, and because any assessment requires a historical context to make it intelligible. They have also wanted to employ a future-oriented standard as a target for improvement, though they have differed over what this standard should be and over whether this should be simply left implicit in the assessment.

Such questions cannot be decided centrally, but must be a matter for each country's assessors. What they have all been asked to do, however, is to identify strengths as well as weaknesses, from a democratic point of view, since there is often a tendency simply to concentrate on bad news, as any reading of a typical human rights report exemplifies. They have all also been asked to write a brief summary of each section, which highlights the main points found in the more detailed question answers, so that a reader can quickly see what the main issues of a section are for the country concerned.

Country ownership of the assessment process

It should be evident from everything that has been said so far that this democracy assessment of New Zealand is the work of experts who are citizens

of the country. Some assistance has been provided from International IDEA in the form of resources and additional expertise, as well as of course the framework and method themselves. Any country assessment can benefit from the experience and perspective of sympathetic outsiders, as this one has done. However, the painstaking work of data collection, selection and analysis, and writing a finished report, has been the work of resident assessors with a suitable range of expertise to cover the widely different elements of the country's democratic life. They know the country best. They have a close interest in its democratic development. And it is right that they should take responsibility for the finished assessment and the judgments it makes.

Other people in addition to the core assessment group have contributed to the report. One of the common features of the pilot studies has been the convening of a national workshop towards the end of the process of assessment, to discuss a draft report and its provisional findings. The purpose of the workshop has been to expose the analysis and the findings to the critical opinion of other experts and to a wide range of different political perspectives. These workshops have typically included such figures as parliamentarians, lawyers, human rights workers, electoral commissioners and other officials, representatives of minority groups, journalists and so on, as well as other academic experts. In some cases these workshops have aroused substantial media comment and have already made a contribution to public discussion and debate. In all countries, the process of workshop dialogue and critique has contributed substantially to the rigour and independence of the finished reports.

Range of use

The International IDEA assessment framework and method can be used equally in old and new democracies, and both are represented in the pilot phase of the programme. The history of the framework's evolution helps explain its range of applicability. It was originally developed in a much shortened version for the Democratic Audit of the United Kingdom, a democracy assessment which was prompted by widespread concern at the country's democratic condition in the late 1980s and 1990s. This framework was then further developed and expanded to adapt it to the conditions of developing democracies, and was subjected to rigorous critique and revision at the hands of an international panel of experts convened by IDEA, drawn mainly from the south. The resulting framework thus incorporates the concerns and experience of democratic analysts and practitioners from all the world's regions.

It is not only the history of the framework's development, however, that justifies its general applicability. It is also based on a conviction that democracy is now a universal aspiration and of universal relevance, even though countries

are at very different stages in their political evolution. The experience of the last decades also demonstrates that all our democracies, at whatever stage of evolution, share similar problems, though these may be more acute in some countries than others. As the recent history of the established European democracies shows, problems of second class citizenships, “money politics”, corruption in party financing, lack of executive accountability and transparency, and many others, are not confined to developing or transitional democracies. And the US Presidential elections of 2000 served as an object lesson to the rest of the world in how not to run an election “freely and fairly”. We all need, and can equally benefit from, an independent and systematic assessment of our democratic condition.

If many of our problems are similar, the solutions to them will not all be the same, but will depend upon local circumstances and traditions. It is not the task of a democracy assessment to canvass particular solutions to the deficiencies it may have highlighted, but to contribute more generally to the process of reform through the systematic character of its analysis. Yet it may also be that it can throw up examples of good practice, or successful reform, that can prove useful to others, whether these come from the innovations of newly established democracies or the tested practices of the older ones.

Conclusion

It is now for the reader to judge whether this finished report justifies the claims we have made for its method of assessment. What is certain is that nothing as comprehensive or systematic has been written to date on the country’s democratic condition, which alone should guarantee it a wide readership.

The International IDEA *State of Democracy* project, of which this country assessment is a product, has a number of other publications which readers of this work may also find of interest. These are:

- a companion volume on the results of the pilot phase as a whole, comprising summaries of all eight country assessments, a series of comparative tables and some tentative conclusions about the condition of democracy worldwide;
- a *Handbook on Democracy Assessment*, a step-by-step guide to the assessment framework and method, for general use. The *State of Democracy* project will only become truly global through the initiative and participation of many others – the *Handbook* is designed to facilitate just this;
- full democracy assessments from the other countries, as they are published;
- an interactive democracy assessment questionnaire, published on the International IDEA website at <www.idea.int>, which has already stimulated contributions from every region of the world.

0.1 Political history

The indigenous Maori population settled New Zealand around the 10th century. European contact dates from the 18th century, and European settlement from the early and mid-19th century. Representatives of the British Crown and New Zealand Maori signed a founding document of New Zealand, the Treaty of Waitangi, on 6 February 1840 (see section 1.2).

During the second half of the 19th century voting rights expanded (see the timeline below). Parliament has met continuously in New Zealand since 1854—making it one of the oldest continuously functioning legislatures in the world (McGee, 2000). Although New Zealand exercised effective self-government from 1856, it was not until the adoption of the Statute of Westminster in 1947 that the New Zealand Parliament became free from legal subordination to the Parliament of the United Kingdom. In practice however, it had been “independent” (in the sense that it ran its own affairs) for most of the previous century.

The Labour and National parties dominated New Zealand politics for the latter two-thirds of the 20th century under the First-Past-the-Post (FPP) electoral system. However, public disillusionment with politics grew and, in a binding 1993 referendum, voters supported a move to a modified German Mixed Member Proportional (MMP) electoral system. This led to an increase in the number of parties and a more diverse Parliament. Coalition governments have become the norm.

Nevertheless, disillusionment with politicians has remained. The National Party was voted out in the 1999 general election after nine years in office and the majority of voters supported a reduction in the number of members of Parliament (MPs) from 120 to 99 in an indicative (i.e. non-binding) referendum held in conjunction with the general election. At this time polls showed that, given the choice, voters would have preferred to change back to the previous FPP electoral system. (For more recent data see section 5.6). The Labour–Alliance minority coalition took office in December 1999 and, as required by law, established a select committee to carry out a further review of the electoral system. The multi-party composition of that committee, and especially the inclusion of the small parties, meant that, as expected, it recommended the retention of a proportional electoral system (see section 5.7), although it is likely that a number of changes will be made to the present MMP system.

Key political and constitutional dates

- 1840** Treaty of Waitangi was signed between the British Crown and over 500 indigenous Maori Chiefs.
- 1852** New Zealand Constitution Act was passed by the Westminster Parliament. Franchise was given to holders of certain freehold and leasehold estates.
- 1853** The Crown appointed the Legislative Council.
House of Representatives elected.
Six Provincial Councils were elected (abolished in 1875).
- 1854** 24 May, New Zealand Parliament first met.
- 1856** Establishment of responsible government. The Governor accepted that he would be guided by the views of Ministers responsible to Parliament.
- 1867** Maori Representation Act 1867. Four Maori seats in Parliament were established.
- 1875** Provincial Government was abolished.
Ratepayers were enfranchised and enrolled without application.
- 1879** Triennial Parliamentary terms were introduced.
- 1890** All European elections conducted by secret ballot rather than the show of hands (voting by a show of hands in Maori electorates was abolished in 1910).
- 1893** Women given the same voting rights as men.
- 1907** New Zealand became a Dominion in acknowledgment of its political independence.
- 1908–11** Two round (or second ballot) voting in single member districts.
- 1919** Women were permitted to stand for election to Parliament.
- 1933** First woman was elected to Parliament.
- 1947** Statute of Westminster Adoption Act 1947. The New Zealand Parliament was no longer legally subordinate to the Parliament of the United Kingdom and achieved power to make its own constitutional changes.
- 1950** Legislative Council Abolition Act 1950—appointed second chamber was abolished.
- 1956** Electoral Act 1956 with entrenchment provisions for a three-year term of Parliament and other key election rules.
- 1962** Ombudsmen Act 1962 (replaced by Ombudsmen Act 1975).
- 1967** ‘Full blooded’ Maori candidates were permitted to stand for general electorates and vice versa.

- 1969** Voting age was lowered from 21 to 20 years.
- 1974** Voting age was lowered to 18 years.
- 1982** Official Information Act 1982.
- 1986** Constitution Act 1986. This brought together several existing constitutional acts.
Report of the Royal Commission on the Electoral System (established in 1985) recommended the adoption of the German-based MMP electoral system.
- 1990** New Zealand Bill of Rights Act 1990 (hereafter the Bill of Rights).
- 1992** Special non-binding indicative referendum on electoral systems. Of the 55.2% of eligible voters who participated, 84.7% voted in favour of a change to the electoral system; 70.5% favoured the MMP system among four possible options (Electoral Commission, 2000, p. 57).
- 1993** Binding referendum on the electoral system held with the general election. Among the 85.2% of eligible voters who participated, 53.9% supported MMP (Electoral Commission, 2000, p. 57).
Electoral Act 1993 introduced the new MMP system.
Human Rights Act 1993. This act consolidated and extended human rights legislation.
- 1996** First MMP election, resulting in a National–New Zealand First majority coalition.
- 1997** First woman Prime Minister, Jenny Shipley, appointed.
- 1999** Second MMP election, resulting in a Labour–Alliance minority coalition.

0.2 Basic political data

New Zealand is an independent state; a constitutional monarchy with a unicameral Parliament and a proportional representation electoral system, known as MMP. The Parliamentary term is three years and at the November 1999 general election for the 120-seat House of Representatives a Labour–Alliance coalition government was elected. A total of seven parties won seats in Parliament.

Territorial control

The total land area of New Zealand is 268,021 square kilometres and the maritime Exclusive Economic Zone (EEZ) is 1.3 million square nautical miles (15 times New Zealand's land mass), making it one of the largest in the world (Statistics New Zealand, 1999a).¹ In addition to the main islands, the North Island, South Island and Stewart Island, New Zealand territory also includes a number of small islands (the Chatham Islands, Raoul Island and Campbell Island) and jurisdiction is held over the Ross Dependency in Antarctica. Tokelau, a small island grouping in the central Pacific, remains a New Zealand dependency, but in practice enjoys a large measure of administrative and political autonomy as the New Zealand administrator has delegated most of their powers to local authorities.

New Zealand also has a constitutional relationship with two other Pacific Islands: the Cook Islands and Niue, which are self-governing states in free association with New Zealand. This relationship provides for the exercise by New Zealand of certain responsibilities for defence and external affairs, but in practice these powers are exercised only on the request of the island governments.

Population and ethnic composition

In September 2001 the estimated resident population of New Zealand was 3,862,800 (Statistics New Zealand, 2001a).

The 1996 census asked people to record which ethnic groups they identified with, allowing for multiple ethnicity to be recorded. The largest ethnic group was European, comprising 74.8% of the population. The New Zealand Maori population comprised 15.1% of the population, followed by Pacific Islands people (5.0%) and the Asian population (4.6%) (see table 1). The Pacific Islands people represent the fastest growing ethnic group in New Zealand and are expected to increase to 12% of the population by 2051 (Ministry of Pacific Island Affairs, 1999, p. 10).

Linguistic composition

Almost all (96.3%) of New Zealand Europeans speak only one language—English. Some 4.5% of the total population speak Maori, an official language, compared with 25.2% of the Maori population (Statistics New Zealand, 1999a; see also section 3.3).

Religious composition

About 50% of the population identify with Christian religions. However, 37% of the population do not identify any religious affiliation (Statistics New Zealand, 1999a; see also section 3.3).

Table 1: Main New Zealand ethnic groups according to the Census, 1991 and 1996*

Ethnic group	1991 Census		1996 Census	
	Number of responses	% of responses	Number of responses	% of responses
European only**	2,657,619	79.4	2,594,688	74.8
New Zealand Maori#	434,847	13.0	523,371	15.1
Pacific Islands##	152,937	4.6	173,181	5.0
Asian†	94,065	2.8	160,680	4.6
Other††	6,348	0.2	14,667	0.4
Not specified	28,113		151,716	
Total	3,373,929	100.0	3,618,303	100.0

Notes

* Usually resident in the New Zealand population.

** "European" includes those who specified a European group as their sole ethnic group.

"New Zealand Maori" includes all those who specified New Zealand Maori either alone or in combination with other groups.

"Pacific Islands" includes all people who specified a Pacific Islands ethnic group except those who also specified New Zealand Maori.

† "Asian" includes all those who specified an Asian ethnic group except those who also specified New Zealand Maori or a Pacific Islands ethnic group.

†† "Other" includes all those who specified another ethnic group except those who also specified New Zealand Maori or a Pacific Islands or Asian ethnic group.

(Statistics New Zealand, 2000c, p. 129).

Constitutional form

Following the British tradition, New Zealand does not have a single overriding formal written constitutional document. Its constitution is made up of the statutes of the New Zealand Parliament, common law, constitutional convention, law and custom of Parliament, and the heritage of British constitutional history. The Head of State is currently the British monarch, Queen Elizabeth II, whose powers as Queen of New Zealand are exercised by the Governor-General, whom the New Zealand Government nominates. The constitution is of a Westminster Parliamentary type, with an executive Cabinet drawn from the legislature, and held accountable to it. The 1840 Treaty of Waitangi between the Crown and the indigenous Maori people has become an important part of New Zealand's constitutional setting.

Electoral system

The first general election using the new proportional MMP system was held in 1996. (For the background see section 5.0). Under MMP each voter has two votes—one for a party and one for a constituency (or electorate) candidate. Following the 1999 general election the 120-seat Parliament consisted of 67 electorate seats (including six Maori seats; there are seven Maori seats in Parliament for the 2002 election) and 53 party list seats.

To be entitled to a proportional share of all the seats in Parliament, a registered party must gain more than 5% of all party votes or win at least one constituency seat. The guiding principle of MMP is that the overall percentage of Parliamentary seats each party receives (including constituency seats) is in proportion to the total number of party votes that the party attains. In short, it is the party vote that determines the overall distribution of all Parliamentary seats (see also section 5.0).

Electoral cycle

Triennial Parliamentary terms were introduced in 1879. The term was extended to four years in 1934, but in 1937 was restored to three years. Although it has been argued that longer terms would provide more effective government, referendums in 1967 and 1990 failed to win support to extend the term to four years. There have been only two snap elections in modern times that took place well before Parliament's term had expired (1951 and 1984; see also section 5.1).

Current government

The current Labour–Alliance minority coalition government took power after the November 1999 general election. It holds 59 of the 120 seats (Labour 49 and the Alliance 10; see table 2). The Prime Minister is Labour Party leader Helen Clark. The Deputy Prime Minister is Jim Anderton, the leader of the Alliance Party. As at 5 June 2001 there were 20 Cabinet Ministers, 3 Ministers outside of Cabinet and 2 Parliamentary Under-Secretaries, all drawn from the Labour and Alliance parties.

The Green Party, which holds seven seats, generally supports the government on crucial votes. Its co-leaders are Jeanette Fitzsimons and Rod Donald. The New Zealand First Party, led by Winston Peters, holds five seats and at times supports the government (see also section 6.1).

The main section of the Opposition is comprised of 49 MPs: 39 from the National Party, 9 from the Association of Consumers and Taxpayers (ACT) Party and 1 from United. The Leader of the Opposition and of the National Party is Bill English. The leader of ACT is Richard Prebble, a former Labour Party Cabinet Minister. Peter Dunne is the leader of United and its sole MP.

Table 2: Party representation in New Zealand Parliament after elections, 1990–1999

Year of election	Labour	National	Alliance	New Labour	New Zealand First	ACT	Green	United
1990	35.1 (29)*	47.8 (67)	N/A**	5.2 (1)	N/A	N/A	N/A	N/A
1993	34.7 (45)	35.1 (50)	18.2 (2)	N/A	8.4 (2)	N/A	N/A	N/A
1996	28.2 (37)	33.8 (44)	10.1 (13)	N/A	13.4 (17)	6.1 (8)	N/A	0.9 (1)
1999	38.7 (49)	30.5 (39)	7.7 (10)	N/A	4.3 (5)	7.0 (9)	5.2 (7)	0.5 (1)

Notes

* The number in brackets indicates the number of seats won in Parliament.

** N/A indicates “not applicable”.

Sources: Mulgan, 1997, p. 236; Electoral Commission, 2000, p. 156; and Chief Electoral Office, 1999. The 1999 figures for the number of seats held by parties remained valid as at 24 November 2001.

0.3 Basic socio-economic data

New Zealand has experienced extensive economic change during the last two decades as it has rapidly moved from protectionism to a more free market approach. The performance of the economy has fluctuated from a flat period from 1986 to 1991 to a comparatively high level of growth from 1992 to 1997. New Zealand experienced two quarters of negative growth in 1998, but economic recovery was strong in 1999 (with regard to 1995–2000 see table 3). Forecasts in October 2001 put real gross domestic product growth at 1.7% in 2001 and 2.2% in 2002 (Economist Intelligence Unit, October 2001, p. 10).

In recent years there has been a growing imbalance in the balance of trade payments. As at 31 March 2000 official sector overseas debt was \$16.4 billion—representing 15% of total overseas debt (Statistics New Zealand, 2000b). Inflation has remained low (see table 4).

Unemployment from 1995 to 2000 was comparatively low (see section 4.1 and table 5). Although New Zealand generally rates highly on the human development indicators, its overall ranking (19) is behind Australia (2), Canada (3), Sweden (4), Finland (10), and the United Kingdom (14) (see table 6).

Table 3: Real gross domestic product growth in New Zealand and selected OECD countries, 1995–2000

Real GDP growth	New Zealand	Australia	Canada	Finland	Sweden	United Kingdom
1995	3.3	4.1	2.8	3.8	3.9	2.8
1996	2.7	3.7	1.7	4.0	1.3	2.6
1997	2.0	2.8	3.9	6.3	1.8	3.5
1998	−0.3	4.8	3.1	5.0	2.9	2.2
1999 [#]	3.4 [*]	4.7 ^{**}	4.2	3.5	3.7	2.1
2000 [#]	3.5 [*]	3.7 ^{**}	3.5	3.25	3.0	3.25

Note

[#] Except for New Zealand and Australia, 1999 figures are partly estimated and 2000 figures are forecasted.

Sources: All figures for annual percentage change are from United Nations, 2000, p. 246; except:

^{*} Economist Intelligence Unit, April 2001, p. 5.

^{**} Economist Intelligence Unit, April 2001a, p. 5.

Table 4: Consumer price inflation in New Zealand and selected OECD countries, 1995–2000

Consumer price inflation*	New Zealand	Australia	Canada	Finland	Sweden	United Kingdom
1995	3.8	4.6	2.2	1	2.5	3.4
1996	2.6	2.6	1.6	0.6	0	2.4
1997	0.9	0.3	1.6	1.2	0.8	3.1
1998	1.3	0.9	1	1.4	−0.1	3.4
1999	1.4	1.5	1.7	1.2	0.5	1.6
2000**	2.25	2.25	1.25	1.75	1.25	2.75

Notes

* Annual percentages change; 1995–2000 figures are weighted averages, where weights for each year are 1995 GDP in US dollars.

** Forecasted (United Nations, 2000, p. 253).

Table 5: Unemployment rate in New Zealand and selected OECD countries, 1995–2000

Unemployment rate	New Zealand	Australia	Canada	Finland	Sweden	United Kingdom
1995	6.3	8.5	9.5	15.3	8.8	8.7
1996	6.1	8.5	9.7	14.6	9.6	8.2
1997	6.7	8.5	9.1	12.6	9.9	7.0
1998	7.4	8.0	8.3	11.4	8.3	6.3
1999*	6.8#	7.25###	7.6	10.2	7.2	6.1
2000*	5.97#	6.6##	7.5	9.25	6.0	6.0

Note

* Except for New Zealand and Australia, 1999 figures are partly estimated and 2000 figures are forecasted.

Sources: United Nations, 2000, p. 251; except:

Economic Intelligence Unit, April 2001, p. 6.

Economist Intelligence Unit, April 2001a, p. 6.

Table 6: Human development indicators in New Zealand and selected OECD countries, 1970–2001

Country	Human Development Index rank (of 174 countries) 2001 [#]	GDP per capita (purchasing power parity US\$ 1999)	% of population		Life expectancy	
			below income poverty line 1989–94*	not expected to survive to age 60 1997	at birth (years) 1970	at birth (years) 1999 [#]
NZ	19	19,104	9.2	11	71.4	77.4
Australia	2	24,574	12.9	9	71.1	78.8
Canada	3	26,251	11.7	9	72.6	78.7
Finland	10	23,096	6.2	11	70.1	77.4
Sweden	4	22,636	6.7	9	74.4	79.6
UK	14	22,093	13.5	10	71.7	77.5

Note

* Poverty is measured at 50% of the median adjusted disposable personal income. Data refer to the most recent year available during the period specified in the column heading.

Sources: All data are from United Nations Development Programme, 1999, pp. 49, 134, 149–50, 168; except:

[#] United Nations Development Programme, 2001, p. 141.

Natural resources and exports

Although New Zealand is not rich in minerals, its climate and fertile lands provide the basis for a thriving farming and forestry industry. The dairy industry is the country's leading exporter followed by the meat and forestry sectors. Tourism and manufacturing are further important industries.

Inequality

New Zealand for many years prided itself on being an egalitarian society. But inequalities exist, particularly along ethnic lines, as table 7 indicates. More specifically, table 8 examines inequality in New Zealand relative to other Organisation for Economic Cooperation and Development (OECD) countries and tables 9 and 10 examine women in the labour force and gender inequality. (For inequalities in employment see section 4.1, for health section 4.3 and for education section 4.4).

Table 7: Key indicators in New Zealand by ethnic group, 1995–2001

Key indicator	Ethnic group		Comparative indicator
	Maori	Pacific Islands	
Average weekly income (all sources) (June 2001)&	\$388	\$352	\$504 (European/Pakeha)
Unemployment (September 2001)+	12.3%	8.2%	5.2% (national rate)
House ownership (1996)*	53.3%	44%	75% (non-Polynesian population)
Education: school leavers with at least 6th form certificate (1999)**	Male: 40% Female: 46%	Male: 50% Female: 58%	Male: 67% Female: 76% (European/Pakeha)
Imprisonment (% of inmates) (1997)++	44%	9%	38% (European)
Life expectancy (1995–97)#	Male: 67.2 Female: 71.6	Male: 69.8 Female: 75.6	Male: 74.3 Female: 79.6 (total population)

Sources

& Statistics New Zealand, 2001b.

+ New Zealand Newspapers Association, 8 November 2001.

* Ministry of Housing, 2000.

** Ministry of Education, 1999, p. 104.

++ Department of Corrections, 1999, p. 26.

Statistics New Zealand, 1999b, p. 25.

Table 8: Inequality in New Zealand and selected OECD countries, 1980–1997

Country	Real GDP per capita (purchasing power parity \$)					
	1997			1980–1994		
	Average	Male	Female	Poorest 20%	Richest 20%	Richest 20% to poorest 20%
UK	20,826.5	25,917	15,736	3,963	38,164	9.6
NZ	17,467	21,177	13,757	4,264	37,369	8.8
Australia	20,235	23,944	16,526	4,077	39,098	9.6
Finland	20,283.5	25,522	15,045	5,141	30,682	6.0
Sweden	19,809	21,789	17,829	7,160	33,026	4.6
Canada	22,530	27,806	17,254	5,971	42,110	7.1

Source: United Nations Development Programme 1999, pp. 138, 149.

Table 9: Women in the labour market in New Zealand and selected OECD countries, 1980–1998

Country	Female % of labour force	
	1980	1998
New Zealand	34	45
Australia	37	43
Canada	40	45
Finland	47	48
Sweden	44	48
United Kingdom	39	44

Source: United Nations Development Programme, 1999, pp. 234–5.

Table 10: Gender inequality—average weekly income for all people in New Zealand aged 15 years and over, by sex, 1997–2001

Year ending	Average weekly income (\$) from		
	wages/salaries	self-employment	government transfers
<i>Males</i>			
June 1997	339	121	54
June 1998	342	131	59
June 1999	345	144	57
June 2000	352	138	60
June 2001	383	141	58
<i>Females</i>			
June 1997	187	33	79
June 1998	193	29	89
June 1999	204	38	87
June 2000	212	36	88
June 2001	231	42	86

Source: Statistics New Zealand, 2000b, p. 164; June 2001 figures are from Statistics New Zealand, 2001b.

Many of these inequalities follow ethnic lines. The *Closing Social and Economic Gaps* report (Te Puni Kokiri—Ministry of Maori Development, May 2000) demonstrated that Maori continued to experience:

- poorer health status
- lower income levels
- higher unemployment

- higher rates of prosecution and conviction
- fewer educational achievements
- lower rates of home ownership.

The findings for Pacific Islands people are similar (Ministry of Pacific Island Affairs, 1999, p. 12). The Labour–Alliance Government has committed itself to reducing these inequalities. This programme was named “closing the gaps” before the name was discarded after the government was accused of helping Maori and Pacific Islands people at the expense of other low-income New Zealanders. Given the deep-seated nature of these inequalities it is unlikely that substantial progress can be made within one three-year Parliamentary term.

I. CITIZENSHIP, LAW AND RIGHTS

1.0 Nationhood and citizenship

Is there public agreement on a common citizenship without discrimination?

Executive summary

There is wide public agreement on the ideal of a common citizenship without discrimination and this ideal is reinforced by law. Despite this, statistics demonstrate clearly that there are groups, particularly amongst Maori and Pacific Islands populations, suffering from inequalities. Politicians seeking to gain political support have occasionally campaigned against migrants and minority ethnic groups, especially Asians, who migrated to New Zealand in increasing numbers in the mid-1990s. Historically, immigration policy heavily favoured European migrants.

The issue of Maori sovereignty and self-government remains contentious. The Treaty of Waitangi between the indigenous Maori people and the British Crown has assumed considerable constitutional significance and practical value in resolving differences between Maori and non-Maori. The Waitangi Tribunal hears disputes relating to the Treaty and makes recommendations to government.

The New Zealand Bill of Rights Act 1990, although lacking any special constitutional status, has also assumed considerable importance in New Zealand.

The introduction of a proportional electoral system has helped ensure wider participation in Parliament. The need for compromise in coalition arrangements ideally should help reconcile major societal divisions.

1.1 How inclusive is the political nation and state citizenship of all who live within the territory?

The indigenous Maori inhabitants of New Zealand acquired British citizenship under Article 3 of the Treaty of Waitangi (see section 1.2). The residents of the Cook Islands, Niue and Tokelau are New Zealand citizens as well and have unrestricted entry to New Zealand. The result is that many more live in New Zealand than in their home islands. About 1,200 Samoan immigrants gain entry to New Zealand each year under a special quota system. (Until its

independence in 1962 Samoa was administered by New Zealand as a United Nations Trust Territory).

Under the Citizenship Act 1977 New Zealand citizenship may be established by birth in New Zealand, or by birth overseas to a parent who is a New Zealand citizen. The general requirements for citizenship by naturalisation are that an applicant must have been ordinarily resident in New Zealand for the three years immediately preceding the date of application; be of good character; and have sufficient knowledge of the English language and of the responsibilities and privileges attaching to New Zealand citizenship. Since October 2000 “overstayers” in New Zealand can be sent home immediately if their permit is more than six weeks out of date.

The New Zealand Immigration Service also considers people who wish to immigrate to New Zealand under the categories of skills (often called the “points system”), general business investor, family and humanitarian. Under United Nations quotas, New Zealand also accepts 750 refugees each year. In the year ended 30 June 1999 nearly 29,000 people were granted New Zealand citizenship (Statistics New Zealand, 2000a, p. 131).

Historically, immigration procedures in New Zealand have heavily favoured European immigrants. Asian people seeking entry into New Zealand during the late 19th century and early 20th century faced racist immigration policies. During the 1970s the National Government staged a crackdown on migrant “overstayers” in New Zealand, which targeted Pacific Islands people whose visas had expired. In 1996 the New Zealand First Party leader, Winston Peters, gained considerable support by advocating a substantial reduction in immigration. He was able to capitalise on some public unease—particularly in the Auckland region—generated by an influx of Chinese immigrants from East Asia who represented more than half of all immigrants in the mid-1990s. More recently, Pacific Islands, Middle Eastern and Asian groups have questioned the impartiality of immigration procedures. There have been problems with follow-up services, such as those for non-English speaking migrants. But generally, immigration and citizenship laws have been implemented impartially.

1.2 How far are cultural differences acknowledged and how well are minorities protected?

The status of the minority indigenous Maori population is protected by the Treaty of Waitangi, signed in 1840 by over 500 Maori Chiefs and Captain William Hobson, representing the British Crown. The Treaty, which was written in Maori and English, has three articles that:

- cede the Maori right to “govern” to the Crown;

- guarantee to Maori “full, exclusive and undisturbed possession” (English version) or “Te Tino Rangatiratanga” (Maori version) which can be translated as full chieftainship or “kingdom, principality, sovereignty, realm” of their lands, estates, forests, fisheries and other properties; and their “Taonga” (treasured possessions);
- recognise Maori as British citizens (Orange, 1990, p. 265).

In 1975 the Waitangi Tribunal was established to hear cases alleging Crown breaches of the Treaty since 1975 and to make recommendations to government. In 1985 the Tribunal’s jurisdiction was extended back to 1840. To date, of the more than 500 claims, only a limited number have been settled, although these have included some of the largest.

The Treaty has no legal standing except when explicitly incorporated in statute or when acknowledged by the courts—which occurred in the 1980s. The Treaty received recognition in legislation in the State-Owned Enterprises Act 1986, which in section 9 stipulated that: “Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi”. This reference later appeared in several other pieces of legislation.

The judgment in *New Zealand Maori Council v. Attorney-General* (1987) stated that the Treaty is a foundation constitutional document creating a partnership between Maori and Pakeha, and recognised and defined a fiduciary obligation on the Crown to respect the principles of the Treaty.

Reports of the Waitangi Tribunal have recognised a number of principles inherent in the Treaty which govern relationships between Maori and the Crown. Of paramount importance is that of reciprocity, the exchange of the right to govern for the right of Maori to retain their full tribal authority and to control their lands, forests, fisheries and Taonga so long as they wish. Other important principles have also been identified by the Tribunal: the partnership between Maori and non-Maori at all levels of society, including decision making; the delivery of services; and employment and education (thus allowing for positive forms of discrimination). Additional principles include the recognition and respect of Maori laws, institutions and traditional authority; active protection of the interests of Maori (also opening the door for positive discrimination); the option of Maori to join Pakeha culture, or to continue to live according to Tikanga Maori, or to live in both worlds; autonomy—the right to manage their own policies, resources and affairs within rules necessary for the operation of the state; and the right to development.

There is considerable debate over how far the Treaty reaches beyond claims for land, fish and other material resources that were under Maori ownership and control in 1840. But governments have devolved to Maori tribes and authorities

the delivery of some social services. Some Maori claim that Article 3 of the Treaty requires the government to ensure that Maori health, employment and housing status is equivalent to that of non-Maori (James, 2000a).

Human rights protection

A framework to protect and to promote human rights exists in New Zealand.

The Bill of Rights Act 1990 provides for the protection of speech, religion, rights in criminal procedure and the rights of ethnic, religious, or linguistic minorities. Although lacking any special constitutional status, the act has assumed considerable importance in New Zealand.

New Zealand has also signed various international conventions and agreements that prohibit the violation of minority rights, including the 1948 Universal Declaration of Human Rights. In 1972 New Zealand ratified the International Convention on the Elimination of All Forms of Racial Discrimination.

A Human Rights Commission was established in 1977; the Human Rights Act 1993 extended the range of protections and the methods of dealing with complaints where the standards may have been breached. The Commission includes the Race Relations Conciliator (who deals with complaints of racial discrimination and promotes positive race relations) and the Privacy Commissioner (who promotes and protects individual privacy) as ex officio members. It acts independently of the executive government (see section 1.6).

Legislation has helped to recognise and to protect Maori rights. For instance, in the first modern landmark case in Treaty jurisprudence, *New Zealand Maori Council v. Attorney-General*, the Court of Appeal found that the State-Owned Enterprises Act 1986 (s. 9) obliged the Crown to safeguard Maori claims under the Treaty before transferring land to state-owned enterprises (SOEs).

Although there is no evidence of systematic discrimination which is officially sanctioned, problems relating to indigenous and minority rights remain. In the year to 30 June 2000, 1,031 complaints were made to the Race Relations Conciliator, compared with 273 in the year to 30 June 1994 (Office of the Race Relations Conciliator, 2000, p. 25).

Maori and Pacific Islands populations are overrepresented in the “negative” statistics relating to health, income, education and housing (see table 7). Minority ethnic groups are also overrepresented in the prison population (Statistics New Zealand, 1999a; see also section 2.4).

Another minority group that has alleged discrimination is the gay community, although it should be noted that the Homosexual Law Reform Act 1986 removed criminal sanctions against consensual homosexual conduct, and that discrimination on the basis of sexual orientation is outlawed. In *Quilter v.*

Attorney General (1997), the Court of Appeal held that the wording and scheme of the Marriage Act 1955 did not accommodate marriage between people of the same sex (Ministry of Justice, August 1999; see also section 1.6).

1.3 How much consensus is there on state boundaries and constitutional arrangements?

Survey research provides evidence that the New Zealand democratic culture remains strong. In the 1998 Study of Values survey, 79.5% of respondents rated the democratic system as “very good” or “good” (Perry and Webster, 1999, p. 52; see also section 12.4). But, as has been noted, the nature of New Zealand’s electoral system remains a contentious issue. The retention of the Queen as the Head of State is also widely supported although there are indications that opinion is changing. An August 2000 survey found that only 32% of New Zealanders wanted New Zealand to become a republic. But more than half thought that New Zealand would eventually become a republic (*National Business Review*, 1 September 2000, p. 16). Debate over the move to a republic was revitalised in April 2001 when the National Party released a report that proposed a referendum on the issue and signalled the party might adopt a new policy on the issue.

The nature of New Zealand’s territorial boundaries is not a subject that features in political debate. But the related issue of Maori “sovereignty” remains a contentious political issue. It has a long history. In 1835, 34 Maori Chiefs signed a Declaration of Independence, and opposition to settler occupation of Maori lands sparked land wars later that century. In more recent times a small number of Maori have argued that the Treaty of Waitangi did not transfer sovereignty to Britain. The Maori Congress resolved in 1995 to move towards some formal recognition of a Maori nation, if not a Maori nation state. Maori land occupations have occurred to reinforce land claims. In the late 1970s Maori staged a 506-day occupation of Bastion Point in Auckland; and a 79-day occupation of Moutoa Gardens in Whanganui took place in 1995.

The sovereignty movement has operated largely outside of the Parliamentary and electoral process and remains small. A recent analysis concluded that, except for a few ideologists, Maori are not looking to become separate or independent (Maaka and Fleras, 2000). Electoral support for Maori political parties has been extremely limited. The Mana Maori Movement received 0.3% of the vote and the Mauri Pacific Party won 0.2% of the vote in the 1999 general election (Sullivan and Margaritis, in Boston et al., 2000, pp. 181–2).

The New Zealand First Party, which has a Maori leader, Winston Peters, but does not promote a particular Maori agenda and argues against separatism, gained considerable Maori support in the 1996 election when it won 17

Parliamentary seats. It formed a coalition government with National, with Winston Peters becoming New Zealand's first Maori Deputy Prime Minister. But in 1999 Maori electoral support returned to the Labour Party and the New Zealand First Party was reduced to five seats in Parliament. The former Maori members of New Zealand First who campaigned as part of the new Mauri Pacific Party—which sought the support of both Maori and Pacific Islands people—won few votes.

1.4 How far do constitutional and political arrangements enable major societal divisions to be moderated or reconciled?

The Treaty of Waitangi has assumed major constitutional and political importance in reconciling societal divisions between Maori and non-Maori (though some believe the Treaty also causes problems).

Maori seats in Parliament have been provided since 1867, but with only four reserved seats until the introduction of MMP in 1996 had only limited success in protecting and enhancing Maori rights and interests. The right of 'fullblooded' Maori candidates to stand for formerly European seats since 1967, the proportional nature of the MMP electoral system, and the retention of the reserved seats have increased Maori representation. Maori MPs have increased in number from seven in 1993, to 16 in both 1996 and 1999 when Parliament had increased in size from 99 to 120 MPs—providing representation approximately proportional to the overall population (see also section 5.4 and table 11). Parekura Horomia was appointed the Minister of Maori Affairs in 2000. The MMP electoral system has helped to increase the presence in Parliament of other ethnic groups. Pacific Islands MPs increased from one in 1993 to three in 1999. A member of the Asian community also gained election to Parliament in both 1996 and 1999 (see table 11).

Table 11: New Zealand women and minorities in Parliament after elections, 1993–1999

Year of election	Women		Maori		Pacific		Asian	
	No.	%	No.	%	No.	%	No.	%
1993	21	21.2	7	7.1	1	1.0	0	0.0
1996	35	29.2	16	13.3	3	2.5	1	0.8
1999	37	30.8	16	13.3	3	2.5	1	0.8

Source: New Zealand Electoral Commission, 2000, pp. 157, 161.

However, doubts have arisen over whether previously underrepresented groups necessarily enjoy a more effective voice under MMP. Numbers in Parliament do not necessarily transfer directly to power, which tends to rest primarily in the hands of a few key Cabinet Ministers. But the onset of MMP has meant that power is now more diffuse than it was previously.

The MMP system has also encouraged the governing party to cooperate more with other MPs in order to pass legislation. Ideally this should help facilitate the moderation of major societal divisions. However, the effectiveness of the MMP system for providing stable government has been questioned. The 1996 coalition agreement between National and New Zealand First collapsed in 1998, although National continued to lead the government as a minority party for the rest of the Parliamentary term. The breakaway of MPs from parties for which they were elected—“party hopping”—meant that some parties had fewer seats than the proportion of the vote they gained in the election.

1.5 How impartial and inclusive are the procedures for amending the constitution?

New Zealand does not have a formal written constitution. Parliament is the supreme political body and can, with a majority vote, make changes to the constitution and laws as it sees fit (although note entrenchment provisions below). The process is as impartial and inclusive as the overall make-up of Parliament determines.

Some constitutional and electoral provisions are entrenched in the Constitution Act 1986 and the Electoral Act 1993. To amend the entrenched provisions a 75% majority of all the MPs or a simple majority in a national referendum is required. Although a simple majority of Parliament can change this entrenchment clause, by 2000 it had survived for 44 years without problems and attained the status of a “moral” entrenchment. Furthermore, major constitutional change is not politically—as distinct from legally—possible without a referendum (Jackson, 2000; James, 2000a).

The Constitution Act 1986 brought together in one enactment some of the most important constitutional provisions scattered in the statute books. Some of the most significant legislative changes to the constitutional framework in recent years have been the Bill of Rights Act 1990 and the 1993 adoption of the MMP electoral system.

1.6 What measures, if any, are being taken to remedy publicly identified problems in this field and what degree of political priority and public support do they have?

An attempt to counter what were seen to be flaws in the new proportional electoral system was made in December 1999 with the introduction of the Electoral (Integrity) Amendment Bill requiring MPs to resign their seats if they change parties after they have been elected (see section 6.4). However, opponents of the amendment argue that it constitutes an infringement of freedom of expression by MPs. The bill was passed in December 2001. Two Parliamentary select committees, the Justice and Electoral Committee and the MMP Review Committee, are considering a range of changes to the MMP electoral system.

In April 2000 a major conference involving participants with academic, Maori, business and political backgrounds considered the need for constitutional change, and especially for a written constitution. However, no consensus emerged from the conference and, apart from some Maori who argue the Treaty of Waitangi should carry greater weight, there is little public support for further constitutional change (see James, 2000b).

In December 2001 significant changes were made to the Human Rights Act 1993. Under these changes the Human Rights Commission and the Race Relations Office will be joined into a new organisation. The government will also no longer be exempt from fully complying with human rights standards. Hence, the government will now be liable for discrimination in the public sector.

The Property (Relationships) Amendment Act 2001 came into force in February 2002 and amended the Matrimonial Property Act 1976. The new act includes provisions on the division of property when de facto relationships and same-sex relationships end.

2.0 The rule of law and access to justice

Are state and society consistently subject to the law?

Executive summary

As a generalisation it can be said that the New Zealand state and society are consistently subject to the law and that the criminal justice and penal system operates in an impartial manner. The New Zealand legal system derives directly from that of the United Kingdom; it consists of common law, both inherited from Britain and developed in New Zealand, and statutes of the New Zealand Parliament. While it is Parliament's role to make the law, it is the independent judiciary that must interpret and apply these laws. Generally, the independence of the judiciary from the executive is respected and the judiciary has been largely free from political interference. But ultimately the doctrine of Parliamentary sovereignty means that Parliament may override judicial decisions with which it disagrees.

The New Zealand court system is tiered and consists of the Court of Appeal, the High Court, the District Court and a number of specialist courts. Appeals may still be made to the Judicial Committee of the Privy Council in the United Kingdom. In 1996 the National Government introduced legislation to remove this right of appeal, but it failed to proceed. Prime Minister Helen Clark has announced her government's intention to review this right (see also section 2.7).

Public officials remain fully subject to the law. The Ombudsmen may investigate cases of maladministration.

2.1 How far is the rule of law operative throughout the territory?

The law operates and is enforced throughout the territory with 42 District Courts providing a comprehensive coverage. The reluctance of governments to accept Maori customary law remains a contentious issue. There are a number of specialist courts—including the Youth Court, Family Court, Employment Court, Environment Court and Maori Land Court. In 1993 the Maori Land Court gained powers to make decisions over the administration of kin-owned land in a manner consistent with traditional custom.

The Court of Appeal, the highest level of court in New Zealand, sits in panels of five judges and three judges, depending on the nature and wider significance of the particular case. The High Court consists of the Chief Justice and 36 other judges (Department for Courts, 2000).

There has been criticism that the backlog of cases delays the administration of justice. However, Department for Courts figures show that over 80% of cases are disposed of within a 52-week period (Department for Courts, 1999, p. 59). It is also argued that more police are required for law enforcement. Nevertheless, total recorded offences dropped 1.9%, of which the police resolved 42.9%, in the year ending 30 June 2001 (New Zealand Police, 2001, p. 191).

There are no territorial enclaves beyond the law and there is little evidence of groups or individuals acting above or beyond the law. Nevertheless the operation of gangs—especially those concerned with drug trafficking—has been a growing area of concern (see section 8.4). There has also been concern that some aspects of “white collar” crime have been able to be practiced beyond the reach of the law (see also section 9.2).

2.2 To what extent are all public officials subject to the rule of law and to transparent rules in the performance of their functions?

Public officials have been, and continue to be, fully subject to the law, and to transparency rules regarding their functions. They are answerable to Ministers and Parliament, are subject to monitoring by the State Services Commission, and are required to comply with the Official Information Act 1982.

Until 1950 Crown immunity under the law meant citizens could sue officials but not government departments or the government as a whole (see also section 7.8). Following the passage of the Crown Proceedings Act 1950, the courts may review actions of public officials on the grounds of:

- **illegality**—officials must exercise their power according to the governing statute;
- **irrationality**—officials must not make patently absurd or perverse decisions;
- **procedural impropriety**—officials must act fairly and in accordance with the principles of natural justice.

The performance of public officials became more transparent with the establishment in 1962 of the Office of Ombudsmen and the Official Information Act 1982. This gave individuals the right to view any information about them held by the government bureaucracy, the right to request any public documents and the right to appeal to the Ombudsmen in the event of refusal.

Judicial review

The most celebrated case of judicial review is *Fitzgerald v. Muldoon* (1976). During the 1975 election campaign the National Party promised to repeal the compulsory national superannuation scheme (New Zealand Superannuation Act 1974). After National won the election, the new Prime Minister, Robert Muldoon, declared that the compulsory requirements for wage deductions under the New Zealand Superannuation Act 1974 would cease forthwith. He further stated that Parliament would repeal the legislation with retrospective effect and that all people who ceased paying from 15 December 1975 would be excused offence under the act. However, the Chief Justice Sir Richard Wild held that Muldoon had violated Article 1 of the English Bill of Rights 1688 by suspending a law without Parliament's consent. No penalty was imposed.

Oversight of public servants' performance

The responsibility for monitoring the work of public servants rests with the State Services Commissioner who is independent of the Ministers. While this independence helps promote the political neutrality of the public service, problems can arise when the government of the day loses confidence in a chief executive whom it lacks power to dismiss. It also raises the question of whether the State Services Commissioner is the best person to judge the performance of appointees made by the Commissioner (see also sections 7.3 and 9.4).

The Auditor-General audits government departments to ensure that they are performing in a manner that is consistent with Parliament's intentions. In the year to 30 June 2000 the Auditor-General found that the financial management and service performance management of 34% of the departments was "excellent". Another 50% were "good" and 16% "satisfactory" (Controller and Auditor General, 2000, p. 23; see also sections 7.6 and 9.2).

But the Audit Office has experienced its own problems. The Auditor-General resigned in 1994 and was subsequently imprisoned for offences involving dishonesty in relation to his expenses. But such blatant corruption is extremely rare. There is little evidence that personal relations or interests have systematically influenced executive, administrative or judicial decisions.

Use of emergency powers

The 1951 waterfront strike provides an example of the state using emergency powers to override what are generally recognised to be basic political rights. Using the Public Safety Conservation Act 1932 Prime Minister Sidney Holland declared strikes to be illegal, prohibited demonstrations, public meetings and the display of posters, suspended industrial agreements and employed the armed forces as strike breakers. The act was repealed in 1987.

Certain immunities exist in law:

- judges are not liable for things said or done in the course of their office;
- the Sovereign, or their representative, does not pay tax and has complete immunity at law;
- the New Zealand Security Intelligence Service (SIS) has powers of surveillance and interception of private communications;
- police have powers of search and seizure (ss. 31–2, 315 and 317 Crimes Act 1961) although police power is subject to the law and can be challenged by the courts;
- Parliamentary privilege is provided for statements made by MPs on the floor of Parliament, but there is now a right of reply. Parliamentary privilege also provides protection for statements made by witnesses participating in Parliamentary proceedings, especially committee hearings.

2.3 How independent are the courts and the judiciary from the executive, and how free are they from all kinds of interference?

Generally, the independence of the judiciary from the executive is respected and the judiciary has been largely free from political interference. But at times judges have been delivered clear messages. For instance, in February 2000 Justice Minister Phil Goff warned judges that they risked losing their discretionary powers if they did not fully utilise tougher sentencing laws.

The Chief Justice is nominated on the advice of the Prime Minister; High Court and Court of Appeal judges by the Attorney-General; and District Court judges by the Minister of Justice. It has been proposed that judges' appointments should be made or proposed by an independent panel. In practice, appointments are made after informal consultation with the judiciary, the Secretary for Justice, the Solicitor-General, the Presidents of the New Zealand and District Law Societies, as well as other Ministers with relevant portfolios. Recently consultation has extended to include the Opposition Justice Spokesperson, the Law Commission and, in some cases, women's groups and representatives of minority ethnic and cultural groups.

High Court and Court of Appeal judges may be removed only by the Crown acting on an Address of the House of Representatives on grounds of misbehaviour or incapacity. District Court judges may be removed by the Governor-General (ministerial advice is all that is required) on grounds of misbehaviour or incapacity. In 1997 Judge Robert Hesketh resigned from the bench after pleading guilty to a charge of fraud relating to his travel expenses. His senior colleague, Judge Martin Beattie, was acquitted after

contesting the charges and continued to hold office, but was administratively reassigned to hear Accident Compensation cases.

Financial security

The Constitution Act 1986 prohibits the reduction of a judge's salary while in office. In 1991 judges agreed to voluntarily refund or donate to charity part of their pay increase because New Zealand was in a period of economic recession.

An important factor that must be noted is the doctrine of Parliamentary sovereignty, which means that Parliament's powers of legislation can have no legal limitation. In effect, this means that governments may legislate to change the law and effectively override judicial decisions with which they disagree. But it is very rare for Parliament to take such action.

2.4 How equal and secure is the access of citizens to justice, to due process and to redress in the event of maladministration?

Citizens' assurance of due process and fair trial are provided for by the Bill of Rights Act 1990, and the Ombudsmen's Office provides an opportunity for redress in the event of maladministration. The Bill of Rights Act 1990, while not supreme law or entrenched, has nevertheless been given some "teeth" by the judiciary. This is in respect of ensuring the policing arm of the executive does not overstep its bounds. The courts must interpret statutes in a way consistent with the Bill of Rights Act 1990 (see section 3.2).

Legal aid

New Zealanders may obtain legal assistance if they cannot afford legal representation. The Legal Services Board was established in 1991 to make legal aid more readily available to people of insufficient means. The increasing demand for assistance has placed greater strain on the provision and quality of legal aid. The Legal Services Board reported 81,000 grants of legal aid for the year ended 30 June 1999, an increase of 30.6% over the previous year (New Zealand Law Society, January 2000).

Ombudsmen

As has been noted, the Ombudsmen Act 1962 and its successor act in 1975 significantly enhanced redress from maladministration. The Ombudsmen have four roles: citizens' protector; promoting open government and the right of access to official information; protecting access to personal information held about individuals; and protecting personal privacy (see table 12). Ombudsmen, who are appointed by Parliament, have security of tenure for their five-year term and may only be removed by the Governor-General.

Table 12: Sources of Ombudsmen Act complaints, 2000/01

Complaints lodged by	% of total complaints
Sentenced inmates	56
Individuals	36
Remand inmates	4
Companies	2
Special interest groups	1
Other	1

Source: Ombudsmen, 2001, p. 52.

Inequalities in the legal system

Although in 1999 New Zealand gained its first woman Chief Justice, women generally remain underrepresented in the judiciary and the legal profession. In 1997 less than a third (30.5%) of practising lawyers and just 12% of principals in law firms were women. The Maori and Pacific Islands communities are more seriously underrepresented. At the time of the 1996 census, just 4.4% of practising lawyers were Maori and 1.2% were Pacific Islands people. Approximately 5% of judges are Maori, although most of these serve on the specialist Maori Land Court. There is a Court Interpretation Service, but there is also a serious shortage of lawyers able to communicate in languages other than English, including sign languages (Law Commission, 1997a, pp. 9–11).

Prison population

The 1999 prison census revealed that 96% of prisoners are male. Forty-eight per cent of male prisoners are Maori and 10% are from the Pacific Islands. Of female prisoners 57% are Maori and 9% are from the Pacific Islands (Department of Corrections, 2000, p. 27; see also table 13).

Deaths and assaults in custody by police and prison officers are rare. There were six cases of unnatural prison deaths in custody in the year to 30 June 2001 (Department of Corrections, 2001, p. 18). The New Zealand rate of unnatural deaths in custody has been lower than that in all Australian states except Tasmania (Department of Corrections, 1999, p. 27). The law prohibits torture or inhuman punishment. In September 2000 the government revealed that more than half a million dollars had been paid in compensation to prisoners assaulted by guards in prison in the past five years (*Press*, 11 September 2000, p. 1).

Table 13: Prison numbers in New Zealand and selected OECD countries, 1990 and 1994

Country	Prisoners per 100,000 people
New Zealand	187.4*
Australia	129.4*
Finland	171.3#
Sweden	161.7#

Notes

* Data are for 1990.

Data are for 1994.

Source: United Nations Development Programme, 1999, p. 221.

2.5 How far do the criminal justice and penal systems observe due rules of impartial and equitable treatment in their operations?

Generally, the criminal justice and penal system operates in an impartial and equitable manner.

The Bill of Rights Act 1990 sets out the fundamental rights of individuals including:

- s. 9: the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.
- s. 21: the right to be secure against unreasonable search or seizure, whether of the person, property or correspondence or otherwise.
- s. 22: the right not to be arbitrarily arrested or detained.
- s. 23: the rights, following arrest or detention, of access to a lawyer, to be charged promptly or released, to be brought before a court or competent tribunal promptly, to refrain from making a statement and to be treated with humanity and with respect for the inherent dignity of the person.
- s. 24: the rights of those charged to adequate time and facilities to prepare a defence, to trial by jury where the possible punishment is at least three months imprisonment and to legal assistance if the individual does not possess sufficient means.
- s. 25: the right to be presumed innocent until proven guilty.
- s. 27: the right to justice, including the right to the observance of the principles of natural justice.

(See also section 14.3).

2.6 How much confidence do people have in the legal system to deliver fair and effective justice?

Public confidence in the legal system has been high, but appears to be declining. The 1998 Study of Values survey found that only 46.7% of respondents had confidence in the justice system compared with 65.1% in 1985 (Perry and Webster, 1999, p. 47).

There has also been widespread discontent over the perceived leniency of judges on criminals. A citizens initiated referendum run in conjunction with the 1999 general election asked “Should there be a reform of our justice system placing greater emphasis on the needs of victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious offences?” This referendum was supported by 91.8% of voters (Electoral Commission, 2000, p. 56).

2.7 What measures, if any, are being taken to remedy publicly identified problems in this field and what degree of political priority and public support do they have?

The Law Commission was established to keep the laws of New Zealand under review and has prepared a wide range of reports. There have periodically been proposals to establish a judicial commission to hold judges more accountable for their actions on the bench. The Prime Minister has announced that a review will be undertaken of the right to appeal to the Privy Council. More prisons are being built, while at the same time attempts are being made to break the cycle of disadvantage and give a greater emphasis to rehabilitation programmes. Finally, in August 2001 the government announced measures to toughen the parole and sentencing systems.

3.0 Civil and political rights

Are civil and political rights equally guaranteed for all?

Executive summary

Under New Zealand law the civil and political rights of all people are guaranteed equally. However, while New Zealand has a Bill of Rights, it is not supreme legislation and can be changed at will by Parliament. But this is a theoretical rather than practical possibility. Generally Parliamentarians, like other government officials, take the Bill of Rights Act 1990 seriously.

New Zealanders enjoy unrestricted freedom of movement, expression, association and assembly. They are free to practise their own religion, language and culture. But while equality in law is guaranteed, in practice some minority groups have experienced difficulty in exercising these rights.

3.1 How free are all people from physical violation of their person and from fear of it?

The law provides that New Zealanders should be free from violence, or the threat of it. Law and order has emerged as a major issue in New Zealand politics—with widespread public fear about violent crime. The 1996 National Survey of Crime indicated that Maori and Pacific Islands people were considerably more likely to have been a victim of violent offending than Europeans/Pakeha, but less likely to have experienced an individual property offence (Young et al., 1997).

There is no evidence of officially condoned violence. New Zealand became a signatory to the International Covenant on Civil and Political Rights in 1978, which covers freedom from physical violation (Articles 6–8). The Death Penalty Act 1989 removed capital punishment as a criminal sanction in New Zealand. Prior to this act, the death penalty could be imposed for treason (under the Crimes Act 1961) and for some military offences (under the Armed Forces Discipline Act 1971). The last execution was carried out in 1957.

Parliament has provided in the Extradition Act 1999 that the Minister of Justice may refuse to extradite a person who may be executed in his or her place of origin. In 1991 New Zealand was the first state to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the Abolition of the Death Penalty. It ratified the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment in 1989.

The Education Amendment Act 1990 inserts s. 139a into the Education Act 1989, providing that no employee of early childhood centres or registered schools, or people supervising on their behalf, may use any force by way of correction or punishment. The Crimes Act 1961 (s. 59) provides for the use of force by parents and guardians of a child by way of correction, so long as that force is justifiable in the circumstances.

From 1 January 1991 an amendment to the Crimes Act 1961 made female genital mutilation illegal in New Zealand. It is also an offence to be involved in arrangements to remove a child from New Zealand to carry out such an act.

Women's Refuge is the largest provider of protection against violence for women in New Zealand. In 1996 there were 56 safe houses spread throughout the country, receiving government funds and staffed by paid and unpaid workers (Ministry of Women's Affairs, 1998a).

Violence against children has become an area of particular concern to the Commissioner of Children. In the year to 30 June 2000 the Department of Child, Youth and Family Services assessed 6,833 children under 17 years of age as abused or neglected. This was a rate of 6.9 children for every 1,000 children; the rate for Maori was 12.0 (Ministry of Social Policy, 2001, pp. 42–3).

3.2 How effective and equal is the protection of the freedoms of movement, expression, association and assembly?

New Zealanders generally enjoy unrestricted freedom of movement, expression, association and assembly. New Zealand is a signatory to the International Covenant on Civil and Political Rights with the relevant articles being 12 (movement), 19 (expression), 21 (assembly) and 22 (association). The New Zealand Bill of Rights Act 1990 also provides protection in these areas.

The limitation of these freedoms is restricted to such matters as pornography and inciting racial hatred. The Films, Videos and Publications Classification Act 1993 allows for the prohibition of "objectionable" material. The Human Rights Act 1993 (s. 61) provides that it is unlawful to publish, distribute or use in any public place words which are threatening, abusive or insulting in order to promote racial disharmony. Defamation laws constrict what can be written about individuals and companies more severely than is the case in the United States and United Kingdom (James, 2000a).

The Attorney-General is charged with considering the consistency of any bill with the Bill of Rights Act 1990 and advising the House of such (s. 7). The utility of this procedure is limited, as the House is not required to act on this advice and the Attorney-General is not required to report on regulations, orders in council, or other government actions besides legislation.

New Zealand has not ratified International Labour Organisation (ILO) Convention 87 concerning Freedom of Association and Protection of the Right to Organise. Restrictions were part of the now repealed Employment Contracts Act 1991 (see section 4.5).

Cases of the state exceeding the law are very rare. One such alleged case of abuse of power occurred in July 1996 when the SIS broke into the home of Aziz Choudry, a political activist. In December 1998 a full sitting of the Court of Appeal held that the SIS had overstepped its powers. Subsequently, legislation was introduced to extend the powers of the SIS in this area (see also sections 8.2–8.3).

3.3 How secure is the freedom for all to practice their own religion, language or culture?

All New Zealanders are free to practise their own religion, language or culture, although minority groups may encounter practical difficulties. New Zealanders are free to follow the religion of their choice. Religious freedom is protected by New Zealand's adoption of the International Covenant on Civil and Political Rights Articles 18, 27; the International Covenant on Economic, Social and Cultural Rights Article 2 (2); and New Zealand Bill of Rights Act 1990 sections 13 (freedom of thought, conscience and religion), 15 (manifestation of religion and belief), 19 (freedom from discrimination) and 20 (rights of minorities).

There have been a number of important cases upholding the freedom of religion. For example, the Human Rights Commission in 1981 judged that a job advertisement could be read as intending to discriminate against non-Christians.

Language and culture

English is the dominant language, although Maori is also an official language of New Zealand. Under 5% of New Zealanders are fluent in the Maori language; the Maori Language Commission is seeking to expand knowledge and use of it. Freedoms of language and culture are protected by the International Covenant on Civil and Political Rights Article 27 (rights of ethnic, religious and linguistic minorities). The principles of the Treaty of Waitangi include the protection of Maori Taonga (treasured possessions), which have subsequently been held to include the Maori language and other cultural elements. This has led to special Maori access to radio frequencies (see also section 10.2).

The Broadcasting Act 1989 established the Broadcasting Commission, whose functions include promoting Maori language and culture and providing broadcasts of interest to minority groups. The Broadcasting Amendment Act (No. 2) 1993 established a funding agency for Maori broadcasting (Te Reo Whakapuaki Irirangi), which shares responsibility with the Broadcasting Commission.

The Maori language is actively fostered through kohanga reo (preschool Maori “language nests”) and kaupapa Maori, primary schools where the predominant language of instruction is Maori. In July 2000, 11,400 Maori children were enrolled in kohanga reo, comprising 35% of all Maori enrolments in early childhood education. Pacific Islands languages are also promoted. In July 2000, 4,400 Pacific Islands children were enrolled in Pacific language nests, accounting for 41% of all Pacific enrolments in early childhood education (Ministry of Social Policy, 2001, p. 68).

If the number of complaints received by the Human Rights Commission is taken as the measure, discrimination on religious grounds is not a major problem in New Zealand. In the year to 30 June 2000 it received 12 complaints against religious/ethical belief discrimination (Human Rights Commission, 2000, p. 18).

3.4 How free from harassment and intimidation are individuals and groups working to improve human rights?

Given the lack of official complaints, it is evident that the harassment and intimidation of human rights advocates has not been a major issue in New Zealand. One controversial action was the police use of buses to block off demonstrators protesting against the abuse of human rights in China during the visit to New Zealand in September 1999 of the Chinese President Jiang Zemin. After an inquiry, the Justice and Electoral Select Committee in December 2000 criticised the police handling of the protests.

The Human Rights Commission (a government-funded but independent body) fosters links with non-governmental organisations working in the field and in this way helps ensure that intimidation does not take place.

3.5 What measures, if any, are being taken to remedy publicly identified problems in this field and what degree of political priority and public support do they have?

Generally, there is wide public support for civil and political rights. The news media highlight issues in this area and help prevent abuses. The Employment Relations Act 2000 is designed to better protect the rights of workers. Prime Minister Helen Clark has announced that moves will be taken to better protect the rights of homosexuals in New Zealand. The government in March 2001 also announced that issues of governance and accountability for police will be addressed in a Police Amendment Bill introduced in 2001. This is part of a continuing reform package that includes a comprehensive review of the Police Act 1958 to be carried out in 2003.

4.0 Economic and social rights

Are economic and social rights equally guaranteed for all?

Executive summary

New Zealand has a long history of governments seeking to create an egalitarian society that would ensure basic economic and social rights. The Old Age Pension Act 1898 was pioneering legislation. So too was the Social Security Act 1938, which introduced medical and unemployment benefits. The Accident Compensation Act 1972 also broke new ground as a comprehensive no-fault system of compensation for personal injury.

But in the 1980s and 1990s New Zealand moved away from the philosophy of the welfare state and universal benefits to a greater emphasis on targeting. Inequalities were increased by major changes to social security provision and the now repealed Employment Contracts Act 1991. Nevertheless, access to social security for those in need remains a basic right and there has been a consistently rising number of beneficiaries. While job discrimination is illegal, in reality work is not equally available to all. Unemployment rates are considerably higher amongst Maori and Pacific Islands people. The average income of women is considerably less than the average income of men.

The state continues to provide public assistance for the basic necessities of housing, health and education. Over 75% of the health system is publicly funded. Payment for workplace accidents is made through the Accident Compensation Corporation (ACC). Education is compulsory to age 16 years and free in state schools until age 19.

4.1 How far is access to work or social security available to all, without discrimination?

Legally, all New Zealanders have access to work or social security without discrimination. In December 1978 New Zealand ratified the International Covenant on Economic, Social and Cultural Rights, which recognises an individual's right to work at the profession of their choice and the right to social security. The covenant also recognises the right to fair wages and equal pay for equal work, remuneration which will provide a decent standard of living and safe and healthy working conditions.

The Human Rights Act 1993 makes it unlawful to refuse to employ, offer less favourable terms of employment, terminate employment or retire an employee on the grounds of: sex, marital status, religious belief, ethical belief, colour,

race, ethnic or national origin, disability, age, political opinion, employment status and family status or sexual orientation (ss. 21–2).

While job discrimination is illegal the reality is that work is not equally available to all. Unemployment rates are, for socio-economic reasons, considerably higher amongst the Maori and Pacific Islands populations (see below). Differing skill levels are clearly a factor, but so too are inequitable social policies, deregulation and changes in social assistance.

Unemployment for Maori from 1986 to 2000 increased from 10.7% in 1986 to a peak of 25.4% in 1992 and in 2000 averaged 13.7%. Unemployment for Pacific Islands people rose from 6.5% in 1986 to 27.9% in 1992 before falling to 11.4% in 2000. The unemployment level among Europeans/Pakeha is much lower—increasing from 3.5% in 1986 to 7.9% in 1991–92 before declining to 4.5% in 2000 (Statistics New Zealand, 1986–2000). National unemployment fell from 1995 to 2000 (see table 5, section 0.3). According to the seasonally adjusted unemployment rate for the September 2001 quarter, the unemployment rate for Maori was 12.3% and was 8.2% for Pacific Islands people. The national rate was 5.2%, the lowest level for 13 years (see table 7, section 0.3).

Women are active in the labour force (see table 9, section 0.3). However, although men and women doing the same job are paid the same wage, gender inequality remains in income (see table 10, section 0.3). In June 2001 women's average weekly wages and salaries equalled \$231 compared with \$383 for men (Statistics New Zealand, 2001b). Further, women are more than twice as likely as men to be in part-time work (Ministry of Women's Affairs, 1998a). New Zealand currently has no legal entitlement to paid parental leave (this will be phased in from 1 April 2002), although unpaid parental leave is available.

Superannuation is a tax-funded benefit provided to those at retirement age. The qualifying age for the benefit has been increasing and is currently 65 years. There are no other explicit or implicit supports (such as tax incentives) for individual or employer retirement provision.

4.2 How effectively are the basic necessities of life guaranteed, including adequate food, shelter and clean water?

New Zealand has a long history of the government providing for the social security of citizens. Although there has been a move away from the welfare state philosophy, no New Zealanders need to be without the basic necessities of food and shelter.

Nevertheless, many individuals and families face considerable hardship. In March 2000 it was reported that over 20% of the population lived below the poverty line—defined as 60% of the median household income (*Listener*,

25 March 2000, pp. 17–18). Income levels for many fell in the early 1990s with the Employment Contracts Act 1991, which removed some overtime and special rates, and reductions in social security provision introduced in the 1991 budget.

The Maori and Pacific Islands populations are disproportionately in the lower income groups (see below) with many dependent on welfare payments. For Maori aged 15 years and over, the rate of receipt of all forms of payments from government sources, including the accommodation supplement and unemployment benefit, is 61% higher than the rate for non-Maori (Te Puni Kokiri, 2000, p. 30). A quarter of Maori live in poor households with an income under \$400 per week, compared with 15% of non-Maori (*Listener*, 25 March 2000, pp. 17–18).

In 2001 the total average weekly income of Maori was \$388 and for Pacific Islands people was \$352, compared with \$504 for Europeans/Pakeha (see table 7, section 0.3). In 1998, 36.7% of Pacific Islands people relied on government benefits as their main source of income (Ministry of Pacific Island Affairs, 1999, pp. 129–30).

Literal homelessness is not a major problem in New Zealand by international standards. The number of people who reported “No Fixed Abode” in the census taken in March 1996 was 964. Where homelessness does occur, it is often linked to psychiatric disability or illness and may be temporary in nature. In 1996 home ownership rates were lower among Maori (53.3%) and Pacific Islands people (44%) than for the non-Polynesian population (75%) (see table 7, section 0.3). In 2000 the Labour–Alliance Government introduced income-related rents for state houses to assist with the housing needs of low-income earners. Those renting from the private sector may apply for a rent supplement.

4.3 To what extent is the health of the population protected, in all spheres and stages of life?

New Zealand has a mixed health system, provided by the public, private and voluntary sectors. Over 75% of health care is publicly funded (Statistics New Zealand, 1998a, p. 157). Hospital treatment is free, but in practice is rationed according to need and urgency. There are long waiting lists for elective surgery. Medical care and medicine prescriptions are subsidised, and provided free to those aged under six years. Child immunisations are also provided without charge. Non-New Zealanders have the right to access medical treatment.

Payment for treatment for workplace accidents is made through the Accident Compensation Corporation. The Occupational Safety and Health Service (OSH) is responsible for promoting workplace safety. OSH lodged a total of 1,683 prosecutions under the Health and Safety in Employment Act 1992 from 1 April

1993 to 31 October 1998, of which 1,353 were prosecutions against employers (Occupational Health and Safety c).

Problems have arisen over user part-charges resulting in people delaying seeking medical treatment due to cost. Hospital waiting lists remain a serious problem at many hospitals. So too does the inadequate provision of health services in rural areas. Preventative health continues to be treated as a lower priority, with the bulk of funding channelled into curative medicine. Questions also remain over the adequacy of support for those with mental health problems in the community and the safety of the general public.

There is a major disparity in health status between Maori and Pacific Islands people and the rest of the population. Maori are far more likely than non-Maori to be hospitalised (Te Puni Kokiri, 2000, p. 40). A considerable (although declining) discrepancy continues to exist in the life expectancy of Maori and non-Maori. From 1995 to 1997 the average life expectancy at birth for Maori males was 67.2 years (compared with 74.3 for the total male population) and for Maori females was 71.6 years (compared with 79.6 for the total female population). The life expectancy for New Zealand's Pacific Islands people during the same period was 69.8 years for males and 75.6 years for females (Statistics New Zealand, 1999b, p. 25; see table 7, section 0.3).

In 1998, there were 140 deaths from suicide among young people aged 15–24 years. Males have a much higher rate of suicide and Maori appear to be overrepresented among young people who die from suicide. New Zealand has the highest youth suicide rate among selected OECD countries (Ministry of Social Policy, 2001, pp. 22–3). Provisional figures for 1999 indicate that the overall rate had declined to 119 deaths (*Press*, 26 July 2001, p. 2).

4.4 How extensive and inclusive is the right to education in the rights and responsibilities of citizenship?

Education in New Zealand is compulsory to the age of 16 years and free in state schools until 19. Tertiary education is available, but not as of right. University fees are subsidised by the government, and allowances paid to students from low-income families. A student loan scheme helps fund tertiary education. The Labour–Alliance Government gained electoral support from its promise to abolish interest payments while students study. These charges would again accrue, however, after study is completed, and remain a continuing source of discontent.

In July 2000 the government abolished the bulk funding of secondary schools introduced by the previous government. Legislation also provided for children to have the right to attend their local school. There are no requirements to provide

civic education, although elements of the “social studies” curriculum include political and social issues.

Early childhood education is not compulsory. It is available to children under six years old through a wide range of services, many of which are administered by voluntary organisations with government assistance. Subsidies are available for low-income families.

Disparities in educational achievement continue to exist among Maori, Pacific Islands people and the rest of the population. In 1999 the figures for those leaving high school with at least 6th form certificate were for males: European/Pakeha 67%; Maori 40%; Pacific Islands people 50%; and for females: European/Pakeha 76%; Maori 46% and Pacific Islands people 58% (Ministry of Education, 1999, p. 104; see table 7, section 0.3). It is significant to note the higher educational achievements by females in all categories.

There are indications that the situation is improving for Maori. From 1984 to 1999 the percentage of Maori aged 16 years and still at secondary school rose from 49% to 71%. Nevertheless, disparities continue to exist as there have been comparable improvements in the non-Maori population (Te Puni Kokiri, 2000, p. 19).

In 2000, 8.2% of males (8.0% in 1997) and 10.0% of females (9.3% in 1997) aged 16 years and older were enrolled in tertiary education (Ministry of Education, 2001; see also table 14).

Table 14: Female tertiary students in New Zealand and selected OECD countries, 1996

Country	Female tertiary students	
	<i>per 100,000 women</i>	<i>as % of males</i>
New Zealand	4,990	124
Australia	5,608	102
Canada	4,227	105
Finland	4,303	106
United Kingdom	3,102	98

Source: United Nations Development Programme, 1999, p. 229.

4.5 How free are trade unions and other work-related associations to organise and represent their members' interests?

Employment relations have been dominated by the Employment Contracts Act 1991 introduced by the National Government, and the changes made by the Employment Relations Act 2000 passed by the Labour–Alliance Government.

The Employment Contracts Act was seen by some to be anti-union. The Employment Relations Act recognises the right of unions to organise and bargain for collective agreements with a “good faith” requirement, and contains strong provisions on unjustified dismissal and harassment at work on gender and ethnic grounds. Union membership has increased as a result of the latter act (see section 11.2).

4.6 How rigorous and transparent are the rules on corporate governance and how effectively are corporations regulated in the public interest?

Businesses must operate within the framework of the law. The Commerce Act 1986 regulates business practice through the Commerce Commission, which investigates conduct that might breach the act and can take enforcement action if necessary. The act prohibits anti-competitive actions, especially by those holding dominant positions in the market. The Serious Fraud Office investigates business activity for fraud, and the Inland Revenue Department (IRD) monitors the compliance of businesses with tax laws (see section 7.6). Governance issues are covered in the Companies Act 1993, Securities Act 1978 and Resource Management Act 1991.

Consumers are protected by the Fair Trading Act 1986. The Commerce Commission oversees compliance with the act. For the year to 30 June 2000 the Commerce Commission filed 31 Fair Trading Act 1986 matters for court action, an increase from 13 during the previous year (Commerce Commission, 2000, p. 38). In 2000, the Caltex, Mobil and Shell oil companies were successfully prosecuted for price fixing. However, the Commerce Commission is underresourced. Current insider trading laws have also proved inadequate (James, 2000a; see also section 4.7).

No biases are evident in the government’s regulation of business and finance. However, the small New Zealand market makes it inevitable that power is concentrated in only a few hands (James, 2000a). Polling reveals that the public does not believe the government effectively regulates the private sector. The 1998 Study of Values survey found that 53% of respondents were in favour of tighter government regulation of big companies and multinationals (Perry and Webster, 1999, p. 61; see also section 9.5).

4.7 What measures, if any, are being taken to remedy publicly identified problems in this field and what degree of political priority and public support do they have?

As has been noted, the Employment Relations Act 2000 has been passed to promote collective contracts. The previous government's policy to allow private companies to participate in the ACC scheme has been reversed. The government also plans to strengthen the Commerce Act 1986 and the Securities Commission (the statutory corporation with the broad aims of encouraging, promoting and facilitating good securities and corporate practice, and discouraging malpractice). The Commission would inherit wide-ranging market enforcement compliance powers if the key recommendations of a discussion paper by the Ministry of Economic Development, released in May 2001, were adopted.

II. REPRESENTATIVE AND ACCOUNTABLE GOVERNMENT

5.0 Free and fair elections

Do elections give the people control over governments and their policies?

Executive summary²

Three-yearly elections in New Zealand have enabled voters to exert considerable influence rather than control over their government and its policies. But they give voters the ultimate control over the future of the sitting government.

Until 1996 New Zealand elections for the House of Representatives were run by secret ballot using the plurality First-Past-the-Post voting system in single member electorates. Under this system the candidate receiving the most votes was declared the MP elected for the electorate.

Growing disillusionment with the majoritarian FPP electoral system encouraged calls for a change. In 1985 the Royal Commission on the Electoral System was established and examined different types of electoral system; in 1986 it recommended that New Zealand hold a referendum on the adoption of the proportional German-based MMP electoral system. In 1992 an indicative referendum was held on electoral systems. Of the 55.2% of eligible voters who voted, 84.7% were in favour of a change to the voting system, while 70.5% favoured the MMP system over the other reform options. A binding referendum was held in 1993 on the MMP system. The result was 53.9% voted for MMP compared with 46.1% for the FPP system. (The turnout in the 1993 referendum was 85.2%). The first MMP election was held in 1996 and the second in 1999.

In summary, MMP is a proportional system in which electors have both an electorate vote and a party vote. The share of the party votes received determines party strength in the 120-seat Parliament. (New Zealand's MMP electoral system is described in section 0.2).

Although New Zealand elections can be classified as both free and fair, the tendency of governments to renege on election promises, and for parties to change their policies once in power, has cast doubt over the degree of the government's accountability to voters. In the 1998 Study of Values survey 85.4% of respondents believed that the public had little control over what politicians did in office (Webster and Perry, 1999, p. 92). This helps explain the

origin of some of the support for the change to MMP. However, it can be argued that accountability is even harder to enforce under MMP, as parties can argue that compromising on policies is necessary to establish and maintain a coalition government. There is an inevitable tension between meeting demands to fulfil election promises and being responsive to changes in public opinion.

The MMP system has provided voters with a greater range of choice—and produced a legislature which more closely reflects the composition of the electorate. Election turnout has remained high by international standards (see tables 15 and 16, section 5.2).

5.1 How far is appointment to government and legislative office determined by popular competitive election and how frequently do elections lead to change in the governing parties or personnel?

The composition of governments is decided solely by election in the sense that only elected MPs may sit in Parliament or serve in Cabinet. But MMP has made a change of government between elections more likely—as indeed happened (although without a change in Prime Minister) in 1998 when the National–New Zealand First coalition collapsed. In the 19 elections held from 1945 to 2000 the government changed on eight occasions (1949, 1957, 1960, 1972, 1975, 1984, 1990, 1996 and 1999). After the 1996 election the National Party still governed but in coalition with New Zealand First.

From 1949 to 1994 the average life expectancy of a government was 6.4 years (Jackson, 1994, p. 15). The National Party, which brings together rural farming and urban commercial interests, has governed New Zealand for the longest period in modern times: from 1949 to 1957; 1960 to 1972; 1975 to 1984; and most recently from 1990–1994 and 1994–1999 as the largest party in a coalition.

Beyond the requirement to be an elected MP, selection to Cabinet is a matter for political parties to decide. The Labour Parliamentary caucus elects the members of Cabinet, while the Prime Minister allocates the portfolios. The National Party leaves both the choice and allocation to the Prime Minister. In 1996 New Zealand First Cabinet Ministers were chosen by the leader, Winston Peters, and his advisers (Laws, 1998, pp. 387–90). In 1999 Alliance Ministers were chosen by the leader in consultation with the Parliamentary caucus.

The Constitution Act 1986 stipulates a three-year maximum Parliamentary term between the return of the writs for a general election and the dissolution of Parliament for the next election. This entrenched provision can only be changed by a 75% vote of all MPs or a majority vote at a referendum. General elections are normally held towards the end of the three-year term of Parliament. Early elections may be held within this term, but are rare, with only two occurrences in the second half of the 20th century (1951 and 1984). Within these parameters

the actual timing of the election is normally decided by the Prime Minister. Other factors that trigger an election are the expiry of Parliament and the loss of a vote of confidence. However, in the latter case a new election would not be necessary if a new government could be formed from the existing Parliament. Once Parliament is dissolved, elections must be held within an approximately one to two month period. It should be noted that the Parliamentary term was extended in both World Wars and during the 1930s depression.

The Governor-General follows the convention of acting only on the advice of the responsible Ministers. But the Governor-General also has reserve powers, as yet unused, relating to the appointment and dismissal of a Prime Minister, the dissolution of Parliament to bring about a new election, and delay to seek further information before acting.

The Governor-General is not elected but formally appointed by the Sovereign on the advice of the government of the day, usually for a term of five years. The government usually consults major opposition parties when appointments are made. Nevertheless, there have been questions raised in the past over the political neutrality of appointees. For instance, in 1977 a former National Party Prime Minister, Sir Keith Holyoake, was appointed Governor-General.

Although employed by the Ministry of Justice, by convention the Chief Electoral Officer has independence for the running of general elections, by-elections and referenda, including those held under the Citizens Initiated Referenda Act 1993. For the 1999 election the Chief Electoral Officer's funding and organisation was inadequate, resulting in the unavailability in some areas of special voting papers and the slow counting of votes.

It should also be noted that under the MMP electoral system, party list MPs are not elected directly by the electorate: they enter Parliament according to their position on a party list and the votes their party receives. The general public has no say as to who is on a party's list, although electoral law requires parties to follow "democratic" methods of selection of candidates which involve party members or their delegates (see section 5.3).

Both the Labour and National parties are long-established and draw their support from throughout the country. MMP has made it much less likely that either of these two major parties will again govern in their own right, so that more recently formed smaller parties are likely to hold the balance of power.

5.2 How inclusive and accessible for all citizens are the registration and voting procedures, how independent are they of government and party control and how free from intimidation and abuse?

Registration and voting procedures are generally both accessible and free of political influence, intimidation and abuse. The Electoral Act 1993 puts in place

procedures to ensure inclusiveness and ease of access to polling places—and provisions to vote for the sick and those away from their electorates.

By international standards New Zealand has very liberal criteria for voting. Any person is legally required to register as an elector if he or she:

- is at least 18 years old;
- is a New Zealand citizen or a permanent resident of New Zealand;
- has lived in New Zealand continuously for at least one year at some stage during his or her life; and
- has lived continuously for at least one month at the address for which he or she applies to be registered.

Aspiring voters may not register if they have been away from New Zealand for more than three years in the case of citizens, and 12 months in the case of permanent residents. Although registration is compulsory, there have been no recent examples of fines being imposed on those who failed to register. Voting is not compulsory. In 1999, 91.06% of the estimated voting age population was enrolled. Of the enrolled voters 84.77% cast a ballot, which represented 77.19% of the estimated voting age population. This is a decline from 1996, when 88.21% of those enrolled voted, representing 80.80% of the estimated voting age population (see table 16).

Table 15: Voter turnout at Parliamentary elections in New Zealand and selected OECD countries, 1998–2001

Country	Date of recent election	Voter turnout at election (%)
New Zealand**	1999	84.77
Australia*	1998	95.2
Canada#	2000	61.2
Finland##	1999	65.3
Sweden†	1998	81.4
United Kingdom††	2001	59.4

Note

* Voting is compulsory in Australia.

Sources

** New Zealand data (turnout of those enrolled). Electoral Commission, 2000, p. 141. All other data from International Institute for Democracy and Electoral Assistance, 2002. All figures refer to the turnout of registered voters.

Table 16: New Zealand enrolment and voting statistics in elections, 1990–1999

Enrolment/voting feature	1990	1993	1996	1999
Electors on master roll	2,202,157	2,321,664	2,420,542	2,509,365
Estimated population of voting age on election day	2,400,360	2,506,110	2,642,400	2,755,800*
% of estimated population of voting age enrolled	91.74	92.64	91.60	91.06
Total number of votes cast	1,877,115	1,978,092	2,135,175	2,127,245
% turnout of voters enrolled	85.24	85.20	88.21	84.77
% turnout of estimated voting age population	78.20	78.93	80.80	77.19
Number of electorates	97	99	65	67
Number of electorate candidates	677	689	611	679
Number of list candidates	–	–	690	768
Number of people who stood as candidates	677	689	844	965

Note

* Includes +1.2% adjustment of 32,677 for 1996 census undercount.

Source: New Zealand Electoral Commission, 2000, p. 141.

Maori registration is lower than that of the general population. It has been estimated that in 1990, approximately 84.4% of Maori eligible to vote enrolled (Vowles and Aimer, 1993, p. 229). In 1999 the total number of Maori enrolled was 311,562, compared with 284,942 in 1996. Of these, 51.11% in 1999 and 49.81% in 1996 were on the Maori electoral roll (Electoral Commission, 2000, p. 142). Turnout is also much lower amongst voters in Maori electorates. In 1999, 70.4% of those registered voted in the Maori electorates, 15.09% less than in the general electorates (Electoral Commission, 2000, p. 64). Pacific Islands people are also less likely to vote. A 1990 election survey found that 27% of non-voters were Pacific Islands people, 33% Maori and 15% Pakeha (Vowles and Aimer, 1993, p. 54).

Assurance of free and fair elections is secured through the right of each constituency candidate to appoint scrutineers for each polling booth and a post-election inquiry by a Parliamentary select committee. New Zealand has endorsed the International Institute for Democracy and Electoral Assistance Code of Conduct for the Ethical and Professional Administration of Elections.

Electoral corruption is rare. The intimidation of voters or candidates, vote buying and malpractice in registration and voting have not been problems in

New Zealand. Following the 1999 election, five people were listed on the Electoral Corrupt Practices List as a result of dual voting at the 1996 election (Electoral Enrolment Centre, 20 January 2000). Instances of dual voting are minimal with only between 5 to 20 people being investigated for dual voting on average following general elections (Chief Electoral Office, 18 January 2000).

5.3 How fair are the procedures for the registration of candidates and parties and how far is there fair access for them to the media and other means of communication with the voters?

The procedures for registration of candidates and parties are fair.

Any New Zealand citizen who is a registered elector, and any person who was a registered elector on 22 August 1975 (when the law was changed to restrict candidacy to New Zealand citizens), can stand for election in any general or Maori electorate if nominated by two electors on the roll for that electorate. The candidate may not stand as a candidate for more than one electorate seat. However, constituency candidates may also be included on a party list. Each nomination for an electorate seat must be submitted on an official nomination paper signed by the nominee and include a deposit of \$300 to the Returning Officer before nominations close. The Electoral Act 1993 (s. 71) requires that registered political parties follow “democratic procedures” when they select their electorate and party list candidates (Electoral Commission, 2000, p. 40).

Only parties that are registered with the Electoral Commission before writ day can nominate list candidates. The main criteria for registration are that a party has at least 500 current financial members who are eligible to register as electors and that the party’s name or abbreviation not be likely to “cause confusion or mislead electors” (Electoral Commission, 2000, p. 30). Each person on a party list must be a New Zealand citizen and be currently enrolled as an elector and must consent to nomination. No candidate can be on more than one party list (Electoral Commission, 2000, p. 40).

Independent candidates may contest the election for a constituency seat if they comply with the relevant sections of the Electoral Act 1993. They face organisational and funding obstacles that are likely to place them at a disadvantage relative to the candidates of the established parties.

If parties and candidates do not comply with the relevant legislation they can be denied registration. In 1999 the Commission refused three applications for registration of a party as it failed to provide information by the deadline that it had at least 500 current financial members (Electoral Commission, 1999, pp. 11–12).

The “official” election campaign usually begins about four weeks before election day. According to the Broadcasting Act 1989 (s. 77a), time may be allocated to eligible political parties for opening and closing campaign addresses on the government-owned, free-to-air Television New Zealand (TVNZ) with nationwide coverage, and on National Radio (also government-owned). Part VI of the Broadcasting Act 1989 also provides for the allocation of free or discounted election broadcasting time on radio and television in an “election period” and for the allocation of public funds to assist eligible political parties to meet the costs of election broadcasting in that period. Allocations of time and funds are made by the Electoral Commission, which acts according to criteria set down in the act. These criteria include party support at the previous election or by-election, the number of MPs, popular support as demonstrated in opinion polls and party membership, and the need to give registered parties the right to convey their policies (Electoral Commission, 2000, pp. 34–5). The affect is that the larger parties have greater access to the media and more extensive resources to communicate with voters. A party may not use its own funds to purchase broadcasting time in addition to that allocated by the Electoral Commission. With regard to the standards of media reporting of the election, the Broadcasting Standards Authority monitors television and radio broadcasts and the New Zealand Press Council monitors the newspapers. The Advertising Standards Complaints Board considers advertising complaints.

Restraints are imposed on candidates to ensure that no attempts are made to influence voters on election day. For instance, campaign billboards must be taken down on the day prior to election day. But the new electronic age makes regulation of Internet web sites very difficult, if not impossible.

Campaign expenditure

Amendments made in 1995 to the Electoral Act 1993 imposed limits on parties’ campaign expenditure. The total amount that a registered party may spend on advertisements promoting itself or its party list during the three months directly before election day is \$1 million if the party nominates a party list and another \$20,000 for each electorate candidate it stands (Electoral Commission, 2000, pp. 31–2).

The amount a candidate may spend on election advertising is restricted. An electorate candidate is not permitted to spend more than \$20,000 on self-promotion for an electorate seat in the three months immediately prior to election day. For by-elections in electorate seats the maximum expenditure is \$40,000. This limit excludes the cost of running the candidate’s personal car. The money spent by list candidates on advertisements must be authorised by his or her party, and the cost is included in the total election expenses of the party

(Electoral Commission, 2000, pp. 31–2). The three-month period may result in some unfairness as only the government knows the precise date of the election, and parties may wish to spend more freely before the three-month period begins.

Registered parties are required to provide the Electoral Commission with an audited account of election spending within 70 days of the declaration of the election of list candidates. Electorate candidates must provide returns to the Returning Officer within 70 days of the declaration of results in that electorate. Each year parties must report to the Electoral Commission electorate donations exceeding \$1,000 and “national” donations exceeding \$10,000, although there is provision for these donations to be anonymous (Electoral Commission, 2000, pp. 32–3). See also section 9.3.

The Labour and National parties have traditionally enjoyed a significant advantage over other parties in terms of their financial resources and organisation. Since most finance comes from the business corporations, conservative and large parties are advantaged over left and small parties (James, 2000a). Figures released by the Electoral Commission indicate that National spent \$2.14 million and Labour \$1.04 million during their 1999 election campaigns (*Waikato Times*, 10 April 2000, p. 8).

Television tends to focus on the leaders of the major parties. However, major newspapers provide wider coverage (Rudd and Hayward, in Boston et al., 2000, pp. 89–104). While some media bias is inevitably alleged, it is not a major problem. The two state-owned radio networks and two television channels are not subject to direct political control. The print media tend to favour conservative parties in their editorials but otherwise all media are generally balanced in their coverage of the two main parties (James, 2000a). Coverage quantity reflects the weight of support for parties in previous elections, party representation in the House immediately before the election, and party support as reflected in opinion polls.

5.4 How effective a range of choice does the electoral and party system allow the voters, how equally do their votes count and how closely does the composition of the legislature and the selection of the executive reflect the choices they make?

The introduction of the MMP electoral system has provided voters with a greater range of choice and a composition of Parliament that reflects this choice.

The Electoral Act 1993 and associated regulations provide the legal framework of New Zealand’s MMP electoral system. The Representation Commission is an independent statutory body that determines the boundaries of the general electorates and the Maori electorates—within a 5% tolerance

(i.e. between 95% to 105% of the appropriate quota)—after each five-yearly population census and the exercise of the Maori electoral option. The Commission has seven members: the Government Statistician; the Surveyor General; the Chief Electoral Officer; the Chairperson of the Local Government Commission; two members appointed by the Governor-General on the nomination of the House of Representatives to represent the parties in government and opposition (these have in practice been representatives of the two major parties—National and Labour); and a Chairperson—normally a District Court judge—nominated by the other members of the Commission. Additional members help determine the Maori electorate boundaries.

For the Maori electoral option, those who have indicated on their enrolment forms that they are of Maori descent may choose after each five-yearly census whether they wish to be on the Maori electoral roll or the general electoral roll. This choice will determine the number of Maori electorates until the next option. As boundaries are determined in terms of total population, the number of voters in a Maori electorate is fewer (it does not, though, affect a Maori voter's party vote, which is the same as for voters on the general roll). This is because a greater proportion of Maori are in the younger age group. However, Maori electorates are considerably larger geographically than general electorates.

The continued retention of separate Maori seats has been controversial. The 1985 Royal Commission that recommended MMP also proposed the abolition of the Maori electorates if MMP was adopted. This proposal was not implemented.

The MMP electoral system has increased voter choice through increasing the likelihood of parties other than Labour and National winning seats in Parliament. This is because Parliamentary representation is proportionate to the votes each party receives. In the combined results of general elections from 1960 to 1993, only six parties won Parliamentary seats. Under MMP six parties won seats in 1996 and seven in 1999. But these figures included only three new parties (ACT, the United Party and in 1999 the Green Party). The National and Labour parties continue to dominate, winning 81 of the 120 seats in 1996 and 88 of the 120 seats in 1999.

The MMP system is not strictly proportional because registered parties must win an electorate seat or over 5% of the party vote to get their proportional allocation of seats in Parliament. The result is the exclusion of some minor parties from Parliament. Unfairness can also seem to result, although there is little public and media concern over this element of the electoral system. For instance, in the 1999 election New Zealand First gained five Parliamentary seats despite being below the 5% threshold—winning 4.3% of the vote—because it won a constituency seat. In 1996 the Christian Coalition won a similar proportion of votes—but gained no seats as it failed to gain any constituency

seats. There has also been public concern that MPs leaving the parties for which they had been elected, or a change of seat at a by-election, can upset proportionality between elections (see section 6.4).

With regard to the executive, the adoption of MMP in the 1993 binding referendum brought about a change from single party to coalition governments from 1994. The National Party remained in government after the 1996 general election through a coalition with New Zealand First (1996–1998), and then with the support of a number of small parties and independents (1998–1999). At the start of 2002 the Labour Party was in a one-seat minority coalition with the Alliance Party and supported on confidence votes and most issues by the Green Party.

5.5 How far does the legislature reflect the social composition of the electorate?

The change to the MMP electoral system has resulted in the legislature becoming more representative of the electorate.

The law has provided for Maori Parliamentary representation in special reserved seats since 1867. Although there are no legal requirements relating to the representation of women and minority groups (other than Maori), the change to a proportional electoral system has helped correct the underrepresentation of certain groups. There are currently 37 woman MPs, 16 Maori MPs, three Pacific MPs and one Asian MP (see table 11, section 0.3). The first Rastafarian MP, two openly homosexual MPs and the first transsexual MP were elected in 1999. (For more information on women's representation see section 11.3).

Under MMP parties have sought to become more inclusive and to increase their electoral appeal by moving away from the dominance of New Zealand-born white males. Five of the seven parties in Parliament have women MPs; on average they represent 35.2% of each of those parties' MPs. Moreover, there currently is a woman Prime Minister (see section 11.3). Five of the seven parties in Parliament also have Maori MPs and represent 13.3% of all MPs (Electoral Commission, 2000, p. 161). Parties on the left have been represented by more women and Maori MPs than parties on the right.

5.6 What proportion of the electorate votes and how far are the election results accepted by all political forces in the country and outside?

By international standards, a large proportion of the New Zealand electorate votes. Overall, election results are accepted by all the parties, although recounts for close results in marginal seats may be sought, as in Tauranga in 1999.

Although voter turnout has traditionally been high, it is declining. As has been noted, it is compulsory to register, but not to vote. The much lower turnout by Maori voters may reflect disillusionment with the political system or lack of interest. For many years it also reflected the overwhelming dominance of the Labour Party in the Maori seats—and the impression that results were a foregone conclusion. In 1990 radical Maori urged their people to boycott the election, as they considered it irrelevant to Maori needs.

However, New Zealanders apparently have yet to find an electoral system that satisfies them. Having rejected FPP, polls show that opinion remains divided over whether MMP should be retained. Nevertheless, it is significant to note that public support for retaining the MMP electoral system is widespread. According to UMR Insight survey results released in March 2001, although 47% of New Zealanders preferred the FPP system to MMP, with 40% support, 64% believed that New Zealand should stick with the MMP system in some form (*Dominion*, 17 March 2001, p. 2).

5.7 What measures, if any, are being taken to remedy publicly identified problems in this field and what degree of political priority and public support do they have?

A Parliamentary select committee examined the strengths and weaknesses of the MMP electoral system, including the number of MPs, and considered public submissions before making recommendations to Parliament in August 2001. The committee advised the government against changing the size of Parliament. This was despite the outcome of the citizens initiated referendum held in conjunction with the 1999 general election where 81.5% voted for a reduction in the number of MPs from 120 to 99 (Electoral Commission, 2000, p. 56). The committee also advised against holding another referendum on the electoral system.

6.0 Democratic role of political parties

Does the party system assist the working of democracy?

Executive summary

Ideally political parties assist the working of democracy through providing a link between the electorate and the governing process. But a problem with answering the question is that the current MMP system is new. The change has increased the number and importance of parties in constitutional terms. But during the 1996–1999 Parliamentary term, the number of MPs leaving the parties for which they were elected—“party hopping”—lowered the public standing of parties, and the new electoral system. This has not occurred since the 1999 general election and may not be an ongoing problem. Parties are facing a longer-term trend of declining membership. This appears to be a worldwide phenomenon that has reached an advanced stage. Parties seem to be transforming from mass to cadre organisations. This is furthered by the modern style of democracy, which concentrates on the “selling” of a product. Mass participation has moved from parties to interest groups, and the support for causes (Jackson, 2000).

While MMP has made for a more representative Parliament, the 1996–1999 experience encouraged concerns regarding its ability to provide stable and effective government. However, this has yet to be a problem for the current government.

6.1 How freely are parties able to form, recruit members and campaign for office?

There are no restrictions on party activity as long as these activities do not violate any of the relevant laws and regulations.

Seven parties gained representation in Parliament at the 1999 general election. As has been noted, these parties are Labour (49 seats), National (39), the Alliance (10), ACT (9), the Greens (7), New Zealand First (5) and United (1) (see table 2, section 0.2). In all there were 22 registered parties with candidate lists and 3 without lists (Ministry of Justice, 2000).

In 1996 National was estimated to have less than 40,000 members, Labour less than 10,000, ACT 5,746, United 1,789 and the Alliance 25,127 (Mulgan, 1997, pp. 248–9). Since then the Alliance’s membership is likely to have decreased significantly. In 1999 a total of 132,890 New Zealanders were

registered party members, a decline from 153,000 in 1996 (*New Zealand Election Study*, 28 July 2000, p. 45).

The major parties, National and Labour, have four levels of organisation: local branch, electorate, regional and national. Labour also has separate branches for women, Maori, Pacific Islands people and other groups; National has a Young Nationals organisation. At the national level, in formal terms, the final authority rests with the parties' annual conferences. In practice their Parliamentary caucuses are more important, partly because they choose the leaders and play an important role in determining policy.

6.2 How effective is the party system in forming and sustaining governments in office?

The previous FPP electoral system generally provided stable party government—at least until the 1993 election. Between 1935 and 1993 there were only two one-term governments. As predicted, since 1996 MMP has brought coalition government and with it a degree of political instability not previously experienced in the post-World War II era. Following the first MMP election in November 1996, it took seven weeks to form the National–New Zealand First coalition, which lasted only 20 months. National continued to govern through the support of independents—including MPs who had broken away from New Zealand First and the lone United Party MP (Peter Dunne).

The decision by New Zealand First—after seven weeks of negotiations—to enter into coalition with National in 1996 was seen by many New Zealanders as a betrayal, as New Zealand First had campaigned to defeat the National Government. The party won only five seats in 1999, compared with 17 seats in 1996.

In marked contrast to the situation in 1996, only nine days after the 1999 general election the Labour Party and the Alliance signed a coalition agreement to govern as a minority government. In another change from 1996, the agreement sought to facilitate stable government by allowing the partners to differ publicly if a “distinctive policy matter raises an issue of importance to the party’s political identity” (Boston et al., 2000, p. 297). The Alliance chose to invoke this clause for the first time in September 2000 when it refused to support a free trade agreement with Singapore. As a minority coalition the support of another MP, the Green Party, or New Zealand First is needed to ensure survival in no-confidence votes. The Greens are committed to maintaining the government in office and passing its budgets, though it reserves the right to vote against specific legislation.

6.3 How free are opposition or non-governing parties to organise within the legislature and how effectively do they contribute to government accountability?

Non-governing Parliamentary parties have a wide degree of freedom on how they organise themselves in Parliament. Generally, the Speaker has worked to ensure the Parliamentary process operates fairly for all parties. Arguably, MMP has increased the effectiveness of parties seeking government accountability.

In addition to a salary set by the independent Higher Salaries Commission, all MPs receive a variety of other benefits or services to assist them in their Parliamentary duties. These are determined by the Parliamentary Service Commission and include unlimited free domestic travel and free telephone and postal services.

Publicly funded research and secretarial assistance is also provided for all MPs, and organised and administered on a party basis. The level of financial assistance is determined by the number of MPs. Non-government party leaders receive extra remuneration and funding. Parliamentary research units were established in 1970 for both government and opposition parties, and provide background data, analyses, policy advice and statistical information for use in Parliamentary debates and other duties. The units are subject to the day to day control of the respective party organisations within Parliament. Some MPs have argued for research assistants to be part of their office staff. Electorate MPs are each provided with secretarial support within their electorates (see section 12.2). Each list MP is entitled to have one office outside Parliament.

Non-governing parties contribute effectively to government accountability under MMP (in contrast to FPP). This is through providing critical support to the governing coalition, in the case of the Greens, or by more traditional opposition scrutiny of the government, in the case of National, ACT and United. New Zealand First has carried out both roles.

6.4 How fair and effective are the rules governing party discipline in the legislature and to what extent is “floor crossing” discouraged?

Party disciplinary procedures are the responsibility of individual parties. The Speaker enforces Standing Orders—Parliament’s own rules of procedure. Changing parties after an election, which is referred to as “party hopping” in New Zealand, is currently illegal, and the experience to date is that MPs who switch parties are likely to be defeated at the next election. “Party hopping” became a serious problem immediately preceding and following the introduction of MMP. In the 1996–1999 period, 13 MPs broke from the party under whose

banner they had gained election. In an attempt to stem the practice the Electoral (Integrity) Amendment Bill was introduced in December 1999. This determines that when an MP resigns from the party he or she was elected for, their seat becomes vacant. A party leader may force a resignation if they believe an MP has distorted, and is likely to continue to distort, the proportionality of party representation in Parliament. The leader must write to the Speaker giving notice and confirming that two thirds of the caucus agrees with the action. The sanction of losing their place in Parliament does not apply to an MP who is expelled from a party, and the legislation has a clause restricting its life to two Parliamentary terms. The government was forced to depend on New Zealand First, as the Greens refused to support the bill, and it passed the bill in December 2001.

Although MPs are legally entitled to vote as they wish, parties have their own structures and procedures for maintaining party discipline. The party whips organise the day to day activities of their MPs in consultation with the party leadership. With the exception of conscience votes (when MPs individually decide how they will vote), party discipline tends to be strict and there are strong informal incentives deterring unapproved “floor crossing”. In important votes dissent is very rare. Labour’s Rule 227 formally requires a loyalty pledge binding MPs to abide by the decisions of the Labour caucus. The Labour Parliamentary leadership attempted to expel Jim Anderton in 1989. The Party Council reinstated Anderton, but he then resigned. In 1993 National Party leader, Jim Bolger, demanded Winston Peters be barred from reselection as a candidate. Peters resigned, fought a by-election and returned to Parliament as an independent MP (James, 2000a).

6.5 How far are parties effective membership organisations and how far are members able to influence party policy and candidate selection?

The decline of party membership suggests party organisations are becoming less effective. Procedures differ amongst the parties. But generally, while party members in theory have the opportunity to be actively involved in formulating party policy and candidate selection, in practice most key decisions rest with the party hierarchies. Party conferences are useful for floating policy ideas and parties maintain policy committees, but the decisions on policy tend to rest with the party leaders and their Parliamentary caucus.

The lack of influence of party members on policy is illustrated by the Labour Government’s rapid economic and social reform, which occurred during the 1980s despite opposition from many rank-and-file Labour Party members. This inability to influence policy encouraged many members to become inactive, to leave the two main parties, or to work through pressure groups.

Rules were changed for MMP, especially for the selection of party list candidates. There was an attempt to achieve “balance” in the regional composition of party lists, although this varied (in terms of procedure and the commitment to this concept) among parties. As has been noted, parties are required by law to have “democratic” procedures for candidate selection. Both the National and Labour parties have a structure of electorate committees to assist in the selection of candidates and the running of election campaigns. In general terms, the local members of the National Party have a greater say in candidate selection. The multiparty nature of the Alliance has complicated the candidate selection process, and a committee with members from each constituent party determines list candidates. With regard to New Zealand First for the 1996 general election, 19 representatives appointed by the party formally determined the party list candidates, although in practice the choice rested with party leader Winston Peters and his close supporters (Laws, 1998, pp. 336–43).

6.6. How far does the system of party financing prevent the subordination of parties to special interests?

While “subordination” is not the appropriate term, party financing does tend to link parties to special interests. Both the National and Labour parties raise funds from business interests—more so in the case of National. Labour receives financial support from trade unions, some of which are affiliated to the party, and National from the farming sector.

The Labour Party was the creation of the trade union movement and relations have generally remained close. Despite this, the Fourth Labour Government undertook wide-ranging reforms and through the 1990s the influence of trade unions declined along with union membership. More recently though, union membership has increased since the passage of the Employment Relations Act 2000, which the trade unions actively promoted (see section 11.2). Some unions have also helped fund the Alliance. The National Party has traditionally enjoyed close relations with commerce and farming interests.

With donations comes influence. For instance, in 1984 the Fourth Labour Government restored compulsory unionism. In 1987 a small group of wealthy individuals gave generous donations not to a party but to a fund controlled by Labour Party Finance Minister Roger Douglas on the understanding that his neoliberal policies of economic reform would be continued after the election. Large business donations were also reported to have been made to the National Party before the 1990 election (Mulgan, 1997, p. 254).

However, the blatant purchasing of influence is not a feature of the New Zealand political system. Party financing laws help prevent excessive influence, although there are serious loopholes. While donations to a party must be

declared, they can be listed as “anonymous” or come through a front group. Indeed, the government unsuccessfully demanded that ACT leader Richard Prebble resign when it was alleged in April 2001 that millionaire businessmen had funded the party’s 1996 electoral campaign through a scheme designed to hide their identity. As noted in section 5.3, there are also limits on campaign spending by candidates and monetary reporting requirements.

6.7 To what extent do parties cross ethnic, religious and linguistic divisions?

Generally, parties do cross ethnic and religious divisions. The ethnic parties that have been formed—for instance Mana Maori and Mauri Pacific in 1999—have received very limited support. As has been noted, the strong Maori support attracted by New Zealand First in 1996 disappeared in 1999.

The Labour Party has traditionally been more popular than the National Party among Maori and Pacific Islands people. A close observer of Maori politics has commented that National has made little attempt to cater for Maori within its party organisation (Maaka, 2000). However, the National Party conference in July 2001 indicated that this might be changing. National has enjoyed support from the relatively prosperous and growing Asian immigrant community.

The main parties have sought and enjoyed support from all religious groups. Parties targeted at specific religious groups, such as the Christian Coalition, have not attracted significant support. Nevertheless, the Christian Coalition received 4.3% of the vote in the 1996 general election, just short of the 5% threshold required for seats in Parliament. The Christian Heritage Party (formerly part of the Christian Coalition) received only 2.4% of the vote in 1999 (Electoral Commission, 2000, p. 156).

The performance of the United Party is also of interest as it had merged with three smaller parties in 1997. One of these parties was the Ethnic Minority Party. Hence, the United Party campaigned in 1999 (largely unsuccessfully) for the votes of ethnic minority groups. More recently, the party merged with a Christian group but failed to register support in the opinion polls. New Zealanders in general appear to prefer their parties to cross ethnic and religious divisions, rather than to see those divisions expressed directly by particular parties (Levine, 2001).

6.8 What measures, if any, are being taken to remedy publicly identified problems in this field and what degree of political priority and public support do they have?

As has been noted, the select committee that evaluated the future of the MMP system considered many of the problem areas. The government has indicated its intention to close the loophole regarding anonymous donations. The decline in party membership is a wider problem facing most Western democracies.

7.0 Government effectiveness and accountability

*Is government accountable to the people
and their representatives?*

Executive summary

New Zealand is a small-scale democracy. In this sense, the capital, Wellington, is a “glorified village” in which it is difficult to maintain secrecy (Jackson, 2000). Parliament plays the key role in holding the government to account.

A distinction needs to be drawn between accountability and answerability. Accountability refers to accepting responsibility for what has, or has not, happened. Answerability involves providing an explanation. The latter has been assisted by lengthy Parliamentary sessions. Since the 1970s Parliament has sat virtually continuously throughout the year, with provision for Parliamentary questions, urgent debates and active Parliamentary committees (Jackson, 2000).

The triennial elections provide for decisive periodic accountability. To remain in power between elections a government must maintain the support or confidence of the majority of MPs voting on a confidence issue. Under FPP the single party government could be held accountable to the electorate for the implementation of its mandate. Under MMP it is more difficult for voters to hold accountable parties making up a multiparty government. Polls reveal a lack of public confidence in the effectiveness of the political system. However, there has been insufficient time to assess if or how much MMP has changed this.

The Parliamentary committee system provides an effective means for public consultation and Parliamentary scrutiny of legislation and the executive. The generally high level of public consultation is a distinguishing feature of the New Zealand Parliamentary process. Other Parliamentary means of holding the executive accountable include special debates and question time.

7.1 How far is the elected government able to influence or control those matters that are important to the lives of its people and how well is it informed, organised and resourced to do so?

In an era of globalisation, there are global economic and social forces which are difficult for a government to influence. On the other hand, on the domestic front, there are remarkably few constitutional, legislative or institutional constraints on what elected governments may do in New Zealand. There is no formal constitution, no second chamber, no sharing of power in a federal system.

The ability of the government to carry out its policy and legislative programmes is determined to a large degree by the support it maintains in Parliament. During the FPP era, whichever party won power generally had a majority in Parliament and the discipline over its caucus members necessary to carry out its legislative programme. With few constitutional, legislative, or institutional safeguards governments could theoretically exercise virtually autocratic control between triennial elections (Jackson, 2000). The main limitation is the democratic political culture, reinforced by public opinion. However, under MMP it has become much harder for major parties to effectively carry out their programmes, as they have not been, and are unlikely to be, able to command a majority by themselves in Parliament. They have been forced to work with other parties.

Governments are subject to both foreign and domestic pressures on policy formulation. For instance, in recent years considerable external pressure has been placed on governments in the area of defence policy. In the 1980s the United States, Australia and the United Kingdom unsuccessfully sought to change the New Zealand Government's anti-nuclear policy. In more recent times, the Australian Government has put pressure on New Zealand—again unsuccessfully—to significantly increase defence expenditure.

In the domestic policy arena there are areas which operate with considerable independence from the government. The Governor of the Reserve Bank—New Zealand's central bank—can act independently to regulate monetary policy, although governments retain the power to change the parameters within which the Governor operates. The current agreement between the Minister of Finance and the Governor requires the Reserve Bank to maintain inflation at between 0% and 3%.

State-owned enterprises, established to operate the government's commercial activities, have considerable independence—although again ultimate control remains with the government. SOE boards are appointed by Ministers.

7.2 How much public confidence is there in the effectiveness of government and its political leadership?

The answer to this question reveals a puzzle about New Zealand democracy. While New Zealand would rate highly on most objective criteria for an effective democratic government, the New Zealand public is generally critical of its governments. The 1998 Report of the New Zealand Study of Values found widespread dissatisfaction in response to the question: "How satisfied are you with the way the people now in national office are handling the country's affairs?" Among respondents, 70.68% professed to being "very" or "fairly" dissatisfied, and only 25.6% were fairly satisfied and 0.6% very satisfied (Perry

and Webster, 1999, p. 41). But this result emerged near the end of the National Party's nine years in power.

7.3 How effective and open to scrutiny is the control exercised by elected leaders and their ministers over administrative staff and other executive agencies?

In theory, Ministers "control" policy and through their respective departments ensure its implementation. In practice, departments also have considerable influence over the content of policy—as well as the degree to which it will be implemented.

Under the State Sector Act 1988 the State Services Commissioner, on the recommendation of a panel of state servants and outsiders, appoints each Chief Executive on a contract for up to five years, thereby ensuring significant independence from political interference. The Cabinet may reject a proposed appointment, but must do so publicly. Each Chief Executive has a purchase agreement and an annual performance agreement. The State Services Commissioner, in consultation with the relevant Minister and others, reviews performance at the end of each year. The Chief Executives are responsible for employment of staff. In April 2001 Christine Rankin, the head of Work and Income New Zealand, decided (ultimately unsuccessfully) to sue the State Services Commissioner, alleging political interference in the decision not to reappointment her when her contract expired.

Under the principle of ministerial responsibility, Ministers are answerable for what is done within their departments. However, they are not necessarily held to be personally responsible. Hence, in 1992 when deficiencies were exposed in the Department of Health's blood transfusion service, Minister Simon Upton argued that he was unaware of the problems and could not be held to be personally responsible. Similarly, in April 1995 when 14 people were killed when a Department of Conservation viewing platform collapsed at Cave Creek Denis Marshall, then Minister of Conservation, resigned from the portfolio but one year after the disaster. Unless personally implicated in a particular decision, Ministers are answerable for their departments, rather than accountable. But in practical terms the distinction makes little difference. Resignations have been very rare and are dependent upon political exigencies (Jackson, 2000). However, Prime Minister Helen Clark has shown little tolerance for Ministers deemed to have acted improperly; by October 2001 four Ministers had lost their positions (although they were subsequently reappointed, not necessarily to their previous positions).

The effectiveness of political control exercised by Ministers over their respective departments will vary according to the Minister's abilities and style of operating. In theory, officials must act in line with their Minister's instructions, although they may provide contrary advice. Outright obstruction is rare. Mostly departments follow Cabinet and ministerial directions.

In general political control is effective and the political neutrality of the public service continues to be respected. However, concern has been expressed that this neutrality is increasingly threatened. Chief Executives continue in their jobs following a change of government. With the benefit of hindsight it seems that the State Sector Act 1988 may have tilted the influence too far in the direction of the independence of the public service. Ministers who find their departments unable or unwilling to implement policy may choose to work through staff they appoint directly to their offices, or through sympathetic "consultants".

There have been cases of bureaucratic opposition. For instance, many officials in the Ministry of Defence, and some in the Ministry of Foreign Affairs and Trade, opposed the anti-nuclear stance of the Fourth Labour Government from 1984–1990. One alleged means of seeking to obstruct policy was to embarrass the government through the selective leaking of documents.

There are elaborate means of accountability through monitoring agencies such as the State Services Commission, Prime Minister's Department, Audit Office, Te Puni Kokiri (Ministry of Maori Development) and the Ombudsmen—together with an active media. Problems of accountability have arisen with SOEs. The Chairman of Electrocorp resigned in 1991 because of ministerial interference in the setting of electricity prices.

7.4 How extensive and effective are the powers of the legislature to initiate, scrutinise and amend legislation?

There is an important difference between the theoretical powers of a legislature and those that it exercises in practice—particularly under the Westminster system in conditions where a government has a clear majority (Jackson, 2000). In such cases, providing that party discipline is maintained, there are few effective legislative checks, especially where there is no second chamber, as has been the case in New Zealand since 1950. (Note: This section relies heavily on information provided by McGee, 2000; Jackson, 2000; and James, 2000a).

The Standing Orders of the House of Representatives, which are regularly revised and updated, govern the process of legislation. Time limits for both speeches and debates are prescribed. Consultation is generally extensive, especially through the select committee process.

There are four types of bill that may be introduced into Parliament:

- a government bill—agreed by Cabinet, dealing with a matter of public policy introduced by a Minister;
- a member's bill—dealing with a matter of public policy introduced by a member who is not a Minister. Time is set aside to discuss these bills, which are balloted every second week that Parliament sits. They seldom become law;
- a local bill—a bill promoted by a local authority that affects a particular area, usually introduced by the local MP;
- a private bill—a bill promoted by a person or body of people for the particular interest or benefit of that person or group.

Governments initiate most legislation. From 1 July 1998 to 30 June 1999 the government initiated 70.2% of introduced legislation and 96.6% of enacted legislation.

For a bill to become law it must be read three times in the House of Representatives. Since the 1999 revision of Standing Orders there is no debate or vote on the introduction of a bill. The first reading of the bill takes place after MPs and the public have had an opportunity to examine and consider the bill. It cannot ordinarily take place before the third sitting day following the bill's introduction.

Following the first reading bills are referred to a select committee unless Parliament agrees to accord urgency to their passing, or the House votes against referral to a select committee. (For a list of select committees, and examination of their work, see section 7.5). Select committees examine bills to determine whether they should pass in the form in which they have been introduced. This stage allows the general public to make submissions on the bill. Usually a minimum of four weeks is allowed for the preparation of submissions, although the committee determines this and in the past has been flexible. Since 1996, select committees have been obliged to report on a bill within a six-month limit, unless the House imposes a different time limit. Select committees may, and frequently do, amend bills, sometimes in opposition to the government's wishes, since the government under MMP does not always command a majority in the select committee.

The select committee report is presented to the House in writing. The second reading of the bill cannot ordinarily take place before the third sitting day following the report. This is to ensure that MPs have had time to read and consider the bill. At the end of the second reading debate any amendments recommended only by a majority of committee members must be specifically endorsed by the House. Amendments recommended unanimously by the

committee become part of the bill when the House agrees to its second reading. A committee of the whole House then considers a bill. Here details of the bill are considered and amendments may be made.

There is a third and final reading of the bill during which MPs can debate whether it is satisfactory. Once the debate is over and the motion agreed to, the bill has been passed. It is reprinted and presented to the Governor-General for the Royal assent. It then becomes law.

Public scrutiny of legislation is of a generally high order, largely because of the select committee process (see section 7.5) and the activities of pressure groups. The scrutiny process works particularly well during periods of minority government. A majority single party or coalition government may override aspects of the scrutiny process. Most majority governments insist on monopolising the important Select Committee Chair positions.

Generally, it can be concluded that Parliament has extensive power to initiate, scrutinise and amend legislation. However, the high percentage of amending legislation seems to suggest that scrutiny processes may be inadequate. Some acts have had to be amended the same year they were enacted.

7.5 How extensive and effective are the powers of the legislature to scrutinise the executive and hold it to account?

Parliament's ultimate authority over the executive is its ability to bring down a government through a vote of no confidence. Such a vote may be moved by way of an amendment to the Address in Reply debate, on the second reading of an Appropriation or Imprest Supply Bill, or if a government chooses to treat a particular matter as a confidence issue. Such votes very rarely succeed. There is no requirement for a vote of confidence on a government assuming office. No government has been defeated on a vote of confidence since 1928. It is possible that this will change with the introduction of MMP, but has yet to do so.

The principal laws governing the legislative process include the Constitution Act 1986. This provides—amongst other provisions—for Parliament to have full law making and appropriation powers, and that Parliament must meet no later than six weeks after the return of writs following an election. Other laws include the Ombudsmen Act 1962 (and its 1975 successor act), Official Information Act 1982, Bill of Rights Act 1990, Electoral Act 1993 and the Fiscal Responsibility Act 1994. But, as a key player in the Parliamentary process noted, the House's scrutiny powers do not derive from specific laws but from its constitutional pre-eminence (McGee, 2000).

The right of MPs to question government Ministers in Parliament provides an important avenue through which the government can be placed under scrutiny.

Each day that the House sits—except during periods of urgency—there is a one-hour Parliamentary question time. A Minister may be asked questions on notice relating to the public affairs for which he or she is officially responsible. Supplementary questions without notice are allowed. Written questions can also be put forward and these are more numerous than oral questions.

Some, for instance former National Prime Minister Jim Bolger, have argued that the legislative power of scrutiny would be improved by restoring a second chamber. (The Legislative Council was abolished in 1950). However, a draft Senate Bill initiated by Bolger was overtaken by the implementation of MMP and won little public or Parliamentary support (even from within his own party). In any case, it can be argued that the functions of a second chamber have effectively been taken over in most respects by the select committee process.

Select committees

Parliamentary select committees provide the most effective means through which the House of Representatives can scrutinise the actions of the government and consult the public. Indeed, it is one of the distinctive features of the New Zealand Parliament. As an authority has observed, the New Zealand system of select committees is remarkably successful at combining legislative scrutiny with popular participation—as is evident in the number of public submissions made (Jackson, 2000).

Apart from the scrutiny of bills, committees can initiate their own investigations into virtually any aspect of government policy, expenditure and administration. Committees also monitor government agencies and examine departmental estimates. While Cabinet Ministers have not since 1985 normally sat on committees, they usually respond positively to invitations to appear before them. Most select committee meetings are open to the media during the stage in which evidence is heard.

Nineteen select committees have been appointed for the 46th Parliament. These committees cover—Commerce; Education and Science; Employment and Accident Insurance Legislation; Finance and Expenditure; Foreign Affairs, Defence and Trade; Government Administration; Health; Justice and Electoral; Law and Order; Local Government and Environment; Maori Affairs; MMP Review; Offices of Parliament; Primary Production; Privileges; Regulations Review; Social Services; Standing Orders; and Transport and Industrial Relations. Each committee on average has nine members. Political parties are represented on the committees in proportion to their membership of the House. Ad hoc select committees are set up occasionally to deal with particular issues.

Permanent committee secretariats are provided by the Office of the Clerk. Staff with particular expertise may be seconded to the Office of the Clerk or

engaged under contract with the Clerk of the House to provide expert advice on a particular aspect of a committee's work. For instance, the Finance and Expenditure Committee is provided with a specialist adviser on tax legislation, and the Audit Office is specifically funded to provide assistance to committees. Committees can request information relevant to any matter before them, and the Speaker can formally require information to be supplied to a committee.

Since 1986 all regulations have been automatically referred to the Regulations Review Committee which, by convention, has been chaired by an Opposition MP. The committee may also report on draft regulations. The committee is provided with a specialist legal adviser.

A number of factors limit the committee scrutiny process. Cabinet Ministers are not members of Parliamentary select committees, although they may appear before them and the government is not obliged to act on committee recommendations. Moreover, as has been noted, some bills are excluded from the committee process. However, these are only rare bills that are passed through all stages under urgency. Other factors hindering the effectiveness of committees include the inadequate time that may be made available for committee work. The government can also avoid committee scrutiny through introducing amendments after committee deliberations have been completed. Finally, government MPs tend to monopolise the Chair positions.

The House of Representatives in 1936 became the first legislative chamber in the Commonwealth to have its debates broadcast by state-owned radio. The Standing Orders provide for the proceedings of the House to be broadcast on radio during all hours of sitting. The proceedings at the opening of Parliament have been televised since 1965 and television may cover Parliament for news purposes, although there are strict rules regarding presentation. Although there is as yet no continuous television coverage of proceedings, as there is for radio, from September 2000 Question Time has been covered by Sky Television. Media may cover all proceedings, including—with some limitations—committee proceedings. Media coverage of legislative activity depends on the judgment of journalists accredited to the Parliamentary press gallery about what may interest the public (see also section 10). Coverage tends to concentrate on “highlights”, controversies and commentaries, rather than detailed reporting (James, 2000).

There is no official information service. However, all Ministers, and Parliamentary parties, employ media advisers for “spin doctoring”. Advertising and media campaigns to promote government activities must conform to a set of principles devised by the Auditor-General—but these give wide latitude.

The Statistics Act 1975 provides for the management of official statistics. Statistics New Zealand has operated free from political influence or

manipulation. It does not implement government policies nor does it advise on their nature. The timing of the release of key statistics is not subject to political control. The Statistics Act 1975 (s. 15) provides for the independence of the Government Statistician but Ministers control Statistics New Zealand's budget.

7.6 How rigorous are the procedures for approval and supervision of taxation and public expenditure?

The power of Parliament over finance—spending and taxes—is a key element of the Westminster system of government. Only Parliament can approve public expenditure and taxation, and will usually do so for only one year ahead, thereby ensuring that Parliament must meet each year. The government is dependent on the support of Parliament both to spend public money and to levy a tax. This power is stipulated in the Constitution Act 1986 (ss. 21–2). The Public Finance Act 1989 provided a major updating of, and advance in, the legal sanctioning of public expenditure.

In addition, the Fiscal Responsibility Act 1994 introduced a comprehensive range of requirements to be met by the government and introduced rigour into the budget cycle. Under the act the government is required to inform Parliament and the public about what fiscal and economic policies it seeks to follow, what effects these are likely to have and to justify any departures from specified principles of “responsible” fiscal management.

The Inland Revenue Department is charged with the collection of taxes and has wide-ranging powers with regard to taxation. For instance, it has the power to make binding rulings on the application of a tax law. The IRD has actively sought to combat tax evasion and has the power to impose various penalties on tax offenders. For example, the Department can impose penal tax on people who have evaded tax, or who have not met their tax obligations.

Parliament's “watchdog” over financial expenditure is the Auditor-General, who audits the government's accounts and reports to Parliament (and especially select committees) on maladministration in financial matters. The Auditor-General is also the Controller, who checks the legality of issues of money to the Crown. The main power of the Auditor-General is the requirement of reporting to Parliament. The Auditor-General is an Officer of Parliament rather than the government and can only be removed from office by the House of Representatives. The Offices of Parliament Committee in Parliament, chaired by the Speaker, approves the allocation of funds for the operation of the Audit Office. The Public Audit Act 2001 reforms the law relating to the audit of public sector organisations.

Examples of fraud and malpractice are rare (see section 9).

7.7 How comprehensive and effective is legislation giving citizens the right of access to government information?

Although not perfect, citizen access to government information through the Official Information Act 1982 generally works satisfactorily. This may include requests for advice by departments to their Ministers and Cabinet papers. Refusal can be made on the given grounds of commercial sensitivity, or because release would prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand. Appeals may be made to the Ombudsmen. In the year ending 30 June 2001 there were 1,128 requests for the Ombudsmen to review decisions not to provide official information. Of the 1,037 Official Information Act complaints completed during the year, 70 percent were resolved in favour of the complainant (Ombudsmen, 2001, pp. 54-5).

Public servants have periodically adapted their behaviour to protect what they regard as sensitive material. The most common way to ensure a matter cannot be disclosed is not to commit department advice or comment to paper.

7.8 What measures, if any, are being taken to remedy publicly identified problems in this field and what degree of political priority and public support do they have?

Further changes to Parliament's Standing Orders are possible following the select committee inquiry into the operations of the MMP electoral system.

The Standing Orders Committee has been convened to review possible changes to the Standing Orders.

In January 2001 a "whistleblowers" law came into effect. The Protected Disclosures Act 2000, provides protection against civil and criminal liability and unfair dismissal for workers who "blow the whistle" on serious wrongdoing in the workplace.

The Crown Organisations (Criminal Liability) Bill that Parliament has sent to the Law and Order Select Committee allows government departments and organisations to be prosecuted for breaches of health and safety, and building legislation in the same way as private organisations. The bill was encouraged by the Cave Creek disaster and the committee was expected to report back to Parliament in October 2001.

8.0 Civilian control of the military and police

Are the military and police forces under civilian control?

Executive summary

Both the military and the police forces in New Zealand are under effective civilian control. The Minister of Defence is responsible for the armed forces and the Minister of Police for the police. The Governor-General appoints the Chief of Defence Force and the Commissioner of Police on the recommendation of the government of the day. Corruption in both forces is very rare. It is noteworthy that the police are not normally armed.

The Police Complaints Authority deals with complaints against the police.

8.1 How effective is civilian control over the armed forces and how free is political life from military involvement?

Civilian control of the New Zealand Defence Force (NZDF) and its accountability to the government is established by the Defence Act 1990. This act stipulates that the Governor-General is the Commander-in-Chief of the NZDF (s. 6). The government Minister responsible for the armed forces is the Minister of Defence. The Secretary of Defence is the principal civilian adviser to the Minister of Defence. The Chief of Defence Force is the principal military adviser to the Minister of Defence (s. 24(2a) and s. 25(1)).

Civilian control is widely recognised and accepted. Personnel of the armed forces are subject to the law. There have been no occasions when the armed forces have directly challenged the authority of civilian rule, and they have remained ultimately accountable to the civilian government.

Members of the regular armed forces are classified as public servants by the Electoral Act 1993. This means election candidates must take leave and vacate their public service office if they are elected (Electoral Act 1993, ss. 52–3). Former members of the armed forces may enter Parliament, but in recent years few have been candidates and fewer still have gained election. However, former members have openly expressed their views on government policy. For instance, seven former defence chiefs in April 2001 called for public debate on defence policy. As has been noted, differences have arisen over policy matters between the government and armed forces, such as during the Fourth Labour Government in the 1980s when its anti-nuclear policy brought about a rupture with the United States in the 1951 Australia–New Zealand–United States (ANZUS) military alliance. However, although the government of the day was

concerned about the military's reluctance to accept government policy, civilian control of the policy process was not threatened.

In January 2001 the most senior officer in the Territorials (New Zealand's part-time soldiers) complained that Territorials who worked for government departments were forced to resign when they volunteered to join operations in East Timor. The government moved swiftly to rectify the problem. Later during the year the conduct of senior Army officers, including the Chief of General Staff, was questioned and a number of official enquiries were launched.

8.2 How publicly accountable are the police and security services for their activities?

In accordance with the Police Act 1958, the Governor-General appoints the Commissioner of Police, who will hold office "during the pleasure of the Governor-General" (s. 3(1–2)). The appointment is made on the advice of the Prime Minister, but politicians cannot direct police to investigate or to prosecute (or not).

If the New Zealand Police arrest a person, that person is required to provide only his or her name, address, occupation and date and place of birth. The police have the power to search a person's house if the person agrees, or if they have a warrant, or if they are searching for items such as drugs, weapons or explosives. Complaints can be made against the police through the Police Complaints Authority, which has the power to make recommendations to the Commissioner of Police on most aspects of a complaint. For the year to June 2001, 150 complaints made against the police were upheld (in whole or in part), representing 13.9% of completed investigations (New Zealand Police, 2001, p. 186). It was announced in April 2001 that the body would be renamed the Independent Police Complaints Authority and that six independent staff would investigate the most serious complaints against the police. The Privacy Commissioner deals with concerns about invasions of privacy under the Privacy Act 1993.

The main security organisations are the New Zealand Security Intelligence Service and the Government Communications Security Bureau (GCSB). The SIS is subject to the control of the Minister (New Zealand SIS Act 1969 s. 4(1)), who has traditionally been the Prime Minister. However, it has not been subject to Parliamentary scrutiny. In 1996, moves were taken to increase the level of oversight over security agencies. In accordance with new legislation, an Intelligence and Security Committee was established to oversee the security agencies. The committee consists of the Prime Minister (Chair), the Leader of the Opposition and three MPs—two nominated by the Prime Minister and one by the Leader of the Opposition. In that same year legislation provided for an

Inspector General of Intelligence and Security to ensure that the security agencies comply with the law and that complaints are investigated independently. Very few complaints have been made. In 1999 it was reported that since 1996 the Inspector General had investigated two complaints and had another two to resolve (Rolfe, 1999, p. 24).

The GCSB is directly controlled by statute and, like the SIS, is responsible to the Prime Minister (see also section 8.5). The Prime Minister chairs the Cabinet Subcommittee on Intelligence and Security, which considers issues such as political oversight. The security agencies are coordinated at the bureaucratic level through the Domestic and External Security Coordination Committee (Rolfe, 1999, pp. 22–3). The contribution of the agencies to New Zealand's security is recognised at the highest levels of government.

People who believe the police and security services have exceeded their powers may challenge them in the courts. Such occasions are rare and success is even rarer.

8.3 How far does the composition of the army, police and security services reflect the social composition of society at large?

The NZDF runs an equal employment opportunities programme and operates an impartial selection process of suitably qualified people. The forces are allowed to exclude people with physical disadvantages and to exclude women from certain combat roles. However, full integration, including combat roles, is to be achieved by 2005.

The only near-accurate breakdown of serving personnel by ethnicity was conducted by the Navy in 1998. It found that Maori represented at least 16.4 percent of personnel and Pacific Islanders 2.4 percent (NZDF, 10 February 2000). As a percentage of regular force personnel, women represented 19 percent of the Navy, 15 percent of the Air Force, and 12 percent of the Army in 2001 (NZDF, 2001, p.27).

The New Zealand Police also has an equal employment opportunities programme, as is required by the State Sector Act 1988. Police recruits must be New Zealand citizens or have been granted permanent residence in New Zealand and must have no criminal convictions. As at 30 June 2001, 1,084 of 7,087 sworn staff were women, 668 were Maori and 117 Pacific Islands people (New Zealand Police, 2001, p. 203).

Information on the security forces is limited. However, it is known that the Security Intelligence Service is an equal opportunity employer and that in 1998 just under half of the 120 SIS staff were women (SIS, April 1998, p.24).

There are complaint procedures in place for service personnel within the armed forces (under the Defence Act 1990) and the police, through the Police Complaints Authority Act 1988. There have been some cases of sexual harassment in the armed forces and the police, which have been dealt with by the authorities.

8.4 How free is the country from the operation of paramilitary units, private armies, warlordism and criminal mafias?

Paramilitary units, private armies and warlordism do not threaten law and order in New Zealand. However, gangs—including Black Power and the Mongrel Mob—have long been involved in criminal activities and at times use violence and intimidation. Gangs with Asian connections have also engaged in criminal activity. In addition, the influence of gangs in prison has been a concern. According to 1998 figures provided by the Police Association, there were an estimated 5,000 gang members and 15,000 gang associates in New Zealand (*Press*, 18 September 1998, p. 3).

8.5 What measures, if any, are being taken to remedy publicly identified problems in this field and what degree of political priority and public support do they have?

Civilian control over the police and armed forces has not been seriously questioned in New Zealand. The intelligence and security acts of 1996 aimed to increase SIS accountability. Legislation covering the activities of the GCSB was introduced into Parliament in May 2001. According to the Prime Minister, this legislation will put the organisation on the same footing as the SIS.

The New Zealand Police has an active programme to employ more women, Maori, Pacific Islands and Asian recruits. Both the police and the military are actively seeking to address the issue of sexual harassment.

Moves to take a tough line on criminals, and particularly gangs, are widely supported by the public. As has been noted, in a citizens initiated referendum run in conjunction with the 1999 general election, 91.8% of voters supported a greater emphasis on the victim and tougher sentences (Electoral Commission, 2000, p. 56).

The government has introduced security measures against terrorism in the wake of the 11 September 2001 terrorist attacks in the United States. These measures included increased security at New Zealand airports and the introduction of the Terrorism (Bombings and Financing) Bill. This bill includes sweeping new ministerial powers, such as the power to make it a criminal offence to recruit anyone into terrorist organisations.

9.0 Minimising corruption

Are public officials free from corruption?

Executive summary

Public officials are largely free from corruption in New Zealand. Transparency International (TI), an organisation committed to reducing corruption, in 2001 rated New Zealand the third least corrupt of 91 countries (TI, 2001).

Parliamentary Standing Orders deal with the potential for conflicts of interest. Campaign funding is covered by legislation but it contains significant loopholes. Various procedures have been put in place to prevent the occurrence of corruption and misconduct in the public service. The extensive changes in the public service over the past decade have weakened the ethos that has minimised the occurrence of corruption. Although not widespread, there have been some high profile cases of misconduct, and other examples, mainly of petty corruption, within the public service.

9.1 How effective is the separation of public office from the personal business and family interests of office holders?

Generally, there has been a clear and effective separation of public office from personal, business and family interests. TI recently concluded: “We can point to no clear evidence of a link between the personal interests of politicians and those who benefit from their policies” (Cave, 2000, p. 3).

Parliamentary rules require MPs to declare pecuniary interests. Party leaders may also discipline their MPs when there is a perceived conflict of interest. For instance, in 1995 a Cabinet Under-Secretary was forced to resign from his office after refusing to resign from a bank directorship.

In 1990 the Prime Minister announced that Ministers were obliged to declare at Cabinet, a Cabinet committee, or Parliament any personal interest that they may have with a matter under consideration by the government or Parliament. Ministers are also required to declare in writing interests and assets they hold, including shares and property, within two months of their appointment and at 31 December each year. Cabinet rules also place limits on Ministers receiving fees or gifts, and engaging in activities that may be considered as endorsing a commercial product. The latter restriction does not apply to MPs, who have occasionally appeared in advertisements for commercial products.

New Zealand MPs have not used their official positions to enrich themselves. The reason for this lack of corruption relates not so much to legal or

Parliamentary requirements but to the ethos of clean government and the small size of the political community which restricts opportunities for malpractice (McGee, 2000).

There have been rare occasions when questions have arisen over government and personal interests. For instance, controversy arose in 1994 when the Minister of Tourism bid for the government-owned Waitangi Resort Hotel. There have also been concerns raised over alleged party bias in the appointment of people to government positions. For instance, in 1999 it was revealed that all appointed members of the Lotteries Commission were former National Party officials. There is nothing to prevent former government MPs and Ministers becoming involved in businesses that closely interact with the government. Several former Ministers and MPs have become professional advisers, or have opened businesses in the fields in which they were Ministers. Some also have become political lobbyists.

9.2 How effective are the arrangements for protecting office holders and the public from involvement in bribery?

Arrangements for protecting office holders and the public from involvement in bribery are effective. It is an offence to offer a bribe to a Minister or an MP and an offence to accept a bribe. There have been no such proven cases.

Given the serious nature of corruption allegations, MPs must raise the issue as a matter of privilege rather than incidentally during a debate. According to the Electoral Act 1993 (s. 55), a MP must vacate their seat if he or she is convicted of a crime punishable by two years or more in prison, or is convicted of a corrupt practice under the Electoral Act 1993.

The Audit Office conducts audits of government departments to provide a check against corruption. The Auditor-General has the power under the Public Finance Act 1977 to access all bank accounts and to require information to be provided under oath. The Auditor-General can surcharge those responsible for a deficiency or loss or for failing to account fully and properly for money or stores.

The most serious case of corruption in recent years ironically involved the Auditor-General himself, who in 1994 was forced to resign and was subsequently jailed for fraudulent activities relating to his expenses. There have been other cases of misconduct by less senior public servants, such as the selling of computer data on the public to private interests. In another case, the Serious Fraud Office in 1999 prosecuted an immigration officer for bribery and corruption related to the selling of passports.

However, despite these well publicised cases, corruption is not a major problem and has not caused widespread public concern. According to the 1998 Study of Values survey, 64.7% of respondents believed that almost no public officials, or only a few, were engaged in bribe taking and corruption (Perry and Webster, 1999, p. 45).

New Zealand is also involved in the global campaign against corruption in the public service. The government has supported the OECD moves to criminalise the bribery of foreign officials. New Zealand also took part in a study of ethics and conduct in the public service by the OECD Public Management Service. TI is active in New Zealand.

9.3 How far do the rules and procedures for financing elections, candidates and elected representatives prevent their subordination to sectional interests?

Campaign finance legislation provides some—but not ‘watertight’—protection against elected MPs becoming subordinate to sectional interests. (Relevant legislation is covered in section 5.3). As has been noted, there are some significant loopholes, such as the ability to report campaign contributions as anonymous and the need to report on expenditure only for the three month campaign period, when campaigning is in reality virtually continuous. A greater level of public funding of political parties would lessen their dependence on—and hence the possibility of undue influence of—special interest groups. However, such a reform runs the risk of further divorcing parties from the public. There is also a case for more comprehensive disclosure requirements, especially to include anonymous donations.

The Electoral Commission upholds the relevant regulations in a fair and effective manner. In 1999–2000 the Commission reported the secretaries of eight registered parties to the police for failing to comply with the requirements of the Electoral Act 1993 in relation to the provision of the return of election expenses and the auditor’s report (Electoral Commission, 2000a, p. 19).

9.4 How far is the influence of powerful corporations and business interests over public policy kept in check and how free are they from involvement in corruption, including overseas?

As has been noted, corruption is not a major problem in New Zealand. However, there have been incidents which have raised public concern. During the 1990s a major scandal (the Winebox Affair, so called because of the container that held the offending documents) involved alleged tax avoidance by New Zealand companies through the Cook Islands.

The public policy process in New Zealand maintains its integrity and is not subordinated to corporate or trade union interests. It is also evident though that such interests have at times influenced government policy. Corporations and special interest bodies lobby officials and politicians extensively, and mostly in secret. Concern has also been expressed over the role of consultants, both with regard to their influence and their financial cost to the government.

The 1988 state sector reforms were designed in part to lessen the prospects of capture by vested interests by dividing the responsibility for policy advice and policy implementation between separate government agencies. The same act further seeks to reduce the likelihood of corruption by making the State Services Commissioner, and not Ministers, the employing authority for the public service. However, the government of the day has wide discretion regarding appointments to advisory boards, state-owned enterprises and other government agencies. There are 181 Crown entities which cover a wide and diverse range of activities—including broadcasting, housing, films, lotteries, the national orchestra and trade development. The Crown Company Monitoring Advisory Unit (CCMAU) oversees state-owned companies.

9.5 How much confidence do people have that public officials and public services are free from corruption?

There is widespread public concern about some business interests exercising undue influence on government. The 1998 Study of Values survey found that 69.5% of respondents believed a few big interests looking out for themselves were running New Zealand. This is a significant increase over the 53.9% of people believing this to be the case in 1985 (Perry and Webster, 1999, p. 44).

See section 9.2 for poll data suggesting a higher level of public confidence.

9.6 What measures, if any, are being taken to remedy publicly identified problems in this field and what degree of political priority and public support do they have?

TI operates in New Zealand to raise consciousness about corruption-related issues. TI has warned that increased “business and other interactions with countries in which corruption is the norm...increases the risks to the prevailing high integrity culture in New Zealand”. On the other hand TI noted that the extensive deregulation and privatisation of recent years has “greatly reduced scope for corruption” (Cave, 2000, pp. 3–4). But it has also changed the public service ethos which in the past had helped discourage corruption (Cave, 2000).

The Serious Fraud Office has been active in prosecuting fraud in the public and private sectors.

III. CIVIL SOCIETY AND POPULAR PARTICIPATION

10.0 The media in a democratic society

Do the media operate in a way that sustains democratic values?

Executive summary

Generally, the diversity of the New Zealand media helps sustain democratic values. Despite foreign-owned, multinational companies controlling sizeable areas of various media sectors, the media has operated with considerable independence from these corporate interests. It has also maintained a high degree of independence from party politics and the government, and is generally considered to be impartial. Most opinions can find an outlet in the news media and there is no official censorship (this section relies heavily on James, 2000).

10.1 How independent are the media from government, how pluralistic is their ownership and how free are they from subordination to foreign governments or multinational companies?

Until the late 1980s the government owned a significant element of broadcasting in New Zealand. Foreign ownership was severely limited by the News Media Ownership Act 1965 and the Broadcasting Act 1976. The Broadcasting Act 1989 restricted foreign ownership to no more than 15% of the voting interest of any broadcasting company. This restriction on foreign ownership was removed with the passage of the Broadcasting Amendment Act 1991. There are currently no restrictions on foreign ownership or cross ownership of any media organisation in New Zealand, other than those restrictions that apply to any enterprise which may infringe the restrictions on market dominance contained in the Commerce Act 1986.

The government continues to own two television channels through a state-owned enterprise (Television New Zealand; see section 10.6) and three radio channels through another SOE, Radio New Zealand. All other media, including Television 3 established in 1989, are privately owned. Most daily newspapers, the main magazine chains, three television channels and many radio stations are owned by foreign companies domiciled in Canada, Ireland and Australia. Most suburban and local newspapers are owned by the two large foreign-owned

newspaper chains. There are two independently owned weekly business newspapers. There is little interference with editors by owners, and the government (James, 2000b).

There is only one domestic national news agency, the New Zealand Press Association, which is owned collectively by the daily newspaper publishers and operates free of government regulation.

The Radio Communications Act 1989 established a market-based system for radio and UHF spectrum management by creating tradeable spectrum property rights. Most of the significant UHF television and AM & FM sound radio frequencies have been auctioned. Controversy has arisen over the sale of frequencies within New Zealand's mobile phone spectrum. The Maori Council has pursued Treaty of Waitangi rights to the spectrum.

While the changes have gone a long way to removing government ownership and influence, this has been at the cost of allowing the commercial imperative of ratings to dictate content. New Zealand shares with other countries the trend toward sensationalism, personalisation and trivialisation of news and comment (James, 2000b).

10.2 How representative are the media of different opinions and how accessible are they to different sections of society?

Most shades of opinion can find an outlet in the news media. While the post-reform broadcasting sector was established to run along market lines, the government has recognised the need for partly subsidised public access to broadcasting and, in 1990, frequencies were reserved for non-commercial use. A set of UHF frequencies has also been set aside for non-commercial broadcasters. Currently there are more than 20 radio stations broadcasting Maori programmes on frequencies reserved for the promotion of Maori language and culture. There is also a Pacific Islands and an Indian radio station broadcasting in Auckland.

The Broadcasting Standards Authority (BSA) is an independent Crown entity established to oversee and enforce the standards and objectives specified by the Broadcasting Act 1989. The four members of the authority are appointed by the Governor-General on the recommendation of the Minister of Communications. The authority's functions are: to encourage broadcasters to develop and observe codes, such as for the protection of children; the portrayal of violence; fair and accurate programming; and procedures for correcting factual errors and redressing unfairness. The broadcast media are required by law to maintain "balance" when "controversial issues of public importance are discussed" (Broadcasting Act, 1989, s. 4(d)).

The Broadcasting Commission (which operates under the name New Zealand On Air) was established by the Broadcasting Act 1989 to reflect and develop New Zealand identity and culture, in part by promoting Maori language and culture. New Zealand On Air fulfils these objectives by providing funds for broadcasting, the production of programmes and the archiving of programmes. From July 2000 this funding has originated from general taxation rather than through the Public Broadcasting Fee, which was abolished. In 1998–1999 New Zealand On Air spent \$42.8 million on the production of television programmes; \$23.7 million on National Radio, Concert FM and access radio services; and \$12.4 million on Maori broadcasting. It also spent \$2.1 million on remote television and radio coverage, \$2.0 million on New Zealand music projects and \$1.0 million on broadcasting archives (Statistics New Zealand, 2000 c).

The funding of Maori broadcasting since 1993 has been the responsibility of Te Mangai Paho. Its goals include increasing the quantity and quality of Maori language and Maori culture programming. Between May 1996 and July 1997 Te Mangai Paho funded a Maori television service, Aotearoa Television, which was eventually scrapped due to public pressure arising from spending irregularities. However, the Labour–Alliance Government intends to launch another television channel as the state is required by a court ruling to ensure that there is a Maori channel (see section 10.6).

The Internet has wide penetration and use within New Zealand society. Survey data from January 2001 indicates that 39.9% of New Zealand households are connected to the Internet and New Zealanders that month spent on average 6 hours 28 minutes on the Internet (*Dominion*, 22 March 2001, p. 12). For data on the Internet and other types of media see tables 17 and 18.

Table 17: Media in New Zealand, 1996–1999

Average circulation of metropolitan daily newspapers	96,556.2 (1999)*
Percentage of households with colour television	97.2 (1998)#
Number of radio receivers per 1,000 inhabitants	1027 (1996)**
Number of Internet host computers	182,000 (1999)##
Percentage of households with home computer	32.9% (1998)#
Percentage of households with cellular phone	21.3% (1998)#

Sources

* Average circulation as at 31 March 1999 for *New Zealand Herald*, *The Press*, *The Dominion*, *The Evening Post* and *Otago Daily Times*. New Zealand Audit Bureau of Circulations, 1999. Also see Hayward and Rudd, in Boston et al., 2000, p. 90.

** UNESCO, 1998, pp. 7.5, 9.7.

Ministry of Commerce, April 1999, p. 24.

Statistics New Zealand, 2000 c.

Table 18: Media in New Zealand and selected OECD countries, 1996–1997

Country	Television sets per 1,000 people (1996)	Newspaper circulation per 1,000 people (1996)	Internet hosts per 10,000 people (July 1997)	Personal computers per 1,000 people (1996)
New Zealand	517	223	424	266
Australia	666	297	382	311
Canada	709	159	228	193
Finland	605	455	654	182
Sweden	476	446	321	215
United Kingdom	612	332	149	193

Source: Minister for Information Technology's IT Advisory Group, August 1999, p. 15.

The problem has been not so much bias in public affairs broadcasting, as the lack of current affairs programmes, especially on television. There is a bias in favour of “mainstream” culture and thinking, but no more than in other comparable countries. Maori, Pacific Islands people and other minority ethnic groups are underrepresented among media professionals (James, 2000). However, this underrepresentation is gradually changing.

10.3 How effective are the media and other independent bodies in investigating government and powerful corporations?

The media are not dependent on official government or corporate channels—but generally make effective use of independent sources. Journalists have proven to be generally adept at investigating the government. They have exposed extravagances or irregularities in the public sector, but have been less effective at exposing malpractice in powerful corporations. Nevertheless, the independent weekly business newspapers have exposed corporate wrongdoing (James, 2000).

The investigating ability of the media, and more specifically journalists, is illustrated by the start of a seven-month inquiry in 1987 after a *Metro* magazine article on cervical cancer research at National Women's Hospital in Auckland. This inquiry found that some patients had received inadequate treatment and four doctors were charged with multiple cases of disgraceful conduct. Individuals have also conducted investigations into government activities and have published their findings. For instance, controversy arose in 1999 after Nicky Hager alleged questionable public relations tactics by an SOE and its links with then Prime Minister Jenny Shipley (see also section 11.1).

10.4 How free are journalists from restrictive laws, harassment and intimidation?

The New Zealand media are subject to no official censorship, other than such restrictions as name suppression orders granted by the courts, pornography, the incitement of racial hatred and the possibility of defamation. Journalists generally feel that defamation action by elected and former politicians and private citizens has tended to have a stifling effect on public debate. On the other hand, it can be argued that strong defamation laws promote responsibility on the part of the media and have protected New Zealand from the excesses of tabloid journalism.

Apart from defamation laws, there are no restrictive laws that prevent journalists from reporting events. A High Court ruling, unsuccessfully appealed against to the Privy Council, has widened the scope of “qualified privilege” to cover all “responsible” comments about aspiring, actual and former politicians. The defamation action taken by the former politician was discontinued in 2000. The Privacy Act 1993 limits what newspapers can write about individuals. There is no harassment, intimidation or obstruction by officials of journalists.

10.5 How free are private citizens from intrusion and harassment by the media?

The Privacy Act 1993 endorsed the notion that the individual has a right to keep certain details about their life private. The act specifies principles for obtaining, storing and using personal information from individuals, and provides for access to that information by the individual concerned. The Broadcasting Act 1989 requires broadcasters to maintain standards which are consistent with the privacy of the individual.

The Broadcasting Standards Authority has also prepared principles to determine breaches of privacy issues and considers complaints. There are also private self-regulating “watchdogs”. The Advertising Standards Authority handles complaints about the standard of advertising on radio and television.

The New Zealand Press Council, which is comprised of an independent chairperson, four representatives of the public and four representing the newspaper industry, monitors the print media. The newspaper concerned must publish the findings of the body. There is no evidence that the complaints procedures have curbed the activities of journalists.

10.6 What measures, if any, are being taken to remedy publicly identified problems in this field and what degree of political priority and public support do they have?

In May 2001 the Minister of Broadcasting issued a charter to guide the future of TVNZ. The charter calls for more Maori language, minority and cultural programmes that educate and contribute to a sense of national identity, including programmes that appeal to tastes and interests not generally catered for by other national television channels. It also encourages “creative risk-taking”, experimentation and support for local talent (*Dominion*, 2 May 2001, p. 2). In June 2001 it was announced that TVNZ was to become a Crown-owned company so that it could meet its charter obligations. In July 2001 the government also announced that a Maori television channel was to be established as a statutory corporation and would start broadcasting from June 2002.

In November 2001 controversy arose over a provision in an Electoral Amendment Bill (No.2) that could be used to prosecute journalists for defaming political candidates. In December 2001 the Government backed down.

11.0 Political participation

Is there full citizenship participation in public life?

Executive summary

Citizens are free to participate fully in public life. There are a wide range of community organisations and interest groups that operate independently of government. There is high voter turnout, and survey research shows that a significant proportion of the public have been involved in public affairs. There is a high level of participation by women in New Zealand politics at both the national and local government levels. This has been assisted by the MMP electoral system, which has also improved the access of minority ethnic groups to public office.

11.1 How extensive is the range of voluntary associations, citizen groups, social groups etc. and how independent are they from the government?

Historically, New Zealand has been a nation of committees. There is an extensive and diverse range of voluntary associations, citizen groups and social movements that operate independently from government. All New Zealanders have the legal right to join and to be active in voluntary associations and non-governmental organisations (Bill of Rights Act 1990, ss. 16 and 17). The Association of Non-Governmental Organisations in New Zealand has about 50 members covering a wide range of interests including welfare, youth, the environment, health, gender and ethnic groups. There are around 130 national women's and Maori women's organisations and groups, many with branches throughout New Zealand (Ministry of Women's Affairs, 1998c). Other groups promote the interests of specific age groups, such as Greypower and Age Concern. The peace movement, environmental groups and Maori advocates have been vocal participants in the political process.

The relationship between the government and interest groups has come under scrutiny in recent times. Controversy arose in 1999 over the relationship between then Prime Minister Jenny Shipley and the state-owned Timberlands, which had formed a "front group"—the pro-logging Coast Action Network (CAN). It was alleged that Shipley's office actively assisted Timberlands, and hence CAN, to influence Ministers and opposition politicians to ensure that native forest logging was continued despite environmental concerns.

11.2 How extensive is citizen participation in voluntary associations and self-management organisations and in other voluntary public activity?

The willingness to become involved in public affairs varies according to the activity. The Study of Values survey found that 89.3% of respondents had signed a petition, 16.9% had joined a boycott, 19.3% had attended lawful demonstrations, 4.4% had joined unofficial strikes and 1.0% had occupied buildings or factories (Perry and Webster, 1999, p. 89).

In 1999, in terms of the proportion of men aged 18 years and over, the three most popular organisations, groups or clubs to be actively involved with were: a sports club (34% of men); social club (20.1%); and union or association (19.4%). With regard to women, a hobbies group (27.3% of women), church (26.4%) and sports club (23.6%) were most popular (*New Zealand Election Study*, 1999).

The larger voluntary organisations have members throughout New Zealand. For instance, in 1990, 22,649 people belonged to Federated Farmers, the principal organisation for the rural sector. In the early 1990s, about 10,000 also belonged to the New Zealand Employers' Federation (Vowles, in Gold, 1992, p. 346). It was estimated in early 1999 that trade union membership had declined from 603,000 to 328,000 since the Employment Contracts Act 1991 (*Press*, 9 March 1999, p. 5). However, under the Employment Relations Act 2000 union membership has increased. At the end of June 2001, 139 unions were registered (an increase from 82 unions in 1999) and membership totalled 319,660 (an increase of 5.7% since December 1999). Union members represented 22.1% of wage and salary earners and 17.7% of the total employed workforce (*Dominion*, 11 August 2001, p. 2; *Evening Post*, 13 July 2001, p. 7).

11.3 How far do women participate in political life and public office at all levels?

Although still underrepresented in Parliament, making up slightly less than one third of MPs (see table 11, section 0.3), women participate effectively at all levels of public life. New Zealand is ranked seventh in the world for the proportion of women in lower or single chamber Parliaments (see table 19). In 2001 women held the positions of Prime Minister, Leader of the Opposition (until October 2001), Chief Justice and Governor-General. As at 5 June 2001 there were seven women Cabinet members (see also table 20).

Women are also politically active at the level of local government. In 1998, 318 women (29% of members) were elected to local government and 19 women

(26% of the total) were elected mayor (Local Government New Zealand b; see also section 13.2).

In regard to the public service, in February 1998 women headed seven of the 40 government departments; in June 1997 women represented 54.3% of public service staff. Moves have also been made to increase the number of women on government-appointed committees, boards and other relevant official bodies. In 1996, 31.4% of appointments or reappointments made by the Cabinet Committee on Appointments and Honours were women, compared with 25% in 1993. In 1998, 68 (19%) of the 351 chairpeople or directors of Crown company boards were women (Ministry of Women's Affairs, 1998c).

Though still underrepresented, women are becoming increasingly active in the judicial system. By 1998, three women had been appointed as High Court judges (9%) and, of the 98 District and Family Court judges, 16 (16%) were women (Ministry of Women's Affairs, 1998c). As has been noted, in 1999 the first woman Chief Justice was appointed.

Discrimination based on gender is illegal in New Zealand. New Zealand ratified the Convention on the Elimination of all Forms of Discrimination against Women in 1985. However, it recorded reservations relating to the role of women in the armed forces and law enforcement and paid maternity leave. In May 2001 the government confirmed that paid parental leave would be phased in from April 2002.

Table 19: A global comparison of women in Parliament (lower or single house), December 2001

Rank	Country	Election date	No. of seats	No. of women	% of women
1	Sweden	9/1998	349	149	42.7
2	Finland	3/1999	200	73	36.5
3	Netherlands	5/1998	150	54	36.0
4	Norway	9/2001	165	59	35.8
5	Iceland	5/1999	63	22	34.9
6	Germany	9/1998	666	207	31.1
7	New Zealand	11/1999	120	37	30.8
8	Mozambique	12/1999	250	75	30.0
9	South Africa	6/1999	399	119	29.8
10	Spain	3/2000	350	99	28.3

Source: Inter-Parliamentary Union, 5 December 2001.

Table 20: Women in government in New Zealand and selected OECD countries, 1996 and 1998

Country [#]	At all levels (%)	At ministerial* level (%)	At sub-ministerial** level (%)
Sweden	31.7	43.5	24.3
New Zealand	27.3	8.3	30.7
United Kingdom	20.0	23.8	19.4
Canada	17.7	18.5	17.6
Australia	16.5	14.3	17.1
Finland	16.2	28.6	13.1

Notes

All figures are for 1998 except for Canadian figures, which are for 1996.

* Ministerial level includes Ministers, Secretaries of State and heads of central banks and Cabinet agencies.

** Sub-ministerial level includes Deputy and Vice Ministers (or their equivalent); Permanent Secretaries (or their equivalent); Deputy Permanent Secretaries, and Directors and advisers (or their equivalent).

Source: United Nations Development Programme, 2000, p. 264.

New Zealand is also party to other conventions that cover the rights of women. These include:

- the International Labour Organisation Convention Number 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951;
- the United Nations Convention on the Political Rights of Women, 1952;
- the United Nations Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages, 1962;
- the United Nations International Covenant on Economic, Social and Cultural Rights, 1966.

11.4 How equal is access for all social groups to public office and how fairly are they represented within it?

The law provides for equal access for all to public office. But in practice women and ethnic minority groups have not been fairly represented. This has changed in terms of Parliamentary representation partly as a result of MMP. Women represent nearly one third of Parliament and hold key leadership positions. Maori are now represented in Parliament roughly proportionate to their percentage in the population.

Members of Parliament tend to come from the highly educated segment of society. At present, some 78% of current MPs have a tertiary qualification, compared with 70% in 1996. With regard to occupation, approximately 14% of MPs were business people, 13% farmers, 11% teachers, 9% worked in local government and the public sector and 7% were lawyers. This represents little change over the last Parliament. The average age of MPs is 48 years, compared with 47 years in the previous Parliament.

Local Government New Zealand in 1998 surveyed newly elected local body members and found that agricultural and professional/technical occupations were the most common sources of income (Local Government New Zealand a).

11.5 What measures, if any, are being taken to remedy publicly identified problems in this field and what degree of political priority and public support do they have?

As has been noted, the most important change to affect the political participation of New Zealanders in recent years has been the move to the MMP electoral system. A number of other moves have been suggested to enhance citizen participation in government. These include a move by the Bay of Plenty Regional Council to establish Maori seats; the government's intention to reserve seats for Maori on new District Health Boards; and proposals for the single transferable vote (STV) electoral system for local government (see section 13.4) that would increase Maori representation.

12.0 Government responsiveness

Is government responsive to the concerns of its citizens?

Executive summary

New Zealand is a small and intimate democracy. The government is generally responsive to the concerns of its citizens but there are exceptions, such as during the reform process from the 1980s to early 1990s. MPs and Ministers are accessible to the public. Despite this, many members of the public do not believe that they have much influence over politicians once they are elected.

12.1 How open and systematic are the procedures for public consultation on government policy and legislation and how equal is the access for relevant interests to government?

As has been noted (see section 7.4), there is a general requirement for most legislation to be referred to select committees for public submissions. Furthermore, the government is bound by the requirements of the Official Information Act 1982 and the Fiscal Responsibility Act 1994, which introduced a comprehensive range of reporting requirements on the government's fiscal and economic policies.

A citizens initiated referendum may be used as a vehicle for public expression of opinion on government policy and legislation. The calling of a referendum requires the signatures of 10% of registered voters collected in a 12-month period. However, such referenda are advisory and are not binding.

There are, however, some notable exceptions to what has generally been a consultative and open process of government. There was limited effective public input into the far-reaching legislative changes instigated by the Labour and National Governments from 1984 to 1993, which transformed the country's economic and social policy. Indeed, many of the reforms were instigated in the face of widespread public opposition. Although MMP has made it much harder to pass legislation with minimal consultation, legislation may still be pushed through under urgency. But such action is relatively rare and its significance should not be exaggerated.

The influence of interest groups will vary according to the political composition of the government. For instance, unions have historically enjoyed a close relationship with the Labour Party, and farmers and business with the National Party.

12.2 How accessible are elected representatives to their constituents?

The most important incentive for constituency MPs to be accessible to their constituents is their desire to be elected to Parliament in triennial elections. List MPs also have an incentive to ensure that their party's profile is high, and most are allocated constituencies or regional districts to help maintain their party's presence.

Public funding for the electorate offices of MPs was first established in 1984 with the Parliamentary Service contributing towards the costs incurred in running such offices. Most MPs, including Ministers, regularly hold clinics or surgeries during which members of the public can raise concerns.

Although constituents frequently express satisfaction with their local MP, there is a high level of public dissatisfaction with politicians in general. The Study of Values survey found that 93.9% of respondents had not very much, or no confidence in political parties; and 84.9% had not very much, or no confidence in Parliament (Perry and Webster, 1999, p. 47). Indeed, over 80% voted for a reduction in the number of MPs in the non-binding 1999 referendum held in conjunction with the general election.

12.3 How accessible and reliable are public services for those who need them and how systematic is consultation with users over service delivery?

Although public servants are required to be accessible and to consult with users over service delivery, there has been increasing public dissatisfaction. Overall, the Study of Values survey found that the level of dissatisfaction with the public service had increased during the last decade from 52.3% in 1985, to 71% by 1998 (Perry and Webster, 1999, p. 47).

New Zealanders have the right to contact their MP about issues that concern them. The MP may choose to raise the matter with the government Minister or agency directly, or to ask a Parliamentary question. The public can also approach the Ombudsmen, an opposition MP, or the media.

There are requirements for public servants to consult with various groups affected by their actions. For instance, departments submitting Cabinet papers have a quality criterion that includes "evidence of adequate consultation with other Government agencies and other affected parties and possible objections to proposals" (Department of Internal Affairs, 1999, p. 81). Furthermore, performance requirements now play a major role in public service delivery.

There have been well-publicised cases of public services failing to effectively respond to public demands. For instance, Work and Income New Zealand was criticised in early 2000 over the problems many students experienced enrolling at tertiary institutions and accessing their student allowances and loans.

12.4 How much confidence do people have in the ability of government to solve the main problems confronting society and in their own ability to influence it?

Survey research has produced some seemingly contradictory results. For instance, it found that support for democracy is strong. According to the Study of Values survey, 79.5% believed that having a democratic political system was very good or good; 73.9% believed that although democracy might have problems, it was better than any other form of government (Perry and Webster, 1999, pp. 52–3). Nevertheless, few considered that they could influence the government: 85.4% believed that the public had little control over what politicians did in office and another 61.6% believed that the average person would not get anywhere by talking to central government public officials. A further question revealed that 67.4% did not believe the government was generally responsive to public opinion (Perry and Webster, 1999, p. 92).

12.5 What measures, if any, are being taken to remedy publicly identified problems in this field and what degree of political priority and public support do they have?

The move to the MMP system was expected to curb this high level of public disillusionment. However, evidence to date suggests a mixed result. More recently, the Labour–Alliance Government has actively sought to fulfil electoral promises. This has helped Helen Clark and the Labour Party to out-poll the opposition in opinion polls. The Government has also sought to ensure that various opinions are heard. For instance, in 2000 the Government placed an emphasis on winning the confidence of the business sector after many businesses had expressed concern over the Government's direction. Key Ministers, such as the Finance Minister, have met with business leaders to hear their views.

13.0 Decentralisation

Are decisions taken at the level of government which is most appropriate for the people affected?

Executive summary

There are three types of local government: regional, territorial and special-purpose authorities. Following reorganisation in 1989 there are 12 regional councils, 15 city councils and 59 district councils (including the Chatham Islands and four unitary councils). Although local authorities in New Zealand enjoy considerable independence from central government, they must act within the legal framework that is established by Parliament, and the legislation is highly prescriptive both as to what local government may, and may not, do.

The openness and accountability of local government is founded on the legal requirement for members to be elected by their electorate. Similarly, local authorities have a wide range of mechanisms through which they can consult the general public. However, many people do not take an active interest in local politics. This is evident by the poor turnout in local government elections. Moreover, there is a widespread feeling that the accountability of local authorities is limited.

13.1 How independent are the subcentral tiers of government from the centre and how far do they have the powers and resources to carry out their responsibilities?

The powers of local government are restricted to those conferred by Parliament. Local government has no separate or independent constitutional status.

The Local Government Act 1974 definitions of the purposes of local government in New Zealand include: the recognition of the existence of different communities in New Zealand; the delivery of appropriate facilities and services on behalf of central government; and the efficient and effective exercise of the functions, duties and powers of the components of local government. It is a vast, complex and highly prescriptive piece of legislation—which had been amended 150 times by 2000 (Hayward, 2000).

Local authorities are required to budget and plan in a way that is similar to that required of central government by the Fiscal Responsibility Act 1994. The only tax a local authority may levy is rates (that is, a levy on the assessed value of residential and commercial properties), the upper limits of which are

prescribed by central government (which is itself excluded from having to pay rates to local government or regional authorities).

The Standing Orders of Parliament provide for a special category of legislation known as local bills, which are promoted by a local authority and only affect that particular area.

With regard to functions substantially funded by the central government, such as health and education, all activities may ultimately be dependent upon the approval of operational plans and grants by the Minister, and policies may be prescribed by legislation. Ministerial consent might also regulate the obtaining of long-term capital loans by local authorities. The regulation of trade wastes, building construction and fire safety may be subject to ministerial comment or Building Industry Authority approval, and standards may be prescribed under the building code. Otherwise, there is no general obligation to obtain ministerial confirmation before a bylaw becomes operative. The Minister of Local Government has discretionary power to initiate a review of the performance of any local authority where it is considered that there has been a significant failure to meet obligations, mismanagement or decision-making processes (Palmer, 1993, p. 82). The central government may dismiss a dysfunctional council, as it did in the case of the Rodney District Council in early 2000 when it became irrevocably split over policy issues, with resultant administrative paralysis. (A new mayor was elected in March 2001).

The three-member Local Government Commission exists as a quasi-judicial body to hear appeals against local government authorities and proposals for reorganisation and amalgamation; and appeals on the triennial review of electoral boundaries.

The Resource Management Act 1991 has placed vastly increased responsibilities on local government.

13.2 How far are these levels of government subject to free and fair electoral authorisation and to the criteria of openness, accountability and responsiveness in their operation?

The accountability of local government is founded on the legal requirement for members to be elected. The Local Elections and Polls Act 1976 regulates the conduct of local elections, which are held triennially on the second Saturday in October every third year. Elections are run on a simple majority basis, unlike the proportional MMP system used for central government elections (see though section 13.4). Votes can be cast through the post, and special votes can be cast by those unable to vote on election day. The franchise extends to all people aged 18 years or over who have resided in New Zealand for one year, and in the

particular local body district for one month prior to enrolment, and who actually enrol. Enrolment qualifications for local body and Parliamentary elections are identical.

In 1991 legislation was passed requiring the preparation of a ratepayers roll (in addition to the residential electoral roll). This roll extended the franchise to:

- people owning property in the city, but residing elsewhere;
- partnerships, joint tenants and companies (who are entitled to appoint a “nominal occupier”);
- people living within the city who own other city property in other communities away from their place of residence. (Electors in this last category are entitled to claim additional Community Board votes only).

The openness and accountability of local government is also ensured by the Local Government Official Information and Meetings Act 1987. The guiding principle of the act is that information must be made available if requested, unless a reason exists under the act for withholding it. The act also requires the local council to publish a directory detailing the functions and structure of the council, including the names of the council members and the standing committee members, their terms of reference, council records and manuals, and the contact officers. Every local authority is also required to prepare an annual report that must be open to public inspection. This report must include information on the policies and objectives of the local authority, the indicative costs and the sources of funds. Legislation also governs the conduct of local authority affairs, which must be conducted in a manner that is comprehensible and open to the public.

The 2001 local government elections were held under the Local Electoral Act 2001. This legislation placed a limit on the amount of money a candidate can spend and made it an offence to publish or broadcast material promoting a candidate without the written authority of the candidate.

Evidence is mixed on the degree to which local authorities have been open in their dealings with the public. A 1998 survey by the Christchurch City Council found that 78% of respondents who dealt with Council staff over the telephone found them to be helpful and that 75% of respondents were satisfied or very satisfied with the service overall (Christchurch City Council c). However, the Study of Values survey found that 45.2% of respondents felt that the average person could not get anywhere by talking to local public officials. A further 52% did not believe that the local government was generally responsive to public opinion (Perry and Webster, 1999, p. 93).

Many council meetings are held in secret. For the year ended 30 June 2001 the Ombudsmen received 209 complaints relating to the Local Government

Official Information and Meetings Act 1987. Of these, 142 were over the refusal to supply information (Ombudsmen, 2001, p. 91).

The composition of local government does not accurately reflect the general population. In 1998 approximately 5.5% of elected members of the local authority were Maori and 29% women (Local Government New Zealand d; Local Government New Zealand b). Local government authorities have also been criticised for failing to meet Treaty of Waitangi obligations to consult with local Maori communities (Hayward, 2000).

Ultimately, members of local authorities are held accountable by the triennial elections. Turnout is very low when compared with national elections, averaging just 51.6% of voters in the 1980 to 1992 period (Bush, 1995, pp. 76, 80, 88, 101). Depending on the class of local body, turnout in the 1998 elections ranged from 51 to 61% (Bush, in Miller, 2001, p. 165). In the 1998 local authority elections, 16 of the 74 mayors were defeated (Local Government New Zealand c). Turnout in the 2001 local elections disappointed Sandra Lee, the Minister of Local Government. For instance, only 48% of eligible voters in Christchurch bothered to vote and research indicated that this poor turnout was primarily because of a lack of interest (*Press*, 5 December 2001, p. 4).

13.3 How extensive is the cooperation of government at the most local level with relevant partners, associations and communities in the formation and implementation of policy and in service provision?

Amendments in 1989 to the Local Government Act 1974 provide for a formal system through which public submissions are made to the local authorities and hearings are staged before a local authority makes its final decision on an issue. Local authorities have a wide range of mechanisms through which they can consult the general public, including the holding of consultation meetings and the calling for submissions from the public on specific proposals. However, despite these efforts, most people do not take an active interest in the local authority. The Study of Values survey found that 55.2% did not believe that the average person had a lot to say about the running of the local government (Perry and Webster, 1999, p. 93). According to the 1998 survey by the Christchurch City Council, 74% did not know the Community Board names for their areas and only 46% of respondents visited a Council Service Centre (Christchurch City Council c).

Overall, there is dissatisfaction with local authorities. This is shown by the Study of Values survey, which found that 69.4% of respondents felt that the

public had little control over what local government politicians did in office (Perry and Webster, 1999, p. 93).

13.4 What measures, if any, are being taken to remedy publicly identified problems in this field and what degree of political priority and public support do they have?

The government has proposed new enabling legislation that would give local authorities wider powers through a power of general competence. The land tax legislation is being reviewed. In May 2001 the Justice and Electoral Select Committee recommended that the STV electoral system be utilised in local government elections and local communities will be able to decide to vote with the STV system from the next local body elections in 2004.

A review of the Local Electoral Act 2001 and of low voter turnout was initiated after the 2001 local government elections.

IV. DEMOCRACY BEYOND THE STATE

14.0 International dimensions of democracy

Are the country's external relations conducted in accordance with democratic norms, and is it itself free from external subordination?

Executive summary

Generally, the goals of New Zealand external relations have been formulated in accordance with democratic norms. New Zealand has actively promoted human rights via its foreign policy.

But foreign policy has remained the prerogative of the executive. Since 1998 Parliament has been able to consider international treaties entered into by New Zealand.

14.1 How free is the country's governance from subordination to external agencies – economic, cultural or political?

New Zealand is a signatory to many international treaties which bind policy, but it is not subordinate to external agencies. Among the most important external agreements is the 1983 Closer Economic Relationship Agreement with Australia.

Parliament must take into account New Zealand's international obligations when passing legislation. Such obligations include those linked to New Zealand's membership of international organisations like the United Nations and, more specifically, individual treaties. In recent years the courts have increasingly referred to international treaties and their obligations when they are interpreting statutes relevant to international obligations. For example, in 1994 the Court of Appeal indicated that the Minister of Immigration should have had regard to the International Convention on the Rights of the Child in exercising a statutory discretion relating to a deportation order. Governments have seldom legislated in defiance or disregard of international obligations.

New Zealand has actively lobbied for trade liberalisation worldwide through its membership in international bodies, notably the Asian Pacific Economic Cooperation (APEC) group and the World Trade Organisation (WTO). The country is heavily dependent upon foreign direct investment which it has sought to attract through having, by international standards, lenient company tax and securities laws and incentives for foreign investment. There are no rules on the

maximum level of equity interest a foreign investor may take in a New Zealand enterprise, except with respect to the ownership of domestic fishing quotas, Telecom and Air New Zealand. Nor are there restrictions on the movement of funds in or out of New Zealand, or the repatriation of profits. An application to the Overseas Investment Commission (OIC) must be made by non-residents planning to invest more than \$10 million establishing a business, or to purchase an equity share of greater than 25% in a New Zealand company worth more than \$10 million. The OIC approval is also required to invest in land over five hectares, islands, the foreshore or reserves. It is rare for investment applications to be declined. As a result, foreign companies enjoy a strong presence in the economy. There is (as has been noted) widespread foreign ownership of the news media, although not of cultural organisations apart from film companies. The government has been highly sensitive to the effect of the nation's credit ratings and the views of organisations like the World Bank, International Monetary Fund (IMF) and APEC.

14.2 How far are government relations with external donors based on principles of partnership and transparency?

New Zealand is an aid donor. The present level of aid—nearly 0.25% of Gross National Product—places New Zealand 15th out of 22 countries in terms of fostering economic growth and political stability in developing nations according to an OECD report. New Zealand aid reached 0.27% in 1998, the highest level for a decade (*Evening Standard*, 19 May 2000, p. 4).

New Zealand supports moves by the international financial institutions and commercial and bilateral creditors to provide comprehensive debt relief to countries that demonstrate a willingness to undertake structural reforms and to improve public expenditures. New Zealand does not provide Official Development Assistance (ODA) in the form of loans and supports the progress under the Heavily Indebted Poor Countries Debt Initiative coordinated by the World Bank and the IMF.

New Zealand ODA is monitored to ensure that programmes are run efficiently and that aid is delivered to those most in need. Development assistance is not tied to the purchase of New Zealand goods and services.

New Zealand gives preference to the South Pacific and, within the Pacific, to Niue, the Cook Islands and Tokelau, to which it has ongoing constitutional responsibilities.

14.3 How far does the government support United Nations human rights treaties and respect international law?

Generally, New Zealand gives strong support to United Nations human rights treaties and abides by its international obligations, which it takes seriously.

While the United Nations Human Rights Committee in 1995 approved the adoption of the New Zealand Bill of Rights Act 1990, it argued that even with the passage of this statute, the provisions of the International Covenant on Civil and Political Rights have not been fully incorporated into domestic law, nor given overriding status in the legal system. Article 2 of the Covenant requires State parties to take such legislative or other measures which may be necessary to give effect to the rights recognised in the Covenant. In this regard the committee regretted that certain rights guaranteed under the Covenant were not reflected in the Bill of Rights Act 1990, and that it did not repeal earlier inconsistent legislation and had no higher status than ordinary legislation (Ministry of Foreign Affairs and Trade, 1995, p. 69).

The United Nations Human Rights Committee welcomed the passage of the Privacy Act 1993 and the Human Rights Act 1993. This legislation enhances the protection guaranteed by Article 2 of the Covenant by extending the grounds on which discrimination is prohibited.

14.4 How far does the government respect its international obligations in its treatment of refugees and asylum seekers and how free from arbitrary discrimination is its immigration policy?

New Zealand's refugee policy is governed by the Immigration Act 1987. This states that the objective of the policy is to ensure that it meets its obligations under the 1951 Convention Relating to the Status of Refugees and 1967 Protocol Relating to the Status of Refugees.

New Zealand is one of only 10 countries worldwide with an established resettlement programme for refugees and has an annual quota of 750. It ranks among the top 20 donors to the United Nations High Commissioner for Refugees (UNHCR). While New Zealand is generally seen as meeting its obligations, the UNHCR has noted a number of concerns, mainly involving a lack of resources allocated by the New Zealand Government to this area. The UNHCR noted that the increasing number of asylum seekers has led to a backlog that might become a political issue unless the government provides more budgetary resources to the processing of applications. Despite the government's resettlement programme, in the opinion of the UNHCR little money is made available for post-arrival integration programmes.

Amnesty International has raised concerns over the standard practice of detaining those asylum seekers whom the authorities determine have submitted “manifestly unfounded” applications for asylum. International standards dictate that asylum seekers should not normally be detained.

14.5 How consistent is the government in its support for human rights and democracy abroad?

As mentioned above, New Zealand has maintained a strong presence in various international bodies promoting human rights and democracy abroad. This is managed in a number of ways, including the deployment of New Zealand soldiers and police as part of various United Nations missions (most recently in East Timor) and through the country’s international aid programme. New Zealand’s ODA is administered by the Ministry of Foreign Affairs and Trade and is designed to provide assistance to developing countries to better meet their own economic and social needs. Key themes addressed in deciding on the disbursement of foreign aid are private sector development, poverty reduction participation, social development, regional cooperation, conflict resolution, good governance, environment, education and training and trade policy assistance (Ministry of Foreign Affairs and Trade, 1998).

Aid is administered either bilaterally or multilaterally. New Zealand concentrates its support on the states of the Pacific Islands, particularly in Polynesia. Multilateral aid is disbursed through organisations such as the United Nations, the Commonwealth and other international organisations.

New Zealand’s human rights activities operate on three levels: bilateral, regional and multilateral. New Zealand’s bilateral support for human rights mainly revolves around the disbursement of aid through the Good Governance fund (a part of ODA). Regional support involves supporting efforts by the United Nations High Commissioner for Human Rights and through liaising with the Secretariat of the Asia Pacific Forum of National Human Rights Institutions. Multilaterally, New Zealand is active in a number of human rights forums, notably meetings of the Commission on Human Rights and in the Third Committee of the United Nations General Assembly. New Zealand is a party to all six key human rights treaties.

Although New Zealand has condemned human rights abuses abroad, there have been times when its stance has been balanced against wider foreign policy interests, for instance with regard to China and Indonesia, as well as in respect of domestic policies taken by Arab oil-producing states. However, New Zealand has been forthright in its opposition to racism and human rights abuses in the South Pacific, particularly in Fiji following the overthrow of the constitutionally elected governments in 1987 and 2000.

14.6 What measures, if any, are being taken to remedy publicly identified problems in this field and what degree of political priority and public support do they have?

Changes in the directions and institutional arrangements for the way that international aid funds are spent were announced in September 2001. These changes include a greater focus on eliminating poverty and a semi-autonomous body within the Ministry of Foreign Affairs and Trade will be established to set policy and administer the programme. The changes are based on recommendations made by a Ministerial review of the ODA programme.

Parliament is now playing a greater role in foreign policy issues through the consideration of international treaties. All multilateral and important bilateral treaties are presented to Parliament before ratification by the government. The treaties are considered by Parliamentary select committees, which may hold public hearings on them.

The Labour–Alliance Government has indicated that it will place greater emphasis on promoting human rights and ratifying international conventions, such as those of the International Labour Organisation.

Notes

1. The page number of the information cannot be provided when it is unavailable. This is the case with much of the information obtained from the Internet.
2. This section is based on the law as at 1 July 2001. There are bills before the House that could amend some of the provisions of the Electoral Act 1993.

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