Constitution Amendment Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Constitution Amendment Bill and recommends that it be passed. We recommend all amendments unanimously.

About the bill as introduced

The purpose of the bill is to address the risk of a potential gap in the continuity of executive government following an election. The Constitution Act 1986 requires all Ministers of the Crown to be members of Parliament (MPs). The Electoral Act 1993 provides that MPs cease to be members at the close of a general election polling day. This results in a period following an election when there are no MPs, until newly elected MPs take office.

Sections 6 and 8 of the Constitution Act enable Ministers and Parliamentary Under-Secretaries to continue to hold office for 28 days, despite not being MPs. This ensures the continuity of government and upholds the constitutional principle that the Governor-General must always have advisers. The bill would amend section 6 of the Act to remove the 28-day rule. It would create a new rule under which Ministers would remain in office until the day after the day on which election processes are completed by the Electoral Commission declaring the elected list candidates. The bill would also amend section 8 to replicate this rule for Parliamentary Under-Secretaries. These amendments seek to address situations where the Electoral Act provides for the date of the return of the writ to be extended, for example, an extreme weather event or a judicial recount of an electorate vote.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendment to clause 5

This commentary covers the one amendment that we recommend to the bill as introduced.

Section 8 of the Act specifies that Parliamentary Under-Secretaries must be MPs except for the 28 days after an election. Clause 5 would amend section 8 to align with section 6, as amended by clause 4, so that a Parliamentary Under-Secretary may continue to hold office for an extended period after ceasing to be an MP. The extended period would run until the close of the day after the day on which the Electoral Commission declared the elected list candidates.

We understand that this rule is only intended to apply following a general election. However, we note that, under clause 5 as introduced, the circumstances in which a Parliamentary Under-Secretary would cease to be an MP are not specific. Consequently, the 28-day rule could still apply to a Parliamentary Under-Secretary who ceased to be an MP for another reason, such as resigning during a parliamentary term. We therefore recommend amending section 8(3) to clarify that it would only apply if a Parliamentary Under-Secretary ceased to be an MP because of a general election and the operation of section 54 of the Electoral Act.

Appendix

Committee process

The Constitution Amendment Bill was referred to this committee on 14 August 2025. The House instructed us to report the bill back no later than 15 December 2025.

We called for submissions on the bill with a closing date of 15 September 2025. We received and considered submissions from 20 interested groups and individuals. We heard oral evidence from one submitter at a hearing in Wellington.

Advice on the bill was provided by the Ministry of Justice. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Hon Andrew Bayly (Chairperson)

Hon Ginny Andersen

Jamie Arbuckle

Carl Bates

Tākuta Ferris

Rima Nakhle

Tom Rutherford

Todd Stephenson

Vanushi Walters

Hon Dr Duncan Webb

Dr Lawrence Xu-Nan

Related resources

The documents we received as advice and evidence are available on the Parliament website.

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Paul Goldsmith

Constitution Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Constitution Amendment Act **2025**.

2 Commencement

This Act comes into force on the day after Royal assent.

3 Principal Act

This Act amends the Constitution Act 1986.

4 Section 6 amended (Ministers of Crown to be members of Parliament)

(1) Replace section 6(2)(b) with:

(b) a person who held office both as a member of Parliament and as a member of the Executive Council or as a Minister of the Crown immediately before having to vacate office as a member of Parliament under section 54(1)(b) or (2)(b) of the Electoral Act 1993 (the **Act**) may continue to hold office as a member of the Executive Council or as a Minister of the

Crown until the close of the day after the day on which the Electoral Commission declares, in accordance with section 193(5)(a) of the Act, the elected list candidates.

(2) After section 6(2), insert:

(3) In **subsection (2)(b)**, **list candidate** has the meaning given to it by section 3(1) of the Electoral Act 1993.

5 Section 8 amended (Appointment of Parliamentary Under-Secretaries)

Replace section 8(2) with:

(2) A Parliamentary Under-Secretary holds office at the pleasure of the Governor-General~~, but must vacate office when they cease to be~~ while they are a member of Parliament.

(3) However, a Parliamentary Under-Secretary may continue to hold office during the period ~~beginning when they cease to be a member of Parliament and ending on the close of the day after the day on which the Electoral Commission declares, in accordance with section 193(5)(a) of the Electoral Act 1993, the elected list candidates.~~—

(a) beginning on the day that they must vacate office as a member of Parliament under section 54(1)(b) or (2)(b) of the Electoral Act 1993 (the **Act**); and

(b) ending on the close of the day after the day on which the Electoral Commission declares, in accordance with section 193(5)(a) of the Act, the elected list candidates.

(4) In **subsection (3)**, **list candidate** has the meaning given to it by section 3(1) of the Electoral Act 1993.

Legislative history

24 July 2025	Introduction (Bill 187–1)
14 August 2025	First reading and referral to Justice Committee

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Published under the authority of the House of Representatives—2025