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Constitutional Advisory Panel
"CAP submission"
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SUBMISSION: CONSTITUTIONAL REFORM IN NEW ZEALAND

Thank you for the opportunity to make submission on the above.

I wish to make the following submission, which will address the Constitutional and "Bill of Rights Act" issues.

This submission is made on my own behalf, as a private individual.

I do not seek to make a personal presentation to the commission

I would appreciate if the abstract of my submission could be included verbatim in any summary of submissions, and I would appreciate an acknowledgment that this submission has been received.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Lindsay Robertson', with a long horizontal flourish extending to the right.

Lindsay Robertson

SUBMISSION: CONSTITUTIONAL REFORM COMMISSION

ABSTRACT

I submit that New Zealand needs a single, written, and comprehensive constitution.

- The written constitutional document should establish the human and civil rights of citizens and the ultimate purpose of government as absolute priorities.
- The constitution should establish the boundaries within which elected representatives (and representational bodies) can operate/legislate.
- The constitution should establish mechanisms to ensure that governance always operates within the constitutional constraints and to ensure that governance bodies always remain directly accountable for the achievement of the constitutional purposes.

1 Functions of a constitution

Businesses, organisations and sovereign countries all require governance, and all appoint executives/managers/representatives to undertake the business of management.

Almost universally, businesses, organisations and sovereign countries also codify a constitution which serves several very important functions:

- It sets out the scope of authority that is delegated to the governing representatives - and conversely the scope of governance that the citizens/members/shareholders do not delegate.
- It sets out the basic processes and modes of governance that are required by citizens/shareholders/members
- It provides appropriate mechanisms to ensure that citizens/members/shareholders retain final control, including provisions for directing the appointed "managers"
- It sets out the purposes of the business/organisation/sovereign country - and more specifically the purposes for which the shareholders/members/citizens appoint governing representatives, and thus sets out a basis for assessing the performance of those who are appointed to govern.

2 NZ does not have a constitution, nor effective constitutional mechanisms

NZ indeed has a number of documents, various conventions (some that are apparently not even written) plus various delegated authorities, related to constitutional topics. While these may have provided general guidance on governance, to claim that they form a "Constitution" is a rather bizarre piece of verbal gymnastics.

We also have a Governor-General, responsible for implementing the Sovereign's wishes. New Zealand actually does **not** have a constitution in any normally-accepted sense of the term, and it certainly does not have either a document or the associated mechanisms that accomplish the functions of a constitution.

3 Review of objections to a formalised constitution

Several "justifications" for not implementing a constitution and associated bill of rights, have been advanced: I submit the following comments on these:

3.1 - Poll is sufficient mandate to govern

On several occasions in the recent past, we have heard an expression of the sentiment that a mandate at the polls is an unconstrained mandate to govern. I think that this assumption is in urgent need of testing, and specifically:

- I do not believe that New Zealanders ever intend to assign the right to make changes to human rights or civil liberties in New Zealand, to their elected representatives..
- I do not believe that New Zealanders (even those who voted for the ruling party) necessarily support every policy in any party's manifesto.
- I do not believe that New Zealanders (even those who voted for the ruling party) can be assumed to agree with all decisions taken during a parliamentary term, and
- I do not believe that these citizens wish to be without an effective means of instructing their representatives on their specific wishes

3.2 Constitution would constrain government

On several occasions in the recent past, we have also heard the expression that "implementing a constitution would put a straitjacket on our parliament". Reviewing the counter-factual argument, I wonder what activities were being contemplated by those who consider that they would be constrained by a constitution.

3.3 Oversight and accountability

Everybody operates within constraints, and with accountability. At present the New Zealand's parliament (lacking an upper house, a constitution, or a direct involvement by a monarch) operates with absolutely no effective constraints and with very little accountability. Our parliament relies on self-regulation – which is not only demonstrably ineffective (Attorney-General reporting on Bill of Rights Act implications of legislation), but violates the good management practice (captured by the age-old adage) of "Never set the fox to guard the chicken-coop".

I find it hard to avoid the conclusion that opponents of a comprehensive written constitution simply wish to be able to operate with neither constraints nor accountability.

4 I submit that

4.1 Need for a constitution

New Zealand needs a full written constitution and associated bill of rights; Not only would this set necessary constraints on governance processes, but it would establish the respective responsibilities of all parties.

4.2 Process for establishing a constitution

NZ needs a purposeful but considered process for developing a constitution. It is not for me to pre-judge what these would be, but I believe a well-considered process (with adequate consideration of the lessons of history, and the hopes for the future) is needed.

4.3 Constitutional principles

A constitution should avoid trivia and topical issues, and should clearly establish fundamental principles including

- the purpose of government,
- the boundaries of governance assigned (and not assigned) to every party
- The basis on which citizens can select and instruct their representatives
- the roles and responsibility boundaries for the judiciary, public services and the forces,
- the responsibilities and the human and civil rights and of citizens (which I sincerely hope would encompass those included in the New Zealand's current Bill of Rights Act, and the United Nations Universal Declaration of Human Rights).

4.4 Constitutional enforcement

New Zealand needs to set in place an effective and independent authority to ensure that the scope of governance assigned by citizens is rigorously and effectively monitored and enforced, and that both the responsibilities and rights of citizens are enforced.

5 Governor-General as guardian/executor of the constitution

New Zealand has a Governor-General representing the Monarch, (to whom judiciary and armed forces pledge allegiance). Without any intention to imply disrespect, it appears that the role of the Governor General has no well-defined, codified or functional "job description".

I would like to suggest that we consider the possibility of asking the Governor General to take the role of "guardian/executor of New Zealand's Constitution", once New Zealanders have developed such a document.