

The New Zealand Legal System

When many people think of the legal system, they think of lawyers and courts. While the courts are an important part of New Zealand's legal system, it also has many other parts.

The New Zealand legal system is derived from the English one and comes from two main sources:

- The common law, which is a body of law built up from decisions made in the United Kingdom and in New Zealand. Developments made by New Zealand courts mean that New Zealand now differs from the United Kingdom on some aspects of the common law.
- Statute law, which is all the law made by Parliament.

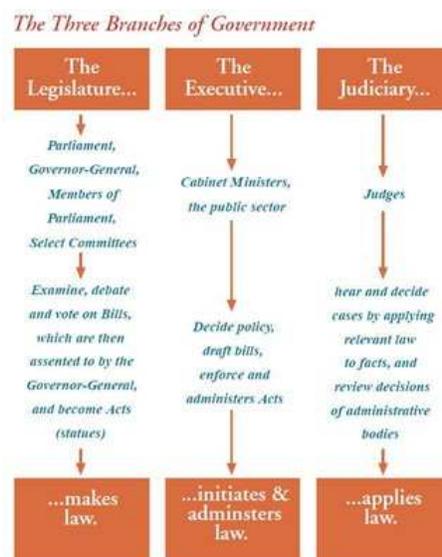
THE QUEEN (Layer 1)

The Head of State of New Zealand (Queen Elizabeth II) who is represented by the Governor-General. The Governor-General is appointed by the Sovereign on the Prime Minister's recommendation for a term of five years.

The Governor-General exercises the Queen's royal powers which are found in the Letters Patent 1983. The Governor-General's main constitutional function is to invite the Leader of the majority party to form a government. The Governor-General is also able to make regulations and his or her assent is required for all Bills passed by the House of Representatives before they can become law. He or she also holds the figurehead position of Commander-in-Chief of the armed forces.

The Governor-General is required by constitutional convention to follow the advice of ministers. This means the Governor-General does what the Government advises him or her to do. Although there could be situations where the Governor-General could be required to exercise independent judgement, this has not happened for a long time.

BRANCHES OF GOVERNMENT (Layers 2, 3, and 4)



An integral feature of our system is the separation of power among three different branches of government. The division of power seeks to ensure that no one branch can act unconstitutionally.

The Legislature

New Zealand's Parliament has developed from the British parliamentary system known as the Westminster system of government and is the highest law-making body in New Zealand.

Parliament has two parts:

1. The Head of State of New Zealand (Queen Elizabeth II) who is represented by the Governor-General.
2. The House of Representatives

One hundred and twenty Members of Parliament (MPs) are elected to the House of Representatives for a three year term. They meet in the Parliamentary Buildings in Wellington. New Zealanders aged 18 years and over, elect the Members of Parliament by voting in elections. This is how New Zealanders have a say in who runs the country.

The House's responsibilities are to debate and pass legislation, provide a Government, supervise the Government's administration by requiring it to explain policies and actions, supply money, and represent the views of the people of New Zealand. It has a number of Select Committees which examine proposed legislation (Bills) in detail, often hearing submissions from interested members of the public.

The Executive

The Executive is made up of the Prime Minister, Cabinet and the public sector. The Executive conducts the Government, deciding on policy and administering legislation.

All important Government policy decisions and legislative proposals either come from or are agreed to by Cabinet. Cabinet also co-ordinates the work of Ministers. Cabinet consists of Ministers who are members of the governing party or parties in Parliament and is presided over by the Prime Minister. Usually each Cabinet Minister is responsible for one or more government departments, but there can be Ministers "without portfolio", who do not have permanent responsibility for any department. Cabinet, like Parliament, has committees that examine specific subjects in detail. Cabinet Ministers are advised by public servants.

Although it has great power, Cabinet is not a body established by statute. Its power comes from long-recognised convention. In contrast, the Executive Council, which is formally constituted, does not have the power to make policy decisions. It gives legal effect to decisions made elsewhere, eg regulations, Orders and Notices. The Executive Council is presided over by the Governor-General and in practice the other members are the Cabinet of the day.

The Judiciary

The independence of the judiciary is an important principle of the New Zealand constitution, so freedom from political interference is an essential feature of the judiciary's position. This reflected in the standing orders of the House of Representatives (their rules) which prohibit members from criticising a judge.

A judgement may be criticised but personal attacks on or attempts to influence a judge are not allowed, and could put the people concerned in contempt of court. If an MP does not like the decision reached in a case, the proper course is to introduce a Bill to change the law in question.

It is the Judges' role to apply the law to every case that comes before the Court. Judges, however, also develop the law by deciding what legislation passed by Parliament means by interpreting it. A growing area of the Judiciary's work is judicial review, examining the acts of government and private administrative bodies to see whether they acted fairly and within their powers.

Judges are appointed by the Governor-General. All judges are lawyers with at least seven years experience.

NEW ZEALAND'S CONSTITUTION (Layers 5, 6, and 7)

A constitution is central to a country's legal system because it defines the principles on which the system is based. It sets up the most important institutions of government, states their principal powers and makes broad rules about how those powers can be used. In some countries the constitution is written down in one place and that document is called the constitution.

New Zealand's constitution, which is the foundation of our legal system, is drawn from a number of important statutes, judicial decisions, and customary rules known as constitutional conventions. New Zealand does not have a single written constitution. New Zealand's constitutional arrangements can be found in a number of key documents. Three of these key documents are:

The Treaty of Waitangi

The Treaty of Waitangi was signed in 1840, as an agreement between the British Crown and a large number of the Maori of New Zealand. Today the Treaty is widely accepted to be a constitutional document, which establishes and guides relationships between the Crown in New Zealand (as embodied by our government) and Maori. The Treaty of Waitangi had at its heart a promise to protect a living Maori culture; to enable Maori to continue to live in New Zealand as Maori, while at the same time conferring on the Crown the right to govern in the interests of all New Zealanders. This means that the Treaty relationships between the Government and Maori are ongoing and dynamic.

The New Zealand Bill of Rights Act 1990

The New Zealand Bill of Rights Act 1990 safeguards the civil and political rights of New Zealanders.

The Act protects the following categories of rights and freedoms: life and security of the person; democratic and civil rights; non-discrimination and minority rights; search, arrest and detention; criminal procedure; and right to justice.

The Act is not higher law and does not "override" other laws, but it does nevertheless provide protection for the rights in it. The Courts must interpret other laws consistently with the Bill of Rights Act if at all possible. Further, all bills are assessed for consistency with the Bill of Rights Act before they are introduced into Parliament.

The Human Rights Act 1993

The Human Rights Act 1993 is aimed at giving all people equal opportunities and preventing unfair treatment on the basis of irrelevant personal characteristics. The Human Rights Act covers discrimination on the grounds of sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status, and sexual orientation. It is unlawful to discriminate on these grounds in the following areas of public life: employment, education, access to public places, provision of goods and services, and housing and accommodation. People who think they have been discriminated against may complain to the Human Rights Commission.