The Parliament of New Zealand met for the first time on 24 May 1854 in Auckland. At that time the Parliament was officially styled “The General Assembly of New Zealand”. It consisted of three bodies: the Governor, a Legislative Council and a House of Representatives. Only the House of Representatives, the elected component, has retained its unbroken membership of the Parliament under its original title, though it is now a much larger body, with 120 members, as compared with 37 in 1854. (The 51st Parliament—2014–2017—had 121 members as a result of an electoral “overhang” of one member.)

The Parliament of New Zealand today consists of the Sovereign in right of New Zealand and the House of Representatives.1 The Sovereign was not originally mentioned as part of the General Assembly. Legislation was therefore passed in 1953, on the occasion of the Queen’s first visit to New Zealand, to remove any doubt about the Sovereign’s power to give the Royal assent to bills.2 The Sovereign’s powers as part of Parliament are exercised by Her Majesty’s representative, the Governor-General, who assumed this title in 1917. The Legislative Council, which was an appointive rather than elective body, was abolished on 1 January 1951,3 leaving Parliament a single-chamber or unicameral legislature ever since.

THE SOVEREIGN AND THE GOVERNOR-GENERAL

The Sovereign has performed a number of acts as a constituent part of Parliament. These have included: giving the Royal assent to bills that have passed through the House; summoning and proroguing Parliament; delivering the Speech from the Throne at the opening of a session of Parliament; and sending messages to the House of Representatives.

The Governor-General, as the Sovereign’s representative resident at the seat of government in New Zealand, naturally plays a more frequent part in the work of Parliament. The Governor-General is the representative of the Sovereign in the Sovereign’s executive capacity as Head of State. But the Governor-General also represents the Sovereign in respect of the Sovereign’s legislative duties as a member of the Parliament of New Zealand. In this capacity the Governor-General summons, prorogues and dissolves Parliament, and gives the Royal assent to bills. If the office is vacant or the Governor-General is for any reason unable to perform

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1 Constitution Act 1986, s 14(1).
3 Legislative Council Abolition Act 1950.
the duties of the office, the Chief Justice performs them as Administrator of the Government.4 (In the absence of the Chief Justice, the most senior Supreme Court judge available may act as Administrator. Their seniority is determined by their length of service as judges of the Supreme Court.)

THE HOUSE OF REPRESENTATIVES
The House of Representatives is the popularly elected component of the Parliament, its members being elected for a three-year term. It is this body that is inevitably identified with the term “parliament”, though it is in fact only a part of the Parliament.

This book is concerned with how that body is formed, what conditions apply to its membership, what rules it adopts for its procedures, what types of business it transacts and what is its legal relationship with persons and bodies outside Parliament.

FUNCTIONS OF THE PARLIAMENT AND THE HOUSE OF REPRESENTATIVES
The functions of the Parliament and of the House are not identical. Each constituent part of the legislature has a different role from the other. The Parliament of New Zealand has only one function, and that is to make laws. Whenever “Parliament” acts, its act has the force of law—as an Act of Parliament. There are communications between the Governor-General and the House of Representatives on other matters than laws, but the two constituents act together as Parliament only to make laws.

Originally this law-making function was confined to making laws for the “peace, order and good government of New Zealand”6 (a common phrase at the time in legislative devolutions to colonial legislatures of the power to make laws). Following questions being raised as to Parliament’s power to make laws having extra-territorial effect,7 that is, outside New Zealand, Parliament itself extended this law-making provision in 1973 to the making of laws “having effect in, or in respect of New Zealand or any part thereof and laws having effect outside New Zealand”.8 The present legislative description of its law-making power speaks only of Parliament having “full power” to make law.9

The Governor-General, as the Sovereign’s representative, has a much wider role than simply that of a constituent part of Parliament. The Sovereign personifies the State and is head of the executive government—for example, appointing Ministers and formally performing many executive acts. But the House of Representatives, apart from its role in the Parliament that makes laws, also performs other functions that are important in themselves though they do not lead to an action of the Parliament as such. Indeed, only about half of the working time of the House is spent on its legislative function. However, the House differs from the Sovereign in that the House of Representatives performs all of its functions under the aegis of the Parliament of New Zealand. The House of Representatives has no role outside the life of a Parliament and cannot function once that Parliament has been dissolved or has expired.

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5 Supreme Court Act 2003, s 18.
6 New Zealand Constitution Act 1852 (UK), s 53.
8 New Zealand Constitution Amendment Act 1973, s 2.
Commentators on the House of Representatives will differ in their classification and description of its functions. The House’s role is not defined anywhere; it has been carved out by the members of the House, partly reflecting the legal environment from which the House draws its power (including its “privileges”), partly expectations (including those of the early parliamentarians) of what members of Parliament ought to do, partly the initiative of members themselves in assuming functions that were open to them, and partly by legislative conferment on an ad hoc basis (removal of judges, appointment of certain office holders, etc). Nor does the House necessarily have an exclusive purchase on any of the functions it performs. It shares its legislative role and the finding of a government, for instance, with the Crown, and the Government may also be scrutinised by means other than parliamentary activity. With these qualifications, four major functions performed by the House are outlined below.

A legislature
The House of Representatives plays a part—manifestly the largest and most important part—in the making of laws by Parliament. An Act of Parliament, a statement of law in its highest form, is a law agreed to by both the House of Representatives and the Sovereign or the Governor-General. The most visible part of the process by which a proposed law becomes an Act of Parliament is its processing by the House. Only when it is agreed to by the House can it be submitted to the Governor-General for concurrence. When this is forthcoming and both parts of Parliament are of one mind on the matter, the proposed law is converted into law as an Act of Parliament.

The imprimatur of Parliament on a document, converting it from a piece of paper with no effect into a statement of rules of binding effect that will be enforced by the full might of the State, is fundamentally important in providing a means by which binding rules (laws) can be recognised. Contributing to such documents is a primary function of the House and its committees.

The provider of a government
Neither Parliament nor the House governs the country in the sense of having direct control of the civil and military apparatus of State and making day-to-day decisions on the management and deployment of these resources. This is the job of the executive (the “Government”), which carries out the government of the country by appointment of the Governor-General.

When the House first met in 1854, executive authority within the colony was exercised much more personally by the Governor than it is today. The Governor’s advisers, those who carried out his wishes or “ministered” to him, were not members of Parliament but people who owed their positions to their standing and personal relationships with the Governor.

For the first two years of Parliament’s existence Ministers were chosen by the Governor not because they commanded the support of a majority of members of the House but for more personal reasons. This severely limited the House’s control and influence over the Government, for the ultimate means of such control—withdrawal of its support for the Government leading to the Government’s dismissal—could not be brought to bear when other factors determined the composition of the Government. Most of the early parliamentarians endeavoured to achieve for New Zealand a “responsible” form of government—that is, one in which Ministers were answerable to, and subject to the full control of, the House for their official actions—in addition to the “representative” form of government already conferred on the colony.

In 1856 the Governor, having consulted the Imperial Government, accepted that he should in future choose Ministers from among members of Parliament who could rely on the support of a majority of members of the House. Responsible
government had been achieved. It is on this principle that Ministers are appointed by the Governor-General today.

In effect, the House is an electoral college, which translates the will of the people, as expressed at a general election, into a Government (a “Ministry”) composed of a Prime Minister and Ministers. The member of the House who commands majority support from the other members is asked by the Governor-General to form a Government by taking office as Prime Minister and recommending to the Governor-General the appointment of other members as Ministers of the Crown. There is no legal or political necessity for this action to be ratified or confirmed by the House when it meets, although the justification for the choice of the Government is constantly tested throughout the life of the Parliament.

The House thus provides and sustains the Government from among its own members, and the Government, although appointed by the Crown, remains in office only as long as it can maintain a majority in the House; that is, as long as it retains the confidence of the House. Where no party has an overall majority in the House, a coalition Government or a minority Government may be formed, and sustained in office on the basis of agreements with other parties or members. But, whatever the precise arrangements, the political situation as represented by the members elected to serve in the House is what determines who is to govern, not the whim or pleasure of the Crown. This is a fundamental convention of the constitution.

To scrutinise and control the Government

Though the Government is appointed from among members of the House depending upon the result of a general election, the House is not just an electoral college that disperses once its function of providing a Government has been fulfilled. The continuing support of the House is necessary to the continuance in office of the Government, and to maintain that support the Government must answer to the House for its stewardship of the executive functions of State. One of the principal means by which the House exacts explanations from the Government of official action it has taken is the annual process of granting financial authority or supply to the Government. As a quid pro quo for the authority they consider necessary to carry on governing the country, Ministers must defend their policies and explain the administration of their portfolios to the House. Similarly, when Ministers ask the House to pass legislation, the House may hold them to account for their actions in the procedure for passing that legislation. Many of the procedures of the House are designed specifically to enable the House to play its part in the scrutiny and control of the Government. Such procedures include questions addressed to Ministers, general and urgent debates, and select committees of members investigating matters of governmental responsibility and regulations made by the Government under powers delegated by Parliament. Everything the House does offers it the opportunity to probe and criticise the actions of the Government.

To represent government and the people

The final function of the House of Representatives reverts partly to the idea embodied in the title of the original New Zealand Constitution Act—the idea of the representation of the views of the populace. The ideas of the Greek city state, in which all the citizens met in conclave to express their opinions on affairs of State and listen to the opinions of others, are quite alien to those ideas derived from British constitutional practice, on which the New Zealand Constitution Act was framed. They are also impracticable given the size and complexity of the modern State. New Zealand’s constitutional theory proceeds on the basis that there is within the State a source of authority, the Crown, which carries on the government,
but calls its subjects into its presence in Parliament for the purposes of consultation
and ratification. As all the subjects cannot attend in person, they attend through
representatives (elected on a national or a local basis), and it is the task of these
representatives to report what the inhabitants of the State feel and think about
particular matters. It is also the task of the representatives to bind the persons
they represent to the decisions of the Parliament to which they have been sent. As
every person is symbolically present in Parliament through a representative, every
person has a share in, and responsibility for, the actions of that Parliament, and is
morally as well as legally obliged to obey its lawful dictates.

The House of Representatives, as the elective element of the Parliament of New
Zealand, fulfils this representative function. It permits members to report and
give voice to national, provincial, local and individual views on matters of State. It
also imposes on every inhabitant some responsibility for the ultimate decisions on
the law and policy according to which New Zealand is governed. It represents the
governed to the Government and the Government to the governed.

THE DEVELOPMENT OF THE HOUSE OF REPRESENTATIVES

This book is concerned with the law applying to, and the procedures employed
in, the House of Representatives. It is not a history of Parliament, and minimal
background to the evolution of the present rules is given only to make them
intelligible. Nevertheless, it may be useful to outline in general terms the principal
phases the House (mostly reflecting political and social changes) has passed
through in its history.

1854–1856: The first two years of parliamentary democracy were something
of a false start for the House. Though it was a representative institution on the
franchise then applying, it found that it could not control the Government, since
the Government was not politically responsible to it but to the Governor. The
steps by which responsible government was conceded to the colony have been
mentioned above. In 1856 the House started afresh, with a ministry appointed
from among its members and holding office only as long as the ministry retained
the confidence of the House.

1856–1890: This was a period of consolidation of parliamentary government in
the colony. The House continued to function through a long and difficult series
of wars, and moved its meeting place permanently from Auckland to Wellington.
Māori representation was firmly established in the House from 1867, and the House
asserted its political pre-eminence over the Legislative Council. The council started
its long and ultimately terminal decline in this period. Elections became important
means of changing the Government towards the end of the period. Nevertheless,
the House was not yet a “modern” legislature, largely because no comprehensive
party system had developed. Such “parties” as there were, were parliamentary-
based alliances or factions that, while relatively cohesive in parliamentary terms,
had little extra-parliamentary organisation. The history of this pre-party period
was therefore something of a calendar of “ins and outs”, with much depending
upon the actions of forceful parliamentary personalities.

1890–1935: In this period a much more recognisably modern Parliament took
shape. This resulted mainly from stronger party organisations being formed to
fight elections and return members on a party ticket, and was reflected in the
House’s procedural organisation taking on a firmer, more disciplined aspect.
Under the influence of the stronger party approach to politics, the House adopted

11 John E Martin The House—New Zealand’s House of Representatives 1854–2004 (Dunmore Press Ltd,
Palmerston North, 2004) at 82.
1935–1996: This period represents perhaps the high point of two-party control of the House. With the election of a Labour Government in 1935, the country entered an extended phase in which the same party held power for a considerable period, followed by an even longer period in which the other major party, National, held power. These two parties obtained a virtual monopoly of seats in the House during this era, and the House attuned its rules both explicitly and implicitly to reflect this. Not even the abolition of the Legislative Council in 1950 caused any significant interruption to a remarkably stable period for the Parliament, of low-key adjustments in its rules.

1996 onwards: Towards the end of the two-party phase of the House’s history several significant developments began, many of them associated with economic and governmental reforms introduced in New Zealand after 1984.

In 1985 the sitting pattern of the House, which had remained unchanged virtually from the beginning, was altered, and the full-time, year-round nature of parliamentary work was recognised. Select committees were conceded powers to conduct inquiries on their own initiative rather than having to have matters referred to them by the House. This is now taken for granted, but it was a major change in parliamentary culture in 1985. The long-standing arrangements for parliamentary administration, which had not been the subject of serious examination for a century, were completely overhauled, and a new body (the Parliamentary Service) created to give members some executive responsibility for their own services for the first time.

In 1993, the country voted at a referendum for a change to the electoral system, ushering in a proportional representation system and multi-party representation in the House from the 1996 general election onwards. In anticipation of this new political environment, extensive changes to the House’s procedures were adopted in 1995. These procedures have continued to be adapted in the light of the practical experience of operating in a multi-party, rather than a two-party, House of Representatives.

The year 2004 saw the 150th anniversary of the first meeting of the House. It was marked by a special sitting on Monday 24 May 2004. It also saw the completion of a project embarked upon at the time of the House’s centenary, to write the history of the New Zealand Parliament. This work had commenced with the appointment of a parliamentary historian (Dr AH McLintock) and had seen the publication of two works: the first on the establishment of representative government in New Zealand and the second on the 19th-century Legislative Council. In 2004 a comprehensive history of the House of Representatives for the first 150 years of its existence was completed by Dr John Martin and published as the centrepiece of celebrations marking the House’s anniversary.

The Electoral Referendum Act 2010\textsuperscript{17} required an indicative referendum on the electoral system to be held in conjunction with the 2011 general election. The referendum asked voters to indicate their preferred system of voting for members of the House. The result was support for retaining the mixed member proportional system (MMP), and, as required under the Act, an inquiry was initiated by the Electoral Commission to determine through public consultation whether changes to MMP were necessary or desirable and to make recommendations to the Minister of Justice. The Commission presented its report to the House on 5 November 2012,\textsuperscript{18} making a number of recommendations for enhancing the operation of the MMP system, which required legislative change. The Minister of Justice in the 50th Parliament indicated in answers to oral questions that she did not believe that the consensus necessary for such change existed amongst the parties in the House.\textsuperscript{19}

The changes contemplated by the Electoral Commission were not of a magnitude to have significant implications for House procedure. The Standing Orders continue to be based on those that have operated since 1996, with adaptations made as a result of reviews conducted by the Standing Orders Committee during each subsequent Parliament. While the Standing Orders changed in response to the introduction of a new electoral system, the parliamentary culture responded more slowly. The 49th and 50th Parliaments have, however, seen more movement to erode some vestiges of the first-past-the-post culture. There has been a growing transparency about the parliamentary timetable, and more recognition that much of the legislation the House passes is supported by most, if not all, parties. This has allowed members to work on a cross-party basis to focus parliamentary time on the issues that are important to them, and deal with proposals that have wide support more efficiently and quickly.

\textsuperscript{17} Electoral Referendum Act 2010, ss 74–78.


\textsuperscript{19} (14 May 2013) 690 NZPD 9852–9853.