

PUBLIC HEARINGS ON THE 2012 REVIEW OF MMP

AT AUCKLAND

ON 2 MAY 2012

HEARD BEFORE ELECTORAL COMMISSION BOARD MEMBERS

SIR HUGH: E nga waka, e nga reo, tena koutou, tena koutou katoa. Welcome everybody here to what is day 1 of the Auckland hearings by the Electoral Commission on our review of the MMP voting system, day 3 overall as we had two days of hearings in Wellington last week and a few more to come too, another day in Auckland and some days in Christchurch and Hamilton to follow.

I am Hugh Williams – come along in. I chair the Commission. Jane Huria to my right is the deputy chair of the Commission and Robert Peden to my left is the Chief Electoral Officer and the third member of the Commission. In the hearings, we're assisted by Professor Nigel Roberts and Dr Therese Arseneau, political scientist from the University – Victoria University and University of Canterbury respectively, and by Louise Vickerman and John Spencer to our left.

As I said, this is really the first time that New Zealand has had a chance to reconsider most of the contentious aspects of our voting system for a least a decade and some would argue for even longer. The process, of course, began with the Royal Commission on the, on New Zealand's electoral systems back in 1986, followed by the referendums in 1992 and 1993, the first MMP election in 1996, we have now had six, the Parliamentary review about a decade ago, and then of course the referendum together with the general election on 26 November last year.

In that referendum, about 58% of those answering part A of the voting paper opted to keep MMP as our voting system and as a result of that, the Commission is required to undertake a public consultative process, which we're doing, into whether any changes to our system are necessary or desirable.

We've had a good response to our information campaign and our request for submissions, something over 3000, I think, I haven't actually got the precise total to date. It's something over 3000 to date, most online, which is our preferred way at the moment. More are still coming in and if you have any influence on your friends, neighbours, and family, don't hesitate to invite them to make their views known as the time for submissions doesn't close until the end of this month, 31 May although anyone submitting now won't have the chance to present those submissions in public.

I think all three of us and probably our advisors as well have been most impressed by the time, trouble, and effort that the people making submissions have taken in putting – the standard of submissions is very high and lots of them, most of them, are, show a lot of interest, a lot of effort, and a lot of thought behind the proposals that people put up. We won't be able to recommend all of them, of course, if for no other reason that many of them are contradictory but we will certainly give our consideration to all the submissions and of course the oral presentations such as this morning.

Essentially, there are seven questions we're asked specifically to consider, the two thresholds, 5% and the one electorate seat; two candidacy questions, whether dual candidacy for general elections should be allowed and whether list MPs can be candidates in by-elections; and three others, whether voters or parties should determine the order of candidates on a party's list, what to do about the overhang when a party wins more electorate seats than its entitlement under the party vote, and what, at what point proportionality of our MMP system might be threatened in the future.

We do have an honest cause to consider other aspects of the MMP voting system but our mandate is certainly nowhere near as wide as the Royal Commission had, a quarter of a century ago. The process is that all those making submissions can be assured that all of us have read the submissions and all have scribbled across them with our various notes and annotations so we're inviting those presenting orally to make their submissions in the form of simply outlining their principal points and commenting on additional points that might have occurred to them, or additional points that might have arisen from reading other submissions, because all the submissions are online.

0920

We then have the opportunity of asking questions, starting with Mr Peden, Ms Huria, and myself, and then our political science advisors, Professor Roberts and Dr Arseneau, also have the opportunity to ask questions. So although the throughput is reasonably quick, according to the schedule of submissions, there is a great deal of reading and thought that's gone into both the preparation and the submissions in our perusal of them before we set in. We hope that everyone will feel that they've had an adequate opportunity to present their views.

SIR HUGH WELCOMES CHRIS SIMMONS

CHRIS SIMMONS: Thank you and good morning. As you've said, my name is Chris Simmons and I am the President of the ACT Party, and today I want to provide our verbal situation on behalf of the party, and I guess at a macro level our submission is very simple. ACT favours no changes to any matters being considered in this review. Whilst this might appear to be the obvious position of a minor party that has benefitted from the one seat threshold, it is my opinion that ACT is in a unique position to represent why matters should remain as they are. So today I intend to provide a practical perspective from our party's point rather than an academic perspective of some observers or people with partisan perspectives.

Let me start by saying that as a party, ACT supports the principle that generally electoral system and electoral arrangements benefit from infrequent change. Legitimacy is brought to the democratic process when the rules of the system are known, understood, and adhered to.

It's interesting when we refer to some information we've had regarding the German experience that suggests it took nearly 20 years before the public understood the role and importance of the minor parties in the MMP environment. In New Zealand today, I would contend that the minor parties are considered a sideshow to the main event. This may be in part because of the behaviour of various players in these parties, but most likely it is because the power is still seen resting primarily in the hands of the two major parties, and things pretty much continue to align one way or the other. Fifteen years of New Zealand experience has not created real knowledge or wisdom within the wide majority of the public, but successive electoral experiences has caused the electorate to wonder if MMP is the right system for New Zealand, or if we as a country have the right constraints for MMP to work effectively. ACT contends that the current system is working and should not, therefore, be changed.

So let me touch now on the key points in more detail. First, the two thresholds for entry into Parliament. The 5% threshold, ACT supports a retention of this threshold. This is a high hurdle. It's one that ACT has failed to cross for the last three elections. However, the purpose of parties is to limit and rationalise voter choice.

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No threshold at all would be unworkable in terms of creating a Parliament. A threshold set high enough creates incentive for the formation of political parties that maintain significant levels of voter support over time. If the threshold is too high, then it becomes a disincentive. 5% as an arbitrary number seems to provide a good balance of rewarding a party that can create momentum but discouraging a mass of under-represented and small parties that clutter the political landscape. In order to get 5%, a party must either

have momentum a la the Greens at the moment or be able to provide the electorate with a compelling message.

The one seat threshold. ACT supports the retention of the existing one seat threshold and the associated opportunity to bring in list MPs up to the level of the party vote achieved around the country. Of course, this is how ACT has survived in the last three elections. This is not disputed and therefore seems to make our support of this clause obvious.

Less obvious, however, to the casual observer is the degree of effort required to win one seat in the first instance. Richard Prebble told me that to win a seat from scratch takes between three and four election cycles for the candidate to win enough support. Four election cycles, 12 years. Winning an electorate seat takes an inordinate amount of time and resource from a minor party to garner enough support but even winning that seat does not guarantee success in terms of the wider electorate. In fact, it may well make it very difficult for the party to get very close to the 5% because voters tend to stay away, concerned that their vote may be wasted if that seat is not won.

Alternatively, if it looks like the candidate is in any form of trouble, then the rest of the country can lose favour. This is what both United Future and ACT experienced in 2011 when it was reported that both Dunne and Banks, respectively, would not hold their seats. Each party had to invest inordinate amounts of time and resource to hold the seats, resource which had to be directed away from building party vote in other parts of the country. Media were able to destroy the wider party vote in reporting of this, their reporting of the situation.

Because of the split voting that is employed, people are often unwilling to two tick, give two ticks to the minor party. So if you're contesting an electorate, you're either the candidate, you're either looking for the candidate tick or the electorate tick. Only the majors get away with a two tick campaign. This can also have a dramatic effect on the overall party vote. ACT's experience in Epsom is a stark reminder. For the elections of '96, '99, 2002, ACT achieved

an average of around 20% party support. In 2005, when ACT won the seat of Epsom, we achieved only 3.5% of the Epsom party vote. Of course, other factors did play a part but the two tick factor shows through in the research. People aren't prepared to give a small party two ticks in general.

In summary on this point, the one seat threshold is a higher bar in much the same way as the 5% is. Between the two thresholds, New Zealand has a system that provides the electorate with a representative Parliament.

So let me address some of the others. Should a list MP be able to stand in a by-election? Once again, ACT supports the retention of this element. As a party, we fully believe that any New Zealander should have the ability to stand for Parliament, regardless of their current occupation. A fact that a list MP is 24/7 engaged in the party business, can speak to the issues in a fully informed manner, gives them a distinct advantage, as does being paid to already be an MP, but should this need to change and the resourcing of that MP, then this is an issue best addressed by the Parliament which controls the financial resources available to an MP.

So to the next point, should a person be able to stand as a candidate both for an electorate seat and on a party list? I thought about this long and hard having stood myself in a couple of seats. ACT supports the retention of allowing a person to both stand for an electorate seat and to be on the party list. I wondered if it was just a matter of resourcing and being able to get enough candidates to actually get across the line with a small party.

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But I reflect on a situation that we had in New Plymouth in the last election. We had a very good candidate that we stood on the list but we chose not to stand him in the electorate seat. He found it very very hard to campaign, almost impossible and the reason is simple. You get invited to speak at debates and at meetings when you're the electorate candidate. If you're just on the list, there is no invitation so if you're number 23 on somebody's list, you

have no cache at all. Who wants to hear from you at number 23, especially in a minor party when you've got no chance of making it into Parliament?

In a small party, the candidate does not even address the option of winning a seat. You go out there and you're asking for the party vote. You know you have no chance at winning that seat. It's actually quite a demoralising, quite a difficult thing to get candidates to get their head around. You'll go out there and you'll hear from people that you're a nice young man, that you're the sort of person you'd like represented in Parliament and you'll think, "Boy, maybe I've got a chance" but in reality you've got no chance as a minor player in the electoral seat but you've got to be standing for the seat in order to have any shot at convincing people to party vote for your minor party.

So who should decide the order of candidates on the party list? I'm very strong here, the status quo must remain. A political party must be able to create its own party list, choosing the people that it wishes to represent it. The voters have the opportunity to cast their vote for the list created by the party at the election, that is the process. Of course, the experience in New Zealand would suggest that few people actually take notice of who is on the party list or who truly understands this element anyway. You could take the New Zealand First example in 2011. People are reported voting for Winston and then wondering who the others were that he brought in with him. But in the end of the day, the list and the people on it were New Zealand First board's choice and they put the people that they felt best represented their views on that list.

The last two issues speak to the size of the Parliament. ACT has long held the view that Parliament does not need 120 MPs. However, we're firmly of the view that the notion of the overhang is an necessary feature of MMP and should remain. Clearly, New Zealanders also believe that 120 MPs is too many and it is important that New Zealanders are equally given comfort that Parliament will mostly consist of 120 MPs and there will not be any creep in this number over time to balance proportionality or other concerns that the Parliament of the day may deem important.

Thank you for providing me the opportunity and the time to share these thoughts with you, I'm happy to take any questions.

SIR HUGH: Thank you Mr Simmons. Mr Peden?

MR PEDEN: Thank you Mr Simmons. On the one seat threshold, as I hear it, your principle reason for retaining the one seat threshold is the effort required to win one electorate seat but isn't it the case that considerable effort is also required to get 3% or 4% of the party vote? So what, I suppose, beyond the effort required in getting, winning one seat would be the, the reason in practice or in principle why a party that wins one electorate seat should be able to bring, as a consequence, additional party members in but a party that wins 4% or 3% shouldn't?

MR SIMMONS: I believe that what you've got is the opportunity to create two strategies – a party can choose a strategy and say that they're gonna go all out to get, in this case, 5% and forego the chance of winning an electorate seat altogether and alternatively, they can choose a strategy that says they'll win a party seat, an electorate seat, sorry, knowing that they get to bring in extras.

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In our case, we won Epsom in 2005. That was our lifeline, if you will, and, but it's a costly strategy in terms of the rest of the country. There is often question that says, "Is it a strategy worth pursuing?" Our view is, and our hope is, knowing that we are an under the 5% threshold type party, that others around the country will say yes, they will win Epsom, therefore they can safely give their, their tick to us. They know there's comfort in that, they know the vote's not going to be wasted, so to speak.

So it gives a minor party, the two thresholds give a minor party two different options in terms of how they approach the election. Do they just go all out to beat the 5% threshold or do they work hard to win an electorate seat, knowing

that they may actually only get 4% of the total party vote country-wide but that will give them a chance to be represented and heard in Parliament.

MR PEDEN: You've obviously committed to the benefit of ACT being represented in Parliament, that's why you're president of ACT. Why, and ACT is a minor party, why wouldn't you support the idea of a much lower threshold so that rather than having to adopt the strategy that you've outlined, you're able to build your party vote nationwide?

MR SIMMONS: I think there's, it comes to my point around incentives to create a party that's sustainable over time and that's the key thing. If you drop that threshold too low and you end up with multitudes of parties in a Parliament then it would become very difficult for a Parliament to truly be formed.

Sustainability is an interesting word and you can look at ACT, right at the moment, you can look at ACT winning 3.6% of the party vote, five MPs at the 2005 election. We were able to make some difference and contribute to that Parliament. This time, we got a caning, there's no doubt about it, and we had one MP in the house. It does make that word sustainability very very difficult. I mean, just trying to run a party with only one MP and the sort of continual work that has to go on, getting volunteers to help left right and centre when they're sort of going, "But we're hardly ever heard" makes it very very tricky.

So a party needs to get itself to a position where it is having contributions, it is able to sustain itself, and it's not just creating a mixture of messages. ACT is in that difficult piece of land right at the moment and as a party, we have to find our way out of that in order to be sustainable and create value to the Parliament over the longer term. Just dropping the threshold to 3% and having lots of little parties that really aren't that sustainable will make it a very cluttered landscape.

SIR HUGH: Thank you. Ms Huria?

MS HURIA: Thank you. Just a point of clarification, if I may, around the ordering of candidates on the party lists. I just wasn't, I just want to confirm that your submission around the democratic requirement through section 71 of the Act is met in your view by the fact that the party compiles the list and then the democratic element is in whether or not voters give ACT their party vote? Is that right?

MR SIMMONS: Yes, yes.

SIR HUGH: You stood for ACT in several elections, I think.

MR SIMMONS: Myself personally?

SIR HUGH: Yes.

MR SIMMONS: Only two elections.

SIR HUGH: Only two. You've been on the list and you've stood for an electorate.

MR SIMMONS: Yes.

SIR HUGH: Did you choose to stand for an electorate because of the normal reasons people stand for an electorate or because that gave you an entrée to campaign meetings and public forums and that sort of stuff?

0940

MR SIMMONS: In 2008, I stood in the Tamaki electorate. I was actually late in getting into the process. That was when I became involved in politics. In fact, I joined the party and held my hand up, and figured I was actually just going to be delivering brochures and that was about the extent of my political involvement, something –

SIR HUGH: But then you found out the reality.

MR SIMMONS: Something went awry and then I joined and became, at about the time that the party list in ACT was actually being created, so I didn't even, in 2008, didn't get a chance to hold my hand up for that, so my desire was to speak to the people of Tamaki and to convince them that they needed to give their party vote to ACT, and my personal motivation was so that we could be a strong party for a centre right Government and give the National Party a partner.

By 2011, I had achieved a slightly higher level of profile within the party, significantly higher and was significantly higher on the list. I was also heavily involved in the National campaign and the planning of it. I stood in the Pakuranga seat. It was actually quite difficult but the only I could effectively campaign and get into Pakuranga was being on that, standing in that seat.

I possibly, given the profile the fact that I was the party president, given that I was number 6 on the list, may have got the opportunity to speak at a few occasions in the course of that, but there aren't that many party president seats going. There aren't that many seats above the top 10 and when you look at a minor, you know, anybody below 10 has basically got no show of getting in, you know, so the Greens are a bit of an exception at the moment. New Zealand First was a bit of a surprise, you know, so they've done okay there, but I would think that – in fact, in Pakuranga, one of the ladies that the New Zealand First candidate stood there, I think she might have been 10 on their list, I mean, she came within a whisper of getting into Parliament. I can tell you when we were having our debates, she didn't think, you know, she had a shot but, boy, she was a whisper away from getting there, to be honest. I mean, good luck to them.

SIR HUGH: All right, thank you. Professor Roberts?

PROFESSOR ROBERTS: Yes, I was wondering, Mr Simmons, quite a few of you have seen the submissions online on the MMP Review website, quite a few submissions have suggested that there ought to be a preferential vote for

the candidate vote and I was wondering if that would have made a difference, for example, to your decision not to stand a candidate in New Plymouth so that you knowing – I'm assuming, one of the reasons was it was a very close election. It was, at the time it was fought, the most marginal seat in the country of the 63 general electorates, all 70 electorates and so an ACT candidate could have detracted votes from the incumbent National MP.

Had it been a preferential vote, as we've had quite a lot of submissions already say that we should have that in the electorate vote, would that have made a decision and therefore increased the ability of ACT to get its message across, not expecting to win New Plymouth on a preferential vote, but not expecting to harm parties –

MR SIMMONS: Correct, yes, yes.

DR ARSENEAU: Could I just ask as a point of clarification when you talked about list MPs running in by-elections and mentioned that Parliament might be better in a position to deal with any benefits that come within incumbency, do you actually advocate that Parliament does do that or, and more specifically, what sort of things would you advocate?

MR SIMMONS: Well, it's not so much the advocacy but the concern we've had voiced or are trying to address is the fact that people are concerned that a list MP can use Parliamentary resources effectively, because they are paid, they are running around effectively on a Parliament wage and so if it's about them having access to those resources when Joe Smith, normal citizen standing, doesn't get access to those resources, then what we're saying is maybe that's something that should be more addressed under the Parliamentary resource budgetary area which may mean that they say, hey look, if a list MP is going to be standing then they need to stand down from their role for the six weeks prior so that they don't access those resources but it shouldn't, it shouldn't say that a person can't stand.

DR ARSENEAU: Thank you.

SIR HUGH: Thank you Mr Simmons, thanks for your help.

0945

SIR HUGH WELCOMES DAVID ROBERT HAY

DAVID ROBERT HAY: Thank you very much. I've given to the admin support here copies of a booklet that I published in 1993 and of the 12 remaining copies of the original publication first print run you now have six.

I will just – I'm giving you that because the booklet is structured around the 12 criteria for judging voting systems that the Royal Commission used to assess the various voting systems and it wasn't until after I'd made the submission that I realised that these actually could be applied in this circumstance as well, quite effectively, and unsurprisingly I think my submission has followed that format.

I'll just very quickly go through the various points. On the 5% threshold I think the choice of four, five, 6% is something arbitrary but there are various other bits of legislation, the standing orders, the determinations of the Remuneration Authority, possibly the Broadcasting Act, where some consistency across the board might be more helpful and, you know, choose a number and make that consistent in terms of when a party is going to be regarded as a party and treated as a party in Parliament and elsewhere. So that's very straightforward I think I would choose five MPs and I think this goes to a further point that I've made, and I'll come back to it, about the splintering of parties, and if a faction decides to splinter off from a major party, if that faction is not of an adequate size to be effective in Parliament then perhaps it shouldn't be treated as such but a group of independents. But if it is, represents a view of party members that is substantial enough for five MPs to form a splinter then, again, it could be treated as such in Parliament, and this is part of the normal churn of political debate and the various views. Most parties are not uniform in their ideology and their principles and policies are coalitions of interest and those coalitions may sometimes be divided on perfectly legitimate grounds.

On by-elections, should list MPs continue to be able to stand as candidates in by-elections? I think this goes against legitimacy of Parliament and the

legitimacy of the voting system if people see a sitting MP contesting a by-election. If that were an electorate MP they would be very dismayed, I think, if they're contesting a by-election in the electorate for which they were not originally elected, and that is permissible under the Electoral Act, so the same rule should apply both to list MPs and to electorate MPs. If you're in Parliament you can't stand in a by-election. Keep it simple, keep it clean and reinforce peoples' perception that when they voted for that person, in the first place, that was the vote that counted. The by-election is the exception, not the rule.

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On the matter of dual candidacy, I find myself in the interesting position of agreeing with the ACT Party candidate. This is a matter of fairness between parties. It's a matter of fairness in the electoral race, the ability of somebody standing on the list to be present in the race, to be seen to be present, to be acknowledged and to get the media time and attention, the public face to face meetings. It would be a significant disadvantage to a list only party if they were not allowed to also stand in electorate contests and as the MP for the Green Party, sorry, the candidate, for the Green Party it's a – I felt that because it was a high profile contest and I was the candidate there, I was able to get a lot more media for the Green Party than we might otherwise have got and to get our key messages across in that context.

Order of the candidates on the list, there are two principles in the, or criteria. Here, there is somewhat in conflict in the Royal Commission's Report. One could argue that it would be greater effectiveness of voter participation if they were able to rank or to contribute to that ranking, but I would argue that it would make for less effective political parties and the effectiveness of political parties is a, one of the criteria. This also comes back to my thoughts about section 71 of the Electoral Act.

The Royal Commission was very clear about this that parties really needed to be internally democratic and it's hard to have a democratic Parliament without that. The Green Party, according to Raymond Miller's analysis in his book on

Political Parties in New Zealand, is far stronger on this than any of the other parties and far more in tune with what the Royal Commission was seeking, and I think that this really comes to some of the dissatisfaction that is bubbling under than it is driven the move to ban dual candidacy and to do the list ranking that parties members are dissatisfied in their relationship with the parties over the party list ranking, and we see this with Damian O'Connor in the West Coast. He didn't get a high party list position. He chose to stand electorate only and the electorate put him back into Parliament, and this is contrary, was, you know, the direct opposite of what the main message is around dual candidacy have been, you know, we voted that guy out of the electorate and he came back in on the list. Well, it's a double-edge sword. He didn't get a high list ranking, but we thought he was a good guy. We put him back in the electorate, so that argument simply falls apart.

Proportion of electorate to list seats, I think there's a real danger here. We didn't vote for supplementary member. We didn't vote for a Parliament largely based on electorate seats with the list seats making up the balance and determining the proportionality, we voted for MMP and the MMP system balances the electorate and the list votes over time with changes to the, you know, balance of the population in South Island and North Island, we are moving away from that principle and I think we need to come back to it. I think we need to say, this is the voting system we chose, it works in a particular way, let's make it work properly. That goes to, again, in a matter of fairness between parties because if you erode that ability of MMP to produce the proportionality in Parliament, that will erode the fairness between parties that is a key principle of the system.

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Finally, I've put it to some length in there, it's something about the different types of parties that Raymond Miller talks about, cadre parties, mass parties, catch-all parties and cartel parties, because I think it's important and interesting. There is some dissatisfaction obviously in New Zealand at the moment with the way the democratic system is working and perhaps it's a little incoherent but we see it, you know, starting to bubble up in the march last

Saturday, the news stories about anonymity of campaign donations and the low voter turn out at the last election but I wonder if that's the voting system if that's at fault here or whether it's actually the way the party system is working and the way the parties are organising themselves internally.

If you don't have democracy within a party, how can you expect that party to support democracy in Parliament and this is, you know, comes back to the idea about effective political parties. It's not something that the Electoral Act can control in any significant way. Perhaps it shouldn't but the parties really need to look to themselves and ask themselves, "Are we doing the right thing internally in the way we behave?" And don't point the finger of blame at the electoral system and say, "That's the problem. That's what's at fault. That's what needs fixing."

SIR HUGH: Thank you, Mr Hay. Perhaps I should observe that the current agitation about anonymous donations is the regime under the local Electoral Act, of course. Under the Electoral Act, which governs the position nationwide, the rules are much clearer.

MR PEDEN: Thank you Mr Hay, very thought provoking submission with plenty in it and I may be in danger of asking too many questions so I'll have to constrain myself and maybe if there's time come back to some of them but the first thing I'd like to point is just to note that I've noted your observations about the party rule information on our website and I, myself, went and tried to find it and I did find it but it wasn't, it wasn't as easy as it should be so we'll be looking at that and seeking to give that more profile so thank you.

I found your position on the thresholds and the reasons that you provide for your positions quite clear and I can follow why you've adopted the proposals that you have. The logic, though, for then concluding that Members of Parliament having got into Parliament and whether or not they should be accorded the status of a party less clear so I can see why you'd want to put threshold for determining who gets into Par – but having actually got to Parliament, if you've got a – one Member of Parliament, two, three, four or five

who are members of a party, wouldn't it be rather odd to give them a status of independent when any – everybody would be regarding them as representatives of the party that they contested the election under?

MR HAY: The standing orders as I understand them allocate speaking time, Parliamentary questions, questions for oral answer and also various resources that party can get and I guess if the party has not achieved a threshold, whatever number that is, you know, if you think fewer people should have the right to be a party and represent themselves, certainly set it at 1% or 2%.

But standing orders does fairly clearly say that a certain number of people shall be treated as a party and below that number, really, they're not and likewise, the remuneration authority determinations around whether you get a party leader paid a higher rate, a deputy leader, a whip and so on an so forth, or governed by the number of party members they have so there seems to be almost by default or, perhaps as a matter of pragmatism, a number. And I'm not sure what the right number is but what I'm arguing for is let's be a little bit consistent across those different spheres of regulation and – choose a number.

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MR PEDEN: I certainly noted the suggestion that we look at those various aspects which are, between us there may well be a possibility of consistency but I suppose what I'm questioning is whether we should build into the mechanics of the system something which is really trying to control something that's perhaps quite fluid, the, the way in which members of the public, the media characterise political actors and if, if we have a mechanism in our system which says that someone elected who stood as a representative of a party succeeded in winning one seat is elected to Parliament, the system is saying they're not a Member of Parliament, sorry, they're not, they're not a party, they're an independent, when the people who voted for them, voted for them as a representative of a party, I'm just wondering how real that's going to be.

MR HAY: Well, talking about the difference between reality and perception, I'll hark back to the Epsom race and the current member for Epsom who was, until very shortly before he became the candidate for Epsom, a member of the National Party so he has represented himself as a member of the ACT party and perhaps other people don't agree with that representation. I would be one of them.

I think in effect and in reality, John Banks stood as an independent in Epsom for reasons that are not entirely honest because – and I've spelled those out there, that's a sort of a Trojan horse to get additional support for the National Party into Parliament. So people can certainly represent themselves however they want and the media may characterise them in that way. Those are not matters for the Electoral Act to contemplate.

But in terms of, of how Parliament actually functions in a Parliamentary democracy, then the Electoral Act does have significant influence and consistency across that functioning is really what I'm supporting.

MR PEDEN: I'll allow myself one more question. On your point about the by-elections, just thinking about the, the last by-election in Mana, where the – it was contested by a list Member of Parliament who had – I'm thinking of Heke Parata – who had contested it as, who had contested at the previous general election as an electoral candidate and contested the following general election. Wouldn't it have been odd to prevent her from contesting the by-election?

MR HAY: Well. I'll respond by talking about the previous by-election in Mt Albert where only one of the major party candidates was not in Parliament. Now even our Green Party leader stood and I disagreed with that within the party but the National Party candidate, the ACT Party candidate, the Green Party candidate were all Members of Parliament and it just seemed like a very very odd choice for voters to make – you can vote for the one guy that's not in Parliament already or one of the three that are. And I wouldn't be

surprised if the voters of Mt Albert felt that they weren't really being given a choice.

MR PEDEN: But isn't that the great thing about by-elections, that voters have the choice and isn't it the mechanism which enables, really, really removes any potential harm in allowing a Member of Parliament to contest a by-election?

MR HAY: Well is it a choice? You're voting for somebody to get into Parliament and three-quarters of them already are. It's not much of a choice at all.

SIR HUGH: Ms Huria?

MS HURIA: No thank you.

SIR HUGH: Like Mr Peden, I found your paper very thought provoking as well but I don't wish to ask any questions about it. Professor Roberts, Dr Arseneau, any short questions?

PROFESSOR ROBERTS: Just one short questions. You drew attention to the West Coast-Tasman seat and Damian O'Conner. Of course, had there been a rule contrary to your views as a Green Party member that the public could vote in somewhere on the party list, Damian O'Connor could well have stood on the party list and taken his chances that the public would have also raised him up. The other thing is, of course, I think that the result on the West Coast was also dependent on the fact that voters in the West Coast-Tasman knew that by voting for Damian O'Connor, they would also get Chris Auchinvole in on the list and did so they've got two MPs in effect.

1005

MR HAY: Yes, I don't entirely agree with that. I think that – as I've pointed out, allowing – I think it's naive to think that, and sorry, I'm not calling you

naive, but the proposition that the average voter is going to be involved in re-ranking party lists is not what would happen in practice. In practice, the parties would get involved in trying to re-rank each other's lists and it is the party activists who would be doing that, so it's not the independent voter who would be having the greatest say and I've painted two scenarios there. One, I think the first one would apply more if there was a sort of system of primaries and the second one, more if there was an actual, if it was done on voting day, and it's not clear really how this ordering would occur so I've covered both bases, but in either case you get a situation which I think could be deleterious to the long-term integrity of Parliament.

MS HURIA: A very interesting submissions, thanks.

SIR HUGH: Thank you, Mr Hay, thank you for your help.

SIR HUGH WELCOMES ARTHUR VALABH

ARTHUR VALABH: Well, I'm not a, I'm just an observer, elector and haven't been involved in parties or a practitioner in the political sense. What I –

SIR HUGH: Your viewpoints are still valuable, Mr Valabh.

MR VALABH: I come from an entirely different perspective and basically I went from this submission, come back to nine points I've made and I've sort of grouped them into three lots and the first lot I say that MMP, but before I get the other – first, I'll say that I believe the Royal Commission did do a good job, but it's never perfect. It could always refine things and there is a need to refine, not major but, and it's appropriate to review things at this stage.

What MMP highlighted is the importance of political parties, but that's always been a fact of life. I think to believe that MMP increase the role of the political parties unduly, it's always been a prominent part of the scene and I can't recall in the New Zealand scene where we have had an independent MP who was elected as an independent MP, other than somebody who has resigned from a party and become independent, so they've always come under the aegis of a political party.

The other thing that's come clear to me is the importance of the party vote and the primacy of the party vote, and when you look at proportionality, that's very important. Now, I think the other aspect is that what electors do at a general election is say this is the proportionality that we want a Parliament to be and anything that happens to disrupt that shortens the term or the effectiveness of Parliament. Electors have delivered at Parliament in certain proportions and they expect that to last that term of that Parliament, so my first grouping is free that I think destructive elements of MMP has its functioning. The first is what – jumping measures and I won't go further but that's been discussed and you're aware of this issue.

The third, I think, was a more reasonable one, by-election which isn't directly related to MMP but where an electorate MP resigns and stands again in the by-election just for political effect, that's undesirable and that's easily dealt with by requiring, not permitting that MP to stand again.

1010

The third element that's questionable, leads to questionable tactics is the one seat exemption and I think all the issues have been tabled and I notice, I recall the chair of the Royal Commission saying that that's one element that they would revisit and I see that the paper by Mr McGroby from Otago who was involved with the Royal Commission at the time also says that that needs relooking and I support that.

In his paper he talks about the German's electoral system now I think having a three threshold but I'm not quite sure the rationale for that. I think there's slightly inconsistent thinking in having electorate basis as a second entry. What we seem to have is two criterias by which you qualify for list seats if you cross the – one is the primary party vote route where, and your threshold of 5% or whatever, is set to jump that hurdle. Then we seem to be saying that the secondary vote which isn't that important, in that case you could take one electorate, one 70th and then not even a majority, just the first past the post basis and that will get you through and to me it seems that we're giving undue weight to the electorate vote in the context of the whole thing. If you want to give some recognition to the electorate vote, maybe you should pool them and say what proportion of the electorate votes but it just seems to be inconsistent. On one hand we're saying we want 5% of the party votes. You jump that hurdle. That gets you in and then when we come to the secondary vote which doesn't determine proportionality or anything we got one 70th, a majority in that. But I put that in this questionable structure of tactical grouping.

The second grouping that I got is proportionality, how it works and what have you and there, the first one is the question of the 5%. As I said in the submission, I'm comfortable with that 5% threshold for various reasons. The

Royal Commission drew a distinction between small and minor parties and I notice that the previous speakers did – went through that sort of rationale.

Now one that's – that I find amusing, I admit, is this overhang issue. To me, whether the overhang's within the 120 or additional to the 120 is minor, is not – and I see that many submissions talk about proportionality and say increase the size to achieve proportionality. I don't think people realise how big, what number you would require to achieve proportionality. I – just a quick calculation when had an overhang of two, and I think that would result in 74 additional members to achieve it and so I don't think the – how the overhang works is fully understood, generally.

But proportionality is not pure. You're certainly setting thresholds. It's approximate and as I said in the submissions, in this incidence, it's arisen through the Māori electorates, that's not a matter for this review. It's being reviewed under the constitutional review but that doesn't concern me that we've got overhang and one or two may be – an overhang of one, two, or possibly three could – is tolerable within the, acceptable within proportionality generally.

1015

I started trying to conceive situations when I think one of the submissions just said where they might split parties and what have you to achieve a result where that's likely to happen or could arise, and the sort of situation could envisage where Australia to have had MMP back in the 60's and 70's where you had the Liberal/Country Party coalition. I could imagine that the Country Party would say, "Give us your consistency vote and your party vote could go to the Liberal Party," and that would have created quite a distortion, so I could envisage a situation like that where, if it were to be manufactured or whatever, it might bring the overhang, credibility of the overhang into play.

The other one is, say something like Scotland, where they've got a strong Nationalist Party and which, if they had MMP, it be – federal level, the national, Westminster level, that party could have said, "Give us your

consistency vote and your secondary vote could go to a major party.” So it’s not entirely inconceivable that the overhang could under some circumstances causes problems, which took me to say, “Well, how would one deal with it?” and I notice some submissions there saying you’ll reduce the vote proportionality, given three-fifths, if the overhang’s two and you’ve got five seats, but I’ve gone the other way and said, “Look, the party’s a prominent thing, just reduce the party vote within Parliament,” –

MR PEDEN: Sorry, Mr Valabh, your submission I’ve found very clear. There was one point that you made that I just wondered if you would briefly expand on your reason. The notion that parties should be limited to having seven electorate MPs on their list, otherwise you wouldn’t be able to have dual candidates, you’d be limited to just seven who could be a dual candidate, why?

MR VALABH: It’s perception I guess and I think the list is important, and because there’s so many list members, 80 or 70, or it gets up to that and what have you, the importance of the list is not appreciated. Within the parties themselves, there seems to be discrimination between list members and party members and what have you, and what I was searching for is, and a public distaste, shall we say, of this member’s, electorate members missing out on the electorate and then coming, becoming list MPs when they’re so far down the list –

MR PEDEN: So basically it’s to increase the recognition of the importance of the list?

MR VALABH: Yes, yes –

MR PEDEN: Thank you.

MR VALABH: Because if you’ve got less, they could focus on those and give priority and, again, likewise is that balance when we – well, moving onto one element of the proportionality, which I thought was – I’ve dealt with

five percent overhang and the wasted votes. Where I think there is a concern about voter participation and if people do take the trouble of voting, then it would be good to ensure that their vote is counted and instead of having a one electorate threshold, I would, within, then give them a second party vote that would give that minor party a chance to become a small party and jump to the threshold. So there is the question that the vote won't count.

SIR HUGH: Thank you Mr Valabh, thank you for your help.

SIR HUGH WELCOMES KIERAN MADDEN AND STEVE THOMAS

1020

STEVE THOMAS: Thank you very much for your kind comments. We two are very grateful to have the opportunity to present our submission on the 2012 MMP review consultation paper today.

We believe that MMP has generally worked well and it is the voting system that voters have endorsed at the referendum. However, we would like to see what we believe are some positive changes made to MMP with respect to some concerns which we have about the legitimacy of electoral outcomes under MMP and the accountability of MPs in the Government to voters.

We will present two of these suggested changes to you today beginning with the thresholds by which parties gain representation in Parliament and concluding with whether closed party lists should be used.

With respect to the issue of electoral thresholds, our recommendations are that the 5% party vote threshold should be kept and that the one electorate seat threshold should be removed. We think that the 5% threshold should be kept so that only parties which win a significant share of the party vote are elected to Parliament. Keeping the party vote threshold at 5% would mean minor parties would have to campaign throughout New Zealand to get the required number of votes and that they would be forced to appeal to a broader cross-section of voters. This means that if they were elected, voters could be confident that a significant number of people had endorsed that party's ideas and leadership.

We think that the one electorate seat threshold should not be kept because it has undermined how the 5% threshold is meant to work and also because it is given some minor parties disproportionate influence in Parliament and on Government. While the idea of the one seat threshold was to enable parties which are popular enough to win an electorate seat to have proportional representation in Parliament, we think that it has encouraged some minor

parties to craft their election campaigns around winning an electorate seat. This has meant that parties which have come close to crossing the 5% threshold have not won seats while others which have focused on an electorate seat have, for example, New Zealand First and ACT in the 2008 election.

Since the party vote is meant to be the most important vote under MMP, we think that the operation of the one seat threshold in this way has undermined its importance. We also think that the one seat threshold has enabled some minor parties to have a disproportionate influence in Parliament and on Government than their share of the party vote ought to entitle them.

At the 2011 election, for example, none of the parties which won one or more electorate seats had enough votes to be allocated additional list seats yet three of them have negotiated governing agreements with the major governing party. Together they only represent 3.1% of the party vote. We think this sort of situation enables some parties and some voters in a handful of electorates a disproportionate say in how New Zealand is governed.

Admittedly, in the 2011 election, removing the one seat threshold would not have electorate seats. However, we do think that removing the one seat threshold would make it less attractive for parties to campaign to win specific electorate seats. This is because it would make it impossible for parties to convince voters that their party vote would help to get a handful of additional candidates elected on the back of winning an electorate seat. Removing the one seat threshold would have changed the 2008 and the 2005 election results, for example, although perhaps not the outcome.

1025

We believe removing the one seat threshold would encourage minor parties to focus more on winning 5% of the party vote and reduce the attractiveness of major and minor parties striking electoral deals over standing candidates in certain seats. Thus, we think that keeping the 5% threshold while removing

the 1 seat threshold ought to improve some aspects of how MMP works that we think many voters find difficult to accept as legitimate.

Another aspect of MMP that some voters have found difficult to accept as legitimate is the election of list MPs through closed lists drawn up by political parties. My colleague Kieren will now outline our recommendations for how we think this feature of MMP can be improved. Thank you.

KIEREN MADDEN: While list MPs are indeed legitimately elected to the party vote in New Zealand, as Steve has just described, our use of closed party lists drawn up by political parties means that list MPs have the unfortunate perception among some voters as being faceless, being seen as less accountable, and less legitimate as MPs.

We think that this situation can be addressed by giving the voters the option of being able to use their party vote in one of two ways. The first is to vote for their preferred party, as they do now, which would accept the list as it currently stands. The second would be to vote for their one preferred list candidate, in the party that they support. Now, this latter vote would also count as the party's, as the voter's party vote and would have the potential to influence the way in which a party's list candidates would be elected. The ballot paper would be similar to how it looks now, but with a box to fill in with the number that would correspond to a consolidated list of all the list candidates which would be posted in the polling place or polling booth.

Once a party's overall share of seats had been allocated, and the electorate seats filled, the highest polling list candidate who received enough preference votes could then leap frog, so to speak, other candidates on the party list. A quota or threshold could be instituted, if it were desired, to make it harder for voters to alter the order of this list. Each party's list MPs would then enter parliament according to the resulting revised list.

Evidence has shown that this would increase the proportion of candidates that would campaign directly to communities, thus increasing the relational

connection that we value, which in turn would also increase a proportion of voters who would vote for a list candidate. It would also allow MPs more autonomy as they're not so, their existence is not entirely reliant on pandering to a party hierarchy.

So thanks for listening, we are more than happy to answer any questions you may have regarding what we presented today but also have left hopefully enough time to discuss what's in our written submission as well, as there's much to discuss.

SIR HUGH: Thank you. Mr Peden?

MR PEDEN: Mr Madden, the, the box in which a voter would indicate their ranking preference, that would – imagining our current ballot paper, where would that appear? At the bottom of the party vote?

MR MADDEN: It would just be where you currently indicate where your, where your vote would be for the party, then you would simply, you would place a number at the top.

MR PEDEN: So instead of putting a tick, you might put a number.

Mr madden: Yep, put a number, correct, yep.

MR PEDEN: And say you put a 13, would that be indicating that you, you thought that the 13th person on the party list that you were voting for should be treated as the, as the number 1?

MR THOMAS: That would be your preferred, you'd be indicated that the 13th candidate on the list is your preferred candidate.

MR MADDEN: Just to clarify, the list that would be put up in polling place, or the polling booth would be all the party lists, a consolidation list of all those. So each list MP would have their own unique number.

MR PEDEN: So at the moment, the Electoral Act provides that the Electoral Commission is only required to publish the first 60, I think it is, candidates on each party list. Often parties have more than 60 candidates. If, the mum of the 75th candidate wanted to put that person at number 1, presumably that means that we'd be required to put the full lists, we'd have to publish the full lists, you know....

1030

MR THOMAS: I believe so. My question to you would be and how many cases for parties is that actually true? Is it just mainly for the two major parties that you would get that number?

MR PEDEN: Three or four I think from memory, mhm.

MR THOMAS: Three or four and as part of your question –

MR PEDEN: Just a practicality, yes, of –

MR THOMAS: The practicality of doing that which is the main concern of that sort of system, but we think that's a good compromise. It may be a little bit more administration for the Electoral Commission in order to give voters the opportunity to actually express a preference for a list candidate and also conversely to create incentives for list candidates to maybe appeal to the Board of Constituency, which they don't necessarily have to at the moment. That increases the relational connection between list MPs and the body politic and I think that's a good thing.

MR PEDEN: So is your motive in proposing this that you think there's a, that there would be a lot of voters that would do this or simply by having this mechanism in our system, it would improve the legitimacy of the system?

MR MADDEN: I think the answer is yes. I think both of those, both dual incentives is what we're trying to do. I know – when voters are given the

opportunity to vote for an individual candidate, then – I know in Belgium, for example, that went from around 20 percent to 60 percent in a period of around 20 years and so –

MR PEDEN: Sixty percent of voters exercising the option to indicate a preference?

MR MADDEN: Yes, yes and the system can be twiggged depending on how much influence you want that vote to have and so there's a balance that needs to be struck between giving the voters a say, but also allowing parties to form lists which are representative of what they value, it's a balance.

MR THOMAS: Yes, I mean, the Australian situation may also be slightly analogous here with the way STV works where you have the above the line option and, I mean, that avoids obviously voters having to list, rank all candidates on that ballot, although the percentage share perhaps isn't quite as encouraging as the European example that Kieran just mentioned. I think I understand it's something like, in the States or at the federal level where it's used may be as much as 90 percent of voters choose to take above the line, but I still think that in principle it's a good thing to do because you're saying you're giving the voter a chance to express a preference, whereas at the moment they have no choice unless perhaps they belong to a political party, so it's about improving the direct accountability between voters and candidates.

MS HURIA: Thank you, yes. I guess my question is on the same topic and I'm really, I understand the principle that you're promulgating but I'm interested to know if you really think that voters will put the work into understanding who the different candidates are to enable them to do their ranking, understanding, you know, the principle around the candidates having to make the effort to connect with voters, but on a very practical perspective, do you think that voters will actually have that information around to make, well, do the work to take on board the information they need to do that ranking?

MR THOMAS: Well, as part of that, part of that issue, doesn't that fall on the onus of the Electoral Commission to help to provide information, good information to encourage voters to make that step along with other efforts to encourage and improve voter knowledge and participation? I honestly don't think these are completely insurmountable issues. Of course, I'm realistic about the expected uptake, at least in the short-term, bearing in mind the long time that it took in Belgium, bearing in mind the Australian situation but I would always – the recommendations that we had made, we have made with reference to criteria, with reference to principles and I think that should underpin the design of our electoral system. I don't – practicality is a consideration, but I don't think it should stop us from considering changes. It may improve the quality of our representative democracy in New Zealand.

MR MADDEN: And just – sorry, just to add on that, voter information is a legitimate concern I think and another option which is mooted, what some people have done is a completely open list whereby you would have to, voters would actually list quite a few list candidates. With the amount of list MPs that New Zealand could potentially have under this system, that would simply be impractical.

1035

No one would understand or have enough information, nor the time to do that, whereas we've gone for a middle of the road solution whereby voters may have had a direct connection with one particular list MP, and that would be, that would be enough to replace them as one candidate. They could conceivably put more time into researching other candidates, but they'd only require one under this, under our recommendation, so we've tried – we understand there are practicality concerns, and we've tried to strike a balance, as it were, so yep.

MS HURIA: Thank you.

SIR HUGH: I still, despite the care with which you've prepared your submission and the questions, I'm still unclear in my mind whether your re-ranking proposal is within a party's list or within all party's lists.

MR THOMAS: I would imagine that it's within your preferred party's list, so if you prefer the Green Party, then you would be – you're casting your party vote for the Greens in the first instance, but you're choosing the candidate that's maybe a little bit further down the list that you'd really like to see be elected earlier on.

SIR HUGH: So at number 7, he puts her or her as number 1. How does that affect all those other candidates on that list?

MR THOMAS: Well, I guess depending on the specific design of how that preference ordering system works, we're not being too specific on how that would actually work. I think that's a downstream question.

SIR HUGH: Are they all ranked equal, all the other 69?

MR THOMAS: Sorry, what do you mean by they're all ranked equal?

SIR HUGH: Well, if you put number 70 at number 1, is the other 69 all ranked equal?

MR THOMAS: Well, I think they all, they all start at an equal position, but I think what we're saying with our recommendation is that if there's enough express preference, depending on how you design the system, then another candidate could move up the order of the list different to what the party presented.

SIR HUGH: I see, okay, thank you.

MR THOMAS: You could think of it a little bit like a preferential vote, which was one of the options at the referendum last year. There's some similarities

there, although you're not expressing a complete on how many ranking of candidates.

SIR HUGH: Suggesting something comparable. Dr Arseneau?

DR ARSENEAU: So again, I thought your presentation was really interesting. So you're not saying – you're telling us exactly how many votes you would think you would need to be re-ordered, is that correct?

MR THOMAS: No. In our written submission, we made some suggestions about how you would set quotas, and I think Kieran referred to those in his presentation.

DR ARSENEAU: What is your preferred?

MR THOMAS: We haven't proceeded to make that assumption. I think that's something that the Electoral Commission and advisors such as yourself in consultation with the public. Say if you were to recommend an open list system, it should be taken at that point, and at that point I think Maxim may weigh on that point. So we're left – we're suggesting a model with some options about how it could work rather than being too prescriptive.

SIR HUGH: Professor Roberts?

PROFESSOR ROBERTS: Like everyone else, I'd like to thank you. I think you win the prize for the most footnotes, not unexpectedly with the quality of the Maxim's Institute work. You may be aware that Sweden has a system a little bit like you're recommending. I mean, Sweden, if 8% of the voters for a party in a multi-member constituency choose a particular candidate, that candidate goes to the top of the list and everybody moves down. Another candidate chosen by 9%, that then leapfrogs over the 8% one. Does that threshold seem around, you know, as a ballpark figure, above right to move someone?

MR THOMAS: That seems reasonable, but I wouldn't want to say yes or no at this point because we – in terms of what Maxim has decided we haven't broached that particular question, but it's certainly something that – that particular case would be certainly one that I would consider in trying to think around what that threshold could be.

MR MADDEN: And we do – I guess what, a principle we wanted to express in what we presented is that we do care about the party list ranking, and that does have some sort of weight as well, but – so there's a balance that needs to be struck there, which the details can be discussed later.

DR ARSENEAU: Can I ask one last quick question, do you feel in a mixed system having ordered lists makes it more complicated than, say, just in a straight PR list system?

1040

MR THOMAS: It does add a layer of complexity but again, as I was saying in response to Ms Huria's question, I think that's an acceptable trade off to make to try and improve the accountability of list MPs who have really struggled, it seems, in New Zealand to gain the degree of status that electorate MPs have. I think that's a reasonable trade off to make to improve how MMP works here.

DR ARSENEAU: Thank you.

SIR HUGH: Thank you Mr Thomas, Mr Madden, thank you for your help over the bibliography you've helpfully provided at the end of your paper. We'll take a break now for a cup of coffee for everybody. Say 10 minutes and start again at 10 to with Mr Craig if he's here or Mr Bentham.

HEARING ADJOURNS: 10.40 AM'

HEARING RESUMES: 10.54 AM

SIR HUGH WELCOMES DAVID BENTHAM

DAVID BENTHAM: Right, good morning.

SIR HUGH: Good morning to you, Mr Bentham. Thank you for your submissions. You know the rules. Would you care to address us on your submission?

MR BENTHAM: Yes. The areas that I'm partly or more interested in are the areas that are actually not covered by your terms of reference. I realise you are in a straitjacket and have to report under the terms that you are told to do so. But you are also, I presume, hearing a lot of information that is outside the terms of reference.

SIR HUGH: Well, quite a lot – there's only, let us say, tangentially connected to the terms of reference.

MR BENTHAM: Yes, and I would be interested in finding out how that information outside the terms of reference are actually treated, and I would hope that you would produce a report that is not limited by your terms of reference.

SIR HUGH: Well, our capacity to do so is limited in the sense that we are required to address the seven questions in the Referendum Act. There is a limited omnibus clause in the Act about other aspects of the MMP voting system. We've had some submissions which have not been within the terms of reference. What we will – what we've done is hear them and we'll consider those submissions first to decide if they are open to us to consider, and if they are, then we'll deal with them. So it's a little bit ex post facto, I'm afraid, but there's no other way to look at it.

MR BENTHAM: I would hope that you would be able to produce an unofficial report on some of the aspects outside the terms of reference.

SIR HUGH: Our timeframe is so compressed, Mr Bentham, that we'd be hard-pressed, I think, to produce the official report. But there will be some comments, I imagine, on other issues.

MR BENTHAM: Because one of the main issues that I am concerned about, and have been concerned about, is the number of list MPs. When we had the referendum, I think it was in 1996, we were to have 60 electoral MPs and 30 list MPs. And then when MMP was chosen as the preferred method by the public, the Government of the day arbitrarily decided, no, we're not having 30 list MPs. We're going to have 60. And that to me is one of the worst decisions ever made by a Government, I think only beaten by closing off the superannuation scheme in 1975.

SIR HUGH: We're not looking at super, Mr Bentham.

MR BENTHAM: No. But to me it is a very poor decision. It has cost New Zealand an awful lot of money. I estimate that it must be – I've said \$400,000 per MP, but it's probably closer to half a million, which is 15 million a year to have these extra 30 MPs, which we were never asked whether we wanted it or not. They were just foisted upon us.

SIR HUGH: Well, perhaps I can assist in this respect, at least, Mr Bentham. You know we're not – that the question of the number of MPs in Parliament is beyond our terms of reference, so some submissions have indicated a variation in the number of electorates or the number of list MPs consequential upon other recommendations that the submitters have made. But it's really a consequential result of other matters raised. We can't look at legislating for the particular proportions.

MR BENTHAM: Yes. I realise that your terms of reference were restricting, but I was hoping that somewhere near, somewhere round the unofficial side of

things that you may be able to put out a report of what the general people think of things outside the terms of reference as an unofficial report, if you like, because I just noticed in Australia where they're having the Gillard Government is sitting so close together, they have 146 MPs. We've got 121. They've got 20 million people. We've got four. I mean, it's just way out of proportion.

1100

Right, well that's one aspect. The other aspect is if an MP leaves parliament for any reason at the moment, the law is stating that there must be a by-election but I'm pretty certain that that law was put in place prior to MMP. I would like to suggest that that legislation be changed so that if any list MP leaves Parliament during the parliamentary period, that a list MP is appointed as the caretaker MP for that electorate and one more list MP comes in from that Parliament –

SIR HUGH: You said any list MP leaves Parliament. Do you mean any list MP or any electorate MP?

MR BENTHAM: No, a list MP being, one list MP would become the caretaker of the electorate, mean there would be one less list MP in there, so therefore another one would have to come into the bottom.

MR PEDEN: But just following on from Sir Hugh's question, electorate MPs represent electorates.

MR BENTHAM: Yes.

MR PEDEN: So are you thinking in terms of if there was a vacancy at an electorate –

MR BENTHAM: Yes.

MR PEDEN: Then that would be filled directly from the list?

MR BENTHAM: Yes.

MR PEDEN: And there will be no by-election?

SIR HUGH: And the list presumably of the party that hold the electorate?

MR BENTHAM: Yes.

SIR HUGH: Right, yes, I understand that.

MR BENTHAM: We'll just continue, things could continue on quickly, you wouldn't have the cost in the running of a by-election.

MR PEDEN: How would you meet geographical imbalance in that possibility?

MR BENTHAM: Well there's no geographical imbalance incurred, is there?

MR PEDEN: Well it's if the next list MP for Party X happens to live in Clutha-Southland and the electorate is in, say, Northland, or something...

MR BENTHAM: Yeah well I didn't actually say that the, the top list MP was the one to become the caretaker, just –

MR PEDEN: Any list MP?

MR BENTHAM: - a, a list MP be put into that position.

MR PEDEN: One chosen by the party?

MR BENTHAM: Yes, well they choose the electoral MP anyways.

MR PEDEN: There we go, I understand that.

MR BENTHAM: Ah, the threshold, I am in favour of keeping the 5% but if you do bury it, so be it, but I think that that threshold should be sacrosanct and that you have to get the 5% of the vote before you partake in that, having a share of the list MPs. I think that's pretty straightforward.

MR PEDEN: So you want, you would recommend abolishing the one seat threshold?

MR BENTHAM: Yes, you have to be 5% to partake, or whatever percentage you, if you do drop it to 4%, whatever threshold you eventually choose or have, that that right to have more MPs simply because you've got one seat creates too many distortions.

MR PEDEN: Well, we won't be dropping the percentage.

MR BENTHAM: No.

MR PEDEN: Or altering the percentage, Parliament will. We can only recommend that you're saying that if Parliament were to choose, let's take a figure, 3%, then that becomes, with the one seat gone, that becomes the threshold for getting extra list MPs.

MR BENTHAM: Yes. Electoral MP or list MP, very simply I think they should be one or the other, I don't think they should have the ability to chop and change from being a list MP or an electoral MP. I mean, if an electoral MP is discarded by his electorate, it must be for a reason and under First Past The Post, they were used to that system, if they lost their seat, they lost their seat. And then it's up to the party to decide among themselves whether they want somebody so badly they'll put them on the list or whether they're going to be an electoral MP. It's a decision for the party to make and I think it should only be one or the other, not both.

And one way out of left field is that the list MPs, I think one of the other systems has suggested that the list MPs be allocated according to the

percentage of votes that they get, so that the 30 of you were a party and got 40% of the total votes, you get 40% of the number of list MPs.

MR PEDEN: Wouldn't that actually make it a, rather than 40% of the seats in Parliament, so wouldn't that mean that we didn't have MMP anymore, we had the Supplementary Member system?

MR BENTHAM: Ah, it's from there, yes, but –

1105

MR PEDEN: Which would be a difficulty, wouldn't it, in terms of the decision that New Zealanders made at the last election to retain MMP?

MR BENTHAM: Yet, well, you're not really changing MMP all that much, you're just sort of saying you're reallocating. The seats are allocated according to the number of votes cast.

MR PEDEN: The difference between MMP and supplementary members system is that the party vote in the mixed member proportional system determines the overall proportionality of Parliament, whereas under the supplementary member system, which is also known as the mixed majoritarian system, it all, it determines is the proportion of the party seats, the list, the supplementary seats so they're quite fundamentally difficult systems.

MR BENTHAM: Okay, I think it just has merit that's all, but the thing I most dislike about MMP and I like MMP, I'd like it to stay and I voted for it initially as I don't like seeing half of our MPs in Parliament being political appointments not elected by the people, and it's very difficult for us to claim to be a democracy when half of our MPs are political appointments. I think it's very, very wrong.

MR PEDEN: I mean that came through in your submission and just thinking about your proposal for by-elections, I was wondering how, how you got to that, given that, you know, the electorate contest is the direct election by

voters of the person to represent them locally, if an electorate MPs die during a term of the Parliament, what you'd be proposing is that somebody came off the list that you regard as an appointment by the party, rather than giving those voters the opportunity to vote again for the person to represent them.

MR BENTHAM: I mean in practical terms the party picks the MP anyway. They say, well, yeah, this is going to be the person who's standing in that electorate, so they are picking the person anyway so they're only putting a caretaker in for, which may be a year, it may be six months, it may be two and a half years, but just a caretaker person put in there to look after that electorate until such times as ...

I actually take my hat off to Lockwood Smith, who evidently decided that he may or may not see out this term so stood down and became a list MP, and if he does pull out, well, there's already an electorate MP in place. I think that's a very responsible and good way going about things if you're uncertain and I, so he has avoided that situation. I think it would be so much easier if, when somebody was out of, another list MP went in that place, just looked after that electorate until such time as the next election.

MR PEDEN: Yes, I think Dr Cullen did the same for express succession purposes.

MR BENTHAM: Oh, did he, good.

MR PEDEN: mhm.

MR BENTHAM: No, that's, if they're doing that, that's wonderful but it's not always known a person is going to leave. I mean, you've only got to look at Taito Phillip that he didn't know he was going to be stood down but when he did, then they have to have a by-election, mhm.

DR ARSENEAU: Could I just explore a bit where your statement that the party list MPs are political appointments, yes and are you meaning specifically

in terms of how they draw up the list, so are you looking for, for example, more rigorous list selection processes around section 71 making it more democratic?

MR BENTHAM: I think, I would like to see it but I think in practical terms it would just be too cumbersome that you're going to have, one of the parties have got up to 120 list MPs anyway, even though now most of them are not going to get in, so you've got a huge list of MPs over, you know, five or six or seven, or eight parties, it becomes a huge task to try to allocate them and I think it would just become too cumbersome unfortunately. I think it would be nice but I don't think it would work practically.

1110

SIR HUGH WELCOMES ROSS CRAIG

ROSS CRAIG: Thank very much for giving me this time to speak to you. I really appreciate it.

SIR HUGH: You're welcome, we've read your submission, we've just been given what looks like a New Zealand Herald.

Mr Craig: Yes, I will, I will just briefly comment on that. I just want to give a bit of personal background to myself. I remember in 1951 sitting by the radio and taking results as they came in and when I went to primary school, it was very much who's National and who's Labour in the school when we were approaching an election. Elections then were of pretty high importance, so high in importance that when I did my masters degree at Auckland University, I did a thesis on the electoral results from 1900 to 1960 and that was simple, that was straight forward. In those days, you had people who represented you and we truly did have a House of Representatives. I'm afraid today that the House of Representatives isn't as pure and things are much more complicated.

I just briefly comment, my first, the first opening that we have on our submission is that the system we have is biased, designed to protect the power of the most powerful. The National Party submission to the Commission demonstrated that very adequately. Another factor is a point that Maxim Institute raised in their submission, that, that minor parties should go out and they should win 5% but when we come to look at how much funding they get from government to actually get their message out there and promote enough support to get that, it becomes virtually impossible because the major parties are granted over a million in terms of finance from the government, from the taxpayers.

And I do make the point that the time on television is crucial and I want a level playing field when it comes to an election, I don't suggest that minor parties should have anywhere near what the major parties have but one minute on

television for one minor party and five minutes on television for another minor I don't think is fair but I know funding is not without, not within the gambit but it is a democratic thing. I was listening to the BBC about six weeks ago and the Russian opposition to Putin getting in were saying "This election is not fair. Look at how much funding Putin has got from the government in Russia."

SIR HUGH: Well he actually owns most of the media outlets.

Mr Craig: *[laughs]* Yeah

SIR HUGH: In distributing the public funds for election advertising as the then Commission did a year ago, we were acting under the criteria set out in the Broadcasting Act, not the Electoral Act, and one of the principle criteria to be applied is the state – the then stated opinion polls. Now that might disadvantage a new entrant into the political arena but it's one of the criteria that has to be taken into account.

1115

MR CRAIG: Now, with respect to the questions, and there are some questions I haven't answered, and perhaps I can comment that the last paragraph on the second page of my submission you should ignore because I, in the supplementary material I sent to you, that covered what's there. So when we, when I say, "We intend to make brief comments on other matters when we attend the hearing," those brief comments have been made in that supplementary paper which you have taken, and I appreciate the degree to which you have read the submissions, I am very impressed about that.

I have participated in the election process myself four times; three of those times were at local government level and one at national level. So I know what it is to actually be somebody who's listening to lots of material, having to work through lots of material and to know what each person is saying.

Towards, at the bottom of my third page of the submission, I make this quote, "A bogus stability argument was made against introducing MMP in the first

place and has proved to be groundless.” Well, I got that from this letter that you have received a copy. I was impressed by this letter about, ah, just over a week ago from an Andrew McCosh, I don’t know him at all, but I thought that letter was pretty relevant and I think that letter was written in response to the National Party’s submission to the Commission.

I start with the point that our, the first paragraph of my submission, “It is inequitable with clear bias designed to protect the power of the most powerful,” and we end in the conclusion, “We trust our robust reasoning will be accepted as the clear result and the clear result of your considerations will be a fairer and purer proportional voting system.” Proportional voting is what it’s all about under MMP, and for a person like me who generally votes for minor parties, I feel that should be no legitimate reason for not accepting that vote. If it doesn’t meet the 5% threshold and a party doesn’t get in by winning an electorate seat, it is disregarded, but that vote is actually counted in terms of distributing proportions among the other parties, so you get, after the election, oh, yes, the Greens have gone up by one member, and so that’s why I suggest that there be an STV type, ah, provision on the party vote on the voting form and I give my example, the last election, my wife and my preference would have been to vote one, Conservative, to vote two, New Zealand First, and vote three, United Future. How grievous is it, that we get another Green MP in parliament because our votes have been disregarded in terms of the individual voting, but collectively that, about 3.5% or it might have been 4% in the last election, that’s counted as people voting for a party and so therefore another – these votes are transferred to make up the balance of the remaining parties.

Now I think that’s about enough of my ranting, but I would say that on the things that I haven’t commented, we’re quite happy with the status quo. The overhang, however, is the last question asked. What should happen when a party wins more electorate seats than would be entitled to under its share of MMP, and we do cover off the fact that the second on electorate list should get the electorate seat, when a party is facing overhang.

So if, for example, the Māori Party has two overhang members, based on the proportion of votes they get, they only, they only get the two people in, or whoever's voted in, ah, of the – let's say they get four members voted in, only sufficient proportionality for 2% to represent them in Parliament, then according to who's number one and number two, they go into Parliament because they won their electorate, but the other two, you look at who was the runner up candidate from another party that wouldn't cause overhang to occur, and that person then gets into Parliament to balance the – it goes towards Labour or something like that, to balance the vote. So, yeah, any questions?

MR PEDEN: Yes, thank you Mr Craig. The, when I read your submission and your proposal relating to STV for the party vote, what I'd envisaged was that you had in mind actually being able to rank the candidates as well as the parties, but is – would your purpose be served by simply enabling voters to be able to, you'd have the same ballot papers that we have now, but instead of ticking one, you'd be able to exercise a preference from one to however many parties there are?

MR CRAIG: Oh, I would think three, if we're talking about preference for parties, I'd suggest three, three preference votes.

MR PEDEN: So you wouldn't go to an excise of preference for all, you'd just have three?

MR CRAIG: Yeah, and I would therefore know that my vote is counting towards Peter Dunne being in Parliament, or my vote is counting towards Winston Peters and his cohorts being in Parliament. That would make me a lot happier than finding out that a Green MP has been – but that's my colour, okay.

MR PEDEN: And just on your – I'm – comes through very clearly how important you regard proportionality. I mean, the other principle that our

system takes into account is effectiveness of Government, and again it comes through clearly that you, you're confident that if there was no threshold, that wouldn't result in difficulties in the formation of Government or the stability of Government?

MR CRAIG: No, I think that's proven, with Peter Dunne and John Banks in a coalition with National, they are essentially two independents. Is there instability in it? Just the way that the Prime Minister is backing one of them at the moment and, yeah, shows that there's pretty good ties between an individual and a party.

MR PEDEN: But wouldn't the question be what the change in voter behaviour might be as a consequence of there being, if there was no threshold. I mean if you took, for example, some of the examples in recent MMP elections, if there hadn't been a threshold, even allowing for the potential changes in voting behaviour, there may have been up to 11 or 12 parties represented in Parliament. Do you not think in that circumstance –

MR CRAIG: In the 11 or 12 represented in the –

MR PEDEN: In Parliament.

MR CRAIG: Have there?

MR PEDEN: No, no, there haven't been, but if there had been no threshold, that would have been, that might have been the result, and that may not – may that have not led to difficulties?

MR CRAIG: I think that it's drawing the long bow to think that that would be the case. I do make the point in my submission that a party, to get 1%, has to have broad appeal. Did United Future get 1% in the last election? Did the ACT Party get 1% in the last election? Well ACT might have just got there.

SIR HUGH: But are you contending for a 0% threshold or a 1%?

MR CRAIG: No, 1 –

SIR HUGH: One percent.

MR CRAIG: I'm contending whatever percentage goes into 120 members. If one party can secure 1% of the votes distributed across 120 Members of Parliament.

MR PEDEN: Well that's an important –

SIR HUGH: Yeah, that's .83%

MR CRAIG: Well I'm suggesting you'd have a higher threshold than that.

MR PEDEN: You'll need to – because at the moment what we've got in your submission was there should be no threshold, and –
1125

MR CRAIG: Well, yeah, no threshold above 1 percent and the 1% is the threshold.

SIR HUGH: I was going to just tease that out with you also, Mr Craig. You, you and your wife contend in the supplementary paper for a citizen's right of veto, is that a submission you made or will you make to the Constitutional Review?

MR CRAIG: Yes it would be to the Constitutional Review. I realise that's outside your scope.

SIR HUGH: My initial reaction is that that's outside our mandate and –

MR CRAIG: Yes, I agree it is, yeah, I agree it is.

SIR HUGH: It might infringe the plenipotentiary powers of Parliament and it's really a constitutional manner. Do you accept that?

MR CRAIG: Yes, absolutely, thank you.

SIR HUGH: Thank you very much. Thank you for your help and would you thank your wife for her contribution as well?

SIR HUGH WELCOMES DAVID CHILD

DAVID CHILD: Good morning, I've asked to appear before you because the issue that I'm submitting on, the way our list MPs get into Parliament I think is the most important issue facing the Commission. You've got to make recommendations on other issues like thresholds and overhangs, but that's only tweaking our MMP system. I'm suggesting quite a fundamental reform of the system.

The election of list MPs is not to me a democratic feature. Voters are suddenly confronted with a list drawn up by political parties and they're forced to suddenly accept or reject that list. There's absolutely no input from members of the community onto that list. You seem to recognise that in your statement which says, "The Royal Commission considered that while the idea of voters having some influence on the list was attractive in principle, there were considerable difficulties in combining this with electorate contests," and that anti-democratic function is also the basis of your question, "Who should rank list MPs, political parties or voters?"

So you've got in front of you what my proposal is that we keep the MMP system, the basis MMP system, that all candidates must contest electorate seats and that voters then draw up the list after the election from those who have been unsuccessful in the electorate, according to the number of votes they've attracted in electorates throughout the country, and I've given you concrete examples of how that would work in practice. There's one mistake on that list, I'm afraid to say. Ms Parata contested the Mana Electorate and gained 12,232 votes which would actually put her at second position on the National Party list.

So I've got five particular points that I want to make about my submission. There's an argument that who is on the list determines how voters will vote for the party. I've seen no substantial evidence that that is the case. Surely most people vote for the party according either to their traditional ways of voting or because some new, a piece of policy particularly appeals to them, so I don't

think that is an argument that has got much merit. Another argument is that political parties can choose capable candidates who might otherwise not get into Parliament and an example there often cited is that of Mr Grosser, the National Party MP. Apparently, in this private life he had a lot to do with trade and he's able to bring his knowledge and skills in that area into the National Party Government, but on my proposal he will still make it into Parliament and very capable MPs will still get in on my, on my proposal.

1130

There's another side to that argument. If list MPs, if the list gets capable people into Parliament, it also allows into Parliament people who are not regarded as particularly capable. An example of that would be Mr Williams on the New Zealand First list. He is a former mayor of North Shore City who was beaten at the last election. To his credit, he stood for the North Shore electorate and despite being a candidate with a high profile, we see very few votes and is able, been able to get into Parliament through the backdoor of the list.

That leads to your question, "Should a person be able to stand as a candidate for an electorate seat and also be on the party list?" And I can't see that there's any clear cut answer to that question. If your answer is no, you're going to prevent capable people who have attracted thousands of votes and who have got a lot of support from their community getting into Parliament. If your answer is yes, then you're going to allow into Parliament people who don't have much support, who haven't received many votes, who can get in through the list, the list way. If you accept my proposal, then of course that question becomes completely irrelevant.

The third point I would like to make is that there's an argument that political parties, the lists of political parties can get minority groups into parliament and I think in our parliament we need to be as widely represented as possible. However, my proposal also ensures that minority groups are represented in parliament. The one exception might be the Green Party list MP, Ms Mathers, who could be said to represent the Deaf community. Under my proposal, she

might not make it back into Parliament but I think that's a small price to pay for making our system more democratic.

Fourth point, I think every MP should have to go through the fire of an election contest. All of our MPs make laws which affect the way we live and impose taxation on us. They need the moral authority to have the right to do that and at the moment the list MPs, in my view, do not have that moral authority. In connection with this, I think MPs in general, and list MPs in particular, are not highly regarded by the New Zealand public. Part of that is this problem that it's not seen as representative and democratic and a result of that is that thousands, tens of thousands, perhaps hundreds of thousands of New Zealanders do not bother to vote. Why should they vote when we have a system where it seems, it's not democratic? So if you can make the list MPs selection more democratic, it might involve more people getting involved in the political process and that is to be welcomed.

And finally, I have suggested that political parties will oppose this point of view because it will take away some of their power but on doing the analysis out of our 50 list MPs, 24 of them would still make it back into Parliament, on my proposal, and so it might not be as unpalatable as I have originally thought.

In conclusion, it seems to me that you can make one of three recommendations on this matter. You can recommend that we keep the existing status quo and in that case we'll continue to wring our hands and wonder why New Zealanders haven't got the wisdom to make the system better. Or secondly, you can recommend that we keep the existing lists but that voters have some sort of vote to determine who should be on the list, that seems to me to be unnecessarily complicated. Or third, you could recommend that voters control the list by a proposal like mine and that ticks all the right boxes, it's simple, it's open, it's transparent, it's proportional, and it's democratic.

MR PEDEN: Just want to check that I've completely understood what you're proposing, Mr Child. The, there'd be two, a voter would have two votes but in

effect, there wouldn't be a list because every candidate – to be elected to Parliament, you need to be contesting an electorate.

MR CHILD: That's right, yes.

MR PEDEN: So you wouldn't need a party list?

MR CHILD: That's right.

MR PEDEN: Right. Wouldn't this, this system remove a choice which voters currently have? At nomination day, parties lodge a party list. It's publicly available from that point, it's distributed by the Commission to every registered voter through their Easy Vote Pack, so every voter has an opportunity to look at the party lists and to understand who they are voting for when they cast their party vote, so it's open to a voter on, when they cast their vote, to choose a local candidate who may be an independent, may be from – but the persons they most want to represent them in the local electorate, which may be different from the group of people that they're voting for when they cast their party vote.

1135

So what I'm, I suppose what I'm seeking your comment on is, isn't your proposal going to result in a loss of choice that voters currently have?

MR CHILD: Sorry, I didn't quite follow you there.

MR PEDEN: When voters currently vote, they can choose a local candidate to represent them –

MR CHILD: That's on the, you're talking about the electorate?

MR PEDEN: Yes, yes.

MR CHILD: Yes.

MR PEDEN: And they can also, and that may be somebody from a party who, a different party, from the group that they're voting for on their party vote.

MR CHILD: Yes.

MR PEDEN: What you're proposing would remove that possibility and don't you think that that's something that voters have got used to being able to do. A large number of New Zealanders split their votes.

MR CHILD: That is a point, yes, which I hadn't considered. That is a point, yes. I'm concerned that the party list is seen as undemocratic and that voters don't have an –

MR PEDEN: But why would it be undemocratic when, when you cast your party vote you've got available to you the list in order of the people who will get into Parliament as a consequence of the exercise of your party vote?

MR CHILD: But are you seriously suggesting that I vote or don't vote for National, because I'm someone who's 12th on their party list and I've never heard of and is going to be a factor in making my vote for National?

MR PEDEN: But if you're voting –

MR CHILD: Surely not, surely I vote for National either because I've always done it or because there's a particular piece of policy that I like about them and then I'll cast my vote for National. The list is not relevant.

MR PEDEN: Mhm, but what I'm seeking to understand is why it's undemocratic when the information is available to you should you wish to know who's number 12 on the National Party list, but by –

MR CHILD: And have you –

MR PEDEN: – but by exercising your vote say to vote for National, you're doing so on the basis that you're looking to have the National Party lead the Government or be the Government and that you're doing so in the notion, in the knowledge that there are a group of people that you are, in effect, voting for who will get into Parliament if there's a sufficient number of people who share your, your aspiration.

MR CHILD: Yes, that I'm forced to vote for, that I'm forced to vote for. If I want National, I must accept these 17 people. If I want National, I must accept these 17 people, most of whom I might not have heard of, some of whom I might think are very capable, some of whom I might think are disasters. I'm forced to accept those 17 people, the number of votes that National is entitled to have, number of list MPs that the, National is entitled to have as a result of the party vote.

MR PEDEN: Thank you.

MR CHILD: Okay, whereas you can see what I'm saying that, you know, Mr Fletcher and Ms Hapetu who attracted thousands and thousands of votes in Rimutaka and Palmerston North, missed out on the list because they're not high enough, even weren't on it, I don't know but they attract thousands and thousands of votes in those electorates. They can feel hard done by I think as a result of the party list.

MS HURIA: So I take it from your submission that you wouldn't think it was acceptable if a democratic aspect of the party list was achieved through party members voting with a list?

MR CHILD: Well, I'm not sure on that. I don't know how this party list is created. Is that, is that how party lists are created? Is their a vote in Labour and National, and New Zealand First and so on for the, for the list? I imagine that it's done by faceless people in party –

MS HURIA: It does depend on how the different parties interpret that need for democracy.

MR CHILD: Yes.

MS HURIA: Certainly, that's the, we've heard that's the way the Greens do it.
1140

MR CHILD: Yes. Mmm, that might be a factor but I, I sort of thought that, um, it was people higher up in the party made personal decisions, the party was going to be on the list.

SIR HUGH: Now, Mr Child, you contend first that all aspiring MPs should contest an electorate seat.

MR CHILD: Yes.

SIR HUGH: Is your scheme meant to apply to both the general electorates and the Māori electorates?

MR CHILD: I didn't consider the Māori electorates.

SIR HUGH: So you're talking just about, well, currently, the 63 general electorates?

MR CHILD: Yes, yes.

SIR HUGH: Each party would only have one candidate in an electorate, of course?

MR CHILD: Yes.

SIR HUGH: Well, would, given we've got a 120 seat parliament, how, how would you see all aspiring MPs contesting an electorate seat? How would you get from 63 to 120? You've got 63 for Party X –

MR CHILD: Yes.

SIR HUGH: – contesting electorate seats.

MR CHILD: Yes. Well, the, the 50 list MPs are created out of the party vote.

SIR HUGH: All right I'm coming to that in a moment.

MR CHILD: So that is where –

SIR HUGH: All aspiring, all candidates have to contest an electorate.

MR CHILD: Yes, yes.

SIR HUGH: But then for Party X there'll be 63 candidates for electorate seats but Party X will have to have a list extending more than 63 names.

MR CHILD: Why is that?

SIR HUGH: Because we've got to get 120 MPs and they all have to stand for an electorate on your system.

MR CHILD: Yes.

SIR HUGH: So you then propose that the list, the list be created after the election?

MR CHILD: yes.

SIR HUGH: Well, voters have to know who, who's going to be in contest for Parliament so the lists have to be published before the election or after?

MR CHILD: No, the lists are created after the election by ranking those MPs who have got the most votes throughout New Zealand. See, I've suggested that on –

SIR HUGH: Yeah I understand that, I'm coming to that in a moment too.

MR CHILD: Yes.

SIR HUGH: Just currently, I'm struggling to see how you can get 120 MPs out of your system if all of them have to be electorate candidates.

MR CHILD: Well putting aside the Māori seats –

SIR HUGH: Yes, we'll put aside the Māori seats, how do we get 120 MPs that people know about before the election when there are only 63 electorates and they all have, all MPs have to stand for an electorate?

MR CHILD: But there are 70, aren't there 70 electorates?

SIR HUGH: 63 general, and 7 Māori, we're putting the Māori seats to one side.

MR CHILD: Yes. Well I didn't consider the Māori, um, the Māori, um, seats, I took it that there were 70 electorates so another 50 MPs get in through the list and out of those 70 electorates, I didn't consider the Māori ones, but out of those 70 electorates, you will have people who just failed to win, win a, the seat by maybe, um, Waitakere, an adjacent electorate to mine. Ms Bennett got two or 300 more and Ms Sepuloni miss out but she nevertheless was very strongly supported in the electorate, she would have made it back into parliament on my, my proposal.

SIR HUGH: So I suppose one of the – in principle it doesn't matter whether it's a, a Māori electorate or a general electorate.

MR CHILD: No, no.

SIR HUGH: And really I think in understanding your system, it's best not to think of it in terms of a list. Really what you're proposing is what I think is sometimes referred to as the Best Loser?

MR CHILD: Yes, exactly, yes, yes.

SIR HUGH: So you, you, the people who win in an electorate are Members of Parliament, they represent that electorate?

MR CHILD: Yes.

SIR HUGH: And then you go through the, you determine from the party vote what proportion each party is eligible for, each number of seats?

MR CHILD: Yes, yes, doesn't change.

SIR HUGH: And then you work out on the basis of the number of, proportion of votes each member of that party got in various contests who, who goes in on basis of their ranking.

MR CHILD: Yes. That would mean, of course, that some electorates would have two MPs from that electorate but there'd still be an official electorate MP and the other would still be considered a list MP.

1145

SIR HUGH: Now, the next stage in your proposal is that the candidates who haven't won electorates then be ranked according to the number of votes they got?

MR CHILD: Yes.

SIR HUGH: But in order to overcome the varying turnouts in electorates, particularly if we include the Māori electorates in this calculation, wouldn't you have to rank the candidates in accordance with a percentage of the votes that they got within that electorate?

MR CHILD: That is another way of doing it, yes. I wouldn't –

MR PEDEN: Because otherwise an electorate has a high turnout and somebody did well, would advantage them over someone who did well in an electorate with a low turnout.

MR CHILD: That is another way of doing it and I'd be very happy to accept that idea, yes. When I wrote the proposal, I hadn't thought of that although I see that some of the other submitters have suggested that.

MS HURIA: Just checking I haven't missed a beat here. Are you saying, you're not saying that every party has to field 63 candidates?

MR CHILD: Well, that would be up to them, no, it would be up to them.

MS HURIA: But unless somebody stood in an electorate so even if they hadn't got, even if they hadn't covered the whole country, they have to stand in one electorate –

MR CHILD: To get into Parliament –

MS HURIA: – to get into Parliament?

MR CHILD: Yes, winning that electorate or getting sufficient support from the voters, winning losers as you put it, yes.

MS HURIA: Which may be a percentage or a number of votes?

MR CHILD: Yes, whichever way you want to do.

PROFESSOR ROBERTS: Just one point of clarification, I'm assuming these are errors where Mr Auchinvole has put down as a sitting list MP Cosgrove, as a sitting. They were sitting electorate MPs who would now, under your proposal, become list MPs, is that not right?

MR CHILD: Did I get that wrong? Did you say Mr Auchinvole is an electorate MP?

PROFESSOR ROBERTS: He was at the 2011 election when he contested it. He was the MP for the West Coast Tasman electorate, is now –

MR CHILD: Yes, but he missed out. He missed out. He was the winning loser and so he now becomes on my proposal, the third or it's actually the fourth because of Ms Parata, he becomes the fourth National list MP, yes, he competed for the election, yes.

PROFESSOR ROBERTS: But what I couldn't understand is why Fletcher is not a sitting list MP then as well?

MR CHILD: Well, he's, he's not in Parliament at the moment, is he?

PROFESSOR ROBERTS: Okay, he's a sitting MP is what you're meaning, isn't it? Yes, okay, right, you've clarified, okay.

MR CHILD: Yes, if I've got it right, Mr Fletcher got 12,488 votes but is not in Parliament because he wasn't high enough or wasn't even on the National list.

PROFESSOR ROBERTS: But to follow from Sir Hugh's question then about the question of percentages, it seems to me that, I mean, best loser proposals are quite common and, of course, they're, it's used in some parts, on some occasions in some Japanese provinces but, of course, what it does then is

focus the campaigning on, in effect, marginal seats. A National candidate would have no incentive whatsoever to stand in a strong Labour seat knowing that they would get a very small number of votes for a very small proportion.

MR CHILD: But they do that anyway. National will have candidates, electorate candidates in those seats anyway, won't they?

PROFESSOR ROBERTS: Yes, but on the other hand, now they can put up a good candidate in a seat they have no chance of winning, but under this proposal, you'd see a migration of your candidates only to marginal seats.

MR CHILD: So what are you saying?

PROFESSOR ROBERTS: Well, doesn't that deny the debate that takes place in an election to whole swathes of the country would, in effect, be ignored because the candidates have no possibility of moving up as a result of the fact they're contesting a seat they know is a hopeless chance of winning as an electorate and therefore because it's a hopeless chance of winning an electorate, it's also a hopeless way of becoming a list MP.

MR CHILD: Mhm, perhaps, yes, but on the other than it might sort of concentrate –

PROFESSOR ROBERTS: Because one of the criticisms of first pass the post was it focussed campaigning basically only on the marginal electorates. It didn't give a countrywide perspective. Now with MMP, one of the arguments is that it gives a nationwide perspective to campaigning because every party vote no matter where its cast counts.

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MR CHILD: But my contention is that list MPs aren't directly involved in campaigning. They don't need to be. You know, they can waltz into Parliament and I use the example of Dr Smith

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...campaigning. They don't need to be, you know, they can waltz into Parliament, and I use the example of Dr Smith, previous speaker said he admired Dr Smith, but if he's, if he gets into Parliament on the list, he's got into Parliament on the list, and if he has no intention of seeing out his three year term, if he has no intention, to my mind he's treating Parliament with contempt, and that would not happen if you actually had to campaign for your position. Now I said I regard Dr Smith as an effective speaker and a good bloke, but if he resigns, and not because of some illness or death in the family or something, if he resigns, showing that he had no intention to see out his three year term, then I don't regard him as a good bloke anymore. And that is what can happen on the list, you know, you can waltz in or waltz out as you please, whereas if you have to campaign, you've expended a bit of blood, sweat and tears on it, and you've taken your responsibilities very seriously.

DR ARSENEAU: Can I just ask, again to sort of understand your basic underlying principle, that list MPs are not directly elected, if you took, for example, a list only party, when people cast that party vote, and if you accept the smaller parties, you know, let's say the Greens are, you know, a list only party, do you think that when people are casting that vote and on the understanding that they figure it's going to be a list only party, that in a sense they are actually using the list as, they see those very much as the candidates so that it is, in a sense, there is a direct connection between a party vote and the people who are elected? Do you understand what I'm –

MR CHILD: Yes, I do. But if I were voting for the Green Party, I still don't like the idea that that list has been created by a party hierarchy. I might want to vote for a list party like the Greens, but those list MPs should have to face the music, as it were, and become the best losers.

DR ARSENEAU: So that, so you think, just to make sure I understand, a geographic – you really, let's say you put a high priority on geographic voting rather than, say, national overall?

MR CHILD: No, I don't think geography comes into it. So you can see with my Green Party analysis, um, the top four who got back in, like Mr Norman, the leader and Ms Turei, would have done so on my analysis.

PROFESSOR ROBERTS: Can I ask a follow up to that?

MR CHILD: Yes.

PROFESSOR ROBERTS: Can you really envisage that anybody voted for the New Zealand First list, despite the fact that Winston Peters was on it, not because he was on it?

MR CHILD: Well I was going to say, Winston Peters might be, um, the exception. You might – I was going to make that point, that he's obviously got a lot of personal following throughout the country, and that people would vote for New Zealand First because of Winston Peters being on the list. But again, I made the point that if Winston Peters had competed for votes in Tauranga, it's highly likely that he would have been the top of the New Zealand First list anyway. That is the one exception, why people might vote for New Zealand First, the personal following of Winston Peters. But again, you see, as I said, um, it's highly likely that the leader of the party, Winston Peters, had competed for votes, he would have actually got in on this list.

SIR HUGH: Thank you, Mr Child.

MR CHILD: So I'll be interested to read your report and see what you've come up with.

SIR HUGH WELCOMES KEVIN FREE

1155

KEVIN FREE: Well, I appreciate the opportunity to come speak in front of you, and for just a slight bit of background, born in New Zealand, I spent 25 years in the United States and was elected to the state legislature of Delaware, where I served for eight years. A little unusual as an –

SIR HUGH: Not many Kiwi born folk could claim that.

MR FREE: Well I'm only the second Kiwi born person to be elected to a local government and the other was Tarcissus McCarthy in California, who was born in Auckland but taken away when he was very young, so I don't quite count him.

MR PEDEN: Have you citizenship to be elected?

MR FREE: I had citizenship when I was in the United States, of course, so we returned about 20 som –

SIR HUGH: How long did you serve in the Delaware legislature?

MR FREE: Eight years.

SIR HUGH: Eight years?

MR FREE: Eight years, and to my shame I have to confess that I voted for the Bank Bill, which was the precursor of all the trouble we've had in the world, and as I review that time, I can kind of justify what happened but I wasn't very aware of what I was doing at the time.

SIR HUGH: Delaware is a stronghold of company legislation of course in the States, isn't it?

MR FREE: That's right. When we returned to New Zealand I was sort of quite amazed at how uninterested New Zealanders are in the political process, and as an engineer I was involved with a lot of engineers at Auckland University and I couldn't find anybody that was a member of a party, and I discovered that there are relatively few people who are members of parties in New Zealand. Since I was born, it's declined hugely, and I think there's a, there's a great dissociation between the electorate and the people who are elected to Parliament, and so I'm hoping that there might come some improvements for what you folk are to do or at least to suggest. I know that then the politicians will take over and then we've all had it, I suppose.

The four points that I wanted to make include pretty much the one that the previous speaker talked about, in the allocation of seats, and so I don't need to revisit that, I have – I'll touch on it perhaps. The first thing I want to suggest is that allowing two votes, one for the party and one for the electorate MP, is confusing and counterproductive, and it makes me think a little bit of what happens when you go into grocery stores these days, trying to buy some breakfast cereal. There's just too much choice and you don't really make great choices necessarily. And I have great difficulty in seeing the use in voting separately for parties and electorate candidates, and as far as I can see, the record, which suggests that, with some major exceptions, that the accumulated votes received by party members is pretty close to the vote received by the parties, and so I propose that we take the party vote as the vote that has been received by all the candidates that the party has put up for election.

What we are getting into in New Zealand at the moment is big business and charisma and television determining a great deal of what goes on in elections, and much less activity in the electorates, so that we're in danger of being prisoners of modern advertising and some dissociation further with the people who are electing Members of Parliament.

I believe that there are, and I think many people believe, that there are far too many list seats available and the fact that all parties have in the past, to a first approximation, had list seats added to the electorate seats that they won, even though they've done quite well in an electorate and my analysis shows that so far fewer list seats would enable reasonable proportionality to be achieved and, in some cases, even better proportionality that we did achieve so that's, that's not an important point. My proposal is that we would have 100 electorate seats and 20 list seats and I'll speak to that a little bit in the handout that I passed out.

The point about the allocation of list seats, I entirely agree with the previous speaker that a list can be made up after the electorate from the best losers, I think is the point that you made and, of course, if we have 100 electorates that's makes, you know, only 20 people available for the list, that reduces the problems that were mentioned earlier, and the final point that I make is that I think it would be appropriate to reduce the threshold for a party being entitled to be represented in Parliament to may be three or 4% and I think we should abolish the rule that says that if the party can get one electorate seat then they can have more members at Parliament, even though it's below the threshold.

Now, the paper that I handed out to you, I hope I kept a copy of that, clearly it's a little bit difficult to propose a model of what might happen if we said that the party vote comes as, from the individual votes because it hasn't happened in the last few years, although it's to a first approximation. We have that and in the last election, I've shown in the first column the percentage of votes received by the parties that are participating in Parliament and the second column just converts that to the percentages that nominally the parties were entitled to is a result of that vote, then I've shown the seats that were won in the 70 electorates and I've scaled that up on the assumption that the distribution would be the same in 100 seats, so the expect title is the expected seats that would be won by the respective parties.

The next column is the goal seats, that's the number of seats that you would allocate to the parties to make up the 120 members of Parliament and I've rounded that off in the next column, so it's an individual rather, a bit of an individual, and then in the next column we have the list as it would be determined at the moment simply filling up to the appropriate percentage and that's the allocation of the 20 seats. The negative ones meaning that National and Labour, National and Māori did better than, through their list, their electorate candidates than they deserved, if you will, on the list and so we adjusted the number of seats in Parliament to give the actual members of Parliament by ignoring, this is giving the adjusted list, if you will, with a little asterix in front of it so that, in fact, we don't subtract members of Parliament. What we do is ignore the extra or the negative Members of Parliament and make some adjustments to the other (inaudible 12.05.20) of lists so that you end up with the 20. There's no overhang, in this case, in other words.

1205

And so we arrive at the number of seats by the various parties and then the second, the last two columns are a comparison of how many, what percentage of seats we have compared to the percentage of seats that we would expect to have as shown by the second column, and then there's the difference there which is less than 2% except in one case but it's less than the threshold level that we're putting on the voting process to get into Parliament at all and it seems to me that that's a pretty reasonable approach to, to proportional representation. I think in the past model that we had, the design of the system was overly concerned about getting very close to proportional representation and I think if there was a discrepancy of 1%, people would be pretty excited. So what I'm suggesting as a sort of a corollary that we, we relax how close we have to get to rigorous proportionality.

That's what I wanted to say about the submission.

MR PEDEN: Just to make sure that I, I understand, so the system you're proposing would have 100 electorates?

MR FREE: Indeed.

MR PEDEN: But it would be a parliament of 120?

MR FREE: Correct.

MR PEDEN: And the example that you've given here is based on the results of the 2011 election?

MR FREE: That's right, yes.

MR PEDEN: And the, the percentages that you give in your first columns are based on the party vote from the 2011 election?

MR FREE: That's right, I picked that, yeah.

MR PEDEN: But going forward –

MR FREE: But what I'm suggesting is we should pick –

MR PEDEN: Electorate vote, is that?

MR FREE: The accumulation of electorate votes. Because I really, I really doubt that there are many people voting who are able to make any distinction between the party and the electorate, except to the lack of benefit for the electorate because they know the party's going to get all the votes or whatever so who cares who's the Member of Parliament?

MR PEDEN: Are you aware that the number of people who split their vote, on average, is around 28, 29, 30%?

MR FREE: Well, no I'm not aware of that because I don't know where to find that information but I'm not totally surprised. My point is at the end of the day,

it doesn't make a lot of difference except in the case of Winston Peters perhaps.

MR PEDEN: Mr Free, do you accept the point I made to Mr Child that if you're totalling the party votes throughout the country and apply it to the electoral candidates that you'd really have to do it on percentages within an electorate?

MR FREE: Oh, oh, yeah, I think that's, that's reasonable, yeah, yeah. Although, you know, you could make the argument for the absolute vote determining it because the reason for poor turnout – the electorates are supposed to have the same number of voters in electorate, I think.

SIR HUGH: And apart from the Māori electorates, they roughly do.

MR FREE: The fact that half of them stay home is a, is an indictment of the system to some extent but not, not necessarily a, a reason why a person from such an electorate – if, if, if the turnout is low, then it seems to me that it's probably a little easier for an off-brand party to gather a lot of votes because they go out and work to work the voters, if you will. I think it's sort of –

1210

SIR HUGH: And then in part, at least, the, your result would be dependent first on turnout and secondly, on, by chance whether there were only one or two or a large number of strong candidates with a lot of local support.

MR FREE: Well, I think that's probably true. I think that it's hard to predict how the parties would behave. Clearly, the parties would be focussed on finding the best possible candidates in every district, which is really what happened in the United States when they abolished the party vote, the big leaver they used to call it and so the primary system was then controlled by the voters. You get two votes, first in the primary elections and then, again, in the election. Now, I liked that system to tell you the truth but, obviously, it's a

bit more expensive and we have a wonderful system by having a very short time of campaigning.

SIR HUGH: Yes, well, watching the republic in progress, that's a fair comment.

MR FREE: Yes, it's dreadful but you can see that we're getting a little bit – the corruption that comes in, in terms of people supporting with money, is sort of creeping into New Zealand. I hadn't realised that we could have anonymous donations in New Zealand, it's amazing. I don't suppose that's your fault.

SIR HUGH: Well, it is our problem in terms of the anonymous donation regime for general elections, but it's a rather more formalised and transparent – not transparent but now in a more formalised process than the Labour election.

PROFESSOR ROBERTS: Just one question. One of the problems with only 20 list seats is illustrated by the table you've handed out today that immediately an effect you have a National party overhang, because you, as you say, the National's goal seats are 57, the rounding, 57.19, the rounding is 57 but 41 out of 70 seats is the equivalent of 59 seats. If they had 59 seats, you've got an overhang. Now, you've taken away the overhang but then, of course, the consequence is that the Greens, which won 14 in the real life, would only have 11 seats and they're quite seriously under-represented, 9.2% as against the 11.1 they received of the votes.

MR FREE: Well, I take your point and all I argue is at the moment we require a party to get 5% of the votes before they can even have anybody in Parliament and I don't see why we can't work in that uncertainty, if you will, and relax the limit that's required, and I'm not saying that we should never have an overhang.

DR ARSENEAU: It was really interesting seeing the results for the 2011. Normally, we sort of expect, in order for the overall system to be quite strictly proportional, you would need roughly 35% of the seats in the house to be compensatory seats, so list seats so at 100 to 20, it's quite a difference. So, up to what level of disproportionality would you find acceptable?

MR FREE: Well, I've looked at all of the elections and I didn't bring the results of all the elections for history that we have, because I haven't had a chance to do enough work and I, in part, I wanted to come here and find out whether there is any interest in this kind of departure. I know we're not allowed to do what a lot of people want to do is go back to 100 seat Parliament on the top, but that's been –

SIR HUGH: Well, we're not allowed to.

MR FREE: That's right, that's what I mean.

DR ARSENEAU: So what did you find, just roughly, in the other elections?

MR FREE: Well, they generally, they generally meant that we were confronted with discrepancies of up to about 4%. That is without using any overhang. In a way, I suppose, at the moment I'm not sure that there's an upper limit to the size of Parliament we can have, is that right? I mean, if you can think of a fanciful case?

1215

SIR HUGH: There is no section in an Act which says we will have 120 members of Parliament.

MR PEDEN: I mean, there's a practical limit in that –

SIR HUGH: Yes.

MR PEDEN: The extreme of the, you know, the hang would be, what, 190 is it?

PROFESSOR ROBERTS: Seventy, yes, 120 plus 70.

MR PEDEN: Yes.

MR FREE: Well, I think we should guard against that.

MR PEDEN: That would be a very unusual result. I think the voters will look after that for us.

MR FREE: I'm very keen on the idea of having more electorates. I think one can argue for a smaller Parliament, but I'm used to a system, when I lived in the United States, where a lot more, there was a lot more political representation than there is in New Zealand and the smaller the electorate, the more chance that there is some kind of relationship between the voters on a personal basis. You can find out who's a crook and not a crook in your electorate and the list MPs, particularly in New Zealand where the parties are so attenuated. I've attended a few selection meetings in New Zealand and it's just stunning who's making the decision and my friends who don't even belong to a party will talk for hours about how bad things are in New Zealand, and I say, "Why don't you join a party?" and they won't join a party and I don't understand it. It's not that the parties require you to go to meetings very often. I can't even find out how many members there are the parties. It's probably public knowledge.

MR PEDEN: No, it's not.

MR FREE: You know though?

MR PEDEN: No, I don't. No, we don't.

SIR HUGH: Well, we, with the funding allocation we were given approximate numbers but it was always emphasised that they should be confidential.

MR FREE: Is that right? I didn't come here to be shot, but I just was surprised. I tried to find out what, what – does the party not have to declare how many members they have every year?

SIR HUGH: They have to have a minimum of 500 members to maintain registration.

MR FREE: Yes, well, that I knew, that I knew and that's it. That's it.

SIR HUGH: Just one point of clarification I should have asked you before, Mr Free, in the table you handed up, why have you included the Conservatives, who aren't in Parliament, but not the other parties who were in contention?

MR FREE: I included them because, because – well, that's a good point because when I did it, I was thinking of a threshold which was lower than the present, okay?

SIR HUGH: I thought you might have been. What was the threshold you had in mind?

MR FREE: Well, I don't, as I look at it I don't know that I had one in mind, 2.5%.

SIR HUGH: All right, thank you for that explanation. Thank you for your contribution, both you and Ms Free.

MR FREE: Now, is there an opportunity for any further communication on these matters?

SIR HUGH: Yes, we will issuing a proposal paper once we've got to the point where we have some tentative ideas, probably in July, may be late-ish July and there will then be a further opportunity for everybody to make submissions probably only in writing. Our timetable's so compressed we really won't have a chance for oral submissions, but everyone who, both those who have and haven't made submissions, are welcome to comment on the proposal paper and we've already had a number of people say they want to do that.

MR FREE: I appreciate your work and I've noticed that you're getting a huge number of submissions, so there's plenty of reading for you.

SIR HUGH: Great isn't it, yes.

HEARING ADJOURNS

12.20 PM

HEARING RESUMES

AUDIO MISSING UNTIL 13:39:02

PETER AIMER: ...to do deals. It's almost stepping into a new criterion for establishing proportionality, a less systematic one. So on that ground and the ground that it's, I think, it's really just prone to over political use it should go. I know also that Sir John Wallace thinks that, too, and I think he's published that point at some, in some place in the law paper.

SIR HUGH: He still holds that theory. He told me that as recently as yesterday.

MR AIMER: Oh good. On the by-elections, I can't see any problem with having list candidates contesting by-elections. They – my argument is they got through the same select – I assume they go through the same selection process as other candidates would and if they have an advantage I think it's in terms of qualities that we probably would like to see in, rewarded in Parliament, these qualities of effectiveness in Parliament and general confidence and articulateness so I had no problem with that. I couldn't understand the fact why there would be a problem with allowing list MPs to contest by-elections.

The only slight reservation I have is that it does imply that the electorate MPs of slightly higher status from the list MP. Otherwise, why would you do it? Unless you felt that your relationship with the party hierarchy was being eroded in some way and that your place on the list might be in jeopardy and you might have a better chance winning the candidacy for contesting a reasonably safe seat. But all that's pretty far-fetched and speculative, so it came back to stick with the, what we have.

Your candidacy, I think probably of all the issues that the Electoral Commission have raised in series of questions, I think this is the one that might generate more passion, popular passion, than any other.

SIR HUGH: It's certainly one of the leading contenders.

MR AIMER: It's particularly that element to it which allows defeated MPs to go back in on the list. I think objecting to that is very misguided but nonetheless I think it's sincerely held by a lot of people so that has to be addressed.

I am a very strong advocate of dual candidacy because I think not only does it allow parties to do certain things which they've done well on the – by using their lists effectively, I think also the core issue is what is it that gets a person back into Parliament and at electorate level it's primarily the same thing as gets you in on the list. That is your, the status of your party in the public eye and to me the, much of the – I'm guessing but I guess that much of the objection to dual candidacy comes from those who subscribe very strongly to, or did subscribe, probably still do secretly, to First Past The Post principles, that is the direct election of candidates and anything that's not a direct election of a person somehow smacks of illegitimacy.

I've suggested there are several flaws in that view, one in particular being the role that MPs immediately start to play when they get into Parliament and an electorate MP will be elected by a particular geographical constituency but as soon as he or she is in Parliament, they start doing the business of the country as a whole and so I think I put it in the submission, what right do people in one electorate have to say this person is not competent to be an MP when what they're going to be doing is something that all electors really have something at stake here.

Also because of the role that party labels play in getting an electorate candidate re-elected, I don't see that you can put the sins of the party entirely onto the candidate whom – or herself and so the – you get the idea that a defeated MP is no longer competent to be an MP at all. It seems far too parochial, far too harsh when that MP may be the victim of a pendulum swing against the party as a whole.

So I'll be disappointed to see dual candidacy go. I doubt that the politicians will want to see it go but I think if it stays it will be one of the ones that will cause a flurry of writing to the editor in a number of newspapers, some fairly indignant comments.

1345

The other thing about dual candidacy, of course, is that it does allow party to put a senior member into an unelectable situation, in a constituency. I'm thinking of – I shouldn't have tried to think of it because the name's popped straight out of my mind, our trade minister who does all the –

MR PEDEN: Oh, Tim Grosser.

MR AIMER: Yeah, thank you. Tim Grosser who was put up against David Cunliffe, I think, in Auckland. Well Cunliffe has a safe seat but I imagine a Cunliffe/Grosser interchange was fairly illuminating for the electors of that electorate.

So I think you can approach it as it were, defending dual candidacy for what it can do, things which I think contribute to the equality of the democratic process, and you can approach it also, I think, from a negative point of view and just deny the, some of the criticisms that seem to be often addressed at that issue, criticisms which seem to apply, if you can't get elected, you're not competent to be an MP and I think that's just wrong.

Closed party lists, please. Again, it's, I think, the open list option will be popular but the problems with that is I don't know how you could implement it under the MMP format that we have now with nationwide lists. In fact, I don't think you could, realistically, have a selection of MPs from a very long list so we'd need to regionalise the lists somewhat and that, that would probably be a feasible way of approaching it but my main problem with it is simply that it won't make much difference, in my view, to the personnel of Parliament.

I did, I wasn't totally confident of that judgement so I got in touch with an academic in Finland where – Finland of course has open, an open list where the voting is for your preferred candidate and it carries the, as I'm sure you know, carries the weight of a party vote as well as a candidate vote and he was quite, quite blunt about it, I can read his words if I can find them. He agreed that it wouldn't change the personnel very much of the house and he said, "What you may get is on the positive side, a stronger sense of real influence among the voters and better candidate recognition." Well I think we'd have to concede that and I think most people want that, that personal sense of having a, an influence on the outcome. It's a fairly diffuse positive but at least it's positive. And on the negative side, he said, "There's a need for candidates to become celebrities rather than the other way around." I've always argued that open lists would invite celebrities to stand for Parliament but he says no, candidates have got to become celebrities to be sure that they will get elected. I think I take his point.

He also, as a negative, says, "You get individual or decentralised campaign finance." That probably could be controlled to some extent through financial restrictions but also you'd get wider problems of control within the party so you're probably going to have a less cohesive party. Now, many people may, may applaud that and see that as an advantage but, but my view is that from what you would get out of open lists, if anything, it's just worth the trouble of trying to amend the MMP or make open lists compatible with MMP at all – I mean regionalising lists may be one thing but you've still got the problem of electorate candidates probably still on the lists as well. So I just find it very confusing to get my head around how it would work without more or less reconstructing MMP if not abandoning MMP. So yeah I've said please stick with the closed lists.

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The over hang, no change I don't think. I find overhangs hard to think through. They didn't, they don't seem to have mattered very much in the last, since 1996 and I do think, also, that if we get rid of the one seat, the one

electorate threshold it will slightly – detract slightly from the possibility of single member, party members becoming an overhang.

I think, basically, I copped out of that one. I just found it a little bit technical and hard to think through what all of the implications were for the different scenarios.

The population and proportionality issue, I think, is quite a serious one. Without proportionality, of course, without the guarantee of proportionality, we don't have MMP and I do think that the referendum was a voice in support of MMP, i.e. the proportional element of MMP.

What mechanism could we use, though, to guarantee in the long-term how this proportionality – I'm afraid I don't – there are several possibilities but I don't know which one would be the most desirable one and I think none of them would be politically very popular, like increasing the house of – the size of the house. But I do think that some point a mechanism needs to be discovered and I haven't been very helpful in suggesting what that mechanism is though I have suggested that it should be implemented before we get to that 77:43 ratio which is what the Electoral Commission's webpage warned us would be reached by mid-century. Won't bother me.

But the other thing about the present system that bothers me a little bit is the constant erosion of the list seats is that it then implies that those seats are dispensable and that the electorate seats have a greater status and so when we have more electorates you take from the list and give to the electorates and that's – I don't think that's a very good signal to be given, given that the original formulation of MMP, I think, implied that the list and the electorate seats were more or less of equal status and I would quite like to see that equality of status emerging rather than disappearing and all that experience of MMP so far I think it's true to say that the list members have struggled to maintain the degree of acceptability of electorate MPs.

So on that section I'm really quite deeply worried about the long-term effect of this erosion of the list, vis-à-vis, the electorates and the greater loss of proportionality, though I haven't been helpful in suggesting the, a mechanism.

On the other issues I thought I'd give a pitch for preferential voting of the electorates because it does puzzle me somewhat that those who say, oh, this defeated MP shouldn't be in Parliament on the list yet they accept MPs being elected by a minority of voters, ie, they've been defeated in a sense in their electorate. It just seems to be a rather perverse view so – and I don't think preferential voting would be contrary to the spirit of MMP. That's well within the boundaries of possible changes and that was it.

I must say, I enjoyed the Electoral Commission's webpage greatly and the problem was, it became almost an addictive – as I began to spend far too much time reading others instead of doing my own thinking.

SIR HUGH: We don't want to contribute to addiction.

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MR PEDEN: Thank you, Dr Aimer, on the proportionality question, the ratio of electorate seats to list seats you've indicated that you don't have any strong views on what the solution might be, but you're clearly concerned about the shift towards more electorates, fewer lists. Do you, would your ideal be to go back to a situation where there was 60 electorates and 60 list seats?

MR AIMER: Yes, that probably would be, I hadn't thought of that but I think, I think I would be very happy with that because it does, gives that sort of equality of status message among other things, but you can't do that, can you, under our present system which has got this dynamic built into it?

MR PEDEN: Mhm, without changing exactly the formula for determining the seats.

MR AIMER: Yes, yes.

MR PEDEN: There's always going to be a gradual increase in the number of electorate seats.

MR AIMER: There's a 60/60 balance I think is good, but proportionality is still, well, as you know, proportionality is still safeguarded under other ratios and it's the proportionality of it that I'm, it's my bottom line, as they say.

MR PEDEN: With your preference for preferential voting in the candidate side of the ballot paper, I s'pose one of the concerns I would have is that an administrator would be the idea of, in terms of and voter education is the idea of voters having to mark a paper in one way on one side and another way on the other side, have you got a view about whether preferential voting would be sensible in the party vote side as well?

MR AIMER: That I've always thought would take us towards STV. Not really. I'm visualising the MMP voting paper as it is?

MR PEDEN: As it is, yes and I s'pose that's what I was visualising also and so on the candidate side, in terms of the number of preferences, were you, I can't recall you recommending just a limited number of preferences or being able to ...

MR AIMER: I just thought of the Australian system and though, well, why not.

MR PEDEN: Yes, because I s'pose in principle they'd be no reason why you couldn't apply the same approach to the party vote side and just – so the ballot paper would be exactly the same but instead of marking it with a tick, you'd go from one to however many.

MR AIMER: I think a preferential vote for parties as parties, that's a bit novel, it's not STV. It would be a temptation I think to go there (inaudible 13:58:28) and just have a party box, tick so that parties were quite sure that if you were voting Labour one, you'd put Green two, or something like that or the other

way around, or if you're doing National one, you put ACT two or other way round.

MR PEDEN: That would start to get complicated, wouldn't it?

MR AIMER: The parties would really want to I think get involved in that piece of guidance much more than they probably would at candidate level but, sorry, I don't think of it as an administrator.

MS HURIA: I enjoyed your submission, thank you, very interesting. With regard to the question about MPs being candidates in by-elections, I'm interested in your view. We've heard from some that there's an unfair advantage from people that currently list MPs in terms of funding, standing and that perhaps they're well known, they've got party resources, standing as opposed to others that there's some preference –

MR AIMER: I'm sure there is. If they've got on the list, have got into Parliament on the list, they have been sort of shoulder-tapped by their parties promising potential MPs, so I guess they do carry with them that kind of advantage, but I don't, I can accept that personally because I just think that is, in aggregate, that's going to increase the competence perhaps of the Parliament as a whole. I suppose there haven't been many cases that I – the one case that I can think of is in Auckland anyway and my vision these days seems to stop at the Bombay Hills. I'm trying to rile Nigel a bit but with.....oh no, no, he didn't get it.

1400

MR PEDEN: There's certainly the Mt Albert by-election, there were a number of list – the Mt Albert by-election in 2009 there were a number of, including MPs, list MPs sorry, who contested. I don't think there's ever been a case of a list MP actually being successful in a by-election.

SIR HUGH: No, no.

MR AIMER: It got political didn't it? I really don't, I don't – yes, if there's some unfair advantage I think it's a legitimate, can you have a legitimate unfair advantage? That doesn't sound very consistent but –

MS HURIA: There's the balance, really, of the trade off of having, you think, more competent representation?

MR AIMER: Yes I think so, yes.

SIR HUGH: I agree with you that there seems to be illogicality in a lot of the opposition to deal with candidacy, a lot of which is the voted out on Saturday, back on the list on Monday.

MR AIMER: Yes.

SIR HUGH: But there doesn't, as I read the submissions, seem to be the same objection to somebody standing for the first time as dual candidate so that they're not an existing MP and people don't seem to have the same problem about them standing for the first time for an electorate and on the list and similarly, as Mr Peters says, there is an illogicality, say, with the Mt Albert by-election where there were four list MPs standing. I mean three of them had to lose, didn't they, and they were always going to go back into Parliament. That was a by-election. I confess to having some difficulty understanding a number of the criticisms but we'll all have to think about that. Mr Roberts?

PROFESSOR ROBERTS: I just wanted to follow up something that's been introduced and the evidence from the Finnish academic. In your submission you said, "Confronted with candidates stripped of their party labels." I'd say in some ways that's an extreme position and Finland, of course, is one of the most open of open lists. You can have ordered list, a la, say Sweden, that are – you are still giving the parties the opportunity to rank but you're giving voters some influence and what you say, I would expect the same tendency for voters to prefer to trust and follow their party's accused. I think I likely agree

with you but don't you think that combined with the Finnish argument a stronger sense of perceived influence would lend legitimacy to the idea of list MPs?

MR AIMER: Ah, yes. I think it would. Oh yes. I do concede that on the positive side, the stronger sense of real influence, I think we would feel that but whether we would behave in a way that's all that much different, I have great doubts. What I did get from this Finnish person who's – I can give you the references if anyone wants them.

SIR HUGH: If you just hand it to staff at the end of your submissions?

MR PEDEN: That would be very helpful.

MR AIMER: Yes, okay. Is the – I was quite surprised at how many countries had some form of list preference, including Denmark which I didn't know.

SIR HUGH: Denmark does now.

MR AIMER: I'm sure you did.

DR ARSENEAU: I was intrigued by your notion of ongoing reviews of MMP every 10 years and I just wondered, I know we're out of time but if you just have any sort of elaboration on what that might look like and what it might cover?

MR AIMER: Well I think the procedure that's been followed this time has been admirable, very open, very accessible. Whether it would have as much sort of bite to it as, if it's just a routine review because there were, after the referendum, certain issues I think were going to be confronted. I don't know but it – how often should it be? Well I think – I'm sure I didn't think of this myself Therese, I think I pinched it from someone else.

DR ARSENEAU: Plagiarised, did you?

MR AIMER: That was one of my objectives, and I think that person may have mentioned after every three elections, every nine years or every tenth year, it certainly would be better to have something like that than to have what we have had really since 1996, this feeling that another referendum was due, when it wasn't, and you had this sort of build up of pressure to get at it in some way and, of course, I think caused us to have a referendum which I don't think we needed or should have had, but however that's a private opinion which I perhaps shouldn't have aired in public. So a mechanism for periodic reviews might take some of the pressure out of, out of the system. And I suppose all electoral systems need reviewing at times, I'm sure that if I look back in comparative politics, you would find electoral systems being revised and changed over the years.

SIR HUGH: Thank you Dr Aimer, thank you for your help. I think Dr Aimer has got some material he'd like to copy and distribute, if you wouldn't mind.

SIR HUGH WELCOMES KENNETH LEES

KENNETH LEES: I've studied electoral systems since 1987, so I'm wondering how much time I've got to make my presentation.

SIR HUGH: Well, the fortunate bit is you can rest assured that everything you've written has been read.

MR LEES: Oh, that's fine, well that's –

SIR HUGH: We've tried to schedule people at about quarter hour intervals, so you need to perhaps be fairly concise, a more historical preview.

MR LEES: Right, thank you. Well, if I go through it in a sort of summary situation, really. Just summarise the first question. As to the question of thresholds, the threshold question is fundamental to the viability of MMP, because if it's too low or too high, it swings from one extreme to the other, so that is really the fundamental whole business, as I see it, of MMP.

I've explained that I really see Government as a question of political, sensible political parties, which you can identify rather than having a sort of fragmentation. I mean, at every election there's 20 candidates standing – or 20 parties standing, well, you know, you've got to have some sort of obvious fundamental threshold to accommodate a situation where you can have too many conflicting views and basically, a lot of those views are just single issue issues. So that is, as I say, the fundamental question.

Many submissions are for lowering it, for the admirable reason of reducing wasted votes, which saw 153,000 wasted in the 2008 election. I noticed that the Green campaign prior to the election was MMP, ah, avoids wasted votes. Well of course it doesn't avoid wasted votes, and that, if you're going to have a threshold, well you're going to be obviously faced with a situation of wasted votes.

A better alternative is the alternative preference vote, which provides the opportunity to eliminate wasted votes, all wasted votes, which would return support for minor parties. Now human nature being what it is, people obviously – if they think they're going to waste the vote, they're not, they're going to be coerced into voting for one of the main parties and over the six elections, I don't think any of them has truly represented the democratic will of the people because of the fear of wasted votes.

Now, as to Mr Peden's point about how, how you would fill the form in, well it's quite simple. You've got the two columns. All you do is put one and two, you put your first preference for your party vote and your second preference for your party vote, your first preference for your electorate vote, your second preference for electorate vote. At the last election, I voted for the Conservative Party because I believe that they offered the truest form of democracy in the sense that they were prepared to make referendums binding. None of the other parties promised that as far as I can remember. So that was my first consideration, because if you're going to have a situation where, like this Commission here, you make proposals and then the government just turns its back on your proposals, well you've defeated the whole purpose of democracy. So I voted, as I say, for the Conservative Party, basically because they were prepared to make referendums binding.

Now, where'd I go, wait a minute. The choice, going on from there, the Commission really has to make a choice which must be either/or, you can't do both, you can't mess about with the thresholds and go for a one/two preference vote because what that will do is open the door for a host of parties, small parties. You've got to decide whether you want a fixed threshold or you're going to decide where you're prepared to have what I call an alternative preference vote. I call it alternative to make it more – clarify it from preference voting which tends to copy, everyone believe it's the Australian system where you vote for every single party in order of preference. Well I, if you name it the alternative preference vote, as distinct from the Single Transferable Vote which many people confuse – a

Single Transferable Vote is the Irish system where you have four or five candidates all elected in one constituency and there's a great amount of confusion about this. The Lord Mayor of Wellington believes that she was elected by STV but she was elected as mayor by preferential voting. So if you're going to go for that, you must call it the alternative preference vote so everybody's absolutely clear that they've got a first choice and a second choice.

And I think that one covers that but I'll go on from there to say if you did go for the second one, because every vote, I will stress this point, every vote counts. If you vote sensibly, for your second vote put to one of the main parties, either Labour or National, you can't be, your vote isn't wasted. If you go for some extreme party, as your first choice and back it up with your vote for either of the main parties, you haven't wasted any votes. So provided people vote sensibly and emphasise the point, there's no votes wasted.

Now, the business of minor parties, I'll just go on from here, because of this threat or coercion of wasted votes, it's interesting to run through the minor parties' support. In 1996 it was 37.97%, '99 31.43%, in '02 37.81%, '05 19.8%, '08 21.08% and in the last election, 25.21%. Now that shows to me that people, I don't think they're discouraged with, ah, minor parties. I think they honestly believe they're just wasting the vote, the threat of the, not passing the threshold.

So I say my system of an alternative preference vote would, would get over that and I also believe that support for the minor parties would increase by about 50% from the 25% back to 37 to 40%. IN the last election under First Past The Post, 30, I think it was 32% or somewhere around there voted for minor parties and all, practically all the votes were wasted so it, there is a core strength for third parties, it's there, but I'm saying that it's waste – people are put off by wasted votes. I mean, all right, you've got people like MPs that destroy essence of preferential voting and alternate small parties but if you stick to that, I think, you know that's the way I think would be the better alternative. So you've got all that so I won't go too thoroughly through that.

1415

The key question, “Should list MPs continue to stand as candidates?” Well, as I say I’ve got –

SIR HUGH: You’ve really opted for the status quo on that, Mr Lees.

MR LEES: Yes.

SIR HUGH: Can I invite you to move onto the overhang question?

MR LEES: Yes, this is an interesting one isn't it? Well I've explained at length why, if you're going to have a proportional system, you cannot make exceptions and I think the exception that I've made or the changes I've made would fairly still represent the Māori party. All they would have, as I've said, is a Māori representative who didn't – wasn't part of the Māori party but he actually was probably, in this case, a Labour Māori representative so you know, you're splitting hairs when you, you sort of – in one breath you want proportional representation and the next you make exceptions to allow more Māoris to come in. Now I've got a very interesting paper here that I would like Mrs Vaughan to distribute to the panel please.

We've got the classic case of the – there's three copies there – of the common sense party's submission, the United Future, in one breath back in the – as published in the New Zealand Herald they were crying foul because it was possible for the Māoris to win all seven seats on the strength of 2% of the vote. Now in his last submission, he's completely contradicted that one, that argument so I wouldn't really pay much attention to the whole submission, quite frankly, if that's the measure of his thinking on the subject of electoral reform. How you can go from one extreme to the other is – quite befuddles me. So I'll leave that with you.

SIR HUGH: And then you were moving onto the proportionality question.

MR LEES: Yes, now at that re-election one of the main parties, either Labour or National, they get more – less votes per seat, per – less votes per seat than the other, right? So if you used the lowest denominator in the case as my example at the last election National average – sorry, average seat per seat was only 25,000 whereas Labour's was nearly 28,000. If you use that as the base to decide your proportionality, you can then magnify all the other results that needed more votes per seat so that you get true, accurate proportionality. From that base, you can then adjust it to whatever level of representation in Parliament you want. You know, you just multiply it by a factor and it's there all right in front of you.

So to my mind, rather, as I've said I think the original proposal for the ratios was a best guess what people thought would be right. But this way you can establish your base, based on the number of electorate MPs and starting from there, you can magnify it with list seats.

I went a meeting prior to the election in Whangarei and the audience didn't know what list seats were for. They couldn't understand it and I had to explain to them that list seats is the mechanism that makes proportion – MMP work. That's what you need. You've got to have a list system to make it work. It wouldn't work – you can't make it work otherwise. So once they understood that, they accepted list seats. Now I'll come onto – I won't go on about that anymore because I think I've covered it.

Oh, yes. I'll go –

SIR HUGH: Well, you've finished this with some additional submissions...

1420

MR LEES: Yes, submitted on the 27th of March.

SIR HUGH: Yes.

MR LEES: Now, what I've set out there is what you – what the benefits of list seats. The first one is topping up electorate seats with list seats is how MMP achieves broad proportionality. The second benefit, they better ensure retention of the most able MPs when the electorate turns against the party, which is, you know, this happens. Proven, mature candidates can more surely become MPs. They free the more demanding ministerial position from the extra burden of electorate responsibilities, and the fifth one, which I should have put down, it takes away the parochial aspect of electorate MPs. If you've got a whole House of electorate MPs, they're all fighting their corner to get elected in their own electorate. If you've got a strong body of list MPs, they've got no parochial base, they can tackle any policy on the pragmatic aspect of its suitability. So I should have put that down as number 5. Going on from there –

SIR HUGH: If you can read from it, Mr Lees, we'll obtain a copy afterwards.

MR LEES: No, I've got copies for you. Going back to this business of the removing the guesswork out of establishing the number of list MPs required to achieve proportionality, I went back over the last six elections and worked out what the result would have been on the system that I'm advocating here for working out how many list seats there should be and the proportion – you see, the point with this system is it's completely flexible. All the submissions keep quoting 60/60, 70/50, 80/40, 90/30, well, you can't fix the proportion of one to the other. You've got to – you can, if you've got a system where you can magnify them or reduce them to suit what you think is desirable, then you've got a far more flexible, manageable system.

Now, there, as I say, I've gone through it for each election. I'll go over the first one, which is quite interesting. At the time of the initial MMP, I was in the UK at the time, that the argument was you need 120 MPs to make MMP work. You needed 120. Well, under this system, you actually only need – in 1999, you only needed 99. The rest was a topple, so it really defeats the argument that you need that number, apart from the reasons I've already stated. The desirability of these factors of the benefits of list MPs. I'm not against list

MPs, but I think they should be more methodically worked out rather than sort of having a guess at whatever the proportion should be. There, the results are there. You can see it. I've highlighted in yellow 99 for '99. That's the minimum that was required. 2002, the minimum was 104.

SIR HUGH: We can read those, thank you, Mr Lees. You've explained that using your method.

MR LEES: All right. So I'll go over the page to page 6. Now, I've projected these forward based on 80 electorates, 85 electorates, 90 electorates, 100 electorates. And I firmly believe that a maximum of 50 list MPs would satisfy the preconditions I've already explained and a desirable number, because the general public, I think they prefer electorate MPs. I think they like to get somebody they can get their teeth into, rather than some person in Wellington. So, you know, I think you can safely increase, as I see it, the number of electorate MPs to 100 before you even need to worry too much about whether it's proportional or not, because I think I've shown here, what you've got to remember is that although the numbers of MPs might go up, the Greens and New Zealand First are hardly likely to still win an electorate seat so they're, you know, the mechanics don't really change no matter how you magnify it because you're not, you can't win an electorate seat under virtually system, in any proportion.

1425

SIR HUGH: Thank you, well we'll ask you some questions now. Mr Peden?

MR PEDEN: Thank you Mr Lees, I don't have any questions.

SIR HUGH: You're away almost free, Mr Lees, I have none as well. Professor Roberts? Dr Arseneau? Thank you Mr Lees, you've obviously gone into a considerable amount of effort to inform us about your views and we'll certainly take them on board. Thank you again for coming to see us.

SIR HUGH WELCOMES ROGER ASHLEY-WILSON

ROGER ASHLEY-WILSON: The first thing I wanted to just cover was the question of overhang, and my response to that was that no more seats should be allowed under the share of the party vote.

SIR HUGH: Do you mean there should be no overhang in the sense of the numbers of MPs –

MR ASHLEY-WILSON: No.

SIR HUGH: – increasing beyond 120?

MR ASHLEY-WILSON: That's right, yep. The question of the order of candidates on the party list, who should decide the order. My response to that was that that should be held by political parties only.

SIR HUGH: And by that do you mean –

MR ASHLEY-WILSON: They're in the best position.

SIR HUGH: – the committee would, or the members?

MR ASHLEY-WILSON: This is the party choosing the candidates and the party should make that choice. The question of should a person be able to stand as a candidate both for an electorate seat and on a party list, I strongly disagree with that. Um, candidate, in my opinion, should be standing for one or the other, it's otherwise confusing for the voters.

SIR HUGH: What would you do in a by-election that was caused by a death?

MR ASHLEY-WILSON: A by-election, if it was a by-election then, um, the party would obviously nominate a candidate.

SIR HUGH: And on the thresholds, we've got a photocopy of your submission, it looks as though you might have had a change of heart, at one stage. You were going to propose a 20% threshold, and then reverted to 10%. Can you explain that?

MR ASHLEY-WILSON: On the question of what, threshold?

SIR HUGH: Yes.

MR ASHLEY-WILSON: Um...

SIR HUGH: For instance, "The 5% threshold, it shouldn't be kept. It should be at least," and it looks as though you originally were going to write 20%, and you replaced it with 10?

1430

MR ASHLEY-WILSON: Yes, no, I've changed my mind. It is – 10% is my answer to that, yes. And that's really about it I guess.

SIR HUGH: Mr Peden, do you have some questions?

MR PEDEN: Well, I suppose it's really just wishing to understand more why you thought 10% and also why you thought that the one seat threshold should be changed to a threshold electorate.

MR ASHLEY-WILSON: Sorry, the second question was?

MR PEDEN: Just that the one seat threshold, you're proposing that become a three seat threshold and I'm just wanting to fully understand why you're recommending those changes.

MR ASHLEY-WILSON: Well, I think it's a fairer system. Less confusing for the voters and the results, I think, would be better in Parliamentary terms.

MR PEDEN: In terms of the confusion you see caused by parties being able to have candidates contest both the electorate and be on the list at the same time, what do you think voters find confusing about that?

MR ASHLEY-WILSON: Well, I don't agree that they should be in a position to hold a party seat and then contest an election. They've already been appointed and I think a definite loser if an election comes up, it should be another candidate who stands for the party on that seat. My impression is that it's confusing for the voters.

MR PEDEN: Hmm, because of course at a general election you have two votes, one for your electorate candidate and one for your party list.

MR ASHLEY-WILSON: Yes.

MR PEDEN: And voters may not – the party list is distributed to voters for them to study if they wish.

MR ASHLEY-WILSON: This may change, of course, if there is a 10% threshold instead of the current threshold.

MR PEDEN: How do you think that would help?

MR ASHLEY-WILSON: Well, I think it would be less confusing because it would be less number of candidates applying. Maybe there would be less parties, in fact, available.

SIR HUGH: Is it not likely that if we adopted a 10% threshold we would finish off with fewer parties in Parliament?

MR ASHLEY-WILSON: Correct.

SIR HUGH: How would you see questions of gender and ethnic diversity being taken into account in that eventuality?

MR ASHLEY-WILSON: Well, I see that as not being a problem at all. They vote in the same way that everyone else does.

SIR HUGH: Dr Arsenau?

DR ARSENEAU: Can I just ask a point of clarification? So if you, if the one electorate seat was removed, you would advocate only three possible extra list seats would come, is that correct?

MR ASHLEY-WILSON: Sorry, could you repeat that question?

DR ARSENEAU: So in your section when you talk about one electorate seat should be kept but only – you can only get three extra – you can only get three lists seats, is that right? If it was under the – if the party was under the threshold?

MR ASHLEY-WILSON: Yes, that's right.

DR ARSENEAU: And so that's – even if the threshold was at 10% you would still say a party under that threshold should at most get three extra list seats if they cross the one electorate seat threshold?

MR ASHLEY-WILSON: Correct.

DR ARSENEAU: Okay, thank you.

SIR HUGH: Dr Roberts?

DR ROBERTS: No, no thank you.

SIR HUGH: Thank you, Mr Ashley-Wilson, thanks for your help, for coming along.

1435

SIR HUGH WELCOMES DENIS BRIDLE

DENIS BRIDLE: No, no, that's right.

SIR HUGH: You address us on your main points and we ask you some questions.

MR BRIDLE: Yes, I'm sure you will.

SIR HUGH: Well, we may not. We haven't asked everybody questions.

MR BRIDLE: Okay. This is on the premise that the voter takes all control of the election. It's also on the premise that we keep exactly the same structure that we've got at present. We're going to mathematically do it differently as far as the allocation, particularly if list seats are concerned.

On page 1 of my presentation, I list very clearly the present system contrasted with the proposal that I've made. I'm wondering if there are any questions from that area.

MR PEDEN: Well, I suppose at this point, Mr Bridle, my question would be that your proposal looks like a form of supplementary member in that the allocation of list seats applies just to the list seats, so the party vote doesn't determine the overall share –

MR BRIDLE: Yes, exactly, that's exactly the point that I make.

MR PEDEN: Right. The – as far as the review of MMP is concerned, though, I think what New Zealanders voted for in November was the retention of a mixed member Parliamentary system and what you're promoting is something that wasn't adopted at the referendum, which is a supplementary member system.

MR BRIDLE: I guess the analysis I would make on that is if you have 120 seats in your Parliament and 70 of them are electorate seats and 50 of them are party list seats, and you offer two ballots to the voter in the booth, he votes or she votes for the electorate seat first, and those seats are taken. They are occupied. They are part – they are not longer part of the 120 seats, and my premise is this, that you take those 90 seats out, and the calculation is done on the 50 seats for the party list distribution by reducing the threshold to 2%.

MR PEDEN: I just wanted to be sure that that's what you –

MR BRIDLE: That's fine.

MR PEDEN: So what you're promoting is something which really goes from a predominantly proportional system, mixed member proportional, to a system which is a supplementary system. It's not – its basis is not proportionality.

MR BRIDLE: But proportionality comes out of the 2% on the 50 seats available. For example, if you turn to page 6 of my submission, you'll find that the Conservative Party gains two seats under the system. Under the system we have at present, there – it gains none.

The other issue regarding – if we're talking threshold is that we have a 5% threshold because we're operating mathematically on the 120 seats. If the – take New Zealand First for example. Without a member in Parliament by election they are solely dependent on the party list. If they get more than 5% they are generously treated over the 120 seats. If they get 4.9.9% they're no longer in Parliament. Now, what the 2% does it, in fact, increase the proportionality by having more people available. It also increases the fact that there'll be continuity amongst the minor parties if they fall below 5%.

MR PEDEN: I suppose somebody might counter that – the Green Party, which got 11% of the votes, is not getting 11% of the seats, are they?

MR BRIDLE: They're getting 11 – they're not getting 11%. There's 50 seats available, hence the 2%. You follow that?

MR PEDEN: Sure.

MR BRIDLE: Okay, right. So if you've got 11 seats there, looking at the Green Party there, their entitlements on page 6 in the right-hand column, and I thank the Electoral Commission for this graph which I got off the website, what I've done is applied my philosophy or proposal to it. So we get 5.53 seats. You'll see, if you look at the total seats on page 6, they actually end up with 6 under this system.

1440

MR PEDEN: Thank you, I'm clear about what you have in mind, thank you.

MS HURIA: I note Mr Bridle that you talk about the party lists being decided by the voters?

MR BRIDLE: Yes.

MS HURIA: And I was just interested in your view as to whether or not that voters are in a position to make a judgement on a long list of candidates?

MR BRIDLE: Well I give an example of three electorates, I give an example of Auckland Central, where you've got Nikki Kaye and Jacinda Ahern. I give an example of Waitakere, where Paula Bennett and I'm afraid I don't know who the other Labour candidate was.

SIR HUGH: Sepuloni.

MR BRIDLE: Thank you. And I give an example of Christchurch Central. In all cases, National won the seats by the narrowest of margins. In fact I think there was a judicial review in Waitakere. Okay, now in this case, the three – in the case of Jacinda Ahern, she was high enough on the party list for Labour

to go in as a Labour candidate, as a Labour list candidate under the present election. Under my system, sorry, under my proposal, thank you, that system is that all three of those candidates, being the Waitakere Labour, Jacinda Aherne for Auckland Central, and for the Labour candidate in Christchurch who also only was narrowly defeated, would automatically be the top ranking party on their party list. They would be one, two, and three, on the basis of the outcome of that election. It was so, it was a hair breadth to make a decision as to which way it was going to go, and with re-counts and judicial re-counts and that sort of thing, those people under this system, it simplifies that they are automatically in on the list. They either gain the electorate or they gain the list, if they get that high a majority.

SIR HUGH: That's really the "best loser" system some people have spoken about?

MR BRIDLE: That's a very interesting question you should raise that, if a person is beaten by 10 votes in an election, I'd hardly call them a loser. I would say that they've done very well and if somebody got out of bed, it might have altered the voting, the outcome. I don't see these people as losers, I see them as having a mandate from their electorate, a very significant mandate. If there's 20,000 voters and both score 10,000 and they're so close, they both have a mandate from that electorate, and that gives the validity for their list seating, and the other advantage to this system is that we use exactly what you've got now. We have one electorate ballot, we have one party list ballot. There is no ranking required, you simply go and do what you do now. It's in the way it's processed that the – that operates.

SIR HUGH: I've suggested to a couple of earlier presenters, that that kind of system mightn't work equitably if you simply base it on the number of votes a person has received, that it might, if you based it on the percentage of the vote they received in that electorate, otherwise how do you take account of varying turnout rates or electorates, such as your Auckland Central, where there were three strong candidates, in fact, all of whom finished up in Parliament.

MR BRIDLE: Yes, yes.

SIR HUGH: So it would have to be a percentage, would it not?

MR BRIDLE: That would be the mathematical domain, I guess, of the Electoral Commission, in their presentation as to how it would go. There are certainly some electorates where the party vote is down, but we're taking the list as a – the list candidates are taken across the whole 70 seats. So if there is one party list that's down, that person may not be high enough in the number of votes that they get against the others to be in Parliament in the list.

SIR HUGH: In putting forward this proposal, did you intend it to operate only for the general electorates or for the Māori electorates as well?

MR BRIDLE: All electorates, so the – sorry.

SIR HUGH: And what was the basis for your advocating for compulsory candidature in electorates for all those who want to be in Parliament, including list candidates?

MR BRIDLE: Well, I would assume that anybody standing for election, with due deference to your question, is because they want to be in Parliament, so therefore if they're not elected by being an electorate candidate, but they do gain enough votes compared with their party, remember you're comparing with only their party, to be a list candidate, they have achieved their result.

1445

SIR HUGH: So, compulsory candidacy is really the first link in your next – and the next link in your proposal, that you count the number of votes or the percentage that each gets in an electorate race?

MR BRIDLE: I'm counting the number of votes, for example if, I've mentioned that Labour, in this present election, 2011, they would've got the first three,

Jacinda Aherm and the two others, okay, we've identified them, so who came under four? It would be the Labour candidate who did not secure an electorate seat, but who scored the next highest number of votes would become number four, down until you've exhausted your party, party list.

SIR HUGH: I understand what you're pressing this for. Professor Roberts? Dr Arseneau? Thank you very much Mr Bridle. Thank you very much for taking the trouble and coming along to help us.

SIR HUGH WELCOMES JOHN LAING

JOHN LAING: I don't propose to go through all the things in my written reply, except for the last one, that is the reason I am here. My submission is based on involvement as a young man in the National Party, as an office holder for many years in the Holyoake and Muldoon administrations, as an electorate secretary and deputy chairman, I was member of the Auckland divisional executive, and served on one of its committees. I did not always see eye to eye with the policies of Mr Muldoon and eventually I left the party after the Prime Minister's deplorable treatment of the honourable Derek Quigley.

However, the methods by which the party used its members to initiate policy, first by way of successful remits from the branch, secondly, if passed, then to an electorate meeting. Thirdly, if passed, to the division, that's the Auckland division and finally, if passed, to the dominion conference. It seemed to me that that was a highly democratic process. If the dominion conference had approved a remit and, ah, my electorate accepted two of mine, the Government knew it would need a good reason not to implement it in some way or other.

I understand this ideal system no longer prevails, at least to the same extent. I therefore make this submission with a view to strengthening voter participation. I call it participatory democracy.

In my submission, I call for candidate selections in all electorates by all parties to be as the result of properly run selection procedures, and by this I mean that all paid party members shall have the opportunity to cast a selection vote in choosing a candidate. No proxy or delegate votes permitted. This is similar to what they do in America, in its higher thinking. If it was an unwieldy process in a large electorate with large membership, the meetings would be held on as many occasions as required. Ballot results should be kept confidential until the last meeting. The opportunity to decide at large the important matter of who is to be our parliamentary representative takes control of the process away from head office, a highly desirable change.

Where are the Michael Minogues and Marilyn Warings of today? It is my submission that even in a “no-hoper” electorate, there should be a contest, if at all possible.

Now we come to list MPs selections and rankings. This submission favours a postal ballot for all financial members to decide who should be on the list and in what order, the cost of the various procedures to be met by the membership fees. Although this Commission does not invite submissions on the constitutional issue of an upper house, there is clearly the possibility of considering list members as filling this role. I invite the Commission to consider this proposition and I thank the Commission for the opportunity of making this brief submission in what I hope will be a perfect example of participatory democracy.

1450

MR PEDEN: Thank you very much, Mr Laing. On your point about participatory democracy within parties, is your submission that the current provisions in the Electoral Act should be made more explicit?

MR LAING: Yes.

MR PEDEN: That, that – so this should be a mandatory legislative requirement?

MR LAING: Oh yes, oh yes.

MR PEDEN: In – I know you only want to come to present on that particular point but if you could just – on your, on your submission, your written submission around the threshold, you’ve referred to a, lowering the threshold to three or 4% in order to limit what is seen by too many as a rort.

MR LAING: Yes.

MR PEDEN: Can you, would you mind just elaborating on that?

MR LAING: Well, ah, if the threshold is higher than 10%, people who are excluded by that might well consider that they had been maltreated.

MR PEDEN: Okay, thank you. Would you elaborate on your – to quote what you mean by the one seat, in relation to the one seat threshold, I'm not clear. At the moment there are two thresholds, aren't there? You've got a, you've got to either pass the 5% threshold or you need to win an electorate seat and that, that entitles you to an allocation of party seats. Do you think that the one seat threshold should be retained?

MR LAING: Yes.

MR PEDEN: You do?

MR LAING: Yes.

MS HURIA: We've heard, Mr Laing, some submissions that the larger electorates, and I'm referring to the second point in your submission, the larger electorates, particularly when their, you know, the voters are very widely distributed get very difficult to actually manage as an electorate MP but I see that you've suggested that there should be fewer larger electorates. Did you give any thought –

MR LAING: Fewer and larger.

MS HURIA: Yes.

MR LAING: Yes, I based this on reading other submissions which influenced me. I thought the argument that other people made was a good one and I reproduced it.

MS HURIA: So I guess my question is around, have you given any thought to the physical, sort of practical difficulties of –

MR LAING: Oh yes I do see that there would be, particularly in the Māori electorates, there would be serious difficulties. I don't know how you get around it but they're ingenious enough, I would have thought, to manage.

SIR HUGH: It's not just in Māori electorates.

MR LAING: No.

SIR HUGH: There are a number of general electorates which are very large.

MR LAING: Yes I understand that.

SIR HUGH: West Coast-Tasman, for instance, goes almost up to Nelson, doesn't it?

MR PEDEN: Yes it does.

SIR HUGH: And right down the whole of the West Coast. Rangitikei goes from about Foxton almost up to Taumaranui.

MR LAING: Yes. Something would have to be devised and the electorates are organised, satisfactorily, I assume, according to however the parties do it.

SIR HUGH: When we look at your submissions concerning by-elections or list MPs standing in by-elections, you say they could stand as electorate candidates but not as list. Does, does that mean you're advocating that they would resign as a list MP in order to be able to stand as an electorate candidate?

MR LAING: No I would have thought they could continue, even though they are list MPs, to offer themselves as a, as a proper, you know –

SIR HUGH: So you're not advocating –

MR LAING: No.

SIR HUGH: - prior resignation as a pre-condition?

MR LAING: No, no.

SIR HUGH: All right, that's good, thank you. Dr Arseneau?

DR ARSENEAU: Thank you for your submission. I was intrigued by your idea of, of postal ballots for selection of a party list.

MR LAING: Yes.

DR ARSENEAU: Would it be, have you thought more about the details around that? So are you thinking it would be perhaps at the stage of confirming what the party has come up with or would it be actually even more at the formative stage, in which case the party members would need to know all the different possible list –

1455

MR LAING: Oh, indeed they would, biographical details and all that sort of stuff would be put before them and they themselves could come up with nominations and eventually, I don't know how long the list would be, but they would sort that out.

DR ARSENEAU: Some people have suggested that maybe we'd need regional lists if we were going to do that?

MR LAING: Yes, that's not a bad idea. I don't oppose it.

DR ARSENEAU: Thank you, very interested.

SIR HUGH: Professor Roberts?

PROFESSOR ROBERTS: No, but I'd just like to add my thanks, in particular for explaining the context of the background to the last point you made. I think it put it into a very good focus, thank you.

MR LAING: Thank you.

SIR HUGH: In relation to membership selection, as you put forward, mightn't there be some difficulties in operating that in the event of a snap election?

MR LAING: I hadn't thought of that, but I still think –

SIR HUGH: Some method could be devised to encapsulate your proposal?

MR LAING: Yes.

SIR HUGH: All right, thank you Mr Laing, thank you for your help.

SIR HUGH WELCOMES BRIAN LEWIS

BRIAN LEWIS: I really came along today to really – for any clarification of the issues or the questions in my submission. But I will say this, that I do believe that the present system, the MMP system as you've got it, is just a little bit too complicated for most people to understand, and I say that from the point that I've been an apolitical public servant for years. I'm not longer a public servant, and I have worked as a senior private secretary to ministers in Parliament, both Labour ministers and National ministers, during the 1980s. So I have some experience, I've seen it from the inside, and perhaps they were First Past The Post then, I can't remember, but the point is that I do bring a little bit of understanding around that area, although I don't claim expertise.

SIR HUGH: It's always helpful, Mr Lewis.

MR LEWIS: I think that what I have proposed does maintain the idea and the spirit, at least, of the MMP system. I just change the emphasis from local voting, if you like, to say that we have now perhaps reached the point in our democracy where we can move forward, and I question whether in fact elections of electorate MPs is really that valuable today, in today's society. That, if we're going to be looking to form or vote for Government at a national level, then that's exactly what we should be doing, um, and putting in the electorate MP vote at that point, or voting for MPs, really doesn't add a lot.

I say that because in most electorates the result is usually a foregone conclusion. You know, you may have 20 – looking at the Pareto principle, you may have 20% of electorates where, um, which might be marginal or which might be changeable, but in the main, a lot of, a lot of seats are really, um, programmed through the party machinery. Um, and I don't think that really adds or helps.

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Having said that, I think it's very valuable that we do have an electorate MP. I'm not suggesting that we move away from electorate MPs, just the way that

they are, are, um, appointed, if you like. I think they still play a very valuable role and I think that if we can get to a stage where we focus at the national level, not at the local government but at the national level, what we're really looking for, that is a government, then that's where our focus should be looked at. It should be a simple affair. It should be really really simple, you know who the parties are, you know who you want to form a government, and you should be able to have that vote across the nation that allows you to make that choice of government. So that's where I think our votes should be and at an election level, I think it'd be a lot simpler for the electorate, a lot easier to understand.

And as for appointing MPs, yes I believe they're very valuable, very important, but I believe that that can be done through the party list system. So in fact, we have a system of parties putting up the list of people who they would have as their own MPs, they would sit as MPs but the way they're appointed wouldn't be by local electorate necessarily, they would be appointed by the percentage of the actual votes.

I, I'm sorry that, that I may not, I've had a couple of strokes and I find it difficult to, how do I say, verbalise that well.

SIR HUGH: We're having no trouble.

MR LEWIS: You're having no trouble. Okay, yes, okay thank you.

MR PEDEN: Perhaps, Mr Lewis, because there are a number of questions, I think, I think what you're proposing is clear and perhaps if I just, um, test that I have understood it. Basically it seems to me you're proposing a, almost a pure proportional representation system in that there would be 90 electorates, voters have one vote?

MR LEWIS: Yes.

MR PEDEN: And we'd be voting for 90 Members of Parliament and the seats would be apportioned on the proportional, to parties on their proportion of the party vote.

MR LEWIS: Correct.

MR PEDEN: The, one thing I am struggling to understand is quite how the parties would agree or what mechanism would be in place for, to enable, to determine which electorates parties get to appoint a Member of Parliament to and I suppose the other question in my mind is where Māori representation, the separate Māori seats, would fit into this, this system.

MR LEWIS: Okay let me try and deal one at a time to that. The first one, I think that once you've established your national percentage of the vote and therefore your percentage of how many MPs that you're entitled to, and the 90 is, is not set in concrete, there may be a need to go over one or two beyond that. That would be then a basis for the parties, the main parties to sit with the Electoral Commission and work through who should go to where. One would anticipate that if you got more than 50% of a particular, of the party vote in an electorate area that you would probably put your MP in there. You would probably have an agreement that if it was one party who scored that amount, then they probably have the right to put their member in there. The point is that the MP themselves would come off the party list, ah, and would then be required to live in that electorate and then be as it is now. It doesn't really matter who actually gets the seat, it, you may have two or three or two main divisions of people who vote differently in those, but at a useful level.

The fact is that once a person's elected and put into that position, they represent everybody in that electorate. So political issues or political background do not play a part necessarily or shouldn't do, perhaps, in a pure world.

SIR HUGH: And do you expect agreement between the parties in an area, let's say Waitakere in the 2011 election, where as it turns out, the margin was a mere eight votes. Surely both National and Labour would say, "That's our area?"

MR LEWIS: Well they may, and that's why I say I'd have to sit with the Electoral Commission, because at the end of the day there's got to be some discipline here.

MR PEDEN: I'm not sure you want this job.

SIR HUGH: Would that be Parliamentary democracy or Commission democracy?

MR LEWIS: Well, I think it's a way of appointing – ah, making sure that we do have an MP in our electorate or in an electorate that's there to represent the people of the electorate, and I would hope for that parties would take it in that spirit. Now, we know that the parties don't always see eye to eye, in fact they fight each other like hell, but I think we've come to a stage with MMP that although political parties hate change, but they can work productively in a way to form a government, and here we're talking about forming a government at the end of election. So I don't think they're going to get too hooked up on who should be put in to each electorate or what electorate. The issues at that point is forming a government. As to the Māori electorates, I'm sorry, I have to say I didn't – that escaped my attention. Um, but Māori electorates could easily come from mainstream MPs anyway, you know, that's normal, Labour or, um, or any of the political parties. So it could be a Labour MP that takes a party.

SIR HUGH: Well, following on from my last question, let's say that in electorate X, like Waitakere where there was only the slimmest of margins, the MP who is selected by the Electoral Commission dies half way through the term, and the major parties say, "Oh the polls have changed now, another

party is entitled to that electorate X.” How would you cope with that, how would your system cope with that?

MR LEWIS: Possibly in the same way that I've described here, that if one were to resign, then possibly that electorate doesn't exact – you know, if one was to resign, um, well, sorry, let me try and go back. If a party has, an agreement has been made that person from X party will be that representative in that electorate, then I'm – and that person dies, then I'll kind of think that that same party follows on with their next nomination on their list. Um, in the same way that, ah, going back to Sir Winston Churchill, when he took over as Prime Minister during the war years, the issue – and a coalition government, the issue is, well, who will replace Churchill in the event that he were to die, and there were some who felt that the Deputy Prime Minister would take over as Prime Minister. Churchill didn't, he said Anthony Eden, the number three, on the basis that the electorate put the Conservatives into power before that point.

SIR HUGH: When they were trying to persuade Churchill to accept Atlee as his deputy, he was resistant and one argument they used was that Mr Atlee was very humble, and Churchill said, “He's got an awful lot to be humble about.” Dr Arseneau, do you have a question?

DR ARSENEAU: Can I just clarify please, thank you for your submission, so you wouldn't have two types of MP, am I right? So you wouldn't have list and electorate MPs, every MP, so it would be, rather than a mixed member –

MR LEWIS: No, no, we do away with the electorate MPs at that point. We don't vote for electorate MPs, we do get an electorate, an MP in the electorate, once –

DR ARSENEAU: But they're all list MPs.

MR LEWIS: – the national vote has been decided and the mechanism for appointment of a particular MP, rather like a CEO of a company, if you like.

PROFESSOR ROBERTS: I just want to clarify, my understanding is that you wouldn't have a formal threshold, you could be elected with the vote that would be required to gain one seat, that would be the only formal threshold, a party with roughly 1% of the votes could win a seat?

MR LEWIS: No, not 1%, one-ninetieth.

PROFESSOR ROBERTS: Yes, one-ninetieth, okay, so that's very nearly 1%.
1510

MR LEWIS: They would need to get around about – if we assume that there is a population of 50,000 give or take for an electorate, and of that electorate roughly a same corresponding number of people who are eligible to vote, whether that be 20,000, 35,000, doesn't matter, if you can get across the country –

PROFESSOR ROBERTS: Get that number of votes.

MR LEWIS: – 35,000 votes, then you're entitled to an MP.

PROFESSOR ROBERTS: That's right, yes.

MR LEWIS: And then if there is somewhere in the middle, the percentage, and not clear cut, you don't get one, you don't get two, depending on where you sit in that number, you either get one or you get two, and that's why you might end up with more than 90 MPs.

PROFESSOR ROBERTS: And that's what the representation commission does, if it's 46.4% of an electorate, it's 46. If it's 46.5, it's 47 electorates.

MR LEWIS: Something of that nature, yes, yes, absolutely.

SIR HUGH: Thank you Mr Lewis, thank you for your help. Thanks for coming along.

SIR HUGH WELCOMES ALAN GRACE

ALAN GRACE: Okay, well just very briefly, since you have read them. Basically we have a situation at the moment, in the last election, where one person lost by nine votes I think it was, or 13, and then, won by that, and then lost by that, and gained again, and that was Paula Bennett in Waitakere. We have another situation in Christchurch where someone lost by less than 50 votes, or won, whichever way around you look at it, and we also have a situation where, for example, Winston Peters didn't even try for an electorate vote. So what I was trying to look at was, um, with MMP as it is at the moment, the parties make up the list, whereas it seems to me to be reasonable to actually make the list up on election day, based on how close the candidates for the electorate who didn't win, got to the winner, as a percentage. Is that clear from what I've put in writing?

SIR HUGH: Yes it is, very clear, thank you.

MR GRACE: Right, so, because I have a mathematics background, I have a masters in mathematics, and I taught at universities and so on, I decided one of the first things to do was explore it, and that's what all those lists there that are actually there. So before I go any further, is it clear what I've actually said there, and do you have any questions on that part of it, because that's the substance of what I've got.

MR PEDEN: No, I think it could be summarised as a "best loser" system?

MR GRACE: That's what they use in Mauritius, for example, but there it's used as – for ethnic reasons, for Muslims and maybe Islam people, or something like that, it's not used to actually go and get a proportion of votes like we do here with MMP. I don't actually like the term "best loser", I'd say "closest winner", because "best loser" itself actually goes and denotes something that I don't actually want here.

MR PEDEN: Sure, no, understand that.

SIR HUGH: Thank you.

MR GRACE: Any other questions about that?

SIR HUGH: No I think we understand that, yes.

MR GRACE: I suppose it's the wrong forum here, but it seemed to be like an alternative ones that wasn't actually amongst all the original ones, so I was wondering why that wasn't actually an option way back when, when MMP and the other systems were first touted, but that's not for this forum I guess.

SIR HUGH: None of us, none of the members of the Commission were involved in the process at that stage. We're bound of course by the terms of the Referendum Act.

MR GRACE: Perhaps just as an insight by me.

SIR HUGH: Now I was, if I could just press on beyond that major point, I was a little intrigued by your suggestion that list MPs shouldn't be eligible for cabinet posts, why did you take that view?

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MR GRACE: Well, my reaction to MMP is that we're in a democracy and I think that the more directly someone is actually voted in by members of the public, the better. And the reason that I put in that list MPs shouldn't be actually in cabinet –

SIR HUGH: You mean individually, individually voted in?

MR GRACE: - was simply because a, why should someone actually be in that particular position to vote in such a powerful meeting, and so on like that if they hadn't been directly voted in, actually publicly voted by people rather than just voting for the party and then a list. I suppose that's why.

SIR HUGH: Well I think my example is, is accurate. In 2005, was it, Dr Michael Cullen moved from being an electorate MP to a list MP as a prelude to his retirement. So the, his party was able to use his seat as a kind of succession measure. Isn't that a legitimate means of, of ensuring there's new blood coming through the party and, and Dr Cullen was a hardworking member of his cabinet up until his retirement from politics. But he was just a list MP in the last triennium.

MR GRACE: If you look at another one of the comments I've made, if there's the by-election, that a list MP that's currently a list MP in Parliament goes for the by-election, my personal view is that it shouldn't be using that just to get an extra person into, if the person wins the by-election, to get another one from the list as well. I suppose, just part of my view, as far as – the more democratic the system is, to my mind, is how directly people are actually voted in.

SIR HUGH: I see, I understand that.

MR PEDEN: So if your closest winner proposal was adopted –

MR GRACE: I'd like that too.

MR PEDEN: Then would you still have the view that the list, ah, the list members shouldn't be able to be cabinet ministers? Because, presumably they'd been near enough, they'd got onto the list because of the level of support they've had through a direct vote.

MR GRACE: Absolutely, then they should be able to be because essentially, under my proposal, every member of the list will also be an electorate MP, otherwise they can never be closest to the winner in any respect. So therefore they have, and their support is being gained directly from the public. It also, under what I'm proposing here, means in the system as we (inaudible 15.17.57) have it, people still think their electorate vote is, in some sense, a wasted vote unless they're voting for the major party in the

electorate, whereas every vote counts if you've got a closest winner type situation because it's always getting towards how close the other people are to the winner. And that gives the ranking on the list.

SIR HUGH: You suggest, I think, that the one seat threshold should become two seats. Have I got that correctly?

MR GRACE: Well yes, when you look at it, one out of 70, I'm just looking at the electorate seats, I think I had that down as 1.73% that is equivalent to or thereabouts, and it sounds like, well, I guess, I'm a mathematician, thinks at least three as far as the electorate, when you consider that electorate seats are harder to gain, I guess, in some respects, then a list seat, if you're higher up on the list, without people getting there. When you look at the last election, except for the two major parties, if people got list seats, they didn't get electorate seats, with the 5%, and if they got electorate seats, um, then they didn't get up to the amount to get extra list, seats from the list, I think. Would that be correct?

SIR HUGH: Have you worked out your proposal in the schedules you've given us?

MR GRACE: Yes, there's two of them. The first I just looked at the closest to the actual winner, just to get an idea of how workable it all was.

SIR HUGH: Right.

MR GRACE: So that was the initial one I did in March. And then even that was difficult to get with the information I had and Mr Marsh and Mr Pengelly with the Electoral Commission tried to provide information but basically I had to do a lot of data entry myself to go and do it.

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And in the second proposal, I've taken all the people that were not independent and just did a ranking, just to see how, what the difference was

between going and ranking people by looking at the person who was first closest to the winner, then the second closest to the winners, and so on down, as opposed to just looking at the percentage difference that everyone had to the winner in the electorate, and it didn't make any difference until about position 21, I think, in Labour's situation, or something. Some people would say that, if you're looking at this sort of "closest winner" if I can use that term, then the people that are the actual closest ones should all be looked at before the third closest, and in an electorate, in one electorate, you might have someone who's actually the third closest who, percentage-wise, is closer than the third person in another electorate, so it's just looking at that side of it as well. Am I the only one to think of these sort of, this sort of system or not?

MR PEDEN: There's been a number of submissions heard.

SIR HUGH: Yes, you're not alone by any means. Dr Arseneau?

DR ARSENEAU: And, yes, a number of people have proposed it, so I'm really intrigued by it, and I assume the reasoning is that you want, as you talked about a more direct ability to elect individuals on the list, so to have more direct say. My question is, how do you control for differences across electorates, now, you know, one thing you could do, for example, is go by percentage of the vote instead of the number of votes, but also, I mean, certain electorates are very safe, say, Labour electorates, or very safe National electorates. So you're not necessarily getting a judgement on the individual so much as you're getting a judgement on other factors that perhaps have nothing to do with the individual.

MR GRACE: I think you are actually getting a thing on the individual because if, for example, I use Paula Bennett as the situation for example. She would be up on the top of the list, only being a nine or 13 vote, depending on which count you look at, and every vote actually counts in that way, because each vote makes them closer to that winner relative to the rest that are in the party, and it doesn't really matter whether it's a strong Labour seat or strong National seat if you're looking at the next ones down within each electorate.

They would still be percentage-wise closer. They might be further away in that electorate than someone else in another, but it still is a – every single vote is counting. Have I answered your question or not?

DR ARSENEAU: Yes, I just – and it's one thing when you look within an electorate, it's when you look across electorates that I wonder whether you're really properly comparing individuals or if you're comparing other factors that really have nothing to do with the individual.

MR GRACE: Well I think you're certainly, in the current situation where a list is made up by a party, you're not comparing anything directly to what actually happens within the electorate itself.

DR ARSENEAU: And some other people have proposed, on that topic, that what they would like to see is more input, perhaps through the political party membership, a rank order in the list, but would that address your concerns, or not really?

MR GRACE: No, because I'm a direct democracy type person –

DR ARSENEAU: Right, okay.

MR GRACE: – if you like, so that wouldn't actually address much at all. What is actually, on this proposal, it's the actual election day and what people say on that day. I mean, considering just the last election again, with Winston Peters only a number of weeks before the election decided that no, he wasn't going to go and even try for an electorate seat. So if what you're proposing there, where you have some members of the public being able to determine the list some weeks prior to the election, that factor may not even – and other factors may not even count, perhaps.

DR ARSENEAU: Thank you, thank you.

PROFESSOR ROBERTS: I'd like to thank you for the amazing amount of work you've done and the extensive tables. My one concern follows on from what Dr Arseneau's been saying, that you're front-end loading the extra MPs from the marginal electorates, and now look at Labour's list, Waitakere, Christchurch Central, Waimakariri, Auckland Central, Ohariu, Tamaki Makaurau, Te Tai Tokerau, they're the marginal electorates so that the focus is going to go on electorates where candidates can come close. Where you put up a very good candidate in an electorate where she has no chance whatsoever, she's not going to become an MP.

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MR GRACE: I can understand where you're coming from there. It basically means that when people, that every person that's standing in an electorate counts. You want the strongest person who will get public support in an electorate, regardless of whether it's marginal or otherwise. In fact in some ways I suppose that the best thing would be to put someone who might be Prime Minister in one of these, um, you know, seats strong in the party so that they're, they actually get closer to that level of support. I can understand, yes, but what we're talking about here is we've got strong support for those people in the marginal seats. They may be roughly about the same, and in the present situation, they miss out and someone that someone never votes for directly gets in from the list. Does that sort of help answer?

PROFESSOR ROBERTS: Mhm, yeah, thank you.

DR ARSENEAU: Yes, that's great, thank you.

MR GRACE: So that's the reverse to what you're really saying.

PROFESSOR ROBERTS: Yeah, yeah.

DR ARSENEAU: Thank you.

SIR HUGH: Thank you Mr Grace. Thank you for your work, and thank you for your help.

MR GRACE: Okay, now the other side of it, I'm just about out of time, I just had a short list, it's only appeared that the actual summary one was actually part of the, um, the summary only included the small amounts of the things there, so I suppose the other thing with me is 5%, being a mathematician, only means five out of a hundred, and I think 10% is too high, but maybe I'm going against the flow, but I think 7.5%, for an electorate.

SIR HUGH: We've got a note of that, thank you.

MR GRACE: Oh, you've got all that, so everything else is all sort of accounted for, you've got no questions?

SIR HUGH: No, thank you very much.

MR GRACE: Excellent, well I'm glad I wasn't the only one then.

SIR HUGH: Not at all, not at all. There's been, I think, one could almost call it a trend during the day.

MR GRACE: I go to the extra effort so they can look to see what the effect is, because even compared the percentage of the total votes but decided that it was how close you were to the winner. So you've delayed your important break so I hope I haven't confused you too much.

HEARING ADJOURNS: 3.28 PM

HEARING RESUMES: 3.46 PM

SIR HUGH WELCOMES PETER HUNT

PETER HUNT: Thank you for seeing me. A little bit more formal than I was expecting, so I guess it's a pretty serious matter, the electoral system. Basically –

SIR HUGH: Oh it's just democracy really, of trifling importance.

MR HUNT: Exactly. So I've basically got a submission here but I'll just, as you say, mention the sort of salient points. So basically I, I, my, obviously this is my opinion. I see problems with the current system being basically three, three current problems.

First thing, I believe that having two votes is confusing and I will explain why I say that but, I, you know, I believe that, you know, that's an opinion shared by many.

Second, second problem I have with the current system is around the list and I see a number of problems with that. First of all, that's it's picked by the party, therefore, you know, it is not really true democratic system and that the voters are not actually able to pick the, ah, the, the listing or the number of list. Second problem I have with the list is that a lot of the, the, um, members on that list are not actually researched by the voters so we're not really sure who those people are. And the third problem I have with the list is I don't believe they have the list, um, candidates or Members of Parliament have accountability to an electorate which I believe perceives, you know, creates this two, sort of, tiered type of MP.

The third problem I have with the current system is around strategic voting. Obviously the, and that's driven really by the two votes and the split vote and which, we'll look at some of the seats, would it be Epsom or whatever, I think

that you will find that that's been seen as a bit of a turn off by the voters so, and again adds to the confusing nature of the current system.

So those are the three problems I see and I'd like to kind of address those. So, so my proposal basically is pretty simply really and it's not a large change so rather than having two votes, I believe we should have one vote and I think that's absolutely crucial. So rather than the current system where you have a, you know, a party vote and an electorate vote, you just have one vote. Now that vote, um, would obviously, um, include candidate and a party, rather than a party vote. That vote, under, just as we have under the old system where you would have, First Past The Post, so you had one vote and you're voting for a person and a party at the same time, so rather than having two votes, you just have one vote.

So Parliament would, would not change, the representation of Parliament would not change and it is the party that you elected on your one vote which will determine the make up of Parliament. In other words, you know, just at the moment, as it is the party vote, it is the party component of your, of your one vote.

1550

So the question is, well, if you have this system with one vote, and nothing's really changed, how do you top up to get that proportionality? So obviously the list, I believe, was designed to, to lead to a top up, to get that proportionality. So I think rather than going to the list to top up, so obviously you would have the same number of electorates under the current system as under my proposed system, the same number of MPs, so we need to top up for every party to get to their proportionality.

So rather than going to the list, all that you would do, you would then go to the highest polling candidates throughout the country, so for example, if the Green Party had 12% of the vote, and under MMP's system currently that might equate to 15 MPs, under my proposed submission that would also equate to 15 MPs, but rather than going one to 15 on a list, a list that probably

nobody's really spent too much time looking at, the 15 highest polling Green candidates would be elected. So they may not have won their electorate, but they would have – they would be the 15 highest polling candidates throughout the country.

So that really is my submission in a nutshell, so I guess the – so I – so there would be no list, there would be no need for a list, and thirdly on the threshold, I mean, I did mention this in my written submission but I don't think this is really that crucial, I personally believe that the 5% threshold isn't necessary. It takes away from being truly proportional and I believe once a party had got one-120th or roughly 0.8 of a percent. They should be represented in Parliament, I don't see why that's not the case.

So if we did, the submission that I have was adopted, basically, you know, you would have the three problems that I mentioned at the start, two votes, confusing, there's a change, there is only one vote, so I believe it's a simpler system. Secondly, the problem I had on the list, which I feel has a number of deficiencies and that I don't believe it's a truly democratic way of electing people into Parliament, um, well we've got around that because there is no list, and thirdly, the nature of strategic voting, which, you know, will they get 5%, will they not, will they win this seat, you've done away with that because basically, um, if you bring that threshold down to, um, you know, one-120th, then basically you're into Parliament anyway, so it's not, there is not really the nature of strategic voting which I say I believe is a bit of a turn-off for a number of voters.

The other things that I think would come out of it, um, basically you would have far more campaigning in local electorates, so currently on election night, for example, the only thing that really matters is the party vote, and when I was at an election party last year, I mean, I do like elections and they've become very dull, so really nobody really cares any more, apart from the party vote, so, and then perhaps behind closed doors, a coalition Government may be formed, but actually the local electorate means very little with the exception of the odd one, like Epsom, or whatever it might be, or some of the Māori

seats et cetera, because of the threshold. So I think that has made it very dull, quite a dull thing.

I think what you would see is much more campaigning in local electorates because if you're a Green Party candidate, and you're not, and the Green Party is unlikely to win a single electorate seat, then clearly you have to be one of those top 15 or whatever it might be, so you need to campaign in your local electorate. You don't have the luxury of sitting on a list and, um, and having this two tier nature of a Member of Parliament. Clearly only one winner can happen for each electorate, but that's just the same as the current system where a certain electorate might have two or even three Members of Parliament representing them in Parliament. So that's no change to the current system.

Secondly, I think you'd get more profile, so you'd – the voters, because of that local campaigning, I believe that you would get more chance to meet these candidates, so rather than number 15 on the Green Party list, who no-one's ever heard of, you would actually have seen that person campaign. They would have had to have had campaigned in order to be elected into Parliament, so people would know who that person is. And I'm not, certainly not trying to pick on the Green Party at all here, just an example of where they get skewed.

So, and the last thing is, um, yeah, as I sort of touched on, currently it's really all about the party vote, so here it's much more local issues, local electorate issues can become important.

The downside in the system, I mean I don't believe it is a perfect system but, um, I think it's a good one. Um, the downside I think is that, you know, with, I guess, under the two vote system, people say you can have all things. You can vote for your party and you can vote for your candidate. Well here you have to make a choice, so you have to, if you feel very strongly about a local candidate, but you don't like their party, well then you've got to make a choice, which is more important to you, is it the party, um, and clearly that will

determine the representation in Parliament, or is it the local candidate, and if it's the local candidate, then you realise that you are sacrificing your, um, party proportionality if you like. That's it.

1555

MR PEDEN: The drive behind your proposal, I understand to be a concern about the complexity –

MR HUNT: Yes.

MR PEDEN: – of the system. I just wanted to test that, because after the election, we survey voters, and one of the things that they tell us, nine out of 10 voters find the ballot paper very simple, very easy to use. We have a very low rate of informal voting in New Zealand, 88% of New Zealanders told us that they were very satisfied with the overall voting experience, the level of information they had before the election, the experience on the day, and the system overall. So I suppose my question is, where is the evidence that New Zealanders find our current system of MMP complex?

MR HUNT: I guess my evidence is more anecdotal and I, you know, just talking to various people, so I don't have, I don't, I clearly haven't done any survey on any large, large scale. I mean I think the system itself is – yeah, people understand the party vote, I mean all the parties are clearly campaigning for the party vote, so that's, it's made it pretty clear that you've got two votes and one's, you know, a lot more important than the other one. In fact the other one is almost irrelevant.

So I'm saying why do we have this irrelevant vote for the electorate, when really it's not actually – all it really is impacting on is very few electorates, as I say. So, um, so I believe that a simpler, cleaner system is around having one vote. But I guess my submission isn't only driven by that, it's also driven by the way that the list, you know, that's really my key, my key concern at the moment, is one, the confusion, but secondly, really, around the list, um, and the fact that the list doesn't seem – clearly it is published ahead of the

election, but I don't believe it's as transparent as you would have if you, if you had people campaigning in electorates and the chance for people to get to know those people a little bit better.

MR PEDEN: Would your concern be alleviated somewhat if there was more focus on internal party democracy and the formation of the party list?

MR HUNT: Possibly, possibly. I guess, I mean I, I guess I'd sort of presented this to a friend recently and he said, "Well, you know, it's like we don't pick the Prime Minister do we, so we just vote and then that's done by party," so at some point the party clearly will have an impact on the ranking of their members, whether it be via a list or, you know, so perhaps a more robust nature there, but, um, yeah, I do believe that the voters would be better served by having people campaign in local electorates, and they would have to do that under a system where they couldn't come in via a list, so that's my concern is that they don't – yes, the party, we're assuming the party have done the right thing by us, um, but really we don't. It's very hard to find information on a number of these people, and they don't have to present themselves, in fact.

SIR HUGH: Ms Huria?

MS HURIA: Mr Hunt, how would you see parties convincing candidates to stand in traditionally low turnout, low voter turnout electorates which would obviously impact on the number of votes they get, if we're looking at a national competition for list places?

MR HUNT: Well I guess it would, and I suppose, you know, my understandings of the electorates are all, you know, all equally, roughly equally represented in population, low turnout I'm not sure, so if there are some lower turnout, consistent lower turnout, then I suppose the party, again, would have some input into saying, "Well, we want 15, we want these 15 Green candidates to be elected," so we don't – they would have some input

into moving them away from those lower – so in fact, that's sort of like a very soft way of determining their list.

They would then have to go to their candidates and say, well, one, what's the voter turnout likely to be, and who's strong in this electorate. So clearly National may be strong in a particular electorate, and that makes it hard for the Green Party to get a large percentage of the vote, but others may be – you know, so that would be determined by the party where these people would stand, I accept that, but the low voter turnout, I would that there would be some equalisation around that, given how the electorates have set up but if that's not the case, I don't know.

1600

SIR HUGH: I apologise for the fact that I'm still a bit unclear, Mr Hunt, –

MR HUNT: Sure.

SIR HUGH: – about what a ballot paper would look like if people are only going to have one vote for the party and the candidate.

MR HUNT: Yes.

SIR HUGH: Would it look much the same but instead of having two votes now, a voter would simply have one vote, either for the person or for the party?

MR HUNT: No, they would have one vote with, say, John Key, National on it. So with both their name and their party, just as we did under First Past The Post, it would be a similar type of ballot paper to that but proportionality would obviously be the way of electing Parliament.

SIR HUGH: And when you talk about a threshold of 0.83%, do I take it that your proposal is that unless a party got 0.83% of the total valid votes cast nationwide, it wouldn't be represented in parliament?

MR HUNT: Well I mean, I think that probably makes sense but I think obviously in some, perhaps of the Māori seats or whatever, some of these, there is a possibility of a party not getting that voting. I don't think that system should change but I do believe, if that's how it's determined, I don't quite know how it is at the moment but I do believe the threshold should be lower.

Because, and I say that because, you know, obviously that, that, you know, you've got a lot of minor parties getting more chance of being represented. I think that's, if it's proportional representation, then they should be, I don't have a problem with that personally, but the strategic nature of voting, this 5%, will I waste my vote, it's a confusion that's added to the electoral process that doesn't need to be there. So I believe wasting three or 4% of the vote is, is just, ah, and that's during the Parliament, is not truly proportional.

So I don't, I don't have a view on if you win a seat and you get, you know, that's the only votes you get in the whole country, that means you should be in, I think that's fine, if that's the system, you win the seat, you're in, and maybe you have to, you know, top it up, all 122 MPs or whatever it might be but I do believe the threshold should be lower. But I don't believe, for me it's not a key part of my submission.

PROFESSOR ROBERTS: Mr Hunt, you referred to the strategic element in voting under MMP.

MR HUNT: Yes.

PROFESSOR ROBERTS: Because we know that, on average, about 30% of voters in the MMP elections have split their tickets so I don't think that they necessarily find it overly complex –

MR HUNT: Right. Yep. Right.

PROFESSOR ROBERTS: - although there is a nice simplicity about the system you proposed. But as you yourself said, voters would be in a quandary –

MR HUNT: Yes.

PROFESSOR ROBERTS: - if they liked the party but didn't like the party's candidate and this was the traditional First Past The Post quandary.

MR HUNT: Yep, that's right, yes.

PROFESSOR ROBERTS: Because you would be voting for a party and a candidate that you would have to say, well, actually I want a Green, the Green has no chance of getting in, I'm voting and may commit somebody else to be elected for the electorate. So that there are strategic elements, both in the –

MR HUNT: Yes, yep.

PROFESSOR ROBERTS: - electorate level and in party vote level.

MR HUNT: Yep, yep, yep, I accept that, yep.

PROFESSOR ROBERTS: Okay.

MR HUNT: I guess, I guess I think it's, no, I do accept that and, um, that, as I say, that is the quandary that you're left with. I mean, I don't think any system can be perfect when you've got this proportionality and you've also got electorates because if it was truly proportional, you wouldn't actually have electorates, you wouldn't, you'd just have a nationwide vote, why would you have an electorate? So clearly the system wasn't designed for that, I would, I would think, or I would hope so because then you would have no local issues, no campaigning on a local basis.

PROFESSOR ROBERTS: That's called The Netherlands.

MR HUNT: Okay, well, okay, right. So by having the electorate vote, we try to say we can be all things to all people, well I don't believe you can so my, I think, I accept what you're saying but I think this is, this has some simplicity around it.

SIR HUGH: Dr Arseneau?

DR ARSENEAU: Thank you for your submission. So if I understand properly, there would be no list?

MR HUNT: Yes.

DR ARSENEAU: And so I'm wondering, do you have any concern about some, some of the things that we might lose from not having a list? And two spring to mind. First of all, the fact that we hear at least that people look at lists to see how the sort, how, what sort of diversity there is on the list and I assume we would lose that in your system. And the other thing was you mentioned that, you give the example of a Green candidate running and that the people would know that candidate better. And they would in that electorate but across the country, they'd have no idea who that person is.

MR HUNT: Mmm, mmm.

DR ARSENEAU: Do those things concern you at all?

1605

MR HUNT: They're good points, I accept those. Basically I suppose the diversity issue could be, you know, I suppose rather than looking at the list, there would have to be some publication of every candidate that was standing, and there'd have to be further analysis around that as to clearly the Green Party are more likely to have these candidates elected and there is, you know, so rather looking one to 15 on the diversity, um, you know, because a list is interesting but really, numbers 45 to 60 in the Green Party

are not really that relevant, so – at the moment. So, you know, so yeah, so further analysis would need to be done to answer that question around diversity, I accept that.

SIR HUGH: Thank you Mr Hunt. Thank you for taking the trouble to put the submissions in and to come along and assist us in this.

SIR HUGH WELCOMES GAVIN LOGAN

GAVIN LOGAN: Just to give you some background into why I'm interested in this subject, I was very active in the 1993 campaign to introduce MMP. My wife, my former wife should I say, was chairman of the Auckland Electoral Reform Coalition, and I worked full-time on the campaign for two months, unpaid unfortunately, in Auckland, and I was also quite involved in this one, not to the same extent, but I was also actively involved in the campaign to retain it.

The main points I'd like to highlight from my submission, in fact, to me, the most – probably the most important point is the one seat threshold. My personal opinion is this defeats the purpose of having a threshold, because essentially if you looked at the MPs that are in there now, the one sort of party MPs, they're largely there because the major party didn't put up a strong candidate, in other words, there was a deal done. Ohariu and Epsom come to mind straight away, and formerly you could say Sydenham almost fitted into that case.

So these parties basically get proportionality, I know they're down to one MP now, without meeting a threshold, and the deal making involved in this, to me, lessens the integrity of the electoral system. It looks shabby when it hits the public view, like it did with the tea pop af – cup of tea affair, and it makes people think the system's got something wrong with it. And I think this probably needs to be removed, more than anything else, and I think the trade-off for removing it is to probably lower the threshold to 4%, which will be a little bit more obtainable, and where parties are sort of showing 2% or 3% in the polls, people might vote for them, whereas they think, "5%, they're not going to make it, I'm wasting my vote." So it would probably bring some parties in that aren't there at the moment, but I think most importantly is to remove the one seat threshold, because it's giving parties that have got a small percentage of the vote that did a deal undue influence, whereas parties that didn't do a deal that might be a better check on the power of Government are missing out.

Now, tied with this is my view of the overhang. I mean, in extreme cases the overhang situation could get you a Parliament of 128 MPs. This, to me, presents more problems than fixing it at 120 and topping up proportionally what's left, because what happens when you allow for an overhang is that, again, Ohariu is a great example, you can vote for another party candidate in an electorate, and the party that doesn't put a weak campaign up can get an extra seat in Parliament, and the same thing happened with the Māori seat where Mana Party was standing. They were opening advocating, "Vote for me and get both candidates because the major party doesn't stand to lose anything." Now, if there was no overhang, the major party could stand potentially to lose a list member, and so there'd be less inclination to do those types of deals, and again I think those types of deals lessen the integrity of the electoral system, and I think it'd be a lot tidier if we just stuck to 120 MPs and just proportionality divvied up what was left once the independents and parties that didn't reach the threshold that won electorate seats had been dealt with.

1610

Now, the other matter that is of great concern to me is the way list candidates are selected. I think that the Act at the moment, and I won't read it to you because you're probably familiar with it, but it is not as specific as it needs to be and there's essentially no way of policing if this is done, and what's happened in some parties is that literally the boards of the party that are running the day-to-day affairs of the party are selecting those list candidates, and those list candidate lists are being greatly influenced by the leaders and the current caucuses of those parties, with not sufficient membership involvement, and I think we need to bring in a system that is policed by the Electoral Commission, where they have to report to the Electoral Commission like they do with the election expenses, that they have followed democratic procedures, and procedures, I think, need to be spelt out in the Act, that they need to have delegates that are broadly elected and there needs to be a minimum number, say 30 at least, that are elected for just the purpose of selecting the list, and that the board members and the Members of Parliament are excluded, the current Members of Parliament are excluded from this. So

again, you get proper democracy and a proper democratic process involving the whole, or a large part of the membership to ensure that you have got a democratic means of selecting those lists, and I think something like this needs to be developed and put in law, so that, so the – each electorate of a party, each electoral organisation of a party is electing a certain number of delegates to go on a, sort of, list selection committee, specifically for the purpose.

The other thing I would like to comment on, because it comes up a lot, is the idea of dual candidacy, of MPs that are standing for electorates not being able to stand for lists. To me, the idea of abolishing dual candidacy is patently absurd, and people who advocate it haven't thought it through, because small parties like the Green Party and New Zealand First and ACT and that would literally not be able to stand any of their leading figures in electorate seats because they wouldn't be able to go into Parliament, and obviously these parties have little show of winning electorate seats, and the side effect of saying no dual candidacy is that they can't get any electorate profile, and I think it's important that parties do put up a showing at electorate level and have electorate organisations. Abolishing dual candidacies is a way of ending that.

And the same with the by-election thing, the argument about not, list MPs not standing in by-elections I think is based on the fact that if a list MP wins, an unknown MP could come in, and I know that's a problem, but again it's the same thing. If a party's got a leading candidate and they to put him in – and they want a strong electoral presence, they should have the right to put their person in, in that electorate, if they think they can win it.

The other thing that I notice has come up, I didn't submit on this but I will now, is I oppose any measures to force MPs who get expelled from parties, whether they're on a list or electorate, who get expelled or resign from a political party over an issue, from being forced out of Parliament, and the reason for this, even though they've been put there by their parties, is that to me the main purpose of MMP is to prevent the so called elected dictatorship,

one particular example is the Muldoon style of Government, to prevent that from happening, and if you have that sort of threat over MPs, whether opinion can be controlled because, "Oh, if you don't tow the party line, we'll throw you out of Parliament," gives too much power to the party machinery, and I think that is to be resisted, even if it has some bad side effects.

I think I've highlighted my main points here.

MR PEDEN: Thank you Mr Logan. Your proposals relating to section 71, have you had any personal experience in political parties and in candidate selection?

1615

MR LOGAN: Yes, I have. I'll be honest. I was a list candidate for New Zealand First in '96. I have since left that party. I'm currently a member of the National Party. I have been for virtually ever since I left. But the first time they put up a list, it was the whole – virtually all the membership voted for it. This didn't suit Winston, and the next time he narrowed it down to where the Board selected the list candidates, which virtually resulted in him and the President handpicking them. It was anything but democratic. And I believe that could still be happening, I don't know. And ACT have a system that essentially is like that, but this time they had a vote on – a sort of a non-binding vote of their members. But essentially, they're board-selecting it. A lot of these small parties are doing that and, you know, it's – I don't think it's got ...

MR PEDEN: I suppose my question – just acting as the devil's advocate here, the current requirement in section 71 includes making the membership rules available, so that the public can know what process a party has, and the resulting party lists are available. If it's open for parties to publicise the approach that they go to forming a list, isn't it sufficient for voters to be able to judge parties when they come to make – when they come to exercise their party vote to compare, for example, how the National Party or the Green Party or New Zealand First has gone about bringing their list together, and to take

that into account when they exercise their vote, rather than imposing upon parties a particular form of internal party democracy on what might be seen as a one-size-fits-all approach.

MR LOGAN: I was thinking more of a minimum requirement being imposed on them, and publishing the way they do it doesn't essentially mean – I hate to say this – that that is the way it was done. As we've seen from a lot of election expenses declarations, and I think there needs to be one – a simple way that members who are dissatisfied or people who are dissatisfied who say the process wasn't followed can complain and get a result, like complain to the Electoral Commission, and there needs to be an overseeing or a policing of it, so that somebody can look at it and say, "Yes, you've done – you've met the minimum requirement or you haven't." And that's not what's happening, and I would suspect that in some parties, particularly the one I have experience of, this is – they certainly weren't meeting a minimum requirement.

MR PEDEN: If I can just test one more thing, and sorry to go on about this, but it has been suggested to us by another submitter that that might have a reverse consequence in that one of the benefits of MMP is seen to be the ability of a party to put before the electorate a carefully-selected list that takes into account things like gender balance, ethnic balance, geographic balance, and that trying to form such a list, taking account of the views of all the party membership, might be a very difficult exercise which may not get you to the ideal result that the party's looking for. What would your view on that be?

MR LOGAN: Well, having – if you are electing a group of people to do this, and the whole membership is, obviously you're going to be electing people who have got a skill at this. They're going to study it.

MR PEDEN: Right.

MR LOGAN: So you would rely on that group being able to come up with the right balance and pick the right people. Like, to give you an example, the

National Party currently have a list ranking committee that is elected quite broadly. It's still – I still think the system could be improved but it's elected quite broadly, and they come up with, I think, a fairly balanced list. I think their system has, although I think it could be improved, but I won't go into that now, but I think still it is the basis of quite a good method of doing it.

MR PEDEN: So minimum requirements in your view would be the election by party members of a group within the party to make this decision, to rank the list members, and that group would exclude current Members of Parliament?

MR LOGAN: And current members of the Board.

1620

MR PEDEN: And current members of the Board okay.

MR LOGAN: So then you've got a separation and you've got people that are focused on one thing, and basically when you're electing these delegates, you know which way their biases are, so you get a balance, and that's why you need a group of at least 30. You don't want a group of five, because you could get, when you get that narrow, you could get all, people with all one opinion, and you want a spread. So I would say a minimum of 30.

SIR HUGH: Ms Huria? In your selection model which would be the, this special elected committee that would make the choice, would the members also have a say, not just in the selection of the committee but in the selection of the candidates who go on the list?

MR LOGAN: I don't think you could enforce that, but I think the idea of having, like the Greens do and ACT did this time, of having a non-binding indicative vote of members is quite a good idea, but I would think that to enforce that in law would be a stretch. I'm thinking of a minimum requirement. I mean I would hope that parties would go beyond a minimum requirement, but it's just my feeling that there is a potential for some parties to go under what is a minimum requirement, and it's very easy, the way this is worded is

very easy to say, “Oh look, the membership’s elected the board as a whole, so we’ll make the board of a party which may be five or 10 members are the people who select the list.” And that would comply with that, but it’s anything but satisfactory. And that’s what’s happening.

MR PEDEN: In terms of enforcing the rules and the idea of the Electoral Commission doing that, wouldn’t there be a risk of the Electoral Commission being politicised if it was, if it was delving into the internal workings of political parties?

MR LOGAN: Well, it’s delving into all of them and it’s not politicised by checking on all political parties’ expenses, and it’s the same sort of thing, you’re just checking that they are meeting the rules. “Here’s the rules, have you met the minimum?” That’s all you’re doing so no, I don’t see that as an issue at all.

SIR HUGH: Dr Arseneau?

DR ARSENEAU: Thank you for your submission, can I just ask a quick question about your fixing, your idea of fixing the number of electorates, 70/50, so 70 general electorates to 50 list. With the drift of population, how would you keep, you know, as the population moves from the South Island to the North, or as the population in the North Island grows faster than the South Island, would you advocate getting rid of the South Island quota, or would you advocate increasing the size of Parliament, or what?

MR LOGAN: Well, this becomes a problem because you’ve got very large electorates in the South Island now. I mean, some MPs are travelling huge distances and if you – I think the ratio has, I should have made this clearer, has got to be 70 to 50, or else if you go down to 80/40, there are situations where you literally won’t have enough list seats to make the system work, so that’s got to be a minimum ratio. I suspect it would be politically very unpopular to start increasing the size of Parliament, but I suspect at some stage, that might have to be done, like, you could, if you keep the

proportionality you're going to be reducing the number of South Island seats. Now, I think under, say, 14 seats, you'd have a serious problem, with just the literally, the physical size of the electorates, so I would think at some stage Parliament's going to have to be increased in size, probably by a seat every election or two.

The other issue that deals with it is the tolerance on boundaries. I think it's 5% at the moment. I would be concerned –

SIR HUGH: Well, plus or minus 5%.

MR LOGAN: Yeah, that's what I mean, yeah. I think if you went to plus or minus 10% it, again, lowers the integrity of the system, but it may solve that problem a little, which would mean the South Island seats have got less population in them, but they cover more land area. But I think that's an issue that would have to be looked at very carefully, because there's always a danger of increasing that sort of tolerance.

SIR HUGH: Professor Roberts?

PROFESSOR ROBERTS: I want to say thank you, the only thing I could add to that is I think it's very important to bear in mind that in a referendum only 14 electorates voted for change, but five of them were rural electorates in the South Island spreading from Kaikoura right down to Clutha-Southland, and it's obviously a huge issue, the size of electorates, already in the South Island.

MR LOGAN: Yeah, I know. It's – that's one of the difficult features of a system where you've got a smaller number of electoral seats, but...

MR HUNT: Thank you Mr Logan, thank you for your contributions and your help for our deliberations.

HEARING ADJOURNS: 4.26 PM