

Appendix 6: Terms of Reference for a Crown-Māori Relationship Instruments Central Repository and Database

1 Underlying authority

On 2 August 2004 after consideration of the recommendations of POL on the Crown-Māori Relationship Instruments policy framework, Cabinet:

- 1.1 agreed to the creation of a central repository and database within Te Puni Kōkiri of all CMRI to:
 - advise Ministers and agencies on any issue in relation to particular CMRI, and specifically on issues of consistency among and within CMRI
 - inform government oversight of CMRI and review of the CMRI policy framework.
- 1.2 agreed that a copy of all CMRI be sent to Te Puni Kōkiri to form part of the CMRI database as follows:
 - every new CMRI
 - every existing CMRI not already provided to the ad hoc officials group, as previously directed by Cabinet during the development of the CMRI policy framework.
- 1.3 directed the Ministry of Justice and Te Puni Kōkiri to report annually to POL on trends in CMRI and any parts of the CMRI policy framework needing review with the first report due by 31 October 2005.
- 1.4 agreed to the following process for approving CMRI: the Ministry of Justice and Te Puni Kōkiri should check proposed CMRI before execution to ensure that the proposed instruments comply with the policy framework and with other applicable policy and legislation. Non-complying CMRI would be submitted to POL for approval.

[CAB Min (04) 25/8]

2 Use of database

- 2.1 Based on the Cabinet directives, the database will be used to:
 - 2.1.1 provide Ministers with advice on any issue that arises in relation to individual CMRI, or on trends in CMRI
 - 2.1.2 advise agencies on issues in relation to CMRI they are developing, especially in relation to: issues of consistency relating to mandate, rohe, representative capacity; use of Treaty of Waitangi statements; and other important acknowledgements
 - 2.1.3 enable government oversight of trends in CMRI

- 2.1.4 enable yearly reporting on CMRI to POL
- 2.1.5 enable officials from the Ministry of Justice and Te Puni Kōkiri to perform their vetting function for draft CMRI
- 2.2 Primarily for the purposes described at 2.1.2 and 2.1.5, the database will be searchable to inform officials where CMRI have previously:
- attributed a mandate to a specific Māori Collective over a people, area and/or issue
 - recognised/defined a rohe/area of interest
 - acknowledged tangata whenua or mana whenua status
 - created obligations for the Crown with the same Māori Collective
 - created obligations for the same agency with different Māori Collective
 - included a Treaty statement in the CMRI.
- 2.3 The database will also be used by Te Puni Kōkiri in its function as the chief adviser to the Crown on its relationship with Māori.

3 Responsibilities, access, and release of information

- 3.1 The database will be administered by Te Puni Kōkiri. It will be set up both electronically and in hard-copy form. Access to the database will generally be restricted to officials from Te Puni Kōkiri who are engaged in work for the purposes described at clause 2.1.1-2.1.5 and 2.3 above.
- 3.2 A permanent Crown-Māori Relationship Instruments officials group will be constituted, made up of officials from the Ministry of Justice and Te Puni Kōkiri. The officials group will have the responsibility of using the database to check consistency among and between CMRI. The information contained in the database will be accessed by an officials group member where they are engaged in work for the purposes described at clause 2.1.1-2.1.5 above. Ministry of Justice officials will gain this access through responsible officials at Te Puni Kōkiri.
- 3.3 Other persons able to gain access to the database through Te Puni Kōkiri officials will be:
- parties to CMRI, to their own CMRI and only through their designated representatives
 - the Crown Law Office, to advise on matters in relation to CMRI
 - government agencies, conditional on the agreement of the parties to the CMRI
 - persons to whom the release of information is required by law.
- 3.4 Release of information contained within the database will be governed by the provisions of the Official Information Act 1982 and

the Privacy Act 1993. Te Puni Kōkiri will notify the parties to the CMRI where a request for release under the Official Information Act 1982 is received and of the outcome of the request.

4 Deliverables

- 4.1 Where the Crown-Māori Relationship Instrument officials group receives:
- a request for advice on consistency among CMRI from an agency or
 - a CMRI as part of the approvals process agreed by Cabinet,
- and may be aided by accessing the database, the officials group will reply within 7 days of receipt with a statement of the expected timeframe a response will require. That timeframe will be determined by the officials group, but will be reasonable taking into account available resources.
- 4.2 Te Puni Kōkiri and the Ministry of Justice will report yearly to POL on trends in and issues for CMRI. The database will be used to aid this purpose.

5 Commencement and review of Terms of Reference

- 5.1 Operation of these Terms of Reference will commence on promulgation of the Guidelines for CMRI.
- 5.2 These Terms of Reference will be reviewed one year after the commencement date.

Office of the Hon Mark Burton
Minister of Justice

Chair
Cabinet Business Committee

Government Response to the Constitutional Arrangements Committee's report on New Zealand's existing constitutional arrangements

Proposal

- 1 This paper seeks approval of the Government response to the Constitutional Arrangements Committee's ("the Committee") report on New Zealand's existing constitutional arrangements.

Executive summary

- 2 A report entitled '*Inquiry to review New Zealand's existing constitutional arrangements*' was presented to the House on 10 August 2005.
- 3 The Committee has recommended that the following generic principles should underpin all discussions of constitutional change: fostering more widespread understanding of New Zealand's constitutional arrangements; and providing accurate, neutral and accessible information on constitutional issues; a generous amount of time for community debate; and a specific process for facilitating discussion with Maori communities. It is proposed that the Government response: agrees to give further consideration to the idea of establishing generic principles to guide significant constitutional change; and notes the importance of also considering how and when such principles should be applied in order to ensure that the process can be tailored depending on the nature of the constitutional change in question.
- 4 The Committee recommends increased effort to improve civics and citizenship education in schools. It is proposed that the Government response: agrees that more should be done to improve civics and citizenship education in schools; outlines the process the Ministry of Education is currently undertaking to strengthen citizenship education in the New Zealand curriculum; and notes the Government's commitment to continue to assess what more it can do in other forums to strengthen civic awareness among our young people.
- 5 The Committee also recommends that the Government consider whether an independent institute could foster better public understanding and debate on New Zealand's constitutional arrangements. It is proposed that the Government response notes that there are a number of issues associated with the establishment of an independent institute;

notes that the Government considers that an independent institute is unlikely to be the best mechanism for achieving greater public understanding and more informed debate on New Zealand's constitutional arrangements; and agrees that as part of the further work that the Government proposes to do on the generic principles in response to recommendation 1, the Government will give further consideration to the role that government and other groups/organisations can play in providing information and facilitating discussion and debate.

- 6 Pursuant to Standing Order 253, the Government response must be presented to the House by 5 February 2006.

Background

- 7 The House of Representatives established the Committee on 14 December 2004. Its terms of reference were to undertake a review of New Zealand's existing constitutional arrangements by identifying and describing:

- i. New Zealand's constitutional development since 1840;
- ii. The key elements in New Zealand's constitutional structure, and the relationships between those elements;
- iii. The sources of New Zealand's constitution;
- iv. The process other countries have followed in undertaking a range of constitutional reforms; and
- v. The processes which it would be appropriate for New Zealand to follow if significant constitutional reforms were considered in the future.

- 8 The Committee was established for the life of the 47th Parliament with seven members drawn from New Zealand Labour (4), Green Party (1), ACT New Zealand (1), and United Future (1). The National and New Zealand First parties decided not to participate. The Committee presented its report on 10 August 2005.

The Constitutional Arrangements Committee's findings

- 9 The Committee's overall conclusion is that:
 - i. New Zealand's constitution is not in crisis;
 - ii. The lack of consensus on what is wrong, and how or whether it could be improved, means that the costs and risks of attempting significant reform could outweigh those of persisting with current arrangements; and
 - iii. Although there are problems with the way our constitution operates at present, none are so apparent or urgent that they compel change now or attract the consensus required for significant reform.
- 10 However, the Committee makes three recommendations to Government.

Recommendation One: Generic Principles

- 11 The Committee commented that there is minimal legal prescription for the way constitutional change occurs in New Zealand, and the process of constitutional change has always been pragmatic. The only rules about constitutional change that require something more than ordinary legislation are the handful of entrenched provisions in the Electoral Act 1993 and the Constitution Act 1986. The Committee considers that the flexibility of our constitutional arrangements means that a process can be tailored to the actual importance of the reform.
- 12 The Committee recommended that generic principles should underpin all discussions of constitutional change in the absence of any prescribed process:
 - i. A first step must be to foster more widespread understanding of the practical implications of New Zealand's current constitutional arrangements and the implications of any change;
 - ii. Specific effort must be made to provide accurate, neutral, and accessible public information on constitutional issues, along with non-partisan mechanisms to facilitate ongoing local and public discussion;
 - iii. A generous amount of time should be allowed for consideration of any particular issue, to allow the community to absorb and debate the information, issues and options; and
 - iv. There should be specific processes for facilitating discussion within Maori communities on constitutional issues.

Government response

- 13 Constitutional change can vary significantly. At one end of the spectrum is significant change, such as changes to New Zealand's electoral laws, or changes that affect New Zealand's national identity (e.g. the development of an entrenched written constitution). The principles identified by the Committee (or similar principles) may be a helpful guide for discussion involving these kinds of changes.
- 14 Some changes, however, are essentially technical, or of interest only to a limited group (e.g. changes to Executive Council procedures). I assume that the Committee did not intend for the principles to apply to changes of this kind. Although the Committee's recommendation does not make it explicit, it seems from the body of the report that the recommended principles are intended to apply only to proposals for significant constitutional change.
- 15 Other changes, particularly those involving changes to unwritten constitutional conventions, may evolve gradually over the course of time (e.g. the changes to the caretaker convention that occurred over a twenty year period from 1984). The principles set out by the Committee might not be suitable for changes concerning the evolution of constitutional conventions.

- 16 I propose that the Government response agrees to give further consideration to the idea of establishing generic principles to guide significant constitutional change. The response should also note the importance of considering how and when such principles should be applied, in order to ensure that the process can be tailored depending on the nature of the constitutional change in question.

Recommendation Two: Civic and citizenship education in schools

- 17 The Committee commented that underpinning all possible future processes is the importance of good information being made available to the public and the need to foster understanding of New Zealand's constitutional arrangements. The Committee considered that in the future information may need to be provided on the advantages and disadvantages of possible changes. But for now, the need is simply to foster understanding of the status quo. The Committee expressed concern that too many New Zealanders do not have sufficient understanding of our current system. The Committee added its voice to those who call for greater concentration on civics and citizenship education in schools. The Committee said that providing young people with the knowledge they need to become informed and engaged citizens continues to need greater emphasis.
- 18 The Committee recommended that to foster greater understanding of our constitutional arrangements in the long term, increased effort should be made to improve civics and citizenship education in schools to provide young people with the knowledge needed to become responsible and engaged citizens.

Government response

- 19 In 2000, the Ministry of Education initiated a stocktake of the New Zealand curriculum, which coincided with a recommendation from a previous Justice and Electoral Committee¹. The stocktake concluded that there should be more emphasis in the curriculum on citizenship (local, national and global).
- 20 In March 2003, Cabinet agreed to the establishment of the New Zealand Curriculum Project to address the recommendations in the stocktake report. This project is redeveloping the national curriculum so that the values, understandings and competencies for New Zealand students are clearly articulated and there is clear focus on the quality of teaching. Through this process citizenship education will be made more explicit in the national curriculum. Schools will be consulted in 2006 and the new curriculum will be implemented in 2007.
- 21 I propose that the Government response: agrees that more should be done to continue to improve civics and citizenship education in schools;

¹ Justice and Electoral Committee *Inquiry into the 1999 General Election* presented to Parliament on 18 December 2001.

outlines the process the Ministry of Education is currently undertaking to strengthen citizenship education in the New Zealand curriculum; and notes the Government's commitment to continue to assess what more it can do in other forums to strengthen civic awareness among our young people, for example, celebrations of national events, open days at courts and citizenship ceremonies.

Recommendation Three: Independent Institute

- 22 The Committee also reached the view that it may be desirable for the Government to consider establishing a new and independent institute, with the specific function of fostering public understanding of constitutional issues. It should be independent from the political process, but not disconnected from it, and requires a solid grounding in constitutional expertise. The Committee commented that any such institute should not commence its function of fostering public understanding of constitutional issues before a negotiated engagement model is formulated, appropriate to the needs and expectations of Maori and Pakeha.
- 23 The Committee recommended that the Government consider whether an independent institute could foster better public understanding of, and informed debate on, New Zealand's constitutional arrangements.

Government response

- 24 Officials consider that this recommendation raises certain issues including:
 - i. The institute's relationship with the Executive and Legislature must be considered. Should the institute provide advice to government departments and/or select committees on constitutional issues or just provide public education? What will be the relationship between the institute and any select committee that may be established to consider constitutional implications in the course of Parliament's work?
 - ii. The matter of how any institute should be funded must be determined. Should it be funded through an appropriation of Parliament, or through Vote Justice, or another government Department?
 - iii. The appropriate structure must be determined. Should the institute be stand alone or attached to an existing organisation? Should it be a government organisation, for example an Independent Crown entity, or should it be a non-government organisation? Who should the institute be accountable to and for what?
 - iv. The purpose of the institute is unclear. What will it actually do and how will it do it? What resources and expertise will it need?

v. What can New Zealand learn from international comparisons?

25 I propose that the Government response acknowledges the importance of increasing public understanding of our current constitutional arrangements; notes that there are a number of issues associated with the establishment of an independent institute including its purpose, accountability, mandate, relationships with other institutions, and funding; notes that the Government considers that an independent institute is unlikely to be the best mechanism for achieving greater public understanding and more informed debate on New Zealand's constitutional arrangements; but agrees that as part of the further work that the Government proposes to do on the generic principles in response to recommendation 1, the Government will give further consideration to the role that government and other groups/organisations can play in providing information and facilitating discussion and debate.

Timing of the Government Response

26 The Government response must be tabled in the House by 5 February 2006.

Consultation

27 This paper was prepared by the Ministry in consultation with Cabinet Office. The Ministry of Education, Electoral Commission, Electoral Enrolment Centre, the New Zealand Qualifications Authority and the Department of Internal Affairs have also been consulted.

Financial implications

28 The financial implications of increasing citizenship education in schools will be considered in the context of the amendments to New Zealand's curriculum proposed by the Ministry of Education.

Publicity

29 No publicity is planned in relation to the tabling of the Government response.

Recommendations

30 The Minister of Justice recommends that the Cabinet Business Committee:

1 **note** that on 10 August 2005 the Constitutional Arrangements Committee presented its report to the House entitled '*Inquiry to review existing constitutional arrangements*';

Generic principles

- 2 **note** that the Constitutional Arrangements Committee recommended to Government that the following generic principles should underpin all discussions of constitutional change in the absence of any prescribed process:
 - i. A first step must be to foster more widespread understanding of the practical implications of New Zealand's current constitutional arrangements and the implications of any change;
 - ii. Specific effort must be made to provide accurate, neutral, and accessible public information on constitutional issues, along with non-partisan mechanisms to facilitate ongoing local and public discussion;
 - iii. A generous amount of time should be allowed for consideration of any particular issue, to allow the community to absorb and debate the information, issues and options; and
 - iv. There should be specific processes for facilitating discussion within Maori communities on constitutional issues;
- 3 **agree** to give further consideration to the idea of establishing generic principles to guide significant constitutional change;
- 4 **note** the importance of consideration being given to how and when such principles should be applied, in order to ensure that the process can be tailored depending on the nature of the constitutional change in question;

Civics and citizenship education

- 5 **note** that the Constitutional Arrangements Committee recommended that to foster greater understanding of our constitutional arrangements in the long term, increased effort should be made to improve civics and citizenship education in schools to provide young people with the knowledge needed to become responsible and engaged citizens;
- 6 **agree** that more should be done to continue to improve civic and citizenship education in schools;
- 7 **note** the process the Ministry of Education is currently undertaking to strengthen citizenship education in the New Zealand curriculum; and
- 8 **note** the Government's commitment to continue to assess what more it can do in other forums to strengthen civic awareness among

our young people, for example, celebrations of national events, open days at courts and citizenship ceremonies.

Independent institute

- 9 **note** that the Constitutional Arrangements Committee recommended that the Government consider whether an independent institute could foster better public understanding of, and informed debate on, New Zealand's constitutional arrangements;
- 10 **note** that there are a number of issues associated with the establishment of an independent institute, including its purpose, accountability, mandate, relationships with other institutions, and funding;
- 11 **agree** that the Government considers that an independent institute is unlikely to be the best mechanism for achieving greater public understanding and more informed debate on New Zealand's constitutional arrangements;
- 12 **agree** that as part of the further work the Government proposes to do on the generic principles (as outlined in recommendations 2 to 4 above), the Government will give further consideration to the role that government and other groups/organisations can play in providing information and facilitating discussion and debate;
- 13 **approve** the Government response, attached to this submission, to the Report of the Constitutional Arrangements Committee entitled "Government Response to Report of the Constitutional Arrangements Committee on its *Inquiry to review New Zealand's existing constitutional arrangements*";
- 14 **note** that the Government response must be presented to the House by 5 February 2006;
- 15 **invite** the Minister of Justice to present the Government response to the House in terms of Standing Order 253.



Hon Mark Burton
Minister of Justice

**Government Response to
Report of the Constitutional Arrangements Committee on
*Inquiry to review New Zealand's existing constitutional arrangements***

**Presented to the House of Representatives
in accordance with Standing Order 253**

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

**Government Response to Report of the Constitutional Arrangements Committee
on *Inquiry to review New Zealand's existing constitutional arrangements***

Introduction

The Government welcomes the Committee's report which makes a valuable contribution to advancing discussion of New Zealand's existing constitutional arrangements.

The Committee has made three recommendations to the Government. The Government responds to those recommendations in the report in accordance with Standing Order 253.

The Government proposes to give further consideration to the idea of establishing generic principles to guide significant constitutional change and agrees that more should be done to continue to improve civics and citizenship education in schools. The Government considers that an independent institute is unlikely to be the best mechanism for achieving greater public understanding and more informed debate on New Zealand's constitutional arrangements. As part of the further work that the Government proposes to do on the generic principles in response to recommendation 1, however, the Government will give further consideration to the role that government and other groups/organisations can play in providing information and facilitating discussion and debate.

Recommendations and Government response

The Constitutional Arrangements Committee recommends to the Government that:

Recommendation 1:

Some generic principles should underpin all discussions of constitutional change in the absence of any prescribed process.

- (a) The first step must be to foster more widespread understanding of the practical implications of New Zealand's current constitutional arrangements and the implications of any change.
- (b) Specific effort must be made to provide accurate, neutral, and accessible public information on constitutional issues, along with non-partisan mechanisms to facilitate ongoing local and public discussion. (By majority¹)
- (c) A generous amount of time should be allowed for consideration of any particular issue, to allow the community to absorb and debate the information, issues and options.
- (d) There should be specific processes for facilitating discussion within Maori communities on constitutional issues. (By majority²)

¹ The ACT New Zealand member dissents from public education proposals he considers susceptible to partisan promotion, as explained in the report.

Response:

Constitutional change can vary significantly. At one end of the spectrum is significant change, such as change to New Zealand's electoral laws. Some changes, however, are essentially technical, or of interest only to a limited group (e.g. change to Executive Council procedures). Other changes, particularly those involving changes to unwritten constitutional conventions, may evolve gradually over the course of time (e.g. the changes to the caretaker convention that occurred over a twenty year period from 1984).

The Government agrees to give further consideration to the idea of establishing generic principles to guide significant constitutional change. The Government intends to give further consideration to that issue, including the nature of possible principles of that kind. It will be important to consider also how and when such principles should be applied, in order to ensure that the process can be tailored depending on the nature of the constitutional change in question.

Recommendation 2:

To foster greater understanding of our constitutional arrangements in the long term, increased effort should be made to improve civics and citizenship education in schools to provide young people with the knowledge needed to become responsible and engaged citizens.

Response:

The Government agrees that more should be done to continue to improve civics and citizenship education in schools.

In 2000, the Ministry of Education initiated a stocktake of the New Zealand curriculum. The stocktake concluded that there should be more emphasis in the curriculum on citizenship (local, national and global).

In March 2003, the Government agreed to the establishment of the New Zealand Curriculum Project to address the recommendations in the stocktake report. This project is redeveloping the national curriculum so that the values, understandings and competencies for New Zealand students are clearly articulated and there is clear focus on the quality of teaching. Through this process citizenship education will be made more explicit in the national curriculum. Schools will be consulted in 2006 and the new curriculum will be implemented in 2007.

Strengthening citizenship education in schools is one way that the Government can ensure that young people have the knowledge needed to become responsible and engaged citizens. The Government is also committed to continuing to assess what more it can do in other forums to strengthen civic awareness among our young people, for example, celebrations of national events, open days at courts and citizenship ceremonies.

² The ACT New Zealand member dissents from public education proposals he considers susceptible to partisan promotion, as explained in the report.

Recommendation 3:

The Government might consider whether an independent institute could foster better public understanding of, and informed debate on, New Zealand's constitutional arrangements, as proposed in this report. (By majority³)

Response:

The Government acknowledges the importance of increasing public understanding of our current constitutional arrangements. The Committee has made a significant contribution to this through its report.

The Committee's proposal to establish an independent institute raises a number of issues, including its purpose, accountability, mandate, relationships with other institutions, and funding. The Government considers that an independent institute is unlikely to be the best mechanism for achieving greater public understanding and more informed debate on New Zealand's constitutional arrangements. As part of the further work that the Government proposes to do on the generic principles in response to recommendation 1, however, the Government will give further consideration to the role that government and other groups/organisations can play in providing information and facilitating discussion and debate.

Conclusion

The Government recognises the importance of the work that the Committee has undertaken and the value of the Committee's report in advancing discussion of constitutional issues.

The Government proposes to give further consideration to the idea of establishing generic principles to guide significant constitutional change and agrees that more should be done to continue to improve civics and citizenship education in schools. The Government considers that an independent institute is unlikely to be the best mechanism for achieving greater public understanding and more informed debate on New Zealand's constitutional arrangements. As part of the further work that the Government proposes to do on the generic principles in response to recommendation 1, however, the Government will give further consideration to the role that government and other groups/organisations can play in providing information and facilitating discussion and debate.

³ The ACT New Zealand member dissents from public education proposals he considers susceptible to partisan promotion, as explained in the report.

Office of the Minister of Justice

Cabinet Policy Committee

A NEW PROCEDURE FOR CONSIDERING SIGNIFICANT CONSTITUTIONAL CHANGE**Proposal**

- 1 This paper:
 - a. proposes a new procedure to ensure that Cabinet is able to give systematic consideration to the principles underlying, and the level of public participation in, future significant constitutional reform; and
 - b. reports back on the progress of civics and citizenship education in schools.

Executive summary

- 2 This paper responds to the issues raised in the report of the Constitutional Arrangements Committee's inquiry into New Zealand's existing constitutional arrangements. One focus of that report was on empowering the public to participate in discussions about constitutional issues, particularly where significant reform is proposed. In part, that requires a procedure to ensure constitutional reform processes include systematic consideration of the appropriate level of public discussion and participation for the reform in question. It also requires adequate civics and citizenship education, and other information resources, to ensure the public is well-informed and motivated to participate.
- 3 The new procedure proposed in this paper will ensure that where the Executive proposes significant legislative constitutional reform, it considers the principles underlying, and the appropriate level of public participation in, that reform. The new procedure will preserve the constitution's responsiveness to change while minimising the risks associated with an unentrenched, partially-written constitution. Other options considered do not have these advantages.
- 4 Under the proposed procedure, key Ministers (the Prime Minister, the Attorney-General and the Minister of Justice), in consultation with other Ministers as appropriate, will assess any legislative proposal initiated by the Executive that has constitutional implications. If those Ministers consider the proposed reform could affect important constitutional relationships or principles, a "constitutional reform statement" will be prepared to accompany the proposed policy when it is considered by Cabinet.
- 5 The constitutional reform statement will explicitly address the constitutional significance of the proposal, those affected by it, options for the reform process, and appropriate means of facilitating public participation. This will ensure that explicit consideration is given to the reform process and the level of public participation needed, in light of the nature and significance of the reform. Each constitutional reform statement will be made publicly available at an appropriate time.
- 6 A key to more effective public participation in constitutional matters is an informed public. While there is much activity on civics and citizenship education, a better assessment of the adequacy of that education will be possible after the 2008 International Civics and Citizenship Education Study. That study will provide useful benchmark information and be a planning tool for civics and citizenship education projects into the future.

Background

- 7 In August 2005 the Constitutional Arrangements Committee ("the Committee") reported on its inquiry into New Zealand's existing constitutional arrangements. The Committee recommended that, in the absence of any prescribed process, the following generic principles should underpin all discussions of constitutional change:
 - a. there is a need to foster more widespread understanding of the practical implications of New Zealand's current constitutional arrangements and the implications of any change;
 - b. effort must be made to provide accurate, neutral and accessible public information on constitutional issues, along with non-partisan mechanisms to facilitate ongoing local and public discussion;
 - c. a generous amount of time should be allowed for consideration of any particular issue, to allow the community to absorb and debate the information, issues and options;
 - d. there should be specific processes for facilitating discussion with Maori communities on constitutional issues.
- 8 To underpin the reform process, the Committee also recommended that attention should be paid to fostering the understanding of New Zealand's constitutional arrangements in the long term, by improving civics and citizenship education in schools to provide young people with the knowledge needed to become responsible and engaged citizens.
- 9 The government undertook to do further work on some of the issues raised in the Committee's report. In December 2005 Cabinet directed officials from the Ministry of Justice, in consultation with the Cabinet Office and other government agencies as appropriate, to report to the Cabinet Policy Committee by August 2006 (later extended to December 2006) on the following issues [CBC Min (05) 20/6 refers]:
 - a. the establishment of generic principles to guide significant constitutional change;
 - b. the improvement of civic and citizenship education in schools;
 - c. the role that government and other groups/organisations can play in providing information and facilitating discussion and debate.
- 10 It has become clear that establishing generic principles and articulating the roles of government and other organisations in facilitating discussion and debate are only part of the answer. The underlying issue is how to ensure the generic principles are always considered, and the appropriate level of debate is facilitated, when considering significant constitutional reform. This paper outlines a new procedure to achieve that. Part 1 of this paper therefore responds to (a) and (c) above, and Part 2 addresses (b) above.

Part I: A new procedure for significant constitutional change

Options

- 11 Three approaches could be applied in the future in relation to significant constitutional reform:
 - option 1 – retain the status quo (no special requirements about process);

- option 2 – introduce mandatory procedures such as binding referendums;
 - option 3 – adopt a new procedure for considering process options and public participation issues for significant constitutional reform.
- 12 An important criterion deciding between these approaches is the extent to which each approach will retain the advantages of New Zealand's flexible and responsive constitution, while minimising the risks associated with an unentrenched, partially-written constitution.
- 13 The advantages of New Zealand's constitutional arrangements are:
- a. The approach to constitutional reform is relatively informal, pragmatic and incremental – change tends to be evolutionary rather than revolutionary.
 - b. Constitutional development is flexible and has been responsive to social change (for example, the enactment of the New Zealand Bill of Rights Act 1990).
 - c. Technical issues can easily be addressed (minor amendments to the Constitution Act 1986, for example, can be effected by an ordinary legislative amendment).
- 14 Nevertheless some risks arise from the nature of New Zealand's constitutional arrangements:
- a. In the absence of an entrenched written constitution, the formal processes required to effect radical constitutional change are comparatively straightforward and can be passed by a simple majority in the House. This is the case even for reforms striking at the heart of our constitutional values – removing, for example, basic human or democratic rights.
 - b. The main constraints on the exercise of executive power are media scrutiny, parliamentary scrutiny, judicial scrutiny, the need to obtain political support, regular general elections, and the need to act within the law. These checks may not be sufficient to prevent radical constitutional reform proceeding through statutory amendment with a simple majority, particularly if the process is not transparent, is not widely consulted, and is concluded quickly.
- 15 Successive administrations in New Zealand have recognised that engaging with the public is particularly important where constitutional reform is proposed, because such reform (by definition) affects fundamental relationships, institutions, rights and obligations.

Comment

- 16 While the possibility of an abuse of power may seem remote in this country, it has occurred elsewhere, and the risk should be minimised if possible. Maintaining the status quo (option 1) is therefore not recommended.
- 17 The risk could be minimised by introducing mandatory procedures for significant constitutional change (option 2). Such mandatory procedures might include a national referendum or a 75 percent majority in the House. Mandatory procedures, however, lack flexibility and responsiveness, and can act to prevent sensible change. Furthermore, it would be difficult to define precisely what constitutional changes would have to be subject to such a procedure.
- 18 While mandatory procedures are used in Australia and Canada, to some extent that is because they are federal jurisdictions with written constitutions. New Zealand's constitutional context is different. The United Kingdom, on whose system New

Zealand's constitution is founded, uses a range of discretionary mechanisms to ensure public participation in constitutional reform processes. I consider that the more flexible approach used in the United Kingdom is more suited to the New Zealand context.

Recommendation

- 19 I therefore recommend Option 3. This option would minimise the risks noted above by ensuring that the issue of public participation is fully and transparently addressed when constitutional reform is proposed. It would enable New Zealand's constitution to remain flexible and responsive by ensuring public participation is at a level appropriate to the nature and magnitude of the proposed change.

Preferred option – Give systematic consideration to the generic principles guiding, and level of public participation in, significant constitutional reform

- 20 I propose that Cabinet create a new procedure for considering which processes are most appropriate for any legislative reform that is constitutionally significant in nature and scope. This procedure is based on two underlying policy premises:
- a. that meaningful public participation is important to any significant constitutional reform process;
 - b. that the process for constitutional reform should remain transparent, flexible, and responsive.
- 21 The procedure will have two steps:
- a. consider whether a legislative reform proposal is significant enough to meet the threshold;
 - b. if the threshold is met, prepare a "constitutional reform statement" including consideration of reform process options and the issue of public participation.

Step one: Threshold Criteria

- 22 To decide whether a particular reform proposal meets the threshold, the Prime Minister, Attorney-General and Minister of Justice (supported by the Cabinet Office, Crown Law Office and the Ministry of Justice) would determine whether the proposal affects a principal part of the constitution, and whether it raises an important question of constitutional principle.
- 23 Whether the proposed reform would affect a principal part of the constitution would depend on whether it would:
- a. alter the laws that establish the basic institutions of the state, which include the Head of State, the legislature, the executive, and the judiciary;
 - b. alter the laws that govern the relationships between or the powers of those institutions of the state;
 - c. alter the legal relationship between the public and any or all of the institutions of state;
 - d. significantly affect the legislative constraints on, or manner of, exercising public power.
- 24 Determining whether an important question of constitutional principle is raised would be a matter of judgement, and should include consideration of principles such as: democracy; the rule of law; the rights of the individual and respect for minorities; the

separation of powers; the unique relationship of Maori with the state based on the Treaty of Waitangi; judicial independence; parliamentary sovereignty; and the maintenance of government that is secular, transparent, representative, and accountable.

- 25 To make this determination, the three Ministers may consult with other relevant Ministers where the proposal raises issues within another portfolio. For example, constitutional reform impacting on the position of Maori or the concept of citizenship could require consultation with the Minister of Maori Affairs or the Minister of Internal Affairs respectively.

Step two: The constitutional reform statement

- 26 If the three Ministers (the Prime Minister, Attorney-General and Minister of Justice) consider that the proposed legislative reform meets the threshold, a "constitutional reform statement" would be required to be submitted to Cabinet with the paper proposing the reform.

Procedure for preparing the statement

- 27 The procedure for preparing the statement would be as follows:
- a. The Ministry of Justice, the Cabinet Office and the Crown Law Office would assist the relevant portfolio agency to prepare the statement for consideration by the three Ministers. The statement would succinctly canvass the nature of the change and its significance, options for the reform process, and the degree of public education and consultation appropriate for the circumstances.
 - b. The three Ministers would consider the constitutional reform statement in light of (i) the government's commitment to meaningful public participation, and (ii) the nature and scope of the proposed reform. Other Ministers would be consulted as appropriate where issues relevant to their portfolios are raised.
 - c. Once agreed to by the three Ministers, the constitutional reform statement would be attached to the policy paper and submitted to Cabinet for consideration. At the appropriate time, it would be made publicly available (via the appropriate website, for example).

Content of the constitutional reform statement

- 28 I propose that the constitutional reform statement address key issues such as:
- a. The nature of the constitutional reform proposed and its significance.
 - b. The institutions, groups, or constitutional relationships affected by the reform and the nature of that effect. This would include consideration of any impact on Maori or the Crown's Treaty relationship with Maori.
 - c. Options for the reform process.
 - d. Appropriate means of consulting with the public or identified stakeholders or otherwise enabling their participation in the reform process. These means might range from the consultation involved in ordinary legislative processes, through to a full education programme and binding referendum.
 - e. Key public sector agencies and non-government organisations that could provide information and/or facilitate debate on the proposed constitutional reform, if required. This decision would be made on a case by case basis. Appendix A lists a number of agencies and organisations that could be called on, depending on

the nature of the reform. If existing agencies were not suitable to carry out this role, other possibilities might conceivably include a Royal Commission of Inquiry, an eminent persons group, a citizens' assembly, a series of hui, or a select committee inquiry or other multiparty parliamentary process.

Implementing the procedure

- 29 I propose that the constitutional reform statement procedure be implemented by way of a Cabinet Office circular, and subsequently be incorporated into the Cabinet Manual.

Part II: Improving civics and citizenship education for young people

Background

- 30 The Committee's report recommended the fostering of greater understanding of our constitutional arrangements through improved civics and citizenship education in schools, in order give young people the knowledge and skills to become responsible and engaged citizens.
- 31 After considering this recommendation, Cabinet:
- a. agreed that more should be done to continue to improve civics and citizenship education in schools; and
 - b. noted the process the Ministry of Education is currently undertaking to strengthen citizenship education in the New Zealand curriculum; and
 - c. noted the Government's commitment to continue to assess what more it can do in other forums to strengthen civic awareness among New Zealand's young people, for example, celebrations of national events, open days at courts and citizenship ceremonies [CBC Min (05) 20/6 refers].

Comment

- 32 I agree with the Committee that fostering civics and citizenship education is very important.
- 33 It is not clear whether the Committee assessed the current activities and resources for civics and citizenship education in New Zealand before reaching the conclusion that civics education needs improvement. A review of the resources available in this area shows that many agencies are already contributing to the strengthening of civic awareness amongst New Zealand's young people to equip and motivate them to be active citizens. Much discussion is also occurring internationally on these issues.
- 34 Civics and citizenship education in New Zealand currently comprises a variety of activities and resources including:
- a. content in the school curriculum;
 - b. information and resources for teachers and students; and
 - c. opportunities for young people to participate in social and democratic processes.
- 35 No one agency could (or should) have a monopoly on the provision of civics and citizenship education. Some resources, and the content of school curricula, are best prescribed by Government and schools. Other resources and opportunities could best

be provided by agents of the legislature (e.g. Parliamentary Service) or by non-government agencies such as Youth Law, Citizens' Advice Bureaux, iwi authorities, or the New Zealand Centre for Public Law.

- 36 Some examples of current activities occurring in the civics and citizenship area are listed in Appendix B. Teachers and students have access to much information and resources, and young people have the opportunity to actively engage in social and democratic processes such as the Duke of Edinburgh Award Scheme and the annual Youth Parliament.

Next steps for civics and citizenship education

- 37 The challenge with civics and citizenship education is in evaluating the effectiveness of all of the activities, given their number, and the number of agencies leading them.
- 38 Much research is being carried out in New Zealand universities and internationally into the content and effectiveness of various aspects of civics education and levels of civic participation. There is, however, no recent comprehensive review of these issues in the New Zealand context. Without this information, it is difficult to assess the gaps in understanding and to recommend how to address them.
- 39 In 2008, New Zealand will participate for the first time in the International Civics and Citizenship Study, which will investigate the ways in which young people are prepared to undertake their roles as citizens in a range of countries. It will report on student achievement in a test of knowledge, conceptual understandings and competencies in civics and citizenship education. New Zealand will participate through the Ministry of Education. The results will be available in 2010. The study will provide useful benchmark information to conduct a gaps analysis and a more focused approach to planning new civics and citizenship education projects, should that be necessary.

Consultation

- 40 The paper was prepared in close consultation with the Cabinet Office. The following agencies have been consulted on this paper: Crown Law Office; the Ministries of Education, Culture and Heritage, and Youth Development; Department of Internal Affairs; State Services Commission; Te Puni Kokiri; and the Electoral Commission. The Department of the Prime Minister and Cabinet has been informed.

Financial implications

- 41 There are no financial implications arising out of the proposals in this paper.

Human rights

- 42 The proposals in this paper appear to be consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative implications

- 43 There are no legislative implications.

Publicity

- 44 The new procedure for constitutional reform should be publicly announced.

Recommendations


45 I recommend that the Committee:

- 1 **Note** that Cabinet directed officials from the Ministry of Justice, in consultation with the Cabinet Office and other government agencies as appropriate, to report to the Cabinet Policy Committee with advice on:
 - 1.1 the establishment of generic principles to guide significant constitutional change;
 - 1.2 the improvement of civic and citizenship education in schools;
 - 1.3 the role that government and other groups/organisations can play in providing information and facilitating discussion and debate [CBC Min (05) 20/6 refers].
- 2 **Agree** that:
 - 2.1 meaningful public participation is important to any significant constitutional reform process;
 - 2.2 the process for constitutional reform should remain transparent, flexible and responsive.
- 3 **Agree** to a new procedure to ensure systematic consideration of guiding generic principles, and the appropriate level of public participation in, legislative reform of a significant constitutional nature;
- 4 **Agree** that the Prime Minister, Attorney-General and Minister of Justice (supported by the Ministry of Justice, the Cabinet Office and the Crown Law Office), in consultation with other relevant Ministers, will decide whether particular constitutional reform proposals raise an important question of principle about a principal part of the constitution (the threshold consideration);
- 5 **Agree** that, if the proposal meets the threshold, a constitutional reform statement will be prepared by the relevant portfolio agency (assisted by the Ministry of Justice, Cabinet Office, and the Crown Law Office) and submitted to the Prime Minister, Attorney-General and the Minister of Justice;
- 6 **Agree** that the Prime Minister, the Attorney-General and the Minister of Justice will consider the constitutional reform statement in light of (i) the government's commitment to meaningful public participation, and (ii) the nature and scope of the proposed reform;
- 7 **Agree** that once approved by the Prime Minister, Attorney-General and Minister of Justice, the constitutional reform statement will be attached to the policy paper, submitted to Cabinet for consideration, and made publicly available at the appropriate time;
- 8 **Agree** that the constitutional reform statement address key issues such as:
 - 8.1 the nature of the constitutional reform proposed and its significance;
 - 8.2 the institutions, groups, or constitutional relationships affected by the reform and the nature of that effect, including consideration of any impact on Maori or the Crown's Treaty relationship with Maori;
 - 8.3 options for the reform process;

- 8.4 appropriate means of consulting with the public or identified stakeholders or otherwise enabling their participation in the reform process;
- 8.5 key public sector agencies and non-government organisations that could provide information and/or facilitate debate on the proposed constitutional reform, if required.
- 9 **Direct** the Ministry of Justice to work with the Cabinet Office and the Crown Law Office to draft a Cabinet Office circular setting out the constitutional reform statement procedure;

Civics and Citizenship Education

- 10 **Note** that many agencies across the public and private sectors are contributing to civics and citizenship education for young people in New Zealand;
- 11 **Note** that the government will continue to actively support and encourage civics and citizenship initiatives in New Zealand to cultivate future generations with an active participatory interest in, and knowledge of constitutional issues and the workings of democracy;
- 12 **Note** that New Zealand will participate in the 2008 International Civics and Citizenship Study, which will report in 2010 on student achievement in a test of knowledge, conceptual understandings and competencies in civics and citizenship education;
- 13 **Note** that the study in recommendation 12 above should provide useful benchmark information and be a planning tool for civics and citizenship education projects into the future.


Hon Mark Burton
Minister of Justice

APPENDIX A

GOVERNMENT AND NON – GOVERNMENT ORGANISATIONS INVOLVED IN PROVIDING INFORMATION AND FACILITATING DISCUSSION AND DEBATE

Government agencies	Non-government organisations	Other state agencies/Crown entities
<ul style="list-style-type: none"> • Archives • Cabinet Office • Crown Law Office • Department of Conservation • Department of Internal Affairs • Department of Labour • Department of Prime Minister and Cabinet • Ministry for Culture and Heritage • Ministry of Education • Ministry for the Environment • Ministry of Foreign Affairs and Trade • Ministry of Health • Ministry of Justice • Ministry of Youth Development • National Library • New Zealand Police • Parliamentary Counsel Office • State Services Commission • Statistics NZ • Te Puni Kokiri 	<ul style="list-style-type: none"> • Centre for Citizenship Education • Citizens' Advice Bureau • Community Law Centres • Immigrant organisations • Iwi authorities and other Maori organisations • Local Government New Zealand • Media • New Zealand Centre for Public Law • Universities and academia • Youth Law 	<ul style="list-style-type: none"> • Electoral Commission • Human Rights Commission and Race Relations Conciliator • Judiciary (including Waitangi Tribunal) • Law Commission • Local government • Privacy Commissioner • Office of the Clerk of the House of Representatives • Office of the Governor-General • Parliamentary Service

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982

APPENDIX B

CIVICS AND CITIZENSHIP EDUCATION FOR YOUNG PEOPLE

Compulsory education provided through schools:

- 1 Schools thread citizenship characteristics through curriculum documents rather than having a formal civics or citizenship education curriculum. Social studies is the main vehicle for citizenship teaching. The social studies curriculum is mandatory in state and state integrated schools for all students in Years 1 to 10.
- 2 Traditionally, the main aim of social studies has been to assist young people in being effective citizens of a democracy. The 2006 draft curriculum describes one of its key outcomes as:

“Citizenship: Students explore what it means to be a citizen. Through their participation in learning experiences in the school or community, they learn how to become active, informed and responsible citizens who know how to contribute positively to the development and wellbeing of the society in which they live”.

- 3 Students learn about organisation of government local and central, laws, rights, roles and responsibilities; human rights, social justice, and the nature and impact of reforms. They discover how “individuals, communities and nations exercise their rights and meet their responsibilities.” (Social Studies in the New Zealand Curriculum).

Teacher Training and Professional Development – Civics and Citizenship Education

- 4 There will be a professional development course in January 2009: ‘Encouraging active citizenship – Democracy, elections and parliament’.
- 5 The Electoral Commission provides resources for teachers and youth workers describing the basic ideas inherent in democracy and active citizenship.

Optional activities offered in schools

- 6 Extra-curricular activities provided by schools to give students opportunities to gain citizenship skills include voluntary work through the Duke of Edinburgh Award Scheme, school road patrol, and opportunities to act as a student representative on the school board of trustees.

Other resources and activities for students and teachers

- 7 *Hands Up!*, produced by the Electoral Commission, assists teachers and students to examine issues central to citizenship and participation in society. The ‘Growing Active Citizens’ working group, which is working on resources for schools based on those used in the United Kingdom, was also initiated by the Commission. These resources allow young people to engage with politicians in a meaningful and interactive way.
- 8 *Making it Happen*, a participation guide produced by the Ministry of Youth Development, provides schools with ideas on implementing the Youth Development strategy. That Ministry produces numerous other resources aimed to assist boards of trustees, principals and teachers supporting youth in schools.
- 9 *Te Ara* is the online encyclopaedia of New Zealand. While aimed at the general public, it also contains material written for a school age audience. The Treaty of Waitangi website

is being incorporated into one of the Ministry for Culture and Heritage's websites NZhistory.net which covers topics in the area of constitutional and civic education and contains: a classroom section directed at NCEA levels; the Dictionary of New Zealand Biography; and NZlive.com – a digital gateway to New Zealand arts and culture.

- 10 Youth Parliaments are conducted every three years through the Ministry of Youth Development, which also directs 'Activate', the Ministry's youth advisory group. That group collates young people's views on policy and legislation and presents submissions to select committees. The Ministry's youth participation advisers support a range of initiatives including 'Provoke,' which works with youth advocates and publishes action guides.
- 11 Parliament and the Office of the Clerk has a number of educational programmes targeted to schools i.e. educational tours, role plays, an election programme, an interactive website, DVDs, posters and fact sheets.
- 12 The Police Youth Education Service (YES), a branch of the New Zealand Police, employs education officers who run classroom sessions and provide resources to schools.
- 13 More than 40 Youth Councils are run throughout New Zealand through Local Government New Zealand. They include youth in planning and decision making through youth forums. There are websites aimed at youth, who they are targeted for consultation. Conferences such as the recent Youth in Local Government conference actively engage younger people in local politics.
- 14 A "Toolkit for Child and Youth Participation" is included on the Local Government New Zealand website, which is seeking to run youth elections along-side local body and general elections. There is clear evidence that engaging youth in voting from a young age encourages similar behaviour in their adult lives.
- 15 Information and publications concerning the judiciary, legislation, human rights, reporting to government, jury service and review of the general election process can be found on the Ministry of Justice's website. It also contains a Youth Court website, and the access to justice material is written for those aged 9-13 years. The Ministry also runs open days to the Courts throughout New Zealand and has pamphlets on various subjects including the New Zealand legal system.
- 16 *Your Rights* pocket guide has been produced by Youth Law, whose website includes topics such as voting, lobbying and participation in decision making. Youth Law is also working with the Electoral Commission to produce a 'Your Voice' guide.
- 17 Information sheets for younger people including information on rights, the Police and legal ages for specific activities are provided by the Citizens Advice Bureau.
- 18 The Department of Internal Affairs and the Electoral Commission have been involved in developing the "Growing Active Citizens" project.