

Regulatory Impact Statement 1: Parliament Bill – Overview

Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing final Cabinet decisions
Advising agencies:	Office of the Clerk Parliamentary Service
Proposing Ministers:	Leader of the House
Date finalised:	6 September 2021
<p>This paper is the first of five Regulatory Impact Statements (RISs). It is an overview of the policy behind the proposed Parliament Bill. The other Regulatory Impact Statements provide analysis of the substantive policy changes being considered as part of the Bill:</p> <ul style="list-style-type: none">• RIS 2 – Organisational Matters for the Parliamentary Agencies• RIS 3 – Operation of the Parliamentary Precinct• RIS 4 – Funding Arrangements for Parliament• RIS 5 – Provision of Funding for Members' Work Expenses.	
Problem Definition	
<p>This Regulatory Impact Statement considers one policy area. The discrete policy problem is set out below.</p> <h3>Updating the Legislation</h3> <p>The Revision Bill Programme in the 52nd Parliament identified that four Acts that relate to Parliament needed to be updated and amalgamated. Those Acts are: the Clerk of the House of Representatives Act 1988, the Parliamentary Service Act 2000, the Members of Parliament (Remuneration and Services) Act 2013 (the MoP Act), and the Parliamentary Privilege Act 2014. It was also considered an opportunity to repeal the redundant Legislative Abolition Council Act 1950.</p> <p>Substantive policy issues with a number of those Acts were identified at the time, so the Bill could not proceed as part of the revision programme. Those policy issues are detailed in RISs 2 – 5.</p> <p>Instead, the Bill needed to proceed as a regular bill in order to make the policy changes identified. The Bill therefore provides an opportunity to:</p>	

- consolidate and modernise the legislation administered by the parliamentary agencies, as the revision bill process would have; and
- address the policy issues that have been identified.

Executive Summary

Updating the Legislation

Our broad policy objectives are to:

- ensure Parliament's legislative framework is consistent, clear, comprehensive, and accessible, as part of our stewardship responsibilities in respect of the legislation that we administer, and
- have an appropriate mechanism to address the policy issues that were raised when the Parliament Bill was on the revision programme in the 52nd Parliament.

We considered three options: (1) the status quo, (2) updating only the three Acts governing parliamentary operations (the Parliamentary Privilege Act 2014 is not about parliamentary operations), and (3) creating a new Parliament Act. Option (3) includes two sub-options: (3A) consolidating only the three operational Acts and leaving the Parliamentary Privilege Act 2014 as a separate Act, or (3B) consolidating all four Acts relating to Parliament.

We prefer Option 3 (a new Parliament Act) and consider both sub-options of Option 3 meet the policy objectives. Each sub-option facilitates a better environment for the users of the legislation and ensures that the legislative arrangements for Parliament are efficient, effective, and fit for purpose. Either sub-option can also be the vehicle for addressing the policy issues in RISs 2 – 5.

The Parliament Bill would be evaluated within five years of enactment. The process of evaluation would involve the Office of the Clerk and the Parliamentary Service consulting with users of the legislation. The Office of the Clerk and the Parliamentary Service would also work with the Department of Internal Affairs, which would continue to administer a small part of the Bill, to report to the Speaker and the Leader of the House on the operation of the legislation and any desirable refinements.

General

We consulted with the following:

- Government agencies: Crown Law, the Department of Internal Affairs (Ministerial Entitlements and Policy Group), the Ministry of Justice, the Public Service Commission, Te Puni Kōkiri, and the Treasury. The Department of the Prime Minister and Cabinet and the Parliamentary Counsel Office were also informed. The Ministry of Justice sought to confirm that there were no policy changes proposed to the Parliament Privilege Act 2014. None of the agencies consulted raised any issue with the proposal to amalgamate the legislation, though most agencies provided substantial comment on the detail in RISs 2 – 5. The Parliamentary Council Office confirmed that no issues were raised during consultation when the Bill was on the Revision Programme in the 52nd Parliament.

- Parties in Parliament: the Clerk provided information about the Bill to all parties represented in Parliament. No party raised any concern regarding the proposal to amalgamate parliamentary legislation. With the exception of the Green Party and the ACT Party, the parties did not provide comment during the time available for consultation. With more time, we would be able to have a clear understanding of parties' views.
- Interested party: Hon Christopher Finlayson QC (former Attorney-General). Mr Finlayson supports the proposal to amalgamate the legislation relating to Parliament, and strongly supports including the Parliamentary Privilege Act 2014 in the amalgamated statute.

Limitations and Constraints on Analysis

The Parliament Bill was originally a revision bill. The time available to develop the Bill's policy is limited because the Speaker would like the Parliament Bill to be introduced in the House in March 2022. This requires policy decisions to be made by September 2021, which minimises the time available for policy analysis. Due to time constraints, no public consultation has taken place. The select committee process for the Parliament Bill will be an opportunity for public input.

Responsible Manager(s) (completed by relevant manager)

David Wilson
Clerk of the House



30 August 2021

Rafael Gonzalez-Montero
Chief Executive
Parliamentary Service



30 August 2021

Quality Assurance (completed by QA panel)

Reviewing Agency:	A special quality assurance panel was convened to consider the Regulatory Impact Statements for the Parliament Bill. It had membership from the Ministry of Justice (Chair), the Department of Internal Affairs, and the Parliamentary Service.
Panel Assessment & Comment:	<p>An independent quality assessment panel has reviewed the Regulatory Impact Statement (RIS) prepared by the Office of the Clerk and Parliamentary Service and considers that the information and analysis summarised in it partially meets the Quality Assurance criteria.</p> <p>The panel considers more information would help to clarify the impacts of option 3A and distinguish it from option 3B.</p>

This RIS contains the monitoring and evaluation plan for the suite of RISs. The plan is somewhat under-developed, and we suggest it be fleshed out during implementation, including its mechanics and whether it would report publicly. We suggest the plan include public consultation so the Bill's impact on perceptions of democratic effectiveness can be assessed.

Time constraints have precluded public consultation for the suite of RISs. Although consultation with parliamentary parties was undertaken there was little engagement. This can be mitigated through consultation. We recommend consideration be given to opportunities for targeted consultation, such as an exposure draft bill.

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IN CONFIDENCE - NOT GOVERNMENT POLICY

UPDATING THE LEGISLATION

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. The arrangements for Parliament are in four statutes. Three Acts provide operational arrangements, and another Act provides for constitutional matters. The four statutes are described in **Table 1** below.

Table 1 – Current legislation governing parliamentary operations and constitutional matters

Current Statute	What It Does
Clerk of the House of Representatives Act 1988	<ul style="list-style-type: none">• Provides for the appointment of the Clerk and other officers of the House• Establishes the Office of the Clerk.
Parliamentary Service Act 2000	<ul style="list-style-type: none">• Provides governance arrangements for the Parliamentary Service• Provides for ownership and control of land/assets for parliamentary purposes• Establishes mechanisms for providing services and delivering funding for parliamentary purposes• Provides for regular and independent reviews of money for services and provides for funding to support parliamentary operations of members of Parliament, parties, and qualifying electoral candidates.
Members of Parliament (Remuneration and Services) Act 2013	<ul style="list-style-type: none">• Provides for the remuneration of members of Parliament• Ensures members are provided with funding and services to carry out their roles and functions• Establishes a system for determining the services and funding• Provides travel services for family of members.
Parliamentary Privilege Act 2014	<ul style="list-style-type: none">• Reaffirms the nature, scope, and extent of the privileges, immunities, and powers exercisable by the House of Representatives, its committees, and its members• Ensures adequate protection from legal liability relating to proceedings in Parliament.

2. A fifth Act (the Legislative Council Abolition Act 1950) remains in force, but is redundant as the only substantive matter it contains was to abolish the Legislative Council.
3. The operational arrangements for Parliament have been changed and reviewed a number of times. Particular efforts have been made in recent years to more closely align the working arrangements of the two parliamentary agencies (the Office of the Clerk and

the Parliamentary Service), by implementing shared services and making minor amendments to governing statutes.¹

4. Potential policy changes have been highlighted in recent reviews, including the:
 - a. statutory review of the Members of Parliament (Remuneration and Services) Act 2013, presented to the House in July 2020
 - b. 2015 and 2018 reviews by the triennial Appropriations Review Committee, and
 - c. 2019 review of parliamentary security.
5. The Revision Bill Programme 2018 to 2020 (presented to the House of Representatives under section 30(4) of the Legislation Act 2012) included a Parliament Bill. That Bill aimed to amalgamate the Clerk of the House of Representatives Act 1988, the Members of Parliament (Remuneration and Services) Act 2013, the Parliamentary Privilege Act 2014, and the Parliamentary Service Act 2000. The reasons given for revising the Acts were that the legislation is a foundational part of New Zealand's constitutional framework, and, given its importance, is in need of improving its accessibility, including its outdated language and drafting style.² It was also considered an opportunity to repeal the redundant Legislative Council Act 1950. In 2020, the Bill was removed from the programme after substantive policy issues were identified during the drafting process that could not be accommodated within the revision bill process. Those policy issues are addressed in RISs 2 – 5.

What is the policy problem or opportunity?

6. The current legislation for Parliament contains some inconsistencies and can be difficult to read as a whole. For example, the Parliamentary Service Act 2000 contains a definition of “funding entitlements for parliamentary purposes”, which is used to inform the principal duty of the Parliamentary Service to administer the payment of funding entitlements for parliamentary purposes.³ The Members of Parliament (Remuneration and Services) Act 2013 then uses the term “parliamentary purposes” but does not define it (that term is also used in secondary legislation that sits under it and sets out members “entitlements”), and the legislation does not clearly link these two uses of the term “parliamentary purposes”.⁴

¹ The Parliamentary Agencies Delegations Legislation Act 2019 made minor amendments to the Clerk of the House of Representatives Act 1988 and the Parliamentary Service Act 2000. Those Acts were also amended consequentially through the Public Service Act 2020. Statutes amendment Acts in 2016 and 2019 also made minor changes to the Members of Parliament (Remuneration and Services) Act 2013 and Parliamentary Service Act 2000.

² In preparing the programme, the Parliamentary Counsel Office selected Acts that are outdated in language and drafting style, heavily amended, contain a mix of styles, obsolete provisions, or complicated numbering; contain related areas of law, which would be easily blended into one Act; are in frequent use or apply widely, affecting a significant sector of the public; contain settled policy and are unlikely to be proposed for substantive amendment during the revision process; and would be more accessible if revised.

³ See sections 3B and 7(b) respectively.

⁴ Other examples of inconsistencies include: the different processes for appointing an acting Clerk and an acting chief executive (see section 6 of Clerk of the House of Representatives Act 1988 and clause 6 of Schedule 1 of the Parliamentary

7. The language of the Clerk of the House of Representatives Act in particular is outdated. The Parliamentary Service Act and the Members of Parliament (Remuneration and Services) Act have a number of overlapping provisions that are difficult to read together. The Acts are a mix of drafting styles.
8. The users of the current legislation are particularly members, staff of the parliamentary agencies, and legal academics and practitioners. Though the public may also use the legislation, the Parliament Website is heavily used, and is most likely where the public go to find out about the 'rules'. However, as legislators, members will often refer to the primary source for legislation, rather than accessing guidance material on that legislation (prepared by the parliamentary agencies). During the consultation in 2020 for the statutory review of the Members of Parliament (Remuneration and Services) Act 2013, one long-standing member commented that "the rules are scattered across five or six different places⁵, and are inaccessible". Another member commented "I don't know what I don't know - improve access to the rules." The Parliamentary Service has taken steps to improve access by improving guidance material, but making primary legislation more accessible would benefit the primary users of the legislation.
9. The process of considering the proposed Bill's content is an opportunity to fulfil our stewardship obligations in respect of the legislation that we administer by:
 - a. looking at the legislation that supports Parliament's operation and its constitutional role and powers, and propose changes that would ensure it is fit for purpose
 - b. developing a modern Act that is accessible for users and contains the main legislative provisions that relate to Parliament in one place.

What objectives are sought in relation to the policy problem?

10. The broad policy objectives are to:
 - ensure Parliament's legislative framework is consistent, clear, comprehensive, and accessible, as part of our stewardship responsibilities, and
 - have an appropriate mechanism to address the policy issues that were raised when the Parliament Bill was on the revision programme in the 52nd Parliament.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

11. The following specific criteria have been developed in order to assess the options:

Service Act 2000); and the process of delegations in each agency (see section 12(1B) of the Clerk of the House of Representatives Act 1988 and in Schedule 1 cl. 8(2) of the Parliamentary Service Act 2000).

⁵ Referring to the Members of Parliament (Remuneration and Services) Act 2013, the Parliamentary Service Act 2020, the Speaker's Directions, the Members of Parliament (Travel Services for Members and Travel Services for Family Members) Determination, the Parliamentary Salaries and Allowances Determination, and (for Ministers) the Ministers' Travel Services within New Zealand Determination 2020.

Criterion	What it means
Administrative Excellence	<ul style="list-style-type: none"> Services are provided efficiently and effectively, which includes: <ul style="list-style-type: none"> consistency, responsiveness, and timeliness accessibility, flexibility, and adaptability administrative burden and cost reduced where possible
Clarity and Certainty	<ul style="list-style-type: none"> The rules are clear and easy to follow

What scope will options be considered within?

12. Parliamentary legislation has previously been identified as requiring modernising and updating and was included in the Revision Bill Programme. A number of policy issues arose during the drafting of the revision bill, and because the revision bill process cannot be used to change policy within an Act, it is not appropriate to continue to use the revision bill process for the proposed parliamentary bill.
13. Regulatory Impact Statements 2 to 5 contain discussions of the policy issues in the three Acts that relate to Parliament's operations. These issues were identified while the revision bill was being drafted and through other means. No policy issues have been identified in the Parliamentary Privilege Act 2014.

What options are being considered?

14. The following options were considered:
 - a. Option 1 – Status Quo
 - b. Option 2 – Update the three Acts governing parliamentary operations
 - c. Option 3 – consolidate the parliamentary Acts, by either:
 - i. A new Parliament Act amalgamating the three operational Acts (Sub-option 3A)
 - ii. A new Parliament Act amalgamating the four Acts relating to Parliament (Sub-option 3B).

Option 1 – Status Quo

15. The five pieces of legislation would remain in their current form. Legislation relating to Parliament would remain fragmented, and the legislative framework governing Parliament's operations inconsistent and unclear. Parliamentary legislation would be difficult to access. A redundant piece of legislation would be retained on the statute book.

Option 2 – Update the three Acts about parliamentary operations

16. An omnibus bill would update the Clerk of the House of Representatives Act 1988, the Parliamentary Service Act 2000, and the Members of Parliament (Remuneration and

Services) Act 2013. The updates would include modernising language in the Acts and implementing any policy changes (refer Regulatory Impact Statements 2 to 6) that couldn't be made when the Parliament Bill was on the revision programme.

17. The parliamentary Acts would remain separate. A redundant piece of legislation would remain in the statute book.

Option 3 – A new Parliament Act

18. A new Act would amalgamate the parliamentary Acts into a single statute. The Acts would be modernised and updated.
19. The new Act would also:
 - a. repeal the redundant Legislative Council Abolition Act 1950
 - b. implement a number of policy changes (refer Regulatory Impact Statements 2 to 5) that couldn't be made when the Parliament Bill was on the revision programme.
20. There are two sub-options under this option:
 - a. Sub-option 3A - A new Parliament Act amalgamating the three operational Acts but leaving the Parliamentary Privilege Act 2014 as a separate Act
 - b. Sub-option 3B - A new Parliament Act amalgamating the four Acts relating to Parliament.

Sub-option 3A – Amalgamating the three operational Acts

21. Amalgamating the three operational Acts would make the legislation relating to Parliament's operations more accessible, particularly to those directly affected by it (including members of Parliament) and those that use it (members, the parliamentary agencies, and legal practitioners). It would also be more accessible to the public generally. There is no reason why these statutes should be separate.
22. Excluding the Parliamentary Privilege Act, which provides for constitutional matters, provides some clarity as to the overall purpose of the new Parliament Act (simply limited to operational matters), but means that not all legislation relating to Parliament is in one place.

Sub-option 3B - Amalgamating the four parliamentary Acts

23. Amalgamating all four Acts relating to Parliament would mean that the legislation relating to all aspects of Parliament would be in one place and would therefore be more accessible particularly to those directly affected by it (including members of Parliament), and those that use it (members, the parliamentary agencies, and legal practitioners). It would also be more accessible to the public generally.

24. Including the Parliamentary Privilege Act means that the resulting Act would deal with both operational and constitutional matters. This may mean that the overall purpose of the legislation is less clear. In addition, mixing these purposes in a single Act may detract from the constitutional significance of the Parliamentary Privilege Act.

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How do the options compare to the status quo/counterfactual?

Key for qualitative judgements:

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
--	much worse than doing nothing/the status quo/counterfactual

	Option 1 – Status Quo	Option 2 – Update the three Acts governing parliamentary operations	Sub-option 3A – A new Parliament Act amalgamating the three operational Acts	Sub-option 3B – A new Parliament Act amalgamating the four Acts relating to Parliament
Administrative Excellence	0 Some inconsistencies across the statutes. Accessibility issues from rules being in different statutes.	+	++	++
Clarity and Certainty	0 Acts require modernisation. Risk of uncertainty in locating which Act a particular rule sits in	+	+	+
OVERALL ASSESSMENT	0	+	++	++

Option 1 – Status Quo		Option 2 – Update the three Acts governing parliamentary operations	Sub-option 3A – A new Parliament Act amalgamating the three operational Acts	Sub-option 3B – A new Parliament Act amalgamating the four Acts relating to Parliament
		Better than doing nothing/the status quo	Much better than doing nothing/the status quo	Much better than doing nothing/the status quo

IN CONFIDENCE - NOT GOVERNMENT

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

25. The agencies prefer Option 3, and consider Sub-options 3A and 3B equally viable. Both of these sub-options equally meet the policy objectives, and have trade-offs of equal importance.

Option 3 - A new Parliament Act

26. Amalgamating the three Acts relating to Parliament's operations (Sub-option 3A) would provide clarity as to the overall purpose of the Act because it would solely deal with operational matters, but it would mean that not all legislation relating to Parliament is accessible in one place. The redundant Legislative Council Abolition Act 1950 would be repealed.
27. Amalgamating all four Acts (Sub-option 3B) would mean that all legislation relating to Parliament would be more accessible by having it in one place. However, including the Parliamentary Privilege Act, which is constitutional rather than operational in nature, may detract from the constitutional significance of that Act.
28. Only limited stakeholder consultation has occurred. The only stakeholder to express a view on this matter was Hon Christopher Finlayson, who supports the proposal to consolidate legislation relating to Parliament and favours including all four Acts.
29. Sub-options 3A or 3B will address the identified problem.

What are the marginal costs and benefits of the option?

30. This section notes the marginal costs and benefits of Option 3 (both Sub-options 3A and 3B). The marginal costs and benefits of individual policies are set out in Regulatory Impact Statements 2 – 5.
31. **Option 3 - A new Parliament Act**

Affected groups (identify)	Comment <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.</i>	Impact <i>\$m present value, where appropriate, for monetised impacts; high, medium, or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Regulated groups	Users of the legislation (one-off, implementation)	Low	Medium

	Understanding new legislation/regulatory environment		
Regulators	<i>Parliamentary agencies (one-off, implementation)</i> Communications	Negligible	High
Others (e.g. wider govt, consumers, etc.)	Nil	Nil	High
Total monetised costs	<i>Parliamentary agencies (one-off, implementation)</i> Communications	Negligible (absorbed within baseline)	High
Non-monetised costs	<i>Users of the legislation (one-off, implementation)</i> Understanding new legislation/regulatory environment	Low	Medium
Additional benefits of the preferred option compared to taking no action			
Regulated groups	<i>Users and administering agencies</i> Increased certainty with some improvements in accessibility	Medium	Medium
Regulators	<i>Administering agencies</i> Increased administrative certainty	Medium	Medium
Others (e.g. wider govt, consumers, etc.)	<i>Public</i> Increased certainty with some improvements in accessibility	Low	Low
Total monetised benefits	Nil	Nil	High
Non-monetised benefits	Increased certainty with some improvements in accessibility	Low/Medium	Low/Medium

Section 3: Delivering an option

How will the new arrangements be implemented?

32. Implementation of Option 3 will require repealing and replacing the Clerk of the House of Representatives Act 1988, the Parliamentary Service Act 2000, the Members of Parliament (Remuneration and Services) Act 2013, and the Parliamentary Privilege Act 2014. The Legislative Council Abolition Act 1950 will also be repealed.
33. Implementation will also include:

- a. communicating with affected parties (members of Parliament, parliamentary parties, parliamentary staff, the agencies that administer and are directly affected by the Act (the Department of Internal Affairs (Ministerial Entitlements and Policy Group), the Remuneration Authority, and the public)
 - b. repeal or replacement of secondary legislation made under the current Acts, for example the Speaker's Directions (made under the MoP Act) and the Parliamentary Service (Additional Parliamentary Precinct) Resolutions (made under the Parliamentary Service Act)
 - c. development of a detailed evaluation plan, including the data to be collected (refer paragraph 35 below).
34. Detailed discussion of matters relating to implementing the substantive policy changes are in Regulatory Impact Statements 2 – 5.

How will the new arrangements be monitored, evaluated, and reviewed?

35. We expect that any significant problems with the new legislation will become evident within five years of it coming into force. We will develop plans for on-going review as an element of implementation. However, as part of normal stewardship processes, we will monitor progress during that five-year period to see how well the legislation met the policy's original objectives. We would do this by contacting the key stakeholders, including members of Parliament and parliamentary parties. Regular meetings with the Parliamentary Service Commission⁶ will also provide an opportunity to discuss the operational changes that relate to the Parliamentary Service in RISs 2 – 5. What happens after that would depend on the feedback we obtain.
36. We would also work with the Department of Internal Affairs, who would continue to administer a small part of the Bill (relating to ministerial funding matters), to report to the Speaker and the Leader of the House on the operation of the system and any desirable legislative refinements based on stakeholder comment.

⁶ The Parliamentary Service Commission is made up the Speaker, the Leader of the House (or a member nominated by the Leader of the House), the Leader of the Opposition (or a member nominated by the Leader of the Opposition), and representatives from each of the recognised parties represented in the House of Representatives. The Commission advises the Speaker about the services to be provided to the House and to members of Parliament.