

**SUBMISSION OF MAXIM INSTITUTE ON THE ELECTORAL (INTEGRITY)
AMENDMENT BILL
MARCH 2006**

INTRODUCTION

1. Maxim Institute is an independent research and public policy think-tank. Maxim Institute is a charitable trust, funded by donations.
2. Maxim Institute opposes the Electoral (Integrity) Amendment Bill ("**Bill**") in its current form. However, Maxim Institute proposes an amendment which, if made would satisfy our primary objection to the Bill.
3. Maxim Institute submits that, in its current form, this Bill has the potential to undermine democracy by ignoring the mandate electorate MPs are given. Maxim Institute is concerned that legislation passed on electoral matters should help to strengthen democracy in New Zealand, rather than undermine the principles upon which it is founded, as described below.
4. According to the Bill's Explanatory Note, its purpose is to "... enhance the maintenance of the proportionality of political party representation in Parliament as determined by electors." Although we understand this aim, we suggest that under a Mixed Member Proportional ("**MMP**") electoral system, it is an unachievable aim and comes at too high a cost; the potential to undermine the role of electorate MPs.
5. MMP is premised on a two-tier system of MPs. List MPs represent a constituency, which is, in essence, comprised of the country as a whole. They are voted into Parliament solely for their adherence to the policies of the party they represent. Conversely, electorate MPs represent a smaller geographical region and although the party they belong to might be a consideration for voters, ultimately they are elected as individuals. A consideration of the historic background of electorate MPs highlights this.

ELECTORATE MPS

6. Until 1996 New Zealand's electoral system was a majoritarian system, that of, First Past the Post. It was under this system that the idea of electorate MPs, as MPs who were elected to represent a specific geographic constituency, became embedded within the New Zealand political system. Thus each MP was connected to a particular electorate.
7. The connection of an individual to a group of people performs many functions. It provides a connection for people to the political process, with the number of citizens represented by a particular MP being maintained at manageable levels, so that the needs of the electorate can be met through an MP's surgery. Local MPs can bring specific needs of local regions before the entire assembly of Parliament. Local MPs are closer to the people, as they represent a smaller group and are therefore able to stay in touch and up-to-date with the concerns of the people they represent more easily. Another important function of an electorate MP is their representation of their constituents.

REPRESENTATION

8. The notion of representation is and has been a reasonably controversial one. The factors that combine to influence how a politician votes are many and varied. An MP's role may be classified in variety of ways. Whilst there are many models of representation, the most influential of these have been those where the MP has been seen as a delegate, or as a trustee or as a representative of a political party. Under a delegate model, an electorate MP votes according to the will of the majority of their constituents. The trustee model is based more on the idea of an MP as the people's representative, and is outlined in more detail in paragraph 11. Increasingly the strength and power of political parties has enlarged the influence that they can exert with regards to representation. This is known as the partisan model. Ultimately, it is probably a combination of these factors which allows reasonable checks and balances on our elected representatives.
9. Maxim Institute is not suggesting that the role of parties in our electoral system should be ignored, but rather that there is, inherent within MMP, a tension between the balance of representation under the trustee model and a partisan model. This tension cannot be ignored. The danger with this Bill is that it stresses almost entirely the role of parties and fails to recognise the vital role which electorate MPs play, as outlined by a trustee model. While the overall proportionality of Parliament is an important consideration, the problem with prioritising this, as the Bill does, is the loss of any semblance of a trustee model.
10. An electorate MP campaigns as an individual; they meet many people in their electorate and circulate campaign material containing their name and personal details. They are ultimately elected not only because of the party they belong to, but because residents of a certain locality have elected to choose them, as their representative. At the next election, the electorate may then hold that same individual accountable. The electorate might choose to elect someone else instead, or may choose to renew their mandate through re-election. This is a check on the performance of electorate MPs.
11. The rationale behind electorate MPs stems from the Westminster system of government. Edmund Burke famously spoke of the role of a representative under such a system, saying:

"... it ought to be the happiness and glory of a Representative, to live in the strictest union, the closest correspondence, and the most unreserved communication with his constituents. Their wishes ought to have great weight with him; their opinion high respect; their business unremitting attention. It is his duty to sacrifice his repose, his pleasures, his satisfactions, to theirs; and, above all, ever, and in all cases, to prefer their interest to his own ... Your Representative owes you, not his industry only, but his judgement; and he betrays, instead of serving you, if he sacrifices it to your opinion."¹

MIXED MEMBER PROPORTIONAL

12. In 1996, with the introduction of a proportional representative electoral system, there was an implicit recognition that the connection between MPs and a local region is important. MMP is a system which maintains the link between a region and an individual MP through the presence of electorate MPs. Whilst MMP then

¹ E. Burke. *Speech to the Electors of Bristol*. 1774.

supplements these MPs with list MPs to ensure overall proportionality to party votes, this does not negate the fact that when an electorate MP is elected, they are elected as a specific individual, not solely because of their Party membership.

13. If an electorate MP chooses to vote against their party on issues, this should be their prerogative. The electorate chose them to represent their interests on their behalf for three years. This means they should be able to remain within Parliament for the entire tenure of their term. If they choose to vote against their party they are still within the mandate within which they were elected, that of using their character, intelligence and judgement to make decisions.
14. Whilst the intention of this Bill may be to ensure proportionality, a consequence would be to undermine the ability of an electorate MP to act as a representative of his or her people; that is, his or her electorate. This notion of representation has been the foundation of New Zealand's electoral system since its very conception. Undermining representation is a cost that is not worth paying simply to ensure proportionality.

LIST MPS

15. The situation is vastly different for list MPs. A list MP is elected entirely because of the party to which they belong. Their mandate comes from the party, and therefore they are bound to follow the party line. If such an individual does oppose the party to the extent that they are expelled from it, they should also be expelled from Parliament, as the mandate upon which they were elected was to support the Party manifesto upon which they were elected.

RECOMMENDATION

16. Maxim Institute's concerns with the Bill relate to its wider implications for the notion of MPs as representatives.
17. When an electorate MP has been elected by a constituency as their personal representative, it should be the constituency that forces them out of Parliament (by not re-electing them at the next election), and not the Party that forces them out of Parliament because they have disobeyed party policy. To satisfy this concern we suggest the amendment below.

Amendment

18. Maxim Institute submits that the Bill should be amended to exempt electorate MPs from its application. Arguably, this amendment conflicts with the rationale for the Bill; the maintenance of proportionality in Parliament. However, under a hybrid electoral system such as MMP, rather than pure proportionality, the tension between the nature of the representation of list MPs and electorate MPs is inherent in the system. So that proportionality is not the only relevant principle. Maxim Institute submits that this amendment would create a good balance within the Bill between the role of parties and the role of electorate MPs.