

Regulatory Impact Statement 2: Parliament Bill – Organisational Matters for the Parliamentary Agencies

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
Problem Definition	
<p>This Regulatory Impact Statement considers four policy areas. The discrete policy problem for each area is set out below.</p> <p>Part 1: Functions of the Clerk of the House of Representatives</p> <p>The Parliament Bill will update and modernise the existing parliamentary Acts. This provides an opportunity to look again at the statutory functions of the Clerk to see if they can better reflect the role of the modern Clerk in legislation. The current statutory functions do not include key functions of the Clerk, including acting as chief adviser on matters of parliamentary procedure and law, as well as other functions that have developed as the role has matured, including public engagement and communicating of parliamentary proceedings (including broadcasting). These responsibilities have gradually evolved with successive Clerks, and with increased public expectation of the ability to engage with Parliament. Including those functions in statute ensures accountability for the continued delivery of these functions, and reduces the risk of the perception that the Clerk is acting outside their statutory remit.</p> <p>Part 2: The Clerk’s Role in Citizens Initiated Referenda</p> <p>The Citizens Initiated Referenda Act 1993 has not been reviewed for nearly 30 years. In considering the Clerk’s functions, it is also timely to examine the role of the Clerk in that Act. The Clerk’s functions under the Act are unusual, out of keeping with the Clerk’s constitutional role, they impose administrative burdens on the Office of the Clerk, and they have no efficiencies with any of the Office’s other business.</p> <p>Two particular administrative inefficiencies have also been identified:</p>	

- Documentation provided by a petitioner, or a submitter, on the proposed wording of the question must be provided to the Office of the Clerk in hard copy.
- The Clerk is required to determine the referendum question within three months of receipt of the proposal. This requirement places all the onus on the Clerk to determine the question, which can prove difficult if a petitioner ceases engaging with the Office.

Part 3: Role of the Parliamentary Corporation

The Parliamentary Corporation was established by statute to facilitate transactions relevant to the duties of the Parliamentary Service and to acquire, hold, and dispose of interests in land and other assets for parliamentary purposes. Most day-to-day functions of the Parliamentary Corporation are delegated to the Parliamentary Service. The current arrangements are cumbersome and outdated.

Part 4: Status of the Deputy Clerk of the House and the Parliamentary Librarian and Library

Current statutory arrangements for the appointment of the Deputy Clerk and the Parliamentary Librarian, the functions of the Parliamentary Library, and the classes of persons who may receive its services can be inflexible and inconsistent with the structure, management, and employment practices of the Parliamentary Service and the Office of the Clerk.

Executive Summary

Part 1: Functions of the Clerk of the House of Representatives

We recommend modernising the Clerk's statutory functions to reflect the current role. This includes three new statutory functions: advising on matters of parliamentary procedure and law; communicating the proceedings of the House of Representatives; and engagement, outreach, and parliamentary advocacy.

Part 2: The Clerk's Role in Citizens Initiated Referenda (CIR)

We consider four main options: (1) Status Quo; (2) Transferring all the Clerk's CIR functions to the Electoral Commission; (3) Transferring the Clerk's CIR certification functions to the Electoral Commission; and (4) Creating administrative efficiencies (enabling electronic transmission of some documentation and adding new exceptions to the requirements that questions be determined within three months).

We recommend Option 2 in conjunction with Option 4. Transferring the functions (Option 2) creates some efficiencies by combining the counting and enrolment-checking processes, and moves the responsibility for carrying out the functions and duties relating to CIRs to a trusted and independent public entity. The planned administrative efficiencies (Option 4) address the specific issues identified by the Office of the Clerk.

These options may create a risk for the Electoral Commission. Some may perceive the Commission's refusal to agree to a specific referendum question as being because the Commission does not want to run the referendum. This perception would undermine the Electoral Commission's neutrality, which might affect public confidence in the

Commission, as the organisation that must conduct the referendum. The Ministry of Justice also considers there is an issue with a perceived lack of independence in a branch of the Executive (the Electoral Commission is a Crown entity) acting as a “gatekeeper” of public access to policy change.

The transfer of functions, along with efficiencies, can only be achieved through legislative change.

Part 3: Role of the Parliamentary Corporation

We recommend dissolving the Parliamentary Corporation and transferring all of its property, rights, and obligations to the Parliamentary Service. The Parliamentary Service would be made into a statutory corporate entity to enable the Service to enter into contracts and hold property. This could require an amendment to the Public Finance Act 1989 (PFA).

The Treasury does not support an amendment to the PFA to allow the Parliamentary Service to become an appropriation administrator as a body corporate. The role of administering Votes is only performed by administrative units that are part of the Crown. The Treasury recommends the establishment of a single new Vote which would be administered by the Office of the Clerk (this would replace Vote Office of the Clerk and Vote Parliamentary Service). It considers that this would maintain the integrity of the PFA and avoid the precedent-setting effect of widening the scope of bodies that can administer a Vote. We do not support this alternative as it would affect the neutrality of the Office of the Clerk because the Office would become responsible for the Service’s outputs (this is of particular concern because the Parliamentary Service administers members’ funding). We also note that the Auditor-General is a corporation sole and is still able to administer a Vote and receive funding under the PFA.

Part 4: Status of the Deputy Clerk of the House and the Parliamentary Librarian and Library

We recommend:

- that the Deputy Clerk be appointed by the Clerk of the House so that they become an ordinary employee of the Office of the Clerk with remuneration set by the Clerk directly. Future appointments to the role would be undertaken by the Clerk.
- removing the Parliamentary Librarian and Library from the legislation so that they become an ordinary employee and a standard business unit in the Parliamentary Service’s organisational structure.

Under the new arrangements, Parliament would continue to receive advice and support that meet its needs, while the parliamentary agencies would gain flexibility and consistency in its organisational management.

In addition to the status quo, we also considered an alternative option where the Parliamentary Librarian was removed from the legislation while the Library remained.

General

The costs of implementing and operating these policies would be negligible or minor for the parliamentary agencies and would come from within baseline. The Electoral Commission would not seek additional annual funding to perform the CIR functions and duties discussed in Part 2 of this paper. This is because of the fluctuating demand for CIR and the relatively small costs involved. Though unrelated, it is important to note that the Commission foresees a significant funding shortfall in the upcoming electoral cycle and additional functions will need to be considered in the relevant Budget, as existing baselines are insufficient for the Commission's existing functions.

We consulted with the following:

- Government agencies: the Department of Internal Affairs; the Electoral Commission (on Part 2); the Ministry of Business, Innovation and Employment (on Part 4); the Ministry of Justice; the Remuneration Authority (on Part 4); and the Treasury. The Department of the Prime Minister and Cabinet and the Parliamentary Counsel Office were informed.

The Chief Electoral Officer supports the proposed transfer of functions to the Electoral Commission. The Ministry of Justice does not support Option 2, and the Department of the Prime Minister and Cabinet considers that this matter falls outside the scope of the Bill. It has also commented that the proposal requires further work by the Ministry of Justice to determine whether the change is compatible with the Electoral Commission's existing functions.

- parties in Parliament: the ACT Party, the Green Party, the Labour Party, the National Party, and Te Paati Māori. The Green Party supports the proposals to clarify the Clerk's statutory functions and to move the Clerk's functions relating to citizens initiated referendums to the Electoral Commission. It noted the Parliamentary Library should be the direct responsibility of the Speaker as it is essential to a well-functioning democracy. The ACT Party considered the policy proposals sensible. No party raised any other concerns regarding any of the policy proposals in this Regulatory Impact Statement during the time available for consultation. With more time, we would be able to have a clear understanding of parties' views.
- other interested parties: former Clerks of the House David McGee and Mary Harris, the current Deputy Clerk, and the Parliamentary Librarian. They support the changes.

Limitations and Constraints on Analysis

There were no policy limitations on the policy options considered under any of the options. There were time constraints over policy development because the Speaker prefers that the Parliament Bill be introduced into 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 the time constraint, public consultation has not taken place. The public will have the opportunity to provide input during the select committee stage of the Bill.

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:

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 **parts 1, 3, and 4 partially meet** the Quality Assurance criteria. The panel considers that the information and analysis summarised in **part 2 does not meet** the Quality Assurance criteria.

Part 2: The RIS has not made a convincing case to transfer responsibilities for citizens' initiated referenda away from the Clerk. The RIS does not adequately explain how these responsibilities are a better fit with the Electoral Commission's core functions. The panel considers that the analysis table on page 29 overstates the benefits of options and introduces several risks that aren't explained elsewhere. We suggest that more work is needed to fully assess both the case for, and implications of, change.

Part 3: The discussion in part 3 does not acknowledge a precedent that will be created by this proposal. If the Public Finance Act is amended to enable Parliament to take full control over its own funding, that begs a question as to why the Judiciary cannot be similarly enabled to maintain symmetry

between the branches of State. Ministers may wish to consider the implications of creating such a precedent.

Whole RIS: Time constraints have precluded public consultation on the RIS, and although consultation with parliamentary parties was undertaken there was little engagement. Public consultation is particularly important for part 2, given it concerns a direct democracy mechanism. We recommend consideration be given to opportunities for targeted consultation, such as an exposure draft bill.

To manage conflicts, the chair recused herself from the decision on part 2 and one panel member recused herself from the decision on part 4.

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Contents

- Regulatory Impact Statement 2: Parliament Bill – Organisational Matters for the Parliamentary Agencies 1
 - Coversheet..... 1
 - Part 1 – Statutory Functions of the Clerk of the House of Representatives 10
 - Section 1: Diagnosing the policy problem 10
 - What is the context behind the policy problem and how is the status quo expected to develop?..... 10
 - What is the policy problem or opportunity? 10
 - What objectives are sought in relation to the policy problem? 11
 - Section 2: Deciding upon an option to address the policy problem 11
 - What criteria will be used to compare options to the status quo? 11
 - What scope will options be considered within? 11
 - What options are being considered?..... 11
 - How do the options compare to the status quo/counterfactual? 165
 - What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits? 176
 - What are the marginal costs and benefits of the option? 187
 - Section 3: Delivering an option 198
 - How will the new arrangements be implemented? 198
 - How will the new arrangements be monitored, evaluated, and reviewed? **Err**
- or! Bookmark not defined.9**
- Part 2 – The Clerk’s Role in Citizens Initiated Referenda 209
 - Section 1: Diagnosing the policy problem 209
 - What is the context behind the policy problem and how is the status quo expected to develop?..... 209
 - What is the policy problem or opportunity? 22
 - What objectives are sought in relation to the policy problem? 232
 - Section 2: Deciding upon an option to address the policy problem 232
 - What criteria will be used to compare options to the status quo? 232

What scope will options be considered within?	243
What options are being considered?.....	24
How do the options compare to the status quo?	298
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?.....	321
What are the marginal costs and benefits of the option?.....	321
Section 3: Delivering an option	343
How will the new arrangements be implemented?	343
How will the new arrangements be monitored, evaluated, and reviewed?	354
Part 3 – Role and Status of the Parliamentary Corporation	365
Section 1: Diagnosing the policy problem	365
What is the context behind the policy problem and how is the status quo expected to develop?.....	365
What is the policy problem or opportunity?	387
What objectives are sought in relation to the policy problem?	387
Section 2: Deciding upon an option to address the policy problem.....	387
What criteria will be used to compare options to the status quo?	387
What scope will options be considered within?	398
What options are being considered?.....	398
How do the options compare to the status quo/counterfactual?	424
2	
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?.....	444
What are the marginal costs and benefits of the option?.....	444
Section 3: Delivering an option	455
How will the new arrangements be implemented?	455
How will the new arrangements be monitored, evaluated, and reviewed?	455

PART 4 – THE STATUS OF DEPUTY CLERK OF THE HOUSE AND THE PARLIAMENTARY LIBRARIAN AND LIBRARY	466
Section 1: Diagnosing the policy problem	466
What is the context behind the policy problem and how is the status quo expected to develop?.....	466
What is the policy problem or opportunity?	477
What objectives are sought in relation to the policy problems?	499
Section 2: Deciding upon an option to address the policy problem	499
What criteria will be used to compare options to the status quo?	499
What scope will options be considered within?	499
What options are being considered?.....	499
How do the options compare to the status quo/counterfactual?	53
What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?	555
What are the marginal costs and benefits of the option?.....	555
Section 3: Delivering an option	566
How will the new arrangements be implemented?	566
How will the new arrangements be monitored, evaluated, and reviewed?	577

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Part 1 – Statutory Functions of the Clerk of the House of Representatives

Section 1: Diagnosing the policy problem

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

1. In section 3 of the Clerk of the House of Representatives Act 1988, the functions of the Clerk of the House of Representatives ('the Clerk') are to:
 - a. note all proceedings of the House of Representatives and of any committee of the House
 - b. carry out such duties and exercise such powers as may be conferred on the Clerk of the House of Representatives by law or by the Standing Orders and practice of the House of Representatives
 - c. act as the principal officer of the Office of the Clerk of the House of Representatives and, in that capacity, to manage that office efficiently, effectively, and economically
 - d. ensure that the members of the staff of the Office of the Clerk of the House of Representatives carry out their duties (including duties imposed on them by law or by the Standing Orders or practice of the House of Representatives) and maintain both proper standards of integrity and conduct and concern for the public interest
 - e. be responsible, under the direction of the Speaker of the House of Representatives, for the official report of the proceedings of the House of Representatives and its committees.

What is the policy problem or opportunity?

2. Creating the Parliament Bill provides an opportunity to better reflect the role of the modern Clerk in legislation. The current statutory functions do not include key functions carried out by the Clerk, including acting as chief adviser on matters of parliamentary procedure and law, as well as other functions that have developed as the role has matured (e.g. public engagement and communicating parliamentary proceedings).
3. The Clerk's role in public engagement and communicating parliamentary proceedings has gradually evolved with successive Clerks as public expectation of the ability to engage with Parliament has grown. However, there remains a lack of public understanding of the Clerk's role in these matters. Placing these functions in statute will increase accountability for their delivery and reduce any risk of the perception that the Clerk is acting outside their statutory remit.
4. The policy problem requires Government intervention so that these functions are set out in statute.

What objectives are sought in relation to the policy problem?

5. The main objective of this policy is to clarify the functions of the Clerk. This is intended to reflect the priority given by Parliament to those core functions, and to then provide the public with a better understanding of the role.

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

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

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

Criterion	What it means
Clarity and Certainty	<ul style="list-style-type: none">• The rules are clear and easy to follow
Participation	<ul style="list-style-type: none">• Parliament is open and accessible to members, their families, and the public
Transparency and Accountability	<ul style="list-style-type: none">• Rules and processes maintain public trust and confidence in Parliament's integrity• Participants in parliamentary duties are responsible for their actions• The public has access to adequate information to hold participants in parliamentary duties to account
Constitutional Propriety	<ul style="list-style-type: none">• Upholds principle that Parliament controls its own affairs• Provides appropriate separation for the Legislature from the Executive

What scope will options be considered within?

7. There have been no limits on the scope of the options considered.
8. We reviewed the functions (whether legislative or established by convention) of the federal parliamentary Clerks in Australia, the United Kingdom, and Canada during policy development.

What options are being considered?

9. We considered the following options:
 - a. Option 1 – Counterfactual
 - b. Option 2 – Update statutory functions to reflect modern role.

Option 1 – Counterfactual

10. Under the counterfactual, the current statutory functions would be retained, but the statutory language would be updated in the Bill drafting process. The Bill would not reflect the role of the modern Clerk. The Clerk's functions of acting as chief adviser on matters of parliamentary procedure and law, as well as other functions that support transparent

democracy, such as public engagement and communication of parliamentary proceedings, would remain unspecified.

11. Under the counterfactual, these functions would continue to be carried out under the more general functions listed in the current Act. For example, the current Act provides for the Clerk to carry out such duties and exercise such powers as may be conferred on them by the Standing Orders and the practice of the House of Representatives. This power is necessarily limited to matters that are able to be conferred by the House in this way. The Clerk’s current function of acting as chief adviser on matters of parliamentary procedure and law has been conferred by the practice of the House. Practice, by its nature, is not written down and therefore the existence of the function is not clear. Similarly, Appendix D of the Standing Orders is the basis of the function of broadcasting parliamentary proceedings, but this is not an obligation to provide that function. The Clerk’s function of public engagement is not itself related to the proceedings of the House and therefore is not clearly within the scope of the Standing Orders or the practices of the House. Instead, the Clerk undertakes that function as part of their existing administrative function to manage the Office of the Clerk efficiently, effectively, and economically.

The counterfactual would lead to the role of the Clerk being less clear and could create a risk of a lack of accountability in respect of the delivery of these unspecified functions.

Option 2 – Update statutory functions to reflect Clerk’s modern role

12. Under this option, the Clerk’s statutory functions would be updated to reflect and affirm the modern role. This would not limit the House’s ability to regulate its own procedure and to determine further functions to be undertaken by the Clerk.
13. We propose that the following new statutory functions be added to those currently provided for:
 - a. Communicating the proceedings of the House of Representatives (*new statutory function reflecting current role*)
 - b. Engagement and outreach with the public (*new statutory function reflecting current role*)
 - c. Advising on matters of parliamentary procedure and law (*new statutory function reflecting current role*).
14. A detailed description of those functions, and the modernisation proposals for the Clerk’s existing statutory functions, are set out in **Table 1** below.

Table 1: Proposed Statutory Functions of the Clerk of the House of Representatives

Function	Description
1. Record the proceedings of the House of Representatives	<p>Current statutory functions:</p> <ul style="list-style-type: none"> - To note all proceedings of the House of Representatives and of any committee of the House (s 3(a)) - To be responsible, under the direction of the Speaker of the House of Representatives, for the official report of the

Function	Description
	<p><i>proceedings of the House of Representatives and its committees (s 3 (e))</i></p> <p>Language may be modernised when the Parliament Bill is drafted.</p>
2. Communicate the proceedings of the House of Representatives	<p>New statutory function reflecting current role</p> <p>Proceedings of the House and its committees are broadcast on the radio, television, and the internet. The Office of the Clerk provides live and on-demand coverage. This is distinct from maintaining the record of the House as its primary feature is enabling public engagement with Parliament.</p> <p>The expectation is that the provision relating to this function will be drafted broadly enough to not limit future means of broadcasting and new forms of communication.</p>
3. Engagement and outreach	<p>New statutory function reflecting current role</p> <p>Public engagement, education, and outreach about the structure, role, and work of Parliament (current and historical) and the parliamentary precinct. This enables the public to participate in, and understand, Parliament.</p> <p>Inter-parliamentary relations and support for members of Parliament to engage with the same.</p>
4. Adviser on matters of parliamentary procedure and law ¹	<p>New statutory function reflecting current role</p> <p>The Clerk advises the Speaker and members on the interpretation of parliamentary rules, precedents, and practices.</p>
5. Stewardship, leadership, and management of the Office of the Clerk	<p>Current statutory functions:</p> <ul style="list-style-type: none"> - <i>To act as the principal officer of the Office of the Clerk of the House of Representatives and, in that capacity, to manage that office efficiently, effectively, and economically (s 3(c)).</i> - <i>To ensure that the members of the staff of the Office of the Clerk of the House of Representatives carry out their duties (including duties imposed on them by law or by the Standing Orders or practice of the House of Representatives) and maintain—(i) proper standards of integrity and conduct; and (ii) concern for the public interest (s3(d)).</i> <p>Language may be modernised when the Parliament Bill is drafted (e.g. establishing that the Clerk is Chief Executive as well as principal officer of the Office of the Clerk).</p> <p>New provisions will affirm the Clerk’s role as leader and steward of the Office and include recognition of active engagement with the Chief Executive of the Parliamentary Service. This reflects and reinforces the close working relationship between the two parliamentary agencies.</p>

¹ Law refers to Parliament’s rules, precedents, and practice. It is not the intention to make the Clerk the House’s Chief Legal Advisor on all legal matters.

Function	Description
<p>6. Duties and powers conferred by law, Standing Orders, or practice of the House</p>	<p>Current statutory function: <i>To carry out such duties and exercise such powers as may be conferred on the Clerk of the House of Representatives by law or by the Standing Orders and practice of the House of Representatives (s3(b)).</i></p> <p>The Parliament Bill will continue to have general provisions to allow the House to continue to control its own arrangements.</p> <p>Language may be modernised when the Parliament Bill is drafted (e.g. affirming that the Clerk has all the powers that are reasonably necessary or expedient to carry out the functions, duties, and powers imposed on the Clerk by statute²).</p> <p>For consistency with the statutory functions of the Chief Executive of the Parliamentary Service, the section will also cross-reference the Clerk’s other statutory roles so all of their functions/roles are in one place (e.g. return of the writ under the Electoral Act 1993).</p>

15. Statutory language may also be updated during drafting of the Parliament Bill.
16. This option provides a clear picture of the role of the Clerk and greater transparency for appropriations purposes. It does not diminish the House’s ability to determine other functions it considers appropriate for the Clerk to undertake. If the functions are not updated to reflect the Clerk’s actual role, there is a risk that they may be perceived to be acting outside their statutory remit in respect of some activities.
17. In some cases, funding for parliamentary engagement has previously been denied. There could be a risk that by including these functions in statute, there would be a stronger argument for the approval of such funding in the Budget cycle. However, when additional funding for public engagement has previously been denied, it was because it did not meet Government priorities (and was considered by Treasury to be “out of scope”).
18. If the functions were included in statute, Treasury would still be able to consider requests for additional funding as being outside Government priorities. This would not be the case if the funding arrangements for Parliament (RIS 4) were to change, but that policy proposal contains a mechanism to ensure funding decisions are transparent.
19. The Green Party supports the proposals to clarify the Clerk’s statutory functions, including advocacy and outreach. No other party raised any concerns.
20. Former Clerk Mary Harris commented that not updating the functions of the Clerk (which had significantly developed during her tenure) creates the risk that Clerks may be perceived to be acting outside their statutory remit.

² Based on section 132 of the Legislation Act 2019 in respect of the powers of Chief Parliamentary Counsel.

21. No public consultation has taken place because of time constraints, and no other stakeholder has expressed a view.

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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 – Counterfactual	Option 2 – Update statutory functions to reflect Clerk’s modern role
Clarity and certainty	<p>0</p> <p>Some risk that Clerk may be perceived to be acting outside of statutory remit for some actions outside of their current statutory functions (mitigated by Parliament’s ability to determine appropriate functions for the Clerk).</p>	<p>+</p> <p>Greater clarity of Clerk’s role removes any residual risk.</p>
Participation	<p>0</p> <p>Engagement and outreach are part of the Clerk’s current role, however there is uncertainty due to its lack of its authority and priority.</p>	<p>+</p> <p>Specifies that Clerk has a function of engagement and outreach.</p>
Transparency and Accountability	<p>0</p>	<p>++</p> <p>Clear articulation of the Clerk’s statutory functions provides an opportunity to enhance their accountability for delivery of those functions.</p>

	Option 1 – Counterfactual	Option 2 – Update statutory functions to reflect Clerk’s modern role
	Statutory functions do not reflect the key functions undertaken by the Clerk. ³ However, transparency is heightened through other information that is publicly available.	
Constitutional propriety	0 Maintains ability for Parliament to determine own affairs. ⁴	0 Maintains ability for Parliament to determine own affairs (unchanged from Option 1).
OVERALL ASSESSMENT	0	+ Better than doing nothing/the counterfactual

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

22. **Option 2 (Update statutory functions to reflect Clerk’s modern role)** is our preferred option. This option would more accurately reflect the modern Clerk’s role, provide the greatest accountability, and ensure that the current activities of the Clerk continue to be delivered.

³ For example, use of a catch-all appropriation class in *Vote: Office of the Clerk*: provision to the House of Representatives of professional advice and services designed to assist the House in its fulfilment of its constitutional functions, and enabling participation in, and understanding of, parliamentary proceedings.

⁴ Refer current function at section 3(b) of the Clerk of the House of Representatives Act 1988.

What are the marginal costs and benefits of the option?

Affected groups (<i>identify</i>)	Comment nature of cost or benefit (e.g. <i>ongoing, one-off</i>), evidence and assumption (e.g. <i>compliance rates</i>), risks.	Impact \$m present value, where appropriate, for monetised impacts; high, medium, or low for non-monetised impacts.	Evidence Certainty High, medium, or low, and explain reasoning in comment column.
Additional costs of the preferred option compared to taking no action			
Regulated groups	<i>Clerk and Office of the Clerk (ongoing)</i> Clerk's current statutory functions (no change)	Low	High
Regulators	None	N/A	High
Others (e.g. wider govt, consumers, etc.)	None	N/A	High
Total monetised costs	None	N/A	High
Non-monetised costs	Clerk's current functions (no change). Adding these statutory functions will not change the funding that the Office of the Clerk customarily bids for, in relation to engagement and outreach activities.	Low	High
Additional benefits of the preferred option compared to taking no action			
Regulated groups	<i>Clerk (ongoing)</i> Increased clarity and certainty over role	Low	High
Regulators	N/A	N/A	N/A
Others (e.g. wider govt, consumers, etc.)	<i>General public and members of Parliament (ongoing)</i> Increased transparency over functions and accountability for public funds	Medium	Medium
Total monetised benefits	None	N/A	High
Non-monetised benefits	Increased clarity and certainty over role Increased transparency over functions and	Low/Medium	Medium/High

Section 3: Delivering an option

How will the new arrangements be implemented?

23. The costs of implementing the new arrangements will be negligible as the proposed changes reflect the Clerk's current functions. It is proposed that the transfer would begin after the 2023 General Election, by way of Order in Council (within six months of the election). This would accommodate the work of the Electoral Commission following the General Election. Communications will be prepared to explain the changes to members and the wider public.

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

24. Refer to *Regulatory Impact Statement 1: Parliament Bill – Overall Bill* for a description of how the policy changes made by the Bill will be evaluated.

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Part 2 – The Clerk’s Role in Citizens Initiated Referenda

Section 1: Diagnosing the policy problem

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

The Clerk’s functions

25. The Clerk of the House of Representatives has a number of statutory functions⁵ associated with the operation of the House of Representatives.
26. There is also an additional function to carry out such duties and exercise such powers as may be conferred on the Clerk of the House of Representatives by law. One of those duties is the Clerk’s role under the Citizens Initiated Referenda Act 1993.

Citizens initiated referenda in New Zealand

27. The Citizens Initiated Referenda Act 1993 allows New Zealand citizens to propose non-binding referendums on any issue. For such a referendum to be held, the proponents must submit a petition to the House of Representatives signed by 10 percent of all registered electors within a 12-month period. Within one month of the petition’s presentation to the House, a date for the poll must be determined by the Governor-General by Order in Council. The poll must be held within 12 months of the petition’s presentation, although it can be delayed if 75 percent of members of Parliament vote to do so.
28. There are six stages in holding a citizens initiated referendum (CIR):
 - a. Stage 1 – Starting a referendum
 - b. Stage 2 – Determination of the question and approval of petition form
 - c. Stage 3 – Collecting signatures
 - d. Stage 4 – Checking the petition
 - e. Stage 5 – Holding the referendum
 - f. Stage 6 – Announcing the result.
29. Of the 48 CIRs that have been initiated since 1993:
 - a. 32 lapsed (usually due to insufficient signatures)
 - b. 11 were withdrawn
 - c. Five proposals triggered a referendum.

⁵ Under the Clerk of the House of Representatives Act 1988

30. The five CIRs held (one in 1995, two in 1999, one in 2009, one in 2013)⁶ related to the employment of firefighters, the size of the membership of the House, the needs of victims of crime within the justice system, whether smacking children should be a criminal offence, and the sale of certain State assets.

Clerk's role in citizens initiated referenda

31. Under the Citizens Initiated Referenda Act 1993, the Clerk must:
- Receive and advise on proposals to promote an indicative referendum petition
 - Consult with the petition promoter and others on the wording of the proposed question
 - Determine the wording of the proposed question
 - Approve the form for the collection of signatures to the petition
 - Certify whether the petition has met the requirements to trigger a referendum.
32. The Clerk's duties are administered by the Office of the Clerk. The administrative impact on the Office depends on what stage the petition reaches, how much interaction with the petitioner is required during the process, and whether a second count of signatures is required (i.e. if the original collection of signatures does not reach the 10 percent threshold).
33. The determination of the referendum question can be resource-intensive. The question must make sense as a single question and must have a yes/no answer. The Clerk must determine the question, which requires that the petitioner voluntarily engage. This can sometimes be a time-consuming process for the Office.
34. The most resource-intensive part of the process is counting the petition signatures (at *Stage 4 – Checking the Petition*). This is carried out by temporary staff contracted for the purpose, with support from a staff member and managerial oversight.⁷ The Electoral Commission is then contracted by the Office to perform the required check of signatures against the electoral roll. Additional administrative costs are managed within baseline as they arise.

⁶ The five citizens-initiated referenda held in New Zealand are: (1) "Should the number of professional firefighters employed full-time in the New Zealand Fire Service be reduced below the number employed on 1 January 1995?" (referendum held on 2 December 1995); (2) "Should the size of the House of Representatives be reduced from 120 members to 99 members?" (referendum held on 28 November 1999); (3) "Should there be a reform of our justice system placing greater emphasis on the needs of the victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious violent offences?" (referendum held on 28 November 1999); (4) "Should a smack as part of good parental correction be a criminal offence in New Zealand?" (held from 31 July to 21 August 2009); and (5) "Do you support the Government selling up to 49% of Meridian Energy, Mighty River Power, Genesis Power, Solid Energy and Air New Zealand?" (Referendum held 22 November 2013 to 22 November 2013).

⁷ For example, on average, a CIR reaching Stage 4 results in 50 boxes of signatures, which takes eight to 10 temporary staff two weeks to count signatures and mark the pages to be checked against the electoral roll. It also requires a secure space to keep and count the signatures, and secure transport of the boxes to and from the Electoral Commission. It is estimated the role for the manager is 1-2 hours a day and full-time for the adviser during this period.

35. A prescribed fee of \$604.10 (set by regulation) must accompany a referendum proposal. This is not a cost recovery mechanism.

Other key roles in the citizens initiated referenda process

36. The Government Statistician and the Electoral Commission also perform key roles in the process:
- a. The Government Statistician provides the statistical methodology which determines which signatories' names and addresses will be physically checked against the electoral roll.⁸
 - b. The Electoral Commission performs the physical checks of the sample of petition signatories against the electoral roll based upon the methodology supplied and conducts any referendum resulting from the process. The Electoral Commission is an independent Crown entity which is responsible for running New Zealand's parliamentary elections and referendums and for keeping the electoral rolls up-to-date.⁹

History of the legislation

37. Some submissions on the original legislation suggested that the Clerk of the House was not best placed to perform these functions because they are not parliamentary. While the Clerk's role exists to facilitate, support, and advocate for representative parliamentary democracy, the Citizens Initiated Referenda Act's sole focus is direct democracy. Alternative models proposed at the time included the functions being discharged instead by the Chief Electoral Officer (then part of the Department of Justice), the Clerk of the Writs (a position now disestablished), or some other Judicial Officer. The Department of Justice noted that the Clerk "has a facility with language, can absorb the duties within existing functions, and is politically neutral."¹⁰ The lack of a viable alternative body to take on the function was also relevant.

What is the policy problem or opportunity?

38. Alongside considering the other functions of the Clerk (that are discussed in Part 1 of this RIS), it is an opportune time to consider the Clerk's role under the Citizens Initiated Referenda Act. In particular, we are concerned with where the responsibilities for citizens initiated referenda best sit.
39. The role is unusual and out of keeping with the Clerk's constitutional role as an officer of the House. At the time the Act was developed, there was seen to be some commonality between CIR "petitions" and the parliamentary petitions process. However, while a parliamentary petition asks the House for action (e.g. to grant relief or to make a law

⁸ It is not possible to verify all signatures which are meant to represent 10% of the population. The algorithm demonstrates how many signatures need to be checked to provide the statistical confidence that the 10% threshold has been reached. An example of the methodology would be to check the fifth signature on every third page.

⁹ Refer to Electoral Act 1993.

¹⁰ Refer to page 4, Citizens Initiated Referenda Bill: Report of the Department of Justice: Part A, 17 August 1992.

change), a CIR petition triggers a referendum if the legal requirements are met—not because the House agrees with the petition.

40. The role imposes a special administrative burden on the Office of the Clerk as there are no efficiencies with any of the other business of the Office as the work cannot be incorporated into other functions that the Office undertakes. The process is also inefficient, and two specific administrative inefficiencies have been identified:
 - a. Documentation provided by a petitioner, or a submitter, on the proposed wording of the question must be provided to the Office of the Clerk in hard copy.
 - b. The Clerk is required to determine the referendum question within three months of receiving the proposal. This requirement places the onus on the Clerk to determine the question after consulting the petitioner. This can prove difficult where a petitioner stops engaging with the Office.
41. The Ministry of Justice (who are responsible for administering the Citizens Initiated Referenda Act 1993) have not indicated that they plan to review the Act, or the law relating to referendums in general, so there is no alternative process available to address the issues identified.
42. The Electoral Commission, the Green Party, and the Clerk of the House of Representatives support transferring the responsibilities for citizens initiated referenda to the Commission.

What objectives are sought in relation to the policy problem?

43. The primary objective of this policy is to ensure efficient and effective administration of citizens initiated referenda, to support the right of citizens to participate directly in New Zealand’s democracy.
44. A secondary objective is to preserve the neutrality of the Clerk and the Electoral Commission (perceived and real).

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

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

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

Criterion	What it means
Independence, discretion, and neutrality	<ul style="list-style-type: none"> • Maintains public trust and confidence in the integrity of public institutions
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

46. Some generic criteria (difficulty of implementation and value for money) have also been considered.

What scope will options be considered within?

47. There have been no limits on the scope of the options considered.

48. In addition to the options above, two alternative options received initial consideration but were found to be unviable:

- Judicial role.* The role of the Clerk in citizens initiated referenda would be transferred to an appointed judicial officer. This option was seen as unviable as it could affect the perceived neutrality of the judiciary. The administrative inefficiencies of the current model would also be replicated under this option.
- Committee of members of Parliament.* It was considered unviable to introduce political influence into the citizens initiated referenda process as independence and neutrality are considered to be essential elements of the system. The Ministry of Justice considers that this option is appropriate as it considers a CIR petition to be a form of political dialogue between the House and the petitioners and that the House or a select committee would be able to examine a range of views on the potential wording of a question. This option would not address the administrative burden on the Office of the Clerk, which would need to provide secretariat support to such a committee.

49. Arrangements relating to promotion of citizens' initiatives in the United States, Switzerland, Denmark, Finland, the Netherlands, and Spain were reviewed during policy development.¹¹ New Zealand is unusual in having the Clerk of the House involved in the administration of citizens initiated referenda.

What options are being considered?

50. The following options were considered:

- Option 1 – Status Quo

¹¹ **United States:** In the 24 states where they occur, the administration of citizens' initiative processes is generally carried out by state officials, but in some states the Legislative Research Council (or similar) may be involved in some aspects.

Switzerland: Popular initiatives may request a partial or total revision of the Constitution. The procedure is lengthy and complex, but the initial process for preliminary approval of the text and obtaining signatures is administered by the Federal Chancellery, a Government department. **Other European Countries:** Some European countries enable citizens to submit bills, or proposals for bills, to Parliament. In Denmark, the Folketing (Parliament) Administration administers the process. In Finland, it is administered by the Ministry of Justice. In the Netherlands, initiatives are submitted to the Petitions Committee of the House of Representatives, which rules on their admissibility. In Spain, the Mesa [Board] of the Congress of Deputies examines an initiative for admissibility, and the Central Electoral Commission administers the collection of signatures.

- b. Option 2 – Transfer all the Clerk’s CIR functions to the Electoral Commission
- c. Option 3 – Transfer the Clerk’s CIR certification functions to the Electoral Commission
- d. Option 4 – Create administrative efficiencies.

Option 1 – Status Quo

- 51. Under the status quo, the Clerk’s roles in citizens initiated referenda would be retained. Inefficient administration of citizens initiated referenda will continue. The risk of a perceived lack of neutrality for the Clerk would remain.

IN CONFIDENCE - NOT GOVERNMENT POLICY

Option 2 – Transfer all the Clerk’s CIR duties to the Electoral Commission

52. Under this option, all of the Clerk’s duties would be transferred to the Electoral Commission. This would comprise:
 - a. Receiving and advising on proposals to promote an indicative referendum petition
 - b. Consulting with the petition promoter and others on the wording of the proposed question
 - c. Determining the wording of the proposed question
 - d. Approving the form used for the collection of signatures to the petition
 - e. Certifying whether the petition has met the requirements to trigger a referendum.
53. The Electoral Commission would convey a successful outcome to the Speaker to begin the House process or certify that the petition has lapsed and return the petition to the promoter.
54. A new provision would specify that the Commission is not required to process CIR questions or certification between writ day and the return of the writ for an election. In effect, this would “pause” the statutory deadlines in the Act.¹² This exception would ensure no interference with the Electoral Commission’s primary electoral duties.
55. The functions are a better fit with the wider role of the Electoral Commission, and some efficiencies can also be gained by combining the counting and checking enrolments processes. The risk of a perceived lack of neutrality is removed for the Clerk by this option, but that risk would transfer to the Electoral Commission. However, the risks are different. For the Clerk, the risk arises as the CIR process is inherently electoral in nature, which does not reflect the constitutional role of the Clerk as an officer of the House. For the Commission, the risk could arise as some may see a refusal to agree a referendum question as a conflict because the Commission does not want to run the referendum, which might in turn have some effect on public confidence in the organisation that must deliver the Vote. However, the Electoral Commission is statutorily independent in its performance of its functions, and this risk can be managed with careful communications.
56. The Electoral Commission’s objective is to administer the electoral system impartially, efficiently, and effectively. As referenda (generally) are electoral in nature, then transferring the Clerk’s functions to that statutorily independent entity is logical.
57. This option is supported by the Chief Electoral Officer and the Green Party. No other party raised any concerns.
58. The Ministry of Justice does not support this option. The Ministry do not consider the duty to determine the question as a logical fit with the Electoral Commission’s existing

¹² Refer to Citizens Initiated Referenda Act 1993 section 11 (determination of the referendum question within three months of receipt of the proposal) and section 18 (certification to be completed within two months of the date the petition is received).

duties. The Ministry also think that a wider review (led by the Ministry of Justice) of citizens initiated referenda is needed before the proposed change is made. The Ministry do not consider that the Parliament Bill is the right process for progressing this type of change, as the main purpose of the Bill is to consolidate the existing parliamentary legislation and make some minor changes to the way Parliament operates. The Department of the Prime Minister and Cabinet considers that this matter falls outside the scope of the Bill as it would expand the role of the Electoral Commission. It has also commented that the proposal requires further work by the Ministry of Justice to determine whether the change is compatible with the Electoral Commission's existing functions.

59. Our view has always been that the purpose of the Parliament Bill is to amalgamate the existing parliamentary legislation, and make policy changes for parliamentary operations which may result in amending other legislation. Our view is that this proposal is in scope for the Parliament Bill, and we acknowledge that this option would expand the role of the Electoral Commission.
60. There is no indication that a wider review of citizens initiated referenda is planned, or has been planned since the enactment of the Citizens Initiated Referenda Act 1993. The problems with the operation of the current legislation will continue if the opportunity to make change as part of the wider consideration of the Clerk's other statutory duties (in Part 1) is missed.

Option 3 – Transfer the Clerk's CIR certification duties to the Electoral Commission

61. Under this model, the Clerk would retain the responsibility for:
 - a. Receiving and advising on proposals to promote an indicative referendum petition
 - b. Consulting with the petition promoter and others on the wording of the proposed question and
 - c. Determining the wording of the proposed question.
62. The Clerk's duties in relation to certifying the petition would be transferred to the Electoral Commission. This would comprise:
 - a. Approving the form on which signatures to the petition are collected
 - b. Certifying whether the petition has met the requirements to trigger a referendum.¹³
63. As under Option 2, a new provision would specify that the Commission is not required to process CIR certification between writ day and the return of the writ for an election. As with Option 2, Option 3 is supported by the Chief Electoral Officer and the Green Party. The Ministry of Justice and the Department of Prime Minister and Cabinet consider this matter falls outside the scope of the Bill proposal, which is about amalgamating the four Acts relating to Parliament.

¹³ The Commission would transfer a successful result or certify the petition as lapsed as per Option 2.

64. The functions in relation to certifying the petition are a better fit with the wider role of the Electoral Commission. The risk of a perceived lack of neutrality is shared by the Clerk and the Electoral Commission under this option, but the risk is greater for the Clerk if they were to continue to determine the question.
65. Having citizens initiated referenda functions split does not seem logical, when the majority of electoral functions sit with the Electoral Commission. However, our view is that this option is an improvement on the status quo.
66. As with Option 2, this option is supported by the Chief Electoral Officer and the Green Party, and is not supported by the Ministry of Justice and the Department of the Prime Minister and Cabinet, for those same reasons noted under Option 2. Our view on those concerns is also the same as under Option 2.

Option 4 – Create administrative efficiencies

67. Two administrative efficiencies have been identified in relation to the Clerk's functions under the Citizens Initiated Referenda Act:
 - a. Enable electronic transmission of some documentation for a citizens initiated referendum petition. This documentation is provided by a petitioner or submitter on the proposed wording of the question. This does not include allowing signatures to be collected electronically.
 - b. Add a new exception to the requirement that the wording of the referendum question be determined within three months of receiving the proposal, to address situations when a petitioner fails to engage with proposed changes to the wording.
68. There is likely to be a benefit as the public are used to electronic communication, and there would be administrative efficiencies for those who engage with the process to be able to submit certain documents electronically.
69. These efficiencies can only be achieved through legislative change.

How do the options compare to the status quo?

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 – Transfer all the Clerk’s CIR functions to the Electoral Commission	Option 3 – Transfer the Clerk’s CIR certification functions to the Electoral Commission	Option 4 – Create administrative efficiencies
Independence, Discretion, and Neutrality	<p>0</p> <p>The determination of the referendum question can have political implications. This may affect the perception of neutrality of the Clerk.</p>	<p>0</p> <p>Any perceived lack of neutrality is removed for the Clerk.</p> <p>The Electoral Commission is statutorily independent in performance of its functions, but any perceived lack of neutrality may be transferred to the Commission.</p>	<p>0</p> <p>Any perceived lack of neutrality is removed for the Clerk.</p> <p>The Electoral Commission is statutorily independent in performance of its functions, but any perceived lack of neutrality may be transferred to the Commission.</p>	<p>0</p> <p>Some risk of impact on perceived neutrality arising from change to rule that question must be determined within three months if petitioner does not engage. Can be mitigated by up-front messaging.</p>
Administrative Excellence	<p>0</p> <p>The lack of efficiencies with other roles of the Office of the Clerk make this role administratively inefficient.</p> <p>Depending on timing of the CIR and the stage it is at, this role can interfere with the Office performing its core functions.</p>	<p>++</p> <p>CIR duties are a better fit with the core functions of the Electoral Commission.</p> <p>One-stop-shop for public on matters related to CIR.</p> <p>Risk of creating public confusion on separate stages of a referendum</p>	<p>+</p> <p>Transfer of petition certification creates efficiencies with existing functions of the Electoral Commission.</p>	<p>+</p> <p>Provides minor administrative efficiencies.</p>

	Option 1 – Status Quo	Option 2 – Transfer all the Clerk’s CIR functions to the Electoral Commission	Option 3 – Transfer the Clerk’s CIR certification functions to the Electoral Commission	Option 4 – Create administrative efficiencies
		(Commission advertising the question may confuse some that a referendum will be conducted).		
Implementation Difficulties	0 Can be implemented with Option 4 (administrative efficiencies).	- Minor implementation work needed to transition to new arrangements (more than status quo and Option 3). Risks of addressing policy problem outside the broader context of referendums policy (in particular the process of determining an appropriate referendum question) and of opening up questions of other changes to the CIRA. This is somewhat mitigated by scope of the Parliament Bill.	- Minor implementation to transition to new arrangements (more than status quo and less than Option 2). Some remaining risk of opening up questions of other changes to the CIRA.	0 Transition negligible impact
Value for Money	0	+ Some synergies with counting and checking enrolments being combined. Minor cost increase for Electoral Commission (no additional funding sought), minor cost savings for Office of the Clerk.	+ Some synergies with counting and checking enrolments being combined. Minor cost increase for Electoral Commission (no additional funding sought), minor cost savings for Office of the Clerk.	+ Efficiencies reduce effort by human resource.

	Option 1 – Status Quo	Option 2 – Transfer all the Clerk’s CIR functions to the Electoral Commission	Option 3 – Transfer the Clerk’s CIR certification functions to the Electoral Commission	Option 4 – Create administrative efficiencies
OVERALL ASSESSMENT	0	++ Better than doing nothing/the status quo	+ Better than doing nothing/the status quo	+ 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?

70. Our preferred options are **Option 2** with **Option 4**.
71. This option has the support of the Chief Electoral Officer. The Ministry of Justice does not support Option 2 and does not support Option 4 if combined with Option 2. This option ensures more efficient and effective administration of citizens initiated referenda, to support the right of citizens to participate directly in New Zealand's democracy.
72. There would be clarity around the functions of the Clerk, which would reflect the priority given by Parliament to those core functions.
73. The duties currently performed by the Clerk fit more logically into the Electoral Commission's wider role. Some efficiencies can also be gained by combining the processes for counting and checking enrolments. Removing the risk of the Clerk's neutrality being affected by the duties would also be a benefit of transferring the responsibilities to the Electoral Commission.
74. Introducing limited use of electronic means of communication may increase accessibility.

What are the marginal costs and benefits of the option?

Affected groups (<i>identify</i>)	Comment nature of cost or benefit (e.g. <i>ongoing, one-off</i>), <i>evidence, and assumption (e.g. compliance rates)</i> , risks.	Impact \$m <i>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	<i>Electoral Commission, Office of the Clerk (one-off, implementation)</i> Development of new administrative processes, transition (minor)	Negligible (use existing resources and within baseline).	High
	<i>Electoral Commission (ongoing)</i> Costs of managing day-to-day public advisory functions and determination of the question are highly	Minor (use existing resources and within baseline).	Medium-High

	variable but overall negligible. ¹⁴ Costs of managing certification process on an as-required basis. ¹⁵ Costs incurred as part of this function are rare. ¹⁶		
	<i>Electoral Commission</i> Risk to perceived neutrality and independence from blocking a referendum question	Low/Medium (managed with communications)	Medium
Regulators	Nil	Nil	High
Others (e.g. wider govt, consumers, etc.)	Public Risk	Nil	High
Total monetised costs	<i>Electoral Commission, Office of the Clerk (one-off, implementation)</i> Development of new administrative processes, transition (minor).	Negligible (use existing resources and within baseline).	High
	<i>Electoral Commission (ongoing)</i> Costs of managing day-to-day public advisory functions and determination of the question are highly variable but overall negligible. Costs of managing certification process on an as-required basis. Costs incurred as part of this function are rare.	Minor (use existing resources and within baseline) Note: The Commission has a significant funding shortfall over the coming electoral cycle and additional functions will need to be considered in the relevant Budget.	Medium
Non-monetised costs	Nil	Nil	High

¹⁴ Overall, minor human resource required, however the workload is unpredictable. Publication in the four major daily newspapers when required (the Herald, the Dom Post, The Press, and the ODT): notification of proposal and invitation for comment on wording: \$1,315.36 (as at 2020/21); and notification of determination of question and approval of form: \$1,644.20 (as at 2020/21). Publication in the *Gazette* for the same notices: \$79.01 and \$89.05 respectively.

¹⁵ The main costs of the certification function comprise: contracting of temporary staff for collection and count of petition signatures (estimated range of \$22,400-\$28,000 per count), the required check against the electoral roll (approx. \$43,000 in 2013, adjusted for inflation) and negligible costs for required notifications in the *Gazette* (e.g. notice of petition lapse, notice on certification of petition).

¹⁶ Triggered in 2013 and 2019.

Additional benefits of the preferred option compared to taking no action			
Regulated groups	<i>Office of the Clerk (ongoing)</i> Ability to redirect human resource to perform core roles (negligible)	Low	Medium
Regulators	Nil	Nil	High
Others (e.g. wider govt, consumers, etc.)	<i>Public</i> Greater accessibility to participation in New Zealand's democracy.	Medium	Medium
Total monetised benefits	<i>Office of the Clerk (ongoing)</i> Ability to redirect human resource to perform core roles (negligible)	Low	Medium
Non-monetised benefits	<i>Office of the Clerk (ongoing)</i> Ability to redirect human resource to perform core roles (negligible)	Low	Low-Medium

Section 3: Delivering an option

How will the new arrangements be implemented?

75. Implementation matters are likely to include the following:
- a. If agreed by the Minister of Justice, amendments made to the Citizens Initiated Referenda Act 1993 to transfer the Clerk's duties to the Electoral Commission as part of an omnibus Parliament Bill
 - b. Transfer to begin after the 2023 General Election, by way of Order in Council (within six months of the election)
 - c. The transitional period between enactment and commencement will allow the Electoral Commission to set up the required administrative processes and for the board to make decisions about any delegations of functions
 - d. Transitional provisions to allow any of the Clerk's duties at commencement to be completed for any active petitions
 - e. Amendments to the Cabinet Manual, which contains information about the citizens initiated referenda process and
 - f. Updating Parliament and Electoral Commission web content to reflect the transfer of duties.

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

76. Refer to *Regulatory Impact Statement 1: Parliament Bill – Overall Bill* for a description of how the arrangements under the Bill will be evaluated.

IN CONFIDENCE - NOT GOVERNMENT POLICY

Part 3 – Role and Status of the Parliamentary Corporation

Section 1: Diagnosing the policy problem

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

77. The Parliamentary Service provides administrative and support services to members of Parliament and administers members' funding entitlements. Services include providing members with support staff in their offices, assistance with travel arrangements, accounting services, research information services, security services, information and communications technology support, and catering services. The Parliamentary Service is also responsible for looking after the buildings and grounds of the parliamentary precinct. The Parliamentary Service has no corporate identity; it is referred to as a "service" under section 6 of the Parliamentary Service Act 2000. The non-corporate structure of the Parliamentary Service means it cannot hold assets or enter into contracts.

History of the legislation

78. The Parliamentary Corporation was established by the 2000 Act to replace the previously fractured arrangements. The Report of the Sixth Triennial Appropriations Review Committee¹⁷ summarised the history:

The Parliamentary Service was founded pursuant to the Parliamentary Service Act 1985. In the 10 years following that the State Sector Act 1988 and the Public Finance Act 1989 were passed, and in 1996 the MMP (Mixed Member Proportional) voting system was introduced. These changes introduced inconsistencies in the original Parliamentary Service Act, which had also undergone a number of amendments. To address these inconsistencies a 'clean slate' approach was taken and the Parliamentary Service Act 2000 replaced the original Act.

One of the notable differences between the 1985 and 2000 versions of the Act is the responsibility for funding. In the original 1985 Act the Parliamentary Service Commission was established as a body corporate with responsibility for budgetary control over Parliamentary Service. The 1985 Act also noted that all expenses incurred or payable under the Act would be appropriated for this purpose.

The Public Finance Act 1989 identified that Parliamentary Service should act much in the same way as a government department. The Speaker was introduced as the responsible Minister, and Parliamentary Service was controlled via the Treasury. These changes were reflected in the Parliamentary Service Act 2000.

As part of the Parliamentary Service Act 2000 a triennial review was introduced. The purpose of this review was to ensure an independent view of the funding appropriated for members and parties to ensure they were adequately funded. Part

¹⁷ The Report of the Sixth Triennial Appropriations Review Committee, 6 November 2015, p.87

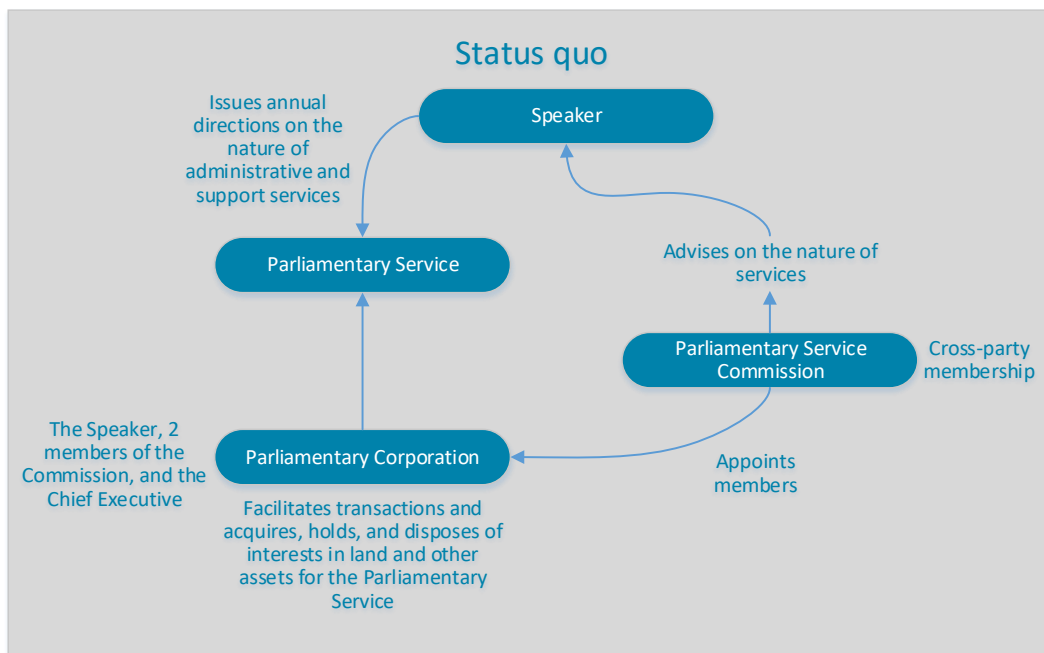
of the thinking behind this inclusion was that an independent review would also address concerns around the decreased independence of the new funding mechanism, given that the Public Finance Act transferred budgetary control to the Executive Government.

Functions of the Parliamentary Corporation and Parliamentary Service Commission

79. As established by the Parliamentary Service Act 2000, the Parliamentary Corporation has the function of holding assets or entering into contracts on behalf of the Parliamentary Service. The Parliamentary Corporation is a body corporate with perpetual succession and a common seal. Its statutory functions are to:
- a. facilitate transactions relevant to the duties of the Parliamentary Service
 - b. to acquire, hold, and dispose of interests in land and other assets for parliamentary purposes.¹⁸
80. The Parliamentary Corporation consists of the Speaker, the Chief Executive of the Parliamentary Service, and two members of the Parliamentary Service Commission (other than the Speaker) appointed by the Commission. The Corporation convenes whenever necessary to carry out its functions (meeting in person or by email).
81. Under the Parliamentary Service Act 2000, the Parliamentary Service Commission has representatives from each party in Parliament, including 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 is chaired by the Speaker. The Commission usually meets every two months. The Commission advises the Speaker about the services to be provided to the House of Representatives and to members of Parliament, and the objectives for those services. It also provides a mechanism for the regular monitoring of parliamentary operations.

The current arrangements are described below at **Diagram 1: Parliamentary Corporation (current arrangements)**

¹⁸ The Parliamentary Corporation cannot borrow money.



82. Most day-to-day functions of the Parliamentary Corporation are delegated to the Parliamentary Service. The Parliamentary Corporation continues to enter into obligations that are required to be by deed, because the Act requires that its common seal is used for deeds and only the Corporation may authorise this.

What is the policy problem or opportunity?

83. This arrangement (where the Parliamentary Corporation holds assets and enters into contracts on behalf of the Parliamentary Service) is cumbersome and outdated. As parliamentarians' trust in the Parliamentary Service has increased over time, this unusual arrangement has become unnecessary. It creates an administrative burden for the Speaker, the members of Parliament who are on the Corporation, and the Parliamentary Service (a staff member from the Service acts in a part-time role as Secretary for the Corporation). The approach to holding assets and entering into contracts could be managed in a modern and conventional manner. The standing delegation of most Parliamentary Corporation functions to the Chief Executive also diminishes the need for the Corporation.

What objectives are sought in relation to the policy problem?

84. The objective of this policy is to ensure that parliamentary administration operates in the most efficient and effective manner.

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

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

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

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
Constitutional Propriety	<ul style="list-style-type: none"> Upholds principle that Parliament controls its own affairs Provides appropriate separation for the Legislature from the Executive
Independence, Discretion, and Neutrality	<ul style="list-style-type: none"> Maintains public trust and confidence in Parliament's integrity Maintains the trust and confidence of the House

86. Some generic criteria (difficulty of implementation and value for money) have also been considered.
87. Although all the criteria are considered to be important, a slightly higher weighting has been given to *Administrative Excellence*, as the matter is considered to be primarily operational.

What scope will options be considered within?

88. There have been no limits on the scope of the options considered.
89. We initially considered making the Chief Executive of the Parliamentary Service a statutory officer with the ability to hold assets and enter into contracts. However, there does not appear to be a clear rationale for creating another statutory officer or corporation sole (apart from creating a consistency of status with the Clerk of the House).
90. Analogous arrangements in Australia were reviewed during policy development. The parliamentary departments are Commonwealth entities under the Public Governance, Performance and Accountability Act 2013.¹⁹ The Secretary of each department is the accountable authority for the department. Their duties are set out in section 15 of the Act. It appears there is no single, central authority for all the departments' assets and contracts.

What options are being considered?

91. The following options were considered:
- Option 1 – Status quo
 - Option 2 – Make the Parliamentary Service a statutory corporate entity.

¹⁹ <https://www.legislation.gov.au/Details/C2017C00269>

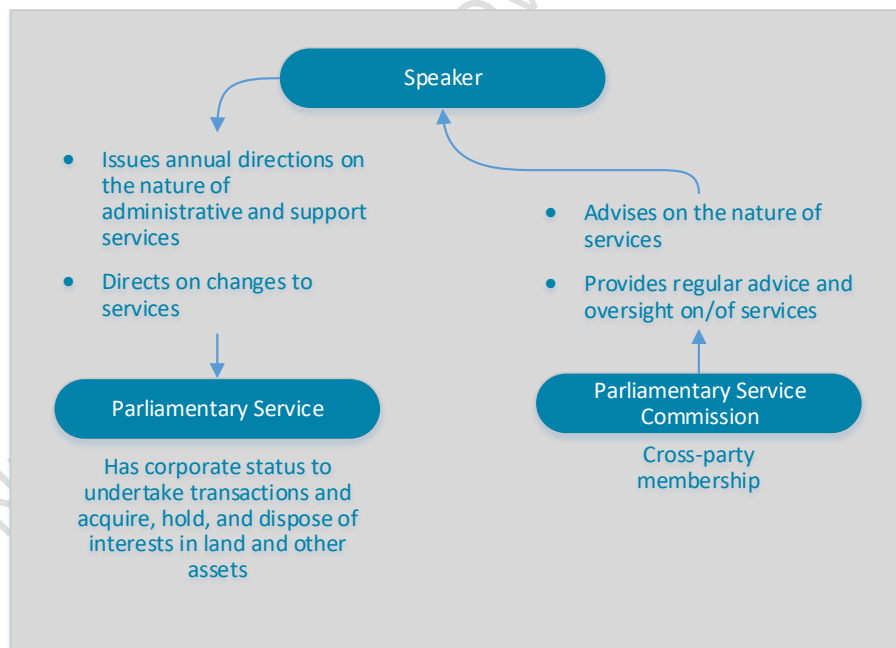
Option 1 – Status Quo

92. Under the status quo, the Parliamentary Corporation would retain its current powers and the Parliamentary Service would retain its non-corporate status. Administrative burdens would remain for the Speaker, the members of Parliament who are on the Corporation, and the Parliamentary Service.

Option 2 – Make the Parliamentary Service a statutory corporate entity (the preferred option)

93. This proposal is to change the character of an existing body (the Parliamentary Service) from a statutory “service” with no corporate identity into a corporate entity with all the rights and duties of a natural person. It would be able to hold assets and enter into contracts.
94. The Parliamentary Corporation would then be dissolved and its property, rights, and obligations transferred to the Parliamentary Service. The Speaker would retain control over the parliamentary precinct.
95. The role and functions of the Parliamentary Service Commission would be unaffected by this change. New arrangements are described below at **Diagram 2**.

Diagram 2: Parliamentary Corporation (proposed new arrangements)



96. The Treasury considers that if the Parliamentary Service becomes a body corporate, an amendment to the Public Finance Act 1989 (PFA) would be required to ensure that the Service remains able to administer a Vote.
97. The Treasury does not support such an amendment. The role of administering Votes is only performed by administrative units that are part of the Crown. The Treasury notes that prior to the PFA, there was no clear rationale for who could administer a Vote. As a result, while most Votes were administered by departments, other agencies

administered Votes. The PFA clarified and restricted the ability to administer Votes to a department (which currently includes the Parliamentary Service) or an office of Parliament, and specifically excluded bodies corporate and other legal entities with the power to contract.

98. The Treasury's concern is the precedent that any amendment to the PFA would set, and the high risk that this would affect the administration of Votes by other entities. There is currently precedent for entities that are not Government departments administering Votes: the Officers of Parliament. This option builds on this pre-existing differentiation between parliamentary bodies and Government bodies (this will be much clearer if the proposal outlined in RIS 4 is also adopted). Our view is that as the distinction is between entities in different branches of government, the risk of precedent setting is low.
99. The Treasury recommends that a single new Vote be established as an alternative to amending the PFA. This Vote would replace Vote Office of the Clerk and Vote Parliamentary Service and would be administered by the Office of the Clerk. The Treasury considers that this would maintain the integrity of the PFA and avoid the precedent-setting effect of widening the scope of bodies able to administer a Vote. We do not support this alternative as it would affect the neutrality of the Office of the Clerk because the Office would become responsible for the Service's outputs (of particular concern is the Parliamentary Service's duty to administer members' funding). It would also fundamentally misrepresent the nature of the relationship between the Office and the Service.
100. None of the parties raised any concerns about the proposal.
101. The Office of the Auditor-General comments that the Parliamentary Service would need to remain a public entity to ensure that it remains within the Auditor-General's mandate for auditing, as listed in Schedule 2 of the Public Audit Act 2001. Our intention is that the Parliamentary Service would continue to be a public entity under this option.

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 – Make the Parliamentary Service a statutory corporate entity
Administrative Excellence	<p>0</p> <p>Administration of the Parliamentary Corporation adds administrative burdens to Parliamentary Service, which is unnecessary.</p>	<p>+</p> <p>It will address unnecessary administrative burden, leading to diversion of resources into other parliamentary services.</p>
Constitutional Propriety	<p>0</p> <p>Membership of Parliamentary Corporation is the Speaker and 2 members of the Parliamentary Service Commission (which has members of all parties represented in Parliament).</p>	<p>0</p> <p>The conventions for oversight of parliamentary matters by the Parliamentary Service Commission ensure appropriate input into major decisions of the Parliamentary Service.</p>
Independence, Discretion, and Neutrality	<p>0</p> <p>Membership of the Parliamentary Corporation is partially determined by the Parliamentary Service Commission, which represents the House in oversight of operational parliamentary matters.</p> <p>The delegation of many matters to the Chief Executive of the Parliamentary Service demonstrates the confidence of the House.</p>	<p>0</p> <p>The trust built up between the Parliamentary Service and members over the years should ensure continued confidence by the House under new arrangements. Members of Parliament continue to have the mechanism for advising on services and decisions that affect them through the Parliamentary Service Commission. Due to the nature of the organisation, Parliamentary Service staff must uphold the highest standards of integrity and trust. This standard is echoed in the Chief Executive's statutory duty set out in section 11(1)(d) of the Parliamentary Service Act 2000.</p>

	Option 1 – Status Quo	Option 2 – Make the Parliamentary Service a statutory corporate entity
Implementation Difficulties	0	0 Implementation will involve developing transitional arrangements and making administrative changes. It is not expected to be difficult because most of these matters are already delegated to the Parliamentary Service.
Value for Money	0	0
OVERALL ASSESSMENT	0	+ 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?

102. **Option 2 (Make the Parliamentary Service a statutory corporate entity)** is the preferred option. It would provide more efficient administration of parliamentary operations, while maintaining an appropriate degree of oversight by the House.
103. The Treasury does not support this option, because of the precedent it would set. However, the precedent would only apply to a parliamentary agency rather than any other type of entity, and would be the only way that the Service could hold assets and enter into contracts.
104. This option would ensure that parliamentary administration operates in the most efficient and effective manner, and that administrative burdens are removed for the Speaker and the current members of Parliament on the Corporation.

What are the marginal costs and benefits of the option?

Affected groups (<i>identify</i>)	Comment nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.	Impact \$m present value, where appropriate, for monetised impacts; high, medium, or low for non-monetised impacts.	Evidence Certainty High, medium, or low, and explain reasoning in comment column.
Additional costs of the preferred option compared to taking no action			
Regulated groups	<i>Parliamentary Service (one-off, implementation)</i> Use of internal capacity to transition to new arrangements (negligible)	Negligible (within existing resources and baseline)	High
Regulators	Nil	Nil	High
Others (e.g. wider govt, consumers, etc.)	Nil	Nil	High
Total monetised costs	<i>Parliamentary Service (one-off, implementation)</i> Use of internal capacity to transition to new arrangements (negligible)	Negligible (within existing resources and baseline)	High
Non-monetised costs	Nil	Nil	High
Additional benefits of the preferred option compared to taking no action			

Regulated groups	Negligible reduction (ongoing)	Low	High
Regulators	N/A	N/A	N/A
Others (e.g. wider govt, consumers, etc.)	N/A	N/A	N/A
Total monetised benefits	Negligible reduction (ongoing)	Negligible reduction (ongoing)	High
Non-monetised benefits	Administratively more efficient	Medium	High

Section 3: Delivering an option

How will the new arrangements be implemented?

105. Implementation in the Bill is likely to include the following:

- a. Transitional provisions to specify that any legal instrument entered into in the name of the Parliamentary Corporation continues in effect, and legal rights and obligations are vested in the Parliamentary Service.
- b. Transitional arrangements to specify when the best time is to vest the assets in the new corporation.

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

106. Refer to *Regulatory Impact Statement 1: Parliament Bill – Overall Bill* for a description of how the effectiveness of the policy proposals under the Bill will be evaluated.
107. As noted above, the Parliamentary Service Commission also provides a mechanism to regularly monitor parliamentary operations.

PART 4 – THE STATUS OF DEPUTY CLERK OF THE HOUSE AND THE PARLIAMENTARY LIBRARIAN AND LIBRARY

108. The policy matters considered in Part 4 are similar and have therefore been considered together.

Section 1: Diagnosing the policy problem

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

Deputy Clerk of the House

109. The Deputy Clerk of the House of Representatives is appointed by the Governor-General on the recommendation of the Speaker,²⁰ with remuneration determined by the Remuneration Authority.²¹ The Deputy Clerk of the House is both a member of the staff of the Office of the Clerk and a statutory officer in their own right.²²
110. The Deputy Clerk is required to perform “*such general official duties (including the exercise of functions, duties, and powers of the Clerk of the House of Representatives) as are for the time being assigned to the Deputy Clerk by the Clerk of the House of Representatives.*”²³
111. The statutory recognition of the Deputy Clerk is a consequence of the Office of the Clerk becoming a statutory agency in 1988. At the time, the Parliamentary Service had a statutory Deputy General Manager: this was a position appointed by the Governor General and then disestablished in 2000²⁴.
112. We reviewed the appointment arrangements of Deputy Clerks in Australian parliaments. The key points are:
- a. In the Federal House of Representatives and Senate, the Deputy Clerk is appointed in the same way as other senior executive service employees in their

²⁰ Refer to section 7, Clerk of the House of Representatives Act 1988. The Speaker must first consult with the Prime Minister, the Leader of the Opposition, and such other members of the House of Representatives as the Speaker considers desirable.

²¹ Refer to Schedule 4, Remuneration Authority Act 1977.

²² Refer to section 4, Clerk of the House of Representatives Act 1988.

²³ Refer to section 5(1), Clerk of the House of Representatives Act 1988.

²⁴ This change was made following a recommendation in *the Report of Review Team on A Review of the Parliamentary Service Act to the Parliamentary Service Commission* (February 1999). The report said “Not only are the [appointment] procedures somewhat cumbersome, they also cut across the General Manager’s responsibility for determining the senior management structures required to meet objectives and respond to changing circumstances.” The Deputy General Manager position was not provided for in the subsequent Parliamentary Service Act 2000 (replacing the 1985 Act). The current Parliamentary Service has a statutory Chief Executive and several non-statutory Deputy Chief Executives comprising its Executive Leadership Team.

Parliamentary Service. Remuneration is set by a determination made by the Clerk (subject to Government employment policies).

- b. In the Northern Territory, Queensland, South Australia, Tasmania, and Victoria, the Deputy Clerk position is not specifically established in legislation.
- c. The Deputy Clerk's salary is determined by either independent or external bodies in the Australian Capital Territory, New South Wales, South Australia, and Tasmania. In Queensland and Victoria, the salary is set by the Clerk, but checked to ensure that it aligns with public service salaries.
- d. The Deputy Clerk role is an executive position in the Australian Capital Territory, Northern Territory, and Queensland, with the ability to carry out functions in the Houses.
- e. In Tasmania and Western Australia, the Deputy Clerk is appointed by the Governor or on the advice of the Speaker or a Presiding Officer, respectively.

Parliamentary Librarian and Library

- 113. The Parliamentary Library and Parliamentary Librarian are recognised under the Parliamentary Service Act 2000.²⁵
- 114. Under the legislation, the Parliamentary Library's general function is to provide specified persons with the library, information, research, and reference services required by the Chief Executive of the Parliamentary Service. The people who receive services from the Library under the statute comprise members of Parliament, officers of the House of Representatives, officers of Parliament, staff of the Parliamentary Service or of any office of Parliament, persons employed within Parliament Buildings (including the Executive Wing), and any other person or class of person approved from time to time by the Speaker.
- 115. The Act also provides that the head of the Parliamentary Library (the Parliamentary Librarian) is an employee of the Parliamentary Service. The Chief Executive is required to consult any committee responsible for providing advice on the Parliamentary Library before appointing a Parliamentary Librarian. The last committee of this type was in existence before 2010. The present Parliamentary Librarian (who is also the Deputy Chief Executive Research, Information and Engagement of the Parliamentary Service) was appointed by the Chief Executive.

What is the policy problem or opportunity?

Deputy Clerk of the House of Representatives

- 116. The processes for appointment and remuneration of the Deputy Clerk in legislation limits the ability of the Clerk of the House to manage Office of the Clerk organisational matters consistently. The current arrangements for the Deputy Clerk mean that there are

²⁵ Refer to Schedule 1, clauses sections 11 -13.

inconsistencies with the terms and conditions for other senior staff in the Office of the Clerk, who carry out broadly similar roles. They are also inconsistent with the arrangements applying to its partner agency the Parliamentary Service, which had its statutory deputy removed in 2000 as the appointment process was found to be cumbersome, and the statutory arrangements were considered to cut across the Chief Executive's responsibility for determining the senior management structures.²⁶

117. It is proposed to retain acknowledgment of the role of the Deputy Clerk in legislation to ensure that there is a clear route for the statutory delegation of the Clerk's functions should there be a vacancy in the Office of the Clerk, or if the Clerk is absent from duty for any reason.

Parliamentary Librarian and Library

118. The current status of the Parliamentary Librarian and Library as statutory bodies is inflexible and inconsistent with the structure and management practices of the Parliamentary Service as a whole. This means that there is a lack of flexibility for structural change within the Parliamentary Service to respond to Parliament's needs.
119. For example, by law, the holder of the position of Parliamentary Librarian is directly responsible to the Chief Executive (rather than to a lower tier manager). This decreases organisational flexibility and may also deter highly-skilled staff members from applying for the role if they do not want a management role or, alternatively, to be the organisation's chief librarian.²⁷
120. Having the Library as a statutory body means that organisational change to respond to Parliament's needs is limited. No other business unit in the Parliamentary Service or the Office of the Clerk is recognised in statute, and the agencies can use that flexibility to provide more efficient services for Parliament. The removal of the Library from legislation would provide the opportunity for flexibility, to efficiently and effectively deliver library, information, research, and reference services to meet the needs of members. The Library does not need to be specified in legislation in order to ensure that those services continue to be delivered.
121. The Parliamentary Service and the Office of the Clerk have aligned the structures within the two organisations as much as appropriate in order to make efficiencies or improvements to service delivery. Both the Chief Executive and the Clerk consider that having the Parliamentary Librarian's role, and the Parliamentary Library as a body, in statute hinders further changes to better support Parliament. The Green Party's view is that the independent status of the Parliamentary Library is essential to well-functioning democracy in Aotearoa. In their view, the Library should be the direct responsibility of the Speaker. The other parties did not raise any concerns in relation to the policy proposal.

²⁶ See footnote 26.

²⁷ Current arrangements prohibit, for example, the Parliamentary Librarian role to be established as a "Principal" role where the Librarian is an expert and a thought leader rather than a manager.

What objectives are sought in relation to the policy problems?

122. The main objectives of these policies are to:

- a. continue to provide Parliament with advice and support services that meet its needs;
- b. ensure that the organisations' management can be flexible and adaptable; and
- c. provide consistent employment arrangements for staff in the Office of the Clerk.

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

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

123. The following specific criteria have been developed in order to assess the options as relevant:

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
Equity	<ul style="list-style-type: none">• People are treated fairly and impartially
Independence, Discretion, and Neutrality	<ul style="list-style-type: none">• Maintains the trust and confidence of the House

What scope will options be considered within?

124. There have been no limits on the scope of the options considered.

What options are being considered?

Deputy Clerk of the House of Representatives

125. The following options were considered:

- a. Option 1 – Status quo
- b. Option 2 – Deputy Clerk to be appointed, and remuneration set, by the Clerk.

Option 1 – Status Quo

126. Under the status quo, the Deputy Clerk will continue to be appointed by the Governor-General, with their remuneration set by the Remuneration Authority. This option limits the Clerk's ability to adapt employment terms and conditions, and manage the performance of the Deputy Clerk. Inconsistency between terms and conditions and performance management of senior Office of the Clerk employees remains, meaning that there are inequities.

Option 2 – Deputy Clerk to be appointed by the Clerk

127. Under this option, the Deputy Clerk's appointment would be removed from the legislation and they would become an ordinary employee of the Office of the Clerk, with remuneration set by the Clerk of the House directly. Future appointments would be undertaken by the Clerk. It is expected that the appointment would continue to be based on advice by specialist recruitment advisers, including advice on job evaluation to provide direction on appropriate remuneration.
128. The appointment of the Deputy by the Clerk would remain in legislation, as would the role's current function in respect of carrying out the Clerk's functions when the Clerk is absent to assure the Speaker and the House that the Deputy Clerk will assume responsibility in the absence of the Clerk.
129. This option gives the Clerk the ability to adapt employment terms and conditions, and manage the performance of the Deputy Clerk. It removes inconsistencies between terms and conditions and performance management of senior Office of the Clerk employees.
130. This proposal has the support of the current Deputy Clerk and of former Clerks of the House David McGee and Mary Harris. This option is broadly consistent with the arrangements applying to the Parliamentary Service.

Parliamentary Librarian and Library

131. We considered:
 - a. Option 1 – Status quo
 - b. Option 2 – Remove the Parliamentary Librarian from the legislation
 - c. Option 3 – Remove the Parliamentary Librarian and the Parliamentary Library from the legislation.
 - d. Additional option – operational changes.

Option 1 – Status quo

132. Under the status quo, both the Parliamentary Librarian and Library would remain in legislation with their current lines of responsibility and statutory functions. The organisational structure and lines of responsibility remain inflexible, and lack the ability to adapt in order to meet the changing needs of Parliament.

Option 2 – Remove the Parliamentary Librarian from the legislation

133. Under this option, the role of Parliamentary Librarian would cease to be recognised in legislation. The Librarian would be an ordinary employee in the Parliamentary Service's organisational structure. This option would remove the requirement that the Chief Executive consult with any committee of the Parliamentary Service Commission responsible for providing advice on the Parliamentary Library before appointing a Parliamentary Librarian. Members may consider their input into the appointment of a Parliamentary Librarian is lost. However, the last time a committee of this type was consulted was before 2010. There is currently no committee of the Parliamentary Service Commission that is responsible for providing advice on the Parliamentary Library. This

indicates that the Library has not been a concern, either politically or otherwise, for members, for some time.

134. The Librarian would be appointed by a Deputy Chief Executive and, as with all appointments within the Parliamentary Service, the appointment would be approved by the Chief Executive.
135. This option provides some flexibility for the Parliamentary Service to adapt lines of responsibility, to effectively and efficiently deliver services to Parliament. Some inflexibility remains as the Parliamentary Library continues to be specified in legislation, meaning the organisational structure cannot adapt to meet changing needs.

Option 3 – Remove the Parliamentary Librarian and Parliamentary Library from the legislation

136. Under this option, both the Parliamentary Librarian and Library would not be in statute. The Library and Librarian would be an ordinary employee and a standard business unit within the organisational structure of the Parliamentary Service.
137. This option provides flexibility for the Parliamentary Service to adapt lines of responsibility and organisational structure to effectively and efficiently deliver services to Parliament.
138. Providing library and other information management services would continue to be a function of the Parliamentary Service. Under the Parliamentary Service Act 2000, the principal duties and functions of the Parliamentary Service include providing administrative and support services to:
 - a. the House of Representatives and to members of Parliament²⁸
 - b. any officer of the House of Representatives, any officer of Parliament, any office of Parliament, and any department or other instrument of the Crown (with the approval of the Speaker).²⁹
139. There is no intention to change current access to library services. For the avoidance of doubt, the definition of “support services” under the Parliamentary Service Act 2000 could be amended to refer to:
 - a. library, information, research, and reference services
 - b. the classes of persons who may receive them (as per current arrangements).
140. The services to be provided by the Library to the House of Representatives would be further specified in the Speaker’s Directions. These would be similar to the current arrangements for parliamentary security, information and communications technology,

²⁸ Section 7(a), Parliamentary Service Act 2000.

²⁹ Section 9(1), Parliamentary Service Act 2000.

and facilities management.³⁰ Members of Parliament will have a mechanism to comment on the services delivered by the Library because the Speaker must take into account advice from the Parliamentary Service Commission, whose cross-party membership, by convention, includes all parties' whips before issuing any directions.

141. This option requires consequential amendments to numerous pieces of legislation referring to the Parliamentary Library.³¹ References will need to be amended to change references to “the Parliamentary Service” or to “the unit of the Parliamentary Service responsible for providing library, information, research, and reference services”, or removed where they are no longer needed. The current Parliamentary Librarian supports this proposal. The Green Party has noted the Parliamentary Library’s independence is essential to a well-functioning democracy, and should be the direct responsibility of the Speaker.

³⁰ Section 8(3), Parliamentary Service Act 2000: The Speaker must, in each financial year, issue directions to the Parliamentary Service as to the nature of the administrative and support services to be provided to the House of Representatives and the objectives to be achieved by the Service in providing those services.

³¹ These references comprise: Section 25, Constitution Act 1986 (*references to “General Assembly Library” to be known as “Parliamentary Library” and “Chief Librarian of the General Assembly Library” to be known as the “Parliamentary Librarian”*); Schedule 1, clause 11(3), Receiverships Act 1993 (*requirement for report to be sent to the Parliamentary Library*); Sections 50, 58 and 98 Copyright Act 1994 (*exemption from needing to comply with the law when an employee of the Parliamentary Library needs to copy works for members of Parliament*); Section 131(4)(k), Films, Videos, and Publications Classifications Act 1993 (*makes it not an offence for an employee of the Parliamentary Library to possess, in the course of their duties, an objectionable publication delivered to the National Library*); Clause 9, Hurunui/Kaikoura Earthquakes Recovery (Local Government Act 2002 - Kaikoura District 3-Year Plan) Order 2018 (*requirement for report to be sent to Library. Note: this order was revoked 30 June 2021*); Section 12, Chatham Islands Council Act (*requirement for report to be sent to Library*); Clause 5(6)(iv), Canterbury Earthquake (Local Government Act 2002—Christchurch City 3-Year Plan) Order 2013 (*requirement for report to be sent to Library. Note: Order revoked in 2015*).

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

Deputy Clerk of the House of Representatives

	Option 1 – Status Quo	Option 2 – Deputy Clerk to be appointed by the Clerk
Administrative excellence	0 Limits the Clerk's ability to adapt employment terms and conditions, and manage the performance of the Deputy Clerk. Creates inconsistency between terms and conditions and performance management of senior Office of the Clerk employees.	+ Increased flexibility for organisational management
Equity	0 Employees in similar situations are treated differently.	+ Employees in similar situations are treated similarly.
Independence, Discretion, and Neutrality	0	0 May be perceived as reducing independence for the appointment of the Deputy Clerk, but in reality, this is done on the advice of the Speaker, who is in turn advised by the Clerk.
OVERALL ASSESSMENT	0	+ Better than doing nothing/the status quo

IN CONF

Parliamentary Librarian and Parliamentary Library

	Option 1 – Status Quo	Option 2 – Remove the Parliamentary Librarian from the legislation	Option 3 – Remove the Parliamentary Librarian and Parliamentary Library from the legislation
Administrative excellence	0 Lack of flexibility for organisational management to respond to any changing needs of Parliament.	+	++ Increased flexibility for reporting lines, and organisational structure. Increases management adaptability. Members may consider their sense of “ownership” over the Parliamentary Library is lost. This risk would be mitigated by development of the Speaker’s Directions with consultation of members to determine library services.
Equity	0 Employees in similar situations are treated differently.	+	+
Independence, Discretion, and Neutrality	0	0 Risk of perception that the Library is less independent and neutral without the Librarian specified in legislation is mitigated by retaining the Parliamentary Library in statute.	0 Risk of perception that the Library is less independent and neutral and that others may impede the professional judgement of its staff. This may be mitigated by existing trust in the independence and neutrality of the Parliamentary Service, and by the description of services to be provided in the Speaker’s Directions.
OVERALL ASSESSMENT	0	+	+
		Better than doing nothing/the status quo	Better than doing nothing/the status quo

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

142. In relation to the Deputy Clerk, **Option 2 (Deputy Clerk to be appointed by the Clerk)** is the preferred option.
143. In relation to the Parliamentary Librarian and Library, **Option 3 (Remove the Parliamentary Librarian and Parliamentary Library from the legislation)** is the preferred option.
144. For the option regarding the Deputy Clerk, this gives the Clerk the ability to adapt employment terms and conditions, and manage the performance of the Deputy Clerk. It removes inconsistencies between terms and conditions and performance management of senior Office of the Clerk employees, providing parity.
145. Both options would ensure that the parliamentary agencies can manage organisational matters with flexibility and adaptability, ensuring appropriate service levels, with the ability to adapt to Parliament's needs.

What are the marginal costs and benefits of the option?

Affected groups (<i>identify</i>)	Comment nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks.	Impact \$m present value, where appropriate, for monetised impacts; high, medium, or low for non-monetised impacts.	Evidence Certainty High, medium, or low, and explain reasoning in comment column.
Additional costs of the preferred option compared to taking no action			
Regulated groups	<i>Parliamentary Service/Office of the Clerk (one-off, implementation)</i> Administrative processes/development of new directions to implement changes (negligible)	Negligible (within existing resources and baseline)	High
Regulators	Nil	Nil	High
Others (e.g. wider govt, consumers, etc.)	Nil	Nil	High
Total monetised costs	<i>Parliamentary Service (one-off, implementation)</i> Administrative processes/development of new directions to implement changes (negligible)	Negligible (within existing resources and baseline)	High

Non-monetised costs	Nil	Nil	Medium
Additional benefits of the preferred option compared to taking no action			
Regulated groups	<i>Parliamentary Service/Office of the Clerk (ongoing)</i> Organisational flexibility	Medium	Medium
Regulators	Nil	Nil	High
Others (e.g. wider govt, consumers, etc.)	Parliamentary Library users (ongoing) May increase service level provided if there is the ability for organisational change to respond to Parliament's needs	Medium	Low
Total monetised benefits	Nil	Nil	High
Non-monetised benefits	<i>Parliamentary Service/Office of the Clerk (ongoing)</i> Organisational flexibility	High	High

Section 3: Delivering an option

How will the new arrangements be implemented?

146. Implementation matters are likely to include the following:

- a. Engagement with relevant staff in relation to the changed status of the Parliamentary Library
- b. Development of directions specifying the services to be provided by the Parliamentary Library to the House of Representatives
- c. Commencement of new provisions:
 - i. In relation to the Deputy Clerk, 1 July following enactment, to align with Remuneration Authority Determination process
 - ii. In relation to the Parliamentary Library and Librarian, new arrangements would begin once directions are issued but no more than three months after the Parliament Act comes into force
- d. Transitional arrangements would provide that the old arrangements under the Clerk of the House of Representatives Act 1988 and the Parliamentary Service Act 2000 will apply until the new arrangements begin and would confirm the continued employment of the current Deputy Clerk and Parliamentary Librarian.

- e. A process for the Clerk to set the terms and conditions of the Deputy Clerk under the new arrangements, including remuneration³²
- f. Communicating with people entitled to receive Parliamentary Library services.

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

- 147. Refer *Regulatory Impact Statement 1: Parliament Bill – Overall Bill* for description of how the policy proposals under the Bill will be evaluated.
- 148. The Parliamentary Service Commission is a mechanism for the regular monitoring of parliamentary operations in relation to the Parliamentary Library. The Commission, which has cross-party representation, typically meets every two months. It provides an opportunity for the Parliamentary Service to discuss services with members and parliamentary parties, and advise the Speaker on them.

³² The Office of the Clerk uses the Hay Group system of job evaluation.