

CHAIR
CABINET POLICY COMMITTEE

PROCESSES FOR DISCUSSING ASPECTS OF NEW ZEALAND'S CONSTITUTION

Proposal

- 1 This paper proposes
 - 1.1 the establishment of a select committee to do a stocktake of New Zealand's existing constitutional arrangements;
 - 1.2 draft terms of reference for the review;
 - 1.3 a report back from the Co-ordinating Minister, Race Relations on how the Treaty Information Unit of the State Services Commission can facilitate public discussion on Treaty-related issues.

Review of New Zealand's constitutional arrangements

2. New Zealand is one of only three countries in the world without a full entrenched written constitution (the others are Britain and Israel). Although New Zealand inherited its constitutional system from Britain, the two systems have evolved differently over the last century. The sources of New Zealand's constitution include the prerogative powers of the Queen, New Zealand statutes with constitutional significance (for instance, the Constitution Act, the Electoral Act, the New Zealand Bill of Rights Act), relevant English and United Kingdom statutes which have been incorporated into New Zealand law (such as the Magna Carta), the decisions of the courts, and the Treaty of Waitangi. These formal aspects of the constitution are supplemented by unwritten conventions, which dictate how the institutions and relationships actually work.
3. In light of the foregoing, it is not surprising that New Zealand's constitutional arrangements are not widely understood. From time to time, interest has been expressed in reforming New Zealand's constitution, for example, in the context of the "Building the Constitution" conference in 2000. It is difficult, however, to assess the need for reform in the absence of a good general understanding of the New Zealand constitution as it is now, and without a clear idea of the processes which might be required if reform were determined to be desirable at some point in the future.

4. In the course of the Justice and Electoral Committee's consideration of the Supreme Court Bill, that committee suggested that it would be timely to inquire into New Zealand's constitutional arrangements.
5. Constitutional arrangements reflect a nation's sense of identity. For that reason, any change would require a lot of time, public involvement, good information and discussion.
6. At this point I believe the best course of action is to establish a special select committee, with representation from all those parties in Parliament which wish to participate, to undertake a stocktake of New Zealand's constitutional arrangements. The Committee would not be invited to recommend any substantive reform of our constitution as a result of the inquiry. The Committee could review other countries' experiences of constitutional reform, and look at possible processes for approaching constitutional reform, if in due course that were determined to be desirable.

Public dialogue on the Treaty of Waitangi

7. The constitutional stocktake is likely to raise questions about the place of the Treaty of Waitangi in our constitutional arrangements. This raises a more general issue about the place of the Treaty in contemporary New Zealand, including in our legal and administrative arrangements.
8. Since the Treaty of Waitangi was signed in 1840, successive governments, parliaments and courts have recognised and responded to it in a number of ways. In recent decades, the Treaty has been incorporated in various ways into New Zealand's institutions and arrangements. For example:
 - 8.1 There are references to the Treaty or to principles of the Treaty in a number of statutes. The Waitangi Tribunal has jurisdiction to hear historical and contemporary claims based on breaches of the Treaty of Waitangi.
 - 8.2 The state and local government have developed a range of administrative practices and arrangements which reflect Maori customary practices, for example, with respect to customary fishing.
9. Treaty-related institutions, relationships, legal instruments and arrangements affect all New Zealanders and communities in various ways, but there has been little coherent public information or discussion in the past about the way they have developed or what their contemporary significance is.

10. Currently, the Treaty Information Unit within the State Services Commission has a website focusing on historical events and more information about the Treaty relationship since its signing is under preparation. Information which would allow the public to consider the place of the Treaty in contemporary New Zealand would also be of interest, and should be developed.
11. The co-ordinating the Minister of Race Relations' should report back to Cabinet on how the State Services Commission's Treaty Information Unit might facilitate more public discussion around Treaty-related issues. The Unit already has in place schemes for sponsoring, for instance, workshops for the media, seminars hosted by reputable organisations such as universities, and seminars and hui hosted by community-based organisations, hapu and iwi. It should continue with this work, and also direct a more broadly-based public dialogue on the place of the Treaty in contemporary New Zealand.

Consultation

12. Initial discussions have been held with a range of agencies.

Financial Implications

13. There will be some additional costs incurred by the Treaty Information Unit in developing material on the place of the Treaty in contemporary New Zealand. Those costs will be described in a further paper to Cabinet Policy Committee.

Human Rights, Legislative and Gender Implications, Regulatory Impact and Compliance Cost Statement

14. None of these issues arise at this time.

Recommendations

15. It is recommended that ministers:
 - 1 **note** that New Zealand's constitutional arrangements are complex and not widely understood;
 - 2 **note** that in the course of the Justice and Electoral Committee's consideration of the Supreme Court Bill, that committee suggested that it would be timely to inquire into New Zealand's constitutional arrangements;
 - 3 **agree** that it would be timely for such a review to take place, and that a special select committee should be established to do a stocktake of New Zealand's current constitutional arrangements

and of how other countries which have reviewed their constitutions have done so;

- 4 **approve** the draft terms of reference for a select committee inquiry attached to this paper;
- 5 **note** that there is a more general issue about the place of the Treaty in contemporary New Zealand society;
- 6 **agree** that the Treaty Information Unit should seek to facilitate community discussion on the place of the Treaty in contemporary New Zealand and invite the Co-ordinating Minister, Race Relations to report back on how this might be done, including on the Budget implications.

Helen Clark
Prime Minister

Draft Terms of reference - Inquiry into the New Zealand constitution

Background

New Zealand has unique constitutional arrangements. It is one of only three countries in the world without a full entrenched written constitution. Although New Zealand inherited its constitutional system from Britain, the two systems have evolved quite differently over the last century. The source of New Zealand's constitution include the prerogative powers of the Queen, various statutes, certain decisions of the courts, and the Treaty of Waitangi. These legal aspects of the constitution are supplemented by unwritten conventions, which dictate how the institutions and relationships actually work.

Due to its complexity, New Zealand's constitutional arrangements are not widely understood. From time to time, interest has been expressed in reforming New Zealand's constitution. It is difficult to assess the need for reform, however, in the absence of a good general understanding of the New Zealand constitution as it is now, and without a clear idea of the processes which might be required if reform were determined to be desirable at some point in the future.

In 2003, in the course of consideration of the Supreme Court Bill, the Justice and Electoral Committee suggested that it would be timely to inquire into New Zealand's constitutional arrangements.

Given that a constitution reflects a country's national identity, this inquiry needs to be approached with care. Any change is likely to require a lot of time, public involvement, education and discussion. The focus of the Committee's review reflects this need for a measured approach.

Terms of reference

- 1 A Select Committee established under Standing Order 184(2) ("the Committee") will undertake a review of New Zealand's existing constitutional arrangements, by identifying and describing:
 - 1.1 New Zealand's constitutional development since 1840;
 - 1.2 the key elements in New Zealand's constitutional structure, and the relationships between those elements; and
 - 1.3 the sources of New Zealand's constitution.
- 2 The Committee will also review and report on:
 - 2.1 the processes which other countries have followed in undertaking a range of constitutional reforms;
 - 2.2 the processes which it would be appropriate for New Zealand to follow if significant constitutional reforms were to be considered in the future.