

SUBMISSION TO ELECTORAL COMMISSION 2012 REVIEW OF MMP - 29 MARCH 2012

Preamble

Thank you for the opportunity to present a submission to the Electoral Commission's review of the MMP electoral system. I would like to be heard by the review committee when it meets submitters after 5 April.

I have been involved with MMP since 1990 and was part of the campaign to install MMP as New Zealand's voting system during the 1992 and 1993 referendum processes. I have written (and broadcast) extensively on MMP since that time, and my booklets *Making Your Vote Count* (1992) and *Making Your Vote Count Twice* (1993) were both influential at the time. For these and concomitant press articles I was given the Wallace Award by the Electoral Commission in 1998. During my frequent visits to Germany I have kept up to speed with what is happening there, most recently in 2010 when I talked to parties and political scientists in Berlin. I also visited Edinburgh that year to visit the Scottish Parliament and look at the AMS system. Last year I was a leading member of the Campaign for MMP which helped achieve a decisive vote in the November referendum to keep the system.

This submission will address the issues in the Commission's order of priority, followed by other issues not listed. At the outset, I feel it necessary to state that the review of MMP is hampered by some issues that have a significant bearing on the electoral system not being eligible for discussion. Namely, (1) the number of MPs; (2) the Maori seats; (3) term of Parliament and (4) constructive votes of no confidence. The first two, in particular, are directly relevant to the Commission's priority questions (and how will be noted below); the others have a more general bearing on how the electoral process and outcomes are viewed by the voting public. That is, for how long voters think they are electing MPs and a government for; whether snap elections may be held; or whether administrations may change mid-stream in a legal and orderly manner. It is regrettable that the Minister of Justice did not see the anomalies in having a review of MMP without those other key factors being dealt with as part of the process.

1. Thresholds

1.1 Thresholds are fundamental to MMP's structure; without them we do not have MMP. Therefore, those submitters calling for no or 1% thresholds are calling for a new system altogether. Thresholds were included in MMP's original structure in Germany to prevent extreme minor parties entering Parliament while ensuring a high measure of proportional representation. MMP is not a fully PR system but, rather, a true majoritarian system that requires a government to be made up of one or more parties that, alone or together, have achieved more than 50% of the vote.

1.2 The key threshold is the party vote. The electorate, 'coat-tail', threshold was included to give some power to the First Past the Post (FPP) component of MMP. In Germany this was set at three electorates whereas here the 1986 Royal Commission on the Electoral Commission decided just one would work, presumably on the basis of the population difference between Germany and New Zealand. At least two members of that Commission have since acknowledged this was a mistake. In an environment of change when MMP was adopted, this allowed individual entrenched FPP politicians to hold their existing electorates and coat-tail additional MPs, although their parties had not reached the 5% party vote threshold. The deleterious effects of this have been enduring, the gerrymandering of the vote in Epsom only being the most recent. The one-electorate provision of MMP should be removed so that, while any individual may continue to stand for and win an electorate, a party cannot gain greater representation without meeting the percentage threshold.

1.3 Removing the one-electorate provision does, however, reduce the chances of a small party gaining representation. Consequently, the party vote threshold should be reduced, either to the 4% recommended by the Royal Commission or, perhaps, 3.5% which would guarantee a minimum party representation of four. To go below that figure would begin to fundamentally change the character of MMP.

Summary: (1) Remove the one-electorate, 'coat-tail', provision.

(2) Lower the party vote threshold to 4% or 3.5%.

2. The Effects of Population Change on the ratio of Electorate Seats to List Seats

Maintaining the proportional representation of MMP is critical; and this is where the veto on discussion about the number of seats in Parliament hampers debate. Clearly, if there was an increase in the number of MPs when proportionality began to be affected by the imbalance of electorate seats versus list seats, then there would not be a problem. But if the size of Parliament is to be fixed at 120 seats (barring overhangs, see below), then the number of electorate seats cannot be allowed to increase beyond the point where they

prevent the exercise of proportionality through the allocation of list seats. At present, there are 70 electorate seats to 50 list seats. The proportionality issue becomes a problem when the number of electorate seats reaches about 78. The number of electorate seats has increased by 10 since MMP was introduced in 1996 which suggests that we will reach 78 by about the 2023 election. Therefore, this question does not need immediate attention but does need regular review, as do many aspects of MMP (see comments about regular review below).

Summary: No immediate change needed.

3. The Effects of a Party's candidates winning more seats than the party would be entitled - Overhangs.

Here is where the veto on discussion about the future of the separate Maori seats hampers useful discussion. Overhangs in Parliament have only occurred under MMP in 2005, 2008 and 2011, all created by the Maori Party winning more of the separate Maori electorates than their party vote entitled them to. If the separate Maori electorates continue to be retained, then there may well be more overhangs. They seem unlikely to occur otherwise. Therefore, there is not much point in discussing this issue.

4. The capacity of a person to be both an electorate candidate and a list candidate.

4.1 The crux of the issue here lies in a widespread, but erroneous, belief that list MPs are not properly elected by the voter but are 'appointed' by their parties.

The Electoral Commission should take steps to educate the voting public in this regard, pointing out that all candidates are selected by their parties, no matter whether they are electorate or list candidates, and that we vote for list candidates when we decide on our party vote (see party list voting below).

4.2 Some say that a candidate should choose between standing for an electorate or only on the list, but this would only reinforce the attitude that list MPs are 'appointed'. It would also create two classes of MPs where list MPs would be effectively divorced from contact with the electorate at large.

4.3 Another view is that if a candidate is beaten in an electorate contest, then s/he should not be elected to Parliament via the list. But this would discourage candidates from taking on 'safe seat' incumbents or replacements and, therefore, deny the local electorate voting public effective policy campaigning and political choice at election time.

4.4 Some people more strongly oppose the procedure that allows incumbent electorate MPs who are beaten in an election to be returned via the list. Here it should be made clear that this latter event has only occurred on a small number of occasions. Also parties should not be prevented from protecting valuable, perhaps highly experienced and skilled, members.

4.5 Allowing list candidates to campaign in electorates requires them to engage in public debate, to listen to voters and to also represent their parties' policies. Many list MPs also go on to effectively act as alternative electorate MPs in their home locations.

4.6 Another point that needs to be mentioned in this context is that we now have the precedent of a major party candidate, without previous electorate or parliamentary experience, being elected directly to Parliament from a high position on his party's list and directly becoming a senior government minister (2008). This seems to me an unhealthy precedent, especially with a closed list system which does not give the voting public the opportunity to pass effective judgement on such a candidate at election time.

Summary: Not only should candidates be able to stand for both an electorate and on the list, the electoral law should be changed to mandate that all candidates for Parliament must stand for an electorate, whether they stand on their party's list or not.

5. A party's ability to determine the order of candidates on its party list and the inability of voters to rank list candidates in order of preference.

5.1 The first issue is how a party's list is compiled. At the moment, the law vaguely states this has to be done democratically. But there is a wide variance between how the parties interpret this and, in one instance, it can be seen to have been significantly disregarded. The Electoral Act should be changed to more clearly specify how a list has to be compiled, to state what the 'democratic procedures' actually are. These should include making it mandatory that all party members have the right to vote, in secret ballot, on who is chosen for their list and how the list is ordered; and with only a limited capacity for a party's executive and/or

leadership to alter the result. At present, the only party that is close to this fully democratic process is the Green Party. Its system would be a useful model.

5.2 The second issue refers to the use of closed lists - the present system - or open lists that allow voters at election time to alter a party's list. The two advantages of the closed list are (1) it is simple, requiring one tick, a yes or no answer; (2) it allows parties to present what it sees as a balanced list of candidates, whether by gender, region or capacity, that cannot be altered. An advantage or disadvantage, depending on one's point of view, is that the closed list also allows parties to protect those candidates it considers most valuable; but it does place some high-on-the-list candidates effectively beyond the reach of the voter's judgement (see 4.6 above).

5.3 There is, however, widespread dissatisfaction with the closed list system and a strong desire for the voter to have more list options at election time; or to have all list MPs more closely aligned with electorates. There are numerous ways of managing the lists within this environment for change, but here I will focus on the three that I feel are most worth looking at. A completely open list system, where a voter could rearrange the list would be unmanageable.

(a) A number of submitters have referred to the MMP system used for elections to the Baden-Württemberg Landtag. This Landtag has exactly the same number of MPs and proportion of electorate to list seats as New Zealand (120; 70 to 50). But voters have just one vote, not two. This vote is cast for both an electorate candidate and the party that candidate represents. The 50 'list' seats are allocated to the parties according to their proportion of the vote, without a threshold; and the candidates who win a list seat are those who, although losing the FPP electorate vote, 'have attracted the most votes in relation to other candidates from the same party'; those candidates who are sometimes referred to as 'the best losers'.

The advantages of this MMP system are (1) it is simple for the voter and (2) for some voters, MPs seem to be more legitimately elected this way. The disadvantages are (1) Parties cannot be sure who of their members will get elected compared to their control of the closed list system; (2) some electorates may finish up with two or more MPs representing them while others have only one; (3) vote-splitting is not possible, removing the current advantage of a voter being able to choose the person they want as their local representative but who may not belong to the party the voter prefers; (4) this system always leads to overhangs. In Baden-Württemberg, the Landtag which has a nominal 120 members currently has 138. I doubt if this would be acceptable to most New Zealand voters.

(b) The Bavarian Landtag variation of MMP allows the voter to cast a preference vote or arrange the list in order of preference or simply tick the party's list. This gives voters a great deal of choice and control of party lists, but outcomes are uncertain. It was seen, for a time, as a system that would provide better outcomes for women candidates, for example, but experience has shown that the reverse is often the case. Having completely open lists is probably too unwieldy and too destructive of a party's desire to maintain a balanced list to be used for a national, rather than regional or state, Parliament. The ability to cast a single preference vote may give voters a degree of flexibility, however. In this situation the voter may choose to either tick the party list box or one single name on the list. This counts as both a vote for the party and a vote for an individual candidate. The list order is then modified according to which candidates receive the most individual votes.

(c) Scotland followed New Zealand in adopting their own form of MMP, AMS, for the new Scottish Parliament but with regional lists rather than national closed lists. That is, groups of FPP electorates form regions which each return eight list MPs in addition to nine electorate MPs (approx). This arrangement gives voters the reassurance that they have list MPs accountable to their own broad region. This could work in New Zealand although we might end up with some regional anomalies caused by the country's attenuated geography.

Summary: Many voters feel that lists are over-controlled by party hierarchies and that they cannot 'get rid of' certain MPs because lists are closed. Completely open lists, however, are open to manipulation by extra-political groups. Adopting the Bavarian one-preference method could be useful in focussing parties' attention on getting their lists right in the first place as well as giving voters a measure of choice. The introduction of regional list MPs has some merit if the geography can be managed. But probably the most important reform would be making the process of selecting and ordering party lists much more open and democratic (see 5.1 above).

6. List members contesting by-elections

The objection to this seems to be that if a sitting list MP contests a by-election and wins, then the party's next list member is automatically elected to Parliament, even if this occurs, say, a couple of years after the previous general election. But what if that sitting list MP lost the original election to the vacant seat by only a small number of votes? And has been acting as a de facto electorate MP in that electorate? Should s/he not be allowed to stand again? This seems absurd. The number of MPs who come off the list during a parliamentary term to fill a vacancy left by a departing sitting list MP is minimal. Sitting list MPs should be allowed to contest a by-election if they wish. Anyone should be allowed to contest a by-election.

7. Other issues

7.1 Some submitters are calling for reinstatement of the infamous anti party-hopping, or waka-jumping, law. This is aimed largely at list MPs. The right of conscience allowing any member of Parliament to leave their party, whether an electorate or list MP, must be defended at all costs. MPs must have the democratic right to disagree with party policy and, in extremis, leave their party during the parliamentary term. The situation could occur where they are representing a strong public view on policy that is being ignored by their party and they should be allowed to stay in the house to continue representing that. The voters will decide at the following election whether or not that dissenting MP should remain in Parliament. Most cases of 'waka-jumping' were in the first MMP Parliament (1996-1999) and at the 1999 election all of them lost their seats. There have been a few cases since and, again, all have lost their seats at the following election. The voter at election time is the best judge.

7.2 There needs to be a regular review of MMP, similar to this current review, to examine recurring questions such as the threshold and the balance of electorate to list MPs (see 2 and 3). I propose that there be written into the Electoral Act that a review of MMP must be undertaken in the year following every fourth election. Therefore, if recommended changes to MMP, arising from this current review, were implemented for the 2014 election then the next review would be after the 2023 election, in 2024.