

5 April 2012

MMP Review
Electoral Commission
PO Box 3220
Wellington 6140
by email: mmpreview@elections.org.nz

To the Electoral Commission,

SUBMISSION OF MAXIM INSTITUTE ON THE “CONSULTATION PAPER ON THE 2012 REVIEW OF THE MMP VOTING SYSTEM”

1. Thank you for the opportunity to make this submission on the “Consultation Paper on the 2012 Review of the MMP Voting System”.¹ Maxim Institute is an independent research and public policy think tank, based in Auckland. We are a registered charitable trust, funded by donations.

SUMMARY OF POSITION

2. New Zealand should have a voting system that enables our MPs and the government to have the freedom to lead and to make decisions in the best interests of all New Zealanders, and encourages them to listen and be responsive to the interests of New Zealanders and their local communities.
3. We believe there are some problems with MMP, and that they mainly relate to the emphasis it places on parties (as the party vote determines the overall make-up of parliament) and whether most voters can accept the electoral outcomes that MMP produces. We propose adjustments that we believe would preserve the integrity and intention of MMP, while still strengthening the legitimacy and accountability of parliament.
4. Our specific recommendations for improving MMP in response to the consultation paper are that:²
 - a. **the five percent party vote threshold should be kept;**
 - b. **the one electorate seat threshold should not be kept**, and minor parties which fail to cross the five percent threshold, but which win an electorate seat, should be treated according to the same seat allocation rules as independent MPs;
 - c. **list MPs should be able to stand as candidates in by-elections;**
 - d. **dual candidacy should be kept;**
 - e. **voters should have some ability to alter the order of candidates from the list order decided by political parties** by using an open party list system, and when voters cast their party vote they should have the option of voting either for their preferred list candidate or preferred party;
 - f. **the overhang provision should be removed**, and when a party wins more electorate seats than the party vote entitles it to, the number of seats in parliament that are distributed proportionally to other parties should be reduced by that party’s number of seats; and
 - g. **there should always be a greater total number of electorate seats than list seats**, and there must be enough list seats to allow MMP to function as a proportional voting system.
5. We do not believe there are any other issues that the review need consider.

6. In the remainder of this submission, we set out our criteria for effective representative democracy that form the basis of our recommendations for how to improve MMP's performance, and our rationale for these adjustments.

CRITERIA OF EFFECTIVE REPRESENTATIVE DEMOCRACY

7. Elsewhere we have developed a set of normative criteria that we think is important for effective representative democracy, and which we have used to evaluate voting systems.³ For simplicity and clarity, we have grouped these evaluation criteria under two headings: representation; and effects on parliament and government.

Representation

- a. Parliament ought to be able to represent both local communities and interest groups.
 - i. **Electorate representation**—the voting system should provide for the election of electorate MPs who are connected to a community of people who live in a particular place so that local communities' interests and concerns can be represented in parliament.⁴
 - ii. **Representation of interests**—parliament should allow for the breadth of society to be represented, so that minority voices or interest groups have a chance to be heard, and that people who belong to or identify with these groups have a reasonable chance to be elected.⁵

Effects on parliament and government

- b. The voting system also affects how parliament and the government functions in practice.
 - iii. **Accountability**—the voting system should enable voters to hold the government and MPs directly to account for their performance. Voters ought to have the opportunity to vote out incumbent MPs or governments of whom they disapprove.⁶
 - iv. **Legitimacy**—the voting system should produce electoral outcomes that voters, as a whole, want and expect so that voters can be confident that their vote contributes towards the fair election of candidates and parties.⁷
 - v. **Stable government**—the voting system should enable governments to form easily and to last for their term of office to provide a measure of certainty regarding stable governance.⁸
 - vi. **Effective government**—the voting system should lead to a government that can carry out what it promised before the election.⁹
 - vii. **Opposition and oversight**—the voting system should promote the formation of an opposition that can criticise and challenge the government so that the government's work can be debated, considered and evaluated.¹⁰
8. New Zealand should have a voting system that balances these criteria well, thereby enabling representative democracy to flourish.
9. When we evaluated MMP against these criteria, **we found that it provides well for electorate representation and the representation of interests, such as minority ethnic and identity groups.**¹¹ While both are valuable, we believe that electorate representation ought to be prioritised because it can provide a more relational connection between voters and MPs, and because it can balance out parties' control over their MPs. **We found that MMP does not, however, perform as well against the criteria of accountability and legitimacy because representation is primarily party-based.** This means that parties end up having a lot of control over who gets to be an MP.¹² The outcome of elections can sometimes be different to what voters expect too, because of how coalition negotiations and variations around electoral thresholds affect government formation.
10. With a majority of voters deciding that MMP should be kept as the voting system in last year's referendum, New Zealand has the opportunity to adjust for these sorts of problems. We have

suggested changes where we believe that New Zealand's experience with a particular feature of MMP indicates a problem with how it works and/or where it does not provide for effective representative democracy.

CONSULTATION QUESTIONS

What thresholds or hurdles should parties have to cross to qualify for an allocation of list seats in parliament?

11. The consultation paper says that the two electoral thresholds—that is, the five percent party vote threshold and the one electorate seat threshold—are “intended to ensure, first, that every party that gets into parliament has at least a minimal level of electoral support and, second, that it is neither too easy nor too hard for smaller parties to get into parliament.”¹³ The thresholds are associated with the issue of balancing the legitimate representation of parties in parliament with ensuring parliament and government are stable and can function. The paper then asks whether:
 - a. the five percent threshold should be kept or changed, and why;
 - b. the one electorate seat threshold should be kept or changed, and why; and
 - c. if a change (to either threshold) is recommended, what should it be and why?

We recommend that the five percent threshold should be kept

12. We believe that the five percent threshold should be kept for the same reasons that are noted in the consultation paper. That is, we do not think that minor parties should be able to be elected to parliament on a very small share of the party vote. The lower the threshold, the higher the likelihood that more minor parties will be elected to parliament. This can make parliament fractious and governments ineffective,¹⁴ because in a multi-party parliament multi-party coalition governments are more likely to form which are less likely to last their term,¹⁵ and it can be harder for governments to pass legislation.
13. We also agree with the idea that a threshold can help to ensure that parties which are represented in parliament, or which are part of the government, should have the support of a significant minimum share of the party vote. In New Zealand, a five percent party vote threshold currently ensures that this support level is over 100,000 votes from enrolled eligible voters or valid party votes.¹⁶ Minor parties have to campaign quite hard throughout the country and appeal to a reasonable cross-section of voters to win this many votes. We believe that when a minor party crosses the five percent threshold, it means that a significant number of people have endorsed that party's ideas and leadership and that this level of support warrants that party having a share of the seats in parliament.
14. If a threshold of four percent or less were used it would make it too easy for minor parties which win a very small share of the vote to enter parliament.¹⁷ For example, if a four percent threshold had been used at either the 2002 election or at the 2008 election (and all other electoral rules remained the same) an additional minor party would have been elected to parliament.¹⁸ This outcome would have made it more difficult for the governing major party to put together a coalition government with a majority of the seats in parliament due to it having to negotiate with more parties. This situation illustrates why lower thresholds can have implications for the ease with which governments can form and the stable and efficient operation of parliament, more generally.
15. In short, we think that the five percent threshold is valuable for ensuring that parliament and the government are both stable and efficient under MMP, and that only those parties which have a decent level of support should get to participate in parliament.

We recommend that the one electorate seat threshold should not be kept

16. We do not think that the one electorate seat threshold should be kept because it has undermined the intention and operation of the five percent threshold, and it has harmed the legitimacy of electoral outcomes by becoming an object of strategic campaigning that gives some minor parties disproportionate political influence.

17. The intention of the threshold was to enable parties that are popular enough to win an electorate seat to have proportional representation.¹⁹ However, as the consultation paper notes, the one-seat threshold has enabled some minor parties to bring in extra MPs in addition to their sole electorate MP, while others with higher party votes have not been represented at all.²⁰ At the 2008 election, for example, the New Zealand First Party won 4.1 percent of the party vote but failed to win an electorate seat. It crossed neither threshold and received no seats in parliament. By contrast, the ACT Party won the Epsom electorate and received 3.7 percent of the party vote.²¹ Because ACT crossed one of the thresholds it received four additional list seats so that its representation was proportional. The party vote threshold's importance has thus been undermined and the proportionality of parliament—a key element of MMP—has been weakened.
18. The one seat threshold has also encouraged some minor parties to deliberately craft their election campaigns around holding a constituency seat to increase their chances of winning seats in parliament. For example, parties such as ACT, United Future and the Mana Party have campaigned both in general elections or by-elections on the electoral advantage that the one electorate seat threshold can give minor parties.²² In the 2002, 2005, 2008 and 2011 elections, this strategy also led to some minor parties forming coalitions with the major governing party that had a mandate.²³ This strategy gives the voters in particular electorates great influence; especially as their vote has the potential to lead to a number of additional MPs in parliament. This influence is starkly apparent if that minor party ends up holding the balance of power in the negotiations to form a government. Such electoral outcomes harm legitimacy.
19. Another type of strategic campaigning has come about whereby major and minor parties have cooperated together to encourage their voters to split their vote to elect a minor party's candidate in an electorate seat so that one of the major parties can have a likely coalition partner. An example of this is how ACT and National apparently reached an understanding at the 2011 election that National's candidate would not attempt to win the Epsom electorate seat to give ACT's candidate a greater chance of winning.²⁴ Strategic campaigning of this nature also occurred at the 2005 election with National's endorsement of United Future leader Peter Dunne in the Ohariu-Belmont seat.²⁵ While this strategy serves both parties' electoral interests (electoral survival in the minor parties' case and a friendly support party in the major parties') some voters have become increasingly dissatisfied with either their parties exploiting their vote for political ends or at the parties instructing them how to vote.²⁶ When voters become dissatisfied with how the voting system works, or the politics that are associated with it, this can affect whether they accept the system, and the electoral outcomes which it produces, as legitimate.²⁷ This seems to be a growing risk in the case of the one electorate seat threshold.
20. Legitimacy has also been impacted when electorate seats have been won by minor parties using the one seat threshold, giving them disproportionate influence in parliament and in government—that is, to a degree the “tail has wagged the dog.”²⁸ This has been occurring more frequently. For example, at the 1996, 1999 and 2002 elections, only one or two parties were elected to parliament without crossing the five percent threshold. By the 2005 election, however, only four out of eight parties elected to parliament crossed the five percent threshold. At the 2008 election, four out of the seven parties elected won less than four percent of the vote. At the 2011 election, none of the parties which crossed the one electorate seat threshold had a large enough share of the party vote to allocate them list seats.²⁹ The one-seat threshold has thus varied in how much it has inflated minor parties' representation—and influence—in parliament.³⁰ The influence can be even more disproportionate when those minor parties become partners with and monitors of major parties in whichever kind of coalition government may be formed after an election.³¹ For example, minor parties such as United Future and ACT have negotiated loose governing arrangements, known as enhanced confidence and supply agreements, with major governing parties after bringing in extra MPs because of the electorate threshold.³² These governing arrangements have permitted the minor parties to get some of their policies on to the government's agenda, even though these parties only represent a small cross-section of the community.³³ Therefore, the one-seat threshold has enabled a handful of minor parties to be elected to parliament with enough MPs to have an influence on government which they may not have been able to have if only the five percent threshold had been used.
21. Given that MMP is a proportional voting system, we believe that the party vote threshold should be the one which parties should campaign towards crossing. The one electorate seat threshold, while meant to protect proportionality, has distracted some minor parties from this focus and given them

disproportionate influence, producing electoral outcomes which some voters find difficult to accept as legitimate. We think these are strong grounds for doing away with the one electorate seat threshold.

If a change is recommended, what should it be and why?

We recommend that minor parties which fail to cross the five percent threshold, but which win an electorate seat, should be treated according to the same seat allocation rules as independent MPs

22. We recommend that if a minor party wins one or more electorate seats, but fails to cross the five percent threshold, it should be treated according to the same rules that are used for allocating seats to independent MPs. That is, it should get to keep its electorate seats, but it would not gain any extra list seats.³⁴ When determining parliament's make-up, the total number of electorate seats won by these minor parties, and independent MPs, would be subtracted from the total number of seats in parliament. The remaining number of seats would be allocated proportionally to the parties that crossed the five percent threshold.
23. For the reasons listed above, we believe that retaining the five percent party vote threshold and removing the one seat threshold would: improve the legitimacy and integrity of electoral outcomes; allow for more stable and efficient government; remove some unhelpful incentives for deals to be done by parties campaigning; and still preserve a broadly proportional parliament, which is a key element of MMP.

By-election candidates: Should a list MP be able to stand as a candidate in a by-election?

24. The consultation paper notes that a list MP does not have to resign their seat if they contest a by-election, but that they can still remain a list MP if they are unsuccessful. If the list MP is successful in becoming an electorate MP, another list candidate gets to enter parliament. The primary issue is whether these outcomes are legitimate. The paper then asks:
 - a. should list MPs continue to be able to stand as candidates in by-elections, and if so, why?

We recommend that list MPs should continue to be able to stand as candidates in by-elections

25. We believe that list MPs should continue to be able to stand as candidates in by-elections because: this is consistent with how list MPs are elected to parliament at general elections; by-elections create an incentive for sitting list MPs to work at representing local communities; and they provide the capacity for minor parties to field quality candidates in by-elections.
26. List MPs are elected to parliament in by-elections in a manner that is consistent with how they are elected in general elections. While there have been concerns regarding the next eligible list candidate replacing a list MP who wins an electorate seat as a result of a by-election, this outcome is legitimate because under MMP voters vote primarily for parties at a general election, thus legitimating the members of their lists until the next general election. It is also consistent with the situation where a list MP who either resigns or dies in office is replaced by another list MP. Furthermore, if a list MP was required to resign to be eligible to contest a by-election, the next eligible list candidate would still be elected to parliament regardless of the outcome. This issue was particularly relevant in the 2009 Mount Albert by-election where three of the candidates were list MPs.³⁵
27. The New Zealand experience with list MPs has shown that they have not limited themselves to just representing interest groups or their parties in parliament, an outcome we believe is valuable for effective representation.³⁶ The majority of list MPs have established a local presence by setting up electorate offices in constituencies and performing roles similar to those of electorate MPs in what is commonly seen as a "parliamentary apprenticeship" even though they have less parliamentary funding at their disposal.³⁷ This also gives list MPs valuable campaigning experience and opportunities to connect with a particular local community. An example of a list MP who has established herself in this way in a local electorate is Labour's Jacinda Ardern. Ardern has strong ties with the community and an electorate office in Auckland Central, the seat which she contested in the 2011 general election and lost by only 717 votes.³⁸ If list MPs were unable to stand as candidates in a by-election and one were held in Auckland Central, Ardern would not be able to stand unless she resigned from parliament. Thus, if list MPs were prevented from standing in by-elections, we believe

that this measure would effectively take candidates who clearly want to be the MP for their electorate out of by-election campaigns. The measure might also discourage list MPs from choosing to represent a local electorate, thereby reducing the value of electorate representation among list MPs.

28. We also believe that representation of interests and electorates are both enhanced by list MPs being able to stand as candidates in by-elections. It does this by affording minor parties a greater opportunity to stand their top calibre candidates in those seats, which can prove difficult due to having fewer members than major parties.³⁹
29. While the provision for list MPs to stand as candidates in by-elections has been regarded by some as illegitimate because of the outcomes that can result,⁴⁰ on balance, we think there are more advantages for representation from keeping the rule the same and so we recommend that list MPs should continue to be allowed to stand as candidates in by-elections.

Dual Candidacy: Should a person be able to stand as a candidate both for an electorate seat and on a party list?

30. The consultation paper notes that there are three ways that candidates or incumbent MPs can unsuccessfully contest an electorate seat, but still return to parliament as a list MP. One is how an incumbent electorate MP can lose their electorate seat but still return to parliament as a list MP—the so-called “back door MPs.” Another is how an incumbent list MP can unsuccessfully contest an electorate seat but still return to parliament as a list MP. The final way is how an unelected candidate can unsuccessfully contest an electorate seat but can still enter parliament because of their party list ranking. The issue is whether improvements to legitimacy and accountability should be pursued, by prohibiting dual candidacy, over the balanced representation of interests and electorates that dual candidacy can provide. The paper then asks whether:
 - a. dual candidacy should be kept, and if so, why; and
 - b. if a change is recommended, what should it be and why?

We recommend that dual candidacy should be kept

31. We believe that dual candidacy should be kept for the benefits that it can provide for representation, namely: minor parties’ ability to campaign for the party vote; the full and accurate representation of candidates on parties’ lists; and the assurance of high-ranking specialist or top calibre candidates’ election. We also think that the number of cases of “back-door MPs”—which is the issue with dual candidacy that has generated most of the negative attention—are so few that it does not warrant prohibiting dual candidacy.
32. We believe dual candidacy is good for representation because it enables a party’s candidates to contest particular electorate seats while also campaigning more widely for their party. Dual candidacy is especially important for minor parties—which often have fewer candidates than major parties—so that their electorate candidates can campaign throughout the country.⁴¹ Standing candidates in electorates can also help minor parties to improve their party vote, and give them a better chance of gaining seats in parliament, because of the profile this give them (although this effect has been modest in New Zealand).⁴² If dual candidacy were prohibited, it could reduce minor parties’ capacity to win the party vote, thus undermining the representativeness of parliament.
33. We also think that dual candidacy is good for representation because it enables parties to present their full range of electorate candidates on their lists. As the list includes those candidates who may primarily represent particular interest groups, dual candidacy gives profile to candidates who represent interests and also to those who primarily represent electorates.
34. Dual candidacy also enables parties to stand experienced, top-calibre candidates high on their list to ensure that they are elected—even if they are unsuccessful at winning an electorate seat. If dual candidacy were prohibited then a party’s list may also exclude senior MPs. For example, if dual candidacy had been prohibited at the 2005 election, Labour’s list would have been headed by Michael Cullen and Margaret Wilson, while senior Labour MPs such as Helen Clark, Steve Maharey and Phil Goff would have been excluded because they contested electorate seats.⁴³ Alternatively these senior MPs may have simply stood on the list, which may have reduced their connection to a local

electorate. Having a single list of electorate and list MPs helps parties to show voters which candidates are more senior and gives voters a clearer indication of the order in which their candidates will be elected.

35. Dual candidacy has become an issue of legitimacy and accountability among some voters, however, mainly because of how it has allowed incumbent electorate MPs who do not win their electorate seat to stay in parliament if they are highly enough ranked on their party's list. For example, a 2010 online survey of New Zealanders' views on MMP found that half of all respondents disliked it that a candidate can lose in an electorate, but still enter parliament on the party list.⁴⁴ In deciding whether this is a problem that should be fixed, we have investigated how many "back door MPs" have been elected. On average, between four and five of these "back door MPs" have been elected at each MMP election from 1999 to 2011. The median figure of back door MPs for the period was three. In the 2005 election, however, there were more than the average, as eleven incumbent electorate MPs lost their seats but returned to parliament as list MPs.⁴⁵ Three of them—New Zealand First's Winston Peters, and the Labour Party's Rick Barker and David Parker—also returned to Cabinet.⁴⁶ About two-thirds of the total number of those "back door MPs" had left parliament by the end of the next term, however.⁴⁷ Even if electorate MPs survive through their list ranking, history shows that electorate MPs who have lost their seat have difficulty retaining their senior ranking unless they have valuable skills and experience.⁴⁸
36. While "back door MPs" appear to lack legitimacy among some voters, and the re-election of incumbent electorate MPs as list MPs can erode the direct accountability provided by the election of electorate MPs, we should not forget that list MPs are legitimately elected by everyone who voted for those MPs' parties with their party vote. We therefore think that prohibiting dual candidacy would be an extreme response to a relatively small problem. While retaining dual candidacy means that legitimacy can be negatively impacted by back door MPs' election, we think that this is a reasonable trade-off to make so that the representation of candidates on party lists is balanced by including those who stand in electorates and the benefits this provides for campaigning. We recommend that dual candidacy should be kept for these reasons.

Order of candidates on party lists: Who should decide the order of candidates on party lists? Political parties only, or voters?

37. The consultation paper describes how parties currently present voters with their list of candidates, noting how this allows them to "include those who are broadly representative of different groups in society and who might otherwise be unlikely to get into parliament."⁴⁹ The issue with the way parties' lists are currently constructed is that it does not allow voters any say in the order in which candidates are elected and it does not give a strong incentive for list candidates to campaign directly for voters to vote for them. This contributes to the popular perception that list MPs are unelected and unaccountable MPs.⁵⁰ The paper then asks whether:
- a. in an election, should voters be able to alter the order of candidates from the list order decided by political parties, and if so; and
 - b. if you recommend a change, how should this be done?

We recommend that closed party lists should be replaced by open party lists in which voters have some ability to alter the order of candidates from the list order decided by political parties

38. We think that closed party lists should be replaced by open party lists because it would improve voters' perception of list MPs' legitimacy, and it could also make them more directly accountable to voters. An open list system would do this by giving voters the chance to vote for a list candidate of their choice, and it would also encourage list MPs to connect with voters to increase their chances of being elected.
39. We also believe that closed party lists have contributed to the popular perception that list MPs are "unelected" MPs who primarily serve the interests of their party rather than voters' interests. In MMP's early days, voters came to see list MPs as second-class MPs because of this perception, one that persists today. A 2010 online survey found that 55 percent of respondents disliked it that candidates who could not get elected to an electorate seat can go to parliament on a party list.⁵¹ This perception

is somewhat unfair, since list MPs are legitimately elected by standing and campaigning for their party, and some of them work hard at serving local communities as well as interest groups.⁵² Nevertheless, list MPs' lower status compared to electorate MPs suggests that this aspect of MMP has not met many voters' expectations in terms of accountable and legitimate representative democracy.⁵³

40. Open lists would also be good for encouraging list MPs to campaign directly for voters to vote for them. This is because international evidence suggests that when it is easy for voters to influence the order in which list candidates are elected, candidates have a greater incentive to campaign directly to voters. This campaigning in turn increases the proportion of voters who use their list vote to elect individual party list candidates when this option is available, rather than just voting for their preferred party.⁵⁴ We therefore believe that open lists can strengthen the direct accountability of list MPs to voters that has been weakened by closed party lists.

If you recommend a change, how should this be done?

We recommend that when voters cast their party vote they should have the option of voting for either their preferred list candidate or their preferred party

41. While we have recommended an open list, we recognise that they work differently in each country which uses them.⁵⁵ Our recommendation is that voters should be able to use their party vote in one of two ways: to vote for their preferred party, as they do now, accepting the party's list as it stands; or to vote for their one preferred list candidate from the party that they support, which would count as a party vote,⁵⁶ and influence the order in which a party's list candidates would be elected.⁵⁷ Once a party's overall share of seats has been allocated, and the electorate seats have been filled, the highest polling list candidates who received enough preference votes could then "leapfrog" other candidates on the party list. Each party's list MPs would then enter parliament according to the order of the resulting revised list. If it were desired to make it harder for voters to alter the order in which list candidates would be elected, a threshold could also be set at a certain share of the list candidate vote before a candidate could move up the party ranking.⁵⁸ We think giving voters the opportunity to vote for their preferred list candidate would strike a balance between giving voters some say over the order in which candidates are elected while still preserving a parties' ability to produce a rank-ordered list and include candidates who will represent particular interests that the party wants.
42. If an open list system like this was used, it would hopefully: help to improve voters' acceptance of list MPs; improve the accountability of list candidates and MPs to voters; and encourage list MPs to develop a relational connection with voters. We think these potential benefits for representation are great enough that there should be a change from closed lists to an open list of the kind that we have recommended.

Overhang: What should happen when a party wins more electorate seats than it would be entitled to under its share of the party vote?

43. The overhang provision allows the total number of seats in parliament to be increased if a party wins more electorate seats than it is entitled to according to its share of the party vote. The consultation paper outlines how this works by using the example of the 2008 general election where parliament was increased to 122 seats.⁵⁹ The issue with the overhang is that it can make it more difficult for a government to form a majority because it inflates the total number of seats in parliament. The overhang can affect the legitimacy of electoral outcomes. The paper then asks:
 - a. what should happen when a party wins more electorate seats than it would be entitled to under its share of the party vote?

We recommend that the overhang provision should be removed

44. While the overhang provision is designed to protect the proportionality of the seat allocation of the 120 regular seats in parliament, we think that it is not essential to MMP's operation, and for the sake of clarity and legitimacy of election outcomes, we recommend that it should be removed.
45. Removing the overhang provision is important because the increase in the number of seats caused by an overhang has a direct impact on how easy it is for a major party to control a majority of the seats in parliament. For example, at the 2008 election, 62 seats were needed to have a majority rather than 61. Another situation where this could happen is if the Maori Party ever won all seven Maori seats, and their share of the party vote remained at about two percent. In this case the major governing party would need a majority of 63 to be able to confidently govern.⁶⁰ Under this scenario, even if a major party won 50.1 percent of the party vote, it could not govern alone.

We recommend that when a party wins more electorate seats than the party vote entitles it to, the number of seats in parliament that are distributed proportionally to other parties should be reduced by that party's number of seats

46. Removing the overhang provision would limit the number of seats in parliament to 120.⁶¹ If a registered party were to win more electorate seats than it would be entitled to according to its share of the party vote, then its seats would be subtracted from the total number of seats in parliament. After subtracting the electorate seats won by parties that didn't cross the five percent threshold, the remaining number of seats would then be allocated proportionally to those that did.
47. While this change would marginally increase the disproportionality of parties' representation in parliament, voters could be confident that the number of seats required for a majority would not change at each election. We recommend removing the overhang because it would produce clearer outcomes and more certainty would be brought to the running of parliament and government, thereby improving the legitimacy of electoral outcomes under MMP.

Proportion of electorate seats to list seats: Changes in population will affect the proportionality of Parliament over time. At what point do changes in the number of electorate seats resulting from population change so affect the ratio of electorate seats to list seats that our voting system could no longer be described as proportional?

48. As the consultation paper notes, as New Zealand's population grows electoral law requires the number of electorates to grow too, so that each electorate has about the same population. When more electorates are created the number of seats in parliament does not increase, instead, the number of list seats falls to accommodate the new electorate seats. The paper illustrates this by showing how over the period between the 1996 and 2011 elections the number of list seats in parliament has fallen by five to accommodate the five new electorate seats that have been created.⁶² In time, this could be a problem for the accurate representation of parties in parliament and the interests which they represent. The paper then asks:
 - a. is this is a problem, and what should be done to fix it?

We recommend that there should always be a greater total number of electorate seats than list seats

49. We are not greatly concerned by the slow growth in the number of electorate seats, particularly as evidence from the Department of Statistics suggests that it is unlikely to affect proportionality until 2051.⁶³ Moreover, we would prefer there to be more electorate seats than list seats in parliament, because we prioritise electorate representation. We do, however, recognise that MMP is a proportional voting system which requires a sufficient number of list seats so parties' representation in parliament can be proportional to their share of the vote.⁶⁴
50. There are two ways that this could be addressed. One way would be to increase the total number of list seats in parliament. This change would require increasing the total number of seats in parliament. Another way would be to enlarge the boundaries of existing electorates to reduce the total number of electorate seats.⁶⁵ The latter change would maintain the total number of seats in parliament at 120; however, each electorate MP would have to represent more people.

51. We do not think that electorates should increase in size, as this could undermine electorate MPs' capacity to serve their electorates. When the total number of electorate seats grows past the point where 120 seats in parliament is sufficient to maintain parliament's proportionality, we recommend that the overall number of seats in parliament will need to be increased. This would enable the current split between the total number of electorate and list seats—where the total number of electorate seats is always greater than the total number of list seats—to be maintained, now and in the future. It would also mean that each party which crosses the five percent threshold would receive a reasonably proportionate share of the seats in parliament. However, as the Review cannot consider the number of MPs that should be in parliament,⁶⁶ we recommend no change to the way the balance between electorate seats and list seats is presently struck.

CONCLUSION

52. Now that a majority of voters has decided that MMP should be kept as the voting system, we think that it could be improved to provide better quality representation. Our suggested changes focus on the areas of accountability and legitimacy, with recommendations that would maintain the current degree of electorate representation, and reduce the chance that parliament will be fragmented and that minor parties will have disproportionate influence. Our recommendations would also be likely to alleviate or remove some of the strategic party campaigning that surrounds MMP elections and solve the issues with MMP that voters have found most annoying or frustrating to understand. These issues are not complicated to remedy and can be solved by parliament making reasonably simple changes to MMP.
53. Please do not hesitate to contact us with any questions regarding this submission.

Yours faithfully,

Steve Thomas and Kieran Madden
Researchers
MAXIM INSTITUTE

APPENDIX

How the recommendations would have changed parties' representation in parliament

54. As a guide to what could happen to parliament if our recommendations were introduced, we have recalculated the 2005, 2008 and 2011 general election results with our revised MMP rules.⁶⁷ The changes modelled here are:
- removing the one seat threshold;
 - removing the overhang provision (so the number of seats in parliament is restricted to 120 MPs); and
 - only allocating seats proportionally to parties that cross the five percent party vote threshold.⁶⁸
55. The issues of whether dual candidacy is permitted and whether open or closed party lists are used are not modelled because they do not affect how the seats in parliament are distributed among parties.
56. We have also included a disproportionality figure for each election, calculated using the Gallagher index. The disproportionality index measures “the difference between parties’ shares of the votes and their shares of the seats.”⁶⁹ A score close to zero means that the voting system has produced a proportionate result. That is, the larger the score, the more disproportionate the result. To obtain the most accurate figure, we have not grouped “other parties” together for the calculation.
57. These recalculated results should be treated with care and not be read as directly indicative of what would have happened under the revised rules. Different rules could have altered candidates’ and parties’ campaigns and so affected how voters would have probably cast their vote. However, the results can provide a general picture of the sorts of results, and the different possibilities of government formation, that our revised form of MMP could produce.

2005, 2008 and 2011 General Election Results Under Recommended MMP Rules						
2005 election	Recommended MMP rules				Current System	
Party	Electorate seats (out of 69)	Party vote (%)	List seats (out of 51)	Total seats	Total seats	
Labour	31	41.1	20	51	50	
National	31	39.1	17	48	48	
New Zealand First	0	5.7	7	7	7	
Green Party	0	5.3	7	7	6	
Maori Party	4	2.1	0	4	4	
United Future	1	2.7	0	1	3	
ACT Party	1	1.5	0	1	2	
Progressives	1	1.2	0	1	1	
Other parties	0	1.3	0	0	0	
Total	69	100	51	120	121	
Gallagher index score					3.1	1.1
2008 election	Recommended MMP rules				Current System	
Party	Electorate seats (out of 70)	Party vote (%)	List seats (out of 50)	Total seats	Total seats	
National	41	44.9	18	59	58	
Labour	21	34.0	23	44	43	
Green Party	0	6.7	9	9	9	
Maori Party	5	2.4	0	5	5	
United Future	1	0.9	0	1	1	
ACT Party	1	3.7	0	1	5	
Progressives	1	0.9	0	1	1	
New Zealand First	0	4.1	0	0	0	
Other parties	0	2.4	0	0	0	
Total	70	100	50	120	122	
Gallagher index score					5.2	3.8

2011 election	Recommended MMP rules				Current System
Party	Electorate seats (out of 70)	Party vote (%)	List seats (out of 50)	Total seats	Total seats
National	42	47.3	16	58	59
Labour	22	27.5	12	34	34
Green Party	0	11.1	14	14	14
New Zealand First	0	6.6	8	8	8
Maori Party	3	1.4	0	3	3
Mana Party	1	1.1	0	1	1
ACT Party	1	1.1	0	1	1
United Future	1	0.6	0	1	1
Conservative Party	0	2.7	0	0	0
Other parties	0	0.7	0	0	0
Total	70	100	50	120	121
Gallagher index score				2.3	2.4

58. At the 2005 election, there would have been no overhang and 113 seats would have been allocated proportionally to the parties that crossed the five percent party vote threshold. The minor parties that won one electorate seat but less than five percent of the party vote—that is, ACT and United Future—would not have received any additional list seats. The net effect of this change would have been to give Labour and the Green Party one more seat each than under the current MMP rules. The outcome would still have been unclear, and, as actually happened, Labour would have needed either the support of New Zealand First and the Greens, or the support of New Zealand First and the three other parties more naturally friendly to it (United Future, the Progressives and the Maori Party), to form a government. With the removal of the overhang, conceivably it would have been possible for the National Party to form a government. However, it would have required the support of ACT, New Zealand First, United Future and the Maori Party for National to claim a majority.
59. At the 2008 election, the two-seat overhang would have disappeared and 112 seats would have been allocated proportionally. The two major parties would have increased their number of seats by one each. Without the one-seat threshold, ACT would not have received any additional list seats on top of its one electorate seat. National would not have had a majority of seats, just as actually happened. However, it would have only needed ACT and United Future's support to form a government, as the Maori Party's support would not have been required to hold a majority of seats.
60. At the 2011 election, the one-seat overhang would have disappeared and 114 seats would have been allocated proportionally. Due to National increasing its share of the party vote from 44.9 percent to 47.3 percent and Labour's share of the party vote decreasing from 34 percent to 27.5 percent, National ended up being allocated the most seats. Thus, the National Party would have lost a list seat while the other parties' number of the seats would have stayed the same. The representation of the minor parties which crossed the one seat threshold would not have been affected in this case since none of these parties won a large enough share of the party vote to entitle them to any extra list seats. While the revised rules would not have changed the outcome of the election, they would have made it more difficult for National to assemble a majority. It would have had to rely most likely on the Maori Party or New Zealand First's support in addition to ACT's and United Future's support to govern with a majority.
61. The changes would have marginally increased the disproportionality of parties' representation in parliament at the 2005 and 2008 elections. However, at the 2011 election the proportionality of parties' representation in parliament would have improved by 0.1 of a point on the Gallagher Index. This was because the National Party's loss of a seat brought its share of the party vote closer to its share of the seats in parliament.
62. In summary, the changes that we have recommended to MMP's rules would probably not have altered the outcome of these two elections, but they did change the results. The changes would have possibly streamlined the formation of a government and removed some of the electoral outcomes that some voters find difficult to accept as legitimate.

ENDNOTES

¹ This submission draws upon previous work that we have published in S. Thomas, "Enhancing MMP: How to improve New Zealand's current voting system," *Research Paper* (Auckland: Maxim Institute, 2011) and S. Thomas, "Kicking the Tyres: Choosing a voting system for New Zealand" (Auckland: Maxim Institute, 2011).

² Elsewhere we have published recommendations on how MMP could be improved in response to the Review's terms of reference in the Electoral Referendum Act 2010. See S. Thomas, "Enhancing MMP: How to improve New Zealand's current voting system."

³ S. Thomas, "Kicking the Tyres: Choosing a voting system for New Zealand."

⁴ Cf. H.F. Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967), 155-156. Also see R. Ekins, "A Government for the People. The value of representative democracy," *Guest Paper* (Auckland: Maxim Institute, 2009), 2.

⁵ For a discussion on how the representation of interests is important see, for example, M.B. Vieira and D. Runciman, *Representation* (Cambridge: Polity Press, 2008), 80-81.

⁶ To quote the philosopher Karl Popper, "throwing out the rascals" (that is under-performing MPs or an under-performing government) ought to be easy if they are not performing. J. Vowles, S.A. Banducci and J.A. Karp, "Forecasting and Evaluating the Consequences of Electoral Change in New Zealand," *Acta Politica* 41 (2006): 270, citing K. Popper, "On the Theory of Democracy," in *All Life is Problem-solving* (London: Routledge, 1987); and K. Popper, "The Open Society and Its Enemies Revisited," *Economist* 28, no. 25 (1988): 28. Also see G.B. Powell, *Elections as Instruments of Democracy: Majoritarian and proportional visions* (New Haven, CT: Yale University Press, 2000), 9; and M. Pinto-Duschinsky, "Send the Rascals Packing: Defects of proportional representation and the virtues of the Westminster model," *Representation* 36 (1999): 117-26. In voting systems where people are chosen through party lists instead of an electorate, this accountability can be reduced as MPs are reliant on their party's success more than the support of local voters.

⁷ P. McCarvill, "Devising an Electoral System for the 21st Century: The case for AMS" (London: Institute for Public Policy Research (IPPR), 2010), 5; and New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the Electoral System: Towards a better democracy* (Wellington: Government Printer, 1986), 12. The legitimacy of election results is closely associated with the performance of our democratic institutions, such as parliament or list MPs. If our democratic institutions are believed to be failing to provide the kind of representative democracy that voters expect, then it can reflect badly on the voting system. International Institute for Democracy and Electoral Assistance (IDEA), "Electoral System Design: The new international IDEA handbook" (Stockholm: 2005), 10.

⁸ New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the Electoral System: Towards a better democracy*, 12. The voting system can affect how stable the government is. For example, if a voting system makes coalition government more likely, so that a number of different parties will have to work together, then the government may not be very stable. Cf. J. Boston, S. Church and T. Bale, "The Impact of Proportional Representation on Government Effectiveness: The New Zealand experience," *Australian Journal of Public Administration* 62, no. 4 (2003): 10, citing M. Gallagher, M. Laver and P. Mair, *Representative Government in Modern Europe* (Boston: McGraw-Hill, 2001), 365, who "found that of 14 European countries during 1945-98, single-party majority governments lasted an average of 953 days, coalitions 638 days and minority governments 505 days (or less than one-and-a-half years)."

⁹ New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the Electoral System: Towards a better democracy*, 12; J. Boston, S. Church and T. Bale, "The Impact of Proportional Representation on Government Effectiveness: The New Zealand experience," 9, citing R. Weaver and B. Rockman, "Assessing the Effects of Institutions," in *Do Institutions Matter? Government capabilities in the United States and abroad*, eds. R. Weaver and B. Rockman (Washington D.C.: The Brookings Institute, 1993), 6. Cf. S. Levine, N.S. Roberts and R. Salmond, "A Wider View: MMP ten years on," in *The Baubles of Office. The New Zealand General Election of 2005*, eds. S. Levine and N.S. Roberts (Wellington: Victoria University Press, 2007), 460.

¹⁰ For a discussion about the value of parliament's deliberative role see J. Waldron, "Parliamentary Recklessness: Why we need to legislate more carefully," *Annual John Graham Lecture* (Auckland: Maxim Institute, 2008) and E. Burke, "Speech to the Electors of Bristol," in *The Works of the Right Honourable Edmund Burke (1854)*, ed. H.G. Bohn, 6 vols. (London: The University of Chicago Press, 1774), 110.

¹¹ S. Thomas, "Kicking the Tyres: Choosing a voting system for New Zealand," 8-9.

¹² Political scientists Gregory Stephens and John Leslie chronicle how MMP has contributed to the National and Labour parties' greater centralisation of candidate selection procedures and thus the greater degree of control which parties have over their candidates at the cost of regional and local party branches' independence. G.R. Stephens and J. Leslie, "Parties, Organizational Capacities and External Change: New Zealand's National and Labour parties, candidate selection and the advent of MMP," *Political Science* 63, no. 2 (2011): 208, 216-17.

¹³ Electoral Commission, "Here's Your Chance to Have a Say on MMP," *Consultation Paper on the 2012 Review of the MMP Voting System* (Wellington: 2012), 5.

¹⁴ Commission Chair John Wallace shares this view, leading him to favour the five percent threshold over a four percent threshold. J. Wallace, "Reflections on Constitutional and Other Issues Concerning Our Electoral System: The past and the future," *Political Science* 54, no. 1 (2002): 60.

¹⁵ Political scientists Jonathan Boston, Stephen Church and Tim Bale, note 8, above, cite W. Muller and K. Strøm, *Coalition Governments in Western Europe* (Oxford: Oxford University Press, 2000); A. Lijphart, *Patterns of Democracy: Government forms and performance in thirty-six countries* (New Haven: Yale University Press, 1999); K. Strøm, *Minority Government and Majority Rule* (New York: Cambridge University Press, 1990); and M. Taylor and V.

Herman, "Party Systems and Government Stability," *American Political Science Review* 65, no. 1 (1971): 28-37 in support of the point that coalition or minority governments are not as durable as single-party majority governments.

¹⁶ At the 2011 election, there were a total number of 3,070,847 enrolled eligible voters and a total number of 2,278,989 valid party votes. Five percent of these figures are 153,542 and 113,949 votes, respectively. Electoral Commission, *Party Votes and Turnout by Electorate* (2011),

http://www.electionresults.govt.nz/electionresults_2011/e9/html/e9_part9_1.html (accessed 20 March 2011).

¹⁷ The 1986 Royal Commission recommended a four percent party vote threshold because it thought that this threshold would make it easier for more minor parties to be elected to parliament. New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the Electoral System: Towards a better democracy*, 66-67.

¹⁸ Electoral Commission, "Basis for Eligibility for List Seats (Thresholds)," *MMP Review Fact Sheet* (Wellington: 2012), 4-5.

¹⁹ Electoral Commission, "Basis for Eligibility for List Seats (Thresholds)," 5; and J. Wallace, "Reflections on Constitutional and Other Issues Concerning Our Electoral System: The past and the future," 60.

²⁰ Electoral Commission, "Here's Your Chance to Have a Say on MMP," 5.

²¹ Electoral Commission, *2008 General Election - Official Result* (2008),

http://www.electionresults.govt.nz/electionresults_2008/ (accessed 21 September 2010).

²² For some discussion of how the ACT and United Future parties have deliberately focused their election campaign on winning an electorate seat see: R. Hide, "ACT - Survival in Epsom," in *The Baubles of Office. The New Zealand General Election of 2005*, eds. S. Levine and N.S. Roberts (Wellington: Victoria University Press, 2007), 140-142; J. Boscawen, "ACT," in *Key to Victory. The New Zealand General Election of 2008*, eds. S. Levine and N.S. Roberts (Wellington: Victoria University Press, 2010), 90; and R. Eaddy, "United Future," in *Key to Victory. The New Zealand General Election of 2008*, eds. S. Levine and N.S. Roberts (Wellington: Victoria University Press, 2010), 105, 108. While the Mana Party ran a campaign for the party vote at the 2011 election, its electoral future still hinged on its leader, Hone Harawira, retaining his Te Tai Tokerau electorate seat. Harawira won this seat for the Mana Party in a by-election in June 2011 partly by running a campaign which told voters that "A vote for Kelvin will only get you Kelvin, but a vote for Hone will get you Hone and Kelvin" (Harawira's Labour Party opponent Kelvin Davis, had already been elected to parliament as a list MP). Thus, it can be argued that the Mana Party has deliberately exploited the one-seat threshold to win representation in parliament. Mana Party, *Bradford Candidacy Announced.* "Media Release" (2011), <http://mana.net.nz/2011/09/bradford-candidacy-announced/> (accessed 19 March 2011); and Mana Party, *Hone Harawira.* "Press Release" (2011), <http://mana.net.nz/2011/06/press-release-hone-harawira-24-june-2011/>.

²³ Coalitions formed between major parties and parties that crossed the one seat threshold, are, according to election: 2002—Labour plus the Progressives; 2005—Labour plus the Progressives and United Future; 2008—National plus ACT and United Future; 2011—National plus ACT and United Future.

²⁴ C. James, "On a Wing and a Smile. Political transition in National's business-as-usual re-election." Paper presented at the Victoria University of Wellington "Post-election Conference on the 2011 Election," 16 February" (2012), 5.

²⁵ P. Dunne, "United Future - Ironies of a Doomed Campaign," in *The Baubles of Office. The New Zealand General Election of 2005*, eds. S. Levine and N.S. Roberts (Wellington: Victoria University Press, 2007), 136.

²⁶ Academic researchers have not yet quantified the level of voter dissatisfaction in Epsom as a result of strategic campaigning at the 2011 election. Nevertheless, in reflecting on the 2011 election campaign, New Zealand political commentator Colin James notes significant backlash from National's Epsom voters against the party's "cynical manipulation." C. James, "On a Wing and a Smile. Political transition in National's business-as-usual re-election." Paper presented at the Victoria University of Wellington "Post-election Conference on the 2011 Election," 16 February," 5. Tim Watkin, producer of TVNZ's Q+A programme, also records a reported high level of dissatisfaction from National Party Epsom voters at being directed by Prime Minister John Key to vote for ACT's candidate, John Banks. T. Watkin, *Why Epsom Matters - A Lesson in Reading Billboards* (2011), <http://pundit.co.nz/content/why-epsom-matters-a-lesson-in-reading-billboards> (accessed 21 March 2011). Nine years earlier, Royal Commission Chair John Wallace noted that he thought New Zealanders would not accept this sort of voter manipulation. J. Wallace, "Reflections on Constitutional and Other Issues Concerning Our Electoral System: The past and the future," 61.

²⁷ If the voting system fails to provide the kind of representative democracy or the electoral outcomes that voters expect, then it can reflect badly on the system's legitimacy. International Institute for Democracy and Electoral Assistance (IDEA), "Electoral System Design: The new international IDEA handbook," 10.

²⁸ S. Levine, N.S. Roberts, and R. Salmond, "A Wider View: MMP ten years on," 463-464.

²⁹ Electoral Commission, "Basis for Eligibility for List Seats (Thresholds)," 5.

³⁰ S. Levine and N.S. Roberts, "MMP and the Future: Political challenges and proposed reforms," *New Zealand Journal of Public and International Law* 7, no. 1 (2009): 149.

³¹ As political and legal analysts Brook Cowen, Penelope Cowen and Alexander Tabarrok have said, "[Under mixed systems] Smaller parties obtain greater influence over policy and the electorate in general has a lesser influence." P. Brook Cowen, T. Cowen and A. Tabarrok, "An Analysis of Proposals for Constitutional Change in New Zealand," (Wellington: New Zealand Business Roundtable, 1992), 3.31.

³² Coalitions formed between major parties and parties that have crossed the one seat threshold, are, according to each relevant election (with minor parties' percentage of the party vote): 2002—Labour plus Progressives (1.7); 2005—Labour plus the Progressives (1.2) and United Future (2.7); 2008—National plus ACT (3.7) and United Future (0.9); 2011—National plus ACT (1.1) and United Future (0.7). Election results from 1994 to the present can be accessed from Electoral Commission, *New Zealand Election Results* (2011), <http://www.electionresults.govt.nz/> (accessed 1 June 2011).

³³ Cf. N. Aroney, "A Tale of Two Houses: Does MMP mean New Zealand doesn't need an upper house?" *Guest Paper* (Auckland: Maxim Institute, 2011), 8-9; J. Boston, "Innovative Political Management: Multi-party governance in New

Zealand," *Policy Quarterly* 5, no. 2 (2009): 56; and J. Boston and D. Bullock, "Experiments in Executive Government Under MMP in New Zealand: Contrasting approaches to multi-party governance," *New Zealand Journal of Public and International Law* 7, no. 1 (2009): 58ff.

³⁴ S. Levine and N.S. Roberts, "MMP and the Future: Political challenges and proposed reforms," 149-150.

³⁵ Electoral Commission, *Official Count Results - Mt Albert* (2011),

http://electionresults.org.nz/2009_mt_albert_byelection/ (accessed 10 March 2012). There would have been four list MPs standing before Labour list MP Phil Twyford decided not to put his name forward for selection. His decision was almost certainly influenced by the prospect of Judith Tizard, who was the next eligible Labour Party list candidate—and who had also happened to lose her electorate seat at the 2008 general election—re-entering parliament if he had won in Mt Albert. "Goff Thinks Fresh Face has Winning Edge," *New Zealand Herald*, 27 April 2009; and K. McKenzie, "New Zealand By-Elections and MMP: The Labour Party and the Mt Albert by-election," *Political Science* 61, no. 2 (2009):

61.

³⁶ See E. McLeay and J. Vowles, "Redefining Constituency Representation: The roles of New Zealand MPs under MMP," *Regional and Federal Studies* 17, no. 1 (2007): 91-92. This outcome was predicted when the Royal Commission considered MMP, where there was an expectation based on the West German experience that "most list members would attach themselves to particular constituencies or regions." New Zealand Royal Commission on the Electoral System and J.H. Wallace, *Report of the Royal Commission on the Electoral System: Towards a better democracy*, 53.

³⁷ New Zealand political scientists Elizabeth McLeay and Jack Vowles have shown that 74 percent of list MPs had a postal address outside of parliament. E. McLeay and J. Vowles, "Redefining Constituency Representation: The roles of New Zealand MPs under MMP," 80. Vowles et al have also found evidence that the public has judged list MPs' performance in this role as comparable to that of electorate MPs. See J. Vowles et al., *Voter's Veto. The 2002 election in New Zealand and the consolidation of minority government* (Auckland University Press, 2004), 170-171.

³⁸ New Zealand Electoral Commission, *Official Count Results, Auckland Central* (2011),

http://www.electionresults.org.nz/electionresults_2011/electorate-1.html (accessed 9 March 2012).

³⁹ E. McLeay and J. Vowles, "Redefining Constituency Representation: The roles of New Zealand MPs under MMP," 76.

⁴⁰ The former Progressive Party leader Jim Anderton raised similar concerns following the 2009 Mt Albert by-election. His concerns led him to draft a Private Member's Bill, the "Electoral (Disqualification of Sitting Members in By-elections) Amendment Bill," which would have prohibited both current list and electorate MPs from standing in by-elections. Progressive Party, *Bill to Stop MPs Standing for Parliament* (2009),

<http://www.progressive.org.nz/latestnews/files/6a1236334e92cb111027a40fcfeefa84-67.html> (accessed 10 March 2012); and New Zealand House of Representatives, *Proposed Member's Bills Ballot for Wednesday*, 10 February (2010), <http://www.parliament.nz/en-NZ/?document=00HOOOCBallot201002101> (accessed 10 March 2012).

⁴¹ E. McLeay and J. Vowles, "Redefining Constituency Representation: The roles of New Zealand MPs under MMP," 76.

⁴² Political scientist Jeffrey Karp finds only modest evidence that, in New Zealand, electorate candidates have helped to increase their parties' list vote. New Zealand's high incidence of split voting—between 29 and 39 percent of voters have split their vote between the electorate and the list vote in MMP elections—might explain some of the modest results. Karp concludes that parties "appear to matter more in New Zealand politics even though districts are relatively small and MPs are likely to invest a great deal of effort in constituency service." J.A. Karp, "Candidate Effects and Spill-over in Mixed Systems: Evidence from New Zealand," *Electoral Studies* 28 (2009): 49.

⁴³ Parliamentary Library, "Final Results 2005 General Election," *Background Note*, 2005/06 (Wellington: 2005), 11; and New Zealand Labour Party, "Talented Kiwis Dominate Labour List. Media Release" (Auckland: 2005).

⁴⁴ The Shape NZ survey had a nationally representative sample of 2,261 respondents and was conducted between 20 and 30 July 2010. Responses were "weighted by age, gender, ethnicity, personal income, employment status and party vote 2008 to provide a nationally representative population sample." The margin of error on the national sample was +/- 2.1 percent. ShapeNZ, "New Zealanders' Views on the Performance and Future of MMP" (Wellington: ShapeNZ; New Zealand Business Council, 2010), 2, 4.

⁴⁵ Parliamentary Library, Personal Communication, 20 October 2011. Cf. S. Levine and N.S. Roberts, "MMP and the Future: Political challenges and proposed reforms," 151, New Zealand Electoral Commission, *Statistics* (2005), http://www.electionresults.govt.nz/electionresults_2005/e9/html/statistics.html (accessed 11 March 2012)

⁴⁶ A. Nicholls, "Peters Fiasco Shows it is Time for a Review of MMP," *The New Zealand Herald*, 1 August 2008.

⁴⁷ Eleven of these back door MPs had resigned or retired by the end of the next parliamentary term. The other five were defeated at the following election. Parliamentary Library, Personal Communication, 25 October 2011. In examining the number of MPs who were defeated in their electorates and who entered parliament through party lists, New Zealand political scientists Elizabeth McLeay and Jack Vowles also note that, "In practice, the shifts between the two segments of representation do not fully support claims that the mixed system [MMP] protects incumbents [through dual candidacy]." E. McLeay and J. Vowles, "Redefining Constituency Representation: The roles of New Zealand MPs under MMP," 76.

⁴⁸ E. McLeay and J. Vowles, "Redefining Constituency Representation: The roles of New Zealand MPs under MMP," 76-77.

⁴⁹ Electoral Commission, "Here's Your Chance to Have a Say on MMP," 11.

⁵⁰ R. Miller and J. Vowles, "Public Attitudes Towards MMP and Coalition Government," *New Zealand Journal of Public and International Law* 7, no. 1 (2009): 97; and New Zealand Royal Commission on the Electoral System, *Report of the Royal Commission on the Electoral System: Towards a better democracy*, 53. The public's low perception of list MPs was due in no small part to the instances of party hopping, where several MPs—such as the Alliance MP, Alamein

Kopu—left the party which had enabled them to be elected. Cf. J. Vowles, "Introducing Proportional Representation: The New Zealand experience," *Parliamentary Affairs* 53 (2000): 687

⁵¹ ShapeNZ, "New Zealanders' Views on the Performance and Future of MMP," 2, 4.

⁵² A powerful motivation among list MPs for electorate service is to be selected as an electorate candidate at the next election. Some list MPs from the major parties have seen their role as a list MP as preparation for becoming an electorate MP. E. McLeay and J. Vowles, "Redefining Constituency Representation: The roles of New Zealand MPs under MMP," 87.

⁵³ Upon reflecting on the roles and perceptions of list MPs, John Wallace remarked that, "German commentators and members of Parliament had stressed to the Royal Commission that in Germany the public made no distinction between list and constituency MPs, and the wave of criticism of list MPs in New Zealand was greater than I had expected." J. Wallace, "Reflections on Constitutional and Other Issues Concerning Our Electoral System: The past and the future," 57.

⁵⁴ S. Hix, R. Johnston and A. Cummine, "Choosing an Electoral System" (London: The British Academy Policy Centre, 2010), 65.

⁵⁵ D.M. Farrell, *Electoral Systems. A comparative introduction*, Second ed. (London and New York: Palgrave, 2011), 77-88; and S. Hix, R. Johnston and A. Cummine, "Choosing an Electoral System," 65.

⁵⁶ A similar proposal was discussed as early as the 1970s when two New Zealand political scientists, R. M. Alley and A. D. Robinson, proposed that the number of MPs in parliament could be increased by electing a share of them proportionally from regional lists. They wished to give voters the option of voting for a party list candidate so that the most popular ones could move up the order of the list. R.M. Alley and R.D. Robinson, "A Mechanism for Enlarging the House of Representatives," *Political Science* 23, no. 2 (1971): 2-8. Also see S. Hix, R. Johnston and A. Cummine, "Choosing an Electoral System," 65ff.

⁵⁷ This is similar to how the Danish voting system works, which is described in D.M. Farrell, *Electoral Systems. A comparative introduction*, 86 and S. Hix, R. Johnston and A. Cummine, "Choosing an Electoral System," 66-67.

⁵⁸ This is similar to how the Swedish system works. New Zealand political scientists Stephen Levine and Nigel Roberts have suggested this as a possible model for New Zealand to follow. They describe how in Sweden, voters can influence the order in which candidates are elected from their preferred party's list if they receive eight percent or more of the relevant vote. Candidates therefore have to win a minimum level of support before they can leapfrog ahead of other candidates. As such, it can be difficult for voters to change the party's list ranking. S. Levine and N.S. Roberts, "MMP and the Future: Political challenges and proposed reforms," 150. Alley and Robinson also believed that their proposal would also have a limited effect on changing the party's list ranking. R.M. Alley and R.D. Robinson, "A Mechanism for Enlarging the House of Representatives," 6. In New Zealand, it is currently impossible for voters to change a party's list ranking unless they join a political party and influence the list ranking from inside the party.

⁵⁹ Electoral Commission, "Here's Your Chance to Have a Say on MMP," 13.

⁶⁰ P.A. Joseph, "The Maori Seats in Parliament," *Te Oranga o te Iwi Maori: A study of Maori economic and social progress* (Wellington: New Zealand Business Roundtable (NZBRT), 2008), 21.

⁶¹ S. Levine and N.S. Roberts, "MMP and the Future: Political challenges and proposed reforms," 150.

⁶² Electoral Commission, "Here's Your Chance to Have a Say on MMP," 15.

⁶³ Electoral Commission, "Proportion of Electorate Seats to List Seats," *MMP Review Fact Sheet* (Wellington: 2012), 2.

⁶⁴ S. Hix, R. Johnston and A. Cummine, "Choosing an Electoral System," 15-16.

⁶⁵ P.A. Joseph, "MMP and the Constitution," *New Zealand Journal of Public and International Law* 7, no. 1 (2009): 130-131.

⁶⁶ Electoral Referendum Act 2010, part 4, 1(3)(b).

⁶⁷ New Zealand political scientists Stephen Levine and Nigel Roberts have also carried out this sort of exercise for not only the 2008 and 2005 elections, but also for the 1996, 1999 and 2002 general elections. S. Levine and N.S. Roberts, "MMP and the Future: Political challenges and proposed reforms," 152-156.

⁶⁸ That is, the number of seats in parliament that would be distributed proportionally would be 120 minus the number of seats won by parties which polled less than five percent of the party vote. S. Levine and N.S. Roberts, "MMP and the Future: Political challenges and proposed reforms," 149, 152-156. In these calculations, the Sainte Laguë electoral formula that is used with MMP now has been used to allocate the seats proportionally. The way that the formula works is described at the Electoral Commission's website, Electoral Commission, *Sainte Laguë Formula Explained* (2008), http://www.electionresults.govt.nz/electionresults_2008/saint_lague.html (accessed 2 March 2011).

⁶⁹ M. Gallagher and P. Mitchell, *The Politics of Electoral Systems* (New York: Oxford University Press, 2005), 602.