

TELECONFERENCE HEARINGS ON THE 2012 REVIEW OF MMP**AT WELLINGTON****ON 11 JUNE 2012**

HEARD BEFORE ELECTORAL COMMISSION BOARD MEMBERS

10:00am**SIR HUGH WELCOMES PROFESSOR ANDREW GEDDIS**

SIR HUGH: We are waiting for Dr Therese Arseneau, but currently on the line – I am in Auckland and in Wellington we've got Robert Peden who has just spoken, Professor Nigel Roberts and a couple of staff members, Louise Vickerman and John Spencer. You may have had something to do with Louise in setting up the arrangements for this. Well while waiting for Therese perhaps I could just explain the format we have adopted with all the oral submissions. We've got the best part of half an hour with you if we need it, we invite the person making the submission to address us on their principal points and any new insights or thoughts they may have had, then the members of the Commission have a chance to ask you some questions – Robert starting off – we'll probably won't have the Deputy Chair, Jane Huria, with us, she's not able to participate, I'm sure I don't think she is – then I'll ask questions, then Nigel and Therese.

ANDREW GEDDIS: If Therese can make it of course, hopefully there hasn't another shake down there.

ROBERT PEDEN: Sir Hugh, I've just suggested that we give Therese...

SIR HUGH: Should we start off and Therese can join in if she is able.

ROBERT PEDEN: Yes.

SIR HUGH: Ok – Prof Geddis, would you like to just run over your submission and main points and, as I said, anything new that you might want to put to us?

ANDREW GEDDIS: Sure – well when I started into the submission or started looking at this, I thought well, you know, I'll probably have quite a bit to say, I'll probably want to make quite a few changes, but the more I actually looked at the particular points that are up for Review, the more I thought actually I'm fairly happy with the way things are working at the moment. So the one area where I have recommended some change is around this area of thresholds. Now the thresholds it seems to me when the Royal Commission did its thinking about it, was it wasn't given a huge amount of thought, and the thought that was given to it seemed to be fairly much well on the one hand this, and the other hand that, or just to clump somewhere in the middle, make it pretty much like Germany and do it with that.

I think as time has gone on, we've actually experienced how MMP has worked in New Zealand. I think that it has shown that the thresholds haven't worked in the way that perhaps was anticipated. The first threshold is this question of the "electorate lifeboat" or if you win an electorate seat you bring in people on your coat-tails, and I really think that has developed in a way that was completely unanticipated at the time, and I think that that has become a problem. A problem for a couple of reasons – first of all I think the way it's been used is - I'd call it – unprincipled in the sense that it's being used as a way to try to evade the higher party vote threshold that's proved just too difficult to get over, and so it has softened the impact of that higher vote threshold, but in a very hit and miss way. And also I think that because it is being used to do that, it's bringing MMP as a system into some odium – I think if the bit of MMP that the public is least happy with and the whole, sort of, shenanigans of the cups of tea, and so on – does leave a bad taste in people's mouths.

So my recommendation around thresholds is simply that the electorate vote threshold should be done away with, but then in order to try to keep MMP having the proportional affect that it was intended to, we should lower the party vote threshold. Now lowering the party vote threshold then gets into difficult questions of, well, how low, if you're going to go below 5% then you go 2%, I don't think there is any absolute right answer to that – it's a trade-off, it's balancing the various things. My own view on that is that the kind of things we should be looking at are just questions around the running of Government, what allows Government to operate in an affective and desirable manner, and questions around what allows the legislature Parliament actually operate in a way that we're happy with and we like. And my preferred view of a good legislature is one in which you do

with party teams that are operating around policy and negotiated policy, and doing the deal that are required under MMP, and a system where you did have a number of one MP party entering into Parliament I think would actually degrade it as an institution. My personal preference is for a threshold that would deliver three MPs, so I've put it at 2.5% as my preferred alternative threshold – so halving essentially what we've got at the moment. So that's the threshold issue – so I'd make reasonably significant changes around that question.

With regards everything else – I would actually see a large reason for change except perhaps in the question of overhangs, which I'll come back to because I don't think I addressed that properly in my submission – but with regards list MPs contesting by-elections, I don't see that as a problem, so I wouldn't change it. The rules allowing candidates to contest both an electorate and be on the party list – again, I don't see that as being a problem – I don't think it has the affect that people really think it does, so again I wouldn't change that.

The rules for order in candidate on party lists – this is an area where I think, we could try all sorts of clever things, such as requiring parties that one member, one vote etc – I guess my position on this I'm leery of trying to intrude the law too far into the way parties organise themselves internally. I think looking around the world, the more legal rules we put down as to how parties have to internally organise, the bigger invite you put for courts to have to step in and start making decisions and often decisions that reflect antagonisms between factions within a party, and I just don't know whether courts are very good at doing. I would tend to view having as minimal a requirement of parties as possible such as the party leader can't of their own fair just decide who the members will be. But I think our current rules say you're not allowed to do that, but then leave it as open as possible to parties to work out what they want to do about selection. I think there's a particular problem if State tells parties they have to have internal selection rules that then rule out certain kinds of parties existing, and this I think will be a particular problem with (interruption....)

DR ARSENEAU: Joined the teleconference – Morning

SIR HUGH: Thanks for joining us Therese, we've got Professor Geddis on the line along with Robert, Nigel, myself, Louise and John – Jane hasn't been able to join

us. Because of the time constraints, we've invited Prof Geddis to embark on his overview of his submission, so he's just doing that, so we'll invite him to continue if that's ok.

DR ARSENEAU: Apologies, Andrew.

ANDREW GEDDIS: That's ok Therese, I'm always done. So, yes, with regards to internal rules of parties or the rules around how parties select their candidates, again that's something that frankly I don't know that it's a problem that we really do need to fix, I'm not sure that there is actually a problem with it at the moment.

Then there's this question the effect of a party winning more electorate seats than its share of the party vote it's entitle to – the overhang issue – I slightly misread the Commission's brief on this, I read the fact that you weren't allowed to address the size of Parliament as meaning that you weren't allowed to ask whether or not we should essentially have a floating number of seats to deal with this problem, so I just skipped over it quite quickly. Again, I don't think there's a good answer to it. I'm wondering, though, if perhaps the simplest and the neatest thing to do would be just to say, look, we'll just leave it at 120 – we'll have a fixed number of 120 seats, and we'll treat overhang seats in the same way as we treat independent fulfilments, they just come out of that 120 and the other parties who qualify for a share of the allocation get to share the reduced number of seats. Sure, it's disproportionate, but then again the whole problem of the overhang is that it's disproportionate in some way, and I'm just wondering whether again to solve future problems of Parliament blowing out to 124 or 125 people, we just don't leave it at the fixed 120 and just mean that some parties down the track will get less MPs than they otherwise would, which is unfair, but you know, the other way is unfair as well.

And then finally the effects of the ratio of electorate seats to list seats – was going on the Department of Statistic's analysis, you know, this isn't going to be a problem for the future through to 2051, so it's not a problem – I wouldn't worry about it too much.

And that is in a nut shell my recommendations.

SIR HUGH: Ok, thanks very much. Robert, do you have any questions?

ROBERT PEDEN: Yes I do – thank you for your submission, Andrew. I've really got two questions, one relating to the threshold, well it's triggered by your submission on the threshold – and I appreciate that, your suggestion of the 2.5% threshold is very much a matter of preference, because as you say, you could make arguments for any percentage around 5% or below – or higher indeed. The 2.5% would be seen as a significant change, and one of the things that the Commission needs to think about is what, along with its recommendations for how MMP might be improved, it also has to think about what it says to Government about what process should be followed for giving implementation to any recommendations, and I wonder if you've thought about that. So, for example, if there was a small change recommended to the threshold, from say 5 to 4 or 3.5, or something in that area, what the requirements might be as opposed to a more significant change, such as 2.5%.

ANDREW GEDDIS: Part of my answer to that would depend on what you guys are hearing as regards this process in terms of submissions. If there was a lot of support, you know majority support, perhaps even getting up to 60-70% for a large reduction in the threshold, then I think you could put it to Government, well look we've gone out, we've talked to people, and people's views are very strongly in favour of, you know, dropping the threshold quite markedly, which then I should think would allow you to say to the Government, well insofar as we've heard from the public this is what the public wants. I suspect, though, I'm probably at the lower end of the, you know, where people want the threshold, I suspect the public generally would want only a small reduction, if any reduction at all, in terms of the submissions you've got, and in that case I think it will be hard to argue for a much lower threshold no matter what the good policy arguments for it – so even if it is the right thing to do, it could be a hard thing to push in the face of, you know, no real public claimer for it.

ROBERT PEDEN: So if we were to suggest a significant change we would also have to consider suggesting that a further referendum be held on the matter, do you think?

ANDREW GEDDIS: That's the situation I was trying to get to, yeah, I mean unless you've can show out of this process that the public is behind this change, then I think it a cut to 2.5% is such a big tinkering with the system, it's not an adjustment, it's a fairly fundamental overhaul of the system, and I think really, yeah, you would have to

say to Parliament, look if you're going to sell this review, if you're going to carry it properly, you may have to, well you will have to go back to the people on it.

ROBERT PEDEN: Thank you. My other question is around your comments on internal party democracy and you mentioned international experience, and I wonder if you – have you got any examples in mind of jurisdictions that impose more detailed requirements than we do on internal party democracy and the court experience that led to the extent to which that's been challenged and what the outcome of that's been.

ANDREW GEDDIS: Sure – well there's a lot of jurisprudence around that out of the United States which has come about almost in reverse because the courts, because of constitutional issues led the parties, you know, there are various ways you must go about your selection, and then the parties have tried to grow rules around and courts have been revisited. Now, because of the particular jurisdictional differences in the constitutionalisation US issue, it probably doesn't impact quite so much, or wouldn't impact in the same way in New Zealand. I think that I was thinking more generally about what I'd call a juridicalisation of politics, in other words, this increasing turn to the court to try to sort out what are essentially political conflicts, and so rather than point to just one jurisdiction of, say, you know look what a hash they made of it by putting party rules in place, it's more recognising that there is a trend to introduce more laws around election type issues, and the more laws you introduce the more the temptation is there for people to try to use those laws quite out of their own internal political battles in the courts, and try to get a court to say, well you win, you lose.

ROBERT PEDEN: Have you got any idea why the, cause I mean, you've made the comment that you didn't think there was a problem in this area, and in fact there may not be a problem, but there is certainly a strong perception coming through submissions that people are concerned about the perception that parties are following good process. Now whether that's right or wrong, is a separate question, but that's the perception. And so if there's a trend overseas to imposing rules - I mean it would be helpful if you've done some work in this area you could identify it for us – some of the countries which are doing this, and why they might have done it, and what the effectiveness of it has been.

ANDREW GEDDIS: Sure – well I mean if you look across to Australia, for instance, with their issues around pre-selection where you have, you know, they are trying to choose who the candidate is going to be, and so the different factions within the party essentially bring in supporters, either from outside the district or they sign up “new supporters” who have got nothing to do with the party to try their stack side one or the other, and you then get into quite strong arguments over who is entitled to be recognised as a member for voting purposes. And, that’s got so bad in the State of Queensland that they’ve actually had to give over to their electoral agency the oversight of that pre-selection process to try to, you know, work out, well you guys are going to decide who is entitled to vote as a member or not. So the reason why there has been a turn of the law there is simply they had bad practices – you actually did have people trying to corrupt to the sense the selection process, well either you ignore that and just let them cheat as it were, or you deploy the law to try to fix it. Now, I don’t know that New Zealand has got that sort of real problem, that is a real problem with the way the political system works, I suspect the problem in New Zealand more is that people either don’t really know how parties are selecting their people, and so there’s a lot of rumours go around that you know, such and such got selected because the leader liked them, well that sort of thing. Or you’ve got people who may know how the system works but lost under it, and you know if you lose under the system well you’re going to think something is wrong with it. But the answer to that I’m just suggesting is that if you do bring the law into here you are going to then have a response to that, and that response may not actually be to the good, you may turn what really should be party members arguing with each other as to who they want and then voting on it in some way, into two sides going into court and a Judge having to make some adjudication as to which side is right and which side is not.

ROBERT PEDEN: And I suppose, I mean the reality at the moment is that the law is involved to the extent that parties have constitutions which the members are entitled to enforce through the courts if they don’t think they are being followed.

ANDREW GEDDIS: That’s true – now in the New Zealand context those - the courts - that have been involved with that process one way or the other have been very hands off to the extent of, well look, we are going to want to see something really, really, really wrong before we are going to get involved, which I think is a good process. Now it may well be that the courts having done that in a couple of occasions may have sent the message, look it’s just not worth trying to fight it here, but of course if you introduce new

rules, then you reset the clock as it were, and we have to go through that again, and once again, they ask well you know exactly what specific example is there of someone of you know of its system not working that we need to fix.

ROBERT PEDEN: Good thank you very much.

SIR HUGH: Just following from that, my current view is that the courts have in Roger Payne's submission and the other cases have probably gone about it as far as we need to go in terms of being prescriptive as to the contents of the various parties' rules. We've certainly, as Robert says, had a number of complaints by affected candidates and people who worked in the party organisation and become unhappy the way they say the rules aren't being honoured, but I find it difficult, and we've asked people making submissions about it, they find it difficult, too, to try and provide any code as to what the political parties' rules should contain, particularly given the considerable differences between big parties and small ones.

ANDREW GEDDIS: Yes, I mean, any attempt to sort of lay out and spell – like your constitution must have these various things in it and must have this particular process for selection – well either it's not that it fits the party but if the party doesn't want to operate in that way and here I have, in particular, say the Labour Party which wants to give its union as organisations a greater say over selection and perhaps individual members. So, either you create a system of rules that means the Labour Party can't exist in current form, which I think is very problematic for the State to say to a party, sorry (Sir Hugh : you can't do that) – no exactly, or alternatively you have essentially what are a nice set of very high principles, a very wide, broad ideals, and then say to Parties, ok sit within these and then if you get any questions – does this particular system actually fit within that – and yeah, I just think that it's always a nice that there are, you know lawyers in particular, always think if we can get the law involved here we can get some certainty and fix the problem. I don't think that's necessarily what would happen here.

SIR HUGH: As another lawyer, I don't either.

ANDREW GEDDIS: Yeah, well some lawyers perhaps I should have said.

SIR HUGH: Some submissions that suggest that the Electoral Commission should have a policeman duty in all of this – I could possibly see us policing some high level principles that need to be included in the Parties' Rules, but I couldn't really see the Commission having much of a role in the policing of the way the Rules are operated. What's your view on that?

ANDREW GEDDIS: Well, not without changing the nature of the Commission quite considerably, and giving it essentially some sort tribunal function, allowing it to hear evidence, allowing it to probably hear

SIR HUGH: I would think that just wouldn't work.

ANDREW GEDDIS: Well, again I just come back to the thing ... not sure that there in the New Zealand political system in order to need that, a particular need for it.

SIR HUGH: Ok that's helpful – Nigel?

PROFESSOR ROBERTS: Thank you very much. Thank you, Andrew, for an excellent submission, there are a lot of very interesting points. I just want to ask you about what you say about by-elections, and you say "so if the concern really is to prevent a change to the proportionality of Parliament, the answer would seem to be to get rid of by-elections altogether, and just allow the Party that holds the electorate seat to nominate the replacement MP". Of course, this can never happen. I was just wondering if you'd like to comment on the fact that of course this does happen, we've just seen it, Bob Carr the new Foreign Minister of Australia, of course, was appointed to the Australian Senate in exactly that way to fill the temporary vacancy – and most European countries simply don't hold by-elections. By-elections are a very foreign kind of English concept. Would you like to comment?

ANDREW GEDDIS: I made that as my reading of the mood of the electorate, and what the likely response would be if you told electorates that if the person you voted in as an MP leaves for any reason midway through a term, the party will tell you who your local MP is next. I suspect that would go down very, very poorly and so 'this could never happen' is not a claim of theory, it's a claim of what I think is reasonably practicable in the New Zealand context.

PROFESSOR ROBERTS: You don't think there's possibly an alternative view in New Zealand, that people would say "thank heavens all that money we are wasting on by-elections is going to be saved"?

ANDREW GEDDIS: Well possibly – if the Commission thought it could sell this as a response then, sure, you could try to sell it. I just think that people are still so wedded to this idea of their local representative who they choose, that to do away with that in the name of maintaining proportionality across a term, I just don't think it would go down – I just don't think it would be acceptable. Like I say, if I'm wrong about it, well then I guess it would be a possibility, it's just I didn't turn my mind to it because I just didn't think it's one of those things you can get to happen in New Zealand.

PROFESSOR ROBERTS: Thanks very much, and thanks for a very readable and interesting submission.

DR ARSENEAU: I want to reiterate what Nigel's just said – to thank you very much – such a clear and well argued submission, and as of course being the last on the list most of my questions have been taken. But I was wondering, Andrew, if I could follow up with the discussion you were having with Robert about a 2.5 party vote threshold we'd probably require a referendum – what would be your cut-off in terms of – at what point would it be just tinkering rather than a substantial change.

ANDREW GEDDIS: Well again I think that question can only be answered in the context what you've heard from the public and the submission process – so if, you know, likely have to give a message to Government, you have to say, look, we've talked to the people, we've heard all the submissions, the mood of the public is such in this, however, we've also heard these – what we think are quite good policy arguments for making a change one way or the other – and out of that mix you're going to have to tell the Government here's a change that we think ought to be made through some sort of process. So my view would be, just on the assumption of what I think you've probably heard from the public, that you could tell the Government, look we can go down to 4% without too much drama, we're just doing what the Royal Commission said – given that there's enough of the public support for a minor reduction in the threshold – frankly anything going under 4% is starting to get into more than tinkering territory. So maybe

down to 3.5% could be sold as an adjustment, but I think certainly anything under about 3.5%, unless you've heard a real – you know – from the public, yup we're happy to go really low, which I suspect you haven't, but if you have heard that, perhaps you could go under 3.5%, but I suspect anything under about 3.5% is going to have to get some sort of extra public buy-in above and beyond simply a recommendation and then vote on by Parliament.

DR ARSENEAU: And, obviously, I mean because your recommendation was 2.5%, you would see no difficulty with going with a half percent – it's most unusual isn't it to say 2.5% or 3.5%?

ANDREW GEDDIS: In a sense it doesn't really matter – you know, it's just a cut off – a fairly arbitrary cut-off – I put 2.5% because that's always going to get you three MPs, and it was more the three MPs thing that I was fixed on. Now, if people sort of thought 3% had a more definite, solid, you know it's more concrete or something, then fine, 3% would be ok. Like I say, 2.5% was for me based on what would get you three MPs rather than the actual.....

DR ARSENEAU: Thank you very much, very clear.

SIR HUGH: Well Professor Geddis, thanks very much for your submission and for your chat this morning. We'll certainly take all that on board and think about it deeply in putting the report together.

ANDREW GEDDIS: Well I appreciate it and I wish you luck with your job, and I'm just glad I don't have to do it.

SIR HUGH: Well we're enjoying it.

ANDREW GEDDIS: Oh, that's good to hear.

END OF CALL: 10:30am

10:30

SIR HUGH WELCOMES ALAN McROBIE

SIR HUGH: Welcome Mr McRobie – we’ve got on the line Robert Peden, Chief Electoral Officer, Professor Nigel Roberts in Wellington, Dr Therese Arseneau is on the line but she’s just put the phone down to dash off and get something, and we’ve got a couple of Commission staff, Louise Vickerman and John Spencer, also on the line in Wellington. We don’t think that Jane Huria, our Deputy Chair, will be able to join us. What we’ve been doing is to invite people making submissions to outline their major points to us and anything new they might want to say, and then starting with Robert, me and then Nigel and Therese we’ve put some questions to people. So if that’s ok with you, you might care to take off.

ALAN McROBIE: That’s fine. I have actually divided it up as you saw in the submission which I’m assuming you’ve all read – in order of the questions and to deal with each question and then perhaps members of the Commission and people on the panel may wish to ask questions on each one so we can deal with each one in turn. How does that sound to you?

SIR HUGH: That’s fine. You order it as you wish.

ALAN McROBIE: Right, so you want me to start now? Ok, looking at question 1(a), the question of thresholds or the hurdles of parties should perhaps meet in order to qualify for an allocation of list seats – what I’ve tried to do is to make my submission and my conclusion evidence based by a look at the actual experience that New Zealand has had over the last five elections since 1996, and the interesting thing that I found from that and looking at it there, that the law in fact is allowing for a much greater range of parties and opinions to win parliamentary representation, but it hasn’t discouraged small parties from attempting to secure representation at all, and in fact the United Future and Green Parties as a good example have been the catalyst for a number of smaller parties to merge together to provide a more affective platform for those minorities views. Now on the basis of this, and looking at the question, it seems to me that the concern about the 5% threshold issues that have been talked, has arisen only because New Zealand First won just over 4% of the vote in 2008 and didn’t win any seats, whereas the ACT

Party that only won 3.6% of the vote won four list seats in addition to its electorate seat that it got. I look back to 1996 and I don't recall the same level or like the same level of concern about Christian coalition failing, even though they also got over the 4% threshold in 1996. It does seem to me there that the 5% threshold is an appropriate threshold and I don't personally see any need to change, and I followed that up when I picked up another point later on that I have a recommendation to make but may in fact address this particular issue.

ROBERT PEDEN: Thank you Alan. Many people have submitted to us that based on our experience with MMP that significantly reducing the threshold, to something like 2.5% and in some cases even lower, on the basis of our experience with MMP would not have the dire consequences to effectiveness of Parliament and formation of Government that others may predict. You are personally comfortable with it staying at 5%. What would be your response to the submissions that New Zealand should go to something like 2.5% or less threshold?

ALAN McROBIE: Oh I think my own feeling on that, and it's a gut feeling I guess, it would actually change the dynamics to some extent from that if we reduced it to that. I'm not hard and fast on 5%, I still think it's an appropriate level for that, and in fact the Royal Commission suggested 4% when they were looking at it, and Parliament in its wisdom back in 1993 decided that that was too low and proposed the 5% threshold which we have at the present time. And the purpose as I recall it in the Royal Commission's Report was that they wanted to make it possible for a range of views to be represented in the Parliament, but they didn't want so many different fragmented views coming into the Parliament that was going to make a government difficult or perhaps unsustainable, and I tend to lean towards the conservative view the 5% - I'll come back to this at another point.

SIR HUGH: Just – a number submissions have left the percentage threshold with the electorate seat threshold and have suggested that if the one seat threshold is abolished then the percentage threshold should be lowered to preserve the proportionality and the representation in Parliament of the wider range of parties that have been able to get over the 5%. What's your view on that?

ALAN McROBIE: That really brings us to the second point that I was.....

SIR HUGH: You recommend doubling the one seat threshold?

ALAN McROBIE: Yes I do – I sort of looked at it – I found it very interesting when the Royal Commission said that the mother for this was the German electoral law which had the winning of three electorate seats before the opportunity to win a list seat came on, and it seemed to me and in work that I've done many years beforehand in relation to the establishment of the Public Expenditure Committee that this was yet another example of New Zealand picking up an idea from overseas and scaling it back to 5%. In the Public Expenditure Committee's case the model was Britain and there were two committees there, one Public Expenditure and the other one dealing with Public Accounts, but New Zealand merged the two of them and while we - post expenditure reviews were very useful in New Zealand the pre-budget, or the Budget Reviews in fact didn't serve any real purpose at all. Now what I'm actually saying here – it does seem to me – and particularly in looking at the experience, again, that we've had over the last 15 years, where effectively the small parties like Jim Anderton's Progressive, United Future and to a certain extent ACT as well there, if they in fact have owed their positions and bringing other people into Parliament, to what are effectively personal fiefdoms or I would call – a bit like the pocket Burrows of the 16th Century that we had in Britain there – and it seems to me, and I've always had the view there to raise that threshold to two seats would ensure that in fact a party had more support within the country than just locked up in one particular electorate as we've found today. And when I look at the Maori seats, an example on this, they in fact have actually had overhangs in the last three elections, but in effect there they have shown that they do have support outside just a single electorate, and I think this was ripped wide with the way in which the National Party and the ACT Party, in fact, to use a better word that may be appropriate not inappropriate, colluded to ensure that the ACT Party won one seat in 2008 and 2011. I found it actually very interesting that, because the parties themselves there are recognising the need to have additional support in every one of the seats that they bring extra seats in, they're actually getting seats over and above what the electorate is actually saying in that particular context.

DR ARSENEAU: Hi Alan – again I'm interested in both your recommendations in terms of thresholds, and trying – we've had a lot of submissions arguing for lowering the 5% threshold, and the argument in terms of the reasons behind it is the sense that

although the Royal Commission talked about needing to keep extreme parties out, that the feeling was that that isn't really going to be a difficulty in New Zealand, and so the 5% threshold was perhaps a bit high considering the fact that we've proven to be quite stable and not extremist at all. So, my question for you is, especially considering how many small parties have got into the House through the one electorate seat threshold, and given that you're recommending a two electorate seat threshold, do you think in light of that that 5% might be too high?

ALAN McROBIE: Are you suggesting here that's in fact the electorate threshold was raised to two seats that the party list threshold, or party vote threshold, could be reduced and I certainly wouldn't have any grave objectives to that. I think that its under-balancing thing with operating with this particular point.

DR ARSENEAU: It's exactly what I'm thinking. Yes, the connection between the two.

ALAN McROBIE: There is a link between the two and you will notice in my submission I actually called them 1a) and 1b) rather than one seat.

PROFESSOR ROBERTS: Just very briefly, Alan, thank you for a very obviously well trans-political scientist and detailed submission with decent footnotes. I just want to say that there was no, I agree with you, criticism of the 5% threshold in 1996, when the Christian Coalition fell below it and got no seats, however, the contrast with 1999 where New Zealand First actually got fewer votes in 1999 than the Christian Coalition had got in 1996, but of course New Zealand First got five seats because of Winston Peter's 63 vote plurality – did produce a lot of comments and criticisms in saying – look – the one seat rule has brought five MPs into Parliament, whereas the Christian Coalition – and I would just say that that 5% and the 1% operation has been criticised at least since 1999.

ALAN McROBIE: I certainly haven't noticed it – but I think that in fact tends to reinforce the view that I have put in the submission there about raising the electorate threshold to two seats because in effect it seems to me, and I'm looking at it from a fairly cynical point of view I guess, but in fact what we have with the one seat threshold is people coming into Parliament, they're labelled as party leaders by getting the privileges of party leaders, some of the privileges of party leaders that are not available to ordinary Members. And yet to all intents and purposes as far as Parliament is concerned, they

are independent MPs. They 're acting as independent MPs even though they've got a party label with them – and certainly even if you did that it's not going to make any difference – if you've got a single person coming in – it's not going to make any difference to the formation of a Government because if it is appropriate to build up a coalition majority in the House if that's what the goal is, with single Members representing who are independents there, there's still nothing to stop them from becoming part of the actual Government in form of a coalition.

PROFESSOR ROBERTS: I quite agree with you, and of course, this last election saw the parties that won individual electorates they didn't bring in one extra list MP, so ...

ALAN McROBIE: I think that's probably the first time that's happened, isn't it?

PROFESSOR ROBERTS: Well, 1996 of course, you point out, Peter Dunne brought no-one else in.

SIR HUGH: Ok, I'm getting just a little concerned about our time – can we perhaps move on to question 2 – List MP in by-elections.

ALAN McROBIE: Yes, I've always found it rather strange that in fact sitting MPs, list MPs, can remain in the House and continue the debate in the House while they're still contesting an election, and I know this certainly wouldn't be particularly popular, but it does seem to me that in fact the appropriate way to handle this, and we've had it on several occasions, that the list MP should not be prevented from standing in an electorate in a by-election, but that in fact that they should first resign their seat in Parliament – it would actually put a check on the by-election – particularly when you get a situation like we got in Mt Albert where you had I think it was at least three sitting MPs who were actually list MPs who were contesting that electorate as well. And it does raise another question that I didn't include in my submission, and that is the issue of an electorate seat changing party allegiance in the by-election. There is some suggestion about a month ago there, that if John Banks was forced to resign his seat that the National Party would certainly win that seat there, and that in fact would give the National Party one more seat in Parliament than they were actually entitled to in terms of the proportionality, so in other words it does upset the proportionality to some extent. Now there are two aspects of this, one could argue that a by-election mid-term or

sometime during a Parliamentary term where you get a change like that is also reflecting changed opinion throughout the country, so it's a fine line that particular one – but apart from that I think that it would be appropriate to require, for the integrity of MMP, to require list MPs to actually resign their seats if they wish to stand in a by-election.

ROBERT PEDEN: What would your response be to submissions suggesting that we simply do away with by-elections and fill vacancies from a party list of the incumbent party?

ALAN McROBIE: It is certainly a back door method of getting into Parliament, isn't it? If I was in that position I would hope like hell for a by-election if I was the next person on a particular party's list to go into Parliament. I know that they've used this practice for Senate appointments in Australia for that – there's certainly a huge cost in by-elections financially, and whether in fact the return is worthwhile – I guess it opens debate – but if you have a look at, for instance, the Te Tai Tokerau by-election last year and the Mana one beforehand there, there was a genuine contest between different parties during that by-election – they weren't done deals, either of those two were done deals when the by-election was actually called. I think if we did that it certainly wouldn't make people comfortable but I think there would be other people that would regret seeing the passing of by-elections.

ROBERT PEDEN: Actually, the Te Tai Tokerau is an interesting example, isn't it? Because one of the contestants from the party's perspective, and perhaps electorate's perspective would have been a very obvious candidate and people would have been surprised if it hadn't been contested by him, but he was also a list MP, that was Kelvin Davis. Should he really have to resign to be able to contest an electorate in that sort of circumstance?

ALAN McROBIE: Well, if he had had to resign the seat, people may have in fact actually have looked at it in a different light because a new, but if in fact, they - Hone Harawira was returned, Kelvin Davis would still remain a Member of Parliament – and it may well be that the dynamics of a by-election is changed as a result of that – we haven't had an opportunity to test that(noise) my recollection is that every by-election we've had with the possible exception of Te Tai Hauauru back in 2004 where the ...

resigned before they contested the by-election – for that has had list MPs contesting by-elections, or parties for an electorate seat.

SIR HUGH: No further questions? Can we move on to dual candidacy – time is ticking by – you are in favour of the status quo?

ALAN McROBIE: Dual Candidacy – I've thought about that and I've wondered about it – there has been some discussion about it – and I think that the Royal Commission's arguments when they looked at the pros and cons of this are appropriate, if there are instances where MPs who – if I can think of some in the present Parliament – who are making quite a significant contribution to Government, the person who probably would not in fact win an electorate unless the party was prepared to select them in, in one of those ultra-safe seats. But I think it does do what the Royal Commission was projecting for it, but in fact it did enable people who had ability but who did not have the links with the public and things like that to build up support in the public there to get elected in an electorate seat.

SIR HUGH: No further questions.

ALAN McROBIE: Right, moving onto question 4 – who should decide the order of candidates on party lists? – I had an interesting debate on that when I did a session post referendum with a group of dedicated proportional MMP people who are in Christchurch, and they were quite keen on the idea. But it did seem to me that when we were discussing it, and I tried to get them to at least think about it, that the question of the difficulties in doing this is to how, at what level of support did a person on a party list need to be lifted up above the parties on the other. And it seems to me that in fact that the parties choosing and setting the list is probably the most appropriate way because most, will accept the party's view of that and they are actually casting a vote for a party on the basis that they want to see that party as the largest party in Parliament and therefore have a real chance of being able to participate as a coalition partner in the next Government. And I think that in fact it may well help people's consciences if they are able to do that, but I doubt very much whether many people would actually do it, because the party's label was still a very strong pull in New Zealand politics. But maybe that, and I know the Royal Commission looked at the possibility of regional lists and then rejected it, that if you went to regional lists it may be possible to do that because of the

smaller size of it, but I'm balanced, my own view is that we actually leave it as it is. My other point that I make in this is that parties that do win seats in Parliament are actually advantaged slightly because the average is somewhere around about six seats per election there has to be reallocated because they are reflected or tied up in votes that are won by parties that didn't get any representation at all. Now, it does seem to me that if we introduce the alternative or preferential voting there, and I'd like to make a comment on that that the preferential vote

SIR HUGH: Well we're nearly out of time, I'm afraid we'll need to speed up if you don't mind.

ALAN McROBIE: right ... is that I think that in fact it would be worthy of consideration of introducing the alternative or preferential vote – at least for the party vote which would give us a better reflection, it might actually deal with the issue of the 4%, 5% threshold anyway, if a party is getting between 4 and 5% in the party vote there, if they have preferential vote it might take them over the 5%.

SIR HUGH: No further questions.

ALAN McROBIE: Question 5 – I don't recommend any change with electorate seats that would be entitled to, if they win their electorate seat – I think that it's a fact that if we're going to be stuck with this as long as we have dedicated Maori seats for that.

The next one I think one of the things Nigel will recall as doing some work on way back in 1993 when we tried to look ahead and see what the affect of gradually increasing the number of electorate seats at the expense of the list, and we came to the conclusion between about 2016 and 2026 we may reach the point where there are no longer sufficient list seats to produce the proportionality that MMP is based on. And what I'm suggesting here is that either in future when we add an extra electorate seat we also add an extra list seat. Ideally I would like to go back to the Royal Commission's one of an even split between electorate and list seat, and that would be, again, whenever an electorate seat was made if we would add a list seat as well to maintain the 50:50 split between that. I suggest that as a possible solution.

SIR HUGH: Although of course we can't look at the number of MPs. Robert?

ROBERT PEDEN: That's an interesting idea, though.

SIR HUGH: Yes it is – quite a neat solution. Therese?

DR ARSENEAU: I agree, a neat solution, but probably outside our parameters at this stage.

ALAN McROBIE: There is a Parliamentary Select Committee talking about some things too.

SIR HUGH: They're talking about constitutional issues, so maybe they'll look at this. We could at least mention it in our Report as an idea which hopefully they would read and pick up.

PROFESSOR ROBERTS: Alan, yes, you say more recent modelling indicates that when the number of electorate seats exceeds 80, three quarters of the total Parliamentary membership – 80 is only two thirds of the Parliamentary membership, 80 out of 120 is two thirds, so that you're talking about 90 electorate seats – you mention more recent modelling – which more recent modelling – have you – is this stuff you've done yourself.

ALAN McROBIE: Yes, it's just stuff that I've done myself that I've got here – I'm not sure whether in fact I've passed over Therese at one stage or not.

PROFESSOR ROBERTS: Because, I mean, this is something that you would have seen on the Review website – the Statistics New Zealand has given its projections out to 2051 and it doesn't reach the one quarter of seats in Parliament list seats, and even in 2051.

ALAN McROBIE: I haven't seen those statistics.

SIR HUGH: If you've done that recent modelling, perhaps you could send a copy of it to Louise Vickerman, it would be interesting for us all to have a look at.

ALAN McROBIE: Yes, I could do – I've probably still got it on the spreadsheet.

SIR HUGH: Oh, that would be great. Is there anything else?

ALAN McROBIE: There was just one other brief one – and it actually comes as a result of various talks that I did prior to the referendum last year – it seems to me, and this is for the Electoral Commission rather than the Review itself – the Commission I think needs to emphasise through its publicity and it's a continuing publicity thing – that a general elections are about electing a Parliament and not a Government. I used to start each of my talks by asking people what they did when they went – what was happening.....

Interruption with Mr Hitchcock –

SIR HUGH: Yes, Mr Hitchcock – we're still talking to Mr McRobie – would you just like to stay on the line for a few minutes, and then we'll get to you.

ALAN McROBIE: I asked the question at the start, what impact did we do when we voted in elections, and people sort of looked blankly and then answer came to almost inevitably – we're electing a Government. Now it seems to me, particularly with MMP we need to get the message through to people there that we are electing a Parliament not a Government, and that the Government will emerge as a result of the composition of the Parliament following the election. But this leads that as a thought for the Electoral Commission for the future.

SIR HUGH: Yes, we certainly agree with that – I think that we've taken the point even if the electorate at large may not have as yet. No further questions? I've got nothing further.

PROFESSOR ROBERTS: No, thank you very much, Alan, a very interesting and well argued submission.

DR ARSENEAU: Same – really enjoyed reading it, thank you Alan.

ALAN McROBIE: Thank you very much – to the panel there – thank you.

CALL ENDED : 11:00am

11:00am

SIR HUGH: Welcomes Mr Hitchcock – you can take it that everybody on the line has read your submission – I’m Hugh Williams, I Chair the Commission; Robert Peden is on the line, he’s the Chief Electoral Officer; we don’t have our Deputy Chair; Professor Roberts is also on the line as is Dr Therese Arseneau, our two political science advisors and Louise Vickerman and John Spencer who have been helping as members of the Commission’s staff. Would you care to address us on your submission, your main points and then we’ll ask you any questions that we think we’d like to ask.

EDWARD HITCHCOCK: Thank you very much for the opportunity to speak to my submission – my submission focuses particularly on the problems that are created by the use of vote percentage threshold. It proposes that the simple and robust way of addressing these issues, it doesn’t advocate raising or lowering the existing thresholds, it aims to make the thresholds less problematic – and I wanted to address three area: One is to talk a bit more about what the problems are with thresholds, to describe the solution that I propose and also to talk a bit about the possible affects of making that change.

Now, thresholds have a fundamental problem that they’re always set subjectively, we have a 5% threshold and there are arguments it should be 4 or 2, or bigger – but in the end they are subjective and so there is always a problem of having a party that just falls slightly to one side of one and that can cause substantial changes in the result, but also obviously it can cause quite a bit of resentment to people if they just miss out. The obvious thing is that if you have an election that is otherwise close, and one party gets a 4.99% of the vote, it doesn’t win a seat, then you can have one party winning whereas if they get a couple of extra votes then the election can go completely the other way. I think that’s a problematical thing as having a voting arrangement where one or two votes can make a huge difference to the result. And of course the other thing that goes with having a threshold that a lot of people are wary of the voting for a minor party because of the risk that their votes might be seen as being wasted should the party fail to make the threshold, and in history we’ve got the situation from 2008 where the New Zealand First Party missed the threshold so that 4% of the vote was affectively wasted – had the threshold been 4% rather than 5% the election result would have been quite a lot closer.

Also in 2005 there were the Greens and New Zealand First only just got over the threshold, and in 1999 there were some close runs as well.

So those are the reasons why I'm proposing this change, and the change that I'm proposing is that on the voting paper there would be an extra column, it would have perhaps back-up party votes so that if those that could choose to choose a main party and also to have a back-up party to vote for and should the party of the main choice not cross the threshold then the vote could go to the back-up party. That means that although you still have the threshold, there's not the risk of a vote being completely wasted, and one would expect in that situation that most voters if they might choose a minor party for their main vote, and a larger party as a back-up vote to ensure that they actually end up with a say in the result.

Now, if you look at the way that would work, the voter could place a main vote or just a back-up vote, it doesn't matter provided they obviously don't vote for two parties in the same column, the process can work quite well – if the voter votes for the same party for the main and back-up vote it has no affect, but it's an acceptable vote – if a voter places only a main vote or only a back-up vote it's easy to count – so it's a very robust process. Once you have those votes and you then assign the back-up votes then the whole process continues unchanged from there. And looking at the affects of that change, is that if you made that change then the number of votes that would be ineffective should drop significantly because the majority of people would be expected to vote for a larger party as their back-up votes, so their vote is likely to be counted, it's likely to encourage more people to vote for smaller parties because there isn't that risk of their vote being lost. And general side affects one would expect would likely to be more support for smaller parties also you could expect that, especially younger voters, might choose to vote for a new party addressing particular concerns, but still being able to have an affective vote for a larger party. There could also be a down side thing in that from an analysis point of view there would be quite a bit of information as to which way people voting for smaller parties were leaning in terms of their other interests.

Yeah, so in summary it seems a simple solution to overcome a lot of the issues with the thresholds that should be straightforward to implement.

SIR HUGH: Thank you for that. We've been starting off with Robert Peden, the Chief Electoral Officer, so I'll hand it over to him.

ROBERT PEDEN: Thank you Sir Hugh. Thank you Mr Hitchcock. I don't have any questions, I'll defer to political scientists, who I think may well have some questions for you.

SIR HUGH: Thank you. I was just going to ask you, Mr Hitchcock, this is a variant on the various types of preferentiality that have been suggested to us, and of course were suggested to the Royal Commission, but preferentiality seems to be rejected by the New Zealand voting public whenever it has been offered them – do you think this would be an even any more acceptable?

EDWARD HITCHCOCK: My understanding of preferentiality that the thing that often has been heard about it, when you ask people to rank 27 candidates in order, not a lot of people can't do that, this process gives you most of the benefits of a degree of preferentiality without the risks of informal votes because it's robust – it gives you most of the benefits really without any of the costs.

DR ARSENEAU: Thank you for your submission, very detailed and well thought out, I was wondering do you think it would add, a sort of an extra complication to have the alternate vote on one side of the ballot but not on the other?

EDWARD HITCHCOCK: I'm sorry, I'm not sure I understand your question.

DR ARSENEAU: Oh, in terms of the electoral – in terms of if you have it for the party vote would you advocate it for in the electorate vote as well?

EDWARD HITCHCOCK: No, no – it's purely in the party vote, because it's purely there to address the issue of the fixed threshold. I think electorate voting is well understood, you've got to have one candidate and the one that wins is the one that gets the most votes. The issue I'm trying to address here is that the fixed percentage threshold is always got to be arbitrary, and this is a way of trying to minimise the cost of having something arbitrary in the system.

DR ARSENEAU: In speaking of that, in terms of the party vote and it's at 5% at the moment, if that was lowered would that partially address your concerns?

EDWARD HITCHCOCK: Oh I think lowering it would certainly lowering the threshold reduces the significance of the threshold as an issue. But I'm aware that there seems to be a feeling of a need to have quite a high threshold, so this is a way of addressing those problems, and obviously reducing the threshold would equally – it would reduce the problem but it still leaves the issues of having a threshold where you can have party that can fall just a tiny amount short of the threshold, which causes all sorts of resentment.

DR ARSENEAU: So, we have received a number of submissions on lowering the party vote threshold to, say, 3% or even 2.5% - so even at those levels would you still be advocating an alternate vote?

EDWARD HITCHCOCK: Possibly, I think the lower the threshold the less important my proposal would be that is for sure. I haven't got a firm view of what level the alternative vote wouldn't be worth doing.

DR ARSENEAU: Thank you very much, I appreciate your submission.

PROFESSOR ROBERTS: Like Dr Arseneau said, thank you for a very interesting and thoughtful - the idea of a back-up party vote is very interesting – I want to just clarify, you say in recent elections the percentage of votes lost has varied up to about 15%. The overall average for all six MMP elections is actually fewer than 5% of the votes, were wasted votes. Where did you get the figure 15%?

EDWARD HITCHCOCK: Oh, I suppose the higher percentage comes in if you include the votes for parties that only got in because of an electorate seat. And I guess perhaps there's an argument that says what I'm proposing would gain an extra level of importance if it were decided not to provide the electorate seat qualification for being able to win list seats.

PROFESSOR ROBERTS: Ok, right, thanks for that clarification.

SIR HUGH: No further questions – thank you Mr Hitchcock – thank you very much indeed for the work you’ve put into that and for the submission – we’re glad we’ve been able to accommodate you by hearing you orally, I gather you’ve been overseas for a period.

EDWARD HITCHCOCK: Ok, thank you very much for the opportunity.

CALL ENDED: 11:15am

11:15am

SIR HUGH WELCOMES PAUL HARRIS

SIR HUGH: Hi Mr Harris – Hugh Williams here, I am the current Chair of the Electoral Commission, thanks for joining us. We've got Robert Peden on the line in Wellington, we don't have Jane Huria, the Deputy Chair, Nigel Roberts is with Robert in Wellington and Therese Arseneau is on the line from Christchurch. The format we have adopted is that we ensure everybody that we've read the submissions, and we have, particularly with a very interesting one such as you've put forward from your experience, and invited the people making the submissions to address us on the principal points and then we'll take it in turn to ask you some questions. So if that's acceptable to you, you might care to lead off.

PAUL HARRIS: Thank you, and thank you for the opportunity to speak to, what is a, I'm afraid, a very brief submission because I only got back from overseas about a week before the deadline. I think in terms of the threshold and the one seat alternative, I think from my quick glance of submissions you've received this is likely to be a pretty major issue for the Electoral Commission.

SIR HUGH: That's the one that has excited most of our submitters.

PAUL HARRIS: Yes, and I think it's going to be a matter of striking a balance between a number of different factors, I mean it's clear that for the Royal Commission the opening avenues for new and emerging parties to be represented in Parliament was a major theme, and that is why I think they settled on 4% of the party vote threshold, and the one seat alternative. I think it's important not to lose sight of the advantages that the one-seat alternative has and I have listed those are the ones that I believe that has in paragraph 6 – but on the other hand it's also true that perceptions of fairness are important for the legitimacy of an electoral system and it's clear that the situation that arose in 2008 was widely perceived as being unfair. And that's why I think the Commission is going to have to respond on this issue and to try and balance the advantages that it sees the one seat alternative and the 5% threshold is having, compared to the disadvantage principally in terms of fairness, and I mean there are some obvious ways of trying to deal with the issues and the ones I listed in paragraph 11, of those I think the last one I think has the potential to strike the balance between the

need to try and preserve fairness, but also to try and preserve some of the advantages of the one seat threshold.

In terms of dual candidacy and whether list MPs should be able to be candidates – I think the disadvantages of preventing dual candidacy that the Royal Commission identified, still stands – particularly the Royal Commission regarded it as another major theme that electoral processes shouldn't in themselves contribute to party disunity, and that's one of the major reasons why they thought that banning dual candidacies was not a good idea. And I think if you allow dual candidacies, then it follows in my view that you also allow list MPs to contest by-elections. So on balance I think the status quo should remain.

Open or closed party lists are an interesting issue – from a technical point of view I think you can construct a system for open lists and it's done elsewhere, and it seems to work. But in New Zealand's case I think you'd almost certainly have to look at some sort of regional list, which means that you'd have to define 'regions' in some way, you'd also have to decide what degree of openness you would allow, and in some cases where lists are open, a voter can only as it were choose one of party's candidates and that counts as a vote for the party as well. So it would be a, I think, a significant issue in terms of voter education and voter information if a degree of openness were to be introduced. But I think also some of the issues that, or some of the reasons that lead people to talk about the need for open lists can be addressed in part by looking at the requirements on parties in terms of the processes they use to select their candidates, and that's why I have raised the issue of section 71 for the Commission's consideration.

Finally, it's an old perennial but the very tight population tolerance that the Representation Commission has to work with in determining electorate boundaries, I think needs to be considered, and that's why I raised it, and you'll be familiar with the arguments no doubt, but I thought it worth raising just to put it on the Commission's agenda for consideration.

SIR HUGH: We've had quite a number of political parties and private submissions that have recommended an increase in the tolerance from minus 5 to I think the most common recommendation is plus or minus 10.

PAUL HARRIS: Oh good, I am glad to hear that, so really that's really all that I wanted to say by way of introduction and I'd be happy to respond to any questions.

SIR HUGH: Thank you very much indeed – it may have been hasty but it was in my view a very well thought out submission.

ROBERT PEDEN: Hello Paul. On your point about the advantages of the one seat rule, your submission is rare in that you are one of the few people who has gone to the effort of identifying the advantages of the one seat rule, and that's very helpful, and I've looked at them carefully – I suppose my question would be, leaving aside the first advantage you identify and the last advantage you identify – I'm wondering whether there are really advantages of the one seat threshold, or advantages of crossing the threshold and still for me the issue is what's the reason in principle for setting one seat as a threshold, or two seats as a threshold as you recommend. The first advantage you set out is that it allows registered parties with enough local support, and it really raises the question in my mind why should a party that has local support, whether it's in the form of one seat or two seats be eligible for allocation of list seats where a party that's got more national support, but not enough to get across the threshold doesn't get any seats.

PAUL HARRIS: Well I think if the voters in an electorate or two electorates, or however many it may be, are willing to elect a candidate from a new party or a regional party, or a party that's responding to significant local issues, then it means by allowing that party to compete for list seats on the same basis as everyone else, it means that the supporters of that party that live outside that particular electorate or electorates also have an incentive to show their support for the party in the party vote. So it is a worry I think of, not enfranchising, but of allowing parties to compete if they have enough local support, significant local support, and getting a person elected in an electorate or two electorates is not an easy task. Although I guess if it's a matter of a negotiated support as we've seen in recent years, then that raises another set of issues. But it is another way of allowing new and emerging parties or parties responding to particular local issues to feel that they have a voice and a chance of being represented in Parliament.

ROBERT PEDEN: I suppose the – a number of submissions – a great number of submissions in relation to the first advantage you identified would say that it simply,

rather than being an advantage, it's simply an unfairness that – just because you've won an electorate seat you should be able to get additional seats that and if the party has enough support to win an electorate that's well and good, but it still needs to cross the same threshold as any other party to get additional seats. What would be your response to the assertion that's been made to us that the current situation, the current threshold is unfair?

PAUL HARRIS: Well it is unfair in the sense that occurred in 2008 where ACT NZ had five seats and NZ First who got more party votes didn't have any seats, and I understand that and that perception can be destructive of perceptions of the legitimacy of the electoral process if it happens on a pretty wide-spread basis – and the Commission clearly has to address that issue – but in doing so I'm suggesting that that perception of unfairness needs to be balanced against a number of other considerations. The fact that a party wins an electorate seat, or a party candidate wins an electorate seat, shows I think a degree of support for that party and the reasons why people are willing to support that party that in my view should it allow the supporters of that party outside that electorate to feel that their votes can count. Now as I point out, they don't always count, but they at least compete on the same basis as parties that get over the threshold. Now, I think that the 5% threshold in my view is a little high, and in my view, as I say, it should be lowered, but the one seat alternative does in my view have some advantages and I don't think it's an open and shut case for discarding it.

ROBERT PEDEN: Thank you Paul. Sir Hugh, the other question I had was around the points Paul makes on the section 71, so I'm wondering whether other members of the, you or Nigel or Therese may have questions on thresholds.

SIR HUGH: Perhaps just pose some questions on the threshold issue and then cover the section 71, if that's ok. We've contacted the surviving members of the Royal Commission and three of them have said to us that their recommendations for the one seat threshold was a mistake. That's Sir John Wallace, Sir Kenneth Keith and Prof Mulgan, and they have all essentially said we shouldn't have done it. Does that alter your views as to the advantages of retaining the threshold with a 5% threshold or in combination with a lower threshold?

PAUL HARRIS: It is, from the best of my recollection, it is true that it wasn't discussed at length, and it is true that the MMP system used in Germany has a similar exemption if you like, (Sir Hugh - a federal constitution) yes, that's right, but I do remember the Commission being impressed by, I think it was a submission from Bruce Beetham, who was a Social Credit Member of Parliament at the time, saying that the Parliamentary workload that small parties have to undertake, makes it very difficult if there are only one or two members of that, I mean they can't obviously be on as many Select Committees as parties with more representation, and to the best of my recollection he also recommended that the electorate seat alternative to passing the threshold should be adopted. Now, as I say, I don't recall a long discussion about it, but I wouldn't describe it as a mistake in my view, because it does have the way it has worked in New Zealand, it does have some advantages, and there may be a case for making it slightly tougher by requiring two seats in combination with lowering the threshold so that new and emerging parties, if they can't win an electorate seat, have a better chance of securing representation.

SIR HUGH: What I have found, and I think probably the others are with, to be one of the most illuminating submissions we've had was in Hamilton was from Jeannette Fitzsimmons whose probably had as much experience as anybody in New Zealand of trying to run a Parliamentary party with one, two or a small number of MPs, and she made the point, which is of course not unsurprising, that the more MPs the easier it is for a party to have an affective voice in Parliament, and how difficult it is for a one person party to make any real significance. But she suggested, as I recall, that about four or five MPs is really the sort of affective minimum for Select Committee work, speaking in the House, constituency work, the allocation of Parliamentary Questions and the like – do you have a view on that?

PAUL HARRIS: Well, I think she's probably about right, and she obviously has more experience in these things than I do. Yes, I mean, I think it's very difficult for parties that don't reach a critical mass to be affective, particularly if some of their members are Ministers, and therefore don't participate in Select Committees and so on.

ROBERT PEDEN: Sir Hugh, sorry – can I just check a follow up question from really the first one I was trying to get to and the advantages that you've identified for – the Bruce Beetham submission - is that what you're getting at in your second bullet point,

additional list seats allow the parliamentary workload to be spread within small parties. (Paul Harris – yes) - so it's really that if a party is going to be represented in Parliament by way of winning an electorate seat, then to maximise its effectiveness in Parliament it should be allowed additional list seats even though it hasn't crossed the threshold, and that may be an answer to the fairness question, that it's not a question of fairness in that case, it's a question of effectiveness of Parliament.

PAUL HARRIS: Yes, I think that it should be allowed the opportunity to compete for additional seats.

ROBERT PEDEN: When you express it like that it had the opportunity to compete for additional seats at the election, I mean, it was contesting the party vote – and ...

PAUL HARRIS: Yes, and if it doesn't get enough party votes it does get any additional seats as has happened more times than parties have won additional seats.

PROFESSOR ROBERTS: Paul, yes, thank you very much for a very interesting and detailed submission – I just want to take up your point that you said in point 7, the major disadvantage of the one electorate seat alternative it is perceived as unfair, that a party has less than 5% of the party votes, but get list seats. Don't you think that there's another perception of unfairness is people in particular electorates, their electorate vote has a power that other people's electorate vote simply doesn't have. So much so, that of course, you know, if you're voting by and large for one of the major parties, the only affect your electorate vote has is choosing which people from that major party is going to get into Parliament and who won't get in on the list by putting in somebody from a major party. I think there's a lot of criticism that it needs to, you know, people in Epsom, people in Ohariu, people in Wigram, their electorate vote is unfairly advantaged.

PAUL HARRIS: Perhaps – I mean that's no different from the old marginal seats perception that people in certain marginal seats have a greater power of their vote because that's where the elections were won and lost. It is I suppose you could say that's a degree of unfairness, but the real determinant of the representation that that party that won that electorate gets, is its party vote and if that party has representation in Parliament and has fewer party votes than other parties then that's where the major degree of unfairness arises. But I think you're probably right, there is resentment, that

voters in Epsom or to take the obvious case, in 2008 and potentially 2011, that the electorate votes had a power that voters in other electorates with their electorate votes didn't have. And I guess if you retain the one seat (threshold?) or increase it then that feeling might persist, but as I see it the major criticism is that the situation that arose in 2008 could arise again.

DR ARSENEAU: Sorry I lost you for a second. Thank you as well for your submission, I found it really interesting and informative. Can I ask you a quick question about what you said about winning an electorate seat shows the degree of support for that party that warrants its representation in Parliament – I'm wondering whether the sort of deals that are done negates that to a certain extent, that there is a perception that, you know, when National sort of indicates that their voters should vote for this other party, it doesn't give the general public a sense that that party has received, I guess, personal support for their party that would warrant their representation.

PAUL HARRIS: Yes, I can understand that, but of course the party's voters still have to vote for that candidate, they still have to follow the party they really support their wishes, and maybe they don't always do that, I don't know. So, it is I suppose a reflection, not necessarily that they support the winning party's policies, but that they rely on the judgment of the party they do support in order to cast their votes for that candidate. And that to me brings a degree of transparency into those sorts of arrangements, I mean, I don't object too strongly to parties doing that provided it's still open to the voters as it is to decide whether or not to follow that course of action.

DR ARSENEAU: That really clarifies it, thank you.

SIR HUGH: Ok, can we move onto the section 71 with the party's order of list.

ROBERT PEDEN: Thank you. Paul, would your submission be achieved by deleting from section 71, paragraph (b) and (c)?

PAUL HARRIS: Yes, it would be because the way it's currently worded, (a), (b) and (c) are alternatives, or (a) and (b) are alternatives and I think it would be achieved by making (a) a requirement but then allowing as I say, allowing delegates elected by party members to then take the results of the participation by members in determining the final

order. Section 71, when it was introduced, I recall, was seen by some as really reflecting the practices, the existing practices of the two major parties anyway, and I think there were, I mean, it's obviously open to parties at the moment to do what I'm suggesting, but occasionally there is criticism that party leaders, that section 71 still allows party leaders to affectively determine the composition and ranking of party lists because they've been elected by people representing the membership.

ROBERT PEDEN: What do you see as the mischief in that, that a party can adopt rules which complies with section 71, but have the effect of a small number of party officials being in a position to be able to determine the order of list and its order.

PAUL HARRIS: It doesn't create much of an incentive to be a member of a political party.

ROBERT PEDEN: Who's problem is that then? – I suppose my question comes back to the mischief then, because if that's the way the party organises itself, and it's a disincentive for people to join the party, what's the mischief that the rules reflect the party in the way its organised, and it may be a turn off for people joining the party, wouldn't that be an incentive on the party to change its rules?

PAUL HARRIS: Well, it may be or it may not be. It seems to me that if section 71 is to have to any real impact, then the democratic procedures and candidate selection seem to me to pretty much require participation by the membership, more directly than section 71 currently seems to permit.

ROBERT PEDEN: or to require.

SIR HUGH: I've got no questions on section 71, Nigel?

PROFESSOR ROBERTS: I'm very happy to leave section 71 to lawyers or former Chief Executives of the Electoral Commission.

SIR HUGH: Well unfortunately it isn't they who will be doing this Report. As you can understand, we've teased out this with a number of people, particularly submissions from former parliamentarians and the political parties themselves, just what you could

put into section 71 which would overcome the problem some people have seen not of the way the rules are worded, but of the way the rules are operating, and no one, I think, has been able to give us a satisfactory list of what would work for parties big and small. Do you have a view?

PAUL HARRIS: No – I mean it seems to me that political parties, and I think there was, I might be wrong in this and Robert can probably recall, but I think there have been a couple of court cases about the ways parties operate under section, but I...

SIR HUGH: Yes, a National candidate called Payne who's sued the National Party for not getting the nomination in Selwyn and Rakaia I think it was. We had Mr Payne make a submission to us in Christchurch.

PAUL HARRIS: And I think there was a case with New Zealand first a few years ago...

SIR HUGH: Peters and Collins where Winston Peters did much the same thing, and there's another case section 71 wasn't actually an issue, but the Court of Appeal made some observations on it. So there are at least three, well, Payne had two goes, actually four cases where judges have made some observations on section 71, which might go some way towards codifying what it ought to include, but their observations are not very detailed.

PAUL HARRIS: And, then of course there is an issue about with section 71 as it stands or in a modified form about what the role of the Electoral Commission should be, in relation to it.

SIR HUGH: Yes, the Royal Commission as you know recommended that the Commission have essentially an adjudicative function in relation to section 71, but in terms of the operation of parties' rules for myself anyway, I have a lot of difficulty seeing how we could do that without becoming, getting into an advisory situation with political parties when that really undermines the whole of what should be the type of cooperative relationship between them and us.

PAUL HARRIS: Yes, I think that's right, and I think parties are now required to deposit their rules with the Commission, so that makes them open to public inspection.

SIR HUGH: And although there is section 71(b) simply says we've got to make them available to anybody who calls at the Commission Offices, in fact all the parties' rules are on our website, so they're publicly available.

Ok, anything else from your point of view, Robert? Nigel? Therese? Thank you very much indeed, as the person charged with the task of writing most of the Report, I must say that I found your analysis and your historical perspective of particular importance and helpful.

PAUL HARRIS: Well, than you very much and I wish you luck in writing what is certain to be quite a significant report, but also likely to be a contentious one.

SIR HUGH: We're all acutely aware of that.

PAUL HARRIS: I'm sure you are, I mean one interesting point that I'll just mention in passing is that as I understand it, it remains to be seen how the Commission's final Report will be considered by Parliament, and whether Parliament is likely to adopt a similar rule as they did with the MMP Review Committee Report requiring unanimity or near unanimity in terms of particular recommendations. But that's something that's in the future.

SIR HUGH: We have had some submissions around the entrenched provisions of the Act, but more around cynicism I think that the political parties who have made submissions essentially opposing any change, currently command the majority of the votes in Parliament, so whilst we have a power of recommendation, those political parties could combine and decide to do nothing, and simply wear any electoral backlash that might be.

PAUL HARRIS: Yes, it might not even require them to combine as long as one party doesn't agree, and if they've adopted a unanimity or near unanimity rule then there's no agreement, so nothing will change.

SIR HUGH: We had a couple of submissions that suggest we ought to recommend a referendum on whatever we propose, and the people making the submissions have been candid enough to say that they're cynical about Parliament's response to our Report and want to try and avoid back-sliding on the part of Parliament, but that's going to prolong any amendment, any changes to the system and I think it's fair to say we're pretty lukewarm about the idea of future referendums on anything we propose, unless it's sufficiently major.

PAUL HARRIS: Yes, I think that's right and also it would be a difficult task to have referendums on a number of specific points because you'd have to make it a package, and that raises a number questions about whether referendums should be used in that way.

SIR HUGH: I mean, in a sense the referendum last year swooped up most of people's objections for the Review following the referendum with the people's major objections to MMP, so it's arguable, it could be argued that we've already done what these people are proposing we should do.

Anyway, thank you very much for your submission and your time, it's been very helpful.

PAUL HARRIS: My pleasure, thank you.

CALL ENDS : 11:50am