



Parliament Brief



PARLIAMENT AND THE GENERAL ELECTION

A term of Parliament in New Zealand may not last more than 3 years. Several parliamentary processes, laws and conventions (established practices) ensure a smooth transition and provide safeguards for democratic process when an election has been called.

Wherever the Governor-General is mentioned below, he or she is representing the Sovereign, who, if present in New Zealand, would carry out these functions.

HOW A PARLIAMENTARY TERM ENDS

The exact date by which a parliamentary term must end is already fixed before the previous general election. The new Parliament can last no longer than 3 years from the latest date set for the 'return of the writ' (official return of result) for that election.¹

The Governor-General normally brings a parliamentary term to an end. In accordance with convention, this action is taken on the formal advice of the Prime Minister, resulting in a proclamation dissolving Parliament – referred to as a 'dissolution'. By convention, the Governor-General then proclaims a date on which the new Parliament will be summoned to meet. This proclamation is likely to be superseded on advice by the new Government (see 'Parliament summoned' below). However, it is an important constitutional safeguard and signifies the intention to maintain democratic institutions.

The dissolution is effective from the time it is published in the *Gazette* (the Government's publication for official notices) or earlier if it is read aloud in the presence of the Clerk of the House and other witnesses. This may involve a ceremony on the front steps of Parliament House.

In some countries (such as the United Kingdom, with a parliamentary term of 5 years) it is common for the

Government to seek a dissolution and call an election well before the parliamentary term expires. In New Zealand the tendency has been for a Parliament to run for most of the 3-year period. There is not, however, any specific law or convention requiring this.

There is generally a period of several days between the last day the House sits and the day Parliament is dissolved. This enables some parliamentary processes to be completed, such as obtaining Royal assent to bills and printing select committee reports for presentation. Written questions may be lodged and papers (such as annual reports of Government departments) presented during this period.

In the absence of a dissolution of Parliament, it automatically expires at the end of the 3-year period.

STARTING THE ELECTORAL PROCESS

Once the dissolution or expiration has occurred, the Governor-General issues a writ to the Chief Electoral Officer for a general election to be held. The writ sets out the closing date for nominations of candidates, polling day, and the latest date for the writ to be returned with the final results. The Electoral Act 1993 prescribes the range of time for these processes. This ensures that there can be no unreasonable delay in electing a new House of Representatives.

For information about the electoral system and processes, visit the elections website at www.elections.org.nz.

UNFINISHED BUSINESS

At the time of dissolution there is likely to be unfinished business (such as bills and petitions) before the House and committees. Until 2005 the Constitution Act 1986 provided for business to be 'carried over' to the new Parliament by House resolution.

In 2005 the Constitution Act 1986 was amended because the practice of carrying business over effectively imposed an agenda on the newly elected House. All business before the House and committees now lapses at the time of dissolution or expiration but can be reinstated by the new House at the same stage it had reached in the previous Parliament.² This enables the new House to determine which business will continue to be considered.

THE 'INTERREGNUM'

The period between the dissolution of one Parliament and the opening of the next is sometimes called the 'interregnum'. This word's literal meaning is 'between reigns'. During this period the country is still governed and administrative decisions in relation to Parliament must still be made.

Government continues

The Government in office at the time of the dissolution continues to run the country through executive decision-making. In the period immediately before a general election, successive governments have restricted their actions to some extent in recognition of the fact that an election, and therefore a possible change of government, is imminent. For instance, significant appointments and advertising campaigns might be deferred but day-to-day issues continue to be managed.

The term 'caretaker government' applies in two circumstances. The first would be if an election had been called because the House had lost confidence in the Government. The second applies to the period between polling day and the appointment of a new Government if election results indicate either a change of government or uncertainty about the new Government's formation. See 'Forming a new Government' below. Conventions guide Ministers and officials during such periods. These require deferral of significant initiatives until a new Government is in place.³

Role of the Speaker of the House

The Speaker (see *Parliament Brief*, 'Officers of the House') remains in office until the close of polling day.⁴ Between polling day and the first sitting of the new House, the former Speaker continues to chair the Parliamentary Service Commission and to be the 'Responsible Minister' for the Office of the Clerk, the Parliamentary Service, and Offices of Parliament (such as the Office of the Ombudsmen).⁵

Forming a new Government

New Zealand's parliamentary system is based on the principle that Government Ministers must first be elected as members of Parliament. This ensures direct accountability to the House. However, the official

results of the election are not returned in the writ until about 2 to 3 weeks after polling day. Until 1986 the period of caretaker government continued until after the final results were returned because no new Ministers could be appointed until they had been confirmed as members of Parliament.

The Constitution Act 1986 recognises that the overriding principle in forming a Government is that a new mandate has been given and a new Government should therefore be able to take office immediately this has been established. The current requirement is that anyone appointed as a Minister must have been a candidate and must become a member of Parliament within 40 days of appointment.⁶ This allows a Government to be formed immediately the outcome of the election is clear.

As soon as the provisional poll results are known (generally within hours of the polls closing), party leaders have a good indication of the number of seats each party will hold in the House. If one party will hold a majority of the seats, it is able to form a Government. However, it is more likely to need to negotiate with other parties to form a coalition and/or an agreement for support on 'confidence' issues such as supply of funds for public expenditure.

Once the political parties have reached an adequate accommodation, and a Government is able to be formed or confirmed, it is expected that the parties will make that clear by appropriate public announcements. By convention, the Governor-General's task in the government formation process is to ascertain where the support of the House lies, so that a Government can be appointed or confirmed in office. Accordingly, the Governor-General will, by convention, abide by the outcome of the government formation process in appointing a new ministry or accepting the right of the incumbent Government to remain in office. The Governor-General will also accept the decision of the party or parties as to which individual will lead the Government as Prime Minister.

Appointment of a new Government might be delayed where lengthy negotiations occur before any agreement is reached. Under these circumstances, the period of caretaker government continues. It would normally be expected that a new Government would be in place before the new Parliament meets, but it is possible that caretaker government could continue beyond this point.

PARLIAMENT SUMMONED

The Governor-General must summon Parliament to meet within 6 weeks of the date for the return of the writ.⁷ This ensures that there is not a lengthy period of government without the opportunity to test if the

Government has the confidence of the House. Once members have been summoned to attend the House of Representatives at a specified time, there are several procedures to be followed before the House transacts its usual business.

Commission opening

Before the formal State Opening of Parliament by the Governor-General, Parliament is opened on the Governor-General's behalf by three Royal Commissioners (usually the Chief Justice and other senior judges).

The Commissioners come to the parliamentary debating chamber, where elected members are assembled. A Commissioner then reads the proclamation summoning Parliament and informs the members that the Governor-General will attend in person to explain the reasons for summoning Parliament. The Commissioners then depart, while the House continues sitting so that members can be sworn in and a Speaker can be elected.

Members sworn in

All elected members are required to take an oath of allegiance to the Crown before they can sit or vote in the House as members of Parliament.⁸ Once the Commissioners have departed, the Clerk of the House administers the oath, having been authorised to do so by the Governor-General.

Members are called upon in alphabetical order. They can swear an oath or make an affirmation. The words are set out in the Oaths and Declarations Act 1957.

Speaker elected

Once members have been sworn in, they elect a Speaker. The Clerk of the House presides. If more than one candidate seeks the position, several votes may be required until one member is supported by the majority of the House, although in recent times this has involved no more than one vote. The Speaker-Elect is then confirmed in office and lays claim to the privileges of the House at a formal meeting with the Governor-General. See also *Parliament Brief*, 'Officers of the House'.

State Opening of Parliament

Normally on the next day the formal State Opening of Parliament occurs. The Governor-General proceeds to the Legislative Council Chamber, where the former upper house used to meet. The Governor-General's messenger, the Usher of the Black Rod, is sent to the House of Representatives to summon members to the Governor-General's presence to hear the Speech from the Throne. This sets out the Government's legislative and policy intentions for the session of Parliament. Once this ceremony is completed, members return to

the debating chamber and the House can start to conduct its usual business.

TESTING CONFIDENCE IN THE GOVERNMENT

While a Government has generally already been formed, it is important that 'confidence' in the Government can be tested in the House. The Address in Reply debate provides this opportunity, taking precedence over other government business. 'Address in Reply' refers to the need for the House to adopt an address to the Governor-General in reply to the Speech from the Throne. This is a 19-hour debate, during which new members deliver their maiden speeches. During the debate a 'no confidence motion' can be moved. This provides an opportunity for the confidence of the House to be tested. At the end of the debate a vote is taken. If the Government survives the 'no confidence' vote, its right to govern is confirmed until that support is withdrawn or until this cycle again comes to an end.

FURTHER READING

Joseph, Philip A., *Constitutional and Administrative Law in New Zealand*, 3rd edition, Wellington, Brookers, 2007.

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

Palmer, Geoffrey and Palmer, Matthew, *Bridled Power: New Zealand's constitution and government*, 4th edition, South Melbourne, Oxford University Press, 2004.

Endnotes

- ¹ Section 17 of the Constitution Act 1986.
- ² For further explanation, see Review of Standing Orders, Report of the Standing Orders Committee, December 2003, I.18B, pp 14 to 16.
- ³ Paragraphs 6.16 to 6.35 of the Cabinet Manual, www.dpmmc.govt.nz.
- ⁴ Section 13 of the Constitution Act 1986.
- ⁵ Section 18(3) of the Parliamentary Service Act 2000; section 2(1) of the Public Finance Act 1989.
- ⁶ Section 6 of the Constitution Act 1986.
- ⁷ Section 19 of the Constitution Act 1986.
- ⁸ Section 11 of the Constitution Act 1986.

Flow of Events

