

Submission | Electoral Referendum Bill

10 June 2010

Committee Secretariat
Electoral Legislation
Parliament Buildings
Wellington

To whom it may concern,

Please find attached the Sustainable Future Institute's submission on the above Bill.

To summarise, it is the Institute's view that although a question about a review of the current MMP system can and should be asked, the subsequent terms of reference for that review should be left open to allow for the consideration of any changes that result from the findings of the 'group to consider constitutional issues including Māori representation'. The terms of reference of this group are still being discussed.

Further, it is our strong view that any review of the way New Zealand elects its House of Representatives must be a review of the whole system. This means the two roll system, the Maori Option and the Maori electorate system should be included in any upcoming review. Not to do so is not in the public interest, as all New Zealanders have a vested interest in effective Maori representation.

The Institute opposes this Bill on the following grounds:

1. The purpose of the Bill does not align with the two questions suggested for the referendum
2. Provision of effective, non-biased public information within an adequate timeframe
3. Need to cap spending on advertising for the referendum
4. Review of MMP should take place *before* a referendum
5. The cost of premature change
6. The referendum and the Constitutional review should not occur in isolation
7. The need for holistic evaluation of representation, including Māori representation
8. Lack of public consultation and clarity over due process

Please find attached two copies of this submission and Report 8 (in final draft). The Institute also wishes to appear before the committee to speak to this submission. Our contact details are provided below.

Kind regards,

Wendy McGuinness
Chief Executive

About Sustainable Future Institute

The Sustainable Future Institute, founded in 2004, is an independent think tank specialising in research and policy analysis. Our purpose is to produce timely, complete and well-researched information relevant to New Zealand's long-term future.

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Our Approach

The method we have adopted for discussing the Bill is to first look closely at the purpose and see whether it aligns with the outcome proposed in the Bill. Then we look closer at the questions contained in the Bill, and the resulting outcomes. This analysis occurs in Table 1. We then put forward an alternative set of questions in Table 2. Lastly, we identify issues of concern that lie outside the Bill, but which we believe have not been considered in terms of the best outcome for the public of New Zealand. This leads us to a number of outstanding questions which we would like to discuss with the Committee.

1. The purpose of the Bill does not align with the two questions suggested for the referendum

If the purpose of the Bill is to give the voters an *'opportunity to express an opinion on the preferred system of voting for election in the House of Representatives in New Zealand'*, then we believe either the Bill or the purpose needs to be changed. Table 1 puts forward the Electoral Referendum Bill proposal.

What follows is a section that explores the purpose of the Bill in more detail.

'opportunity to express an opinion'

This text waters down the actual outcome of this Bill. The outcome would lead to a process that may change electoral systems, so the vote cast actually determines whether MMP is reviewed in 2011, or whether an alternative system to MMP is put forward and voted on in 2014. So voters are being asked to cast a vote, not give an opportunity to express an opinion. This text needs to be removed.

'on the preferred system'

Voters are asked to express an opinion on MMP in Question 1 and then in Question 2, if MMP is not pursued what their preference would be, therefore arguably all preferred options should co-exist in one question.

'preferred system of voting for election'

In Question 2, voters are being asked to choose which of four voting systems they would prefer if the system were to change. The Regulatory Impact Statement on the proposed referendum (MoJ, 2010) states that:

The alternative voting systems for voters to consider in the second question of the 2011 referendum are to be the same as those offered to voters in the 1992 referendum (as drawn from the report of the 1986 Royal Commission on the Electoral System):

- First Past the Post
- Preferential Vote
- Single Transferable Vote

- Supplementary Member.

The Royal Commission's comprehensive analysis¹ of different voting system options for New Zealand is still appropriate and relevant to New Zealand, and therefore avoids the need to carry out a further lengthy and costly inquiry. (MoJ, 2010: 4)

A voting system can be described in terms of whether it is a plurality voting system (which focuses on how a predetermined constituency elects a single Member of Parliament) or a proportional representation voting system (a voting system which focuses on the overall composition of the House of Representatives). Electoral systems are evolutionary and should be continually reevaluated to ensure it meets the needs of the public, hence referring back to past systems is a retrospective step, in that democracy is continuously changing and needs to be frequently reviewed and reassessed to ensure the system delivers effective representation.

'election in the House of Representatives'

Voters are being asked to vote on what they consider is the best way votes should be counted and aggregated to yield a final result in the House of Representatives, without any more than a three page description of voting systems. This means that other options are excluded and that there is no detailed explanation of the adjustments that can be made within each system. We ask not only whether this question is needed, but whether this question, as it stands, is sufficiently accurate to provide useful information to the Electoral Commission.

Further, the use of the term 'House of Representatives' implies it is about the outcome, as in who actually sits in the House and who and what they are representative of. We therefore consider that if this is what the intent is, no barriers should exist and the Electoral Commission should be free to complete a full inquiry (without barriers) as we want the best system for New Zealand. If the question is based on the whole parliamentary representation system, as implied by the use of the term 'House of Representatives' in the Bill, this enables the Electoral Commission to look at the system as a whole, and therefore include two key platforms: (a) Maori representation in Parliament and (b) the number of members in Parliament. Notably, As a result of the 1992 referendum on electoral systems, an independent panel identified criteria for judging voting systems which included Māori representation, in particular:

- Will a particular voting system help or hinder representation of Māori people?
- Are Māori people fairly represented in Parliament?
- How will different voting systems affect this?

How will different systems affect the existing separate representation of Māori people?
(Chief Electoral Office, 1992: 4)

We believe these issues are important and cannot be reviewed in isolation; hence any resulting review needs to take them into account. What this Bill does is introduce a very costly process with two key platforms for reform excluded. This is not only a waste of public funds, but it also ignores the opportunity to look at one of the most contentious issues of effective representation – is our two roll system delivering effectiveness for Maori and for all New Zealanders?

2. Provision of effective, non-biased public information within an adequate timeframe

The proposed timeframe in which to conduct the referendum should not be reduced as adequate time is needed to deliver a public information campaign. It is important to facilitate an education process that all New Zealanders are able to engage with. Central to this is the provision of information that caters to the specific information and language needs of New Zealanders of diverse backgrounds. The campaign should utilise various media, including face-to-face communication and internet.

¹ See Royal Commission, 1986.

³ Prime Minister John Key stated in February 2010 that the 'structure, terms of reference and the membership of this group will be released in due course, and consultation and hui across New Zealand will begin' (NZ Govt, 2010: 22).

It is crucial that information provided by the government is clear, easy to understand and non-biased. We support clear and simple wording of the referendum – as proposed in the table above. We support the Electoral Commission remaining the body that oversees both the referendum and the associated public information campaign.

3. Need to cap spending on advertising for the referendum

It is crucial that there is a cap on spending on advertising. If there is no cap, there is the risk that better funded viewpoints will be better promoted thus influencing open public debate and democratic process. It is important that a particular viewpoint should not gain disproportionate influence due its resource level - all options should receive a comparable opportunity to be heard. Freedom of speech is crucial; however, that freedom should be universally available, not available in proportion to financial backing. The proposal to not cap advertising spending is inconsistent with current practice. For example, in citizen-initiated referendums all groups have a spending cap of \$50,000. The same should be applied to this referendum.

4. Review of MMP should take place *before* a referendum

The text of the proposed bill would only see a review take place after the referendum and only if more than 50% of voters chose to retain MMP in Question 1. However, we believe that to allow voters to make the most informed decision, the review of MMP should take place before the referendum. This proposed referendum does not give sufficient consideration to the electoral system as a whole, and the multiple interacting aspects that affect its current operation and outcomes. It is commendable that the Bill proposes to review the current system of MMP if greater than 50% of those who vote in the referendum vote to retain the current system. However, this should be the first port of call, before a referendum on whether another system is preferable. Without knowing whether the current system of MMP is optimal, we can't make an informed decision as to whether we want another system. For this reason, we oppose this bill as we believe that the optimal approach is one that first, holistically evaluates our current system.

5. The cost of premature change

The potential cost of establishing a new electoral system and educating the public on this new system would be considerable. To change to a new system without sufficiently reviewing and attempting to correct the deficiencies of the current system is premature. Furthermore, the time required for the public to familiarise themselves with any changes to the electoral system can be significant, which creates further incentive not to undertake change on a whim as it can impact on voter turnout and the level of informal votes. This would not be a cost-effective decision.

6. The referendum and the Constitutional review should not occur in isolation

The current government, in the *Relationship and Confidence and Supply Agreement between the National Party and the Māori Party*, agreed to the 'establishment (including its composition and terms of reference) by no later than early 2010 of a group to consider constitutional issues including Māori representation' (NZ Govt, 2008: 2). The same document states:

The National Party agrees it will not seek to remove the Māori seats without the consent of the Māori people. Accordingly, the Māori Party and the National Party will not be pursuing the entrenchment of the Māori seats in the current parliamentary term. (ibid.)

Apart from the Prime Minister's statement in February 2010, at the time of writing the government had made no further public announcements on the establishment of this group.³ At the time of writing, we understand that discussion regarding the Terms of Reference is still taking place (personal communication, P. Sharples, 24 May 2010).

Does agreeing to not 'seek to remove the Māori seats without the consent of the Māori people' prevent the Māori seats from being considered within the scope of a review of MMP or consideration of other electoral systems? Including Māori representation could foster improved understanding of the status quo, thus allowing Māori and non-Māori New Zealanders to develop an more informed opinion on what they believe is the optimal electoral system for New Zealand.

Table 1: Electoral Referendum Bill

Purpose of Act: <i>'an opinion on the preferred voting system of voting for election in the House of Representatives in New Zealand'</i>				
Question	Vote Cast	Threshold	Outcome	Comments
1. Should the current MMP voting system be retained?	I vote to retain the MMP voting system	More than 50% of votes cast	The bill provides that if 50 percent or more of the participants vote to retain MMP in the first referendum, then the Electoral Commission will undertake a review of aspects of the way in which MMP works. ⁴	We believe the outcome of the question is not clear and suggest the following text is more accurate:
	I vote to change to another voting system	More than 50% of votes cast	If a majority votes for a change from MMP, this Government is committed to holding a second, binding referendum in conjunction with the 2014 general election. This will be a run-off between MMP and the most preferred alternative voting system from the first referendum. If voters prefer the alternative voting system, the 2017 general election will be held under that new system. ⁶	Should the current MMP voting system be retained and reviewed or should New Zealand consider adopting a new type of voting system? 'I vote to retain and review the current MMP voting system, I vote to change from the current MMP voting system and request Government to hold a second, binding referendum in conjunction with the 2014 general election. ⁵ Once again, we consider the question does not denote the outcome and suggest:
2. Regardless of how you vote under Part A, if there was a change to another voting system, which voting system would you choose?	I would choose the FPP system	The winning voting system becomes the most preferred alternative voting system.	If a change is voted for above, a binding referendum will be held in conjunction with the 2014 general election, where two options will be put forward: (j) MMP or (i) the most preferred alternative voting system.	Regardless of how you votes under Part A, if there was a change from MMP to another voting system, which voting system would you choose prefer ? I would choose prefer the FPP system I would choose prefer the PV system I would choose prefer the STV system I would choose prefer the SM system
	I would choose the PV system			
2. Regardless of how you vote under Part A, if there was a change to another voting system, which voting system would you choose?	I would choose the STV system	The winning voting system becomes the most preferred alternative voting system.	If a change is voted for above, a binding referendum will be held in conjunction with the 2014 general election, where two options will be put forward: (j) MMP or (i) the most preferred alternative voting system.	Regardless of how you votes under Part A, if there was a change from MMP to another voting system, which voting system would you choose prefer ? I would choose prefer the FPP system I would choose prefer the PV system I would choose prefer the STV system I would choose prefer the SM system
	I would choose the SM system			

⁴ See House of Representatives, 2010.

⁵ This option does not allow for a review of MMP to take place, a point we raise later.

⁶ See House of Representatives, 2010.

Table 2: The Sustainable Future Institute's Proposed Solution

Purpose of Act: <i>'an opinion on the preferred voting system of voting for election in the House of Representatives in New Zealand'</i>				
Question	Vote Cast	Threshold	Outcome	Comments
1. Should the current MMP voting system be retained and reviewed?	<p>I vote to retain and review the current MMP voting system [or]</p> <p>I vote to change from the current MMP voting system and request government to hold a second, binding referendum in conjunction with the 2014 general election.</p>	<p>More than 50% of votes cast</p> <p>More than 50% of votes cast</p>	<p>Review of MMP with two restrictions</p> <p>Binding referendum in the 2014 general election between what options.</p>	<p>A full review is needed. It is dangerous to look at issues of effective representation in isolation. New Zealand needs the best system of representation for its people. This means no exclusive areas – we consider the two restrictions should be removed, and the number of seats and Maori representation should be included in the review.</p> <p>We do not have a problem with the referendum being held in 2014, but we do have significant concerns about the lack of an agreed process being defined in the Bill. For example, who is going to undertake a detailed review of each voting system? Who is going to ensure the public are informed? Who is available to answer questions? Who is going to assess outcomes in terms of international experiences and best practice? There is a significant body of work that needs to be progressed in order for the public to be able to make informed decisions.</p>

7. The need for holistic evaluation of representation, including Māori representation

The Institute is in the process of completing a report on the effectiveness of Māori representation in Parliament (see attached confidential draft). By undertaking this research, it has been necessary to stand back and critically consider our system as a whole. We have been unable to fully evaluate Māori representation, and in particular, the Māori electorate seats, without consideration of the system in which they occur, due to the extent to which this system impacts the representation the seats deliver.

Similarly, it is not possible to review our electoral system without considering the impact this may have on Māori representation, though this is what this Bill proposes. Ideally, the process of evaluating our electoral system should take place alongside, and interconnect with, the group that is being established to review constitutional matters, including Māori representation.

The likely result of continuing down the path proposed by this bill is that we take a piecemeal approach to interconnected issues, limiting the durability of any solutions. These intrinsically connected issues are currently being pursued through separate processes, despite the outcomes of each process being interrelated. In order to develop enduring solutions, it is important that these interconnecting issues are addressed together.

8. Lack of Public Consultation and clarity over due process

We have raised this issue in the public arena (see Appendix 1), in order that the committee also focuses on numerous ways to invite engagement by all members of the public.

To conclude, we have the following outstanding questions:

1. If more than 50% vote for a change in Question 1, will there be a review of the MMP system?
2. How will the government inform the public about MMP and the proposed four alternative systems between now and the referendum? Furthermore, will this include information about how MMP could be improved if MMP is the chosen option?
3. What is the timeframe for government-led public information provision in the lead up to the referendum?
4. What is the tentative cost of a review of options to improve MMP?
5. How is the public being informed about the timeline for the whole referendum process?

Appendix 1: Media Release

SUSTAINABLE FUTURE INSTITUTE MEDIA RELEASE: 10 June 2010

Time for parliamentary committee to use modern media!

The Institute is concerned about the procedural limitations surrounding public notifications as evidenced by the lack of media coverage on the invitation for submissions on the Electoral Referendum Bill. Submissions closed today.

The chairperson of the Electoral Legislation Committee invited submissions on the Electoral Referendum Bill via (i) a public notification in New Zealand's major daily newspapers on 28 April 2010 in the public notices section, (ii) a listing on the parliamentary website and (iii) a media release, which may or may not have been published by individual media outlets.

The consultation process for the development and approval of bills is set out in The Cabinet Manual (7.24 to 7.45). The Cabinet Manual states 'effective and appropriate consultation is a key factor in good decision making, good policy, and good legislation' (7.24). Whilst the public have been notified, the Institute believes it is timely for the government to review these procedures in order to align them with today's modern media society, and invite participation across all age groups.

The process above limits the involvement in the policy process of a large section of our contemporary community. Newspaper readership is falling and the parliamentary website is unknown to many, however this Bill will affect all New Zealanders. Wendy McGuinness, the Institute's Chief Executive, says 'I do not believe that notification for public consultation is reaching a wide enough audience to engage with issues of national significance'.

'This Bill is the beginning of an ongoing process, aimed at ensuring we have optimal parliamentary representation in this country. Hence, Government needs to investigate a broad based strategy for public notification across a range of multimedia outlets including social networking sites, such as Facebook and Twitter, that reach more New Zealanders.'

McGuinness thinks that effective representation in Parliament is critical to making this country deliver optimal outcomes for all New Zealanders; 'so let's make sure everyone can be involved in the policy process'.

[ENDS]

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References

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