

318 The Esplanade
Island Bay
Wellington 6023

8 June 2010

Clerk of the Committee
Electoral Committee
Select Committee Office
Parliament Buildings
Wellington 6160

Electoral Referendum Bill

Who From: Dr Jon Johansson
Victoria University of Wellington

Contact Address: 318 The Esplanade
Island Bay
Wellington 6023

Contact Phone: 021 385 034

Appearance: I would wish to speak to this submission if given
the opportunity by the committee.

Submission:

Context

1.1. After five MMP elections New Zealand has demonstrably and unequivocally become a more representative democracy. The value of each New Zealander's vote is greatly more equal than it was under First-Past-the-Post. The increase in the number of women and Maori represented in

parliament, allied to the nascent growth amongst other ethnic minority groups gaining representation, has been a stand-out feature of our post-MMP politics. Indeed, the goodness of fit between our current electoral system and our dramatically changing demographics is among the strongest arguments for retaining proportional representation at the proposed referendum in 2011.

1.2. Those enormous representative gains have now been placed at risk by this government in its determination to, in the words of Prime Minister John Key, “kick the tyres” on MMP. Unfortunately, if kicking the tyres of MMP was the government’s intention it would, instead, be reviewing the existing electoral system to remedy it of its well known anomalies, then seeking endorsement from the public for any changes. Instead of kicking the tyres the government’s proposed Electoral Referendum Bill is more akin to putting the car up for sale. In doing so the government has placed the aforementioned democratic gains at risk.

1.3. The Electoral Referendum Bill under consideration is the product of two earlier political failures. The first can be sheeted home to the ineffectual Hunt committee report into MMP, conducted by the Clark Government in 2000. Despite satisfying the nebulously perceived promise to review MMP the Hunt Committee was designed to maintain the status quo and therefore offered no release valve for those who wished to see some obvious anomalies around MMP remedied, nor did it satisfy those already vehemently opposed to proportional representation.

1.4. The second failure can be attributed to the set of misperceptions that underpinned the National Party’s promise to hold another referendum, made while it was in opposition. Despite there being little or no evidence of voters clamouring for a further chance to “kick the tyres” on MMP this bill is the unfortunate product of nine years of fear about whether National could win electoral contests under proportional representation’s rules.

1.5. That said our path to proportional representation was itself an accident from above, so a failure of political will by the Hunt Committee and a fear of

failure by National are entirely consistent chapters in the story of our country's haphazard constitutional development.

Electoral Referendum Timeline and Process

2.1. My general position on the Electoral Referendum Bill is therefore to accentuate that while it is wholly unnecessary – and one only needs to cast one's gaze overseas to observe that no western democracy has ever moved back in the direction of greater disproportionality once proportional representation was established – the opportunity to put further and future threats to electoral stability to rest, once and for all, is to be welcomed, if not warmly.

3.1. I wish to commend the government – most particularly the Minister of Justice Simon Power, as well as his staff and officials – because he and they designed a high quality referendum process, one that has already drawn multi-partisan support from within parliament to get it to select committee. I therefore fully support the timeline for the referendum process as it lends itself to coolly rational deliberation by New Zealanders as they consider and debate a crucial aspect of our functioning democracy.

3.2. Those select committee submitters who criticise the responsiveness of the referendum process outline in the Electoral Referendum Bill, which would see a final referendum in 2017 if a majority of voters still prefer change, are motivated and clouded by their irrational desire to see a less proportional electoral system replace MMP.

3.3. Should the select committee be moved by opponents of MMP over the timeline established for the referendum process they risk increasing the probability of creating a potentially ruinous path dependency, one which could fatally undermine our future electoral system stability. Any proposal to hold a second referendum within a year of the initial trigger referendum, predicated on the 2011 vote favouring change, raises the risk that voters plump for electoral system change for situational rather than deliberative reasons. Fast-

paced electoral system change, should it occur, would then inevitably lead to a future clamour for yet another referendum as our nation's dramatically changing demographics – with 9 percent of the voting population Asian New Zealanders and another 7 percent Pasifika New Zealanders – would be ill-suited for a less proportional electoral system. We know from our own country's electoral history, as well as from any comparative analysis drawn from overseas jurisdictions, that fewer minorities will be elected under any more disproportional electoral rules.

3.4. I therefore wish to suggest to the committee that any proposal made to shorten the referendum process is not only flawed in fact, but pernicious in intent as any submitter who wishes to dilute the deliberative aspect of the referendum process – i.e., its timeline – is not driven by any commitment to deliberative democracy, but rather by ideological consideration unrelated to constitutional propriety.

3.5. I therefore wish to reinforce my fulsome support for the referendum process as outlined in the bill and congratulate the government for creating a democratic precedent for future constitutional change that pays respect to voters being allowed to calmly and rationally reflect on the choice(s) before them. The government has learned that the means employed to discuss and decide constitutional issues is as crucially important as the ends they seek.

Modified MMP as an Option in Part A of Schedule 1

4.1. Another general point I wish to make is that while I am hugely disappointed that a modified MMP system was not chosen as an option in Part A of the referendum voting paper (Section 12 (a) of Subpart 2 of the Electoral Referendum Bill) the government has seen fit to at least provide the opportunity for a review of MMP should the status quo be preferred by voters in 2011.

4.2. I disagree with the government that it was too difficult to offer 'modified MMP' as one option in Part A of the ballot paper. In fact the comprehensive

scope of a future MMP review [as outlined in Section 56 (1) (a-f) and Section 56 (2) and (3)] demonstrates that 'modified MMP' could have communicated to the voting public with a clear sense of the scope and direction of possible changes that a review team might then consider. Part A of Schedule 1 should be changed to the following wording:

Part A

Should the current or a modified MMP voting system be retained?

Vote for only one option

I vote to **retain** the MMP or Modified MMP system voting system

I vote to **change** to another voting system

4.3. Given the government does not share my view I do wish to nonetheless commend it for providing a mechanism for reviewing the MMP electoral system should the status quo survive the referendum. It is my contention, one supported by public opinion polling, that a super majority of voters will prefer to either keep MMP and/or address its worst and most obvious anomalies. This strong public preference has been partially accommodated, depending on the final result of the trigger election, so I compliment the government for allowing the elephant to at least peer into the room of electoral reform and stamp its feet.

Public Education and Part B of Schedule 1

5.1. I also wish to hugely commend the government for its commitment to launching a public education campaign to help educate voters about their choices at the 2011 referendum. Public education for such a crucial decision of far-reaching import – the most important question the electorate has faced since the 1993 electoral referendum in this submitter's professional opinion – is a necessary corollary to compliment the referendum's intention to promote a deliberative process for deciding the future direction of electoral reform.

5.2. This leads me to offer the following helpful suggestion, one specific to Schedule 1 of the Electoral Referendum Bill (s 7(1), (2) Schedule 1 Form for referendum voting paper). To better facilitate public education the ordering (but not wording) of Part B of Schedule 1 should be changed. Instead of what appears to be the random ordering of the four electoral system alternatives on offer in the current bill I would suggest the ordering be consistent with any recognised proportionality index for each electoral system alternative (such as Gallagher or Rae disproportionality indexes) as this will better facilitate a quality public discussion over the key trade-off facing voters; namely, between the representativeness of the electoral system choice and its effectiveness. To illustrate this I would recommend the select committee recommend the following ordering of Part B of Schedule 1 to improve the bill:

Part B

Regardless of how you voted under Part A, if there was a change to another voting system, which system would you choose?

Vote for only one option

I would choose the **Single Transferable Vote** system (**STV**)

I would choose the **Supplementary Member** system (**SM**)

I would choose the **Preferential Voting** system (**PV**)

I would choose the **First Past the Post** system (**FPP**)

5.3. Such ordering would allow all sides of the referendum debate to better inform voters about the trade-offs explicit in each electoral system choice. For instance only STV amongst the four choices offered to voters is a proportional system approximating our existing MMP. The other three systems are all majoritarian systems, to varying degrees of accentuated disproportionality. If the voting paper was ordered as suggested this would be far clearer to voters, reinforcing the government's to quality public education.

5.4. I also wish to anticipate one argument made by supporters of change, namely their desire to employ a preferential voting system to count the final results of the Part B vote. This position is ridiculously self-serving. Having no confidence in the New Zealand public's intelligence, opponents of MMP fear anti-MMP votes splitting amongst the three grossly disproportional electoral

systems on offer (SM, PV and FPP), thereby giving STV an unfair advantage.

5.5. If the select committee acquiesced to this demand it would be viewed by supporters of MMP as a gross manipulation of the referendum process, fatally compromising the governing party's integrity, and undermining the quality process already outlined in the bill.

5.6. Likewise, another argument likely to be made by supporters of change is to argue that Section 56 (3) (b) should be changed to allow for a review of the size of parliament. I reject this line of argument – so endorse fully the bill's current exclusion of parliament's size from the scope of any subsequent review – as it is made solely to try to manipulate public opinion by introducing a confounding variable which supporters of change think necessary to try and manipulate the referendum's outcome. Such submissions should be ignored.

Referendum Campaign Spending

6.1. Turning to the issue of the government's proposal to impose no limits on referendum campaign spending, no doubt many submitters will address the unfettered approach preferred by this government. I agree with all those submitters who argue that some reasonable limits on campaign advertising and other spending be established. I further suggest to the committee that if there is one area where we should willingly accept some limits on unrestricted free speech it is in how we elect our representatives and, in this specific case, how we decide the historically crucial issue of which electoral system will best serve us in the future.

6.2. While I am personally confident that the unlimited spending by opponents of MMP, provided for in this bill, to support a 'No' vote will effectively see a wealth transfer from these individuals straight to the advertising industry, I offer the following warning; one only has to have one referendum result, or one election result, distorted through the greater resources of a wealthy few to forever change the nature of our democracy. Once lost, integrity in one's democracy cannot be easily restored. The

government presumably does not perceive such risks with the referendum given its current policy. In my opinion this is not a prudent position to adopt, by any government, but especially this governing party given its recent untidy history of involvement with third party campaigning. We are a small village and the opportunity to skew public opinion through unfettered spending is accordingly much greater than in a large democracy where countervailing forces are so much greater than what exists in New Zealand.

6.3. The Report of the Royal Commission on the Electoral System (1986) rightly urged caution when considering political finance. The commissioners argued that “Nor is it fair if some in the community use their relative wealth to exercise disproportionate influence in determining who is to govern and what policies are to be pursued” (p.183). I urge the government and the select committee to reflect deeply about whether unfettered spending doesn’t risk undermining the integrity of our democracy. Transparency around who is spending does not go far enough on its own without also adopting an upper spending cap to keep the playing field as level as consistent with the protection of free speech.

Summary Recommendations

7.1. In summary, although the National Party is willing to place at risk all the democratic gains that have been achieved since the introduction of MMP for dubious reasons (at best), I do commend the referendum process established and the commitment to a quality public education campaign. However, the process can be further improved at committee stage by adopting the following specific recommendations:

- 'Modified MMP' be further considered by the committee as one option in Part A of Schedule 1 Form for referendum voting paper;
- Part B of Schedule 1 Form for referendum voting paper is changed as suggested in 5.2. above, to order each of the four electoral system choices according to their proportionality;

- The timeline for the referendum process be endorsed by all political parties represented at committee;
- No consideration in the Electoral Referendum Bill be given to reviewing the size of parliament;
- No consideration in the Electoral Referendum Bill be given to any suggestion to count the votes in Part B of the referendum voting paper by way of preferential voting;
- An upper limit of campaign spending be established, say \$500,000.

Let me finish by thanking the committee for the opportunity to comment on the Electoral Referendum Bill. This bill can still be improved and I am optimistic that final multi-party support can be achieved.

Yours sincerely

Dr Jon Johansson