

Governor General: Political Neutrality, Democracy, Unity. Acts on advice of ministry, with confidence of the House; must have a ministry.

Responsible Government: to House and Electorate.

Convention: Binding Constitutional Practice.

Achieving Confidence of the House -

Agreements:

- Matters of confidence and supply
 - Abstentions reduce required votes
 - Easier/Clearer under FPP than MMP
- Entirely Political
- Very Diverse content: substantive, procedural, functional.

Types:

- Coalition – formal, all in government/Cabinet.
- C & S – supports, but outside of Cabinet.
- Enhanced C & S – supports, SOME Ministers, OUTSIDE of Cabinet.
- Single Party v Coalition Government
- Minority v Majority Government

Factors to Consider:

Substantive:

- What policies are pursued?
- What are parties' bottom lines?
- What positions can you live with?

Functional:

- How important are Ministerial Privileges?
- Who gets which portfolios?

Political:

- How important is your ability to criticise the government/maintain a distinct identity?

Testing the Confidence of the House

Express

- From Opposition
- Amend a motion to make it an explicit vote of confidence: PM's Statement; Address + Reply

Implied

- From Government
- Any question of Monetary Supply (Budget, Imprest, Tax Rates) – the government cannot function without money. They collapse without.

By Declaration

- From Government
- They state that it is a matter of confidence: reinforces strength + coercive influence.

The Caretaker Convention

When?

- When there is a loss of Confidence: **CM6.21**
 - After a General-Election or mid-term
- NOT before a normal general election – **CM6.9**
 - Though tends to be conservative policy **CM 6.10**

Clear Outcome – **CM6.29**

- No new policy of their own.
- Acts on advice of incoming government if needed.

Unclear Outcome – **CM6.25-6.28**

- Day-to-day as usual – **6.31**
- Previous commitments implemented, unless difficult to reverse – **6.25**
- Anything significant/controversial/new/changing:
 - a. Deferred

- b. Decided temporarily/provisionally
- c. Made after consultation, with consensus.

Reserve Powers

Appointing + Dismissing a PM; Forcing / Refusing request for Dissolution

What is special about them?

- Cannot rely on a ministry for advice, so GG must exercise discretion.

Must still consider:

- Political Neutrality; Democracy; Unity

Appointing a Prime Minister

Letters Patent s10; Royal Prerogative

Two Considerations:

1. Quantity – **6.44** – who has majority?
2. Clarity – **6.43** – is it publicly and unambiguously articulated?

- Decision is ENTIRELY POLITICAL; parties only – **6.42**
- Unofficial Deadline b/c Parliament sits 6 weeks after the return of the writs – **CA s19; CM6.47**

Refusing a Request for Dissolution

Royal Prerogative; Letters Patent s3(a), **CA s18**.

Proper to refuse when:

1. Another group has confidence in the House
2. A government cannot be formed, but confidence has not been tested.
3. A PM is replaced as leader, but confidence remains.

Where does the confidence of the House lie?

- If a group asking DOES have confidence, *must* dissolve the house – **6.63**
- If a group asking does NOT have confidence – **6.64**
 - Caretaker convention applies;
 - See if other groups have confidence – **6.41**
 - See if other parties agree to dissolution – **6.62**
- If it is UNCLEAR, entitled to ask them to confirm confidence – **6.64**

Power to Refuse Royal Assent

Royal Prerogative

- UNCLEAR whether this is a power – no assent has been refused since 1708. Some NZ Governors did, though.

Government Bill

- Palmer and Palmer – it is not a power; it is only appropriate in crisis.
- Joseph – can occur when assent is unlawful; where irreparably damages democracy.
- Why not?

- GG has no democratic mandate to do this; it is not their place; other protections exist: election, courts, normative.

Government Advises Refusal

Should refuse:

- Follow government with confidence.
- Confidence is expressed in groups, not laws
- Government not Parliament provides policy direction

Should not refuse:

- Parliamentary Sovereignty overrules.
- Refusal is not actually a power
- Responsible government is traced back to Parliament and electorate, not the executive.

Collective Cabinet Responsibility

Elements: Confidence; Unanimity; Confidentiality

When does it apply?

- Full Force to Ministers in Single Party Government – **5.52, 5.31**
- Agree-to-disagree clauses may be established – **5.26-28**
 - For matters of PARTY DISTINCTIVENESS
- Selective Application to Ministers Outside of Cabinet:
 - Only on matters of portfolio/confidence
 - Perhaps, not even then: *John Key + Rodney Hide*
 - When acting overseas for Government

How does it work?

- People wear different hats – leader of a party v minister
- Agree-to-disagree
- Enhanced C & S + Selective Enforcement
- Discrete/Clearly Defined Portfolios
- Dissent is kept muted/minor

Tensions

- Party Distinctiveness is Important
- Pragmatic Difficulty of Enforcement:
 - Rely on support so cannot alienate.
- OIA presumption of Openness v Confidentiality – proactive release of minutes + papers

Why is it important?

Constitutionally:

- Confidence in Cabinet, not individual ministers
- GG acts on advice of individual ministers; must be able to trust them
- Government + Crown is one and indivisible; incl. ministers
- Democratically – voters must know who supports what policy and who to hold accountable; this crystallises.

Political

- Appearing cohesive is important for Govt strength – less criticism possible
- Useful management tool for dissenting Ministers

Individual Ministerial Responsibility

A minister is responsible for anything that happens within their portfolio, regardless of if they were personally involved – **CM3.27**

Explanatory – explain what happened to Parliament.

Amendatory – must be seen to take actions to put it right.

Culpability – must resign if found guilty of impropriety

- Must be high level, not just unwise
- It probably does not need to be related to portfolio – Dover Samuel, sexual allegations
 - An allegation probably does not need to be proven – prima facie case is enough for resignation.
 - It probably needs to be direct association, not vicarious responsibility for resignation: Cave Creek is the closest thing – Dennis Marshall

- Perhaps, only fulfilled AFTER explanatory and amend “Happens when lose confidence of the PM”

Standards of Ministerial Conduct

In ALL capacities: personal, MP, Ministerial.

Conflict of Interest

Ministerial information gives you an unfair advantage.

Ministerial v Personal – **2.59**

Ministerial v Constituency – **2.77-2.85**

Pecuniary v Non-Pecuniary – **2.64**

Direct v Indirect – **2.65**

Association with a group – **2.68**

NOT – generic class of interest – **2.71**

Personal – 2.74

- Declare interest, stop receiving papers, transfer responsibility to another Minister or Department, divestment, blind trust, resignation from organisation.

Shane Jones + Manea

Constituency

- If it does NOT relate to portfolio – NO CONFLICT – **2.78**
 - Must act as MP, NOT minister*
- If it DOES relate to portfolio – CONFLICT -
 - Transfer ministerial responsibilities – **2.79**
 - Get another MP to help – **2.80**
 - Make people aware of the conflict – **2.81**
 - Refuse to help

- **NEVER – interfere with prosecutorial functions in any capacity** – Maurice Williams/ Donghua Liu

Public Service

Accountability Relationships

Electorate

The House

Cabinet – Individual Members

Chief Executives (TO SSC)

Public Servants

Key Principles:

Loyalty – absolute loyalty to the government of the future.

Political Neutrality – must preserve ability to provide service to future governments.

Anonymity – public servants do not have independent public identities (they have no individual accountability).

State Service

Includes: Public Service; Local Bodies; Police; Statutory Authorities.

Executive Function – framing of government policy for legislative enactment + administration of law.

Relationship with Ministers

Ministers CAN – shape policy direction; receive advice; communicate well; work together with.

Ministers CANNOT – Act as employers; interfere with prosecutorial functions, with day-to-day running – **3.11**.

Who is the executive?

- That function, in that moment, according to statute, situation, etc.

- The degree of control by the minister (*CIR v Medical Council of NZ; ACC v Stafford*)

- The function of the body – how “public” it is (*Lab Tests Auckland*)

- Is one and indivisible – (*Town Investments Ltd v MFE*)

- Can't sue Crown for damages – *AG v Chapman*

The Crown: “all departments and the monarch”; “jewelled headwear”; “the state”; “the Monarch herself”.

The Judiciary

Impartial – act without partisanship and bias

Independent – freedom from dependence on Govt.

Tenure: free from threat of removal; HIGH BAR, incapacity and misbehaviour – **CA s23**

Financial: salaries not reduced - *Francis Bell* – **CAs24**

Institutional: non-reliance for resources etc – strained.

Appointed by AG – noted, no discussed at cabinet; non-political.

Accountability: Judicial Conduct Commissioner to:

a. Dismisses Complaint; **b.** Takes it no further; **c.** Refers to Head of Bench; **d.** Recommends Judicial Conduct Panel.