



# DEMOCRACY RESET

Decades of government failure have continued to undermine public trust in our political institutions. It's time this changed.

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**TOP.**

## A Government for The People

You don't need to be a political scientist or a constitutional lawyer to see that our democracy is not working for everyone. Aotearoa New Zealand has the world's most unaffordable housing, continuing environmental & economic decline, poverty & extreme hardship, unsustainable superannuation and declining voter turnout. Young people are over-represented in this declining voter turnout, and it is our young people who these issues will affect the most.

These are not the outcomes that New Zealanders want. And there is no reason we should settle for them. We have the ability to resolve these issues, we just need a government that serves the people, a government with the courage and the ambition to implement policy that works for all New Zealanders - present and future - not just vested interest groups.

Election after election the establishment political parties "promise" to deliver affordable housing, to protect the environment, to increase economic prosperity and to address poverty.

But government after government has failed to deliver.

Why is it that our democracy endlessly promises us what we want but never delivers it?

And who can blame voters - particularly youth - for the apathy they demonstrate?

### Democracy in decline around the world

Decades of government failure have continued to undermine public trust in our political institutions. When citizens no longer feel their governments represent them, they become dissatisfied, disillusioned, and disengaged with the political system entirely, or become increasingly polarised. We have seen this manifested through Brexit in the UK & the election of Trump in the United States. Even now in New Zealand, we are witnessing the emergence of political movements of dubious inspiration and disquieting intent. The reasons for these developments are many, but it seems fair to interpret them in large part as a natural consequence of large numbers of the people feeling disenfranchised, frustrated and helpless in the face of a disconnected and unresponsive ruling elite. People all over the world are wondering what it will take to get a government that will serve them and create the sort of society, economy & environment that we all want to live in.

Backed up against the wall – over decades – the disenfranchised lash out in ultimately counter-productive ways. But the message they are sending is clear; "this isn't working for us."

### TOP's view:

Our democracy is not serving our people – and we need change. We want a democracy that serves the people, not vested interest groups.

The Government of the day – and more specifically Cabinet - don't want change, they currently enjoy unbridled power and want to keep it that way. Given that the two major parties enjoy duopoly control over the country, they are unlikely to support any legislative changes that would place more limits on that power.

So how do we restore the balance of power, to ensure our democracy truly is a government of the people by the people? There are things we can do now to stop the rot, but some changes - namely developing a formalised Constitution - will require a lot more time.

## Short Term Changes

There are a number of measures that TOP would advance immediately in order to bolster the performance of our democracy namely:

1. Implement all the recommendations of the [Electoral Commission's 2012 Review of MMP](#) including:
  - a. abolishing the one electorate seat threshold for the allocation of list seats and
  - b. lowering the party vote threshold from 5% to 3% (the Commission stated 3% would be reasonable but recommended 4% as a conservative first step).
2. Establish a [Royal Commission into Electoral Funding](#) and require that the Commission's recommendations are implemented. Members of Government and Opposition parties are being and have been investigated by the Serious Fraud Office. Regardless of whether they are found guilty, these scandals have shown that parties can drive a truck through the loopholes in the rules that are supposed to safeguard our electoral system. The parties currently in Parliament have failed to address this creeping corruption. In particular, we would like to see a review of donations limits, to citizens and capped at levels within the reach of ordinary citizens (who currently have to compete with wealthy private interests for access to political influence and political outcomes).
3. Protect the political independence and transparency of our Public Service advice. Our Public Service should serve the public - not just the Government of the day. The public sector plays an important role in an informed public. New Zealand has a good record with transparency and low public sector corruption, but in recent years this has been slipping. There is an urgent need for a more open and transparent government, including:
  - a. giving communities more say over the services that affect them;
  - b. allowing for the use of more deliberative democracy;
  - c. abolishing "no surprises";
  - d. making a greater investment in open data;
  - e. more independent evaluation of policies; and
  - f. a refreshed approach to Official Information.
4. Ensure well funded, good quality public interest journalism, funded by a tax on Facebook and Google.

We provide more detail on some of these points below.

### **Media**

Media plays a crucial role in an informed democracy. With the shift to online media from print and television, advertising revenues have shrunk and largely been snaffled by large overseas corporates (which is another reason to make sure they are taxed). Combined with heightened competition for the public's attention, this has led to fewer resources being devoted to true public interest journalism. Corporate media is no substitute for independent, public-interest journalism.

TVNZ is now a commercial operation competing with private operators. We would like to see public media funding used more effectively to create a critically informed democracy. To restore and secure funding for quality journalism and media to New Zealanders, TOP will [sell TVNZ](#) and institute a [Digital Services Tax](#) in order to set up a Public Journalism Fund as part of NZ on Air.

NZ on Air is an independent New Zealand broadcast funding agency. It is an autonomous Crown entity, responsible for funding public-good broadcasting content across television, radio, and new media platforms. TOP considers NZ on Air is the best existing platform to oversee quality media. Under this model, Radio New Zealand, TVNZ, and other organisations would compete for programme funding alongside other platforms.

### **Devolution**

NZ is a very centralised democracy. We need to shift power from central to local government and to the people. While at the national level power has become more and more concentrated in Cabinet (to the extent that Parliament is pretty much neutered) – there's a strong case to suggest that the re-empowerment of citizens is required if we are to restore the performance of our democracy. This requires devolution of power.

The idea of community-led initiatives, that central and local governments facilitate and support, is one that is not just central to the Māori concept of rangatiratanga, but has been shown to lead to [better outcomes for indigenous peoples](#), and also finds support from non-Māori. The idea is that communities sort out what's best for their interests and so long as their plans fit within an overall national framework then some regional or community variation is fine. Electricity trusts, school and health services enable more participation by communities in self-determination. Such an approach would de-emphasise the influence of national politicians who often have no appreciation of community differences and certainly are not able to accommodate them in their decision-making.

The risk with devolution is that higher costs come with replication of resourcing. What we have seen in New Zealand of late is an almost worst of all worlds – where responsibility is devolved but no resourcing is provided. This renders small communities ineffective at fulfilling their mandates. Implementing the RMA competently, resolving environmental problems (like making our rivers safe to swim), requirements for local bodies to comply with Treaty of Waitangi principles – are all examples of initiatives that some communities really struggle to fulfil competently.

So while devolution is very useful it must be adequately resourced otherwise people will be further alienated from what should be a democratic, empowering process.

### **Deliberative Democracy**

We also need to remodel the way we engage citizens in our democracy. Modern technology means people are more suited to continuous interaction and less suited to queuing up at a polling booth once every 3 years. The old two-party duopoly and left-right ways are outmoded and outdated. This is a challenge to the current model of representative democracy, but opens the way for more thoughtful deliberative democracy if it is well designed.

TOP advocates the strong use of deliberative democracy such as collaborative software, participatory budgeting and Citizens' Assemblies.

The risk with direct democracy (referenda) is that the public is capable of choosing contradictory positions. In California, for example, people have voted for more spending on education as well as for tax cuts. You can't run a country that way, so more sophisticated methods are needed to ensure the public has a say but in a way that is adequately informed. TOP is committed to learning from experiments overseas, such as in Taiwan, and developing models of deliberative democracy that work in the New Zealand context.

## **Compulsory Voting**

Once we have the preceding measures in place we can then have a conversation about compulsory voting, provided there remains an option "None of the Above".

## **Long Term - A New Constitution for Aotearoa New Zealand**

Whilst the foregoing measures are necessary they are insufficient. Long term there is much more that needs to be done in order to get our democracy functioning properly. But we can only approach this together, as a nation, to develop our response.

This concerns the development of our nation's constitution. Many New Zealanders are unfamiliar with the arguments in support of this need. Let us introduce the topic here with some quotes from some of the leading work in the area;

From [Sir Geoffrey Palmer and Andrew Butler's 'Towards Democratic Renewal'](#)

*“‘Constitution’ is a word few New Zealanders are accustomed to using. It means the rules under which a democracy like ours governs itself. It is all about who has public powers, what they can do with them, what limits are established upon their use and how human rights are protected. A constitution sets out the basic institutions of government and the core values that guide the work of those institutions.... We believe there are serious dangers inherent in our current constitutional structures and they need to be overhauled. There remains within them a distinctly colonial tinge that is out of whack with contemporary New Zealand understandings of how political power should be exercised in a democracy.”*

And from [Matike Mai Aotearoa](#)

*“I don't know of any people who never governed themselves. Self-determination is just a reality which our tūpuna lived every day. It was real because they did it and they would literally fight to keep it”.*

*In that sense, it was also taken as a given by the Working Group that while constitutionalism and government are often regarded as complex ideas they are really very simple. Government is the process that people choose to regulate their affairs and a constitution may be understood as the code they use to describe how the government will function.*

Essentially the need for a new constitution cuts right to the core of government under-performance. It is a recognition that no amount of tinkering is going to cut it - we need to rewrite the rulebook.

And so TOP supports the development of a codified written constitution primarily as a response to the stark reality that successive governments are failing to deliver, and we need to restore public trust in our democratic institutions. We believe that a formalised constitution can safeguard our way of life, strengthen societal cohesion and be a powerful tool in ensuring the levels of Government performance and accountability that all New Zealanders deserve.

We are encouraged by the large numbers of people who - having become informed about the need for a constitution – agree that positive action is not only necessary but urgent.

Composing a constitution is a massive undertaking that requires a national conversation and may take many years to complete. It will also take some time to get everyone on board with the need for a constitution and the need to honour the Treaty. One prominent advocate has even

suggested that 2040 - the 200th anniversary of the signing of The Treaty of Waitangi - would make for an achievable and meaningful aim.

We support a process to develop a constitution, and it needs to bring together the following:

1. We acknowledge many people and organisations and the excellent work they are doing with regard to the development of a new constitution;
  - a. The Māori Party's 2008 initiated [Consideration of Constitutional Issues](#) (under their Relationship and Confidence and Supply Agreement with the National Party). And the ensuing Constitutional Advisory Panel and their 2013 report [New Zealand's Constitution A Report on a Conversation He Kōtuinga Kōrero mō Te Kaupapa Ture o Aotearoa](#)
  - b. Professor Margaret Mutu (Chairperson) & Dr Moana Jackson (Convenor) of [Matike Mai Aotearoa – The Independent Working Group on Constitutional Transformation](#) first promoted in 2010 and their 2016 report [He Whakaaro Here Whakaumu Mō Aotearoa](#).
  - c. Sir Geoffrey Palmer & Dr Andrew Butler, the creators of [Constitution Aotearoa NZ](#) and co-authors of
    - i. [Constitution of Aotearoa New Zealand \(2017\)](#)
    - ii. [Towards Democratic Renewal \(2018\)](#)
  - d. Dr Claire Charters and her work on constitutional arrangements internationally especially in regard to indigenous peoples and the particular insight she brings to the [New Zealand context](#).
  - e. And we note too that there are many other interested individuals and organisations including, for example, [New Zealand Republic](#).
2. We recognise that the development of a new constitution will require the consideration of several key issues:
  - a. Entrenching the rights contained in the New Zealand Bill of Rights Act 1990, and to expand on those rights protected in law to those discussed further below.
  - b. The importance of He Whakaputanga o te Rangatiratanga o Niu Tīreni of 1835.
  - c. How we honour both The Treaty of Waitangi and Te Tiriti O Waitangi of 1840 and in particular settling transgressions and resolving tino rangatiratanga, self-determination and power-sharing.
  - d. The option of a New Zealand Republic and a New Zealander as Head of State. We note that this is a key question for Māoridom. We acknowledge that many in Māoridom are reluctant to move to a republic because of the implications – perceived or real – of formally extinguishing the relationship between Māori and The Crown that is enshrined under The Treaty of Waitangi.
3. We applaud the Government announcement that [NZ history is to be taught in all schools and kura by 2022](#) but it may take many decades for young learners to filter through in numbers to the ranks of voters and leadership roles in our society. We believe there is a more urgent need for evolving the public's understanding of our history, including Te Tiriti O Waitangi and He Whakaputanga o te Rangatiratanga o Niu Tīreni and this is challenging ground, particularly for some Pākehā - many of whom's forebears have now lived in New Zealand for generations - but also for other more recent immigrants many of whom will have little appreciation of our current situation in respect of our past. But we believe there is no defensible way over, under or around this issue. We cannot keep suppressing Māori concerns and the only way forward is straight through the middle, we need to work through this if we are ever going to create the mature, equitable and egalitarian society so many of us want to believe that this country already is.
4. Constitutional transformation can only happen with the will of the people behind it. It is not something that any political party or interest group can create - let alone implement

- in isolation. It's also not something that Pākehā or Tauīwi can generate in isolation from Māori. A new constitution can only be successfully developed and given effect via education, conversation, understanding and with the full commitment of all the people of New Zealand.

5. We propose an educational campaign and/or Citizens' Assemblies to further work through how we - together - might develop a new constitution and what it might look like.
6. We believe a new constitution should put checks and balances on the power of the Government. We need to explore how those checks & balances can best be ensured. It was with this need in mind, and the need to facilitate tino rangatiratanga, that in 2017 TOP floated the idea of reinstating Parliament's Upper House. Informed opinions vary as to whether this is the best approach and we acknowledge there are a number of ways in which useful improvement might be achieved.
7. Expanded rights to be included:

Religion – we are a secular society, religious freedom is important. However, we must deal with point at which it clashes with our human rights and anti-discrimination legislation. Freedom of religion cannot be used to abuse our Constitution and any religious leaders or followers that incite such behaviour are breaching the law.

The Treaty of Waitangi – this is a unique and essential element of our Constitution which holds that the Treaty must be honoured so both societies – Tangata Whenua and the rest of us can live in harmony as New Zealanders, with a duty of care to each other, and doing all we can to ensure each society fulfils the aspirations that the Treaty and its principles outline.

Women's rights – New Zealand has a proud record of protecting women's rights and while we are by no means perfect in this regard, we seek to continually improve our record. Until equal rights for women are established and assured we will not rest.

Ethnic rights – New Zealand is a multicultural society and strongly defends the rights of all ethnicities to protect their cultural values and customs. This is subject only to the Constitution which outlaws discrimination, restricts the influence of religious mores, etc. New citizens need to understand that while New Zealand is multicultural, it has a bicultural founding document that binds all New Zealanders who are not Tangata Whenua to defend the Treaty and its principles.

Transparent government – New Zealand has a strong history of good governance, with low levels of public sector corruption. However, in recent years our status has slipped, and the public sector has increasingly become captured and corrupted by the governments of Establishment Parties. Public sector advice is no longer free and frank, and instead, Ministerial offices are having greater say over what advice they will receive and what the public will see. "De-corporatising" our public service, and re-establishing its obligation to independence is a priority.

Equality – This includes equality before the law, prohibition of discrimination on grounds of religion race, caste, gender or place of birth, and equality of opportunity when it comes to equal effective access to publicly funded health and education services. Necessarily this requires an element of cultural and ethnic empathy with the recipients of those services – including language, customary and traditional practices. This is an aspirational objective; resource constraints necessarily limit the ability to perfectly replicate the practices of places of origin. But a reasonable effort must be made by the public sector. The exception is for Māori, who are guaranteed this under the Treaty.

Rights of the child – these are strongly protected in New Zealand as well, again something that not all societies do, so all permanent residents need to be aware of this. Having said that, child poverty here is unacceptably high and if we enforced children's rights more would have to be done simply not to be in breach of our Constitution. So there's plenty of room to walk the talk. Having this highlighted in a Constitution and subject to legal challenge would promote that cause. TOP wants to see equal opportunity for children enshrined in the Constitution, with that covering access to healthcare, housing and schooling. And we very much like the Brazilian Constitutional approach wherein any advertising to children is regarded as child abuse.

Rights of Nature – New Zealand has yet to recognise these but it is long overdue. Bolivia and Ecuador provide effective precedents for how this right can be defined and protected.

## CONCLUSION

The full aggregation of TOP's policy suite will rebalance the political strength of all citizens, and the opportunities available to those with wealth and those without. We seek to dismantle the iniquitous barriers that impede flourishing, creating the conditions where all New Zealanders have an equal opportunity to thrive.

With the Democracy Reset Policy, we seek to advance an analogous adjustment to our institutions of political power such that they are compelled to serve the interests of all New Zealanders. And importantly, that all New Zealanders are equally empowered to hold those institutions to account.