

Parliamentary term: Objectives and options for change

Date	30 November 2022
Action required	<p>Discuss the identified issues in relation to the parliamentary term</p> <p>Discuss and indicate the relevant objectives for the parliamentary term</p> <p>Indicate which options the Secretariat should develop further for your consideration.</p>

Purpose

1. This paper provides a high-level overview of the range of options the Panel may wish to consider relating to the parliamentary term.
2. Based on the Panel's feedback, the Secretariat will undertake further analysis of the issues and develop those options the Panel identifies as feasible.

Recommendations

3. The Secretariat recommends you:
 - i. **Discuss** identified issues in relation to the parliamentary term;
 - ii. **Discuss** the objectives in the Terms of Reference, and **indicate** which of these you wish to use as criteria for assessing options for the parliamentary term;
 - iii. **Discuss** the range of options identified in the paper and **indicate** which you would like developed further.

Background

4. This paper has been prepared to help structure the Panel's preliminary discussions on issue identification, setting relevant objectives, and identifying the range of feasible options for addressing this topic of the parliamentary term.
5. To avoid unnecessary repetition, we have not reproduced the information previously provided to the Panel in the analysis template *Workstream: Parliamentary term*. Panel members should therefore read this paper together with the analysis template available on SharePoint: [Analysis template - Parliamentary term.docx](#) and reattached by email as Appendix 1.

Parliamentary term

6. This paper will focus on objectives and options for the term of Parliament only. The Secretariat suggests focusing on this topic first given its broad importance to the electoral system and the public, as well as the flow-on effects for related topics once decisions are made about the parliamentary term.
7. This paper will therefore not cover objectives and options for the mechanism for setting the election date nor any additional checks and balances that were discussed in the *Workstream: Parliamentary term* paper. The Secretariat will be able to provide further advice about, and possible options for, these topics after the Panel has discussed whether any change to the term of Parliament is needed. However, some considerations for these related topics if any change to the term of Parliament was to be recommended are noted below.

Current law and practice – where are we now?

8. Section 17(1) of the Constitution Act 1986 provides that the parliamentary term can run no longer than three years from the return of the writs for the previous election. The return of the writ is the day on which a writ, containing the name of every electorate candidate elected, is returned to the Clerk of the House of Representatives.
9. At the end of this three-year period, unless it has already been dissolved, Parliament expires. This provision sets a maximum length for the parliamentary term. There is no minimum length. The Governor-General, on the advice of the Prime Minister, can dissolve Parliament at any time before the three-year term finishes.¹

Issues identified – what is the core problem or opportunity?

10. The review has been asked to consider whether the current three-year term of Parliament continues to be appropriate for New Zealand. The Terms of Reference outline that the review should consider:²
 - a. whether a longer parliamentary term would improve the effectiveness of government, Parliament and MPs;
 - b. if the term of Parliament was longer, whether voters would still have an appropriate level of influence over government and MPs; and
 - c. other related changes (such as the dissolution and expiry of Parliament).
11. There have been no previous Justice Committee or Electoral Commission recommendations on this topic. The term of Parliament was discussed by the 1986 Royal Commission and the 2013 Constitutional Advisory Panel. Issues previously identified by these reviews and by academics have been set out in the paper *Workstream: Parliamentary term*.

¹ Constitution Act 1986, s 18; Cabinet Manual (2017) at [2.4, 2.6].

² Terms of Reference, Independent Electoral Review, paragraph 14

12. In broad terms the key issue identified in that paper was whether the current term of Parliament is a suitable balance between:
- allowing enough time for government and Parliament to be effective, and
 - maintaining trust in public institutions and upholding the legitimacy of the democratic system by keeping Parliament and government accountable to voters.

Issues arising from consultation

13. We have not yet completed a full analysis of all submissions. However, so far, we have not identified any significant new issues or themes that were not covered in the *Workstream: Parliamentary term* paper.
14. A list of the submissions on this topic made by key stakeholders is attached as Appendix 2.
15. We note that, at the end of the consultation period, there were 1169 responses to the term of Parliament question on Citizen Space. Of those responses, there was a very even split between submitters' choosing three years or four years for the parliamentary term with a small number of submitters' identifying other term limits.³

Question for Panel: Are there any issues that have been missed?

Objectives – what should the criteria be for assessing options?

16. The Panel's objectives are set out in the Terms of Reference for the review. A table of all objectives has been provided to the Panel separately for ease of reference.
17. The Secretariat suggest that the following objectives are most applicable and relevant to addressing the core issue of the parliamentary term for the reasons set out here. We invite the Panel to consider which objectives they wish to use as their evaluation criteria for assessing the different options available for addressing the issues in this topic.
18. The below objectives collectively contribute to the parliamentary term upholding and promoting the legitimacy and integrity of New Zealand's democratic electoral system.

³ Around 48% of Citizen Space responses supported the current 3-year term, while around 46% supported a 4-year term. Two per cent supported a term of less than 3 years and around 7.5% a 5-year term or longer.

Suggested Objectives (as taken from Terms of Reference by the Secretariat)		
<i>Upholds te Tiriti o Waitangi/the Treaty of Waitangi</i>	<i>Produces an effective Parliament and Government</i>	<i>Is open and accountable, with checks and balances to ensure its integrity</i>
Why is this objective relevant for this topic? (as proposed by the Secretariat)		
Any term of Parliament must provide a democratic check on the Crown (Article 1) and support the rights of Māori (Article 3).	Any term of Parliament must be sufficient for Parliament and government to effectively meet their responsibilities and exercise their functions.	Any term of Parliament should ensure Parliament and government remain guided by public input and scrutiny.

19. Other objectives might also be applicable to this topic, but the Secretariat believe that these three objectives capture all relevant considerations. For example, one might choose the objective ‘encourages participation’ but the public input required for an open and accountable system would capture that intention. One could also choose ‘practicable and enduring’ but a system that needs to be effective in its functions, including without breaking government arrangements, must also be durable.

20. Other related topics may have different criteria to assess options for addressing the issues. For example, it may be appropriate to include ‘fairness’ as an objective for the question of setting the election date given the current system may provide a political advantage to the governing party.

Questions for Panel:

Would you like to change any of the above objectives to use as assessment criteria? How would you like to interpret and apply the objectives you select?

Options – what are the options the Panel might consider?

21. This section gives a high-level overview of the broad options we have identified for addressing the issues raised with the parliamentary term. Anything beyond these options would be an outlier internationally and has therefore not been considered but can be developed up as an option if it would help the Panel.

22. We have not analysed the different options in detail at this stage, so have only noted well-canvassed advantages, disadvantages, and considerations to assist the Panel’s preliminary discussion on possible options.

23. Based on the Panel’s feedback, the next step would be to develop the options the Panel considers feasible in more detail.

Option 1 – Three Year Term (status quo)	
Description: There would be no change to the current parliamentary term. There are two other unicameral parliamentary systems around the world that have a three-year term. ⁴	
Advantages <ul style="list-style-type: none"> As elections are frequent, politicians remain responsive to voters Voters don't have to wait very long to vote out unpopular governments and policies Governments are likely to be able to maintain coalition arrangements for a full term Voters can and do commonly chose to give governments a second term (which in practice can address some of the disadvantages listed) Connected to wider electoral system timings (at this stage) 	Disadvantages <ul style="list-style-type: none"> Short working period for government to develop and implement policy Parliament has limited time to scrutinise the executive and examine legislation, which may encourage the use of urgency Places time pressures on Select Committees Election costs, both direct and indirect, are more frequently incurred Government formation and pre-election campaigning takes up a larger proportion of the term Promotes short-term thinking and may create barriers to major long-term policy reform and stakeholder relationship building
Considerations This option would retain the current system and therefore not affect the wider electoral system. It does not exclude other changes to improve checks and balances in the system or mechanisms for setting the election date.	

Option 2 – Four Year Term	
Description: This would be a one-year extension to the current term of Parliament.	
Source: International comparators. There are 49 unicameral parliamentary systems around the world that have a four-year term. ⁵	
Advantages <ul style="list-style-type: none"> Potential for longer term policy reform More time for policy to be implemented and effects to be assessed More time for government to build stakeholder relationships Parliament has more time to scrutinise legislation 	Disadvantages <ul style="list-style-type: none"> No guarantee long term policymaking would occur or policy process would improve MMP coalition/minority government arrangements must last longer so more vulnerable to instability and breakdown No guarantee will go full term without fixed election date

⁴ These are El Salvador and Nauru. Additionally, there are three bicameral lower chamber parliamentary systems with a three-year parliamentary term. These are Australia, Philippines, and Mexico. (There are no upper chambers with a three-year term). Parline database on national parliaments, Inter-Parliamentary Union. Accessed November 2022. [Compare data | Parline: the IPU's Open Data Platform](https://data.ipu.org/compare?field=chamber::field_parliamentary_term&structure=any_lower_chamber)

⁵ Additionally, there are 25 bicameral lower chamber systems with four-year parliamentary terms. Upper chamber parliamentary terms have been excluded here. Parline database on national parliaments, Inter-Parliamentary Union. Accessed November 2022. [Compare data | Parline: the IPU's Open Data Platform](https://data.ipu.org/compare?field=chamber::field_parliamentary_term&structure=any_lower_chamber)

<ul style="list-style-type: none"> • More in line with similar democratic parliamentary systems overseas • Longer period between election costs 	<ul style="list-style-type: none"> • Less frequent accountability to voters at election, meaning voters have to wait longer to change policies they don't like
<p>Considerations</p> <p>This option has already been the subject of two referendums prior to the introduction of the MMP voting system. A four-year term was discussed by the 1986 Royal Commission, but no recommendations were made. There would likely be impacts on legislated timings in the wider electoral system such as local government elections and voter eligibility rules.</p>	

<p>Option 3 – Five Year Term</p>	
<p>Description: This would be a two-year extension to the current term of Parliament.</p>	
<p>Source: International comparators. There are 52 unicameral parliamentary systems around the world that have a five-year term.⁶</p>	
<p>Advantages</p> <ul style="list-style-type: none"> • As for Option 2 but with a more extended timeframe 	<p>Disadvantages</p> <ul style="list-style-type: none"> • As for Option 2 but with higher chance of governing arrangement breakdown and loss of accountability given more extended timeframe
<p>Considerations</p> <p>This option would put higher importance on improving other checks and balances in the system given New Zealand's current constitutional framework. There would be implications for legislative timings in the wider electoral system that may require amendment.</p>	

<p>Questions for Panel:</p> <p>What options do you consider feasible? Are there any other options you think are missing? What further work would you like done on developing options you consider feasible?</p>
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Related topics – what else might the Panel need to consider?

24. The parliamentary term is an entrenched provision. If the decision were made to change the length of the term of Parliament, the Panel would then need to consider the process for doing so. As an entrenched provision, the term length can only be amended by a 75% majority vote in Parliament or by a 50% majority at referendum. Previously this topic has been an issue at referendum.⁷
25. The process for setting the election date, the other topic included within the *Workstream: Parliamentary term* paper, relates closely to the term of Parliament. One could change the mechanism for setting the election date without changing the term of Parliament. However, if you did recommend a change in the term of Parliament, there would be a stronger case for also considering the process for setting the election date to

⁶ Additionally, there are 50 bicameral lower chamber systems with five year parliamentary terms. Upper chamber parliamentary terms have been excluded here. Parline database on national parliaments, Inter-Parliamentary Union. Accessed November 2022. [Compare data | Parline: the IPU's Open Data Platform](#)

⁷ Referenda on the term of Parliament held in 1967 and in 1990 rejected an extension to the term.

ensure the objectives of a longer term are met. There are several ways the election date could be set, and options previously suggested by other reviews and academics were briefly outlined in the *Workstream: Parliamentary term* paper.

26. Given that New Zealand's constitutional framework is considered to have limited safeguards, as discussed within the paper *Workstream: Parliamentary term*, several other mechanisms may need to be strengthened or introduced if a longer term were implemented. The Panel would therefore need to consider what recommendations it might want to make in relation to this issue, depending on which options for the term of Parliament were being considered.

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Appendix 1: ‘Workstream: Parliamentary term’ paper

Please refer to document 2

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Appendix 2: List of key stakeholder submissions on parliamentary term

Academics

Graeme Edgeler
Jack Vowles
Richard Shaw, Janine Hayward, and Claire Timperley

Central government and regulatory bodies

Clerk of the House of Representatives
Department of Internal Affairs
Electoral Commission

Civil society

E Tū
JustSpeak
Mental Health Foundation
New Zealand Council for Civil Liberties
New Zealand Taxpayers' Union
Public Service Association
International Institute for Democracy and Electoral Assistance (International IDEA)
Trust Democracy

Disabled

Disabled Persons Assembly NZ

Māori

Hāpai te Hauora

Individuals

David Farrar
Hugh Williams
Kenneth Keith

Political parties and politicians

Aotearoa Legalise Cannabis Party
Lianne Dalziel
Maryan Street
Geoffrey Palmer
New Zealand Labour Party

Professional organisations

Institute of Directors
New Zealand Council of Christian Social Services

Youth

Generation Vote
Victoria University of Wellington Students Association (VUWSA)
Wellington City Youth Council

Policy Analysis Template

Workstream: Parliamentary Term

Description
<p>The primary purpose of elections is to decide through voting which individuals and political parties enter Parliament and exercise public decision-making powers on behalf of society.</p> <p>Limiting the term of Parliament ensures that voters have a regular opportunity to choose who represents them and to hold the government accountable.</p> <p>The Independent Electoral Review has been asked to examine whether the parliamentary term in New Zealand should be changed. If the parliamentary term were lengthened, then other changes might be considered to help maintain or improve current levels of accountability.</p> <p>This workstream will also look at options for how the election date is set, which is currently the decision of the Prime Minister.</p>
Scope
<p>The topics within scope of this workstream are:</p> <ul style="list-style-type: none">• <i>Length of the parliamentary term</i>• <i>Mechanisms for setting the election date.</i>

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Topic: Length of the Parliamentary Term

Status quo

Current legislation

Section 17(1) of the Constitution Act 1986 provides that the parliamentary term can run no longer than three years from the return of the writs for the previous election. The return of the writ is the day on which a writ, containing the name of every electorate candidate elected, is returned to the Clerk of the House of Representatives.

At the end of this three-year period, unless it has already been dissolved, Parliament expires. This provision sets a maximum length for the parliamentary term. There is no minimum length. The Governor-General, on the advice of the Prime Minister, can dissolve Parliament at any time before the three-year term finishes.¹

History of the term of Parliament

The parliamentary term in New Zealand was originally 5 years, reflecting the arrangements in Britain. It was reduced to three years in 1879. This change was a result of the abolition of provincial governments in 1876, which increased the importance of central government and its law-making abilities. There was a general concern that this new power needed to be restrained and therefore the term was reduced to increase the frequency of how often elections were held.²

New Zealand's parliaments have almost always continued for a full three-year term. Since 1879, there have only been a few occasions where the parliamentary term has differed from the three-year limit:

- the first and second world wars (delayed elections and formation of Parliament)
- 1935 (four-year term following an extension legislated by the Forbes Coalition)
- 1951 (early election called by the Prime Minister)
- 1984 (early election called by the Prime Minister)
- 2002 (early election after collapse of junior coalition partner).

A table setting out the length of New Zealand's parliamentary terms is included in **Annex 1**.

Previous consideration of the parliamentary term

In its 1986 report, the Royal Commission on the Electoral System considered whether the term of Parliament should be extended. It found that the arguments on the length of the term were finely balanced and that any change needed to sit alongside other restraints, in particular the introduction of its recommended MMP voting system. It therefore made no recommendation for a change to the term but recommended that "a referendum should be held no later than December 1993 to determine whether the term should be extended to four years".³

Referenda on the term of Parliament held in 1967 and in 1990 rejected an extension to the term. Of those who voted in the 1967 election (69 per cent of registered electors), 68 per cent favoured

¹ Constitution Act 1986, s 18; Cabinet Manual (2017) at [2.4, 2.6].

² New Zealand Royal Commission on the Electoral System, *Towards a Better Democracy* (1986), p 155; P. Joseph, "The Future of Electoral Law," in C. Morris et. al. (eds), *Reconstituting the Constitution* (New York: Springer, 2011), p 238.

³ Royal Commission on the Electoral System, pp 164–165.

retaining the three-year term. Of those who voted in the 1990 election (85 per cent of registered electors), 69 per cent supported the three-year term.⁴

In 2013, the length of the parliamentary term was considered by the Constitutional Advisory Panel. The Panel noted a reasonable proportion of the people who commented on the topic supported a longer term. It recommended that the Government set up a process, with wider public consultation and participation, to explore what additional checks and balances might be desirable if a longer term was implemented.⁵

There are no Electoral Commission or Justice Committee recommendations concerning the parliamentary term.

Issues & opportunities

Introduction

Limiting the term of Parliament and requiring elections to be held every few years ensures that voters have a regular opportunity to elect Members of Parliament (MPs) to represent them. Regular elections also ensure voters can directly, through the ballot box, hold the government of the day accountable for their actions. Governments must regularly renew the mandate voters have given them.

This democratic 'check' on government power is, some argue, especially important in New Zealand because many of the constitutional features that apply in other western democracies to restrain the powers of government are not present in New Zealand's constitutional arrangements.⁶ New Zealand has one central government and a single-chamber Parliament. It does not have a written constitution or the power for the courts to strike down Acts of Parliament.

Voters also need their government and Parliament to be effective. Governments need enough time between elections to develop and put in place policies and laws that reflect the mandate they have been given by voters. Parliament, including select committees and opposition parties, needs time to review legislative proposals, budget decisions and public expenditure and to challenge the government's actions and policies.

The length of the parliamentary term must therefore balance two important considerations. It must:

- allow enough time for government and Parliament to be effective, and
- maintain trust in public institutions and uphold the legitimacy of the democratic system by keeping Parliament and government accountable to voters.

⁴ Nigel Roberts, '[Referendums - Constitutional referendums](#)', Te Ara - the Encyclopedia of New Zealand, (accessed 29 June 2022).

⁵ Constitutional Advisory Panel, *New Zealand's Constitution: A Report on a Conversation* (November 2013), pp 58 and 61.

⁶ Dr Edward Willis, '[Government terms: three years or four?](#)', 4 November 2020.

The parliamentary term should support the effectiveness of government, MPs, and Parliament

The current term may not provide adequate time for governments and parliaments to be effective and efficient

A maximum term of Parliament determines the time available for:

- governments to develop, consult on, and implement policies
- parliaments to scrutinise the executive and examine legislation
- the public to understand and assess the performance of the government and MPs.

Governments operate with a “working period” in office that is, in practice, shorter than the full three-year parliamentary term. In part this is due to constitutional restraints on decision-making before (the pre-election period) and after (aspects of the caretaker convention) the election that reduce the time available to implement policies.⁷ Political constraints associated with campaigning and elections also reduce the working period a government has in office.

Some commentators have suggested that the three-year term, in practice, provides only “one effective year” for governments to formulate and implement policy, once time for establishing a government and then campaigning for re-election is accounted for.⁸ These commentators consider that this working period is not long enough for the government to be effective and develop and implement robust policy informed by effective consultation. It may also incentivise the use of urgency in parliamentary processes⁹ and more generally lead to unintended policy consequences that may not meet the public’s expectations.

Extending the term of Parliament would extend the working period available for governments, allowing them to take more time to develop and implement policy. Proponents of a longer term consider it may lead to better decision-making with more time for public consultation and more time for Parliament, including select committees and opposition parties, to consider legislation.

However, others have argued that there is no guarantee that a longer term would translate into more robust and informed policies being taken up by future governments.¹⁰ There are factors other than the time available that influence government decisions on the policy programmes they wish to pursue and the approach they take to delivering these. As such, there is a risk that governments will simply use the extra time to push more policy through rather than increase the level of consultation and improve the robustness of policy.

The current electoral cycle may pose a barrier to major reforms with long term benefits

A shorter electoral cycle might encourage governments to focus on shorter-term wins at the expense of longer-term issues. International research shows that there can be electoral costs for an incumbent government pursuing major reform later in its term, with incumbent leaders who do so being 17 per cent less likely to be re-elected.¹¹

With a three-year term, the influence of an approaching election is in play for a greater portion of the parliamentary term. As the costs of new policies are frequently felt immediately by some sectors of society, unlike the benefits, governments may be less willing to make long term, significant policy decisions. Some argue that this dynamic creates a barrier to major policy projects that may encourage longer-term strategic planning for topics such as housing, climate change, or economic inequality.¹²

A longer term would not necessarily mean that more significant reforms would be completed. They might still take more than one or two electoral cycles to complete or, once enacted, continue to be politically controversial and subject to change when new governments take power.

There are also other tools that could address short-term bias within the system without a longer term, such as the requirement for the preparation of long-term insights briefings under the Public Service Act 2020 and for Cabinet papers to outline the greenhouse gas emission implications for policy proposals.

A shorter period between elections may impose higher costs

Elections have a range of direct and indirect costs for electoral participants and society more broadly. These include:

- recurring **direct costs** on the Crown to run elections and on political parties to run campaigns
- **opportunity costs** of time spent prioritising campaigning and government formation over day-to-day executive and parliamentary work
- **indirect economic costs** that may arise from uncertainty (including which policies will change post-election), drops in business confidence, and delayed investment.¹³

When elections are more frequent, these costs are incurred more frequently. These costs must be considered in the context of the value of government accountability, as discussed below.

The parliamentary term also needs to support an accountable government, MPs, and Parliament

Regular elections support direct democratic accountability

Elections are a direct way for voters to pass judgement on government and MPs. The current three-year term arguably gives voters more power to set the agenda for government and Parliament. Three-yearly elections may help to ensure government and MPs remain responsive to the public and focused on the implementation and delivery of manifesto policies. They also provide a relatively frequent opportunity for voters to remove governments from power if they lose the confidence of the voting population.

Any extension of the parliamentary term would mean a reduction in this direct democratic accountability to voters. The extent to which this may be considered acceptable would likely depend on the length of any extension, as well as the strength of other accountability mechanisms.

⁷ Cabinet Manual (2017) at [6.5] – [6.40].

⁸ P. Joseph, “The Future of Electoral Law,” p 237.

⁹ Claudia Geiringer, Polly Higbee and Elizabeth McLeay, [What’s the hurry?: urgency in the New Zealand legislative process 1987-2010](#).

¹⁰ Constitutional Advisory Panel, p 62.

¹¹ Gabriele Ciminelli, Davide Furceri, Jun Ge, Jonathan D. Ostry, and Chris Papageorgiou, [The Political Costs of Reforms: Fear or Reality?](#) (IMF Staff Discussion Note, 2019), p 17.

¹² Jonathan Boston, David Bagnall and Anna Barry, *Foresight, insight and oversight: Enhancing long-term governance through better parliamentary scrutiny*, June 2019, p 38.

¹³ Research indicates that indirect economic costs in the form of a drop in business confidence and an increase in business uncertainty are incurred before every election. See New Zealand Institute for Economic Research, [NZIER's QSBO shows pre-election business confidence jitters, Quarterly Survey of Business Opinion - October 2017](#).

MMP has improved the accountability of government

The 1986 Royal Commission intended that the MMP voting system would provide a restraint on the power of governments that might, by itself or alongside other accountability mechanisms, justify a four-year term.¹⁴ Some commentators consider that the introduction of MMP has indeed shifted the balance of power between governments and Parliament, revitalising Parliament so that it now more effectively holds the government to account.¹⁵

Parliament has, for example, become more diverse, with an increase in smaller parties under MMP. This has increased the likelihood of coalition and minority governments.¹⁶ Therefore, Parliament requires more debate and negotiation amongst parties to set a policy programme and pass legislation.¹⁷ As a result, policies and legislation may be more likely to represent a broader range of views and interests.

There are several other checks and balances on Parliament and government

Along with a maximum parliamentary term and the MMP voting system, New Zealand's constitution includes other 'checks' on the government that seek to 'balance' the need for efficient public decisions with controls on public power. Such checks and balances provide accountability by creating transparency and enabling public participation in governmental and parliamentary processes.

One example is the use of the parliamentary select committee process, where a committee with representatives from across Parliament reports back with their views on a draft piece of legislation, after hearing from the public and experts.

An outline of some recent developments that may increase transparency and accountability in policy-making and parliamentary processes is included in **Annex 2**.

There may be opportunities for additional or improved accountability mechanisms

In its report, the Constitutional Advisory Panel noted that the public would be more willing to explore a longer term if there were additional checks and balances to compensate for the reduction in voters' powers.¹⁸

Most accountability measures that could be put in place to improve scrutiny of the system are likely outside of scope of this review. However, some potential examples that have previously been raised¹⁹ include:

- legislative improvements to enhance scrutiny and transparency, such as reform of the Official Information Act 1982
- updates to the Cabinet Manual and Parliamentary Standing Orders to improve Cabinet decision-making and parliamentary processes (including select committee processes²⁰), such as by providing increased scrutiny of human rights and environmental implications of policies
- increased use of referendums
- broader constitutional changes such as introducing an upper house, formalising the constitution into one written document, and adding more members of parliament.

Other impacts of a change to the parliamentary term

Impact on setting the election date

Without a fixed term or election date, there is no guarantee that governments would go to a full term if the maximum term were lengthened. Issues relating to setting the election date are discussed in the next topic in this template.

Impact on local elections

Any changes to parliamentary term will impact local government elections. An extension of the parliamentary term would increase the likelihood of general and local elections falling within the same year. This could cause administrative and political problems as well as potentially overwhelm voters.

Impact on younger voters

A change in parliamentary term would impact younger voters who may have to wait longer to vote for the first time. For example, a person who turned 18 immediately after an election would not be able to vote for the first time until they were 22 (under a four-year term) or 23 (under a five-year term).

Treaty Analysis

We are not aware of any specific analysis or commentary on how the length of the parliamentary term impacts Māori or their viewpoints on the issue. Engagement will provide an opportunity to hear from Māori about their views.

Placing a limit on the length of the parliamentary term – whether three years or some other duration – could be seen as providing a democratic check on the Crown’s exercise of kāwanatanga under Article 1 of te Tiriti/the Treaty. This, in turn, supports the right of Māori to participate in elections as guaranteed by Article 3, as full citizenship rights include those of political participation and representation.

¹⁴ Royal Commission on the Electoral System, p 164

¹⁵ John Wallace “Reflections on Constitutional and Other Issues Concerning Our Electoral System: the Past and the Future”, *Victoria University of Wellington Law Review* (2002), 33:3&4, p 742; A. Geddis, “New Zealand’s Ill-fated Review of MMP”, *Electoral Regulation Research Network Democratic Audit of Australia Joint Working Paper Series* (Working Paper No. 13, November 2013), p 3; R. Miller and P. Lane, “Future of the MMP Electoral System”, in R. Miller (ed.), *New Zealand Government and Politics* (Oxford University Press, Melbourne, 2010, 5th ed), p 181.

¹⁶ Ibid above.

¹⁷ A. Geddis, “The Formation (and Form) of Government under New Zealand’s MMP System” (2006) *Public Law Review*, 17, p 85; J. Boston and D. Bullock, “Experiments in Executive Government under MMP in New Zealand: Contrasting Approaches to Multi-Party Governance” (2009) *New Zealand Journal of Public and International Law*, 7, p 39; J. Boston, “Government formation in New Zealand under MMP: Theory and practice” (2011) *Political Science*, 63, p 79.

¹⁸ Constitutional Advisory Panel, pp 61 and 62.

¹⁹ Ibid.

²⁰ Boston, Bagnall and Barry, p 183.

To exercise kāwanatanga responsibly and to protect Māori rights, the Crown's decision making on matters affecting Māori should be informed by an assessment of Māori interests and te Tiriti/the Treaty. Engaging with Māori in the policy development process helps ensure that policies have accounted for Māori rights and interests and support positive outcomes for Māori. The questions raised about whether the current parliamentary term limits effective policy development and consultation might also impact the Crown's ability to engage with Māori and identify the Treaty implications of policy proposals.

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ANNEX 1: New Zealand Parliamentary Terms

Parliament	Election date	Dissolution or expiry date	Term in years
1	14 Jul-1 Oct 1853	15 Sept 1855	2
2	26 Oct-28 Dec 1855	5 Nov 1860	5
3	12 Dec – 28 March 1860	30 Oct 1865	5
4	12 Feb – 6 Apr 1866	13 Sep 1870	5
5	14 Jan- 23 Feb 1871	21 Oct 1875	4
6	20 Dec – 29 Jan 1875	11 Aug 1879	4
7	28 Aug – 15 Sep 1879	24 Aug 1881	2
8	9 Dec 1881	24 June 1884	3
9	22 Jul 1884	10 June 1887	3
10	26 Sep 1887	18 Aug 1890	3
11	5 Dec 1890	7 Oct 1893	3
12	28 Nov 1893	19 Oct 1896	3
13	4 Dec 1896	24 Oct 1899	3
14	6 Dec 1899	4 Oct 1902	3
15	25 Nov 1902	31 Oct 1905	3
16	6 Dec 1905	12 Oct 1908	3
17	17, 24 Nov + 1 Dec 1908	30 Oct 1911	3
18	7, 14 Dec 1911	20 Nov 1914	3
19	10 Dec 1914	27 Nov 1919	5
20	17 Dec 1919	30 Nov 1922	3
21	7 Dec 1922	14 Oct 1925	3
22	4 Nov 1925	18 Oct 1928	3
23	14 Nov 1928	12 Nov 1931	3
24	2 Dec 1931	1 Nov 1935	4
25	27 Nov 1935	20 Sep 1938	3
26	15 Oct 1938	30 Aug 1943	5
27	25 Sep 1943	4 Nov 1946	3
28	27 Nov 1946	3 Nov 1949	3

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29	30 Nov 1949	27 Jul 1951	2
30	1 Sep 1951	5 Oct 1954	3
31	13 Nov 1954	20 Oct 1957	3
32	30 Nov 1957	31 Oct 1960	3
33	26 Nov 1960	29 Oct 1963	3
34	30 Nov 1963	25 Oct 1966	3
35	26 Nov 1966	28 Oct 1969	3
36	29 Nov 1969	26 Oct 1972	3
37	25 Nov 1972	30 Oct 1975	3
38	29 Nov 1975	26 Oct 1978	3
39	25 Nov 1978	29 Oct 1981	3
40	28 Nov 1981	15 June 1984	2.5
41	14 Jul 1984	21 Jul 1987	3
42	15 Aug 1987	10 Sept 1990	3
43	27 Oct 1990	30 Sept 1993	3
44	6 Nov 1993	27 Aug 1996	3
45	12 Oct 1996	5 Oct 1999	3
46	27 Nov 1999	11 June 2002	2.5
47	27 Jul 2002	2 Aug 2005	3
48	17 Sep 2005	23 Sep 2008	3
49	8 Nov 2008	20 Oct 2011	3
50	26 Nov 2011	14 August 2014	3
51	20 September 2014	22 August 2017	3
52	23 September 2017	6 September 2020	3
53	17 October 2020		

ANNEX 2: Examples of recent accountability developments

Process	Introduction/Current state
Regulatory Impact Statements (RIS)	<p>Prepared prior to Cabinet decisions on policy proposals and published alongside the relevant Bill or regulation. These summarise:</p> <ul style="list-style-type: none"> • the problem that needs to be addressed • options for addressing the problem • the costs and benefits of each option • who has been consulted and their views • proposals for implementation and review.
Departmental Disclosure Statements	<p>Required since August 2013, these are published alongside the introduction of most government bills and substantive supplementary order papers. They outline:</p> <ul style="list-style-type: none"> • available background policy material (such as a published review or evaluation, a relevant international treaty, or regulatory impact statement) • the quality assurance work undertaken by the department during the development of the legislation (such as consultation undertaken, advice received from external reviewers, and any other testing or assessment undertaken), and • any provisions of the proposed legislation considered to be significant, unusual, or deserving of special comment.
Climate Impacts of Policy Assessment (CIPA)	<p>Prepared when papers are submitted to Cabinet for policy approval, CIPAs estimate and disclose the greenhouse gas emission implications for certain policy proposals, including those in which decreasing emissions has been identified as a key policy objective.</p>
Declarations of Inconsistency	<p>In 2018, the Supreme Court held that the High Court has the power to make declarations of inconsistency.²¹ A declaration of inconsistency is a formal statement by a court or tribunal that an enactment is inconsistent with a plaintiff's fundamental human rights protected by the New Zealand Bill of Rights Act 1990 (NZBORA). A declaration does not affect the validity of an Act, or anything done lawfully under that Act.</p> <p>The recently enacted New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill provides a mechanism for the Government and the House of Representatives to consider and, if they think fit, respond to, a declaration of inconsistency made under NZBORA or the Human Rights Act 1993.</p>

²¹ Attorney-General v Arthur William Taylor [2018] NZSC 104.

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Proactive Release	In 2018, Cabinet agreed that, from 1 January 2019, all Cabinet material will be proactively released no later than 30 business days after the final decision, with some exceptions, as a commitment to open government. ²²
Long Term Insights Briefings	<p>The Public Service Act 2020 introduces a new statutory requirement on departmental chief executives to publish a Long-term Insights Briefing at least once every three years. These briefings provide:</p> <ul style="list-style-type: none">• information about medium and long-term trends, risks and opportunities that affect or may affect New Zealand and New Zealand society• information and impartial analysis, including policy options for responding to these matters. <p>These briefings are think-pieces on the future, not government policy.</p>
Standing Order Reviews	<p>Standing Orders of the House of Representatives are the rules of procedure for the House and its committees. They are reviewed by the Standing Orders Committee during each term of Parliament, usually before a general election.</p> <p>Recent changes to the Standing Orders arising from these reviews include provision for a new 'petitions' select committee and the ability to have remote select committee meetings. Provision has also been made for pre-legislative engagement and development plans as an incentive to encourage governments to undertake broad consultation when developing legislation before the introduction of Bills to the House.</p>

²² Cabinet Office Circular CO (18) 4.

Topic: Mechanisms for setting the election date

Status quo

A general election may be called at any time before the three-year maximum term

In New Zealand, a general election can be called at any time before the end of the maximum term, which is three years from the return of the writ of the previous election.²³ There is no minimum length of a parliamentary term. There is also no legally prescribed minimum notice period required for an election to be held. If an election is not called by the maximum term, then Parliament expires and must be dissolved.

Currently, the Electoral Act 1993 only requires that the polling date be held on a Saturday.²⁴

The Governor-General, acting pursuant to the prerogative powers bestowed under the Letters Patent as the Sovereign's representative, has the constitutional role of dissolving Parliament and calling a general election.²⁵ By constitutional convention, this is carried out on the advice of the Prime Minister who has the ultimate decision-making power to choose the election date.²⁶ This system is a part of the Westminster legacy inherited from the United Kingdom.

In recent years, a practice has developed where the Prime Minister announces the election date early in the third year of the electoral cycle.²⁷

There are several core constitutional processes around general elections

The constitutional convention around the Prime Minister choosing the election date relies on the government and Prime Minister still having confidence of the House.²⁸

The government or Prime Minister may lose the confidence of the House through not having majority support for any vote of confidence and supply. This situation has yet to happen under MMP.

If such a situation arose in future, and there was no alternative head of government or parliamentary majority, then the Governor-General would be obliged to call an election. If such an alternative parliamentary majority did exist, the Governor-General could refuse to call an early election to allow for this alternative parliamentary majority to govern.²⁹

The writ for a general election is issued by the Governor-General to the Electoral Commission telling them to prepare arrangements for the general election. The day this occurs is known as the

²³ Constitution Act 1986, s 17(1).

²⁴ Electoral Act 1993, s 139(1)(b).

²⁵ Department of the Prime Minister and Cabinet (DPMC), *Appendix: Letters Patent Constituting the Office of Governor-General of New Zealand 1983*. Section 18 of the Constitution Act 1986 outlines the summoning, proroguing, and dissolution of Parliament.

²⁶ Cabinet Manual (2017), early election at [6.62-6.64], Prime Minister's role at [2.4 and 2.4].

²⁷ Prime Minister Key arguably broke with the earlier tradition by announcing the 2011 election date 9 months beforehand, the 2014 election 7 months before election day and the 2017 date 8 months before election date. Prime Minister Ardern took the same approach announcing the 2020 election date 8 months before the selected date.

²⁸ A. Geddis, *Electoral Law in New Zealand: Practice and Policy* (Wellington, LexisNexis, 2014), p 44.

²⁹ Cabinet Manual (2017), at [1.18].

'writ day' and must occur within one week of Parliament dissolving or expiring.³⁰ The writ must set out the latest day for the nomination of electorate candidates, the date of polling day, and the latest day for the return of the writ.

There are practical limitations on the Prime Minister's power to decide the election date

The Prime Minister's options for polling day can be limited by practical considerations such as the need to enable referendum legislation or for other events such as boundary reviews to be completed. There are no restrictions on the Prime Minister calling an election for political reasons.

Early elections have been rare in New Zealand

In practice, New Zealand governments have almost always completed a three-year term. Early elections have only been called three times:

- In 1951, the National Prime Minister sought to gain a fresh mandate from the people after major national strikes on the wharves. The Prime Minister announced the election on 11 July and polling day was 1 September. This occurred with 15 months remaining in the three-year term.³¹
- In 1984 the National Prime Minister called a snap election after two and a half years following the loss of a vote in the House. The loss of this vote did not mean that the confidence of the House had been lost and constitutionally did not necessitate a general election. The Prime Minister called the election on 14 June and polling date was four weeks later on 14 July.
- In 2002 the Labour Prime Minister called an early election after two and a half years following the collapse of the Alliance party, which was the junior coalition partner in government. The Prime Minister called the election on 12 June and polling day was six weeks later on 27 July.

Issues & opportunities

The process for determining the general election date needs to balance supporting a sufficiently flexible electoral system while also not creating any unreasonable uncertainty or unfairness for electoral participants.

The current arrangements recognise the flexibility New Zealand's MMP system requires

Under MMP, New Zealand typically has coalition or minority governments, which require different political parties to govern effectively together. Coalition or minority governments, which may involve several smaller parties trying to work together, can be unstable.³² The mechanisms for setting election dates therefore relies on a certain amount of flexibility to provide for potentially fluid governing arrangements.

³⁰ Electoral Act 1993, s 125.

³¹ Joseph, "The Future of Electoral Law", p 233.

³² Governing arrangements under MMP typically take the form of coalition, confidence and supply, or cooperation agreements. This can include several different parties depending upon the proportion of party votes provided at the election.

There might be a situation where after an election no agreement or arrangement can be formed sufficient to hold the confidence of the House and governing power.³³ In this case another election might have to be called right away.

If governing arrangements subsequently break down, there is a risk that the government would be unable to continue and might lose the confidence of the House. In these circumstances, an early election might need to be called. However, the current arrangements also allow for a new grouping of parties to agree to govern instead. In 1998, for example, following the collapse of the National-New Zealand First coalition government, a new National-led minority government was formed. This new government gained the confidence of the House and stood for the rest of the parliamentary term.³⁴

The current arrangements can give the governing party an advantage

Where possible, constitutional arrangements should be neutral between political parties and designed to control any tendencies of parties to promote their own interests.

Currently, the Prime Minister can potentially choose an election date that maximises the partisan interest of the governing party. The current process can also provide opposition parties with less notice to prepare for an election.

The impact that this power has in practice is difficult to quantify and academics have differing opinions about the problems with the status quo.³⁵

The current arrangements can create uncertainty for electoral participants

Under the current arrangements, there is uncertainty both around when the polling date will be and when the Prime Minister will make the announcement. This lack of certainty can impact parties, candidates, voters, and wider society.

Certainty and notice are beneficial to parties, candidates, and advocacy groups who need to build a campaign and provide coverage of election issues to engage with voters and promote participation.³⁶ Generally, providing more time and certainty can help improve voter turnout, as voters have more time to enrol to vote and to learn about policies and candidates.

The Electoral Commission noted in its report on the 2020 General Election that it needs at least 14 weeks' notice before election day to prepare for running an election.³⁷ In the run-up to an election, the Electoral Commission's work includes enrolment update campaigns and community engagement programmes, recruiting and training staff, and securing voting places. If fewer than 14 weeks' notice was provided, the Electoral Commission noted that advance voting would need to be limited, with the focus being only on polling day itself.³⁸

³³ Ibid, p 235.

³⁴ Ibid, pp 233-234.

³⁵ Andrew Geddis, *Electoral Law in New Zealand*, pp 48–49; Phillip Joseph, "The Future of Electoral Law", pp 236 and 241.

³⁶ Electoral Commission, *Report of the Electoral Commission on the 2017 General Election*, p 42.

³⁷ Electoral Commission, *Report of the Electoral Commission on the 2020 General Election and referendums*, p 61.

³⁸ *Report of the Electoral Commission on the 2017 General Election*, pp 37, 42.

The election date also impacts other processes, such as the timing for boundary determination and the Māori electoral option.

Several options for changing the election date process have been suggested

Royal Commission on the Electoral System

The 1986 Royal Commission expressed a preference for a minimum term of three and a half years (with a four-year maximum parliamentary term) but with an exception for the situation where a government could no longer govern because it had lost the support of the House. The Commission did not feel a longer term could be implemented without restraint on the right to dissolution.³⁹

Electoral Commission

The Electoral Commission has invited further discussion of legislative change to provide for a fixed election date or a minimum notice period for the general election in both its 2017 and 2020 post-election reports. These recommendations are in **Annex 3**.

Constitutional Advisory Panel

The 2013 Constitutional Advisory Panel considered a fixed election date in New Zealand. It recommended that the government sets up a process, with public consultation and participation, to explore a fixed election date in conjunction with any exploration of a longer term.

The report identified two specific options:

- limiting the Prime Minister's discretion to set the election date to be within a certain period, such as the last year of the term
- codifying the (then) current practice of holding the election on a Saturday towards the end of November.⁴⁰

Other suggested options

There have been several other suggested mechanisms for setting the election date, including:

- allowing for others besides the Prime Minister and governing party to be involved in the decision to dissolve Parliament early (such as the House of Representatives, a cross-party group, the Governor-General, the Supreme Court, or the public)⁴¹
- setting a minimum notice period for elections⁴²
- legislating for a minimum term⁴³
- restricting the circumstances in which an early election can be called (for instance, after the passage of a no confidence motion, the defeat of the budget, or denial of supply)⁴⁴

³⁹ Royal Commission on the Electoral System, pp 155-166. Another exemption would be where, following a change in coalition arrangements, the new Government considered itself obliged to seek a mandate.

⁴⁰ Constitutional Advisory Panel, p 63.

⁴¹ Ibid; Geddis, *Electoral Law in New Zealand*, pp 49-52.

⁴² *Report of the Electoral Law Committee: Inquiry into the report of the Royal Commission on the electoral system* (1988), pp 50-54.

⁴³ Ibid; Geddis, *Electoral Law in New Zealand*, p 49; Boston, Bagnall and Barry, pp 18, 143, 149, and 184.

⁴⁴ *Report of the Electoral Law Committee* (1988), pp 50-54; Kieran Madden (Maxim Institute), "On the parliamentary term: striking the best balance of government effectiveness and accountability" (2013), p 11.

- limiting the length of the parliamentary term after an early election to the remaining time of the original term.⁴⁵

Treaty Analysis

We are not aware of any specific analysis or commentary on how the current mechanism for setting the election date impacts Māori or their viewpoints on the issue. Engagement will provide an opportunity to hear from Māori about their views.

Historically Māori, and especially younger Māori, have the lowest turnout of voters at general elections.⁴⁶ A set election date may provide more time for targeted campaigns and engagement to encourage electoral participation by Māori and other groups who typically have low voter turnout.

⁴⁵ Ibid.

⁴⁶ Electoral Commission, "[Voter turnout statistics for the 2020 General Election](#)".

Annex 3: Relevant Electoral Commission recommendations

Report	Type	Date	#	Recommendation
2017 GE	EC Report	Apr-18	27	The Commission invites further discussion of legislative change to provide for a fixed election date for the general election.
2020 GE	EC Report	May-21	40	The Commission invites further discussion of legislative change to provide for either a fixed election date or a minimum notice period for the general election.

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