



LIST MPS STANDING IN A BY-ELECTION

How by-elections occur

By-elections in New Zealand occur to fill electorate seats made vacant in Parliament by the resignation or death of a sitting electorate member.

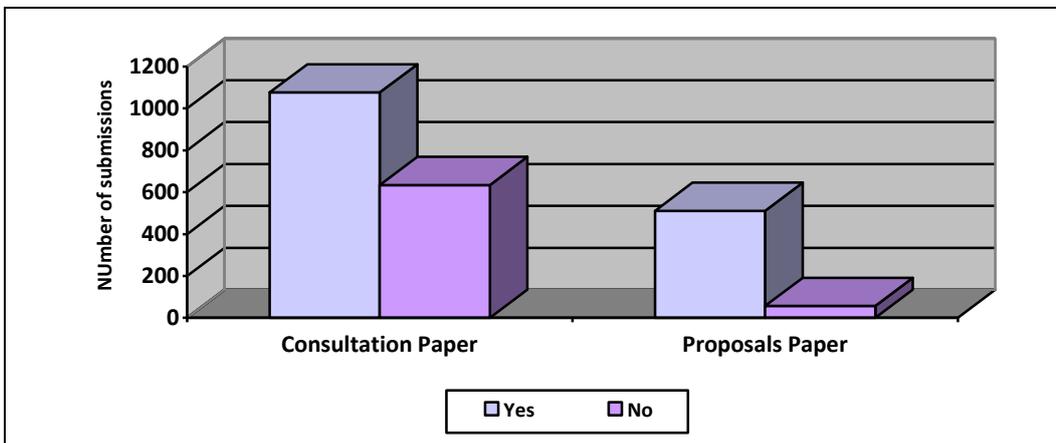
This does not apply to list members. If a list member's seat becomes vacant, the next available person on their party's list fills the position.

A list MP can stand as a candidate in a by-election without first resigning their seat.

What submitters said—

This issue was raised in 1,710 submissions during the consultation phase. Of these, 63% were in favour of retaining the status quo while 37% were opposed. The issue was commented on in 567 submissions on the Proposals Paper and an overwhelming majority (90%) supported the status quo.

Figure: Simple analysis of submissions on by-election issue



COMMISSION'S RECOMMENDATION

- ❖ List MPs should continue to be able to contest by-elections.





Comments and themes from the full submissions on whether a list MP should be able to contest a by-election.

Political parties

All the political parties except the Mana party supported retaining the status quo (the Green Party did not submit a view on this issue). The parties supporting the status quo submitted there should be as few restrictions as possible on the ability of eligible persons to stand for Parliament. To prohibit this would create an anomaly with the eligibility of list MPs standing in general elections. List members are often electorate candidates who may have been narrowly defeated in the previous general election and are therefore the most likely candidates for the by-election.

These parties also suggested a by-election always has the potential to 'distort' proportionality, irrespective of whether list MPs are candidates or not. They suggested this is an inevitable consequence of a mixed member electoral system.

The Mana party submitted that existing parliamentary parties are already advantaged over non-parliamentary parties and sitting list MPs enjoy similar advantages. Currently sitting list MPs are standing for election in a Parliament they have already been elected to. Banning the practice would be more transparent as everyone would know who the new person elected to Parliament would be.

Academics and social commentators

The majority of academics and commentators who submitted on this issue support the status quo. These submitters argued MMP does not claim to guarantee a proportionately balanced Parliament for the entire parliamentary term and the balance of numbers in Parliament may change over a three year term for a host of reasons. Their view is that voters should be free to endorse the candidates running for the seat.

They submitted New Zealand is too small to restrict who can contest elections and it is undemocratic to deny some citizens the right to stand as candidates. They suggested the market place is the best place to resolve this issue. One submitter commented "there may be an argument that the profile of a sitting MP means he or she has an advantage over other candidates, but that is the case at a general election as well as a by election".

Another submitted that, although this practice may reinforce the idea of inequality between list and electorate MPs, and can affect election day proportionality, on balance it is in the long term





interests of New Zealanders to have democratic choice, information and awareness about candidates, their parties and policies.

Those opposed, however, submitted that it is inappropriate for sitting list MPs to contest by-elections because it creates the impression an electorate MP is more important than a list MP. They argued sitting list MPs have an unfair advantage because they already have a public profile and more resources and remain a member regardless of the outcome.

Concerns were also expressed about the effect on the proportionality of Parliament if the party that won the seat at the general election fails to hold it at a by-election and the potential such a result could have a government's ability to continue in office.

What other submitters said—

Retaining the status quo

- All people with the right to stand for Parliament should be permitted to stand for by-elections. Many list MPs would prefer to be their region's representative. Why should they be disallowed from standing in a by-election, simply because they didn't win last time? Such a rule would make it impossible for many candidates to stand at all.
- Yes, otherwise you are complicating an electoral system where the rules for a by-election differ to the rules that apply to a general election. A by-election is in fact a mini-general election hence both should operate under one electoral law.
- Electors should be able to choose the best candidate to represent their electorate from the widest possible range of candidates, no matter whether the candidate is a current list MP or not.
- Power in electoral systems should rest with voters.
- The objection to this is if the list MP was successful, the 'next person on the list' would enter Parliament to take the vacant list place, as though this were an unintended or undeserved consequence. However, forcing the list MP to resign first would trigger this consequence anyway.
- What problem is restricting the ability of list MPs to stand in by-elections supposed to fix?
- Any qualifying person has the right in law to stand for Parliament and this right must never be diminished. This goes to the very heart of a free, democratic, society.





- It may be a way of spreading the party's message in an unwinnable seat, so should be seen as a publicity effort and encouraging debate. It would be unfair if the list MP had to resign first.
- In a democracy, there is nothing wrong with encouraging political debate even if the outcome of the particular vote is known in advance. It would be a shame to lose a good list MP because of a requirement that they step down.

Prohibiting

- If a sitting list MP were to stand in a by-election and win, it would change the number of seats the parties have in Parliament. This allows a small local region to go against the wishes of the nation as determined by the party vote in the general election.
- List MPs should not be able to stand in a by-election. They have an unfair advantage as they are standing as an MP when all the other candidates are not MPs.
- List members wanting to become electorate MPs just fuels the perception that list MPs aren't 'real MPs' and electorate MPs have higher value.
- They are already members of Parliament. Being able to stand as an electorate candidate when they are already list MPs feeds into the argument that list MPs are second class.
- If list MPs wish to stand in a by-election then they should first resign their list seat. Otherwise the voters are faced with a phony election and, in some cases, find themselves in the situation of choosing between several candidates all of whom will remain in Parliament regardless of the outcome. What this achieves in reality is the election of an unseen and unknown person who is next on the party list.

What happens in other countries?

A number of submitters suggested that by-elections should be abolished. For some it was an issue of cost, for others the issue was about maintaining election-day proportionality.

The following countries all use MMP as their voting system. Not all have by-elections: Bolivia, Germany and Romania do not hold by-elections.





Table: Showing how parliamentary vacancies are managed in countries with MMP

Country	How parliamentary vacancies are filled
Bolivia	Vacancies arising between general elections are filled by substitutes elected at the same time as titular members or, failing this, by the 'next-in-line' candidate on the party list.
Germany	Any vacant seat (electorate or list) is filled by the 'next-in-line' candidate of the same party. Vacant overhang seats are not filled. Vacant seats held by independents are filled through a special election in that constituency.
Lesotho	Vacancies arising between general elections are filled through by-elections.
New Zealand	Electorate vacancies arising between general elections are filled through by-elections. List vacancies are filled by the 'next-in-line' candidate of the same party (from the list).
Romania	Vacancies arising between general elections are filled by unsuccessful candidates declared as substitutes. By-elections can be held in exceptional circumstances.

